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Transcripts of Meetings of the State of Georgia Constitutional Revision Committee to Revise Article VI, Vol. II

State of Georgia



**STATE OF GEORGIA
SELECT COMMITTEE ON
CONSTITUTIONAL REVISION**

1977-1981

TRANSCRIPTS OF MEETINGS

COMMITTEE TO REVISE

ARTICLE VI

VOL. II



STATE OF GEORGIA
SELECT COMMITTEE ON CONSTITUTIONAL REVISION

Transcripts of Meetings
1977-1981

COMMITTEE MEMBERS:

GEORGE BUSBEE
GOVERNOR
CHAIRMAN
L. MILLER
DEPUTY GOVERNOR
THOMAS B. MURPHY
SPEAKER, HOUSE OF REPRESENTATIVES
BERT H. JORDAN
CHIEF JUSTICE, SUPREME COURT
WELLEY QUILLIAN
CHIEF JUDGE, COURT OF APPEALS
MICHAEL J. BOWERS
ATTORNEY GENERAL
ARCUS B. CALHOUN
SENIOR JUDGE, SUPERIOR COURTS



SELECT COMMITTEE
ON
CONSTITUTIONAL REVISION

ROOM 23H
47 TRINITY AVENUE
ATLANTA, GEORGIA 30334
404/656-7158

COMMITTEES MEMBERS:

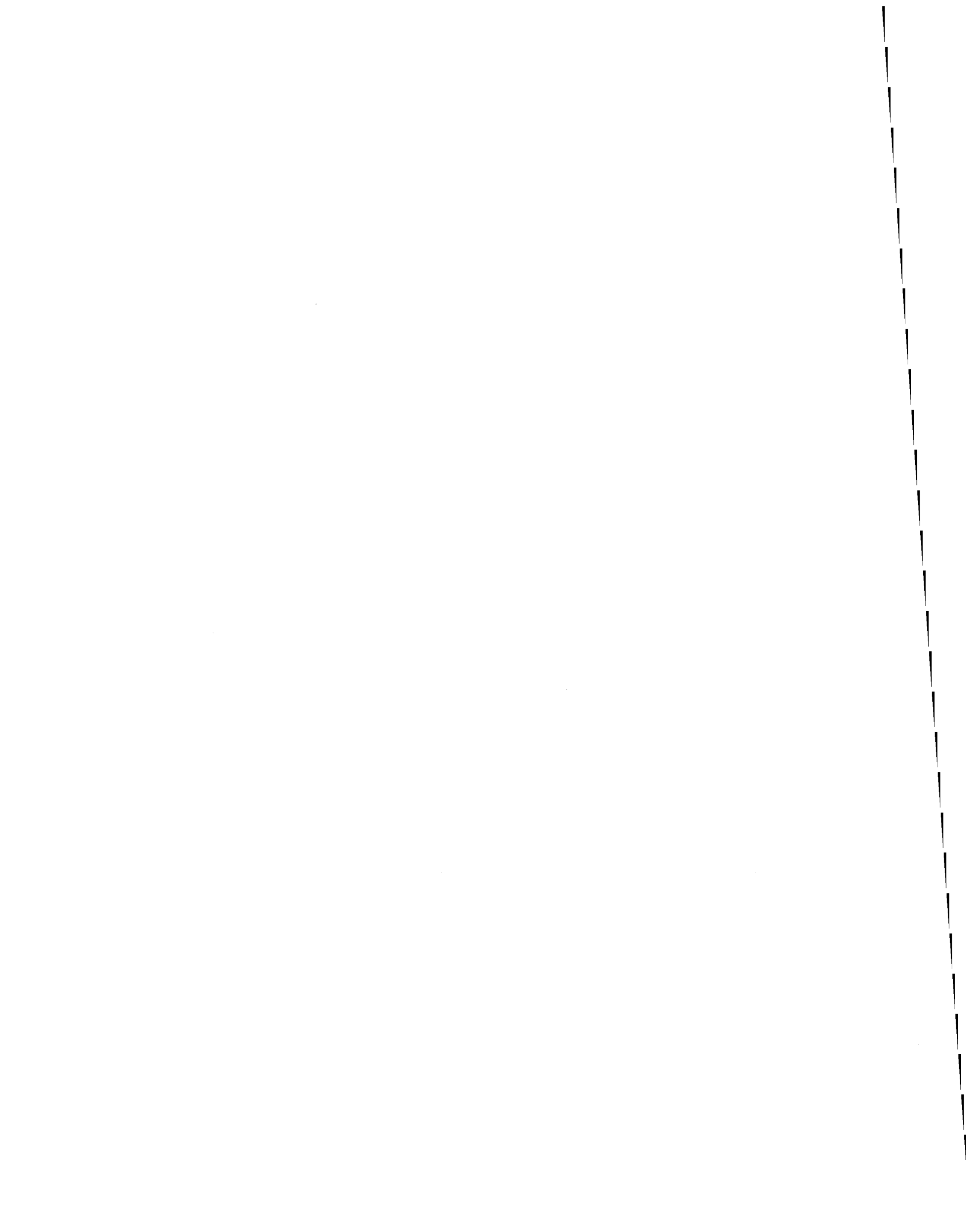
AL HOLLOWAY
SENATE PRESIDENT PRO TEMPORE
JACK CONNELL
SPEAKER PRO TEMPORE
ROY E. BARNES
CHAIRMAN, SENATE JUDICIARY COMMITTEE
WAYNE SNOW, JR.
CHAIRMAN, HOUSE JUDICIARY COMMITTEE

FRANK H. EDWARDS
SPECIAL COUNSEL
J. ROBIN HARRIS
EXECUTIVE DIRECTOR
MELVIN B. HILL, JR.
ASSISTANT EXECUTIVE DIRECTOR

MEETINGS HELD ON CONSTITUTIONAL REVISION

COMMITTEE TO REVISE ARTICLE VI

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Full Committee	July 11, 1977	34
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Full Committee	October 7, 1977	149
Public Hearing	October 15, 1977	101
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Full Committee	October 24, 1977	49
<u>1978 Effort</u>		
Full Committee	April 28, 1978	34
Full Committee	May 26, 1978	180
Full Committee	June 16, 1978	142
Full Committee	June 30, 1978	126
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COMMITTEE MEMBERS:

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CHAIRMAN

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LIEUTENANT GOVERNOR

THOMAS B. MURPHY
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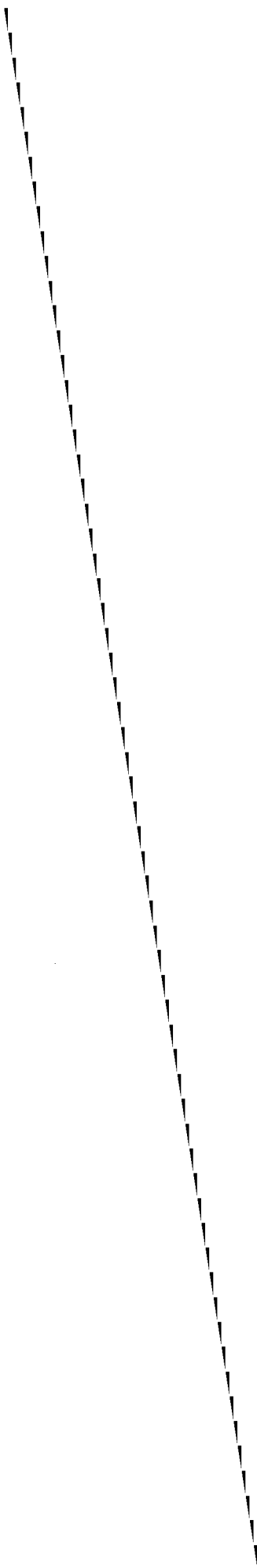
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<u>COMMITTEE</u>	<u>DATE</u>	<u># OF PAGES</u>
<u>1980 Effort</u>		
Full Committee	June 27, 1980	102
Includes draft of proposed new Judicial Article considered at meeting of Full Committee held on June 27, 1980		
Full Committee	August 8, 1980	226
Includes draft of proposed new Judicial Article considered at meeting of Full Committee held on August 8, 1980		
Full Committee	August 22, 1980	123
Includes draft of proposed new Judicial Article considered at meeting of Full Committee held on August 22, 1980		
Judicial Article Conference	September 12, 1980	134
Includes draft of proposed new Judicial Article considered at Judicial Article Conference and includes other materials distributed at Conference		
Full Committee	October 3, 1980	151
Includes draft of proposed new Judicial Article considered at meeting of Full Committee held on October 3, 1980. Also includes:		
-draft of proposed new Judicial Article as approved at October 3 meeting;		
-a summary of judicial administrative district forums held at Judicial Article Conference;		
-recommendations regarding proposed new Judicial Article prepared by the American Bar Association Committee on the Implementation of Standards of Judicial Administration; and		
-a copy of the final draft of the proposed new Judicial Article and related materials.		



STATE OF GEORGIA

Proceedings of the Select Committee on Constitutional Revision, State of Georgia, Subcommittee on Judiciary, held on April 28, 1978, at 11:00 o'clock, a.m., in Room 133, State Capitol, Atlanta, Georgia, and chaired by Representative Wayne Snow.

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P R O C E E D I N G S

1
2 REP. SNOW:3 Let's come to order. I'm going to ask Ray to start
4 off. I think that we have some new facts here so we'll
5 start off by introducing ourselves and as to the asso-
6 ciation of the group that we are representing.

7 DEAN PHILLIPS:

8 Mr. Chairman, Ray Phillips. I'm here representing
9 the University of Georgia Law School. Dean Beard is en-
10 gaged in law school activities today. And I have with me
11 Mr. Jerry Braun. Jerry has joined our operation as
12 Executive Director of the Institute of Continuing Judicial
Education.13
14 Jerry is a graduate of the University of Georgia some
15 seven years ago and practiced for four or five years; then
16 got into legal education over at the University of South
17 Carolina. And we've convinced him to return to the good
18 State of Georgia to help us at the University. And Jerry
19 is here and I want him to meet as many of you as possible.20 He wants to have a symposium at the University, poss-
21 ibly in the early part of September, where the judiciary
22 can hear from this committee and the work of this committee
23 so that none of us can be accused, as we once were at a
24 public hearing, of our work last year that nobody knew
25 about it. I would like you to meet Jerry.

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REP SNOW:

We're glad to have you with us, Jerry.

MR. BRAUN:

Thank you, Mr. Chairman.

REP. SNOW:

Joe?

MR. DROLET:

I'm Joe Drolet, Assistant District Attorney here in Atlanta. And I'm the designee for the District Attorneys Association.

MR. STUBBS:

I'm Bob Stubbs, Executive Assistant to the Attorney General, designee of Attorney General Bolton.

MR. HARRIS:

Robin Harris, savings and loan business in Decatur.

REP. THOMPSON:

I'm Albert Thompson, Chairman of the Special Judiciary Committee of the House of Representatives.

REP. SNOW:

I'm Wayne Snow, Chairman of this committee and also Chairman of the House Judiciary Committee, House of Representatives.

MR. HODGKINS:

Marty Hodgkins, staff of the Constitutional Revision Committee.

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1 MR. BEXLEY:

2 Harry Bexley, representing the AFL-CIO.

3 MS. WEBB:

4 I'm Mary Anne Webb, Senator Howard Overby's secretary
5 and he asked me to sit in. He's Chairman of the Senate
6 Judiciary Committee.

7 MS. WILLIAMS:

8 I'm Lucy Williams, Fulton County Grand Jurors Associa-
9 tion.

10 MR. MCKENZIE:

11 Terry McKenzie, with the Office of Legislative Coun-
12 sel.

13 MS. NONEDIZ:

14 Cindy Nonediz, with the Office of Legislative Coun-
15 sel.

16 JUDGE CRANE:

17 Bert Crane, a Juvenile Court Judge of Bartow County
18 and President-elect of the Council of Juvenile Court
19 Judges.

20 MR. SANFORD:

21 I'm Mike Sanford, Juvenile Court consultant with the
22 Council of Juvenile Court Judges.

23 MR. PERRY:

24 I'm Lee Perry. I'm the law assistant for the Chief
25 Justice; he can't be here today.

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1 REP. SNOW:

2 Tentatively, subject to the approval of the Select
3 Committee--and for those of you who were not there, we did
4 have a public hearing--one public hearing last year which
5 was interesting--I am going to appoint to this committee
6 --and again, of course, it is subject to the approval of
7 the Select Committee--Dorothy Beasley, who is one of the
8 judges of the State Court here in Atlanta to represent
9 the State Court Judges' Association and Judge Stanley--
10 William Stanley--to represent Probate Court, Joe Mundy,
11 to represent the Superior Court Clerks Association. He's
12 presently the President of that association.

13 I have down here--I hadn't met you, Bert--but I had
14 down here Judge Ruff to represent the Juvenile Courts.
15 If you have some preference or if you would like to be the
16 representative--what we do, we appoint these folks but
17 some of them have designees.

18 JUDGE CRANE:

19 Judge Powell appointed me as Chairman of the committee
20 to look into the Judicial Article. I will be president
21 next year; but Rex is fine. He's past president.

22 REP. SNOW:

23 Well, it's immaterial to us from that standpoint.
24 Rex had been rather active with us from time to time and
25 that's why his name came to mind.

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CERTIFIED



1 JUDGE CRANE:

2 Would you like for me to get in touch with Judge
3 Powell and report back to you to see if he would prefer
4 that?

5 REP. SNOW:

6 If you would. Because, as I said, this is tentative
7 and we can take it on any basis from that standpoint.

8 And Justice of the Peace Roberts. And we will have
9 a representative also from the Minicipal Court. We do
10 not have a name for that yet but Ed will help us with
11 that.

12 That will increase the membership of the committee.
13 Unless there's some objection to it, we will keep our
14 quorum, however, at eleven. And at the next--by the time
15 we meet again with the Select Committee--I will not be
16 able to attend the meeting on the 25th, but Marty, if you
17 will submit this to them, then we will proceed from there.

18 During the past session--I think I'll ask you, Marty,
19 if you will, to report on the passage of the two Articles
20 by the General Assembly.

21 MR. HODGKINS:

22 Last session the General Assembly passed the first
23 two Articles that the Select Committee submitted to them.
24 They passed a revised Article on Elective Franchise and
25 a Revised Article on Retirement and Scholarships. The

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1 first two proposed by the Select Committee were approved
2 without too much problem. They also approved several
3 other constitutional amendments which will affect the
4 entire process of constitutional revision. I think probab-
5 bably of the two, the most important one is the amendment
6 that allows the effective dates of constitutional amend-
7 ments to be placed in the resolution proposing the amend-
8 ment rather than the body of the of the resolution itself.
9 And this way you won't have a Constitution that's full of
10 effective dates in various and sundry places.

11 And, secondly, they also approved a special commission
12 which will have the power that, as constitutional revision
13 goes along to--and to keep Article that have been revised,
14 to keep them clean without amendments that may or may not
15 be germane to a particular Article--to place them in
16 another Article until that Article is finally revised and
17 we can look at that different Article and see that provi-
18 sion is necessary. But it's a mechanism to make sure that
19 the amendments or the Articles that are revised aren't
20 immediately amended and get back in the same problem that
21 Georgia has now, to just continue amendments to the
22 Articles.

23 REP. SNOW:

24 I would like to add to that the Elective Franchise
25 Article that was passed was passed without any change. It

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1 went through exactly as it was recommended by the commit-
2 tee.

3 We made a minor change in the Retirement and Scholar-
4 ship Article. And it was because of the local legislation
5 that was being affected for Fulton County and for the City
6 of Atlanta. And we had to make a change as far as the
7 retirement system for the employees of the schools in the
8 City of Atlanta as compared with the Fulton County em-
9 ployees.

10 And that was the only change that we made there. So
11 I'm hopeful that whatever the recommendations that we will
12 make as a committee, that the next General Assembly will
13 be able to accept them without substantial changes. I
14 made the statement to several folks, especially many on
15 the Select Committee, that the task that this committee
16 has is the most difficult of any of the Articles of the
17 Constitution. I don't think there's any question about
18 that. Because there are more folks that are probably
19 going to be affected--more different groups--than any
20 other Article will do.

21 But I hope that as we continue our deliberations, we
22 will keep in mind that we are not trying through the Judi-
23 cial Article to make great changes as far as the present
24 procedure or the present courts are concerned, but to make
25 changes only so far as the Constitution is concerned and

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1 that the General Assembly on the recommendations of dif-
 2 ferent people in the future will be in a position to
 3 base legislative action on the needs as they may exist
 4 within the State and not be necessarily bound by constitu-
 5 tional language.

6 We need to keep things flexible. We are trying to
 7 reduce a lot of verbiage; we're trying to remove from the
 8 Constitution several areas that probably could be better
 9 effectuated through legislation and not through constitu-
 10 tional appointment.

11 Now, with that, we'll come to the time for the next--
 12 yes, Joe?

13 **MR. DROLET:**

14 How many new constitutional amendments were passed
 15 this session which affected the Judicial Article and would
 16 conflict with revision of it. I know there were a number
 17 that we had talked about last year--individual constitu-
 18 tional amendments that will come up this Fall for vote
 19 affecting the new Judicial Article?

20 **REP. SNOW:**

21 I don't know of anything of any--

22 **MR. DROLET:**

23 I know we tried generally to discourage them; I just
 24 wondered how successful we were.

25 **REP. SNOW:**

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1 We didn't pass any out of the Judiciary Committee, I
2 know. I don't think y'all did either, Al?

3 REP. THOMPSON:

4 !Indicating negative response.1

5 REP. SNOW:

6 We tried to discourage any additional amendments to
7 the Judicial Article.

8 MR. HODGKINS:

9 There were some local amendments increasing J.P.
10 Jurisdiction--I think four or five of those. But that's
11 all, as far as I know.

12 REP. SNOW:

13 Now, we had several amendments that would have
14 amended, say, the election franchise. Because one of
15 the things--the recall provision. But we changed that to
16 amended Article I, rather than the elections portion of
17 the Constitution.

18 At our next meeting which we will discuss as to time
19 somewhat later, but we are going to have, hopefully, repre-
20 sentatives from North Carolina and from--I wish we could
21 get Judge Hefner from Alabama over, if we can, Marty, but
22 if he's running for Governor, he's going to be tied up.
23 So we can--if you will, make some inquiries on that and
24 we will select a date before we adjourn this meeting to-
25 day.

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1 MR. STUBBS:

2 Did you ha-pen to notice that--I think Marty sent
3 out a copy of the Tennessee's Judicial Article. That was
4 the only Article that was rejected in Tennessee.

5 REP. SNOW:

6 They had really gone into a situation there--that
7 commission--that was based on a constitutional commission
8 --elected people. They had virtually placed the judiciary
9 at the mercy of the legislature as far as appointments and
10 other things were concerned. So it--they really had
11 weakened the judiciary in that.

12 Dean, it's good to see you.

13 DEAN PATTERSON:

14 I apologize for being late, sir.

15 REP. SNOW:

16 All right. There are two other things that I
17 wanted to--this meeting is more or less an organizational
18 meeting to see what we are going to do for the rest of the
19 year. We had, last year, certainly decided that we needed
20 to have additional public hearings. And I would like for
21 us to try to set some schedule for hearings in Augusta and
22 Savannah.

23 These could be arranged in such a way that we could
24 meet in one place on the afternoon and--say, Augusta, on
25 an afternoon and the next morning, in Savannah. The same

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1 thing would be true on the western side if we--say,
2 Albany and Columbus, the same way. The proximity of
3 Macon to Atlanta--I don't know whether we need to meet in
4 Macon or not. Do you all have any feelings about that?

5 I mean, possibly up in north west or northeast Georgia,
6 we could meet in Dalton or Lafayette. We'll talk about
7 that further.

8 Since we met last, though, Robin Harris has sent out
9 a further recommendation. Marty has copies of that to
10 give to each of you. Robin, I'd like for you to go into
11 some detail on your recommendations. We're not going to
12 take any action on that today, but just to familiarize the
committee with your proposal there.

14 And then we'll go into discussion on what our pro-
15 cedure should be for the rest of the year.

16 MR. HARRIS:

17 After the public hearing we had and, upon additional
18 reflection, although I'm one who has strongly advocated a
19 single-tier trial system, I felt that we ought to look
20 once--and although that was what the committee had deter-
21 mined last year--I felt that we ought to take another look
22 at the possibility of the two-tiered trial system.

23 And based on that, I submitted to you a couple of
24 proposals. They're pretty well spelled out in the informa-
25 tion. It would tie the second tier basically to the State

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1 Court concept and would make Probate--the existing Probate
2 Judges that have the qualifications would basically become
3 Superior Court Judges. And those without qualifications,
4 would become Associate Judges. And I thought theirs
5 would be the--as far as compensation, that those who met
6 the qualifications for Superior Court and District Judges
7 would be compensated by the State and Associate Judges
8 would be compensated in the same amount that they are now
9 compensated.

10 At the appropriate time, if the committee determines
11 to reconsider its decision of last year to travel with a
12 single-tiered trial court system, I would propose to sub-
mit this or something like this as some alternative method.

14 REP. SNOW:

15 This is just for our review today and not for--

16 MR. HARRIS:

17 Right. I'm suggesting that in counties over--and I
18 left blank the population--that Probate would be a divi-
19 sion of the Superior Court with the same qualifications
20 as Superior Court Judges. They could be used to preside
21 in Superior Court and Superior Court matters.

22 It's just something to look at.

23 REP. SNOW:

24 All right. I hope that everybody will give this
25 some rather close attention so that when we do get again

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1 into the substantive part of the Article that we will be
2 familiar with it.

3 Judge Weltner is with us and would like to make a
4 few remarks, I understand, Judge. We're glad to have
5 you, sir.

6 JUDGE WELTNER:

7 Thank you. I won't impose upon you, Mr. Chairman.
8 This is John Shope, who is on the staff of the Judicial
9 Council. I wanted to state only that we have submitted
10 proposals to your committee. I think all of our members
11 are very strenuously in favor of a single trial court.
12 And we are--I serve as chairman of a small committee com-
13 prised of myself, Associate Justice Jordan and Probate
14 Judge Marion Guess of DeKalb County, to continue our in-
15 terest in assisting you and being in consult with you re-
16 garding the committee. We feel very strongly that we've
17 got a good chance to do this and we hope that in time
18 we'll see that. Thank you very kindly.

19 REP. SNOW:

20 All right. Are there any comments that any member
21 of the committee would like to make at this time or any
22 suggestions that you would like to make prior to our try-
23 ing to determine what kind of schedule we're going to fol-
24 low for this year? Bob?

25 MR. STUBBS:

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1 It seems to me that one of the crucial decisions
2 that will have to be made again is going to be this one-
3 tier or two-tier system. And it might be appropriate be-
4 fore we get to that decisionmaking that we hear, maybe in
5 a more structured form, from the courts that were the
6 loudest in objection last time, were the groups that felt
7 most strongly for the multi-tiered system before we get
8 into--

9 REP. SNOW:

10 That primarily is one of the reasons for adding
11 some additional members to the committee. I think it will
12 also be helpful, Bob, for us to see what is happening in
13 Alabama and North Carolina and hear from those folks as to
14 how their system is working.

15 Of course North Carolina had a totally unique system
16 and they went about it over a ten-year period. And Ala-
17 bama rushed into theirs a little bit more rapidly, I think,
18 and they've had some repercussions.

19 MR. STUBBS:

20 A lot of fiscal problems.

21 REP. SNOW:

22 Yes. So of course Judge Hefner would be the logical
23 person to have here, but I doubt if we can get him. Let's
24 make every effort to do so.

25 MR. STUBBS:

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1 He will come if he can. He's a great advocate of
2 this.

3 REP. SNOW:

4 We ought to arrange that in such a way, Marty, that
5 we will have the folks from North Carolina--they don't
6 necessarily have to be here at the same time. But
7 schedule one in the morning and, if Judge Hefner could
8 come, to have him in the morning and the folks from
9 Carolina in the afternoon. Because we may have a time
10 problem and we wouldn't want to waste any of their time.

11 MR. HODGKINS:

12 Would you want to hear from any other states--Vir-
13 ginia, West Virginia?

14 REP. SNOW:

15 Ray, do y'all have any other suggestions on that, as
16 to some other states that have--what other states have
17 recently--you sent us a list on that, Marty, and I don't--

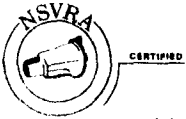
18 MR. HODGKINS:

19 Florida, and they're revising their judicial struc-
20 ture to a certain extent again right now. West Virginia,
21 Virginia, Kentucky--Kentucky, I think, just in '75 approved
22 a brand-new Judicial Article. I think they and Alabama
23 are the closest--have done theirs most recently.

24 REP. SNOW:

25 If we do it somewhat in depth, it will take--as far

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1 as North Carolina and an explanation of their system is
2 concerned, it will take a couple of hours or three hours
3 to do that. We will have to--it will be impossible to
4 arrange more than two states on one day, I think.

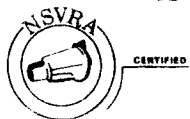
5 What we might do is to hear from those two since
6 they are neighboring states and then after that, make a
7 determination if we felt we needed to hear from some of
8 the others. We do have time. That's one of the beauties
9 of the things right now. We do have some time. Joe?

10 MR. DROLET:

11 I think one thing that has sort of bothered me a
12 little bit when we start talking about one-tier versus
13 two-tier and so forth, I think we're trying to go around
14 the sensitivities and the complaints and so forth that
15 came out with last year's proposal--different courts
16 worrying about losing their jurisdiction or their clerk
17 and so forth.

18 It seems to me that what we need to do is find out
19 exactly which areas are sensitive to the various existing
20 courts that are feeling threatened. And I'm looking down
21 the list of issues to be considered that Marty sent out
22 on April 17th. And these are the real questions. Do we
23 want to limit the number of different courts? Does every-
24 body agree on that including many of these smaller courts?
25 Do they agree on any of these? Do we want to change

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1 jurisdictions? On some of these more abstract questions,
2 I think, probably an approach would be to see which of
3 these areas there is some agreement on and which areas
4 are the sensitive ones that politically are going to be
5 impossible to get around before we start talking about
6 whether it's going to be one-tier or two-tier. Because
7 that's really going to dictate whether it's one-tier, two-
8 tier or whether we make no changes whatsoever.

9 And if nobody wants to change jurisdiction, number
10 of courts, size, you know, relationships to anything, then
11 it's going to be impossible to change anything. We're
12 going to be right where we were last year in a very futile
13 situation. Maybe some kind of questionnaire sent around
14 to some of the different courts--something to determine
15 which areas they're really bothered by as far as any
16 amendments in the Constitution.

17 REP. SNOW:

18 I think, again--and it's been said by several of you
19 on other occasions that we've met--that the objective of
20 this committee is to come up with a Constitution that, we
21 think, as a majority would be worthy of the people of the
22 State of Georgia and would be complementary to good judi-
23 cial practice.

24 And that is the responsibility we're charged with.
25 And it isn't necessarily to make everybody happy. And

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1 we're not going to make everybody happy. I don't think
2 there's any way to do that. Because I think everybody
3 would like to be a part of the Constitution. They don't
4 care what you do with somebody else but they don't want
5 themselves to be affected. I don't think there's any
6 question about that.

7 Well, if we're going--if that's going to be the end
8 result we might as well quit wasting our time right now.
9 We don't need to be meeting other than just to make some
10 language changes that would reduce, possibly, some verbiage.

11 But, again, we--Albert and myself and Senator Overby,
12 we've got to look at it from a practical standpoint too.
13 The two Articles that were passed this year went relative-
14 ly smoothly. We did have to--the Retirement Article was
15 passed only in the last week of the session. But, again,
16 that was because of the very sensitive situation existing
17 in the City of Atlanta between the school systems and their
18 own local package of legislation. So that was the hold-up
19 there. But that was--it was no real problem with any of
20 the substance of it in any of those Articles.

21 But I hope that I can feel real comfortable with the
22 end result that we come out with here. I want to support
23 whatever this committee does as far as the legislature is
24 concerned. And Albert wants to do the same, I'm sure.
25 And Senator Overby does. But there are some practical

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1 problems. There are courts in every Representative and
2 every Senator's districts. And they have tremendous in-
3 fluence over their local folks. Now, it's a selling job.
4 And that's why, hopefully, with the public hearing that
5 we'll have and we'll be able to at least encourage some
6 local support for the objectives that we have. It's not
7 simple.

8 But, again, it's the duty of this committee to come
9 up with something that we feel comfortable with and after
10 it leaves us, then there's nothing else we can do about
11 it. It will be up to the General Assembly then. But if
12 we're strong enough in our personal views on it, I think
we can do that. I hope so.

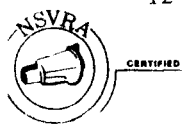
14 Now, when would you folks like to have the next
15 meeting of the committee? This will be the one in which
16 we will try to have some folks from the other states. I
17 feel rather certain that we will have some representatives
18 from those states. We may not get the people that we
19 would prefer to have. But we will certainly have some of
20 the folks that are knowledgable, can we not, Marty?

21 MR. HODGKINS:

22 I've talked with them. There will be no problem
23 in coming.

24 REP. SNOW:

25 If anyone has suggestions as to particular days that



1 we might start setting our meetings?

2 REP. THOMPSON:

3 How much time does Marty need to start contacting the
4 people?

5 MR. HODGKINS:

6 I can try this afternoon and find out what their
7 schedules are. In North Carolina, I talked to the direct-
8 or of their court system. He's worked on it quite a bit
9 and he is willing to come down. It would just be a matter
10 of his schedule.

11 And Alabama, if you wanted to get former Justice
12 Hefner, you know, that might be a little difficult as
13 he's running for office. I'd have to find out, you know,
14 what their schedules would be.

15 REP SNOW:

16 Is there any particular day of the week that is
17 more agreeable to folks for meeting days than others? Is
18 it better to meet on the latter part of the week--Friday?
19 Is that generally a good day for most of you?

20 MR. HARRIS:

21 Mondays, Thursdays and Fridays are fine with me.

22 Tuesdays and Wednesday are out.

23 REP. SNOW:

24 All right. How about you, Albert?

25 REP. THOMPSON:

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1 Friday's a good day.

2 REP. SNOW:

3 Is that fairly well a consensus? Well, we've
4 selected a day. Now, how about a date? The next meeting
5 of course will be here in Atlanta. What is the 26th of
6 May? That's a Friday, isn't it?

7 MR. HODGKINS:

8 That's a Friday, right.

9 REP. SNOW:

10 Well, I don't know. That wouldn't give us--the
11 Select Committee's on the 25th. We need to have the
12 approval of the new appointees by that time. I don't know
13 whether that would give us enough time. I don't antici-
14 pate any problems with the Select Committee on that, but--

15 MR. HODGKINS:

16 We could probably do it just like we did last time.
17 Once we get with these people, just notify the members by
18 mail. I think that's what we did last time. We could do
19 it that way.

20 REP. SNOW:

21 I know. But they would not be formally members of
22 the committee--the new ones--until after they'd been
23 approved by the Select Committee.

24 MR. HODGKINS:

25 Right. The last time, I think, what we did, Wayne,

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1 they had so many days to respond with any reactions. If
2 there was no--

3 **REP. SNOW:**

4 All right. Let's do that. Send it out to each
5 member of the committees. If they've got any objections,
6 then they can let us know about it. And those that we do
7 not know exactly who will be the member, just name the
8 association--a designee of the association.

9 All right. Is May 26th agreeable with everybody?

10 All right. That's the day then for beginning.

11 Now, what do you folks think about a schedule for the
12 public hearings? We won't necessarily have to select any
13 today. But as to places within the state that we should
14 meet? Bob, you might have some suggestions in that re-
15 spect.

16 **MR. STUBBS:**

17 I was trying to think back on the Juvenile Court
18 Code. I know we met in Savannah; I know we met in Augusta
19 and I think we met in Macon. But I don't recall any
20 other places.

21 **JUDGE CRANE:**

22 We met in Dalton.

23 **MR. STUBBS:**

24 Did we meet in Dalton?

25 **JUDGE CRANE:**



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Yes.

MR. STUBBS:

I didn't remember going to Columbus. I think Mr. Thompson might be offended if we skipped Columbus.

REP. THOMPSON:

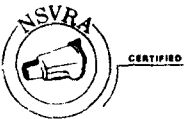
I got a volume of mail and telephone calls coming out of Columbus out of concern from one of the courts. I think a lot of other people got them too. You'd get a lot of objection out of that section of the state if we didn't go down there.

I like what you said originally. Go to Augusta and Savannah for two days and then Albany and Columbus on another trip. And then if you wanted to meet in North Georgia or something like that, that would be fine. I certainly think those two places are important.

REP. SNOW:

Okay. Does everyone feel that we should have these meetings prior to getting back into the substantive portions of it? And then after we have done that and come up with another recommendation, then to go back at least to one or two locations in South Georgia and maybe one in North Georgia prior--immediately prior to the General Assembly to try to get some support from the legislative delegation in those areas.

MR. DROLET:



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1 Are you contemplating using the proposal that we
2 ended up with last year as sort of a starting point?

3 **REP. SNOW:**

4 As well as some other recommendations that have been
5 made and a few of the comments that folks have on differ-
6 ent recommendations.

7 **MR. STUBBS:**

8 Well, you've got two spokesmen--Dorothy Beasley and
9 Bill Stanley, putting them on here--on the committee.
10 We'll be able to get an awful lot of comments that they
11 --both from their region as well as their judicial consti-
12 tuents.

13 **REP. SNOW:**

14 Do we have other suggestions? I think it's very
15 important--the manner in which we handle these public
16 hearings.

17 **MR. DROLET:**

18 That's why I was wondering about what we were going
19 to be talking about at the public hearings. If we don't
20 really have anything concrete that we're saying or no
21 change, then it's going to be hard to get anybody out.

22 **REP. SNOW:**

23 It will be the committee's recommendations as of last
24 year as well as any other recommendations that have been
25 made as to what they think relative to the one-tier or the

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1 two-tier proposals as well as the other areas that we
2 covered last year. We still have--as everyone is still
3 aware, we've still got some deep-seated feelings between
4 Court of Appeals and the Supreme Court of Georgia.

5 MR. BEXLEY:

6 I think we can't lose sight of the fact that we can't
7 direct all this just to those that are judges and in the
8 court system itself. I think we've got to take it to the
9 people that are going to be affected by these changes and
10 I think we'd best be addressing a lot of this to the pub-
11 lic out there, rather than to the judicial system. Because
12 otherwise we'll never anywhere with it.

13 They're the ones that are going to tell those legis-
14 lators how to vote. And we should come up with some kind
15 of program that we can get their input as well as the
16 courts.

17 REP. SNOW:

18 All right. As to the public hearings, would it be
19 good to be able to invite some special groups in the area
20 other than those who are involved in the courts to come
21 and to tell us what they think's wrong with the system
22 now; how they think it could be improved? I'm not talking
23 about the folks in Stone Mountain who want to burn crosses.

24 MR. DROLET:

25 I think we have to do that, otherwise we're going to

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1 end up back where we were with the people that don't want
2 to lose their jurisdiction and don't want to lose their
3 clerk or something like that, all telling us how they want
4 to keep everything the way it is and we don't have any-
5 thing. I really think we've got to get out somehow and
6 make this a public issue. Because it is a public issue
7 and then get the public's response and publicity in regard
8 to what is going on. Otherwise, we're never going to sell
9 this thing ultimately unless we do.

10 MR. HODGKINS:

11 Wayne, on that, I would imagine if you're going to
12 try and get the public, other than, as we say, the people
13 in the system--the judicial system now, that we might
14 have to have either night or weekend hearings to give the
15 people the most opportunity to attend. Because there are
16 a lot of people who might be interested but, you know,
17 work and during the day can't get off or whatever.

18 MR. STUBBS:

19 They get off during the legislative session and come
20 up here any day they want.

21 MR. HODGKINS:

22 Is that the public you're trying to reach, though?

23 REP. SNOW:

24 Of course we had our last and only public hearing on
25 Saturday. Lucy, you're really the only one that really

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1 represents an association, but yours is localized in
2 Fulton County.

3 MS. WILLIAMS:

4 That's right. Just Fulton County.

5 REP. SNOW:

6 Fulton County Grand Jurors Association. There's not
7 another one in the state, is there?

8 MS. WILLIAMS:

9 Dekalb has one. But not in other parts of the
10 state.

11 REP. THOMPSON:

12 You can start off, Wayne, with local governments.
13 They have an interest because of the financing angle of
14 the thing. And then you can get organizations like the
15 League of Women Voters--civic groups that have statewide
16 affiliation. If we can try and get them concerned in it,
17 that would be a start--Jaycees.

18 MR. DROLET:

19 Any community or civic group. That's why I think
20 there's a need, though, to have something concrete that
21 we're throwing out. You know, we're considering eliminat-
22 ing all of the little courts or considering abolishing
23 municipal courts or having just one court or something
24 that people can relate to and have some interest in.
25 Otherwise, they aren't going to have any idea what we're

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1 talking about or have any interest in coming to talk
2 about it.

3 **REP. THOMPSON:**

4 You're suggesting we send that same document out
5 this year?

6 **MR. DROLET:**

7 You know, this is a proposal. What do you think
8 about this? I mean, if you ask somebody, "What do you
9 think about the Judicial Article?" You know, "It's one
10 of the nicest ones I've seen." You get no response what-
11 soever.

12 **REP. SNOW:**

Jerry, do you have any suggestions?

14 **MR. BRAUN:**

15 I think that probably the more input you get into
16 this thing, the better the chances of selling it to the
17 public. I think that if you go in with a specific propo-
18 sal, you may not appear to have the flexibility to some
19 of these people that you do have. I think that you can
20 say, we have considered a lot of different things and
21 conclude, rather than have a specific proposal--

22 **REP. SNOW:**

23 Or that these are specific proposals that have been
24 made. "What do you think about these?"

25 **MR. BRAUN:**

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1 --not that you're just considering one.

2 REP. SNOW:

3 Well, we'll definitely have it on that basis.

4 All right. I will discuss this with--talk to Marty fur-
5 ther about it. Because we can make some decisions on
6 this after--at our next meeting after we hear from these
7 other states, I think. And then we can--in the interim,
8 I will discuss it with Marty and others and try to come
9 up with concrete proposals as to who should be invited or
10 --of course we invite everybody. But there are specific
11 groups that we might be able to locate within several of
12 these areas.

13
14 MR. HODGKINS:

15 Wayne, to follow up what Joe was saying, would it be
16 possible, maybe to have a committee approve just tenta-
17 tive things. Several alternatives that might be discussed,
18 you know. The one that we adopted last year or tentative-
19 ly adopted last year, maybe one similar to what Mr. Harris
20 drew up and maybe two or three things like this. This
21 might give them something to respond to and would show
22 that the committee is not wed to any particular idea?

23 REP. SNOW:

24 Well, we've also got the recommendations of the
25 Judicial Council and the probate Judges have made some
suggestions. I think it would be wise for the staff,

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1 though, Marty, to be able to also pinpoint each of those
2 recommendations as to how they differ or try to fix some
3 type of orderly schedule showing the differences that
4 would be in each of the proposals.

5 **REP. THOMPSON:**

6 Mr. Chairman, if I may make a suggestion, we had at
7 one time a proposed one-tier system and a two-tier system.
8 If we're going to send out that basic document, I think
9 that would be enough documents, at least enough proposals
10 to send out. And then if he prepares the alternatives
11 that have come up in another form, rather than in a
12 finished document and send that out, that would be enough.
 We don't want to overwhelm them with material.

14 **REP. SNOW:**

15 Well, it might be better to do it on that basis for
16 the whole thing, you know. Just to how it affects differ-
17 ent groups or--I think we should send out at least a
18 couple of the recommendations. Joe?

19 **MR. DRODET:**

20 I would think, though, not just sending out a couple
21 of recommendations. Maybe something explaining some of
22 the basic alternatives. Should we abolish municipal
23 courts? Sort of a press release kind of thing and then
24 an appendix of, "Here are two proposals," with it. There
25 ought to be something there to catch people's attention.

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1 If you send them two Judicial Articles, most people can't
2 dig into that.

3 REP. SNOW:

4 Primarily we also want to present them with a ques-
5 tion. "What do you think about your present judicial
6 system? How do you think it can be improved?"

7 MR. DROLET:

8 And that's the key question.

9 REP. SNOW:

10 That's the whole question. Any other comments or
11 suggestions? If not, then we're going to meet back here
12 on the 26th.

13 DEAN PHILLIPS:

14 What time, Mr. Chairman?

15 REP. SNOW:

16 Is eleven o'clock convenient with everybody? Maybe
17 we ought to meet at ten since we're going to have some
18 folks here for that morning. And then in the afternoon.
19 Let's meet at ten.

20 MR. DROLET:

21 When are you contemplating public hearings? June?

22 REP. SNOW:

23 Well, I think we can wait until the 26th and make
24 some decisions on that. Then we'll pretty well know where
25 we're going to go. And I'm not sure about public hearings

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1 on a Friday afternoon or Saturday morning. Thursday
2 afternoon and Friday morning would be better times unless
3 we're wedded to Saturday hearings.

4 MR. DROLET:

5 On something like this, I don't think it makes that
6 much difference.

7 REP. SNOW:

8 I think the people that will be contacted will be
9 able to make arrangements to attend--to be present.

10 DEAN PHILLIPS:

11 If we have enough advance notice that we're coming
12 to Augusta, Savannah, the people will be there. I would
13 be inclined to agree with Joe. If we give them a two or
14 three week advance lead time, we'll hear from them.

15 REP. SNOW:

16 All right, then. We'll definitely pinpoint some
17 people--the first ones--at the meeting of the 26th.

18 MR. DROLET:

19 Does this mean we're adjourned?

20 REP. SNOW:

21 We're adjourned.

22 [Whereupon, the above-entitled proceedings were adjourned
23 at twelve o'clock, p.m.]

24 -oOo-

25 C E R T I F I C A T E

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I hereby certify, as the court reporter, that the statements that appear in the proceedings were taken stenographically by me, and thereafter reduced to typewriting by me, and that this transcript is a true and accurate record to the best of my ability.

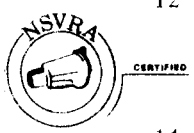
Darlene F. Akins

DARLENE F. AKINS, CCR

Notary Public, Georgia, State at Large
My Commission Expires Aug. 3, 1980

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INDEX

Committee to Revise Article VI

Full Committee Meeting Held on April 28, 1978

FULL COMMITTEE MEETING, 4-28-78

(Procedural)

COMMISSION TO REVISE THE JUDICIAL ARTICLE
STATE OF GEORGIA

The transcript of the proceedings heard before
the HONORABLE WAYNE SNOW, Jr., Chairman, commencing
at 10:00 o'clock a.m., Friday, May 26, 1978, in Room
416-A, State Capitol Building, Atlanta, Georgia.

* * *

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942-0482

DEPOSITIONS - ARBITRATIONS - CONVENTIONS - CONFERENCES

P R O C E E D I N G S

REP. SNOW:

We'll bring the meeting to order. We have five new members, plus our newest representative from the League of Women Voters. So many of us have not had an occasion yet to really get to know each other, and I think starting with you, Marty, we'll go around the table. If you will, just introduce yourself, and just come on around. We'll all meet one another.

MR. HODGKINS:

Okay. Marty Hodgkins with the Standing Subcommittee.

JUDGE BEASLEY:

I'm Dorothy Beasley, Judge of the State Court of Fulton County. I've always been interested in this committee, and finally, Wayne, you're up and appointed me to it.

DEAN BEAIRD:

Ralph Beaird, Dean of the Georgia Law School.

JUDGE STANLEY:

I'm Kay Stanley. I'm Judge of the Probate Court of Bibb County, and I'm delighted to serve on this committee. I think everyone knows my interest in this area of court revision.

MR. GIFFORD:



My name is Bill Gifford, and I came down with Judge Stanley.

MS. WILSON:

I'm Carol Wilson, League of Women Voters, to replace Charlotte Moran.

REP. SNOW:

We all were very fond of Charlotte. I know the League misses her very much.

MS. WILLIAMS:

Lucy Williams with the Fulton County Grand Jurors Association.

MR. BEXLEY:

I'm Harry Bexley, legal counsel for AFL-CIO.

REP. SNOW:

Okay.

MAYOR MEDLOCK:

I'm Randolph Medlock, Mayor of Stone Mountain.

MR. MCKENZIE:

Jerry McKenzie with the Office of Legislative Counsel.

MR. GREENE:

Adam Greene, Clerk, Superior Court, Bibb County.

JUDGE CRANE:

Bert Crane, Judge, Juvenile Court, Bartow County, representing the Council of Juvenile Court Judges.



1 MR. DROLET:

2 I'm Joe Drolet, Assistant District Attorney here
3 in Atlanta, representing the Atlanta Judicial Circuit.

4 JUDGE CALHOUN:

5 I'm Marcus Calhoun, Superior Court Judge from
6 Thomasville, and I'm a member of the Select Committee.

7 REP SNOW:

8 And I'm Wayne Snow, Junior, a member of the
9 Select Committee and Chairman of this Judicial Article
10 Commission.

11 Our first order of business may be a matter
12 that there have been two groups that have suggested or
13 have requested that they have an appointment made to the
14 Commission. One of them is a representative of the Small
15 Claims Courts or some of the divisions I guess of the State
16 Courts in the state, and I'm inclined, especially in this
17 regard, because of the vast differences in jurisdiction
18 and the fact that some of them are appointed, some are
19 elected, that it would be impossible to really have anyone
20 representing that group, and upon motion made by someone,
21 we would advise them that we just do not feel that one
22 person could be representative of that group. I would
23 appreciate such a motion.

24 DEAN BEAIRD:

25 So moved.

1 JUDGE CALHOUN:

2 I second it.

3 REP. SNOW:

4 All right. Marty will take care of that.

5 The other one is from the Judicial Council of
6 Georgia that they have a representative. Of course this
7 involves the various courts of the state, and we do have
8 most of those courts now represented on the Commission,
9 and we have the Superior Court already represented by
10 Judge Calhoun. So what would be your feelings in that
11 regard?

12 MR. BEXLEY:

13 I so move that we don't put them on.

14 REP. SNOW:

15 All right. A motion has been made that the
16 Judicial Council, because it's already represented by
17 the various courts, that they not have an additional
18 member. Is there a second to that?

19 MR. DROLET:

20 Second.

21 JUDGE BEASLEY:

22 On the other hand, Wayne, in the discussions
23 did they submit a proposal from the Judicial Council?

24 REP. SNOW:

25 Yes, but of course anyone can submit proposals.

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1 JUDGE BEASLEY:

2 Yes, but do you think that perhaps they have
3 already been invited to discuss that proposal?

4 REP. SNOW:

5 Yes. Everybody will have an opportunity to be
6 heard at any time.

7 JUDGE BEASLEY:

8 So they're not foreclosed?

9 REP. SNOW:

10 No, ma'am. No one is foreclosed.

11 JUDGE BEASLEY:

12 I know that, but at any rate, they have not
13 already discussed their proposal.

14 REP. SNOW:

15 I think the biggest problem that we would run
16 into here is that we would have a duplication.

17 JUDGE BEASLEY:

18 I agree with you.

19 REP. SNOW:

20 One court would have more than one representative
21 on the Commission.

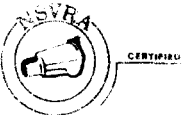
22 JUDGE BEASLEY:

23 Sure.

24 REP. SNOW:

25 And we might run into some difficulties.

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JUDGE BEASLEY:

I agree.

REP. SNOW:

A motion has been made and seconded. Those who favor the motion will say "Aye."

(Ayes)

REP. SNOW:

Those opposed?

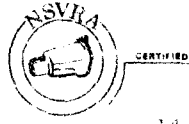
(No response)

REP. SNOW:

All right. The motion carries. We will make the appropriate contacts with these two groups.

All right. Today primarily we are meeting to find out what has happened in some of the other states that have had constitutional revisions, how they went about doing it, and the method and the means by which they got their amendments or their constitution revised and passed and what effects it's had on the various court systems itself and what difficulties they have run into, and we're pleased to have Robert Martin, who is one of the Assistant Directors of the Administrative Office of the Courts in the state of Alabama, and he's with us today, and he's been through this matter from the very beginning in the state of Alabama.

How many years, Bob, have you been with them?



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1 MR. MARTIN:

2 Six.

3 REP. SNOW:

4 Six years. So from the very inception you have
5 observed it and been an active part of it. So without
6 any further ado, I think it would be good if we heard from
7 Robert, and then after he has made a presentation of some
8 of their history, then we will ask him questions as it
9 may effect the various areas that we individually are
10 concerned with in Georgia as compared with Alabama to see
11 if we can get some direction there, and then of course
12 this afternoon at one o'clock we will have Mr. William
13 Davis, who is going to advise us relative to court reform
14 in the state of Kentucky.

15 So, Robert, I'm going to turn it over to you
16 right now, sir.

17 MR. MARTIN:

18 Thank you, sir. Let me say this, that I always
19 find it a good practice when I go before the legislature
20 to say I'm not a lawyer, so no deference --

21 REP. SNOW:

22 That's a very popular thing to say most everywhere
23 except lawyers who are members of the legislature.

24 JUDGE CALHOUN:

25 You didn't apologize really.

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1 REP. SNOW:

2 I was at a meeting last Thursday when I made
3 a speech, and I told them -- it was a group of folks, and
4 I'm a member of the particular club, so it's always
5 difficult when you're talking among your own, but it was
6 an especially difficult position to be in as an attorney
7 and a legislator because there's nobody as unpopular I
8 guess in the United States than that combination. They're
9 at the very bottom of the totem pole, but one did mention
10 that used car salesmen are at the lower end.

11 MR. MARTIN:

12 Well, I was in the newspaper business, so that
13 may --

14 REP. SNOW:

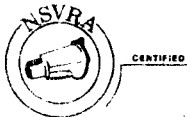
15 That doesn't impress me at all.

16 MR. MARTIN:

17 I thought I would just begin by maybe tracing
18 a bit of history about the constitutional revision in
19 the state of Alabama.

20 In 1969 the Governor appointed and the legisla-
21 ture funded a Constitutional Revision Commission made up
22 of various distinguished citizens of the state from all
23 aspects of the stat's population. The Commission was
24 chaired by Conrad Fowler of Shelby County, who was a
25 Probate Judge of Shelby County at that time, and in 1973

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1 the Commission completed its work with a draft for a
2 proposed constitution of Alabama and presented its work
3 to the legislature.

4 In 1970, the former Chief Justice Heflin was
5 elected as Chief Justice of the Alabama Supreme Court
6 and took office in 1971. He had campaigned on the issue
7 of reforming and modernizing the court system. So those
8 two things were going on simultaneously.

9 The Constitutional Commission, similar to the
10 one you have here, was drafting a proposed constitution,
11 and Article VI, which was the judicial article, was a
12 part of that, and when Judge Heflin got in office, he began
13 doing some things and getting some legislation passed
14 which more or less would lead up to the eventual passage
15 of the new judicial article.

16 The first things were really piecemeal items, but
17 let me enumerate those for you just for historical
18 purposes. In 1971 the legislature established an
19 administrative arm for the Chief Justice. The 1901
20 constitution of Alabama gave the Chief Justice authority
21 to supervise and administrate the entire court system,
22 but the Chief Justices had never had any administrative
23 tools with which to do that. So in 1971 the Department
24 of Court Management was created by the legislature
25 directly under the Chief Justice and the Supreme Court.

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1 Other legislation which was created and passed in 1971
2 was legislation which gave the State Supreme Court the
3 exclusive power to make rules and procedure, practice
4 and pleading for the trial courts in the civil area.
5 Legislation was passed to give the Supreme Court, the
6 State Supreme Court the authority to establish its own
7 rules. Legislation was passed that provided continuing
8 judicial training and education for State Judges, to bring
9 about mandatory retirement of Judges at age seventy.
10 Legislation was passed creating a permanent study commission
11 to continually study the judicial system of the state.
12 Legislation was passed to eliminate, help eliminate some
13 of the procedural delays in the submission of cases to
14 the appellate courts.

15 There were two constitutional amendments passed
16 by the legislature in '71 and ratified by the people in
17 January of '72. One abolished the old impeachment method
18 of removing judges and established a judicial commission.
19 It's now called the Judicial Inquiry Commission. It
20 established this as a clearinghouse for complaints and
21 empowered that commission to censure, discipline,
22 involuntarily retire or remove the judge from office.
23 The second constitutional amendment which was passed
24 abolished the old Justice of the Peace Courts and
25 established the authority for new Small Claims Courts.

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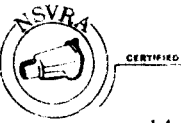
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1 These things occurred in 1971-72.

2 At this time of course the Constitutional
3 Revision Commission was in the process of drafting its
4 product to deliver to the legislature, and in early 1973
5 that proposed constitution was submitted in report form
6 to the legislature. The members of the Constitution
7 Commission felt -- and I think I can say they felt this
8 way. This is what I assume they felt -- that they
9 couldn't get the entire package. They felt they couldn't
10 get the entire package through the legislature in 1973.
11 So a decision was made to take Article VI, the judicial
12 article, mainly because it was felt that the time was
13 right because Judge Heflin was attempting to modernize
14 the court system, and it was felt that the move was right
15 and the timing was right to attempt to pass the judicial
16 article. So it was introduced in bill form, and I
17 believe in the State Senate it had twenty-three
18 co-sponsors out of the twenty-five senators or thirty-
19 five sentators, and in the House, I think it had about
20 twenty-five co-sponsors out of a hundred and five
21 Housemen. I won't go through the details of the
22 legislative process, but it passed the legislature in
23 somewhat revised form. There were several compromises,
24 and then on September the 18th, 1973, it was ratified by
25 the people in a constitutional amendment election, and it

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1 was ratified by better than a two to one margin.

2 Now, from that point on there were many things
3 about the article itself which were self-executing, but
4 the major thrust would have to be carried out and dealt
5 with in the four years after 1973, which included the
6 implementation legislatively of the new constitutional
7 amendment, and those are the four years that we have just
8 been through, and they have been sometimes trying, but I
9 think they have been -- it's been a great reward and great
10 improvement for the state court system in Alabama.

11 I think that if I had to say one thing in
12 summary of what this constitutional article did, I think
13 it gave the state a unified and uniform court system with
14 the flexibility to meet the future needs of the system.
15 It's not perfect. There were some things in the constitution
16 itself, which because to get it passed, frankly had to be
17 compromised, but that's the name of the game in the
18 legislature, and when you're going about trying to revamp
19 and revise a court system that is made up of so many
20 different elements, I think probably what you want to hear
21 me say is what were the problems we had, and I have had --
22 I have tried to revise my thinking because I have been --
23 for the last four years I have been thinking legislatively
24 and on implementation. I'm going back now to think of the
25 basic constitutional questions, and so why don't I do this?

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1 Why don't I just let you folks ask me the questions? And
2 I'll respond in that manner.

3 REP. SNOW:

4 All right. You might briefly though tell us
5 what you did as between -- you have a Court of Appeals.

6 MR. MARTIN:

7 Yes.

8 REP. SNOW:

9 And a Supreme Court.

10 MR. MARTIN:

11 Yes.

12 REP. SNOW:

13 As to what you did between the Court of Appeals
14 and the Supreme Court, and then on your second tier, you
15 call them Circuit Courts or Superior Courts?

16 MR. MARTIN:

17 Circuit Courts.

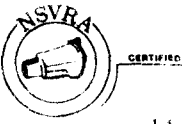
18 REP. SNOW:

19 Okay. You've got your Circuit Courts and their
20 relationship to your State Courts or to your Small Claims
21 Courts and you J.P.'s and Magistrates and then down into
22 the Municipal Courts and County Courts.

23 MR. MARTIN:

24 Okay. Basically the constitution as passed,
25 the new constitution did not alter the appellate court

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1 system. We had a Supreme -- well, let me start from the
2 top. The Alabama Supreme Court is composed of nine
3 justices. There are two intermediate appellate courts,
4 the Court of Civil Appeals, which is a three judge court,
5 and the Court of Criminal Appeals, which is a five judge
6 court. That structure remained the same. The initial
7 proposal would have consolidated the two Courts of Appeals
8 into a single intermediate Court of Appeals. There was
9 objections from one or both of those intermediate Appellate
10 Courts in this regard, so this matter was left as it
11 was, and there was no basic change.

12 REP. SNOW:

Well, your Supreme Court already had basic
14 rule making authority for both the trial courts and for
15 its own rules?

16 MR. MARTIN:

17 Right. Right.

18 JUDGE CALHOUN:

19 And the Court of Appeals?

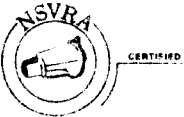
20 MR. MARTIN:

21 It did. The Supreme Court now has the
22 authority for rule making authority, civil, criminal,
23 appellate, administrative.

24 REP. SNOW:

25 Did your Court of Appeals object to their having

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1 this much authority?

2 MR. MARTIN:

3 Well, the main objection of the Court of Appeals
4 was budgetary. They wanted to continue to prepare their
5 own budget, and so that was left as it was. The budget
6 of the Supreme Court now -- the Supreme Court prepares its
7 budget now, and the two Courts of Appeals prepare their
8 budgets, and there's a budget for the state trial courts.

9 DEAN BEAIRD:

10 Is the jurisdiction of the Supreme Court
11 primarily certiorari jurisdiction?

12 MR. MARTIN:

13 The jurisdiction has not changed in the
14 constitution, but the Alabama Supreme Court hears all
15 civil matters on direct appeal above \$10,000.

16 DEAN BEAIRD:

17 Appeal as a matter of right?

18 MR. MARTIN:

19 Right. They hear cases on cert. from both of
20 the intermediate appellate courts. The Court of Civil
21 Appeals hears cases up to \$10,000, domestic relations
22 cases, things of that nature. The Court of Criminal
23 Appeals hears all criminal appeals. So there was some
24 discussion at the time about making the Supreme Court,
25 you know, a total cert. court and combining the two

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1 intermediate appellate courts, but that was not
2 accomplished.

3 REP. SNOW:

4 That's when the Court of Appeals went to lobbying
5 then.

6 MR. MARTIN:

7 That's correct.

8 REP. SNOW:

9 Okay.

10 MR. DROLET:

11 It doesn't happen here.

12 REP. SNOW:

13 No way. We don't have any problems between the
14 two here.

15 MR. MARTIN:

16 At the trial court level, Alabama had a
17 general jurisdiction court, the Circuit Court, with at
18 that time thirty-seven or thirty-eight circuits. I forget
19 exactly how many. Below that, a variegated system. I
20 think the courts were called by twenty-seven or twenty-
21 eight different names. You had your County Courts, your
22 Common Pleas Courts, your law and equity Courts, your
23 intermediate courts. Some of them were called inferior
24 courts, and of course you had your Probate Courts, and in
25 some instances, the Probate Courts had juvenile jurisdiction.

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1 All of this was -- all of these courts -- and you had your
2 Municipal Courts of course. All of this, all of these
3 except the Municipal Courts were brought under the umbrella
4 of the uniform District Court with uniform jurisdiction
5 throughout the state in the constitution.

6 JUDGE BEASLEY:

7 Including the Circuit Court?

8 MR. MARTIN:

9 Well, the Circuit Court remained as it was. A
10 District Court of limited jurisdiction was created with
11 uniform jurisdiction throughout.

12 DEAN BEAIRD:

13 That replaced all these others?

14 MR. MARTIN:

15 All the other numerous courts with varying
16 degrees of jurisdiction.

17 MR. HODGKINS:

18 Did you grandfather in all the judges?

19 MR. MARTIN:

20 The constitution provided that all judges had
21 to be lawyers except Probate Judges. There were some
22 grandfathering, but no grandfathering of any judges who
23 weren't lawyers.

24 DEAN BEAIRD:

25 How does the workload between the Court of

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1 Appeals, the two Courts of Appeals and the Supreme Court
2 compare now?

3 MR. MARTIN:

4 The Court of Civil Appeals is light. The Court
5 of Criminal Appeals is heavy. The Supreme Court I guess
6 is moderate, but the Chief Justice -- under the
7 constitution, the Chief Justice was given the authority
8 to use, utilize judge manpower in the state.

9 DEAN BEAIRD:

10 To move them around?

11 MR. MARTIN:

12 Yes. And that authority I believe was granted
13 maybe by legislative act, but it's also in the constitution
14 too, but he can now utilize retired judges, supernumerarii
15 judges. He can move Circuit and District Judges. He can
16 transfer them both horizontally and vertically, and
17 District Judges can sit on the Circuit bench. Circuit
18 Judges can sit on the District bench. Both can sit on
19 the Appellate bench.

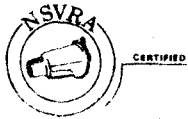
20 REP. SNOW:

21 Can they add new panels temporarily for cases
22 on the Appellate bench?

23 MR. MARTIN:

24 I don't know whether they've ever done that
25 or not, but he has utilized several. Well, back in 1972

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1 or '73, '73 I guess, there was -- the Supreme Court had a
2 backlog, and a lot of the Circuit Judges were utilized to
3 help the Court clear its backlog of cases.

4 JUDGE CALHOUN:

5 Did your districts encompass more than one
6 county?

7 MR. MARTIN:

8 The districts as it was initially envisioned --
9 there would be a District Court in each county. When it
10 got through the legislature, I think there were -- I know
11 there were a couple of instances where the District -- two
12 counties had one District Judge. There may be just one
13 instance of that. We have eighty-five District Judges
14 in the state.

15 DEAN BEAIRD:

16 Sixty-six counties?

17 MR. MARTIN:

18 Sixty-seven counties.

19 DEAN BEAIRD:

20 Sixty-seven?

21 MR. MARTIN:

22 Right.

23 JUDGE STANLEY:

24 Where is your probate jurisdiction?

25 MR. MARTIN:

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1 Probate? There were many -- there were some
2 instances where the Probate Court had juvenile jurisdiction
3 basically. Now, that jurisdiction, the juvenile
4 jurisdiction was moved into the District Court. The
5 probate jurisdiction now basically -- wills and estates,
6 and there is direct appeal to the Circuit Court.

7 JUDGE STANLEY:

8 Well, is it in the district level courts? Is
9 that where it is?

10 MR. MARTIN:

11 The probate jurisdiction?

12 JUDGE STANLEY:

13 Yes.

14 MR. MARTIN:

15 It's separate.

16 JUDGE STANLEY:

17 It's separate?

18 MR. MARTIN:

19 The probate -- let me go to my reference. I
20 hope I brought enough to answer any specific questions
21 like this.

22 Incidentally, any questions I can't answer, if
23 you will let me know and get them down in writing, I will
24 provide you folks with an answer in writing when I get
25 back. Let me just -- I think maybe this might answer some

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1 questions. I'll read the first section of the constitution
2 as passed. It reads like this: "Except as otherwise
3 provided by this constitution, the judicial power of the
4 state shall be vested exclusively in unified judicial
5 system which shall consist of a Supreme Court, a Court of
6 Criminal Appeals, a Court of Civil Appeals, a trial court
7 of general jurisdiction known as the Circuit Court, a trial
8 court of limited jurisdiction known as the District Court,
9 a Probate Court and such Municipal Courts as may be
10 provided by law."

11 I would have to get you a -- I would have to
12 just as to what the exact jurisdiction of the Probate
13 Court is now, I may have to get that prepared and sent
14 to you.

15 JUDGE STANLEY:

16 But it's a separate court from your District
17 Court level. Is that right?

18 MR. MARTIN:

19 Right. Right. Section 6.06 of the constitution
20 says, "There shall be a Probate Court in each county
21 which will have jurisdiction as may be provided by law."
22

23 JUDGE STANLEY:

24 All Probate Judges are attorneys?

25 MR. MARTIN:

No.

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1 JUDGE STANLEY:

2 They are not?

3 MR. MARTIN:

4 They're not required to be lawyers. Now, let
5 me see if I can answer your question as to what the
6 jurisdiction is.

7 JUDGE CALHOUN:

8 At the same time, could you tell us whether the
9 Probate Judges are financed by the state or the
10 individual counties?

11 MR. MARTIN:

12 No, no.

13 JUDGE CALHOUN:

14 Counties?

15 MR. MARTIN:

16 Counties. In effect the Probate Court is not an
17 integral part of the unified court system. The Probate --
18 in many instances in Alabama and maybe the same applies
19 in Georgia, the Probate Judge wore two hats, wears two
20 hats as the chief county administrator and as judge of
21 the Probate Court.

22 REP. SNOW:

23 We only have two I think now in the state of
24 Georgia. Am I right, Judge?

25 JUDGE STANLEY:

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I think so.

REP. SNOW:

There are two that still function as the
commissioner of the county.

JUDGE STANLEY:

That's my understanding.

MR. MARTIN:

At any rate, basically I think the majority of
the Probate Judges in Alabama are primarily the chief
administrator of the county government either as chairman
some of the counties have county commissions, which the
Probate Judge serves as chairman.

JUDGE BEASLEY:

Is the entire system other than the Probate
Judges financed entirely by the state?

MR. MARTIN:

Yes.

JUDGE BEASLEY:

By state-wide budget?

MR. MARTIN:

Yes.

JUDGE CALHOUN:

Even Municipal Courts?

MR. MARTIN:

Except Municipal Courts. Let me back up a

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1 minute. Okay. As we progress through the legislative
2 process in passing the judicial articles, it was passed in
3 the State Senate with language eliminating or language which
4 would have abolished the Municipal Courts and brought them
5 under the District Court system. The League of Municipalities
6 objected, mainly because of the revenue aspect.

7 JUDGE CALHOUN:

8 That may be a thing of the past now. Judge Owens
9 ruling down in Albany last week said you had to appoint
10 judges -- I mean lawyers for all the people. That may be
11 a liability instead of an asset.

12 MR. MARTIN:

13 Let me tell you how this eventually passed. So
14 a compromise there with the League of Municipalities in
15 this regard --

16 JUDGE CALHOUN:

17 They just voted to abolish the Attorney General.

18 MR. STUBBS:

19 Good. You'll take the Guthrie case.

20 MR. MARTIN:

21 The League of course wanted to retain the
22 revenue, so what happened was a compromise that goes
23 basically like this. The constitution said the
24 Municipal Courts -- gave the legislature four years to
25 implement the provisions of the constitution. It was

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1 specifically itemized that the Municipal Courts would
2 remain as they were for four years. On December the 27th
3 of 1977, the Municipal Courts became a part of the unified
4 court system except for the fact that they are financed
5 within -- by the cities themselves. The Municipal Courts
6 now have the option -- the cities now have the option to
7 abolish the Municipal Courts if they so desire and bring
8 in -- allow those courts' jurisdiction to be placed within
9 the District Court, provided that the District Court holds
10 court in all cities with a population of one thousand or
11 more. If they do decide to opt under the District Court
12 system, they still retain -- let me make sure I get this
13 correct. Ninety percent of the court costs and ten percent
14 of the fines go back to the cities. We have had some
15 fifty-five Municipal Courts abolished, which have come
16 under the District Court system. However, we have some
17 three hundred and I think maybe eighty-five municipalities
18 in the state, so we have some Municipal Court Judges --
19 let me -- all right -- that could opt in. If they didn't
20 opt in and retained their Municipal Court, the following
21 provisions were enumerated. Number one, the judges had to
22 be lawyers, but they could be part-time -- but they could
23 hold part-time positions with the municipality where a
24 lawyer might serve as Municipal Judge of, say, three
25 municipalities. That can occur. They have to be -- they

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1 are still appointed by the city governing bodies. If
2 they are full-time Municipal Judges, they are appointed
3 for a four year term. If they are part-time, they are
4 appointed for a two year term. The jurisdiction and rule
5 making within the Municipal Courts comes under the purview
6 of the Supreme Court rule making authority, administrative
7 rule making as well as judicial.

8 JUDGE BEASLEY:

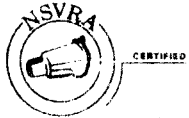
9 Do they have any jurisdiction over state
10 offenses or do they handle strictly ordinances?

11 MR. MARTIN:

12 The ordinance cases. This is probably something
13 you're going to face. Let me just read the language.

14 "Municipal Courts: Municipal Courts, all Municipal Courts
15 shall have" -- this is in the constitution -- " shall have
16 uniform original jurisdiction limited to cases arising
17 under municipal ordinances as proscribed by law. Judges
18 of Municipal Courts shall be licensed to practice law in
19 the state and shall have other qualifications such as the
20 legislature may prescribe. A Municipal Judge may serve
21 as a Judge of more than one Municipal Court. Judges shall
22 be paid in the manner prescribed by law, notwithstanding
23 the provisions of Section 6.09," which is prohibited
24 activities of judges," of this Article. Municipal Judges
25 shall be appointed and vacancies filled by the governing

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1 body of the municipality in accordance with uniform terms,
2 conditions and procedures as may be provided by law,"
3 notwithstanding some other provisions of the constitution,
4 "and the prohibited activities of 6.08(a) and (b) shall
5 not be applicable to a Judge of the Municipal Court."

6 Now, those prohibited activities are that no
7 Judge except a Judge of Probate Court shall seek to accept
8 any judicial non-elective office or hold any other office
9 of public trust except in service of the military forces
10 of the state of federal government, and no Judge of any
11 Court shall during his continuance in office engage in the
12 practice of law or receive any remuneration for his
13 judicial service other than salary and allowances as
14 authorized by law, and the governing body of a municipality
15 shall have the right to elect at any time to abolish the
16 Municipal Courts within its limits. If such election is
17 exercised, the jurisdiction of the Court abolished shall
18 be transferred to the District Court of the district in
19 which the municipality is located. The governing body of
20 a municipality may at its election re-establish the
21 Municipal Court after appropriate notice.

22 So the municipalities were given the option of
23 coming in to the District Court system or retaining their
24 Municipal Courts, but the compromise on the other end was
25 the fact that the judges had to be lawyers. They had to be

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1 appointed, and they could only be removed for cause by the
2 Judicial Inquiry Commission.

3 DEAN BEAIRD:

4 Is the Chief Justice of the Supreme Court
5 considered the head of the unified court system?

6 MR. MARTIN:

7 Yes.

8 DEAN BEAIRD:

9 Does he present the budget or the request for
10 appropriations to the legislature for that entire unified
11 judicial system?

12 MR. MARTIN:

13 Yes. Well, except for the Appellate Courts.
14 He presents it for the Supreme Court and the trial courts,
15 and the intermediate Appellate Courts present their own
16 budget.

17 JUDGE STANLEY:

18 What is your jurisdiction of your District Court?

19 MR. MARTIN:

20 Okay. Constitutionally the District Court shall
21 be a court of limited jurisdiction and shall exercise
22 uniform original jurisdiction in such cases and within such
23 geographical boundaries as shall be proscribed by law,
24 provided that the District Court shall hold court in each
25 county seat and at such other place as prescribed by law.

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1 The District Court shall have jurisdiction over all cases
2 arising under ordinances of municipalities in which there
3 is no Municipal Court and shall hold court in each
4 incorporated municipality of a population of one thousand
5 or more where there is a Municipal Court in place as
6 prescribed by law. Of course the jurisdiction is actually
7 contained in the legislative act which implemented it,
8 and civil-wise, it's a \$5,000 limit. It has the juvenile
9 jurisdiction in all jurisdictions except where there is
10 a Family Court established in the Probate Court -- I mean
11 in the Circuit Court, and there are two or three examples
12 of that, one in Birmingham and Mobile where they had the
13 Family Court Divisions. They were already established and
14 operating, and there is provisions that allow that to take
15 place.

16 REP. SNOW:

17 Are these provisions in the constitution that
18 specifically allow the Family Court to exist or was that
19 part of the Circuit Court under the rule making authority?

20 MR. MARTIN:

21 I think I believe that it may be -- it's either
22 in the constitution or the legislation one I believe.

23 JUDGE BEASLEY:

24 Are there any other specialized courts subject-
25 wise other than the Probate and Family Courts? And of

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1 course you've got Criminal Appeals and Civil Appeals.

2 MR. MARTIN:

3 Right.

4 JUDGE BEASLEY:

5 Everything else is general subject matter?

6 MR. MARTIN:

7 Right.

8 MR. STUBBS:

9 But your Family is a division of the Circuit
10 Court?

11 MR. MARTIN:

12 It's a division of the Circuit Court or it's
13 within the District. It's within the Circuit Court where
14 those Family Courts were in operation, and it's within
15 the Circuit Court.

16 JUDGE BEASLEY:

17 Do the judges rotate through those specialized
18 courts?

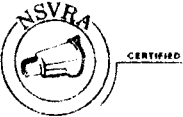
19 MR. MARTIN:

20 They're generally specialized. I think in most
21 instances the Presiding Judge of a Circuit has the authority
22 to transfer the judges.

23 DEAN BEAIRD:

24 The new Civil Practice Act in Alabama, a rule
25 promulgated by the Supreme Court -- would that require any

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1 legislative approval at all?

2 MR. MARTIN:

3 The legislature can alter a rule of the Supreme
4 Court by a general act by majority vote, passage of a
5 general act of the legislature.

6 DEAN BEAIRD:

7 Did you have any separation of power conflicts
8 during this process?

9 MR. MARTIN:

10 There was -- you had some. I don't recall that
11 there was any great reluctance of the legislature to give
12 the Supreme Court the rule making authority. I think
13 that's essential. If you're going to truly have a
14 unified court system, I think you've got to do it. For
15 the legislature to be required to make the rules under
16 which the court operates is a very cumbersome -- I mean as
17 we all know, they may or may not get through, but the
18 Court basically gives a professional body, the Court,
19 the authority to run the court system.

20 REP. SNOW:

21 And really your office is the one that's really
22 doing that. The administrative office is making suggestions
23 to the Supreme Court.

24 MR. MARTIN:

25 Well, we don't do that as a matter of rule.

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1 Basically the way the rules are handled, the Court has
2 appointed advisory commissions to draft rules, and there
3 are continuing commissions made up of people throughout
4 the state to advise the Court as to changes, modifications,
5 new rules, deletion of rules, et cetera, and they use those
6 commissions.

7 DEAN BEAIRD:

8 Oakland Melton headed that, didn't he?

9 MR. MARTIN:

10 Yes. Oakland was the primary one.

11 MR. STUBBS:

12 You mentioned earlier that in the Chief
13 Justice's submission to the General Assembly, to the
14 legislature that he did not cover the Court of Civil Appeals
15 and Criminal Appeals?

16 MR. MARTIN:

17 Right. Their budgets are submitted by their
18 Presiding Judges.

19 MR. STUBBS:

20 What was the argument that developed about that?
21 Was there any particular reason? Political or what?

22 REP. SNOW:

23 Political.

24 MR. MARTIN:

25 During the -- the two courts basically wanted to

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1 control their budgets.

2 REP. SNOW:

3 You know, Bob, if you would get here on time,
4 we've already covered that once.

5 MR. STUBBS:

6 I apologize.

7 MR. MARTIN:

8 Really, you know, although it would be nice --
9 it would be nice if there was one appellate court budget
10 included. As to the operation of the unified court
11 system, in operating the trial courts it really didn't
12 matter that much, so that's why there was no problem.
13 It was just like it was.

14 JUDGE CRANE:

15 Prior to the revision of the judicial article,
16 did you have any separate Juvenile Courts in Alabama
17 other than the two Family Courts you were talking of?

18 MR. MARTIN:

19 The Juvenile Courts were scattered asunder.
20 Some of them were in the Circuit Courts; some of them
21 were in some of the courts of limited jurisdiction; some
22 of them were in the Probate Courts, just however by
23 statute they were created.

24 JUDGE CRANE:

25 Do you have any specialized Juvenile Court Judges

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1 in your judicial system now?

2 MR. MARTIN:

3 The District Court Judges have a Juvenile Judges
4 Association because they do -- they now do have in most
5 instances, in most counties -- they are the Juvenile
6 Judge.

7 JUDGE CRANE:

8 Well, you intimated that you had two Family
9 Courts in Alabama that had Juvenile Court jurisdiction.
10 I would assume that Mobile and Birmingham aren't the
11 only towns in Alabama that have significant juvenile
12 problems.

13 MR. MARTIN:

14 Right.

15 JUDGE CRANE:

16 And I would think that in some of those towns
17 you would probably need some of them.

18 MR. MARTIN:

19 Montgomery has a Family Court too, but in
20 those places, the juvenile jurisdiction is within the
21 Circuit Court.

22 JUDGE CRANE:

23 Is there provision for transfer? You intimated
24 that if they had a Family Court provision, it stayed in
25 the Circuit Court; otherwise, it became a District Court

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1 Judge.

2 MR. MARTIN:

3 That was a problem, and it was resolved.

4 JUDGE CRANE:

5 I'm talking about transfer. No, I'm not talking
6 about transfer of cases from the District Court to the
7 Circuit Court. I'm talking about is there a provision
8 whereby if the caseload got to such, the court could be
9 a Circuit Court rather than a District Court.

10 MR. MARTIN:

11 No, I don't think so.

12 JUDGE CRANE:

13 Then you really don't have a unified court
14 system.

15 REP. SNOW:

16 Carol?

17 MS. WILSON:

18 Yes. Will you describe a little further the
19 Department of Court Management powers, duties, limitations,
20 staffing?

21 MR. MARTIN:

22 Okay. That's what we call it now. We call it
23 the Administrative Office of the Courts.

24 REP. SNOW:

25 Let me ask one thing, Bob. Is their

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1 Administrative Office of the Courts very similar to our
2 Judicial Council? Are you familiar with Alabama's?

3 MR. DOSS:

4 It's not, Wayne, because they're involved
5 primarily in line management activities and we're currently
6 operating more in the fashion of an office of management
7 and budget.

8 REP. SNOW:

9 I thought we needed to get that clarified too.

10 MR. DOSS:

11 Well, there's a good deal because they don't
12 have a Judicial Council that functions like ours. The
13 receive reports directly to the Chief Justice of Alabama.
14 They also have about sixty people in their shop. We have
15 six and a half on state funds. So it's a significant
16 difference, but they also do a lot more. They handle a
17 lot more.

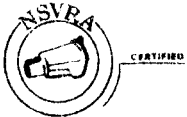
18 MR. MARTIN:

19 Let me go back to this question. Basically if
20 I had my choice, my personal choice would be to create a
21 single tiered court system with one, but this is just a
22 personal opinion.

23 JUDGE STANLEY:

24 You mean one trial court?

25 MR. MARTIN:



1 One trial court.

2 JUDGE STANLEY:

3 I agree with you wholeheartedly.

4 MR. MARTIN:

5 I think that that -- I think we've found that
6 that would probably be much better, but then if that is
7 not possible, then I think you have to go to a two tiered
8 system with a court of limited jurisdiction.

9 DEAN BEAIRD:

10 You do not have anything comparable to the
11 Judicial Council in Alabama, do you?

12 MR. MARTIN:

13 We have a Permanent Study Commission on the
14 Judiciary, which is made up of legislators, judges,
15 district attorneys, court clerks, which gives advice and
16 consent. It's a legislatively created committee. Within
17 our system, we have our own steering committee of clerks,
18 judges and things of that nature, but I don't think we
19 have anything comparable to the Judicial Council because
20 the Administrative Office -- now, I'll get to the question
21 about the Administrative Office.

22 We handle the -- we are the service agency for
23 the trial courts. We budget for the trial courts. We
24 supply the trial courts. We pay the trial courts. We try
25 to make progress, develop progress programs for the trial

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1 courts. We provide the judicial education programs for
2 the courts, and when I say courts, I mean the courts and
3 the clerks' offices and the judges and all the system, all
4 the personnel within the unified system.

5 REP. SNOW:

6 You provide a clerk for each county in Alabama?

7 MR. MARTIN:

8 The clerks, yes. There is a clerk's office in
9 each county. The clerks are constitutional officers,
10 elected, but we service. We are a service agency
11 basically.

12 JUDGE CALHOUN:

13 Do they handle deed records in addition to court
14 functions, things of this nature?

15 MR. MARTIN:

16 Deed records are I believe in the Probate Court.

17 JUDGE BEASLEY:

18 Do the Family Courts have jurisdiction over
19 juvenile matters and divorce and custody and charges of
20 non-support and abandonment, all of that, or do they
21 have jurisdiction only over juveniles really? Are they
22 comparable to the Juvenile Courts?

23 MR. MARTIN:

24 I'm going to have to defer to that. I really
25 don't know, but we can find out.

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JUDGE CALHOUN:

Who handles your commitment hearings, issuing search warrants, warrants and things, magistrate work?

MR. MARTIN:

We have -- there is a provision for magistrates.

JUDGE CALHOUN:

Are they selected, appointed, paid and so forth?

MR. MARTIN:

They are selected. They are selected and appointed by the Administrative Director of the Courts through the recommendation of the judges at the local level, and they're paid by -- within the unified judicial system.

JUDGE CALHOUN:

Is this a full time job?

MR. MARTIN:

Some of them are, and some of them aren't. Let me see what the legislation says about that. You've got that question?

MR. HODGKINS:

(Nods affirmatively)

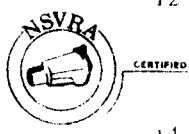
MR. MARTIN:

I'll look that up and get you an answer.

JUDGE CALHOUN:

Okay.

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1 DEAN BEAIRD:

2 So I really understand your own personal point
3 of view, you indicated a single tiered system would be
4 your preference. Now, that would look on a chart this
5 way: Supreme Court, two Courts of Appeals, then one trial
6 court. Is that right? That would include -- there would
7 be no State Courts; there would be no Probate Courts and
8 so forth?

9 MR. MARTIN:

10 Well, a one tiered trial system, right, with
11 divisions within that system.

12 DEAN BEAIRD:

13 With divisions?

14 MR. MARTIN:

15 Now, basically as I said before, except for
16 wills and estates jurisdiction -- I believe I'm correct
17 on this -- all the judicial powers was removed from the
18 Probate Courts, and in those two instances, it was
19 provided for direct, authomatic appeal to the Supreme
20 Court.

21 DEAN BEAIRD:

22 Why would that be best in your opinion?

23 MR. MARTIN:

24 I'm looking at it basically from an administrative
25 function. I don't think you should have Inferior Judges,

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1 you know. It was appalling to me to find out that we had
2 courts called Inferior Courts. I think that initially
3 you might have some from the Superior Court bench because
4 it would enlarge -- you know if you put it in Georgia,
5 it would enlarge the Superior Court, but you basically end
6 up with two sets and two types of judges. We have our
7 District Judges. They're paid a little bit less state-wide
8 than the Circuit Judges, and they resent that because
9 sometimes they can be moved and called to sit on the
10 Circuit bench.

11 MS. WILSON:

12 Who can move them?

13 MR. MARTIN:

14 The Presiding -- the Chief Justice can do it
15 or within his own Circuit, the Presiding Circuit Judge
16 can do it.

17 MS. WILSON:

18 Do you usually recommend that? Does that come
19 under part of your duties?

20 MR. MARTIN:

21 The way we do it, when there's a need for a
22 judge to go to another area, we find out who can do it,
23 and the Chief Justice --

24 MS. WILSON:

25 Makes the recommendation that way?

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1 MR. MARTIN:

2 Right.

3 JUDGE STANLEY:

4 It took the state of Illinois ten years to come
5 to a one tiered system like you're talking about. They
6 had a two-tier originally, but in talking to some of the
7 judges from Illinois, their opinions were or one in
8 particular that I know -- and Marcus, you know him --
9 that like there was a great deal of resentment between
10 them. It created a caste system between the two tiers.
11 Finally they got around to a one tier, and he says it's
12 working extremely successfully.

13 MR. MARTIN:

14 Well, we've got it to the point now where we've
15 got our District and Circuit Judges meeting together,
16 and instead of holding separate meetings -- of course we
17 hold the power of the purse, and

18 REP. SNOW:

19 That makes a big difference.

20 DEAN BEAIRD:

21 How much state money do you have for
22 continuing judicial education as against LEAA money?

23 MR. MARTIN:

24 It's meshed within our -- it's within our
25 unified trial court budget. Now, the exact amount we have

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1 budgeted for 1978-79 I'm not exactly sure. I think it's
2 in the neighborhood of \$159,000, something like that.

3 JUDGE CRANE:

4 Is it all state money or state appropriation or
5 is it LEAA and state?

6 MR. MARTIN:

7 This is state money. Of course we utilize all
8 the federal money we can in that regard.

9 JUDGE CALHOUN:

10 Do you have any day limit on that? You have to
11 teach them all they need to know in five days. That's
12 the limit in Georgia.

13 MR. MARTIN:

14 What we are attempting to do at this particular
15 time -- Chief Justice Tolbert is very interested in
16 establishing a Judicial College for the state, and we want
17 to put -- if that can be accomplished and is very close
18 to being accomplished, we want to put all our judicial
19 court supportive education within that Judicial College.

20 DEAN BEAIRD:

21 We're ahead of you on that.

22 MR. MARTIN:

23 I know you are. I think one thing I should
24 say to you and speak briefly about is what an
25 administrative arm for the court system can do. Prior

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1 to -- and I think another thing you might be interested
2 in is, you know, the question is going to be asked, "Well,
3 if you do this" -- you haven't brought this up, but you're
4 going to get the question. What's it going to cost?

5 REP. SNOW:

6 It cost you a lot more than what you thought it
7 was going to cost.

8 MR. MARTIN:

9 No. We didn't produce as much revenue. The
10 cost was another factor. The major cost in creating a
11 unified court system is naturally going to come within
12 a personnel area. We tried to find out what the court
13 system in Alabama cost, the tax dollar, the total tax
14 dollar for the cost of courts, operating courts in
15 Alabama, and it was impossible. For example, copying in
16 some clerks' offices -- this was embodied in some
17 counties, embodied in the total county budget. It wasn't
18 broken out into the clerk's office. Clerks and
19 registrars who are on fees paid some of their employees
20 out of their own pockets, which they were not incorporated
21 within the county budget, and there were just numerous
22 things. Supplies in some instances were just provided by
23 the counties to the clerks' offices and not broken out
24 into the segment of courts. So it was impossible to find
25 out exactly what the judicial services to the state of

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1 Alabama was costing the public. We did three surveys.
2 They call came out with a different figure, but basically
3 without accounting for the things that we couldn't
4 determine, we could account prior to the actual unification
5 of courts -- we would account for about twenty million
6 dollars in expenditures.

7 Now, we can tell you -- I don't have it with me,
8 but right now we can tell you to the penny what it costs
9 every office in the court system of Alabama from this
10 past October to this particular day. We've got it on
11 computer. We've got a computer expense accounting system
12 set up. For the first time on October 1, 1978, we will be
13 able to tell the legislature to the penny what it cost,
14 what judicial services cost in the state of Alabama. We'll
15 be able to tell what it costs the judge in DeKalb County's
16 office or the clerk in Mobile County's office.

17 The basic increase in costs in our case came
18 in the personnel area. We had some choices. We could
19 have brought -- we could have brought the personnel in
20 the various court offices around the state under the state
21 umbrella and grandfathered them in at the same pay they
22 were making, but that would not have been treating them
23 right, so we established a judicial personnel system
24 which coincides with the state personnel system, State of
25 Alabama Personnel System and Merit System, and brought them

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1 on at comparable pay to the State Merit System. Doing
2 this instead of grandfathering them in at the same level
3 cost us across the system about roughly somewhere between
4 a million-two and a million and a half.

5 REP. SNOW:

6 Now, let me make sure we know exactly what
7 we're talking about here. Are you speaking in terms of
8 your clerks' offices?

9 MR . MARTIN:

10 Right.

11 REP. SNOW:

12 And then the Deputy Clerks or the personnel in
13 those offices -- they became state employees under this
14 judicial personnel system?

15 MR. MARTIN:

16 Right. We brought on I think some between eight
17 and nine hundred employees in the various judges' and
18 clerks' offices throughout the state.

19 JUDGE CRANE:

20 You're talking about primarily clerical staff
21 though, right?

22 MR. MARTIN:

23 Right.

24 JUDGE CRANE:

25 Not specialized like probation officers and



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1 that kind?

2 MR. MARTIN:

3 No. The probation officers are not a part of
4 our system, and the district attorney's office is not a
5 part of the unified judicial system budget. I'm trying
6 to give you some comparison other than the funding for
7 the administrative, central administrative office, our
8 office, which is about five percent of the judicial trial
9 court budget. That was the major additional cost. Now,
10 you're going -- these employees of course might -- we're
11 going to probably have pay increases coming up, but at any
12 rate, it cost us that much more to do it, and that was
13 about the only major cost increase that I could enumerate.
14 There were some part-time. You had your lower court
15 judges who were part-time. Some of them were part-time,
16 so you might -- there was probably some additional cost
17 in setting up the District Judges, but we set up fewer
18 District Judges than we had --

19 REP. SNOW:

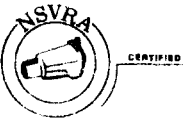
20 All of those part-time judges became full time
21 judges?

22 MR. MARTIN:

23 Right. Right.

24 REP. SNOW:

25 With the same pay scale throughout the state?



1 MR. MARTIN:

2 Right.

3 REP. SNOW:

4 And your clerks also have the same pay scale
5 throughout the state?

6 MR. MARTIN:

7 Right. They set up -- they're paid the same
8 throughout the state.

9 JUDGE STANLEY:

10 What was the differential in your Circuit Court
11 Judge's salary and District Court Judge's?

12 MR. MARTIN:

13 At the present time Circuit Court Judges are
14 paid from the state twenty-seven-five. District Court
15 Judges are paid twenty-five.

16 JUDGE STANLEY:

17 Twenty-five hundred dollars?

18 MR. MARTIN:

19 Right.

20 JUDGE STANLEY:

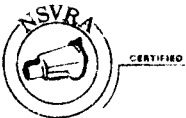
21 Are there county supplements in addition to
22 that?

23 MR. MARTIN:

24 Yes.

25 JUDGE STANLEY:

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1 For both?

2 MR. MARTIN:

3 There can be, but those county supplements do
4 not come out of our unified court system budget.

5 REP. SNOW:

6 How many Circuit Court Judges do you have in
7 Alabama?

8 MR. MARTIN:

9 We now have thirty-nine circuits and a hundred
10 and ten Circuit Judges. We have eighty-nine District
11 Judges and seventeen Appellate Judges.

12 JUDGE BEASLEY:

13 How did you -- to get to another subject
14 entirely, how did you secure public input into what the
15 public wanted out of its court system and what it received
16 or it should have for the next fifty years or whatever?

17 MR. MARTIN:

18 Well, first I would say the Constitutional
19 Revision Commission. Second, we had several citizen
20 conferences which made recommendations.

21 JUDGE BEASLEY:

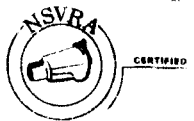
22 What kind of conferences?

23 MR. MARTIN:

24 Citizens conferences.

25 JUDGE BEASLEY:

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1 Citizens.

2 MR. MARTIN:

3 Once the constitution article was passed, a
4 committee was appointed by the Chief Justice, about a
5 sixteen member committee consisting of all elements of
6 the court system, and the Bar and the general public, to
7 draft and prepare the implementing legislation.

8 JUDGE BEASLEY:

9 Well, you said he had campaigned. The Chief
10 Justice had campaigned on court reform, court system
11 reform. Did he lay a lot of groundwork in that regard
12 to highlight the thing for the public?

13 MR. MARTIN:

14 Oh, yes. Oh, yes. When Judge Heflin stumped
15 the state.

16 JUDGE BEASLEY:

17 So the citizens were aware of it and knew what
18 was going on?

19 MR. MARTIN:

20 We conducted, you know, a -- I wouldn't call it
21 a massive, but we tried to do a public affairs job and
22 get it disseminated and let the folks know what they were
23 voting on.

24 JUDGE BEASLEY:

25 Well, yes, what they were voting on, but in the

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1 drafting of the constitutional change, was there a lot
2 of citizen input? And how did you get it?

3 MR. MARTIN:

4 Well, it was basically through these citizen
5 conferences we had, and we also had the support and
6 interest of many, many professional groups too, the League
7 of Women Voters, the Chamber of Commerce, labor, Farm
8 Bureau.

9 JUDGE BEASLEY:

10 Well, did you receive their comments by letters,
11 you know, that they just initiated themselves or did you
12 solicit their support in some way? Or did you have any --
well --

14 MR. MARTIN:

15 Well, of course I don't know what the
16 Constitutional Revision Commission did. I presume that
17 they -- because the basic draft was taken from this. The
18 legislative bill was basically taken from the work product
19 of the Constitutional Commission, and I don't know what
20 kind of input they had. I was not a part of that
21 organization, but it was legislatively drafted and
22 introduced in bill form.

23 REP. SNOW:

24 Okay. Joe?

25 MR. DROLET:

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1 Going along with what Judge Beasley was asking,
2 was there really a sort of clamoring for this prior to
3 these efforts starting because of the existence of twenty-
4 seven different courts? Or in other words, what prompted
5 all this to get started and set up political climate
6 really for the commission and setting up of citizen
7 conferences?

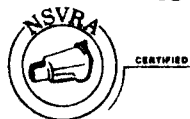
8 MR. MARTIN:

9 Well, of course initially you had your
10 Constitutional Commission, and they had received wide
11 publicity about the fact that they were drafting a new
12 constitution, and it was basically the impetus I guess of
13 the Chief Justice who probably saw that this was a time to
14 take this product and get -- we had two citizens
15 conferences attended by over three hundred citizens from
16 all walks of life that went through and made recommendations
17 to the legislature, made a recommendation, and that was
18 basically I guess the only real input that was elicited
19 aside from those people within the court system.

20 DEAN BEAIRD:

21 Would it be fair to say just from a casual
22 observor that you had an element there in this whole
23 process that doesn't exist today in Georgia? Alabama was
24 still operating under very archaic procedural rules and so
25 forth, so the court reform was part and parcel of the

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1 procedural reform?

2 MR. MARTIN:

3 That's true.

4 REP. SNOW:

5 The reforms he's talking about are things we
6 have passed in the last few years.

7 DEAN BEAIRD:

8 Yes. Civil Practice Act and all that. So you
9 really campaigned to a large extent on common law pleading
10 and all that?

11 MR. MARTIN:

12 Streamline the appellate process, reducing the
13 backlogs of cases in the court system, the administrative
14 mechanism that you could have to help reduce those
15 backlogs and keep the courts current with the cases.

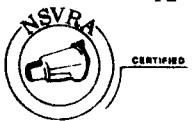
16 JUDGE BEASLEY:

17 Was it useful to have these citizens conferences
18 or did they end up really being just a PR type of thing
19 to get support or did they really come out with anything
20 substantive in assisting?

21 MR. MARTIN:

22 Well, the citizens conference, for example,
23 recommended the merit selection of judges, but that was
24 not included in the bill, but yes, I think that they did
25 basically have input, and the input was requested through

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1 the conference, through the citizens conferences.

2 JUDGE STANLEY:

3 Do you have a judicial code of conduct for
4 your judges?

5 MR. MARTIN:

6 Yes. That was a part that was included in the
7 new constitution, that the Supreme Court was directed to
8 promulgate canons of judicial ethics.

9 JUDGE STANLEY:

10 Are your judges elected in non-partisan
11 elections?

12 MR. MARTIN:

13 No. The judicial Appellate Judges are elected
14 state-wide, six year terms. All District and Circuit
15 Judges are elected within their district or circuit, six
16 year terms.

17 DEAN BEAIRD:

18 Is there any sentiment for the Missouri plan
19 during this process?

20 MR. MARTIN:

21 There was. In fact in its report to the legis-
22 lature the Constitutional Commission recommended that
23 all judges be elected, but they had an alternate
24 recommendation that judges be placed on -- be taken out
25 of the political area by having a non-partisan ballot, but

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1 that did not go through.

2 REP. SNOW:

3 Your Supreme Court Chief Justice -- does that
4 individual run for the job of Chief Justice or how is he
5 selected?

6 MR. MARTIN:

7 He is elected.

8 REP. SNOW:

9 He's elected as Chief Justice?

10 MR. MARTIN:

11 Right. Right.

12 REP. SNOW:

13 There is a tremendous amount of power in that
14 office in Alabama.

15 MR. MARTIN:

16 Right. The power is --

17 REP. SNOW:

18 What if you get a nut in there?

19 MR. MARTIN:

20 The Supreme Court does have the back-up authority.

21 The Supreme Court -- his power rests to some extent with
22 the Supreme Court.

23 REP. SNOW:

24 They agree on the rules?

25 MR. MARTIN:

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1 Right.

2 JUDGE STANLEY:

3 Does the Chief Justice spend his entire time
4 in the administrative aspects of the office rather than
5 taking on a caseload himself?

6 MR. MARTIN:

7 He wishes -- he probably wishes he didn't have
8 to. He spends a great deal of his time administratively.
9 He also -- our Supreme Court sits in two divisions. We
10 have a nine member court. They sit in two divisions. He
11 sits on both divisions. However, they do allow him to
12 reduce the number of cases. He doesn't get quite the
13 number of cases assigned randomly that the other Justices
14 have. It should be reduced probably some more, you know.
15 I don't know. He's got a pretty heavy workload.

16 REP. SNOW:

17 We still have this carry-over in Georgia as far
18 as the legislature is concerned, and I think a fear on
19 the part of attorneys in many areas of the Duckworth
20 era, and there's a great deal of fear in too much power
21 in the Chief Justice of the Supreme Court, and I'm
22 inclined to think that that fear is justified.

23 MR. MARTIN:

24 That was, you know -- to be perfectly frank,
25 that was a problem. That was a problem that we had, and

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1 there was some criticism to that effect, but then again,
2 to effectively manage a system -- and out system includes
3 around thirteen hundred to fourteen hundred judicial
4 system employees, including all the judges around the
5 state -- I think you've got to vest the power in one
6 office. It seems to me it would be difficult for a ten
7 member commission to try to administer a system.

8 REP. SNOW:

9 What happened to your non-lawyer judges when
10 your constitution went into effect? And what was their
11 reaction?

12 MR. MARTIN:

13 When the District Court was created, they could
14 not run again.

15 REP. SNOW:

16 Well, was some other retirement provisions made
17 for them by special legislation where they had a number
18 of years in or did you continue your retirement systems
19 or were they vested?

20 MR. MARTIN:

21 Narrow that down and let me get you -- I'll get
22 you an affirmative answer.

23 REP. SNOW:

24 How about your --

25 MR. MARTIN:

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1 At the Municipal Court level, the non-lawyer
2 judges could stay in until this past December, but these
3 were part-time judges, and there was nothing -- they just
4 couldn't run, you know. They just couldn't be appointed
5 again if they were not lawyers at the municipal level.

6 JUDGE BEASLEY:

7 You say there is mandatory training or is
8 training available now?

9 MR. MARTIN:

10 Training can be mandatory if the Chief Justice
11 wants it to be.

12 JUDGE BEASLEY:

13 But it isn't now? It's just provided for. Is
14 that right?

15 MR. MARTIN:

16 I think the law provides that the Chief Justice
17 has the authority to direct the judges to go to various
18 and sundry training, educational activities.

19 DEAN BEAIRD:

20 Strong suggestions are pretty effective.

21 MR. MARTIN:

22 That's the way it's carried out. There isn't
23 any restraint on the Chief Justice other than the
24 electorate and the Supreme Court.

25 MR. STUBBS:

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You say they share the role making authority with
him?

MR. MARTIN:

Right.

MR. STUBBS:

And any of the particulars?

MR. MARTIN:

Administratively he is the commander in chief
administratively. Now, administrative rules though --
the Court, but day to day operations, he's the boss.

JUDGE BEASLEY:

Is there much vertical reassignment in the
sense of lower court judges being asked to do higher court
work?

MR. MARTIN:

Some. We have a couple of retired judges who
do work for the Appellate Courts almost full time.

JUDGE BEASLEY:

Retired trial court judges?

MR. MARTIN:

Retired trial court judges.

JUDGE BEASLEY:

But they've had the experience and training over
the years?

MR. MARTIN:

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1 Right.

2 JUDGE BEASLEY:

3 They just never got appointed to the Appellate
4 Court?

5 MR. MARTIN:

6 A major thing that took place in that regard
7 was back in 1970, I think in '73 or '74 maybe, when the
8 Chief Justice -- when the Supreme Court just sent out
9 about eighty or ninety cases to the trial court judges
10 to write opinions on.

11 REP. SNOW:

12 Were your J.P.'s built into your former
13 constitutional judicial article? And how many did you
14 have throughout the state authorized?

15 MR. MARTIN:

16 J.P.'s? There weren't a lot.

17 REP. SNOW:

18 On a magistrate level, did you have folks
19 called magistrates or by other names issuing warrants?

20 MR. MARTIN:

21 When I said there weren't a lot of, you know,
22 J.P.'s, they were scattered throughout the state, and
23 we had your other lower court judges around the state too.

24 REP. SNOW:

25 And they were issuing warrants and things?

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1 MR. MARTIN:

2 Yes. Now, the constitutional amendment passed
3 prior to the judicial article abolished the Justices of
4 the Peace. Now, another thing that was created within
5 the District Court system was the authority for a Small
6 Claims Court of up to \$500.

7 JUDGE BEASLEY:

8 Did you not have that before?

9 MR. MARTIN:

10 No.

11 REP. SNOW:

12 That can be handled then by a non-attorney?

13 MR. MARTIN:

14 I can walk into the Circuit Clerk's office, pick
15 up a form, file my own case. The Defendant -- you pay
16 \$10. The Defendant is served within fourteen days, and
17 it's tried by the District Court.

18 REP. SNOW:

19 The clerk handles the procedure on that?

20 MR. MARTIN:

21 Right.

22 REP. SNOW:

23 And it's tried by the District Judge?

24 MR. MARTIN:

25 Right.

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1 JUDGE STANLEY:

2 Did you say the terms of the court -- I mean
3 the terms of office of the Judges of the District Court
4 and the Circuit Court were the same, six years?

5 MR. MARTIN:

6 Yes, sir. And the district attorneys, six
7 years.

8 JUDGE BEASLEY:

9 Is it staggered?

10 MR. MARTIN:

11 No. Oh, you mean at the appellate level?

12 JUDGE BEASLEY:

13 These six year terms. In other words, somebody
14 changes this year; somebody changes two years from now
15 or do you have the possibility --

16 MR. MARTIN:

17 At the appellate level, yes.

18 JUDGE BEASLEY:

19 Do you have the possibility of changing the
20 whole court in one year?

21 MR. MARTIN:

22 The appellate level is staggered, the Supreme
23 Court staggered. Now, I think it's four, three and two.

24 REP. SNOW:

25 This is probably a question you may not have an

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1 answer to, and that would be getting back down to the
2 J.P.'s. I've got that on my mind. When they were
3 abolished, was it your experience or do you recall that
4 those J.P.'s who had been most active in the state -- did
5 they become magistrates or were they then authorized as
6 District Judges where they could issue warrants?

7 MR. MARTIN:

8 Not on any kind of scale that I can recall
9 whatsoever.

10 JUDGE BEASLEY:

11 Go ahead.

12 MR. MARTIN:

13 Go ahead.

14 MS. WILSON:

15 Didn't you say the constitutional amendment
16 prior to the passage of the judicial article which
17 abolished the J.P.'s established the Small Claims Court?

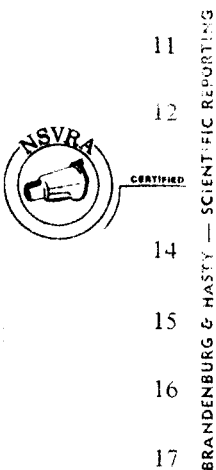
18 MR. MARTIN:

19 It established a provision for it, but the
20 real establishment with the judicial article when the
21 District Court was created.

22 MS. WILSON:

23 So your J.P.'s didn't move to Small Claims
24 Court?

25 MR. MARTIN:



1 No. You know, let me just point out one or
2 two things. Let me step back to the administrative
3 function. I just want to point out a couple of things,
4 you know. Naturally I feel that the legislature was
5 vitally concerned with what the system was going to cost.
6 Now, I never did finish what I was going to say in that
7 regard. Aside from bringing on the personnel, bringing
8 the personnel up to State Merit System pay scales, which
9 can either be done or not be done, and aside from the
10 creation of the administrative function at the state
11 level -- our office now has sixty-one employees, and our
12 personnel budget for our office is something around
13 \$900,000. Those are the two major cost factors. Of course
14 you've already got -- in Georgia you've already got the
15 element of administrative office. You have it here with
16 I think twenty-three employees. Bob?

17 MR. DOSS:

18 Twenty-eight and a half.

19 MR. MARTIN:

20 Twenty-eight and a half. Right. Twenty-eight
21 and a half.

22 REP. SNOW:

23 I'd hate to be that half. Wouldn't you?

24 MR. MARTIN:

25 As I said, in our budget we figured that what



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1 we could find the whole court system cost was about twenty
2 million dollars three years ago. Our budget this year
3 for the entire trial court system is 24.2 million dollars.

4 MR. HODGKINS:

5 That's trial court?

6 MR. MARTIN:

7 Trial court. I'm speaking strictly on the trial
8 court budget because the appellate courts have their own
9 separate budget.

10 MR. STUBBS:

11 Could I interrupt you a minute? Now, when you
12 talk about your managing the trial court level, you said
you do all the supplies for them?

14 MR. MARTIN:

15 Right. We purchase.

16 MR. STUBBS:

17 You took over their secretaries and clerks?

18 MR. MARTIN:

19 Right.

20 MR. STUBBS:

21 And you pay the judges?

22 MR. MARTIN:

23 Right.

24 MR. STUBBS:

25 How about the other logistical expenses?

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1 Courtroom maintenance?

2 JUDGE BEASLEY:

3 Court reporters?

4 MR. STUBBS:

5 Courthouse maintenance, court reporters, that
6 sort of thing, equipment?

7 MR. MARTIN:

8 In the transfer, the basic transfer came in the
9 area of -- well, let me stop and start all over again.
10 Prior to January the 16th, 1977, the counties provided
11 about seventy-five percent -- and these are our figures,
12 but about seventy-five percent of the cost, paid for about
13 seventy-five percent of the cost of operating the courts.
14 The state paid for about twenty-five percent roughly. The
15 state pays Circuit Judges and some other things. There
16 was a corresponding switch in the revenues, and a new
17 fine and fee schedule had to be devised where the state
18 would get the lion's share of the revenues since they were
19 taking over the costs, so the counties were providing
20 about seventy-five percent of the costs prior to -- and
21 getting about seventy-five percent of the revenues, and
22 that switched. The counties -- the state took over these
23 costs from the counties, and now the counties still get
24 about twenty-five percent of the revenues of the judicial
25 court revenues that flow through the court system, and

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1 they also provide the space. With the budget, we don't
2 have to budget for space or utilities. The counties
3 provide the space and utilities.

4 MR. STUBBS:

5 How about furniture and equipment?

6 MR. MARTIN:

7 We have that.

8 MR. STUBBS:

9 You provide all that?

10 MR. MARTIN:

11 (Nods affirmatively)

12 MR. STUBBS:

13 Libraries?

14 MR. MARTIN:

15 We took over. We took what court equipment
16 they had, and it's our baby. We've resupplied the system.
17 The state does at the state level. This has had, you
18 know -- a lot of your county governments were
19 understandably leery about it. The one concrete example
20 I have is that this has saved -- they figured it out in
21 Madison County, Huntsville, that the county saved the
22 county \$343,000 a year when you took into consideration
23 the revenues that they got from the fines and fees and
24 the taking away of the responsibility to paying the
25 clerk's office, the clerks and clerk's employees.



1 REP. SNOW:

2 You all are blessed in Alabama with larger
3 counties than what we've got in Georgia.

4 MR. MARTIN:

5 Yes.

6 REP. SNOW:

7 We would -- under your particular system, we
8 would almost have to keep somewhat the scales we've got
9 now as far as the pay scales are concerned, but that
10 would become under the plan that you've got -- that would
11 become the responsibility of the state to pay them rather
12 than the responsibility of the local governments or the
counties to pay them.

14 MR. MARTIN:

15 Let me get back to the costs just a minute.
16 Our budget for next year for trial courts is going to
17 run around -- well, the legislature gave us an affirmative
18 budget of 26.2 with a half million conditional, so we're
19 about 25.7, and this includes some progress programs
20 that we're trying to make in the area of microfilming
21 court records. This is a tremendous problem that counties
22 all over the country are facing. We've got one or two
23 counties where they keep a snake where they store the
24 records to keep the rats out.

25 JUDGE BEASLEY:

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1 That's cheap.

2 MR. MARTIN:

3 The Fire Marshal in Birmingham has prohibited
4 the Registrar there from putting in another filing cabinet
5 on that floor of the courthouse, and so we're trying to go
6 to some microfilming which hopefully will save having to
7 build additional buildings to store records.

8 One thing that the centralized function can
9 do -- and I think you should be aware of what it can do.
10 Our records management people found when they initially
11 surveyed the state that there were over 10,000 different
12 forms in the court system of Alabama. Some of them were
13 gold seals, some of them bound in the big, leather-bound
14 gold engraved docket books. We have now eliminated and
15 now reduced the number of forms in the court system to a
16 little over two hundred standardized, no gold and red
17 lettering. There's no telling how much that will save
18 the taxpayers of Alabama, just the forms, just the paper.

19 REP. SNOW:

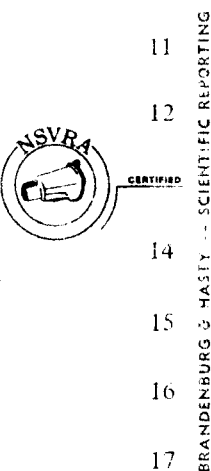
20 All right.

21 MR. MARTIN:

22 I just want to throw that little plug in.

23 REP. SNOW:

24 Let me ask this now. Getting back to your
25 personnel type situations on your circuit level, you have



1 a clerk in each of your counties?

2 MR. MARTIN:

3 Right.

4 REP. SNOW:

5 Which we would propose also in our different
6 proposals, but we've also got a proposal for a clerk of
7 the circuit. I don't know if that's really an appropriate
8 name. What is it that handles the business of each of
9 your judges themselves? What do you call it? Is that an
10 administrator?

11 MR. MARTIN:

12 Okay. You have in Georgia -- as I understand
13 it, you have court administrators, regional court
14 administrators.

15 REP. SNOW:

16 That's regional. I'm getting down into the
17 circuit level now.

18 MR. MARTIN:

19 At the circuit levels in our state, the real
20 court administrator is the clerk, except --

21 REP. SNOW:

22 In each county?

23 MR. MARTIN:

24 Right, except in our larger counties we do
25 have -- we have court administrators, and we're going to

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1 go -- we're proceeding towards regional court
2 administrators such as you have set up here, and this is --
3 I consider it a vital area. You've had some fear of
4 various and sundry clerks that these court administrators
5 were going to assume their jurisdiction, but that hasn't
6 occurred and will not occur in Alabama. The clerk is
7 still a constitutional officer elected by the people.

8 Now, we have clerks. They are clerks of the
9 Circuit Court. In some instances we have a separate
10 District Court Clerk, in some instances, but that District
11 Court Clerk is appointed, not elected. In some instances
12 the Circuit Court Clerk's office handles both the District
and the Circuit Court.

14 REP. SNOW:

15 Adam?

16 MR. GREENE:

17 Do you know right offhand -- I know it's
18 difficult to pull all this out of your hat on the spur of
19 the moment, but what provision has been made -- since all
20 those personnel have been taken over by the state, what
21 provision has been made regarding continuing training
22 programs for them or any minimum professional requirements
23 of any sort that may be set up?

24 MR. MARTIN:

25 We -- our office does that. In fact we have a

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1 judicial education officer. We are setting up some
2 training sessions for all the employees in the system.
3 We've even got a training session scheduled for judges'
4 secretaries. So we do that. We handle that function.

5 MR. GREENE:

6 There is an ongoing training program?

7 MR. MARTIN:

8 Right. Right.

9 MR. GREENE:

10 How about them being now state employees? I
11 assume they're under what we call the State Merit System.
12 In other words, they have statewide protection for
 retirement?

14 MR. MARTIN:

15 Right.

16 MR. GREENE:

17 Do they not?

18 MR. MARTIN:

19 Our people --

20 MR. GREENE:

21 That's deputy clerks I mean.

22 MR. MARTIN:

23 Right. The judge's employees and the clerk's
24 employees are set up in a judicial personnel system. The
25 state personnel people didn't want us, but we set up our

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1 procedures.

2 MR. GREENE:

3 You mean you've got a separate program, a
4 separate system?

5 MR. MARTIN:

6 Yes, it is. Although I think that a person
7 might have appeal to the State Personnel Board. We would
8 like that to be the way it is, but we've got our own
9 separate system, but it coincides and was designed with
10 the assistance of our state personnel people.

11 MR. STUBBS:

12 What did you do about retirement for all these
people coming in?

14 MR. MARTIN:

15 They participate. They're allowed to participate
16 in the state retirement.

17 MR. STUBBS:

18 Well, where did the money come from to run that?
19 I mean they're starting out at all different ages and
20 periods of experience, and you've got all sorts of built-in
21 potential liabilities there.

22 MR. MARTIN:

23 You've just hit on one of the more perplexing
24 problems that we had, that we've had for the past year
25 and a half, and that's bringing the eight or nine hundred

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1 people into the system.

2 JUDGE STANLEY:

3 Didn't you have to integrate various pension
4 systems into that system?

5 MR. MARTIN:

6 You had employees who had a pension system, for
7 example, in Jefferson County for the Jefferson County
8 people. In Mobile you had some that didn't have it, but
9 most of them had it, and a lot of them -- see, the counties
10 in Alabama are allowed to participate in the state
11 employees' retirement system in county governments, so
12 some of them were already in the state employees'
13 retirement system, but the others that had to be worked
14 out were the counties individually, and the fringe benefit
15 problem was really a headache for us because it was
16 different in every case, and we had -- where we decided to
17 bring these people on and not -- so that they would not
18 be, you know -- receive any less benefits than they had
19 been receiving --

20 MR. STUBBS:

21 I'm not worrying about how they're going to get
22 less benefits. I'm worried about how the state is going
23 to fund it. You've got an actuarial responsibility in
24 bringing these people in at different ages and what have
25 you.

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1 MR. MARTIN:

2 Well, there were some provisions, and I'd have
3 to go back and figure it out. I'd really have to check
4 with our retirement system, but the retirement system
5 people worked it out, and I think, you know, there were a
6 lot of payments in the retirement system, and I think
7 maybe there was some transfer from the others.

8 MR. STUBBS:

9 From the county systems?

10 MR. MARTIN:

11 Yes.

12 REP. SNOW:

13 I imagine it would be very similar to what we
14 do when they change one. If they want to elect to come in,
15 they would have to pay back for so many years.

16 MR. MARTIN:

17 Yeah.

18 REP. SNOW:

19 And then they would have the right of election
20 not to come into the system, and in the system we've got
21 existing now such as the Superior Court Clerk's retirement
22 system, those who are presently within it -- any funding
23 would be transferred over to maybe the judicial retirement
24 system, but those present within the system would have
25 the right of election as to whether they wanted the

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1 benefits that they're now entitled to through a vested
2 interest or whether they would have increased benefits
3 under the new system.

4 MR. MARTIN:

5 Yeah. That was worked out, and they were
6 merged.

7 JUDGE BEASLEY:

8 We had that thing when I was an Assistant
9 Attorney General, you know. I was in that system. Then
10 I got out of it and got into a federal system. Now, I'm
11 in a county system, but I've elected to go back into the
12 state system, so I've picked up my years and just paid
13 back, so it's already mechanized, mechanically set up in
14 the state. I don't think it would be too much of a
15 problem.

16 REP. SNOW:

17 But what we would have would be a tremendous
18 number of deputy clerks or personnel in clerks' offices
19 that are not now covered by any system I'm sure.

20 MR. GREENE:

21 Unless they've got a county system.

22 REP. SNOW:

23 And we're talking about a sizeable investment
24 there initially.

25 MR. GREENE:

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1 Right.

2 JUDGE BEASLEY:

3 Did you have much turnover in personnel when
4 you went into the new system?

5 MR. MARTIN:

6 No. You know, nothing other than your normal
7 turnover. We just brought them right on in, and it's --
8 really I'm talking more -- I've been talking more about
9 the implementation process than the constitutional
10 revision process, but I think you need to be aware of,
11 you know, the problems, and bringing the personnel on
12 was a major task and a big problem, but we've got it.
We've moved it out now, and it seems to be working fine.

14 JUDGE BEASLEY:

15 What were the biggest areas, the biggest
16 problems not only from the administrative point of view --
17 of course that's the office you represent, but the biggest
18 problems after this thing got passed. Was it in
19 acceptance or was it just in the mechanics of it or was
20 it in passing the implementing legislation or which areas
21 were your hardest things?

22 MR. MARTIN:

23 This was the implementing legislation. It was
24 introduced as a 169 page bill, and it ended up over 200
25 pages, but the legislature did what I consider an excellent

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1 job on implementation. The Advisory Committee spent an
2 entire year drafting the implementation. The House
3 Judiciary Committee, a subcommittee of the House Judiciary
4 Committee spent seven weeks going through the implementing
5 bill, which incidentally completely revises the juvenile
6 code of the state, and made their amendments and made their
7 changes in it, and you know, I think they did an outstanding
8 job.

9 The one big problem we had, the one big mistake
10 we made -- we were asked to tell the legislature what the
11 court system was going to cost and how much revenue it
12 was going to bring in. We could pretty accurately tell
13 that in regard to the Circuit Court, but as to the various
14 limited jurisdiction courts, we felt we could, but we
15 didn't have sufficient data really to even -- we should
16 have kept our mouths shut. So the projections -- we had
17 some consultants come in and study the system and try to
18 tell us how much revenue it was going to produce. So we
19 simply told the legislature it was going to produce the
20 revenue to pay for itself. So the legislature tagged an
21 amendment on our budget to that effect that we couldn't
22 spend more than what was brought in.

23 REP. SNOW:

24 That's what George is going to use against
25 Heflin if he runs for Governor.

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1 MR. MARTIN:

2 Possibly.

3 MR. STUBBS:

4 You said earlier that your original estimate
5 was twenty million dollars at the trial level?

6 MR. MARTIN:

7 Right.

8 MR. STUBBS:

9 And that was in what? '76 or 7?

10 MR. MARTIN:

11 '75-76.

12 MR. STUBBS:

13 And you just mentioned that your next year's
14 budget is 26.2. That's a pretty healthy jump, isn't it?

15 MR. MARTIN:

16 Well, that's because we have some progress
17 programs in next year's budget.

18 MR. STUBBS:

19 How much of that is progress programs? How
20 much is just in costs?

21 MR. MARTIN:

22 This year's is a bare boned budget in which
23 we're going to be able -- we're able to operate the system
24 at twenty-four, but we have -- when I said twenty going
25 to -- normally I think inflationary costs is going -- the

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1 cost of living, pay raises for state employees -- that
2 eats and adds, so I don't know that that twenty million
3 figure is, you know, basically what it cost. I suspect
4 it cost a lot more than that, but that's simply what we
5 were able to find out, and it didn't include those things
6 we didn't know about and couldn't find out, but we made
7 the mistake of saying that the revenues were going to pay
8 for the system, and it was an honest mistake because we
9 thought they would.

10 MR. STUBBS:

11 Does the --

12 MR. MARTIN:

13 They don't.

14 MR. STUBBS:

15 Does the Chief Justice in the administrative
16 rules set the cost or is that done by legislation?

17 MR. MARTIN:

18 No. It's done by legislation.

19 MR. STUBBS:

20 And your fines are done by legislation?

21 MR. MARTIN:

22 Right. It's in the implementing legislation.
23 The fine schedule and court cost schedule. We find
24 that the revenues from a system in actuality are producing
25 about half the costs. We're bringing in about a million

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1 dollars a month of revenues.

2 REP. SNOW:

3 Are there other questions? Bob, we appreciate
4 very much your being with us, and you've given us a great
5 deal of insight in this. I think this is very helpful to
6 see what is occurring and happening in other states, and
7 as I said, we will have Bill Davis, the Director of the
8 Kentucky Administrative Office of the Courts, here at one
9 o'clock. So I think we need to recess for lunch now and
10 come back at one.

11 JUDGE BEASLEY:

12 I just want to ask one other question. Is there
13 any subject matter that you included in your constitutional
14 provisions that you think it was a mistake to do and should
15 have put in legislation?

16 MR. MARTIN:

17 Well, I personally feel that we should have --
18 in regard to the court structure, I personally feel we
19 should have created a one tiered trial court. One of our
20 attorneys in our office who's been involved in all this --
21 I asked him to prepare me a little memo as to what he
22 would change, and he has done that, and he feels it would
23 be better for all the municipal courts to either be
24 preserved as municipal courts or abolished and not, you
25 know, make the option available to come under the District

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1 Court. I really don't have an opinion on that. He feels
2 that a one tier system should have been created, and I
3 think the basic thing, you know, in looking at
4 constitutions -- the basic thing I would say needs to be
5 done -- the system needs to be unified with the flexibility
6 built in to whatever body you're going to allow to run
7 the court system, the flexibility built in so they can run
8 it.

9 REP. SNOW:

10 And not be tied down too much to constitutional
11 language, which would change infrequently or you can't
12 change it to readily.

13 MR. MARTIN:

14 I've brought a lot of material. I brought a
15 constitution, the entire constitution that was submitted
16 by the Alabama Constitution Committee. I brought our
17 implementing legislation, some questions and answers about
18 the judicial article itself. I'm going to leave these
19 here so you all can have them.

20 REP. SNOW:

21 Very good.

22 MR. MARTIN:

23 And I'm also going to be here until about two,
24 two-thirty, so if any of you have any questions, I'll be
25 happy to answer them.



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REP. SNOW:

All right. Let's try to be back by one, and we'll try to wind up here this afternoon around three so you folks can get away before the traffic starts getting bad on Friday afternoon.

(Whereupon, the matter was adjourned for luncheon break.)

* * *

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A F T E R N O O N S E S S I O N

1
2 REP. SNOW:

3 I think we best for the sake of time proceed.
4 Let me advise I'm going to have to slip out of here right
5 slightly before two to be gone for a few minutes for a
6 short hearing, and I'll be right back, and then if you
7 will, Judge, preside in my absence.

8 JUDGE CALHOUN:

9 All right.

10 REP. SNOW:

11 And also for the benefit of others who may have
12 to leave early, I am inclined to think that these particular
13 hearings are beneficial and would still like to hear from
14 North Carolina and possibly another state that's gone
15 through this, and if you can think, Cole, of another
16 state besides North Carolina, then we will proceed to
17 have our next meeting in also the same type format.

18 MR. COLE:

19 Mr. Chairman, it might be good to think of
20 having another state outside of our region just to get
21 their viewpoint.

22 REP. SNOW:

23 Well, I think that would be good. You can make
24 some suggestions to Marty in that respect.

25 MR. COLE:

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1 Yes, sir.

2 REP. SNOW:

3 Then we will do that. When would you like to
4 have the next meeting?

5 JUDGE CALHOUN:

6 Are we operating on a timetable that we want
7 to be ready to submit some kind of concrete proposal by,
8 say, October or November?

9 REP. SNOW:

10 I would like very much by at least November the
11 1st, and the Select Committee I imagine will tell us when
12 they would like to have our proposal. I'm sure they
would want it by November the 1st.

13 JUDGE CALHOUN:

14 Then we ought to meet sometime within the next
15 fifteen or thirty days it seems to me. We've really got
16 to get going if we're going to do that.

17 MR. DROLET:

18 Closer to fifteen I would think.

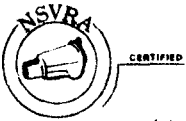
19 JUDGE CALHOUN:

20 According to your proposal to hold public
21 hearings around the state. So we really have a lot of
22 ground to cover.
23

24 REP. SNOW:

25 Is Friday agreeable with everyone?

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1 MR. DROLET:

2 Yes.

3 REP. SNOW:

4 Okay. On June -- how about June the 16th?

5 Unless there's an objection, then it will be at ten
6 o'clock, June the 16th, and sometime during the course of
7 the day, the morning or the afternoon, Marty, for North
8 Carolina and then the other state. We'll leave it up to
9 your selection on that, possibly outside the Southeast.

10 JUDGE STANLEY:

11 Mr. Chairman, I think it would be good to hear
12 from Florida sometime because I think their system is
13 very interesting, although it is a sister state.

14 REP. SNOW:

15 We might possibly work out something for
16 Florida when we have public hearings down at the south end
17 of the state and maybe just ask them to come in and ask
18 them to talk to us before we start our public hearings
19 down there. It would be more convenient for them coming
20 up from Tallahassee. Possibly we can do that, but let's
21 hear from outside the state and also North Carolina.
22 North Carolina was the first one that did that really got
23 into basic court reform and this unified system, and I
24 think it would be worth our while to see the schedule that
25 they had of some ten years that they were involved in this

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1 matter.

2 All right. We have this afternoon Mr. William
3 or Bill Davis who is the Director of the Kentucky
4 Administrative Office of the Courts, and Bill, we're
5 delighted to have you with us, and we just want you to
6 give us some idea of the problems that you encountered
7 and what you all set up in Kentucky and any of the
8 difficulties -- primarily we're facing all those
9 difficulties now -- in your court system and what you did
10 with some of the courts and non-lawyer courts especially
11 and maybe give us some direction. We appreciate your
12 being with us.

13 MR. DAVIS:

14 Thank you very much. I would second the
15 suggestion to get North Carolina to come. We took a
16 legislative delegation to North Carolina, some eighteen
17 members of the Special Committee. They spent four days
18 there visting rural and urban centers and visting with
19 prosecutors and defenders and judges and clerks, and we
20 found their experience to be extremely beneficial, and
21 we avoided I think a lot of the problems they encountered
22 initially.

23 I would like to spend just a few seconds going
24 over trying to answer some of the questions, and please
25 ~~interrupt as we go because I'm sure you will find questions~~

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1 that will come to mind. I've handed out a brief little
2 booklet that gives in very summary form a description of
3 our system and some of the results today, and I think
4 you'll find the budget overview under section 9 and others
5 may be particularly interesting.

6 Let me start with the history of what happened in
7 Kentucky in 1974. Our constitutional framework required
8 that our General Assembly draft and put before the public
9 any constitutional change. Thus, that's drafted in one
10 session, and two years later it's then voted upon by the
11 public. So in 1974 our General Assembly, after a
12 substantial amount of prompting from the Bar Association
13 and the public, interested groups like the League of Women
14 Voters and others, decided for the third time in fifteen
15 years to put before the public another reform of the
16 judiciary. That vote was held in November, 1975 and
17 successfully passed. As you may be aware, at that time
18 Kentucky had before the U.S. Supreme Court North v.
19 Russell. The decision had to do with the lay judge imposing
20 a criminal sentence in which the Supreme Court said since
21 he had a trial de novo, the man's rights weren't in
22 jeopardy. Our judicial article substantially obviated that
23 problem in a variety of ways, and I'll talk of appeals as
24 one part of this presentation.

25 We had at that time and we had until January of

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1 this year 650 courts. Kentucky has almost three million
2 two, almost three and a half million people, and those
3 courts were composed of Police Courts, which are known in
4 some states as Municipal Courts; County Courts, which
5 were governed by what is known as a County Judge, a unique
6 officeholder really originating from some of the antecedents
7 in old England who occupied legislative, executive and
8 judicial functions, and he was like the old Sheriff in
9 England going out and levying the taxes and found the
10 folks guilty at the same time and did everything at once,
11 and that, by the way, gave rise to some of the substantial
12 public disenchantment with the judiciary. These courts
13 had concurrent and confusing jurisdiction. There was
14 substantially no accountability, and I mean accountability
15 in the sense of money and accountability in the sense of
16 decision-making, and we have the very common practice or I
17 should say had the fixing of things as it would be
18 friends who were friends of the people in influence
19 always had their things fixed, much to the dismay of those
20 who weren't friends, as you might suspect. Delay was a
21 common characteristic at the appellate level. It took
22 three years on the average to get a case through the
23 Supreme Court, well then known as the Court of Appeals.

24 As I mentioned, the judicial article which we
25 passed -- and this is a bit of hindsight -- gave us a time-

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1 frame of passage in 1975 to full implementation in 1978.
2 The people who drafted the time parts -- if you'll look
3 under tab A, you'll notice in the very back of that they
4 have added in the time all of this would go into effect,
5 and that was an afterthought, and I talked to the
6 draftsman. Why did they throw that in at the end? And he
7 admitted they gave very little thought to it, and I don't
8 know if we paid a price of it, but it put an incredible
9 amount of work on us in a very short period of time.

10 As someone mentioned, North Carolina took seven,
11 almost eight full years and did things I think in a very
12 orderly way. So that's one thing I would alert you to, is
13 pay very close attention to how soon and how quick and
14 what burdens you are placing on the people who end up
15 doing most of the work because you can end up racing
16 through things, making a lot of mistakes.

17 In 1976 the General Assembly met and by virtue
18 of the judicial article, we had created a Court of
19 Appeals, a new intermediate court with a rather novel
20 concept of appellate justice, and that is this court is
21 based primarily in it's hometown wherever the judges were
22 elected from. They still reside there. We provide them
23 offices in their hometown. There are fourteen judges.
24 They sit in panels of three, and they sit all over the
25 state. They go -- they travel on the average twenty-odd

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1 weeks a year, and it was thought again that this court
2 was to be different because most appellate courts stay
3 in the state capitol. The public has no understanding of
4 the appellate court, and it's the litigants who have to
5 travel the distances to come to the appellate courts for
6 their hearings. The idea here was to have an expeditious
7 appellate process with the court going out and conducting
8 oral arguments in the towns around the state. So panels
9 of three judges travel throughout the state of Kentucky.
10 This has been going on since August, 1976. These judges
11 conduct oral argument in every case. Unless it's waived by
12 the parties, it is mandatory, and it is not uncommon for
13 a decision to be rendered the day of the oral argument.
14 The judges have appellate briefs ahead of time. We
15 transfer the original records from the lower court. We
16 do not duplicate the lower records, thus reducing the cost
17 of litigation. The original record is transferred to the
18 appellate court. Then that court has that with abbreviated
19 briefs. We don't allow lengthy briefs. Very brief
20 statements. The judges, when they take the bench, do this
21 in trial court facilities and are then ready to interrogate
22 and query the lawyers on their cases. This has met with
23 substantial favorable opinion by the public and the Bar.
24 As I said, it's reduced the cost of litigation, and it's
25 completely eradicated what we once had in delays of two to

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1 three years. So we don't have delay now.

2 Both our courts -- the Supreme Court, which was
3 the former Court of Appeals, is entirely current it's
4 civil and criminal docket.

5 DEAN BEAIRD:

6 Do they write opinions?

7 MR. DAVIS:

8 They write opinions. Their opinion writing is
9 increasing in fact. They wrote six hundred, five hundred
10 and some odd opinions last year.

11 DEAN BEAIRD:

12 I'm talking about --

13 MR. DAVIS:

14 The Court of Appeals?

15 DEAN BEAIRD:

16 -- the Court of Appeals.

17 MR. DAVIS:

18 They're obligated under law to write opinions,
19 so even if they render judgment orally from the bench,
20 they do follow that with an opinion.

21 DEAN BEAIRD:

22 Are they generally abbreviated opinions, very
23 short opinions?

24 MR. DAVIS:

25 It depends on the matter. Those that require

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1 much more depth generally receive it. I have ton confide --
2 the Bar has generally mixed reviews. They like the
3 opinions, and some of them don't like the judges' opinions.
4 I don't mean because they lost the case -- the quality.
5 I think those who are judges in the room will attest to
6 the difficulty it takes in learning the craftsmanship of
7 the English language, and I think we expect that by the
8 way to come with time, but that has met -- we have just
9 finished our annual Bar convention. I've heard words of
10 praise for that court. People were very pleased with its
11 operation.

12 Our Supreme Court now occupies a position much
13 like other courts, and that is you get all cases under the
14 judicial article. Where there's twenty years or more
15 confinement, you go directly to that court. Obviously all
16 capital cases or death penalty cases go directly to that
17 court, and all over cases go by cert. In other words, you
18 have mandatory appeal to the -- excuse me. You have a right
19 of appeal to the Court of Appeals, and then from that
20 point forward only by discretion. They do have a
21 procedure that we call a motion to transfer. If the lawyer
22 feels that his case has substantial merit, he would
23 like to bypass the Court of Appeals and he inevitably
24 expects it to go there. He has the right to file a
25 motion, and the court will review that motion and decide

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1 whether or not to move it on past the Court of Appeals.

2 DEAN BEAIRD:

3 All the except the death penalty cases or cert.
4 cases to the Supreme Court?

5 MR. DAVIS:

6 And twenty years imprisonment.

7 DEAN BEAIRD:

8 Twenty years in prison.

9 MR. DROLET:

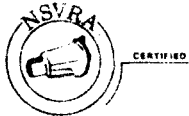
10 What did you say your caseload was in the Court
11 of Appeals?

12 MR. DAVIS:

13 It's averaging at this point about ten cases a
14 month per judge. That's what they're running right now.
15 I can't explain this today because I don't know. We've
16 only observed last year's filings. It was around fourteen,
17 and it's lower this year than it was last year. I don't
18 know why that is. We suspected that there would be many
19 filings at the outset, people wanting to try them in
20 court to see what kind of results they got, and maybe
21 now that that's happened, they're not doing it as much,
22 but that's much too soon to give you any firm answer on
23 why that's taken place.

24 MR. DROLET:

25 And you have fourteen judges now?



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1 MR. DAVIS:

2 Fourteen judges. That's right. They have a
3 central office staff in Frankfurt, the state capitol, but
4 as I said -- and they congregate monthly for a monthly
5 meeting in their office, at which time they render
6 opinions which by the way are rendered on a weekly basis,
7 but they meet at that time, and then they have -- well,
8 that's too much the mechanical operation.

9 MR. STUBBS:

10 What sort of experience have you had on this
11 motion to bypass the appellate court?

12 MR. DAVIS:

13 It's not been extremely abused. They've been
14 fairly careful about it. I think they would like --
15 quite honestly everybody is feeling their way through
16 this. My expectation is in another year they'll begin
17 to take more cases, but at this point, they're being
18 fairly conservative in their approach in looking at
19 these matters.

20 MR. STUBBS:

21 You indicated that the court issues opinions.
22 Is this the opinion of the panel or of the whole court?

23 MR. DAVIS:

24 That's a good question. Both in given instances.
25 It's not uncommon, quite obviously, with Workmen's

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1 Compensation cases and some of the search and seizure
2 things that arises in the criminal area, to have similar
3 questions of law. Consequently that's why they use what
4 is called a central staff attorney so they will identify
5 if the panel on the western part of the state has the same
6 issues as one in the eastern part of the state, and then
7 those things are redflagged, and at the monthly meetings
8 they down and look and say, "Well, wait a minute. This
9 panel has arrived at the opposite conclusion than this
10 one." Then the whole court in bank will consider the
11 matter. Then they will render their opinion as to which
12 way it goes.

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DEAN BEAIRD:

What's the workload of the Court of Appeals in terms of reviewing administrative agency decisions? Is it substantial?

MR. DAVIS:

That's a good question also because many people thought the administrative agency decisions would proceed directly from the agency to the Court of Appeals. This was one of the interesting quirks in our judicial article. It says you have the right to an appeal in every civil and criminal case. Well, our interpretation was that an administrative agency matter was not a case in the court system until it got in the court system by

1 virtue of the appeal. So consequently we interpreted that
2 appeal to be to the trial, general trial court rather
3 than to the appellate court, and the reason for that was
4 one of the big problems with the backlog had been with
5 Workmen's Compensation cases. Now, if we did not interpret
6 it that way, those cases would have gone directly to the
7 Court of Appeals and then as a matter of right, they
8 would have been right back in the Supreme Court, and we
9 would have made no progress in trying to use that
10 intermediate court to buffer and handle most of these
11 matters. So the consequence was those cases are still
12 handled at the trial court level.

14 I'll come to that because that has some other
15 implications which I think we were able to forecast, but
16 it is pretty tenuous. We started looking at the effects
17 of a district court system because that has had at this
18 point a very radical effect on the general trial court.
19 It's taking much of its former work in fact, as much as
20 thirty-five percent of it at this point, and
21 consequently, those judges of the general jurisdiction
22 who are working at capacity and who are complaining
23 bitterly of taking these administrative matters are
24 now finding that they now have the time in which to
25 handle those matters. They don't like to do it. Most of
us don't. The Workmen's Comp -- I focus on that. We've

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1 got a lot of coal mining in Kentucky, and that's given rise
2 to enormous amounts of litigation. What we're finding
3 thus far with the district court is that that workload
4 has substantially dropped, and so the issues that it
5 tended to address -- that is the speedy resolution of the
6 administrative agency appeals -- is being handled at the
7 trial court level. So that is another facet of the system
8 that we did not anticipate.

9 So if I can, in 1976 we started with that. That
10 was the first stage of our judicial article. We had a new
11 Court of Appeals. It was appointed through a nominating
12 procedure, a nominating commission. Membership was
13 proscribed by the judicial article, which you've got a
14 copy here, to submit three names to the Governor, and
15 from those three names, he has sixty days in which to
16 appoint someone. In two and a half years he's never
17 failed to appoint anyone, and we doubt that that will
18 ever happen. He appointed the Court of Appeals. They
19 then in fact stood for election almost a hundred days
20 after their appointment, and three of the appointees
21 were defeated. So the election process works its wonders.

22 From that point, during 1976, Kentucky did
23 something else not entirely unrelated to this, but I'll
24 share it with you because I think it's interesting. We
25 abolished commercial bailbondsmen.

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1 JUDGE CALHOUN:

2 Let me ask you this. Was this a statewide
3 election on appellate judges?

4 MR. DAVIS:

5 No, it was not. It was on appellate districts.

6 JUDGE CALHOUN:

7 And they're running against themselves on the
8 so-called modification reserve plan?

9 MR. DAVIS:

10 That's right. Non-partisan. All elections are
11 non-partisan judicial elections.

12 We abolished commercial bailbondsmen in 1976
and replaced them with a pretrial release program.

14 DEAN BEAIRD:

15 Excuse me. The Judge needs a copy of this
16 handout here. Marty, do you have another copy? Excuse
17 me.

18 MR. DAVIS:

19 And since that date we have had a program which
20 quite honestly removed really one of the most sinister
21 parts of the criminal justice system, and we have never
22 had more than three percent of our criminals fail to
23 appear. That's the highest in a month, and that happened
24 in a winter month when the snow was bad, and we attributed
25 and found out that most of it was folks who could not get

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1 to the courthouse because of the weather. It's been
2 extremely successful. A year ago it was cited by the
3 Council of State Governments as one of the ten most
4 successful new programs in the United States, and we find
5 our judiciary has great reliance on it because these
6 fellows give them the benefit, these fellows and ladies the
7 benefit of information when they make decisions on bond
8 that they otherwise never had before, and if anything, the
9 reliance on the program is increasing. That's one of the
10 things that did not come as a result of the article. It
11 was a legislative action initiated by the Governor.

12 So in 1976 we had a special session of our
13 General Assembly at which time they took up most of the
14 major issues as it related to the structure. So from
15 January of '76 to December of '76, our office with the
16 legislative committee spent that entire year doing
17 studies and research to make recommendations to the
18 General Assembly on the number of judges, location of
19 judges, the financing of the system and a variety of
20 matters. Most of those recommendations I have shared
21 with your staff in this report right here, so I won't go
22 into the detail of those.

23 The General Assembly met in December and at
24 that point decided on the number of judges. As I mentioned
25 a moment ago, we had 650. They were replaced by 113 judges,

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1 all of whom are lawyer-trained judges with a minimum
2 requirement of two years admission to the Bar, and their
3 salaries were set at that time. In addition to that, we
4 had to establish a budget that related to the clerk's
5 office. We have one clerk for both levels of trial
6 court. We had a system, a fee system, which is one of
7 my pet peeves. The clerks operated under the fee system,
8 and we found that that brought more inequities than it
9 brought efficiencies although it was designed originally
10 to bring efficiency. We found fictional sorts of things
11 that were created so those fees could be accumulated. We
12 replaced -- there were 1,400 clerks in the old system,
and they were replaced by 940.

14 The clerk's office turns out to be one of the
15 most significant expenditures in the court system. In
16 fact it's almost fifty percent of the total operating
17 cost that goes to that basic pool of manpower, mostly
18 femalepower I should say in the clerk's office. This is
19 a very difficult matter to deal with and one of the things
20 that we undertook to study was a weighted caseload study
21 to try to deal with and get a handle on how many judges
22 and how many clerks would be used because if you -- I'm
23 sure Georgia is not too dissimilar from Kentucky. When
24 you talk about eliminating 650 jobs and trying to come up
25 with some figure on the other end that has some reasonable



1 relationship to the amount of work that's going to be
2 performed and not get lost, if you'll excuse me in the
3 political process, that's pretty tough to do. So we
4 undertook the weighted study to try to give the
5 legislature at least if they chose to follow it a
6 reasonable handle on the number of judges. They chose to
7 follow it in large part.

8 Yes, sir?

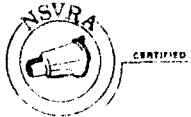
9 JUDGE CRANE:

10 You said you had 650 judges and you now have
11 113. Your handout says you have 87 Circuit Court Judges
12 and 113 District Court Judges.

13 MR. DAVIS:

14 District, right. The 650 were replaced by the
15 113. Our general level trial court was unchanged. The
16 study gave us guidance and gave the General Assembly
17 guidance because one of the things that we still have a
18 problem with on our general court jurisdiction is we have
19 enormous disparities in workload between the different
20 judges, and we have the fellows that are being paid
21 \$35,000 a year. They have a good retirement system, and
22 we've got people with less than 500 cases a year, and some
23 of them have 1,500 cases, and we still have enormous
24 inequities in that part of the system. I can only say
25 thus far it appears if things stay relatively the same, the

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1 amount of inequity in the district court system is far
2 less because the study was generally followed, and the
3 number of judgeships was held down.

4 Another thing that I want to share that we
5 found particularly acute was court facilities. I don't
6 know how you'll approach that here, but it was an absolute
7 nightmare. Any time you talk about creating a new court,
8 the first thing you forget about is where you're going to
9 put all these people, and it was one of the last things we
10 got around to, and it was a big mistake. I think we've
11 got a reasonable solution. I've given it to you here
12 under tab D, a copy of the legislation most recently passed
13 by our General Assembly, and what it basically says is that
14 the state isn't going to rent these facilities from the
15 counties or cities, but we're going to contribute to the
16 burden the county has or the city has in providing
17 facilities. The philosophy there the General Assembly
18 adopted was we're using the same taxpayers' money whether
19 we take it from state revenue or if we take it from local
20 county revenue, and we ought to be prudent either way we
21 go. These are two arms of government, and we ought to
22 deal with each other not on a commercial basis at arms
23 length, but on the basis of how do we keep this cost to a
24 minimum. So they adopted an approach that we got really
25 from the federal government that the Office of Management

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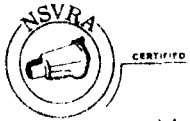
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1 and Budget uses in building a new Post Office. They put in
2 a percentage contribution each month, each year. They use
3 two percent. So we used four in this method of the state's
4 bearing a cost of providing facilities, and in addition
5 to that, the state pays its pro rata share of the operating
6 expenses. It's an amicable solution to what was otherwise
7 a terribly knotty problem and very politically volatile.
8 The counties were upset at losing money in providing
9 facilities.

10 That leads to the next question, is money. How
11 do you handle the fines and forfeitures and what have you?
12 North Carolina didn't have that problem because their
13 money went to the education system, and it stayed that
14 way, so the state picks up all that cost with no revenue
15 to speak of. We didn't have -- we had a serious problem,
16 and supposedly many of the folks who supported the article
17 campaigned on the proposition that the cities would not
18 lose money, if you will. Now, then we found that the
19 Municipal Courts made money and the County Courts did not.
20 Convincing County Judges is another thing, that they
21 weren't making money because most of them had never put
22 a ledger sheet together and really sat down and figured
23 out how much they're spending on personnel, judges, how
24 much they're spending on operating costs and what have
25 you. All they saw was these fees and fines coming back at

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1 the end of the year. When the audit was finally completed
2 of the 120 counties, only fourteen were actually making
3 money on their system. As opposed to that, the cities --
4 over eighty percent of them were making money on their
5 system. The procedure that was adopted here was a net
6 court revenue proposition, and that was that in order --
7 it's basically a hold harmless proposal. They took the
8 average revenue the city and county had made for the years
9 '74, 5 and 6 and deducted from that the operating cost
10 incurred in providing the system, the court system, and
11 whatever that net figure was, that's what the county or
12 city gets back from the state. That amounts to as far as
a statewide proposition five million dollars a year.

14 MR. STUBBS:

How long are you going to do that?

16 MR. DAVIS:

17 I hope not very long, but the political
18 commitment at this point I think is very strong, and I
19 suspect it will be a couple or more years.

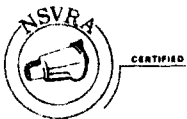
20 MR. STUBBS:

21 Do you have a limitation in your constitution
22 about grants to municipalities and counties?

23 MR. DAVIS:

24 Yes.

25 MR. STUBBS:



1 From the state legislature?

2 MR. DAVIS:

3 Right. We sure do.

4 MR. STUBBS:

5 They had to amend that portion of it?

6 MR. DAVIS:

7 Well, it's not amended in the constitution.

8 This is a creative legislative act shall we say? I can't
9 characterize it in any harsher language. It is basically
10 revenue sharing in a way. That's right. And this was a
11 very difficult problem. I know Alabama has had trouble
12 with it. Florida has had a lot of discussion about it.

13 As I said, it wasn't an issue in North Carolina because of
14 the previous way they used the money. I think you would
15 find, if you're talking about unification in dealing with
16 the local courts becoming state courts, this will be along
17 with facilities the two most difficult problems. The net
18 revenue approach has at least passed muster politically.

19 DEAN BEAIRD:

20 Did you have any difficulty -- this may sound
21 like a silly question at first. You created the Court of
22 Appeals, fourteen judges more or less.

23 MR. DAVIS:

24 Right.

25 DEAN BEAIRD:

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1 How would you assess the quality of that court?

2 The reason I ask that -- we've been told by some people
3 commenting on the initial draft here that ultimately the
4 size of the Court of Appeals in Georgia will have to be
5 increased. The more it increases, the more the quality
6 of the judge decreases. What would be your comment on
7 that?

8 MR. DAVIS:

9 Well it's obviously a judgmental question. It's
10 like Justice Berger telling everybody they're incompetent
11 lawyers. It's a matter of degree. I mean if we're all
12 perfectionists, then all of these guys are incompetent. I
13 would say on balance everyone I've talked to -- and I
14 reflect I think the comments of the Bar more so than my
15 own personal comments -- is that they've been very
16 pleased and were pleasantly surprised at the people who
17 chose to run for the office, a wide variety, and
18 interestingly enough, only three were trial judges, which
19 kind of surprised me. I thought more trial judges would
20 chose to take on the office. All of them are men of many
21 years experience at the trial bar, and three of them were
22 prosecutors I should say. I'd say in many ways the
23 quality is equal to our present Supreme Court, if not
24 better in some ways, and I think, as I said, with the
25 initial stages behind them -- I think it will get much,

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1 much better. It's a very aggressive group of men, and
2 I'll tell you. Anytime you can convince somebody to run
3 for office and travel twenty weeks a year, it's a tough
4 job and a hard job, and they work very hard at it, very
5 diligently at it.

6 Let me add. That same question came up by the
7 way with our District Court because we were creating again
8 out of whole cloth 113 positions, no incumbents, and the
9 average age, much to my surprise, is forty-four years old,
10 which is traditionally the height of the earning years of
11 a practice. We attracted a good number, many people with
12 good practical experience in the law, and that more than
13 anything has led to the success, the early success of the
14 system of the courts.

15 There are a lot of nuts and bolts, and I won't
16 go into some of those things. I'll talk about I think
17 some of the other issues that relate to how did this get
18 passed. I heard you were going to have public hearings.
19 I hope the public comes. We've tried public hearings.
20 Nobody comes.

21 REP. SNOW:

22 We have had the benefit of those who are vitally
23 interested in it to come.

24 MR. DAVIS:

25 Yes. I suspect that, but other than those, just

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1 just the citizens concerned in the state --

2 REP. SNOW:

3 We did have a citizen come who wanted to abolish
4 all of it.

5 MR. DAVIS:

6 Well, you can recite to him -- and I can't
7 recall exactly where I read this the other day, but the
8 judiciary stands between tyranny and democracy, and people
9 who want to run around and abolish the judiciary have very
10 short sights in my judgment. That's one of the things
11 that's unfortunate. You do hear that.

12 DEAN BEAIRD:

13 Excuse me. I'm going to ask one more question.
14 Was the Chief Justice the head of the judicial system.--

15 MR. DAVIS:

16 Yes.

17 DEAN BEAIRD:

18 -- in Kentucky prior to this?

19 MR. DAVIS:

20 We had a fragmented system. We had a Court of
21 Appeals largely responsible for its own affairs, also
22 responsible for issuing rules of court and beyond that no
23 responsibility basically. We had a trial bench of 87
24 judges, the Circuit Court, and they had their own
25 association, and they pretty much ran things as they saw

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1 whatever fit meant. So we had a head that was titular
2 and I think more so than that just meaningless in the
3 sense of operations. That's the title he had, but he didn't
4 have anything to do with all these other places. That's
5 not the case now, and if anything, it's given rise to
6 some resentment, but it's also given rise to a good deal
7 more order, and I guess you have to balance those things.
8 He is responsible for submitting the budget for the whole
9 court system. He's responsible -- as the constitution
10 says, he's the executive head of the system, which he
11 takes very seriously, and he chairs a judicial council
12 which is a statutory created body which is advisory only.
13 He chairs obviously the Supreme Court which has a very
14 broad discretion in rule making authority, and he's also
15 chairman of all the nominating commissions whenever they
16 convene to nominate a judge. That is a very difficult --
17 each state I found deals with this differently. Our
18 system thus far I think has brought a lot more sense of
19 order and direction because previously our Chief Justice
20 didn't have that. We had groups going this way and groups
21 going that way, and you never had anything that pulled
22 together, and consequently you had people at each other's
23 throats quite frequently, and that can't be but
24 destructive. You can't progress very far when you've got
25 two oxes pulling the wagon hooked to the same yoke and

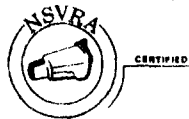
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1 they're trying to go in opposite directions, and I think
2 that characterized the judiciary prior to this system.
3 Now, the other end of that is resentment from the local
4 level that, quote, "the state or centralized government"
5 is involved in the affairs of the local community, and of
6 course we hear that. I say that about Washington, and
7 people say that about me in Frankfurt. It's a matter of
8 balance. It's not a clear issue, and more often than not
9 it depends on the personality that occupies the office.
10 I don't believe the structure has anything to do with it.
11 If the individual that occupies the office is sensitive
12 and concerned and will work with people and isn't
13 particularly autocratic, these aren't problems that really
14 can't be solved, but if it happens that you get that sort
15 of person, sometimes unfortunate events occur. We haven't
16 had that. The Chief Justice has a weekly visit to a trial
17 court, so we go out every week someplace to visit with
18 people to find out what their problems are, what they
19 think, what they want, what we can do to hopefully improve
20 that, whatever system of service that they would like for
21 us to give them.

22 I was going to mention a moment ago about the
23 public before the judicial article was voted on in 1975.
24 We hired the Craft Opinion Survey people from Washington,
25 and they did a survey of the public's view of the judiciary.

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1 The one thing that came very clear -- seventy-seven
2 percent of the people surveyed said they wanted lawyer
3 judges. If there was anything that was absolutely
4 unequivocal, that was it, that they did not want to go
5 before laymen. They just knew that the society had become
6 too complex, that you just can't expect someone not trained
7 in the law to handle these matters, and much to the
8 surprise -- and I'll say this with all deference to
9 politicians in the state -- none of the politicians
10 expected this to pass. I think it's because they had
11 lost touch with the public sentiment on this issue and
12 the public was far ahead of them on it. I think, if
13 anything, if you had the benefit of a survey just done
14 by the Yankolovich people, which Bo Cole's National Center
15 for the State Courts had done, it reflected a high degree
16 of dissatisfaction that the public has with the judiciary,
17 and I don't think we can afford to let those things slide
18 by, and I think that was manifested in Kentucky. I'll be
19 able to tell you more about the public views of our new
20 system next year because we intend to repeat the survey,
21 altering it and seeing what their thoughts are now as
22 the new system has taken effect.

23 REP. SNOW:

24 Bill, I'm going to have to leave for just a
25 few minutes, but before I leave, Bo Cole is here. You

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1 mentioned him, and I'm sorry I hadn't introduced you a
2 few minutes ago, Bo. I should have done that, but he
3 will be here also to answer some questions. He's got a
4 tremendous world of experience in this field.

5 I'll be back in a few minutes.

6 MR. DAVIS:

7 Another problem that we've had and it's still
8 a serious problem and it relates to jails. Again it's
9 one of those really nuts and bolts issues that you just
10 don't really pay too much attention to.

11 JUDGE BEASLEY:

12 You're talking now about another problem the
13 public perceived or another problem you had with it.

14 MR. DAVIS:

15 Another problem we've had with it.

16 MR. STUBBS:

17 Your courts run your jails?

18 MR. DAVIS:

19 No, we don't. They don't. We have county run
20 jails, and we have city run jails, so here we're talking
21 about a single court system where you had two before, a
22 city and a county, and each maintained its own jail. Now,
23 we're talking about a combination, and those facilities
24 obviously weren't generally constructed in contemplation
25 that they would be handling this many people. Our jails

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1 are like most jails I know in the country. They're the
2 most frightening places on earth to be, and we've had
3 enormous difficulty in trying to work out a system of how
4 to incarcerate people or hold them over as the case may
5 be, and where we're going there is a regional concept of
6 jails. We're not going to be able -- we have 120 counties,
7 and that's another problem in Kentucky.

8 MR. STUBBS:

9 We've got 159.

10 MR. DAVIS:

11 I know you do. I know you do. Georgia and
12 Texas are only about three or four of them that are ahead
13 of us. We couldn't justify them, and we can't justify
14 on a cost basis maintaining jails in all these places, so
15 what is evolving now is a series of well designed, well
16 constructed facilities on a regional basis, and then at
17 the local level you will have holdovers.

18 MR. STUBBS:

19 Who will run them on the regional basis?

20 MR. DAVIS:

21 At this point it's not clear. It may be the
22 State Department of Corrections with some local control.
23 I don't know the answer to that.

24 JUDGE CALHOUN:

25 Who will finance them? Who will build them?

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1 MR. DAVIS:

2 The state.

3 MR. STUBBS:

4 Have you had any problem with your federal
5 judges wanting to run your jails?

6 MR. DAVIS:

7 Not yet.

8 JUDGE CALHOUN:

9 You think they will, Bob?

10 MR. STUBBS:

11 We've got several of them under judges now.

12 MR. DAVIS:

13 Not yet. That hasn't come yet. As I said, I
14 was at a place two weeks ago that looked like -- I think
15 it was built 120 years ago, but it would predate that by
16 another 300 years if you looked at the facility. I can't
17 laud anything in that kind of correctional system. It's
18 pretty bad right now. There's enormous room for improvement
19 there.

20 JUDGE CALHOUN:

21 Speaking of regional jails, has there been any
22 move or any sentiment for regional trial centers as
23 opposed to trials in every county?

24 MR. DAVIS:

25 Yes. No, not trial centers. We're doing

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1 something right now that's a little different, and it
2 addresses the question I mentioned a moment ago about the
3 number of judges. We've got disparity, and one of the
4 ways we're handling that is we've created regional projects
5 with a Chief Judge elected by those judges in that
6 region, and he has the authority delegated by the Chief
7 Justice to assign justices in that region to take care of
8 the workload as it appears in that region, but that's
9 done locally, not taking the folks any further from
10 home.

11 JUDGE CALHOUN:

12 We have a similar system in Georgia in judicial
13 districts.

14 MR. DAVIS:

15 Right.

16 JUDGE CALHOUN:

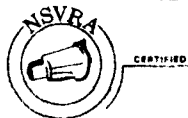
17 But we run into the problem of facilities.

18 You've got a big trial backlog in Cook County. You've got
19 one place in Cook County where you can hold trials.

20 MR. DAVIS:

21 I'll share with you what we're talking about
22 doing, and I think we will do it this year. We will
23 order three preconstructed mobile courtrooms because we do
24 have facility problems, and we intend to use them on the
25 basis of need where the need arises.

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1 JUDGE CALHOUN:

2 You mean they'll be portable?

3 MR. DAVIS:

4 That's right. It worked. I'm a native
5 Kentuckian, but I worked for three years for the courts in
6 California, and that was done in no less than five
7 counties, and the fact of the matter is it worked out much
8 better than people would have ever imagined. The truth
9 of the matter is these mobile units are more functional
10 than the old stately courtrooms. You can hear better,
11 and the people get in and out of them better. You don't
12 have the old folks confronted with hundreds of stairs,
13 and there are a lot of benefits, but that's the way we're
14 going to have to deal with it. You'll just have to be
15 creative I'm afraid.

16 JUDGE CALHOUN:

17 I guess you could put it anywhere in the county
18 and there would be space somewhere, wouldn't it?

19 JUDGE BEASLEY:

20 Judge Calhoun, is it a constitutional provision
21 or a legislative provision on counties? Constitutional,
22 isn't it?

23 JUDGE CALHOUN:

24 Yes.

25 JUDGE BEASLEY:

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1 We should change that to make it easier.

2 JUDGE CALHOUN:

3 You haven't touched on the magistrates. Who
4 issues search warrants? Who conducts preliminary hearings?

5 MR. DAVIS:

6 Okay.

7 JUDGE CALHOUN:

8 This is a real problem in this state.

9 MR. DAVIS:

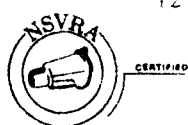
10 The 113 District Judges are primarily responsible
11 for issuing all search warrants and arrest warrants. In
12 addition to that, in each county in which a judge does
13 not reside, a District Judge, there is an appointed trial
14 commissioner who shall be a lawyer when available. If
15 one is not available, it should be someone of comparable
16 experience. That translates into former Police Judges
17 mostly.

18 JUDGE CALHOUN:

19 Appointed by whom?

20 MR. DAVIS:

21 By that Judge, that District Judge. In the
22 absence of the judge and the trial commissioner, the clerk
23 of the court can issue them. There's a recent U.S. Supreme
24 Court decision with the city of Tampa which authorized a
25 quasi-judicial officer to issue those warrants. We've



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1 advised the clerks not to issue search warrants as a
2 general practice.

3 JUDGE CALHOUN:

4 Do they also hold preliminary hearings, the
5 District Judges?

6 MR. DAVIS:

7 They do.

8 JUDGE CALHOUN:

9 And preside over the trial in which they held
10 the hearing?

11 MR. DAVIS:

12 They do. No, I'm sorry. Not in the felony
13 preliminary hearings. They hold the felonies, and they
14 go to the Circuit Court.

15 JUDGE BEASLEY:

16 What do you do about the minor things like
17 small claims and traffic and landlord and tenant and all
18 those.

19 MR. DAVIS:

20 They're all handled by the District Court.
21 The jurisdiction of the District Court is traffic matters,
22 misdemeanors, probate, juvenile, small claims and civil
23 jurisdiction up to \$1,500.

24 JUDGE BEASLEY:

25 You do not have a separate Family Court then?

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1 MR. DAVIS:

2 We do not. As I mentioned before, I don't think
3 that we're two years from that though because at this
4 point as of the end of May, we're five months into the
5 new system, and the initial figures show us that thirty-
6 odd percent of the work that was formerly in the general
7 jurisdiction court is being handled by the inferior
8 jurisdiction court, which is going to create even more
9 disparity in work, which I think the legislature will be
10 forced to look at the jurisdictional scope of the District
11 Court and seeing what they can move up, and juvenile is
12 the logical one, which would then convert it, if you will,
maybe in name only to a Family Court.

14 JUDGE BEASLEY:

15 Well, did you conceive or consider the prospect
16 of a family type court?

17 MR. DAVIS:

18 Yes.

19 JUDGE BEASLEY:

20 Which would handle divorces and custody and
21 juvenile matters?

22 MR. DAVIS:

23 Right. We did. We recommended it.

24 JUDGE BEASLEY:

25 And non-support.

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1 MR. DAVIS:

2 And our general jurisdiction judges opposed it,
3 and they prevailed.

4 JUDGE CALHOUN:

5 Does your constitution set the jurisdiction?

6 MR. DAVIS:

7 No, it does not.

8 JUDGE CALHOUN:

9 That's provided by law?

10 MR. DAVIS:

11 Right. We found that the more flexibility you
12 can leave there, the better off you are. It's the hardest
thing on earth to change the constitution.

14 JUDGE CALHOUN:

15 We've found that.

16 MR. DAVIS:

17 I think I might comment that our courts, all
18 courts are courts of record. Lower courts historically
19 were not, and that changed the nature of the appellate
20 process. We use tape recorders in the lower court, four
21 channel devices, and that's gone very well. That record
22 is used. The tape itself is not transcribed. It is
23 transmitted with the appeal to the next level of court.

24 JUDGE CALHOUN:

25 When you're talking about the lower court, you're

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1 talking about the District Court and Circuit Court?

2 MR. DAVIS:

3 District. Just the District Court.

4 JUDGE CALHOUN:

5 You have reporters in the --

6 MR. DAVIS:

7 In the Circuit Court. I should hasten though
8 that as of the first of the year, eight Circuit Judges
9 have chosen to go to the machines, and there are others
10 who have expressed an interest, so there's some increasing
11 interest in that.

12 JUDGE CALHOUN:

13 Your law does not require that felony cases be
14 transcribed?

15 MR. DAVIS:

16 They do, and they are. When that takes place,
17 the judge's secretary sits in the court, monitors the
18 machine, and transcribes the proceedings at the conclusion.
19 That effect can serve two positions.

20 MR. STUBBS:

21 With that jurisdiction that you're giving your
22 District Courts, are those jury trials?

23 MR. DAVIS:

24 Yes. They are also six man jury trials. You
25 have a right to a jury trial in any case.

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1 JUDGE CRANE:

2 Including juvenile?

3 MR. DAVIS:

4 No. I beg your pardon.

5 MR. STUBBS:

6 I've just scanned your materials here. You said
7 one District Court in each county, but you've got 120
8 counties and only 113 districts.

9 MR. DAVIS:

10 Well, the judges have more than one county.

11 MR. STUBBS:

12 Oh, I see.

13 MR. DAVIS:

14 We've got twenty-three of those 113 in Louisville
15 only, but again the idea here was that you are going to
16 pay someone to give up his law practices and you're going
17 to pay him to be a judicial officer; you ought to pay him
18 a salary that's commensurate with the duties and
19 responsibilities, and you ought to have only so many
20 judges as you need.

21 JUDGE STANLEY:

22 What are their salaries?

23 MR. DAVIS:


24 They're presently paid \$27,500 a year. I
25 expect by the next legislative session it will be around

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1 thirty-three or four. They're in the retirement system,
2 the state judicial retirement system, to which they
3 contribute five percent and the state thirty-five
4 percent. It takes twenty-four years for it to vest full
5 to receive full salary, but there won't be many of them
6 make it because as I've told you, the average age is forty
7 some odd now, and we don't have a mandatory retirement age
8 at this point. So it costs us per District Judge right
9 now -- it's running about \$95,000, and per Circuit Judge
10 it's a little over 100,000, and that does not include
11 facilities because we haven't been able to get our
12 calculations sophisticated enough to do that yet.

 JUDGE STANLEY:

14 Where are your permit matters? In what court?

15 MR. DAVIS:

16 Circuit Court, which is the next level.

17 JUDGE STANLEY:

18 Is that de novo hearing?

19 MR. DAVIS:

20 No, sir. It's on the record. The novo hearing
21 in my experience has been an exceedingly costly provision.
22 You end up repeating everybody's time and the cost of
23 litigation is doubled. I should say the judges, the trial
24 judges were very reticent about listening to these tapes.
25 They complained bitterly, and you couldn't explain to them

1 for the earth that if they had a tape, that it would take
2 less time than having to try the case over again. It was
3 just the thought of having to listen to the tape. Now,
4 since the first of the year, we haven't had that many
5 appeals, but every judge I've talked to said this is the
6 greatest thing that's ever happened. They've got a device
7 in chambers. They listen to it in chambers, and it takes
8 almost no time at all to handle the matter. So we've got
9 an instant record. We've got no delay in appeals. We've
10 got virtually no cost to the litigant in appeal. We
11 have machines so that we can duplicate the tape. If the
12 lawyer goes to court or the citizen goes to court and he
13 wants a record of the proceeding, we've got a duplicator,
14 and we can duplicate for three dollars the whole
15 proceeding for him.

16 JUDGE BEASLEY:

17 For those interested in that proposition, we've
18 got that right here going on in the U.S. Magistrate's
19 office. That's the way they operate, and the secretary
20 will make a duplicate cassette if you want it off the
21 big reels. They've got a big reel, but it's working very
22 well over there. It's been working now for at least a
23 year and a half or two years if anybody wants to look at
24 it.

25 JUDGE CALHOUN:

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1 You're talking about a four channel system. What
2 is this now? Is this some kind of back-up system?

3 MR. DAVIS:

4 No, sir. What the four channels means --
5 basically you have four mikes in the room, and each
6 records separately, so if you do get a commotion in the
7 courtroom, both counsel talking simultaneously, you can go
8 back -- or witness and counsel talk simultaneously. You
9 can play back each channel separately and discern
10 exactly what each said.

11 JUDGE CALHOUN:

12 I understand that, but you just have one system.
13 If it breaks down, you just don't get anything.

14 MR. DAVIS:

15 If it breaks down, there's a variety of ways
16 it's being handled. We have back-up equipment. It takes
17 an hour to get it there generally. The litigant has a
18 right to waive the recording, and that's done also, but if
19 the court reporter gets sick, he stops things too. So
20 nothing is infallible. At least I haven't found anything
21 yet.

22 Yes, sir?

23 MR. SHOPE:

24 Are your court reporters part of the unified
25 system?

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1 MR. DAVIS:

2 Yes.

3 MR. SHOPE:

4 Are your individuals that listen and are
5 operating the machines certified or trained in any method
6 other than just judge's secretaries of some kind?

7 MR. DAVIS:

8 The court reporters are part of the system.
9 They're part of the judicial personnel system, they're
10 compensated for their duties by salary. They also over
11 and above that receive per diem transcripts -- excuse me --
12 receive transcripts in pauper cases, and if a private
litigant requests a transcript in civil litigation,
14 they're also compensated on that.

15 The individual who monitors the tape has been
16 trained on site, and there has been recurring -- we've
17 had two training sessions with everybody already in five
18 months. It doesn't take a great deal of skill, but you
19 have to show them how to make sure things are recording.
20 That's the most essential part of it, and we've had things
21 happen. We've had mistakes. We've had omissions. We've
22 had breakdowns. All those things have occurred, none of
23 which has presented such difficulty it can't be overcome
24 though.

25 MR. MARTIN:



1 Can I say one word to offer you a contrast? In
2 Alabama the District Court is not a jury court. In the
3 case of trial appeals, it goes de novo to the Circuit
4 Court. So if you want to get a contrast of the two,
5 you've got it in those two systems. Now, our experience
6 has been that there have not been very many appeals into
7 the Circuit Court over the past year and a half. So you've
8 got those two things to look at, if you choose to do so.

9 MR. COLE:

10 Bob, what is the percentage of de novo appeals
11 to the Circuit Court now? Do you know?

12 MR. MARTIN:

13 I don't know. I'd have to look, you know. We
14 could get that figure, but it hasn't been very much.

15 JUDGE CALHOUN:

16 What did you do about existing judges? Did
17 you have Justices of the Peace?

18 MR. DAVIS:

19 Yes.

20 JUDGE CALHOUN:

21 Separate Juvenile Judges?

22 MR. DAVIS:

23 Yes.

24 JUDGE CALHOUN:

25 What did you do about the? Did you grandfather

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1 them in?

2 MR. DAVIS:

3 No. Their jobs were abolished. They had the
4 option to run for office if they were qualified, but their
5 jobs were abolished.

6 JUDGE CALHOUN:

7 You did this in a period of two years?

8 MR. DAVIS:

9 Yes, sir.

10 JUDGE CALHOUN:

11 You said three years. '75 and '76?

12 MR. DAVIS:

13 Well, actually most of this was begun in mid
14 '76 to January of this year. The same applied to clerks
15 of the court who worked for other than the Circuit Court.
16 The Circuit Court clerk was already working in part for
17 the state. So any additional people who came on who
18 previously worked in the county or the city court were
19 hired. No, we didn't grandfather anybody in. The decision
20 was left to the appointing authority, who was the clerk
21 in this case. Our office reviewed their qualifications.
22 I mean we get their applications, and we reviewed the
23 qualifications for the position, and that's all, and they
24 hired who they saw fit to hire.

25 JUDGE BEASLEY:

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1 Mr. Davis, how did you keep from having these
2 people hold up the whole process and sabotage it if there
3 were so many of them that were in a position of some
4 political power that were going to lose their jobs,
5 period?

6 MR. DAVIS:

7 Well, the article in itself abolished the
8 judicial positions initially by just requiring lawyer
9 judges. That almost eradicated ninety percent of them
10 right there.

11 JUDGE BEASLEY:

12 But even that, how did you get that to be
accepted without having a lot of opposition?

14 MR. DAVIS:

15 Well, the public opinion thing was one thing
16 that was very clear on it's opposition to the non-lawyer
17 judge. Secondly, I'll be very candid. I think the public
18 was fed up with what it got from the lower court system.
19 It was like going to the stockyard, and most of the folks
20 in the system could care less about what was happening,
21 and the cities used the courts as a revenue device, and
22 the public knew it. I think we don't give the public
23 enough credit for understanding how they've been abused
24 in these cases, and I really think the more I travel
25 around our state -- and I go all over the place -- the

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1 people I've run into are just ecstatic with getting rid of
2 these things. I think they're tired of it, and as I said
3 before, I don't think the politicians had any sense of
4 that.

5 How did it happen? It's a mystery. One
6 explanation given to me was the same year they had this
7 constitutional amendment on the ballot, they had the
8 homestead exemption, and many of the elderly who went
9 to vote were unclear what they were voting for. They
10 were two levers apart, and they voted for both to be sure.
11 There may be some merit in that. It's hard to say.

12 MR. DROLET:

There's your answer right there.

14 MR. DAVIS:

Yes, sir.

16 MR. GREENE:

17 Were not a goodly number of those people part
18 time anyway?

19 MR. DAVIS:

Very much so.

21 MR. GREENE:

22 In othe words, you didn't make their living
23 full time.

24 MR. DAVIS:

25 That's exactly right. Easily seventy-five percent

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1 were part time.

2 MR. GREENE:

3 Getting down to the nitty-gritty of the thing,
4 it really was not that important to a goodly number of
5 them?

6 MR. DAVIS:

7 That's right. That's exactly right. Of course
8 that made the job more difficult when you talked about
9 how many judges you needed. You had all these part time
10 people. How do you equate that to full time? It's a very
11 difficult process.

12 MR. GREENE:

13 You've got I would say probably hundreds of
14 Justices of the Peace in this state. They hold that
15 title, but they really function -- I've got a sister-in-
16 law, and I asked her why she continues. They've got two
17 in the judicial district. Nobody ever runs when one is
18 to be elected, and she always lets the grand jury appoint
19 her, and the only way her constituents can catch her is
20 if she sees them coming in the front door and they see
21 her before she sees them and vice-versa because if she
22 sees them first, she's gone. So I don't think she would
23 get real shook up about her job being abolished, but on
24 the other hand, I know a number of others who do make their
25 living, and they're going to get real shook up.

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1 MR. DAVIS:

2 Yes. Well, that's true. There's no question
3 about that. I don't mean to sound harsh about it. I
4 think there's a number of people who were displaced. I
5 don't know that it's avoidable. I don't know how you do
6 that. I make the comment, and I have no basis except
7 the experience with our general jurisdiction judges. My
8 comment is those who were grandfathering people in --
9 that would have been a mistake. We would have inherited
10 all the problems of the past to start with, and everyone
11 of those folks that we had in the old system is still
12 trying to do things the old way, and you can't for the
13 life of you talk to somebody and say, "Wait a minute. We
14 can save money. We can be more efficient. We can do
15 things this way and still provide the same quality."
16 And the contrast I have is the fellows who started with
17 the next system are eager. They're looking at things and
18 saying, "This is" -- we've got a major public responsibility
19 because this is the first major constitutional change in
20 the history of our state since 1892. So this is like a
21 public trust that may never come along again. So the
22 fellows take it very seriously, and I think the attitude
23 has more to do with it. The gentleman that asked me about
24 the quality of the bench -- if they have a good attitude,
25 I think things just really go well, and that's how I

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1 answered the other question, how do you do this with all
2 these people. Well, we had advisory committees. We had
3 almost 250 people working on different advisory
4 committees. This is an exceedingly complex proposition.
5 The more you wade into it the more you find out there are
6 hundreds of things that you never thought about, and the
7 way we did this is we literally took the statute on subject
8 matter and rules and abbreviated them, and then we asked
9 questions. Why is this this way? And does it need to
10 continue this way? And we went through 14,000 statutes.
11 Our statutes are in a computer in Kentucky, so we could
12 query the statutes on just the word "court" or "judge"
13 or "jury" or "clerk of court" or things of that nature,
14 get a printout. It would be this high, and we would just
15 sit down and go through each of those and ask questions.
16 Why is it this way? We would find I hate to tell you how
17 many things that would be on the books forever and nobody
18 knows why. They have no useful purpose. So we went
19 from an outline approach. The planners, the blue sky
20 thinkers today don't do things this way, but we found
21 that this was -- this kept us -- by going this way, we had
22 a track of where the system was, and then the committee
23 that worked on that subject matter could see what were
24 the other states doing and all these other things, and
25 we could provide that information, and they would make a

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1 recommendation which would in turn get to a legislative
2 committee, and we went through that process. It was like
3 a giant gristmill because you started with it and you just
4 kept -- you'd meet and revise it, and it would change,
5 meet again, and you'd finally end up with a draft of
6 legislation that reflected the consensus of the trial
7 bar, the trial bench clerks, the public. We had a very
8 wide group of people, and that came to a larger committee.
9 In other words, sort of a steering committee, and
10 procedurally, by involving so many people, quite honestly
11 that had a very salutary effect because a lot of people
12 were involved and they felt they made contributions which
13 they undoubtedly did, and they gave the system -- because
14 most people were advised what was going on -- a pretty
15 good, firm foundation.

16 JUDGE CALHOUN:

17 Now, your system is a two-tiered system. You
18 have a system of Circuit Courts and you indicated that
19 you are going or maybe have already gone to the district
20 concept with the Circuit Courts where an area of the state
21 would elect one of their number as an assignment judge.

22 MR. DAVIS:

23 Yes.

24 JUDGE CALHOUN:

25 Do District Judges do the same thing?

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1 MR. DAVIS:

2 Not yet.

3 JUDGE CALHOUN:

4 There is no correlation or no supervisory power
5 in the Circuit Court as far as the District Court is
6 concerned?

7 MR. DAVIS:

8 That's coming. We're trying to be very cautious
9 with that, Judge. The thought was initially let the
10 District Court get started, let these fellows work out
11 the bugs basically and get comfortable with what is it
12 they're confronted with and then let's try to move into
13 these other things. That's why we started on a pilot
14 basis, and then quite honestly when the regions are
15 finalized, the District and Circuit Judges would be in
16 the regions together, the same regions. We don't
17 duplicate them, and they will be used interchangeably.
18 The vest criteria or the stipulation is unless a fellow
19 has eight years practice from the District Court, he won't
20 be assigned to the Circuit Court. That's the general
21 qualifications for a judge of the Circuit Court, and we've
22 applied that generally for the fellows to be assigned
23 upstairs.

24 JUDGE CALHOUN;

25 And the qualifications for District Court Judge

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1 are separate?

2 MR. DAVIS:

3 Yes. Now, we went to Oklahoma. I heard you
4 talk about going to another state. Oklahoma has a single
5 level trial court. Marion Powell isn't here. He used to
6 be the administrator, but my impression from that visit
7 was they have a single level trial court and everybody
8 knows that they have two kinds of judges, and we spent
9 three days there, and I came away with the distinct
10 impression that those were Associate Judges and those who
11 were Judges just didn't get along because they knew there
12 was a difference, and I don't know how you get around that
13 because you either have a single level where everybody
14 does everything or you don't. Now, they've got two, but
15 they draw lines. If you're thinking of that, I don't
16 know. There are several other states who have got a single
17 level trial court. I can't comment on that because we
18 didn't have that and don't have it.

19 MR. MARTIN:

20 Bill, do you budget for the entire trial court
21 system?

22 MR. DAVIS:

23 We do. We do.

24 MR. MARTIN:

25 How many employees?

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1 MR. DAVIS:

2 1,700. If you'll turn to the back of tab I,
3 you'll see our budget on an annual basis. It's 38
4 million dollars, and you'll see the categories it's broken
5 down into. Someone asked me earlier about money, how much
6 money is coming into the system. That's under page, tab
7 G. This is a difficult subject, also one of the most
8 controversial. As much as I've argued with the General
9 Assembly and others about using the courts as a revenue
10 agent and as a means to pay for themselves, I find that
11 abhorrent because I think it distorts the concept of
12 individual justice when you have a judge having to make
13 decisions about the innocence or guilt of someone
14 premised on the fact that maybe that money will pay his
15 light bill this month. I just think that's terrible in
16 terms of trying to apply justice in a given case. We
17 haven't been successful in convincing many people of that
18 yet, and quite honestly, I think to come back to the public,
19 I think that is one of the things that I expect the public
20 to react most vehemently about at some point in the
21 future. They haven't yet, but I think the more they
22 understand it, the more they'll see that.

23 We're at this point -- it's bringing in three
24 million dollars a month, and I expect by mid-summer -- we
25 have a very large and extensive state park system, and at

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1 the rate of tourism and what have you with the lakes, we
2 expect it will be around almost four by the end of the
3 summer because so many people come in during the summer
4 and fish and what have you.

5 MR. STUBBS:

6 Those are considered judicially created funds?

7 MR. DAVIS:

8 Well, not really, but yes.

9 MR. STUBBS:

10 Because the legislature has allocated them that
11 way?

12 MR. DAVIS:

13 No, they haven't. If we did that, we would be
14 in good shape in every way. It's viewed that way
15 philosophically, but the legislative approach to this
16 has been thus far how much money are you going to bring
17 in, how much is it going to cost, so they balance things
18 in that view. Of course no one could tell us or anybody
19 how much money was going to come in. You can't do major
20 surgery and expect something to happen. We just didn't
21 know what would happen. We had estimates, and that's
22 about it, and our estimates are going to be exceeded it
23 looks like.

24 MR. STUBBS:

25 But how about farm registrations? I mean there's

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1 half a dozen other things that may be administered by a
2 Probate Judge or an Ordinary.

3 MR. DAVIS:

4 We don't have that, the benefit of those funds.
5 I mean they don't go to the state treasury. They go to
6 the local unit of government that has that, so the only
7 thing we have that's a little unusual from the court's
8 perspective is our clerks sell driver's license and boat
9 license, so that unusual facet still remains, but it goes
10 to the general fund.

11 JUDGE CALHOUN:

12 I noticed in looking at your budget, I don't
see anything for public defenders.

14 MR. DAVIS:

15 That's right.

16 JUDGE CALHOUN:

17 How is that handled? It's not part of the
18 judicial system?

19 MR. DAVIS:

20 It is not part of the judicial system.

21 JUDGE CALHOUN:

22 It's executive?

23 MR. DAVIS:

24 It is executive. We have the Department of
25 Justice which has this as part of its functions, the Bureau

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1 of Corrections and the Public Defender's office, Crime
2 Commission money and those things.

3 JUDGE BEASLEY:

4 How about the probation office?

5 MR. DAVIS:

6 The same. It's in the Department Of Justice.

7 JUDGE CALHOUN:

8 And Attorney General also?

9 MR. DAVIS:

10 And the Attorney General. We have -- they
11 call it like everybody calls everything unified courts. We
12 have a unified prosecutor, but he's not unified. We've
13 got two prosecutors still. We've got a county attorney and
14 a commonwealth attorney. The county attorney is-- both
15 are elected. The county attorney prosecutes in the
16 District Court and the commonwealth attorney in the
17 Circuit Court. It's an exceedingly expensive proposition,
18 and I suspect that it's going to have to come to one
19 prosecutor. I suspect it's going to come in the next
20 legislative session. There was an effort this time, but
21 it was unsuccessful. There are lots of advantages to it.

22 Now, again North Carolina went through it. They
23 had two prosecutors for six years, and in '72 they
24 converted to a single prosecutor, and their experience,
25 I'm sure, will be very helpful for you in looking at that

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1 aspect.

2 JUDGE CALHOUN:

3 Are all public defender fees or all expenditures
4 for the defense of indigents provided by the state of
5 Kentucky?

6 MR. DAVIS:

7 Yes.

8 JUDGE CALHOUN:

9 Counties have no obligation on that?

10 MR. DAVIS:

11 It's optional if they want to, but very few of
12 them want to. Now, we also have legislation in Kentucky
13 where the trial judge upon determination of appointment
14 of the public defender can, if he can ascertain if the
15 individual has any funds whatsoever, if he has a job, he
16 can require that individual to pay the lawyer's fees over
17 a period of time. So those contributions are picked up.

18 JUDGE CALHOUN:

19 We do it here too. We call it a fine though.

20 MR. DAVIS:

21 Well, that's over and above the fine, Judge.

22 JUDGE CALHOUN:

23 We have a provision you can do that also.

24 MR. MARTIN:

25 Where does your Municipal Courts fit into the

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1 unified structure?

2 MR. DAVIS:

3 We don't have Municipal Courts.

4 MR. MARTIN:

5 They come under District Courts?

6 MR. DAVIS:

7 Right.

8 JUDGE BEASLEY:

9 What do you do about ordinances?

10 MR. DAVIS:

11 They're prosecuted in District Court.

12 MR. HODGKINS:

13 Do you have trouble with that?

14 MR. DAVIS:

15 No, no problem with that at all.

16 JUDGE BEASLEY:

17 Did you used to have Municipal Courts?

18 MR. DAVIS:

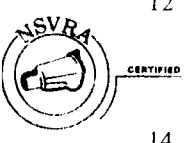
19 Yes. We called them Police Courts.

20 JUDGE BEASLEY:

21 And you got away with getting rid of them?

22 MR. DAVIS:

23 Right. That's right. There's just four
24 courts, District, Circuit, Court of Appeals and Supreme
25 Court.



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1 JUDGE BEASLEY:

2 Do you have a statewide association of
3 municipalities or anything?

4 MR. DAVIS:

5 Yes. League of Cities. They supported the
6 constitutional amendment.

7 JUDGE BEASLEY:

8 They did?

9 MR. DAVIS:

10 Yes.

11 MR. DROLET:

12 How come?

13 MR. MARTIN:

14 Did they get fine revenues back?

15 MR. DAVIS:

16 They get the net court revenue once the costs
17 have been deducted, and most cities really -- again it's
18 like we were discussing; most of the Police Judges are
19 part time positions, one day, two days a week, and nothing
20 more, and it's a nuisance more times than not. Now, here's
21 a serious problem, and again, the North Carolina experience
22 was very helpful to us. That's when you have so many
23 Municipal Courts. Obviously you have so many police forces,
24 and you've got problems of logistics, getting to your
25 county seat is ten miles away from where this place used to

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1 have a Police Court. Well, the way we wanted it was to
2 assign specific days for those officers from those towns,
3 so those fellows, when they came to prosecute the city
4 ordinances, for example, they would go Tuesday mornings
5 or whatever it was, and the city could make provisions
6 for covering whatever other protection they needed during
7 that time, and it's rather well organized, and it's not
8 really a problem. If we're talking about a town that
9 small, they generally don't have a serious crime problem
10 as a general rule anyhow, so it really hasn't caused a
11 substantial inconvenience, and it's really a matter just
12 I found -- it's really quite easy to work out if the judges
and the police and everybody just sat down and talked
14 about it for awhile. These enormous obstacles seem to
15 disappear.

16 JUDGE CRANE:

17 I noticed in your handout you said something
18 about certain juvenile matters that the courts had
19 jurisdiction over. Are they limited in what cases they
20 can hear?

21 MR. DAVIS:

22 No. Maybe that's a misstatement because they
23 really have the entire -- they have all juvenile
24 jurisdiction, except I shouldn't say that, except if the
25 commonwealth chooses to prosecute in a felony matter.

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1 JUDGE CRANE:

2 And the prosecutor makes the selection, not the
3 judge?

4 MR. DAVIS:

5 Right. That's right. That's the only
6 difference.

7 Let me share one other thing that I think is
8 exceedingly crucial. Once you get to the stage of
9 worrying about what are you going to do when you have
10 merged courts, we adopted rules of transition, and they're
11 under tab C, and I cite those to you for your own reading.
12 One of the biggest difficulties North Carolina had -- and
13 again their experience was very helpful -- was they did
14 not anticipate the problems that would arise in
15 particularly the big cities of transferring those cases
16 from all those local courts into another court. How do
17 you know which are active, which are inactive? Most of
18 these courts have no record keeping system that's orderly
19 in any way. It's general sequential numbering, so you
20 just don't have any idea. There's no way to determine
21 it. Basically what happens is you've got six months in
22 which to move the court for your case. We put notices,
23 told everybody, "If you don't move, it's going to be
24 dismissed with leave to reinstate at some point in the
25 future." That's the only way we could figure out an

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1 orderly transition to get an active docket and people
2 then could begin to move cases.

3 Another provision here had to do with accounting
4 of money because the fee structure was changed, and we
5 have unfortunately a mistake. I think we made a serious
6 mistake here. We have the highest fees I think of anyplace
7 in the United States. Now, we don't have step costs
8 any more which was a serious problem. As I say, the clerks
9 were fee officers, but you couldn't go into any two
10 counties of the state and have the same case and it come
11 out with the same fees. It just never worked that way.
12 So we surveyed the state, and we found that the average
13 cost in a given case was about \$109. Well, we recommended
14 that it be set at \$70 and there be no additional costs.
15 Well, that's I think a mistake. It's too high. I think
16 it's going to have to come back down.

17 Nevertheless, what we did with the rules, with
18 some of the rules is we tried to prescribe how to take
19 care of those cases where they had step costs before the
20 system started and how that would relate to the new
21 filing fee. Those things have to be dealt with you'll
22 find. You'll have a lot of chaos if you don't deal with
23 those kinds of issues. The people at the local level get
24 lost in the volume. Somebody will drive in in a truck
25 some day from some municipality and drop 90,000 cases on



1 you. That almost happened. So you just have to pay
2 attention to that. I guess that's what I'm trying to say.

3 MR. HODGKINS:

4 Do you allow counties and municipalities to
5 supplement salaries of any judges?

6 MR. DAVIS:

7 No, we do not. The state pays a salary for
8 the officials who work for the state, and you cannot receive
9 dual compensation -- there's a constitutional provision --
10 for the same duties.

11 JUDGE CALHOUN:

12 And what are your Circuit Judges paid?

13 MR. DAVIS:

14 They're paid 35,000, Judge, and I suspect --
15 again we suspect a major raise in 1980 to around forty.

16 JUDGE CALHOUN:

17 Now, you mentioned a survey conducted by the
18 National Council of State Courts. Did you say a copy of
19 that survey was available?

20 MR. COLE:

21 I can certainly get you some copies, yes.

22 MR. DAVIS:

23 The public image of the courts?

24 JUDGE CALHOUN:

25 Yes.

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1 MR. COLE:

2 It was a national survey, very well done.

3 JUDGE CALHOUN:

4 Is it broken down by states?

5 MR. DAVIS:

6 No, it is not.

7 MR. COLE:

8 No, sir.

9 MR. DAVIS:

10 Our whole judiciary just met two weeks ago,
11 and that was a major focus of our conference, and I'll
12 tell you one thing. The judges went away really
13 thinking about it because it had some very alarming
14 thoughts. The only group that beats us in lower confidence
15 level is the legislature.

16 JUDGE CALHOUN:

17 You should have waited until Wayne got back to
18 say that.

19 MR. MARTIN:

20 There's one important part of that survey
21 though which indicates that the public does have an
22 interest in the courts and approves modernization of the
23 courts.

24 MR. DAVIS:

25 Yes.

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1 MR. MARTIN:

2 And also approves funding of the modernization.

3 MR. DAVIS:

4 That's right.

5 MR. MARTIN:

6 Which was about the only encouraging thing.

7 MR. DAVIS:

8 Well, I think there's a lot more. As I said
9 before, my experience has been there's been a lot more
10 public support for the reform than people would have led
11 you to believe. I don't know of anybody who doesn't want
12 things to be better.

13 JUDGE CALHOUN:

14 Do you have less than twelve person juries in
15 the circuit?

16 MR. DAVIS:

17 We do not yet at this time.

18 JUDGE CALHOUN;

19 Does your constitution provide that you have to
20 have at least twelve?

21 MR. DAVIS:

22 Yes. That's going to be hard to change.

23 JUDGE CALHOUN:

24 Do you have to have unanimous verdicts in all
25 jury trials?

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1 MR. DAVIS:

2 No, not in civil trials now. Nine.

3 JUDGE CALHOUN:

4 Nine-twelfths?

5 MR. DAVIS:

6 (Nods affirmatively)

7 JUDGE CALHOUN:

8 Is this a constitutional provision?

9 MR. DAVIS:

10 No, it's not. It's statutory. We do have
11 something that is unfortunate, and please don't get into
12 this. This is a mistake I think. We have jury
sentencing.

14 MR. DROLET:

15 We had it.

16 MR. STUBBS:

17 We had it.

18 MR. DAVIS:

19 The judges are dominated by defense lawyers,
20 and they want to change it, and we've got a problem there.

21 MR. DROLET:

22 Ours is dominant also, but we got it changed
23 anyway.

24 MR. GREENE:

25 Wayne is missing all these choice comments.



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1 MR. DAVIS:

2 Yes.

3 MR. GREENE:

4 I wouldn't mention this except for you having
5 mentioned about the problems of the jail situation and
6 having it sort of slip by you. How about the Probate
7 Judge and clerk of the Superior Court having several
8 non-judicial functions? They have marriage licenses and
9 pistol toting licenses and I think in some counties birth
10 and death certificates, do they not, and then of course
11 the clerk has the Uniform Commercial Code. The biggest
12 part of my office really is real estate. Actually I've
13 got more people, you know, but it's the largest part. The
14 Uniform Commercial Code, the Republic Military Discharges
15 and affidavits. In other words, all those have no
16 connection whatsoever. What do you do with that sort of
17 thing?

18 MR. DAVIS:

19 The only non-judicial functions the clerks at
20 this point have are the drivers and boat licenses.

21 MR. GREENE:

22 Do you have a separate deeds Registrar?

23 MR. DAVIS:

24 The county clerk. That's right.

25 JUDGE CALHOUN:



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Did you always have this?

MR. DAVIS:

Yes. The county clerk was the court clerk for the County Judge, and when the County Judge was removed or stripped of his judicial authority, the only thing that happened there was that the county -- the judicial part went to the District Court, and now we do have dual filings in part on probate matters, so the court's records are retained, but only in limited things, and the original wills are retained in the county -- what do you call it? The Recorder?

JUDGE CALHOUN:

Registrar of deeds.

MR. DAVIS:

Registrar of deeds. Yes.

JUDGE CALHOUN:

Now, who handles your probate matters? District?

MR. DAVIS:

The District Judge. I'll tell you why that was done. Probate we find is one of the things that the public -- that always happens without expectation. People come from out of state or out of county almost -- well, they come whenever they feel like it, so you don't have regular days so to speak, but since we had more District Judges, we thought we ought to have more -- how shall I



1 say it -- more access to the public, and since we have
2 more District Judges, that's where it was put. The
3 Circuit Judges are eighty-seven in number, but they're not
4 in all these counties, so that's what gave rise to that.

5 JUDGE CALHOUN:

6 So the actual recording, filing and maintaining
7 of records as to wills, probate reports of executors,
8 administrators and so forth are in the County Court?

9 MR. DAVIS:

10 No, sir. They're in the District Court.

11 JUDGE CALHOUN:

12 I mean the District Court, the old County Court.

13 MR. DAVIS:

14 And the originals are filed in the County
15 Clerk's office, or the Registrar of deeds', your
16 equivalent. Now, in North Carolina the county clerk
17 handles all the probate matters, the clerk of the court,
18 and they retain their register of deeds.

19 MR. GREENE:

20 You're talking about the new system?

21 MR. DAVIS:

22 That's right.

23 JUDGE CALHOUN:

24 All right. Now, who selects and hires the
25 clerk of your Circuit Court?

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1 MR. DAVIS:

2 He's elected.

3 JUDGE CALHOUN:

4 Elected by the people?

5 MR. DAVIS:

6 Yes.

7 MR. STUBBS:

8 Statewide or just in that circuit?

9 MR. DAVIS:

10 In that county, in that county only. There's
11 120 of them.

12 JUDGE CALHOUN:

13 But he's strictly a functionary of the court?

14 MR. DAVIS:

15 That's right.

16 JUDGE CALHOUN:

17 He doesn't have any other duties except you say
18 he registers boats, sells licenses?

19 MR. DAVIS:

20 Well, he's the functionary of the court, but
21 he's a local politician. He runs a hardware store or has
22 another business on the side. They're an unusual breed of
23 cat. I think the South has the only group of people who
24 are clerks of court quite like this. I don't know of any
25 other place in the United States where it has evolved quite

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1 this way. The article would have absolutely never passed
2 if it changed that these folks weren't elected. They're
3 very influential politically, more so than the judiciary
4 thought about being, and it just wouldn't work that way
5 at least at this time in Kentucky, so they're still
6 elected and will be I dare say for some time to come.

7 JUDGE CALHOUN:

8 Is it a constitutional office?

9 MR. DAVIS:

10 It is.

11 JUDGE STANLEY:

12 Did you give any thought of putting your
13 probate matters in your Circuit Court?

14 MR. DAVIS:

15 We did. Originally in fact that was discussed,
16 and we thought, "Why not move it all there and have it
17 heard there originally?" The reason given for that was,
18 as I said, was accessability. Many of the rural folks
19 felt they needed more judges because people -- a lot
20 of Kentuckians move to Michigan and Ohio and other
21 places, and they come home; granddaddy dies, and they
22 want to have a judge right then. They're fewer Circuit
23 Judges and they're harder to find. So from a policy point
24 of view, it really has nothing to do with function. It's
25 really from policy the legislature put it in the District

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1 Court.

2 MR. STUBBS:

3 Do you maintain in either District or your
4 Circuit Courts separate calendars or separate divisions
5 for types of cases?

6 MR. DAVIS:

7 Yes.

8 MR. STUBBS:

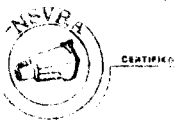
9 Do you use proctors, auditors or what have
10 you, referees, functionaries appointed by the court
11 for fact-finding purposes?

12 MR. DAVIS:

13
14 Only in the Circuit Court. We have domestic
15 relations commissioners, and I daresay that in a years
16 time we won't have any more. As I mentioned before, with
17 this enormous cutting into the workload of the Circuit
18 Judges, I don't think the Supreme Court stand by and let
19 those positions be retained. I think it increases the
20 cost of litigation, and it's just another step which was
21 created because you didn't have enough judges, and as I
22 said, my guess is in a year we won't have them.

23 JUDGE CALHOUN:

24 Your people must not be as litigious as ours
25 if you limit your District Court to \$1,500. I don't
remember seeing a suit for less than \$100,000. No \$1,500



1 suits in Georgia I don't believe.

2 MR. DAVIS:

3 One of the greatest advancements in civilization
4 in Kentucky and particularly in eastern Kentucky where I
5 come from is the folks started lawing instead of killing
6 each other, and as they said up in the mountains, they
7 started lawing. They law over everything. They're
8 litigious all right.

9 Now, strangely enough in the western part of the
10 state where it's flat and it's farmland, those folks just
11 don't have lawsuits that much, but you get up in the
12 mountains, well, it's just a measure we think of progress.
13 They're just not killing each other off any more. I guess
14 that's a difference in degrees.

15 JUDGE BEASLEY:

16 Do you have uniform forms now throughout the
17 state?

18 MR. DAVIS:

19 Yes, we do.

20 JUDGE BEASLEY:

21 As part of your uniform rules of court?

22 MR. DAVIS:

23 Yes, we do. Uniform forms, uniform accounting
24 procedure for all the clerks to follow. We abolished and
25 got rid of great big books, you know, that you have in most

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1 courts. They cost \$350 apiece, and when we found that
2 out, we looked around. It cost the state \$390,000 a year
3 to buy these books to keep the courts going. That just
4 can't be. You just can't do things that way. There's a
5 day when you've got to say, "Well, we're glad to see you
6 go."

7 JUDGE BEASLEY:

8 Is there computer service on many of the things
9 in court like calendars?

10 MR. DAVIS:

11 Only in two counties. We have three major
12 metropolitan centers, Louisville being the primary one
13 and Lexington being second, and four others being about
14 seventy and ninety thousand people. We can't justify it
15 except in Lexington and Louisville at this point, but we
16 will be using computer services there. Another thing
17 you'll be doing is dealing with juries. We have a
18 combined jury situation because we have one clerk and two
19 courts. We have -- the jurors are called, and they're
20 used interchangeably among the judges. That by the way
21 has brought enormous amount of public satisfaction.
22 They've just been ecstatic. The best editorials I've
23 ever seen have all originated from that.

24 JUDGE CALHOUN:

25 Are jurors paid by the state?

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1 MR. DAVIS:

2 Yes, they are?

3 JUDGE CALHOUN:

4 Uniformly around the state?

5 MR. DAVIS:

6 Yes.

7 JUDGE CALHOUN:

8 What is the pay?

9 MR. DAVIS:

10 Twelve dollars a day.

11 JUDGE CALHOUN:

12 That's about average.

13 JUDGE STANLEY:

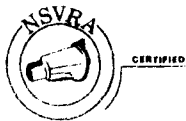
14 Do you envision going to a one tiered trial
15 court ultimately?

16 MR. DAVIS:

17 No, I don't, not for some substantial time.

18 That's going to be -- I can't see that coming right
19 now. I can't see it being expressed by any group at this
20 point except the District Judges want to be paid almost
21 as much as the Circuit Judges, and that gives rise -- I
22 like a little competition among the judiciary. I think
23 it's healthy. I think when the people at these lower
24 levels start running at the ones at the second level up,
25 it stimulates the environment, and that's healthy I

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1 believe. I know some judges don't agree with me, but I
2 think it has an overall beneficial effect.

3 MR. DROLET:

4 On the appellate level also?

5 MR. DAVIS:

6 Yeah.

7 MR. DROLET:

8 We've got a healthy system then.

9 MR. DAVIS:

10 Well, it depends. Obviously there can be
11 abuses.

12 JUDGE CALHOUN:

13 I notice that your budget requests \$55,000 for
14 law clerks and the legislature appropriated zero.

15 MR. DAVIS:

16 Right. That's for trial judges.

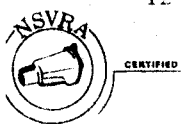
17 JUDGE CALHOUN:

18 Oh, I'm sorry. I was wondering if the
19 appellate judges have them.

20 MR. DAVIS:

21 They have them, but we would use, if you
22 notice down there, as I explained -- we have something
23 I don't think any other state or maybe some other states
24 do. We ask for state match money in our budget, so when
25 we go after grants, we use our own matching money, and

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1 that gives us a lot more flexibility. We can deal with
2 HEW people if we want to, if you dare do so. You can
3 deal with LEAA. You can deal the highway safety people.
4 It just gives us a lot more administrative flexibility.
5 The rest of the state doesn't get it that way. They
6 appropriate it to the Crime Commission.

7 JUDGE CALHOUN:

8 Do any of your Circuit or District Court Judges
9 have law clerks under LEAA matching money?

10 MR. DAVIS:

11 Yes.

12 JUDGE CALHOUN:

13 Pretty generally over the state?

14 MR. DAVIS:

15 No. Three positions at this point. We are
16 creating three more right now. We're creating in the state
17 law library which is a part of the Administrative Office
18 of the Courts a reference center so the judges can call
19 in and have questions of law or materials or whatever,
20 and that office will supply them with that support.

21 JUDGE CALHOUN:

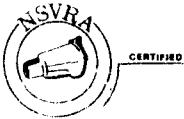
22 How fast?

23 MR. DAVIS:

24 Within a day unless it's --

25 JUDGE CALHOUN:

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1 Too late. It usually comes up, you know --

2 MR. DAVIS:

3 In the middle of a trial.

4 JUDGE CALHOUN:

5 Right.

6 MR. DAVIS:

7 Well, we've had that before, and we do that
8 now. I say in most cases we're able to handle those
9 things, but sometimes he stumbles on something that's
10 pretty tough, and you can't respond that quick.

11 JUDGE STANLEY:

12 Do you have county supplements to salaries?

13 MR. DAVIS:

14 No, sir, we do not. We have -- although we do
15 have CETA workers assigned to some clerks' offices. Of
16 course that's just part of the political patronage
17 system. As I mentioned before, the clerks are influential,
18 and they can get those things.

19 MR. GREENE:

20 CETA. Of course, you know, we've got one of
21 those. We've got to pick up that position. You've got
22 some obligation too.

23 MR. DAVIS:

24 That's right. That's where the issue comes down
25 to. Somebody has to pick up the tab at some point.

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1 MR. MARTIN:

2 How many people do you have in your office?

3 MR. DAVIS:

4 Including the state law library and staff, of
5 which there's six or seven of them, there's sixty-one
6 people I think.

7 MR. MARTIN:

8 What is the percentage -- what percentage of
9 total budget is that? Do you know?

10 MR. DAVIS:

11 Of the Administrative Office?

12 MR. MARTIN:

13 Yes. I don't have a copy.

14 MR. DAVIS:

15 Well, it's 1.8 million of 34 million. I don't
16 know what that is. I haven't figured it out. Our
17 office is organized, and I gave you a chart in here of
18 the statutes that have been enacted that's relevant to
19 the office, and the office is organized by functions by
20 the statutes, and generally we have three levels. We're
21 responsible for all the education and training of judges
22 in the state. We run the state pretrial release program.
23 We have an internal auditing staff and do all the
24 personnel, as I mentioned before, and our own data
25 processing group, and, well, there are a bunch of things

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1 here. We do all the uniform forms, records, accounting,
2 purchasing, purchase for the whole state. That's a
3 logistical nightmare if you ever saw one. Holy cow!
4 That was another thing that slid by. Nobody in their
5 right mind ever thought about how to deliver equipment
6 and get supplies. You've got 159 places. We had 120,
7 and you can't drive straight to any place. You've got to
8 go every which way to get there. Now, we've had that
9 experience. You've got to zig-zag and what have you,
10 and that's been a difficult problem to deal with, getting
11 the number of forms the people need in the state. It's
12 been a problem, and it's worked out now, but those are
difficult problems to deal with.

14 REP. SNOW:

15 I suppose you've gone through some detail on
16 the State Courts and the effect that it had on different
17 folks.

18 MR. DAVIS:

19 (Nods affirmatively)

20 MR. DROLET:

21 You missed some interesting comments.

22 REP. SNOW:

23 I'm sure I have.

24 MR. DROLET:

25 About the legislature.

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1 REP. SNOW:

2 I mentioned this was an opportunity to talk
3 about the legislature. What was it?

4 MR. STUBBS:

5 Nothing but gratitude, Wayne.

6 REP. SNOW:

7 I'm sure.

8 MR. DAVIS:

9 I will share one comment about the legislature
10 which I couldn't have said last year, but I can say this
11 year. At our special session in '76, the political
12 ambiance was very, very heated over this whole matter,
13 and there was a substantial amount of reaction on the
14 part of legislators due to many of the folks that were
15 upset at some of these things and consequently they took a
16 very, very conservative approach to funding, and
17 knowingly so. They knew they had cut us back to where
18 we couldn't operate. They knew that. There was no doubt
19 in anybody's mind. This may sound strange to say, but
20 it had a very beneficial effect because we were
21 exceedingly cautious on how we spent every dime. I mean
22 to tell you we went backwards trying to make sure we
23 spent our money in a way that we could justify it, and it
24 forced us to look at things that otherwise, if easy money
25 was there, that we would not have looked at. Now, I'm not

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1 encouraging that. It's painful as hell if you'll excuse
2 the expression because it's a nightmare trying to deal
3 with all these things and not having any money, but you'll
4 learn how to find out where the office surplus is. You'll
5 learn a lot of things that otherwise you just wouldn't
6 pick up, and it forced us, for example, to using the tape
7 recording. In looking at that, we did a study of which
8 Bo's office helped with for five months with judges,
9 lawyers and clerks looking at all the different machines
10 before we could come to any conclusion about machines.
11 We were very cautious about that. We've been very cautious
12 about salaries. Everything was approached I think in a
13 responsible way because there was so many unknowns. This
14 is the largest change in the history of our state. Nothing
15 of this magnitude has ever happened before, and obviously
16 on anything of that scale has many unknowns for everybody
17 involved, and I think that raised specters of horrid
18 thoughts in the legislative minds and the Governor's
19 mind, and they jointly felt let's go at this very
20 cautiously, but as I said, I think thus far we've gotten
21 nothing but thus far very positive remarks and feedback
22 because things have worked out. Our budgetary needs I
23 think have been fundamentally met. We've got no serious
24 problems.

25 JUDGE CALHOUN:

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1 Has your judicial education program been
2 functioning long enough to tell us whether it's effective
3 or how many seminars or sessions you hold or is it
4 mandatory and so forth?

5 MR. DAVIS:

6 We started the first of a series of colleges
7 last year. We have colleges for each level of court.
8 They last a week long. They are eight hour sessions a
9 day, and it's not mandatory. However, it's being
10 discussed as being mandatory. The reason it isn't
11 mandatory at this point is over eighty-five percent of
12 the judges came. It was presented to them at their
13 conference and they were told, "You better come or at some
14 point somebody is going to come in and say you better
15 start going; it's going to be obligatory." They came,
16 and the response has been they don't want to go back to
17 Reno. Most of them -- they felt it was exceedingly very
18 helpful, very practical.

19 REP. SNOW:

20 What all did you do at night?

21 MR. DAVIS:

22 They certainly can't compete with Reno at
23 night.

24 JUDGE CALHOUN:

25 Are Reno you go to school at night.

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1 JUDGE BEASLEY:

2 That's right.

3 MR. DAVIS:

4 But we will repeat our classes again in August
5 this year and in October.

6 JUDGE CALHOUN:

7 Do you hold them all at the state capitol or
8 hold them around?

9 MR. DAVIS:

10 No. At regional universities. We divide the
11 state up so the judges in that area of the state come
12 to that regional university.

13 JUDGE CALHOUN:

14 What about your faculty? Is it Kentuckians?

15 MR. DAVIS:

16 It's mixed. It's professors, judges, lawyers
17 and out of state folks. It's quite a group.

18 JUDGE CALHOUN:

19 Do you set up the curricula yourself?

20 MR. DAVIS:

21 No. We have a judge's education committee
22 which our staff works with, and they meet with them.
23 They survey. They get the judges what they think they
24 need. We do an evaluation after each session, and we
25 get feedback, what they like and who they didn't like.

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1 REP. SNOW:

2 Do you help with this?

3 MR. COLE:

4 We have not in the past.

5 MR. DAVIS:

6 We also have a clerk's education program, the
7 same thing. In fact next week we'll have our first of
8 our sessions there. We're working on one for court
9 reporters and other ancillary folks in the system. So we
10 send our Circuit Judge's secretaries and others to a legal
11 assistants program.

12 JUDGE CALHOUN:

13 Do you have provision for these educational
14 programs in your budget?

15 MR. DAVIS:

16 Yes, sir, we do.

17 JUDGE CALHOUN:

18 I want to ask you about your pretrial release
19 now. I assume that bonds are generally set in the District
20 Court.

21 MR. DAVIS:

22 Yes. Overwhelming percentage.

23 JUDGE CALHOUN:

24 And the District Court then would be the one
25 that supervised the pretrial release primarily.

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1 MR. DAVIS:

2 Yes. That's basically the way it works. We
3 handle them.

4 JUDGE CALHOUN:

5 You're talking about the officers now who get
6 the information upon which the judge bases his decision?

7 MR. DAVIS:

8 That's right. The way we've done that
9 procedurally is we review the fellow they send up for
10 his qualifications, but the judge -- and we appoint him,
11 but we do it subject to the judge's approval. They
12 basically work under his or her discretion at the local
level.

14 JUDGE CALHOUN:

15 And I assume everyone would have an absolute
16 right to bond except in capital felony cases.

17 MR. DAVIS:

18 That's right.

19 JUDGE CALHOUN:

20 How about your appellate bonds after conviction
21 of something of this nature? Is that at the discretion
22 of the judge?

23 MR. DAVIS:

24 It is.

25 JUDGE CALHOUN:

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1 Who handles the case?

2 MR. DAVIS:

3 Yes.

4 REP. SNOW:

5 Other questions?

6 JUDGE BEASLEY:

7 When do you expect this survey to be done about
8 how the people feel now?

9 MR. DAVIS:

10 Next year. I think we have to give it a year
11 of operation. In fact we expect to do this survey next
12 year in order to prepare in part our budget for the
following legislative session.

14 JUDGE BEASLEY:

15 Transition-wise, can you give us any helpful
16 hints on that other than what you've got in the transition
17 rules?

18 MR. DAVIS:

19 Well, I think the transition rules -- we had
20 twenty-five regional meetings. That meant we went out to
21 different areas of the state and met with clerks and
22 judges and lawyers, and we repeated it twice, and you
23 can't do that enough and try to answer the people's
24 questions. My experience has been the larger the group,
25 the fewer the people communicate, so we try to get them

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1 down to about twenty-five people in a group, where people
2 who are more timid feel comfortable in expressing their
3 views, and we continue to do that, and those are evolving
4 into something in part in relation to education which is
5 what we want to get into, which is a regional administrator
6 where we get clerks and judges to sit down and talk about
7 their common problems.

8 JUDGE BEASLEY:

9 This was done by the Administrative Office?

10 MR. DAVIS:

11 That's right. And we call in the state police
12 and all the other ancillary groups that had something
13 to do with the system, so they went with us. So if there
14 was anything they had to say about the training session,
15 they were involved at the same time.

16 JUDGE BEASLEY:

17 But you did include the judges and clerks and
18 all those people in one meeting?

19 MR. DAVIS:

20 Yes. That's right.

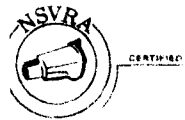
21 JUDGE BEASLEY:

22 Instead of trying to meet with all the clerks
23 and then all the judges?

24 MR. DAVIS:

25 We had joint topics and then separate topics.

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1 Other ways that we used to effect the transition as
2 smoothly as possible is you have to schedule two months
3 of the heaviest snow in history. I can't underplay that.
4 January and February were the worst snow months in the
5 history of our state. Of course those were the first
6 two months of the system, and we couldn't have been blessed
7 with anything better because it gave us two months to work
8 out all these things. The volume wasn't there. There
9 weren't that many. You couldn't arrest anybody; nobody
10 was driving anyplace.

11 JUDGE BEASLEY:

12 Nobody was doing anything.

13 MR. DAVIS:

14 The crime rate -- I think it's fascinating
15 these people taking the credit for the crime rate going
16 down last year and this year, and in our state it's due
17 to the weather. There wasn't any increased enforcement
18 or effectiveness. Nothing happened in January and
19 February.

20 JUDGE CALHOUN:

21 How do you arrange the snowstorms?

22 REP. SNOW:

23 You need some in south Georgia, don't you?

24 JUDGE CALHOUN:

25 We can have a flood. I don't think we'll have

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1 any snowstorms.

2 MR. DAVIS:

3 I can't help you with that, but that helped a
4 lot.

5 We had a twenty-four hour phone call service so
6 when the clerks or judges ran into something that they
7 didn't know about, they could call us anytime night or
8 day.

9 JUDGE BEASLEY:

10 To the Administrative Office?

11 MR. DAVIS:

12 Right. So we could try and respond. A lot of
13 times questions couldn't be answered, but we did that
14 for the first three and a half weeks, and then we found
15 there was a lot of forum shopping. People would call
16 until they got the right answer. They would keep calling,
17 trying to find somebody else. So we stopped it, you know,
18 unless it's an emergency.

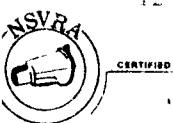
19 JUDGE BEASLEY:

20 Why did you make it twenty-four hours?

21 MR. DAVIS:

22 Well, at the outset -- well, as you know,
23 people get arrested at the wrong times of day and all
24 kind of things, the paper wasn't there, the police had
25 done something. things just don't function orderly at the

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1 outset. So we felt it was appropriate to have an 800
2 number and let them call in, and a lot of people did,
3 particularly the fellows who had never been judges before.
4 That's another thing we wrote by the way. We wrote a
5 bench book for all the new judges, so before they even
6 got there, they had a whole shopping list of things that
7 they could do, and in any case they had before them, they
8 could go through the shopping list. They could make sure
9 they covered the procedural rights in a given case, and
10 they had a brief summary of substantive law, and I haven't
11 been to a District Judge's office in the last few months
12 that they don't have that right on the bench.

JUDGE CALHOUN:

Who prepared that?

MR. DAVIS:

We did.

JUDGE CALHOUN:

Did you do it with other judges?

MR. DAVIS:

Yes.

JUDGE CALHOUN:

Or did you do it by bringing in a study
commission or something?

MR. DAVIS:

We did it. The staff drafted it in an



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1 education committee, and judges reviewed it with lawyers
2 who had an expertise in juvenile law or probate or what
3 have you, and the way we procedurally did that, somebody
4 would draft a chapter and it would be mailed out, and then
5 they would get a comment and bring the comments together,
6 and then they would meet on everybody's different
7 comments.

8 JUDGE CALHOUN:

9 This somebody would be somebody on your staff
10 who did the initial paperwork?

11 MR. DAVIS:

12 Yes. That's right.

13 JUDGE CALHOUN:

14 Did you finance this with state funds?

15 MR. DAVIS:

16 We used grant funds for that.

17 JUDGE CALHOUN:

18 How long did it take you to do this?

19 MR. DAVIS:

20 Seven months.

21 JUDGE CALHOUN:

22 What do you do about your jury instructions?

23 I know you do have them.

24 MR. DAVIS:

25 We do. The jury instructions are included in the



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1 manual, and we also have two volumes written by our
2 present Chief Justice on jury instructions, which he's
3 revising now, and those were copies of those we provided
4 the judges. We provided each new judge a boxload of books
5 on a variety of topics. We have an evidence manual written
6 by a fellow in Kentucky, a law professor, on Kentucky
7 law and evidence, and they got that. They got an
8 administrative manual that told them how to buy things,
9 how to appoint things, whatever any of their duties that
10 were given to them by statute, how they could go about
11 doing it. Those who have been in the Army know what I'm
12 talking about. These are just basic things that we give
13 a fellow so he doesn't have to call. He can look it up
14 and figure out how to do it himself.

15 REP. SNOW:

16 It sounds good. Any other questions?

17 (No response)

18 REP. SNOW:

19 We really appreciate it, Bill.

20 MR. DAVIS:

21 It's my pleasure.

22 REP. SNOW:

23 And, folks, we stand adjourned until three
24 weeks from today I think, two weeks or three weeks from
25 today.

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1 MR. DROLET:

2 Three.

3 (Whereupon, the above entitled matter was adjourned.)

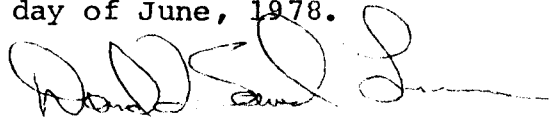
4 * * *

5 C E R T I F I C A T E

6 G E O R G I A)
7)
8 DEKALB COUNTY)

9 I, Donald Samuel Lemmer, being a Certified Court
10 Reporter and Notary Public in and for the State of Georgia at
11 Large, do hereby certify that the above and foregoing is a true
12 and complete transcription of my stenographic notes taken at
13 the said proceeding and was reduced to typewriting by me
14 personally.

15 WITNESS my hand and official seal at Atlanta, DeKalb
16 County, Georgia, this the 1st day of June, 1978.

17 

18 DONALD SAMUEL LEMMER

19 (SEAL)
20
21
22
23
24
25

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Committee to Revise Article VI

Full Committee Meeting Held on May 26, 1978

FULL COMMITTEE MEETING, 5-26-78

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STATE OF GEORGIA

**Proceedings of the Select Committee on Constitutional
Revision, State of Georgia, Subcommittee on Judiciary,
held on June 16, 1978, at 10:00 o'clock, a.m., in
Room 416A, State Capitol, Atlanta, Georgia, and chaired
by Representative Wayne Snow, Jr.**

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3715 COLONIAL TRAIL, DOUGLASVILLE, GEORGIA 30135

942-0482

DEPOSITIONS - ARBITRATIONS - CONVENTIONS - CONFERENCES

P R O C E E D I N G S

1
2 REP. SNOW:

3 In discussing the public meetings, we could have one
4 on Thursday and then on Friday morning in two cities of
5 close proximity. Let's just plan for four different
6 groups on it. I don't think that the whole committee has
7 to meet on all of these public hearings. And we could
8 --I think it would be good if we all had the benefit but
9 we could schedule at least--split the committee up and
10 have one going simultaneously--I mean two meetings going
11 simultaneously. That might be the best thing to do.

12 I think we ought to plan for the Augusta and the
13 Savannah meeting for the whole committee to meet for that
14 one. For the Albany/Columbus--

15 JUDGE BEASLEY:

16 Mr. Chairman, I for one would like to go to all of
17 the meetings, if possible. I think that would be desir-
18 able. In considering whether they should be simultaneous
19 or not, I don't see a necessity for having them on the
20 same day even if they involved different people. One could
21 be a Monday and Tuesday or Thursday and Friday. I sure
22 would like to go to all of them if possible.

23 REP. SNOW:

24 Albany and Columbus--what's the distance there? It's
25 considerable, isn't it--about a hundred miles, isn't it?

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1 MS. WILSON:

2 You'd almost be better to do Albany and Macon.

3 REP. SNOW:

4 Albany and Macon; then, Columbus and Rome instead of
5 Dalton; how's that?

6 SEN. OVERBY:

7 What do you think about Gainesville and Rome, as far
8 as the driving?

9 JUDGE BEASLEY:

10 You know, on this whole idea of public hearings, it
11 seems to me that maybe it's a little premature right now
12 to do it. It seems to me that we could present something
13 to the public for them to study and discuss, particularly
14 since we are going to be inviting groups to come in. Let
15 them first become acquainted with the whole subject matter
16 and maybe our proposal so that when they come to the pub-
17 lic hearings, it will not be--the public hearing won't be
18 an education-type experience where we're telling them what
19 it's all about. Do that by newspaper and by sending out
20 memorandums or something, but by voter education first.
21 And then have the public come in once it's educated as to
22 what this is all about. Because most people don't know
23 what the court system is all about. Then get their edu-
24 cated opinions on what they would like.

25 REP. SNOW:

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1 I'm inclined to agree. I think what you're suggest-
2 ing here is that we need, as a committee, to meet further
3 and to go over some of the information that we've re-
4 ceived from the other states--which we're going to receive
5 today too.

6 JUDGE BEASLEY:

7 Right. And come up with a proposal and approach it
8 in the way that New Mexico did, their change in the crim-
9 inal justice system there, which ferrated out very edu-
10 cated, informed opinions from the citizens as opposed to
11 just a peripheral kind of bloodletting.

12 REP. SNOW:

13 Of course it would be very desirable if we had full
14 consensus on this committee. But I think it's going to be
15 very difficult for us to have every--

16 JUDGE BEASLEY:

17 Well, we could always present to the public the al-
18 ternatives and options. But I think we ought to do that
19 and disseminate that very widely through the newspapers,
20 if we can get free newspaper coverage as a public service,
21 and through television. Say, with the Governor getting on
22 television and saying, there's going to be these public
23 hearings and you can get a copy of the proposals and alter-
24 natives by calling someone or writing Marty--that kind of
25 thing. So that those who are concerned--and believe me,

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1 people are interested. I've been telling my jurors about
2 it and a number of them want to go on the list and want
3 to find out more about it so that they can have an input.
4 So I think we wouldn't be ready for public hearings until
5 maybe Spring--or Winter, anyway, until we come up with our
6 alternatives.

7 DEAN BEAIRD:

8 We do have, in a sense, a proposal that was developed
9 by this committee last year. And the proposal did answer
10 a number of questions and we did have consensus with re-
11 spect to certain--almost consensus with respect to such
12 things as the appellate jurisdiction and so forth. We do
13 have a rare opportunity--Jerry Braun, the Director of the
14 Institute of Continuing Education, is with me this morning
15 and, for the first time in the history of the State, we're
16 having a Judicial Convocation in Athens on September 7th
17 and 8th.

18 REP. SNOW:

19 Would you like to introduce those folks to them?

20 DEAN BEAIRD:

21 Well, Jerry Braun is Executive Director of the Insti-
22 tute. The purpose of this meeting is to specifically dis-
23 cuss judicial reform and I think it would be wise, if we
24 could, to have some kind of framework developed by this
25 committee. Not maybe to present as a recommendation of the

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1 committee, but something that would serve as a discussion
2 vehicle for that group. I think such a document could be
3 put together with relative ease--certain areas showing the
4 option. Maybe using as a vehicle the Kentucky system--
5 what they did. In that way you can present the various
6 options and how people focus in on what would be the issues.

7 I would like to see us, if we could, come up with some
8 kind of working paper, maybe identifying those areas where-
9 in there is some general consensus, identifying those areas
10 with which there will be considerable controversy and in-
11 dicating the options there. And taking it to the public
12 and particularly to this Judicial Convocation. Because
13 I'm sure that, while the public will be greatly interested
14 in this, a great deal of the interest will be expressed by
15 those affected.

16 REP. SNOW:

17 Maybe we should then consider these public hearings
18 to be something that should come up in the Fall after we
19 have had the Convocation as well as some additional meet-
20 ings of this committee to iron out some of our difficulty.
21 We do have some definite areas of difficulty. There's no
22 question about that and I think a lot of it is really more
23 misunderstanding than it is any difficulty. Joe?

24 MR. DROLET:

25 One thing that bothered me last year and still

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1 bothers me in trying to get any kind of interest in this
2 whole process from the public is we're really not talking
3 about judicial reform at this point. We're talking about
4 judicial change. I don't think anybody really knows what
5 is the big problem right now--what it is that we're trying
6 to reform. We heard from the people in Kentucky that their
7 system was deplorable and people were up in arms about it.
8 And the same thing somewhat in Alabama. Right now, if you
9 were to ask people what the problems are in this state,
10 most people, you know, probably wouldn't think much about
11 judicial reform unless they were really into studying this
12 whole system.

13 I think one of the things that might be useful would
14 be simply setting out what we have now, what some of the
15 problems are with it, if there are problems. If there
16 aren't any problem with the present system, if we can't
17 point to any inefficiencies, duplications or anything else
18 that's wrong with it, we're going to have a real hard time
19 interesting people in reforming it.

20 JUDGE BEASLEY:

21 One of the states--I'm not sure if it's one we've
22 already studied or one I've read about--had two sets of
23 public hearings. One, they went out and got people's
24 ideas, first, what they perceived the problems to be--their
25 ideas of what the problems are. Then, they went back and



1 they worked together with the materials they already had in
2 their proposals and what not. And they worked along and
3 came up with a proposal based on what the problems were.
4 Then they went out to get the people's ideas as to whether
5 this was acceptable or not, what they came up with. So
6 they had two sets of public hearings. I don't know whether
7 we will want to go to that extent or not, but if we only
8 have one set of public hearings, then it should be after
9 we have something to present. And after the people have
10 an opportunity to study and we have to present. And let
11 them judge for themselves and then come up with their--
12 get some intelligent feedback.

13 BEAIRD:

14 Well, of course we set up a subcommittee last year and
15 we came up with a proposal that we think had--one excep-
16 tion, the Court of Appeals tended to disagree with it. But
17 other than that, I think it was generally accepted. So
18 that area, I think, is very well defined. It was consist-
19 ent with virtually all of the proposals that we've heard
20 from the other states.

21 JUDGE BEASLEY:

22 Well, maybe we're ready then to put it--nearly to put
23 it in writing and disseminate that. And encourage groups
24 to discuss it and become educated and it be--

25 REP. SNOW:



1 What you're suggesting, Judge, is that maybe the
2 thing to do is to--for this committee to prepare a pro-
3 posal in those areas where there is a general consensus
4 and be very specific. In those areas where there's not,
5 indicate the options, like Superior Courts, two tier ver-
6 sus one tier and so forth. Then we will at least identify
7 the areas where there are so many issues, at least from
8 the interested groups to be able to focus on those.

9 **JUDGE CALHOUN:**

10 Well, I think we do really have a problem with our
11 trial court system because of the fact that we have so
12 many various types of courts and overlapping jurisdictions.
13 And some Small Claims Courts with jurisdictions of three
14 hundred ollars, five thousand dollars--things of this na-
15 ture. And I think we have a problem with parttime judges
16 myself. And I think really probably our greatest problem
17 is in the trial courts.

18 And we submitted a proposal last year and I--of course
19 it was not approved by this committee and I think we made
20 a mistake in that proposal in that we were trying to protect
21 every bested interest which I don't think you can do. I
22 think what we should do is decide what really is the best
23 judicial system and then try to sell it. And if it abol-
24 ishes the Justices of the Peace, if to abolishes the Super-
25 ior Court, we ought to go ahead and do it and try to sell



1 it.

2 JUDGE STANLEY:

3 Mr. Chairman, in connection with what Judge Calhoun
4 is saying, I think we've got a real area for considera-
5 tion in the Probate Courts as to qualifications of the
6 judges, as to the jurisdiction and powers of the court, as
7 to the necessity for de novo hearings, how appeals might
8 be handled--just a whole area that I think ought to be
9 discussed and some real consideration given to.

10 JUDGE CALHOUN:

11 I don't think anybody can dispute that, Kay. Of
12 course, you and I discussed this for a long time on vari-
13 ous committees. I think it ought to be a division of the
14 Superior Court. I mean, you ought to have qualified
15 people there and you ought not to restrict them to just
16 that one area.

17 JUDGE STANLEY:

18 I find that, frequently, because of the limited juris-
19 diction and limited powers, lack of equity and that sort
20 of thing, that the court is really hamstrung in dealing
21 with areas that are vital--matters of serious import in
22 relation to protecting rights of heirs and beneficiaries
23 and minors and guardians and having competence. The whole
24 thing just needs some real serious consideration. I think
25 it's been an area where the court system has been--Georgia



1 has been neglected historically for eons. And I just think
2 it's time that the judiciary in Georgia and the public in
3 Georgia ought to consider where they want this particular
4 fiduciary aspect of the law to lie.

5 JUDGE CALHOUN:

6 Marty, did you have an agenda--I got here late and I
7 don't really know.

8 MR. HODGKINS:

9 We're waiting for the gentleman from North Carolina
10 who is supposedly coming in from the airport.

11 DEAN BEAIRD:

12 It might be well, Mr. Chairman, to either have the
13 staff of some committee of this group attempt to take the
14 document that was formulated last time; look at it and
15 bring it back for discussion before we--as a member, I'm
16 personally very much impressed with the Kentucky arrange-
17 ment--what they did there. That pretty well conforms to
18 what my understanding was that this committee recommended
19 generally last time except for certain areas. But if we
20 can get that document developed, then we'll have some-
21 thing to talk about--focus on.

22 JUDGE CALHOUN:

23 Well, we had a subcommittee and I don't know whether
24 the Chairman wants that subcommittee to still operate or
25 not. We can find out.

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1 MR. DROLET:

2 Perhaps going along with that--that suggestion, we
3 could have the subcommittee--the same subcommittee come up
4 with sort of an advance package of information that could
5 be sent out setting forth some of the problems that you
6 enumerated in regard to the courts. In other words, some-
7 thing that would catch the attention of the people as to
8 what is wrong with the judicial system or needs change and
9 then some of the proposals that we're considering, the
10 alternatives, a one-tire system and a two-tier system.
11 Maybe we could come up with sort of an interesting, stimu-
12 lating package of information on that with the announce-
13 ment that there would be public hearings, like, a month
14 hence on those matters in the area where this information
15 is being distributed. I think that might help get some
16 interest when we had the public hearings. Otherwise, I
17 have a feeling nobody's going to be there unless we're
18 abolishing their job or something.

19 JUDGE CALHOUN:

20 Now, Dean Beaird has expressed interest--I guess
21 agreement with the Kentucky plan. How many other people
22 like theirs/ It's a two-tired plan, if you remember, and
23 they did, I believe, abolish all the courts; set up a
24 system of magistrates. Anyone care to comment on agree-
25 ment or disagreement with the Kentucky plan?

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1 DEAN BEARD:

2 I may disagree with some certain aspects of that but
3 my impression was that generally what they did--and I know
4 particularly with the appellate jurisdiction--was consist-
5 ent with what we had originally recommended. And I had
6 thought that--maybe I misunderstood the fellow when he was
7 here last time--what they did in the trial courts was gen-
8 erally consistent with what we had talked about before.
9 Am I wrong in that, Judge Calhoun?

10 JUDGE CALHOUN:

11 Well, I guess generally, although they really sepa-
12 rated their trial courts into district and circuit and,
13 well, he said Superior Court and associate judges. But
14 theirs was a two-tiered system. We recommended a one-
15 tier system. We could take our present State Court set-
16 up and operate it on the district basis. It's been done
17 in one judicial circuit in Cherokee where they have State
18 Court operating in two or three counties of a five-county
19 circuit and--

20 SEN. OVERBY:

21 Two counties, Cherokee and Forsyth. But it's working
22 very well.

23 JUDGE CALHOUN:

24 I know that in my circuit we have three State Courts,
25 all in individual counties. And these judges--their total

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1 salaries would almost equal the salary of a Superior Court
2 Judge and one person could handle it fulltime, I believe.

3 JUDGE BEASLEY:

4 Mr. Chairman, I was just going to say that since we
5 are studying what other states have done--the ones that have
6 revised their court system recently. I have learned that
7 South Carolina had changed their system and also I wrote
8 to a friend of mine, Judge Carl Moore, in Spartanburg.
9 He's on the Spartanburg--the Circuit Court of South Caro-
10 lina, Southern Judicial Circuit. And he sent me a package
11 of what they have done there in South Carolina that we also
12 may want to study. He sent a report of their committee,
13 as well as exactly what it was that they came up with--the
14 whole package of things. And wrote to me that throughout
15 the state they have a concerned citizens group called
16 "Court Update" that met with citizens through the state to
17 inform them what needed to be done. And then the League
18 of Women Voters played a big part in getting the constitu-
19 tional amendments adopted and so on and so forth. They
20 still have a Court of Common Pleas and General Sessions and
21 a Family Court system, which hears all criminal/juvenile
22 matters.

23 Further, they sent materials from the Judicial Insti-
24 tute of South Carolina which worked jointly with the com-
25 mittee on the recommendations made to implement it. And

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1 then he suggested that we get in touch with Senator
2 Marion Brissette, Chairman of the Judicial Committee and
3 also President Pro Tem of the Senate for further questions
4 on the thing. So I would propose that we also look into
5 what they came up with as a sister state.

6 JUDGE CALHOUN:

7 Marty, could you reproduce this? How voluminous is
8 this information, Judge Beasley?

9 JUDGE BEASLEY:

10 Either someone can digest it or--and say what it is
11 and reproduce what we would like or we can invite Senator
12 Brissetts to come perhaps. But anyway here's another one
of our sister states.

14 JUDGE STANLEY:

15 Judge Calhoun, has the Florida system been studied by
16 this committee?

17 JUDGE CALHOUN:

18 No, not to my knowledge. We had someone from Alabama
19 and from Kentucky--none from Florida. How about it, Marty?
20 Do we have any information?

21 MR. HODGKINS:

22 Like you say we haven't had anyone. I haven't put
23 together any information on the Florida system. All it is
24 --it's a two-tiered system. It's got the circuit courts,
25 a general trial court and then each county has a court.

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1 As I understand it, there are several counties who share
2 a judge--smaller, less populated. It's a court of limited
3 jurisdiction. They have no magistrates or any other judi-
4 cial officers--just those two courts.

5 JUDGE BEASLEY:

6 If we wanted something on Florida, Justice Arthur
7 England, soon to be Chief Justice of Florida, I am sure,
8 would be happy to get it to us. He's most interested in
9 this area and is very active in it. And I know him so I'm
10 sure that we could get someone from there to come.

11 JUDGE CALHOUN:

12 One thing they did in Florida, they provided a cut-
13 off date after which all judges would have to be members of
14 the Bar, I believe. They operated for a time with some
15 of the county judges who were not members of the Bar but--

16 JUDGE STANLEY:

17 Didn't they have some provision for grandfathering in
18 some and some means of affording them an opportunity to
19 attend law schools or to be certified or something?

20 JUDGE CALHOUN:

21 I think they gave a certain number of years after
22 which they had to be attorneys. As you know, Kay, before
23 the reorganization in Florida, probate matters were handled
24 in the county court.

25 JUDGE STANLEY:

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1 But they're in the general court now?

2 JUDGE CALHOUN:

3 I think so. And they have a system which I think is
4 superior to ours in that the records were kept in one
5 office--for instance, you keep all the records and Adam
6 keeps part of the records in Bibb County. It seems to me
7 that it would be better if the records were in one place
8 rather than probate records and birth records being in one
9 place and deed records being in another place and so forth.
10 But, Marty, what time is--ladies and gentlemen, this is
11 Mr. E. C. Hinsdale, who is the Assistant Director of the
12 Institute of Government at the University of North Caro-
13 lina, Chapel Hill. He will discuss with us the North
14 Carolina reorganization. Mr. Hinsdale, we have a group
15 here of legislators, judges, private citizens who are mem-
16 bers of the committee to revise the Judicial Article. I'm
17 sure you're familiar with that and we are very much interest-
18 ed in what you've done in North Carolina because we have
19 heard from various states and we are trying to decide what
20 would be the best system for the State of Georgia. And I
21 would appreciate it if you would outline briefly your pre-
22 sent system--how you change it, what difficulties you had.
23 We were talking about public meetings and this kind of
24 thing, trying to get citizen input and we're just interested
25 in the whole story. All right, sir.

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1 MR. HINSDALE:

2 Thank you, sir, and good morning. I see two or three
3 familiar faces from previous meetings I have attended
4 around the country. I am glad to see you again. I'm
5 sorry I was late. Ten minutes out of Atlanta, we were on
6 schedule and we finally got down and I'm glad I made it.

7 Your director, Marty, has asked me to respond to
8 seven questions, very informally, he said, and that's what
9 I'm going to do. I'm going to read you the question and
10 give you a ten-word or maybe ten-sentence answer. I'll
11 move rapidly through them in maybe ten minutes and then
12 throw it open to--for you to tell me what's on your mind
and then I can respond in more detail.

14 Mr. Chairman, is that a good approach?

15 JUDGE CALHOUN:

16 All right, sir.

17 MR. HINSDALE:

18 First question--what motivated the efforts to seek
19 judicial revision in North Carolina? The answer is we had
20 real smelly lower court system, about as bad as yours. I
21 have your description of your system here. I'm just talk-
22 ing about the lower court system. And it's complicated and
23 out of date, shall we say, if you prefer that word to the
24 one I used. I used the word "smelly" because in our legis-
25 lature in 1915 the allegation was made by the President of

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1 our Bar there that our lower court stinks--our lower
2 court in our own system stinks. And that refrain lasted
3 on through the 1950's until we finally got up enough lead-
4 ership to do something about it. The catalyst was a bus-
5 inessman governor, Governor Luther Hodges, who came into
6 office from Lieutenant Governor's office. Before that he'd
7 been head of a large industry, strictly a businessman, no
8 political background at all. And he was in office for seven
9 years and he did a great deal to put some efficiency into
10 state government.

11 And when he looked at the judicial system, he said,
12 "We can't live with this." And he challenged the Bar asso-
13 ciation at its summer convention in 1955, twenty-three
14 years ago, to do something about it. And the Bar associa-
15 tion acceted the challenge; appointed a blue ribbon com-
16 mittee, chaired by a no-nonsense, hard-working, hard-charg-
17 ing State Senator from Charlotte who has since gone to the
18 Circuit Court of Appeals and he died in the early sixties.

19 Second question--what period of time was necessary to
20 revise the Judicial Article and implement the changes?
21 Fifteen years. Now, that's much too long. We can shrink
22 that a great deal in my state by explaining that our legis-
23 lature only meets every two years and we lost eighteen
24 months three or four times in a row before we got the thing
25 completely organized and implemented down in the counties.



1 Fifteen years is not necessary. Ten years is more like it
2 if you want to do it in a fashion that defuses a lot of
3 the political opposition. That was our experience.

4 What is the present judicial system? Well, that's--
5 I'm going to put that question last because I have a hand-
6 out that will fit that.

7
8 What problems were encountered in the transition from
9 the old to the new judicial system? These, it seems to me,
10 were all thought out in the years that it took to get the
11 constitutional amendment adopted. And thereafter, putting
12 the statute together was not too difficult. It was an in-
13 tensive proposition but it was not too difficult and we
14 had substantial unanimity. And flybacks and efforts to
15 roll the clock back have been substantially zero.

16 What is reaction of the local governments, the public,
17 the judicial personnel and others to the new system? I
18 think it's one of enthusiasm. If we had to limp along now
19 with what we had in 1965, we just couldn't make it. Be-
20 cause, as you know, the litigation explosion and the case
21 law coming down from Washington and other places make oper-
22 ating with an 1860 system--and that's about what we had--
23 it would be substantially impossible. I think we came
24 forward maybe seventy-five years worth in the one decade
25 of the sixties. I'm not saying we're now operating with
a 1978 court system. Because even though we've had it in



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1 operation for part of the state for twelve years, it's
2 beginning to show signs of needing further tuning, just
3 because of the litigation explosion and the fast march of
4 events in the judicial system. And I hope in the next ten
5 years we will be able to do so more fine tuning.

6 Of course when we were first starting out, the public
7 was skeptical. They had heard of court reform movements
8 before. Local government was skeptical because they thought
9 they'd lose a revenue source and local control. And indeed
10 they did. But the state picked up the tab. The state pays
11 for the court system altogether in North Carolina except
12 for the courthouse--furnishing the courtroom and the Clerk's
13 office. The state pays everything else. And local govern-
14 ment's got really millions of dollars worth of responsi-
15 bilities in terms of salaries or twenty-five hundred cerlks,
16 for per diem for jurors, to mention two very large items.

17 What recommendations would you make to Georgia based
18 on the experiences in your state? Uh-uh. I want to get
19 back on that place in one piece this afternoon and I won't
20 suggest any recommendations. I will be happy to answer
21 specifically, if I can, any questions you want to throw up,
22 recognizing that we comleted our reform movement several
23 years ago and, on some real fine print details, my memory
24 might be getting a little rusty.

25 What was the structure of the judicial system of your



1 state prior to the revision? As I've said in my opening,
2 and unfortunate, remark about small, our system--our lower
3 court system was very much like yours. It was fragmented;
4 it had no uniformity; it was characterized by scores--hun-
5 dreds of small courts, no two of which--literally no two
6 of which were alike. And it was responsible--there was no
7 --to nobody. We had anywhere from eight hundred to fourteen
8 hundred justices of the peace. Nobody's ever been able to
9 nail it down completely. I tried for eighteen months to get
10 an accurate count on it and gave up. There was a few paid
11 justices of the peace and no two of them operated the same
12 way. The system hadn't been changed in a hundred years and
13 the century had just bypassed the office and it was totally
14 obsolete for a functional--a twentieth century operation.
15 Each city, each county, had its own courts with rare excep-
16 tions. We have a hundred and eighty or so of those; no two
17 of them were alike. We had non-lawyer judges. We had non-
18 judicial clerks of courts in a hundred counties operating
19 juvenile courts. We had about ten separate juvenile courts
20 that were doing a pretty good job, but ten of those in a
21 hundred counties is not very many. And, in addition, we
22 had fee system on the--quite a bit on the local Recorder's
23 Courts at a county court basis. We had no central control.
24 A traffic ticket in one court might cost eight dollars; the
25 same ticket in another court might cost thirty. No uni-



1 formity of costs, of procedure, of personnel, of nothing.

2 As I read the outline of your system, you're very
3 much--what you have now--the biggest improvement we didn't
4 have to deal with was the extra fifty-nine counties that
5 you have. We have a hundred. And of course that's t-o
6 many for modern administration in many functions. You do
7 have a hundred and fifty-nine and I know that must com-
8 pound your problem somewhat. It would be a lot easier to
9 get along, I think, in North Carolina with fifty or sixty.
10 We have some counties with more bears than they have people.
11 I'm sure you may have the same problem.

12 Now, what have we got now? All right. Let me give
13 you a handout which I use in some of my classes. I don't
14 intend to spend much time on it. It would take two or
15 three hours to go over everything that this chart repre-
16 sents. I think I can hit the high spots in not more than
17 five or six or seven minutes. And then, rather than give
18 you more than you need to know, let you ask me what details
19 you'd like to have filled in.

20 On the front of the folder, you see it's headed at the
21 top by our Supreme Court of seven justices. Then, the
22 Court of Appeals, which is fairly new. We added that in
23 1967 when we found out there was no way the Supreme Court
24 could continue to cope with the massive caseload that was
25 building up. That sits in four panels of three judges each.

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1 And the membership of the panels constantly rotates so that
2 no lawyer can judge-shop successfully or panel-shop suc-
3 cessfully. When he appeals, he has no idea which of the
4 three judges will hear his case. Then, the Superior Court,
5 which is our court of general jurisdiction, sixty-six
6 judges recently raised from fifty-five judges. That's a
7 twenty percent increase and an effort by our present Gover-
8 nor to get ready for speedy trial legislation which goes
9 into effect in October. And also it's part of the popular
10 movement to "crack down on criminals" which is related to
11 the number of judges.

12 Then, at the bottom, we have our misdemeanor court
13 which also has civil jurisdiction in the five thousand-
14 dollar range. With the waiver, it can handle million-
15 dollar cases if the judges and the lawyers want to try it
16 there. That has a hundred and twenty-six judges. And at
17 the bottom, the magistrate, which replaces the old justice
18 of the peace and also replaces the evils that went with the
19 old JP system.

20 All of these people are on salaries; all are fulltime
21 except for some of the magistrates in rural areas who are
22 paid for a twenty-hour week or thirty-hour week where
23 there's not that much work to do. All are paid by the
24 state. We have no parttime people. We have no fee-com-
25 pensated people.



1 JUDGE SMITH:

2 Mr. Chairman, is it in order to ask a question about
3 this right now?

4 REP. SNOW:

5 Do you mind being interrupted?

6 MR. HINSDALE:

7 Anytime. Fire away.

8 JUDGE SMITH:

9 The District Court with a hundred and twenty-six
10 judges, do I read it here that they try all criminal cases?

11 MR. HINSDALE:

12 No, they try all misdemeanors. There's trial de novo
13 to the Superior Court. Unfortunately, we still have trial
14 de novo.

15 JUDGE SMITH:

16 In other words, any criminal cases tried in the Dis-
17 trict Court, if they want to, they can appeal to Superior
18 Court for a de novo trial?

19 MR. HINSDALE:

20 Yes, they get their constitutional jury of twelve in
21 the Superior Court. They do not get it on first panel.

22 JUDGE SMITH:

23 They don't get any jury at all?

24 MR. HINSDALE:

25 No jury at all on the District Court level. About

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1 one case in thirty appeals.

2 JUDGE SMITH:

3 Well, couldn't you have a six-man jury down there?

4 MR. HINSDALE:

5 Yes, very much so, I think. And I hope in the next
6 two years we'll get to that. We just couldn't get it in
7 in the sixties. There was too much opposition there.

8 JUDGE CALHOUN:

9 Does your Constitution require a twelve-person jury?

10 MR. HINSDALE:

11 It requires a twelve-person jury on the Superior
12 Court level and it's non-waiverable. If they want a jury
13 trial--if they're going to Superior Court, they have to
14 take a jury whether they want it or not.

15 JUDGE SMITH:

16 What percentage of your District Court cases are
17 appealed to the Superior Court?

18 MR. HINSDALE:

19 About one in thirty. But they are tried on Superior
20 Court level. The commonest kind or the great bulk of them
21 are drunk driver cases or a ralted cases where the man's
22 license is at stake. The lawyer appeals so that the man
23 can make so more paydays and pay the lawyer and so the man
24 can save his license.

25 JUDGE SMITH:

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1 Why'd you put the lawyer's pay ahead of saving his
2 license?

3 MR. HINSDALE:

4 I wasn't thinking very fast. Many of them have--once
5 they come up for trial in the Superior Court request a
6 remand because of those conditions having been set aside.
7 You separate the two conditions by twelve months and the
8 penalty on the license is less. And they're content at
9 that point to just let it remand and all it costs them is
10 the cost of the Superior Court which they didn't use but
11 which they thought they were going to use. It is wasteful,
12 however, and it would be nice to get those cases out of
13 Superior Court. That's one of our weaknesses and I'll
14 admit to several more if you press me but we're in fairly
15 good shape.

16 JUDGE SMITH:

17 I was interested in how that was handled. That was
18 interesting to me. When I saw the de novo trial, I would
19 think that would really--could clutter you up.

20 MR. HINSDALE:

21 I believe in the next two years we'll be able to get
22 rid of it.

23 DEAN BEAIRD:

24 What was the rationale behind giving appeal as a mat-
25 ter or right to the decisions involving utilities commis-



1 sions, general ratemaking cases?

2 MR. HINSDALE:

3 The feeling was that that affects everybody in the
4 state and that when anything is a broad-based as that, that
5 people ought to be heard on the highest level.

6 DEAN BEAIRD:

7 Isn't that unusual?

8 MR. HINSDALE:

9 Perhaps. I dare say it's two percent of their busi-
10 ness. Not many ever go that high.

11 JUDGE SMITH:

12 When dissent in Court of Appeals--that means one dis-
13 sent?

14 MR. HINSDALE:

15 Yesh, but it's two to one. They sit in panels of
16 three.

17 JUDGE SMITH:

18 Well, you don't go to the entire court, then, if you
19 have a dissent on a panel like we do here?

20 MR. HINSDALE:

21 No, it goes up.

22 JUDGE SMITH:

23 It goes up? The whole court doesn't get it, just the
24 panel?

25 MR. HINSDALE:

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1 June the panel. What we have there is actually four
 2 Courts of Appeal which handle eighty percent of all cases
 3 appealed. The Supreme Court gets the other twenty percent
 4 which are the tough ones--the constitutional issues--when
 5 there is a dissent and this little wierd thing which, maybe
 6 is not necessary, but it causes no problem--utilities cases.

7 JUDGE SMITH:

8 Do you mean when the dissent of the Court of Appeals
 9 --is that when the majority of the Court of Appeals dissents
 10 or just one dissent in the Court of Appeals?

11 MR. HINSDALE:

12 Two to one decision.

13 JUDGE SMITH:

14 Okay, two to one decision.

15 JUDGE STANLEY:

16 What was your probate before and what is it now?

17 MR. HINSDALE:

18 No change there. Our Clerk of Superior Court is ex-
 19 officio Judge of Probate in each county.

20 JUDGE STANLEY:

21 Is he an attorney?

22 MR. HINSDALE:

23 No, not to offen. In the big cities, he's an attorney.
 24 The job pays up to thiry-one thousand now. A few attor-
 25 neys have been attracted to it but not by and large. We



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1 considered, for several years in the early sixties, requir-
2 ing that Probate business go to the District Court and
3 finally decided that it was being handled satisfactorily
4 in the Clerk's office and it has stayed there.

5 JUDGE STANLEY:

6 And that's a de novo too?

7 MR. HINSDALE:

8 Questions of fact decided by the Clerk are appealable
9 to the Superior Court Judge. Not too much of that, but the
10 Clerk, when he gets a hot one, can be overruled by the
11 Superior Court Judge with a jury if it's a factual matter
12 as in a condemnation case.

13 JUDGE CALHOUN:

14 And he handles all wills too--things of this nature--
15 the Clerk of the Court?

16 MR. HINSDALE:

17 He handles them initially with appeal to the Superior
18 Court for jury trial if there's caveat to the will.

19 The jurisdiction--you notice we're quite simple. We
20 have one misdemeanor court, one general jurisdiction court
21 which takes all criminal appeals from the misdemeanor
22 court; for all civil appeals bypassing the Superior Court
23 and going directly to the appellate branch, all cases ex-
24 cept the death and life imprisonment go to the Court of
25 Appeals at first. And the Supreme Court can look over the

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1 shoulder of the Court of Appeals and pick up on any case
2 that it feels is going to wind up on their bench anyway.
3 Those are cases involving significant public interest, such
4 as maybe tort liability of a charitable hospital. We had
5 one of those not long ago. Or maybe brownbagging, which
6 we have in North Carolina now. But as of today, we have
7 a law replacing it--at least local option to replace it.
8 Legal principles of major significance where delay would
9 cause substantial harm--they're free to take the case and
10 avoid the four months or so it would take to go through the
11 Court of Appeals.

12 And when the Court of Appeals has a backlog, they can
13 balance the load by saying, send us all of your cases in-
14 volving local government units or all sentences to impris-
15 onment over ten years or something like that and balance
16 the load again. They did that once three or four years
17 ago and picked up a hundred cases which helped out. But
18 they didn't like the extra work and they haven't done it
19 again.

20 JUDGE SMITH:

21 I was going to say, I don't imagine they ever thought
22 the court got overloaded, did they?

23 MR. HINSDALE:

24 Well, the Supreme Court went from about eight hundred
25 opinions a year down to a hundred and fifty. And they now



1 think that a hundred and fifty is all they can handle.

2 JUDGE SMITH:

3 I'm glad to hear you say that.

4 JUDGE CALHOUN:

5 As you probably surmised, this is Judge Smith of our
6 Court of Appeals.

7 JUDGE BEASLEY:

8 How does that procedure work? How does the Supreme
9 Court reach down? Does it review--

10 MR. HINSDALE:

11 That's up to the appealing party. Anyone who's in
12 the Court of Appeals can ask to also let the Supreme Court
look--

14 JUDGE BEASLEY:

15 Do they get a report of the cases pending before the
16 Court of Appeals, is that how it happens?

17 MR. HINSDALE:

18 Yes. They're just a hundred feet from each other,
19 just across the street and they work very closely together.

20 JUDGE BEASLEY:

21 So they do literally look over the shoulder of the
22 Court of Appeals and see what they're doing down there and
23 see if there's anything they're interested in?

24 MR. HINSDALE:

25 Well, literally might be carrying it a little too far



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1 but it's up to the lawyer who wants to bypass the Court of
2 Appeals to let the Supreme Court know by filing a petition
3 with them to pick it up.

4 JUDGE SMITH:

5 Then, it's really an unofficial certiorari; it's an
6 application to be heard?

7 MR. HINSDALE:

8 Well, yes. And he can do the same thing after the
9 Court of Appeals.

10 JUDGE SMITH:

11 I understand that. But I mean before that it is an
12 application to bypass the Court and they can pass on it
13 if they want to?

14 MR. HINSDALE:

15 I don't have any firm figures on how often the Supreme
16 Court has been dipping down to pick up these cases, but
17 it's very small. They have--the courts prefer, unless
18 there's a real emergency on, to let the case mature by
19 being screened through a judge of the Court of Appeals.
20 And that's a sensible approach and then they can always
21 say the Court of Appeals is all fouled up and write the
22 brief on the other side.

23 DEAN BEAIRD:

24 What or whom do you consider to be the head of the
25 Judicial Branch in North Carolina?



1 MR. HINSDALE:

2 The Chief Justice, Susie Sharp.

3 DEAN BEAIRD:

4 Do you have Administrative Offices of the Court and
5 so forth?

6 MR. HINSDALE:

7 We have Administrative Offices of the Court with a
8 budget of about fifty million a year and three thousand
9 or so people on the payroll; it's a large office. And it
10 handles all the housekeeping for the system. I gave you
11 the impression perhaps it's an expensive operation, but
12 that three thousand employees includes every clerk in
13 every courthouse in the state--seventy-five hundred or
14 more. It includes two hundred family court counselors
15 that are the court counselors for the juvenile system.
16 The legislative has recently put them in the Judicial De-
17 partment. They were an Executive Branch agency before.

18 JUDGE SMITH:

19 Are those clerks selected or appointed elected?

20 MR. HINSDALE:

21 Clerks of the Court are elected by their county--
22 county of residence.

23 JUDGE SMITH:

24 But they still come under the Administrative--

25 MR. HINSDALE:



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1 They're only tied to the county that they're elected
2 and the county--the state pays them; the Administrative
3 Office tells them how to keep the records so that the
4 record in every county of the state is kept the same way.
5 And a lawyer can go from one county to another and be sure
6 that he will know how to use the court's records with no
7 problem.

8 MS. WILSON:

9 Is your Supreme Court elected or appointed and is the
10 Chief Justice elected as Chief Justice or--

11 MR. HINSDALE:

12 All of our judges are elected with the exception of
13 eight special Superior Court Judges appointed by the Gover-
14 nor. The Chief Justice is elected as Chief Justice except
15 when there's a vacancy of course and the Governor fills
16 that until the next general election.

17 JUDGE STANLEY:

18 Are these non-partisan elections?

19 MR. HINSDALE:

20 Partisan. We have been trying to get merit selection
21 in North Carolina. The last four sessions of the legisla-
22 ture have said no. The margin of defeat has been increas-
23 ingly narrow. A fifth attempt will be made this coming
24 January. The present Governor has said that he will sup-
25 port it, that currently he is selecting his Superior Court

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1 Judges from merit selection panels which he has set up.
2 He likes it and he will support it in the legislature.
3 The odds now rise to at least fifty/fifty for merit selec-
4 tion of our judges next year.

5 JUDGE CALHOUN:

6 Now, I know you say you had a system of various
7 courts with overlapping jurisdiction and so forth. Did
8 you have District Courts before? Where they called Dis-
9 trict Courts?

10 MR. HINSDALE:

11 They were called Recorder's Court of X County of City
12 Recorder's Court or County Criminal Court. There were
13 dozens of names.

14 JUDGE CALHOUN:

15 All right. What happened to the judges of those
16 courts? Did you make any provision for grandfathering
17 them in?

18 MR. HINSDALE:

19 They were not grandfathered in. And the way we got
20 away with that was providing in the constitutional amend-
21 ment that, after the people approved it three to two in
22 1962, that implementation would take place over a seven-
23 year period. And that the complete new system had to be
24 in place in every county of the state by 31 December 1970.

25 So we put the new system in place of December of '66



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1 in phase with the county officers election cycle in seven-
 2 teen counties that were anxious to have it. And in 1968
 3 we put it in sixty-one more counties--and by that time,
 4 counties were volunterring to get in line. And in Decem-
 5 ber of 1970 the last--what was it--twenty-two counties,
 6 many of whom were irked because they hadn't been put in
 7 the system sooner. So since--now, for eight years we've
 8 had total uniformity with no lower court system all over
 9 the state.

10 JUDGE CALHOUN:

11 Now, your District Courts sometimes handle more than
 12 one county, do they not?

13 MR. HINSDALE:

14 Well, let's turn to the foldout and I can explain that.
 15 The state is divided into thirty-two judicial districts
 16 and the districts are the same for both the District Court
 17 and the Superior Court. Superior Court--well, I'd better
 18 point out that there are thirty if you go from east to
 19 west. But the twenty-seventh district was split last year
 20 and so was the fifteenth. And today the legislature may
 21 split the nineteenth, but it's nip and tuck.

22 Superior Court Judges servé within their division,
 23 which is our rotation system and has its drawbacks. But
 24 it has some very major advantages also.

25 REP. SNOW:



1 You're the only state that does that, is that--

2 MR. HINSDALE:

3 Well, South Carolina does it a little. Connecticut
4 does it a little. We're the only state that does it as
5 much as we do. And it's a hot issue now, has been for a
6 hundred years but I foresee no immediate change.

7 REP. SNOW:

8 The judges aren't happy with it, are they?

9 MR. HINSDALE:

10 The judges are about fifty/fifty. We're not con-
11 vinced it's the best system, but it's a very emotional
12 issue, rotation of Superior Court Judges. When the judges
13 vote--and they have voted several time in the last ten
14 years--it comes out at about fifty/fifty. But a lot of
15 judges ton'd vote. And you'd have to--they say, well,
16 we'll go along with whatever the legislature wants to do.
17 If I had to make an informed guess, it wouldn't be as in-
18 formed as I'd like for it to be. But I think that the
19 Superior Court Judges at the moment are probably about
20 fifty-one percent for curtailing rotation. So it has the
21 advantage of giving the judge a great deal of independence
22 that he doesn't get if he sits in the same courtroom day
23 in and day out. And the lawyer on one side is his law
24 fraternity brother and the lawyer on the other side is his
25 law school classmate. And he knows half the litigants

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1 from rotating criminal offenses. Well, I got sidetracked.
2 The question was about District Courts.

3 District Court Judges stay in their district. They
4 do not rotate. However, in a county--in a district like
5 the thirtieth one, seven counties and mountainous, there's
6 some travel time involved. There are three judges in that
7 district. And they specialize a little bit when they can
8 to reduce the travel time a little bit. But each judge is
9 still expected to be available to serve in each of the
10 seven counties.

11 JUDGE CALHOUN:

12 Don't you run into some counties--when you have seven
13 county-districts and various counties came into the dis-
14 trict at the same time--at different times?

15 MR. HINSDALE:

16 No, they came in by districts. They didn't come in
17 by counties. And you'll notice a county like Mecklenburg
18 is a district by itself--Charlotte with a hundred thousand
19 people. It has eight District Court Judges and four Super-
20 ior Court Judges.

21 On the back of the folder, the jurisdictional breakdown
22 on the trial court level is specified a little more com-
23 pletely.

24 UUDGE CALHOUN:

25 I notice that the District Courts handle all domestic



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1 relations and so forth. You say you have no juries in
2 District Courts?

3 MR. HINSDALE:

4 No juries in District Court--oh, civil, yes. No
5 criminal jury in District Courts. We have a twelve-man
6 civil court. In many counties it would be convened only
7 once every ninety days. The bulk of the civil business
8 is before a judge without a jury. But the lawyer can have
9 a jury if he wants to request it or wait until the next
10 jury term, which might be a week or it might be ninety
11 days, depending on the volume of business.

12 JUDGE CALHOUN:

13 They must do it by statute at the judge's discretion
14 like the Federal court?

15 MR. HINSDALE:

16 The Chief District Judge sets his schedule and assigns
17 himself and the other judges of his district to the court-
18 houses and the specialized sessions. Civil-jury, Civil-
19 non-jury, general misdemeanor, traffic, juvenile and then
20 involuntary commitment to the mentally ill and highly
21 specialized matters like that are all scheduled separately.

22 MR. SANFORD:

23 Excuse me, the juvenile court. Do you have a separate
24 and distince juvenile court or does the District Judge
25 simply sit as Juvenile Court Judge?

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1 MR. HINSDALE:

2 District Court Judge sits as juvenile court judge.

3 We try to give those judges special training, those that
4 want to specialize in handling juvenile cases.

5 MR. SANFORD:

6 Do they rotate at all?

7 MR. HINSDALE:

8 They are eligible to try all business in District
9 Court in any county in the district and many of them do.
10 However, some of them handle juvenile business only by
11 request and design. Most of them don't like to specialize
12 permanently because they're afraid it will hurt them next
time they come up for election.

14 MR. SANFORD:

15 You mentioned earlier that there were family court
16 counselors provided under your AOC, is that the totality
17 of juvenile court staff? Are they all under Administrative
18 Office of the Courts or does the local juvenile court have
19 its own provision for service and so forth?

20 MR. HINSDALE:

21 No, it's all state; they're all under that state.
22 They're state-paid. They function under a Director of
23 Juvenile Services, I believe his name is, under the AOC.
24 And he has regional directors and two hundred and fifty
25 family counselors and intake officers. The terminology

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1 changes.

2 JUDGE BEASLEY:

3 Did you consider a separate family court which would
4 handle exclusively domestic relations and juvenile cases?

5 MR. HINSDALE:

6 Yes, it was debated from '56 through '65, I guess.

7 And the majority feeling throughout all of that time was--
8 indeed that was a popular national position in those years.
9 That specialist judges were very wasteful. That a juvenile
10 judge, if that's all he can do, may go home on Wednesday
11 afternoon and play golf and again on Thursday. Whereas,
12 a judge in another court is working right up until five
13 o'clock on Friday and still doesn't get caught up.

14 JUDGE BEASLEY:

15 Was there any consideration for letting him to be
16 exclusive domestic relations judge, but also when he had
17 time be available for other assignments? In other words,
18 at least you would have a specialist who could have that
19 kind of training and that kind of--

20 MR. HINSDALE:

21 Yes. We even provided in our initial statute that
22 the judge who wanted to could opt to run in a particular
23 district as a juvenile specialist. And the statute is
24 still there and it's never been used. No judge has opted
25 to say, "I will be juvenile judge only and run on that

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1 ticket." They've all been afraid that they would narrow
2 themselves too much and that it would hurt at the polls.

3 DEAN BEAIRD:

4 I take it from this chart that decisions of regula-
5 tory agencies--state regulatory agencies, like Workmen's
6 Compensation Commission and so forth, are appealed directly
7 to the Court of Appeals and do not go through the Superior
8 Court. Is that--my understanding correct?

9 MR. HINSDALE:

10 There are three commissions, you see, on the front of
11 this. Well, they're on both front and back. They have
12 fulltime staffs and make verbatim records and that's why
13 they appeal at the Court of Appeals level. They've got a
14 verbatim record. The other regulatory bodies that do not
15 prepare a verbatim record, they are required to insert
16 their appeals into the system at the Superior Court level
17 where a verbatim record is constructed.

18 DEAN BEAIRD:

19 What would be an example of that?

20 MR. HINSDALE:

21 Well, appeals from hearings before traffic officers
22 on revocations of licenses, for example. You're entitled
23 to get into the court system but without a verbatim record,
24 it would be pretty awkward on the appellate level. So they
25 go into the Superior Court where a record is made. And if

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1 that doesn't wash it out, then they have access to the
2 Court of Appeals.

3 JUDGE SMITH:

4 Wasn't the real problem in your court system the same
5 as ours and many more, was the lack of uniformity? You
6 call it reformation of the system, but uniformity of the
7 system is what you're really trying arrive at?

8 MR. HINSDALE:

9 That was the number one problem, the lack of uniform-
10 ity.

11 JUDGE SMITH:

12 And really if you could get uniformity in the system,
13 you'd almost have that reform that you keep talking about?

14 MR. HINSDALE:

15 Well, you wouldn't have everything, I don't believe.
16 We had to get rid of the fee system which was under con-
17 stitutional challenge. We had to put all our officials
18 on a flat salary.

19 JUDGE SMITH:

20 Well, that's what you need--uniformity because we have
21 some that's on the fee system and some that's not. And
22 once again, that would be uniformity, wouldn't it?

23 MR. HINSDALE:

24 Within a class. Well, it depends on how you draft
25 your constitutional revision. Ours wouldn't permit sub-

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1 classifications, I don't believe. That's the reason the
2 magistrate gets a flat state salary and it doesn't matter
3 how he tries a case or doesn't try a case. He's paid re-
4 gardless.

5 REP. SNOW:

6 You may have covered some of this while I was absent,
7 Mr. Hinsdale. But about the schedule manner in which you
8 approached your constitutional revision of the Judicial
9 Article and some of the problems that you ran into as far
10 as the legislature was concerned. We 're concerned and
11 interested in that possibly too. And I do think y'all
12 went over a period of around ten years; is that correct
 to implement the entire constitutional revision?

14 MR. HINSDALE:

15 Yes, let me cover that briefly. That was--I should
16 have answered under question one, I guess. When Governor
17 Hodges made his pitch to the Bar, the Bar accepted it and
18 appointed a blue ribbon commission under Spencer Bell, who
19 is a real hard charge and willing to take his lumps if he
20 had to to get what he was after. His committee sought
21 foundation money from several foundations and got a nice
22 pot of money to pay a research staff of several attorneys
23 that worked over a period of three years researching what
24 we had; putting it in understandable form. And his full
25 committees then cranked out recommendations which are



1 printed and fed back to the Bar of the state, the numerous
2 times that the subcommittees made reports to the Bar as a
3 whole and accepted their criticisms. When they came back,
4 the subcommittee report was worked over again so that al-
5 though they made a report to the Bar Association in 1958
6 that they were about ready, they didn't have the bill for
7 the legislature until 1959. At that point, every lawyer
8 in the state knew what was in it. Those that were willing
9 to read had receive many, many brochures and handouts on
10 it and--

11 JUDGE SMITH:

12 What you're saying is, you had the entire reformation
13 on paper, as to how it was going to operate, before you
14 ever went to the legislature with it?

15 MR. HINSDALE:

16 Yes, sir, we had a bill involving a new Article--Judi-
17 cial Article to the Constitution.

18 JUDGE SMITH:

19 That's the only way you ever sold it, didn't you?

20 MR. HINSDALE:

21 Well, we didn't sell it that year. It was too modern
22 for the legislature.

23 MR. DROLET: Well, it took too much power away from the legisla-
24 ture and gave it to the Supreme Court and--

25 JUDGE SMITH:

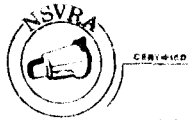
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1 No, the legislature had to find out whether or not
2 they could keep getting elected if they passed it. I
3 guess it took them a year to find that out.

4 MR. HINSDALE:

5 Well, the legislature put up a fight; said, no, we
6 won't buy it and it lost out by a vote or two in 1959.
7 And the--Spencer Bell and his committee could read the
8 election returns as well as anybody and they forced them-
9 selves to eat a little bit of their bill. They backed off
10 the merit selection of District Court Judges, for example,
11 and they restored to the legislature rulemaking power which
12 they had wanted to give to the Supreme Court in the Judicial
13 Article. And a couple of other modest change. And then in
14 1961, went back to the legislature and this time--to make
15 a long story short--it won by a vote or two. And then it
16 went to the people on a constitutional ballot in November
17 of 1962 was adopted by six hundred thousand to four hundred
18 thousand or something like that. And in 1963, then, the
19 General Assembly had this seven-year task before it to write
20 the implementing legislation. And the General Assembly
21 then went the blue ribbon committee route again and appointed
22 a commission of fifteen lawyer-legislators that met liter-
23 ally every weekend for eighteen months to draft the legisla-
24 tion that was then adopted in the Judicial Department Act
25 of 1965. Now, that wasn't the whole package but that was



1 enough to get seventeen counties started. And in 1967 we
2 added to it by reorganizing the prosecutorial system and
3 cleaning up the jury selection system and two or three in
4 the--rewriting the Juvenile Court Code. And in '69 and
5 '71, we added a Judicial Standards Commission to watch over
6 judges, a uniform retirement system for all judges to
7 which the lobbyists of the district attorneys and the
8 clerks quickly grabbed onto and extended it to their
9 people and a mandatory retirement for age for all judges,
10 which requires appellate judges to retire at age seventy-
11 two and trial judges to retire at age seventy.

12 REP. SNOW:

Are your clerks included in that retirement system?

14 MR. HINSDALE:

15 The clerks are now included. They get three percent
16 a year. State employees as a whole get one and a half
17 percent a year. Justices get four percent a year. Super-
18 ior Court Judges get three and a half percent a year. We
19 hired an out-of-state actuary to design our system. An
20 actuary in Richmond who had designed the Tennessee system.

21 JUDGE SMITH:

22 You said judges get four percent. Is that just the
23 seven Superior Court Judges or the Court of Appeals Judges
24 also?

25 MR. HINSDALE:



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1 That's Court of Appeals also.

2 JUDGE STANLEY:

3 Mr. Hinsdale, concerning the long period of time for
4 complete reformation, do you see any objections to partial
5 reformation as you go along, maybe to implement the system
6 in stages?

7 MR. HINSDALE:

8 Well, we did it over stages, but I think I know what
9 you mean. And if you know you can get so much in at a time,
10 I see no harm in getting what you can. However, the danger
11 you run into there, it seems to me, is that you're liable
12 to get tired blood in the process. That eventually hap-
13 pened to our blue ribbon legislative committee, which was--
14 worked from '63 to '73. The last year or two, it had been
15 phenomenally successful. Everyting but merit selection
16 which it had proposed had been adpoted. But for every
17 victory, there were a coule of more enemies that sprang up.
18 And by '73, the enemies said, we've had enought of the
19 North Carolina Court Commission and they killed it. Which
20 is unfortunate. Because now, for two seasons, we haven't
21 had a very open oversight body that can screen out bad
22 ideas that come in from the field. Like this thing that's
23 going to split one of our districts--our judicial districts
24 today. It has not been screened by statewide committee
25 that could look into the statewide effect of splitting a



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1 district. We're suffering from a lack of an overall super-
2 visory body right now.

3 JUDGE STANLEY:

4 Let me give you an example. Do you think that this
5 would lead away from uniformity, for example, if--an area
6 that I'm particularly interested in is the Probate area
7 whereby those judges having the qualifications of a Super-
8 ior Court Judge have expanded jurisdiction and powers
9 which would be limited to, say, ten judges out of a hund-
10 dred and fifty-nine, at this point. It would be a model
11 that would lead towards some statewide reformation in the
12 future. Do you think that would be a right or wrong ap-
proach to it?

14 MR. HINSDALE:

15 I suppose my background in your present system is too
16 shallow for me to make an answer that would be worth much
17 to you. I have read Sections 10, 11, 12, I think it is--
18 the transitional provisions of the document that Marty
19 sent me. An effort made last year, was it, to--which seems
20 to be talking about what you're talking about. My first
21 reaction is that you're giving up a lot to, if I understand
22 paragraph ten, to grandfather in so many other present
23 officials of the system. If there's something in there
24 causes them to be replaced by the brand-new system over a
25 period of eight or ten years, it's fine. I think that's a



1 necessary price you may have to pay. But if you don't cut
2 it clean at some point, you're left with these old vestiges
3 holding you back over a period of twenty or thirty years.
4 I can't answer it more specifically than that.

5 DEAN BEAIRD:

6 You mentioned a moment ago that in the initial consti-
7 tutional provision or one of the bills that followed that,
8 the legislature retained rulemaking authority. Does that
9 mean that--did you refer by that to power to provide pro-
10 cedural rules and so forth or the allocation of jurisdic-
11 tion or the allocation of workload or what is the extent
12 of that rulemaking authority that was retained.

13 MR. HINSDALE:

14 It's procedural primarily. The thinking in the early
15 sixties was that it would be better to let the Supreme
16 Court design our procedural rules on the theory that they
17 could keep them up to date and respond more quickly to
18 emergencies. Statutory rules have a habit of getting of
19 getting inured sometimes for decades and you just work
20 around them and not realize what a handicap they are.

21 But the legislature said, no, we're going to keep our
22 finger on trial court rules and they did. And as a matter
23 of fact, since that time, we've had a new Code of Civil
24 Procedure in 1970 and we're again by stages installing a
25 new Code of Criminal Procedure right now. We have the

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1 pretrial court and 1 July, in two weeks, we'll get the
2 trial court on the new Code of Criminal Procedure, all
3 specified by the legislature.

4 JUDGE CALHOUN:

5 Did you say you wrote this in the Constitution--the
6 reulmaking power of legislature?

7 MR. HINSDALE:

8 Yes. There's an additional sentence that says the
9 legislature can delegate it--the rulemaking power of the
10 trail courts to the Supreme Court if it wants to. But
11 there's been no enthusiasm for doing that.

12 DEAN BEAIRD:

13 How common is that in other systems, do you know? Is
14 it usual or unusual? I mean, in terms of including it in
15 terms of the constitutional provision?

16 MR. HINSDALE:

17 Well, I'm not sure. It may be that one of your
18 later speakers would have a better grasp of that than I do.
19 I think both approaches are pretty common. I've never seen
20 the judicial approach--never lived under the judicial
21 approach to rulemaking. But I have a feeling that the
22 court can react faster to changing situations. On the
23 other hand, they can also get ahead of the people alto-
24 gether.

25 MR. DROLET:

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1 Do you have any idea as to what others did in regard
2 to cose of the system or who was bearing the cost or—in
3 other words, did the state end up with an enormous increase
4 compared to what it had previously?

5 MR. HINSDALE:

6 Costs have risen in the state budget but a lot of that
7 is inflation and a lot of that is the--again, the litiga-
8 tion explosion. Our state budget for the judiciary is now
9 in the fifty-million dollar area. And it was probably
10 ten million ten years ago. Inflation is a great bit of
11 that. A lot of that is the case law which says that you
12 must brush your teeth and dot your eyes in quintuplicate
13 more than you ever did before. For instance, just take a
14 guilty plea, for example. Twenty years ago we could take
15 a guilty case--fifteen years ago in one or two minutes. A
16 guilty plea in a felony case now may take twenty minutes
17 and the transcript is fourteen inches long and it requires
18 four signatures. I don't know whether it's that bad in
19 Georgia yet or not, but we think that complies with the
20 case law and prohibits a lot of close conviction appeals.
21 But it takes time. And I know some new judges that are
22 taking forty-five minutes in a felony case to get the matter
23 on record where there's more than one count, say. And they
24 feel that the man may be a borderline situation.

25 JUDGE GUESS:

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I'm representing Calvin Simpton today. Apparently, you recognize some difference in the rural and urban areas by salary and by being a lawyer in some of the larger town, I think I heard you say. Did you ever recognize any difference as far as jurisdiction of the courts in the metropolitan areas versus rural areas?

MR. HINSDALE:

Jurisdiction of the court is the same in every county of the state. Also, salaries of the court personnel are the same in every county of the state.

JUDGE GUESS:

I misunderstood. I thought you said the Clerk of the Court went up to thirty-one thousand. I was thinking maybe it was more in a larger county, less in a smaller.

MR. HINSDALE:

The Clerk's salary of course is not thirty-one thousand in Clay County where there are literally more bears than people. The Clerk's salary there is on a scale depending on the population. In Clay and a few other counties in that bottom group, I think that salary is about fourteen thousand.

REP. SNOW:

Does the legislature set that scale?

MR. HINSDALE:

The legislature sets that. And all judicial salaries

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1 were raised about ten percent yesterday, effective 1 July.

2 JUDGE GUESS:

3 Do District Court Judges in Clay County make the same
4 as the District Court Judges in--

5 MR. HINSDALE:

6 Yes, they go from twenty-eight to thirty-two thousand
7 on the first of July.

8 DEAN BEAIRD:

9 You indicated that the Supreme Court issued about a
10 hundred and fifty decisions a year. How many decision are
11 issued by the four panels on the Court of Appeals?

12 MR. HINSDALE:

13 It's roughly four times that--three to four times
14 that. They put out three to four volumes of opinions a
15 year to one for the Supreme Court. Everything can be
16 appealed in North Carolina except a man who pleads guilty
17 in the Superior Court. He can appeal only by writ. But
18 everything else can go all the way if the appellate courts
19 want to hear it. And of course everybody's got a lawyer
20 now. We spend--of that fifty million dollars a year, six
21 million dollars goes for the assigned counsel of the Public
22 Defender system, which we have in five districts. And that
23 runs the bill up.

24 MR. GREENE:

25 This may possibly have been covered. It's difficult to

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1 absorb all this, Ed. Relating to your magistrates, are
2 any of them lawyers?

3 MR. HINSDALE:

4 One or two out of four hundred and fifty.

5 MR. GREENE:

6 How do they get their jobs?

7 MR. HINSDALE:

8 These are attorneys who have practiced civilly and
9 have volunteered to be available at odd hours or beyond
10 office hours, certainly, in some cases to issue warrants
11 and to conduct first appearances.

12 MR. GREENE:

13 Wait a minute; you lost me. I thought you said a few
14 of them were lawyers and attorneys.

15 MR. HINSDALE:

16 Just a couple. They like it. They pay their rent
17 out of the magistrate's salary. But they practice civilly.
18 They don't practice in criminal court.

19 MR. GREENE:

20 But they're not appointed?

21 JUDGE SMITH:

22 The others are non-lawyers?

23 MR. HINSDALE:

24 The others are non-lawyers.

25 REP. SNOW:

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1 How are they selected?

2 MR. HINSDALE:

3 They are nominated by the Clerk of Superior Court and
4 appointed by the Superior Court Judge who's a resident in
5 that district. That's a compromise--a political compro-
6 mise.

7 MR. GREENE:

8 Was there any effort at all made in this--in these
9 extensive hearings in the period of time involved in this
10 transformation to eliminate completely non-lawyer judges?

11 MR. HINSDALE:

12 Yes, we considered requiring that every judge be a
13 lawyer. And over the seventies, three separate bills were
14 introduced amending the Constitution, separate from our
15 package, to require that judges be lawyers. They were all
16 shot down. The last time in the Senate, two years ago, was
17 twenty-seven to twenty-two. It takes a vote of thirty on
18 a constitutional amendment. Now, that's no big problem
19 however. In the old days, when we had a couple of hundred
20 city and county courts, all different, there were about
21 fifty of the judges that were parttimers, non-lawyers.
22 They held court on Monday morning and they sold insurance
23 the rest of the week. Or they ran a pharmacy or what have
24 you. The new system has eliminated all but eight non-
25 lawyers. We have eight non-lawyers now out of two hundred.

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1 Non-lawyers continue to run and there's some districts
2 where a non-lawyer can beat a lawyer five to one and has
3 done so.

4 JUDGE CALHOUN:

5 This is the District Courts?

6 MR. HINSDALE:

7 This is the District Court. We've never had a non-
8 lawyer in the Superior Court or the appellate branch in
9 this century. Although a fire insurance salesman ran
10 against our Chief Justice two years ago and got two hun-
11 dred and sixty thousand votes.

12 JUDGE CALHOUN:

13 You mean they're not require to be lawyers in the
14 Constitution?

15 MR. HINSDALE:

16 No. We have a decision in 1911 that says we cannot
17 require a public officeholder to be anything more than a
18 voter, age twenty-one--eighteen now--and a resident of
19 the district and not be a felon.

20 REP. SNOW:

21 What kind of courts do you have for your municipali-
22 ties? Is that your District Court? Do they handle those?

23 MR. HINSDALE:

24 That's the District Court.

25 REP. SNOW:



1 So there is no separate municipal court?

2 MR. HINSDALE:

3 There is no city court; there is no county court.

4 There is just the District Court for Lincoln County.

5 REP. SNOW:

6 Do you have some means that you compensate some fees
7 back to the municipalities because of that or any loss
8 that they've suffered because of not having those court
9 funds coming into their Treasury?

10 MR. HINSDALE:

11 No. There are a few cities before, including my
12 old hometown in Hendersonville, that was charging thirty
13 bucks for a traffic ticket and making a little bit of
14 money for the county treasury. The average for a traffic
15 ticket was probably closer to twelve or fourteen in those
16 days. Well, they stuck out; they were a target and they
17 got shot down. The state said the cost of a traffic
18 ticket everywhere in the state, whether you plead guilty
19 or not, whether you waive trial and go before a magistrate
20 or whether you plead not guilty and fight it out before the
21 judge, the cost is going to be fifteen dollars. It doesn't
22 matter--total uniformity. Geographically and in accord-
23 ance with whatever your plea is, whatever court you're in,
24 the cost of a traffic conviction is fifteen dollars. Now,
25 that was in 1965. In 1970, it was raised to sixteen and

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1 then last year it was raised to twenty-seven, which is
2 fairly steep for a traffic ticket.

3 JUDGE CALHOUN:

4 What are you talking about--illegal parking?

5 MR. HINSDALE.

6 Any traffic offense on a guilty plea.

7 JUDGE CALHOUN:

8 Driving under the influence? Speeding?

9 MR. HINSDALE:

10 Including drunk driving.

11 JUDGE CALHOUN:

12 That's ridiculous. You say if a guy's going one mile
13 over the speed limit--

14 MR. HINSDALE:

15 Now, this is the cost of court, not the fine. It's
16 the cost of court; he asked me the cost of court.

17 JUDGE CALHOUN:

18 Okay. What makes the difference?

19 MR. HINSDALE:

20 Now, the fine is always in the discretion of the
21 judge. About three-fourths of our traffic misdemeanors
22 are washed out by the defendant going before a magistrate;
23 pleading guilty; signing a waiver; putting up your twenty-
24 seven dollars and his find, which the magistrate is required
25 to impose in accordance with the schedule given him by the

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1 Chief District Judges. The magistrate has no discretion.

2 JUDGE SMITH:

3 Well, all the uniformity you have then is in the
4 court costs. You don't have uniformity in the fines levied?

5 MR. HINSDALE:

6 Oh, no. The amount of the fine is strictly up to the
7 judge.

8 MAYOR MEDLOCK:

9 But he has to pay the court costs regardless.

10 MR. HINSDALE:

11 He has to pay the court costs if he's convicted and
12 traffic tickets--probably eight hundred thousand a year.
13 That's a money generator in a way that generates a lot of
14 revenue to support the system. And let me tell you how
15 that's divided up. For every conviction in any misdemea-
16 or, not just traffic, the county that tries the man gets
17 three dollars out of that twenty-seven. It's a facilities
18 fee that goes into the county's General Treasury to help
19 support law enforcement; to help support the courthouse and
20 the Clerk's office. And the only expense the city or county
21 has is to keep their courthouse and furnish the courtroom
22 and the Clerk's office. They don't even have to pay for
23 the equipment in the Clerk's office, only the permanent
24 furniture. The state buys the stenotype machines, the
25 typewriters, the pencils, the erasers--everything. No

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1 county has to support the courtroom.

2 Now, this facilities fee may run to sixty thousand a
3 year in a large county. It won't buy a courthouse but it
4 will maintain it--the parts of the courthouse used by the
5 judicial system.

6 MR. GREENE:

7 Well, I--perhaps everybody else understood it, but I
8 got lost somewhere. In other words, I couldn't quite deter-
9 mine when you stopped talking about magistrates and started
10 talking about District Courts relating to your non-lawyer
11 judges. Did I understand you correctly to say that some of
12 your District Court Judges are not lawyers?

13 MR. HINSDALE:

14 Out of a hundred and twenty-six, we now have eight who
15 are not lawyers. And they're elected by the people for
16 four-year terms. And that's the best we can do. Everytime
17 we have tried, in a constitutional amendment, to require
18 that they be lawyers, the vote has been unfavorable. No-
19 body's pushing for it now. We figure we can live with
20 eight.

21 MR. GREENE:

22 Of course relating to your magistrates, thought, the
23 opposite is true--that very few of those were lawyers?

24 MR. HINSDALE:

25 Very, very few of those.

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1 MR. GREENE:

2 And they get their jobs by nomination by the Clerk
3 of Superior Court and appointed by whom?

4 MR. HINSDALE:

5 And appointed by the Senior Resident Superior Court
6 Judge.

7 MR. GREENE:

8 For a specific term?

9 MR. HINSDALE:

10 Two years. Two years is too short in a way, but if
11 you appoint a sour apple, you don't have to reappoint him.
12 And that has advantages.

13 DEAN BEAIRD:

14 I just wanted to ask, do you have a mechanism or a
15 system of continuing judicial education and, if so, how is
16 it funded?

17 MR. HINSDALE:

18 We have a system of judicial education which is one
19 of the primary functions of my office. We hold--for the
20 Superior Court Judges, we hold three or four educational
21 seminars a year. I just came from one yesterday that
22 lasted four days. Out of sixty-six Superior Court Judges,
23 we had fifty-eight in attendance.

24 JUDGE STANLEY:

25 Is it mandatory?

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1 MR. HINSDALE:

2 It is not mandatory and probably never will be. I
3 see no real virtue to making it mandatory. You can make
4 them come, but you can't make them sit in the room or you
5 can't make them listen. So if we can get fifty-eight out
6 of sixty-six come voluntarily, we think we'll be a lot
7 better off to leave it that way.

8 MAYOR MEDLOCK:

9 Do you have certain days when the cases made in muni-
10 cipalities are heard or do they have to do just anytime?

11 MR. HINSDALE:

12 The Chief District Judge in each of these districts
13 sets up a court calendar. Take my district of 15b, for
14 example. We have two judges now; we used to have four but
15 the district was recently split in the court system--two
16 places in Orange County and two places in Chatham County.
17 And each of those seats of court gets a service at least
18 two days a week, but it's on schedule. And then anybody
19 who gets a traffic ticket or a citation knows on the ticket
20 what day to come to court and where to come to court. And--

21 MAYOR MEDLOCK:

22 Well, all I was trying--really trying to find out was
23 if it goes to court and there's a lot of cases being tried.
24 If you take the police that issued the citation and has to
25 appear in court and the case might not be heard, he goes

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1 back the next day. I just wondered what this does to
2 small municipalities with small police departments?

3 MR. HINSDALE:

4 Well, our officers including the highway patrol pick
5 the day that they're going next to be in court. And they
6 cite the defendant to be in court on that day. The patrol-
7 man or the policeman knows that Thursday is his day in
8 court and if he arrests somebody on Tuesday, he'll probably
9 cite him to be in court Thursday week, nine days from now.
10 And he will be there to testify.

11 MAYOR MEDLOCK:

12 Well, is the case going to be heard that day? Or it
13 might be that it doesn't get heard and he has to go back
14 the next day?

15 MR. HINSDALE:

16 It would be unusual for it not to be heard because in
17 most of our counties traffic--well, misdemeanors are set
18 up on a half day basis. And if they--in my opinion, they
19 get to it if they have to stay till six o'clock. Now, if
20 an unexpected sickness comes along, of course you've got
21 some rescheduling to do.

22 JUDGE CALHOUN:

23 I don't believe the question was answered as to how
24 judicial training is funded.

25 MR. HINSDALE:

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1 Well, I didn't get to finish. On the district court
2 level, we have three or four seminars a year. Sometimes
3 they extend longer than a weekend. The last one started
4 on Sunday night and ended Wednesday afternoon. We have a
5 joint one coming up in Asheville in October. Presently
6 we're planning a program for all trial judges in the Spring.
7 The judges will meet separately in a three-day program.
8 That's my job. I plan judicial seminars for all the trial
9 judges. I've tried to interest the appellate judges in
10 it, but they go to NYU and other places and we have not
11 had in-service continuing education for appellate judges.
12 We also send a lot of people to Reno and to all the other
specialty schools around the country.

14 JUDGE CALHOUN:

15 Does the state pay expenses of the judges attending
16 these meetings on regular travel expense account or--

17 MR. HINSDALE:

18 The state uses LEAA funds most of the time. We got
19 permission to go to Asheville. We can't go to a spa on
20 the coast anymore. As a matter of fact, our meeting this
21 last weekend had to be at New Bern, which is forty miles
22 from the beach. We got a little bit more education, I
23 think, that way.

24 JUDGE CALHOUN:

25 But there's no state appropriation for this?



1 MR. HINSDALE:

2 We're getting some--we also educate the Clerk of
3 Court and they are on state appropriation this year; they
4 were never taken off. It all depends on the administrative
5 officer who plans this. And he got enough LEAA funds to
6 service most of the training but he had a little bit of
7 appropriate funds also. And I think we can justify, unless
8 we have another recession, to the legislative committees
9 return that we're spending the money wisely and will be
10 able to keep it up. We've been at it for twenty-five years
11 on the Superior Court level and for twelve years on the
12 District Court level, ever since the District Court was
created.

14 JUDGE CALHOUN:

15 But apparently never with adequate state funding?

16 MR. HINSDALE:

17 Not enough, no. On the magistrates level, we are re-
18 quired by state law now to give each new magistrate eighty
19 hours of classroom training and we do that at the Insti-
20 tute. And we also bring them back for refresher training
21 and specialty courses, maybe one in criminal law, one in
22 civil law for the small claims magistrates and a refresher
23 generally.

24 JUDGE STANLEY:

25 Do you consider the Judiciary in North Carolina a



1 a potlcial branch of government now, and does the financ-
2 ing come from recommendations of the Chief Justice or
3 Supreme Court or--and does it have more or less approval
4 of the General Assembly or how is that handled?

5 MR. HINSDALE:

6 It's a co-equal branch but our Chief Justice who's
7 head of the system in modern times has never been an
8 aggressive, hard-charging leader that tried to push any-
9 body around by going to the legislature and saying, this
10 is what we've got to have. And the soft-sell approach, I
11 think, has been very successful. The legislature respects
12 the Judiciary and the last two years the Judiciary has
13 gotten a thirty percent raise in two stages. Everybody
14 else in state government has gotten a twelve percent raise.
15 That answers your question more effectively, I think, than--

16 JUDGE STANLEY:

17 I think it's all right for a Superior Court--Superior
18 Court Judges' salaries are what?

19 MR. HINSDALE:

20 It is now thirty-five thousand, six hundred, I think.
21 And it goes to thirty-nine thousand, nine hundred the first
22 of July.

23 JUDGE STANLEY:

24 No county supplements?

25 MR. HINSDALE:



1 No county supplements. That would be unconstitution-
2 al.

3 DEAN BEAIRD:

4 I notice that you have on the back of the handout that
5 the District Court has appellate jurisdiction over all
6 civil and criminal judgments of magistrates and that the
7 Superior Court has certain appellate jurisdiction over the
8 District Court. How extensive is that appellate jurisdic-
9 tion or how extensive are both of those used? Are many of
10 the decisions of the magistrate appealed? What is the
11 appellate jurisdiction--the workload?

12 MR. HINSDALE:

13 From the magistrate, everything can be appealed that
14 the magistrate tries, but the magistrate is a very, very
15 small board judicial official in North Carolina. The
16 taste that the justice of the peace left in the mouths
17 of the voters of North Carolina was so bad, when the JP
18 was replaced, his replacement was given very, very little
19 independence and authority.

20 JUDGE SMITH:

21 What's the difference between the magistrate and the
22 justice of the peace now?

23 MR. HINSDALE:

24 The name. The jurisdiction is even less of a magis-
25 trate than the JP had. On the criminal side, the magistrate

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1 cannot take a not guilty case and try it except a bad check
2 case. And that was the lobby--retailers lobby recently
3 shot that hole in our uniformity.

4 DEAN BEAIRD:

5 How extensive is the appellate jurisdiction exercised?
6 Are many of the decisions of magistrates appealed to the
7 District Courts?

8 MR. HINSDALE:

9 Less than one percent.

10 DEAN BEAIRD:

11 What about from the District Court to the Superior
12 Court?

13 MR. HINSDALE:

14 One in twenty to one in thirty of the criminal cases
15 are appealed. And frequently when they come up for trial
16 in the Superior Court, they are--the lawyer requests a
17 remand and that reinstates the District Court judgments.
18 But I would not try to--well, say, for a problem here,
19 drunk driving cases are still a terrible pain in the Super-
20 ior Court and the judge may frequently have his busy docket
21 ruined by having a half a dozen of those cases up there.
22 Not all of them remand when they're called. And the man
23 has the money and he wants to save his license and he wants
24 to go to a jury.

25 SEN. OVERBY:

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1 Well, isn't your point system rather severe up there?

2 And isn't your penalty for drunk driving rather severe?

3 MR. HINSDALE:

4 Well, nobody ever goes to jail unless he's a four or
5 five time loser. Also, we have a new statute to be tati-
6 fied this morning which will make a second offender go to
7 jail for three days or take compulsory rehabilitation
8 training. We don't know if it's going to work out.

9 JUDGE BEASLEY:

10 Do you have drunk driving schools?

11 MR. HINSDALE:

12 Yes.

13 MR. GREENE:

14 In your home territory of 15b, how many magistrates do
15 you have? Do you know right offhand?

16 MR. HINSDALE:

17 About seven, I guess.

18 MR. GREENE:

19 Who keeps their records?

20 MR. HINSDALE:

21 The magistrate is under the thumb of the Clerk for
22 recordkeeping purposes. He has to turn in his money and
23 his reports daily to the Clerk. And the Clerk takes his
24 money and sends it--well, sends a lot of it on to Raleigh
25 to the State Treasury but he cuts out that three dollars

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1 for facilities fee and the two dollars for the arrest fee
2 which goes to the police--to the city of the policeman that
3 made the arrest. It goes to the county if the sheriff
4 or patrolman made the arrest.

5 MR. GREENE:

6 How about the District Court records?

7 MR. HINSDALE:

8 Same thing exactly. The Clerk in our county is the
9 Clerk for all levels of court, Superior, District and
10 Magistrate, and is the Clerk with a big "C" because--

11 JUDGE STANLEY:

12 Go through that again now. The Clerk is the Clerk of
13 all the courts--the Superior and District?

14 MR. GREENE:

15 Has control of the records, is what you're talking
16 about?

17 MR. HINSDALE:

18 And all records are kept--all permanent records are
19 kept in the county seat. The Clerk in some counties may
20 send an assistant out to a small town to hold court for a
21 half day--misdemeanor court. The records go with that
22 assistant clerk and they come back with him.

23 MR. GREENE:

24 Mr. Chairman, I'll ask just one more question. How
25 about some of the non-court related duties that we have

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1 here in Georgia, namely, real estate, Uniform Commerical
2 Code is two big ones? Who has that now?

3 MR. HINSDALE:

4 We have a Registrar of Deeds who takes care of real
5 estate records. They don't go through the Clerk's office.
6 And Uniform Commercial Code, the bureaucracy or the paper-
7 work is under our Secretary of State and the central fil-
8 ing office is in Raleigh.

9 MR. GREENE:

10 No county filing?

11 MR. HINSDALE:

12 Yes, there's some. But it's not in the Clerk's Office.
13 It's in the Registrar of Deeds.

14 REP. SNOW:

15 And the Registrar of Deeds is not part of your court
16 system?

17 MR. HINSDALE:

18 No, he's a separate, elected official in the county
19 system.

20 JUDGE STANLEY:

21 Your Clerk is really a judicial officer, to a large
22 degree?

23 MR. HINSDALE:

24 Yes, he is.

25 JUDGE SMITH:

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1 Well, if we were to put you in, would you recommend--
2 leave our Clerk like it is and just take the court work
3 away from him and get up a new court clerk would be the
4 easiest way to do it, wouldn't it? Because he has the
5 deeds and all that kind of stuff?

6 MR. HINSDALE:

7 I'm not too familiar with what his total workload is
8 but the Clerk of Court, in many places, it's going to be
9 a fulltime job. And if he is relieved of certain political
10 chores and other matters, you may have more efficient
11 court systems.

12 JUDGE SMITH:

13 It would be easier to set a new clerk up for the
14 court system than it would to change this--

15 MR. HINSDALE:

16 Well, why not put one in his place? Make one move
17 rather than two?

18 JUDGE SMITH:

19 Let me ask you one other question. Would an improve-
20 ment of your system be--we've touched on this a moment ago
21 in the District Court--that was, have a six-man jury and
22 then the only appeal be on application to the Court of
23 Appeals rather than going through the Superior Court?
24 Wouldn't that cut down on the Superior Court--the tremend-
25 ous amount of work they have?



1 MR. HINSDALE:

2 I think it would. And I think in the next ten years,
3 we will probably go to that. I'm building up statistics
4 on a statewide basis or national basis to show that trials
5 de novo are--that system is shrinking rapidly. I think
6 there are only about nine states that do it our way now.
7 And the other states have not been inundated excessive
8 trials on the lower court level. So I think we could go
9 to a six-man District Court; try the drunk driving cases
10 there and be finished with them.

11 JUDGE SMITH:

12 And let him go--if he wants to appeal, appeal to the
13 Court of Appeals by application only. Certiorari is what
14 I'm trying to say really--really, certiorari.

15 MR. HINSDALE:

16 Yes. We give them a court reporter in District Court
17 and make it a verbatim record. Then he would appeal to the
18 Court of Appeals.

19 JUDGE SMITH:

20 On certiorari rather than by matter of right?

21 MR. HINSDALE:

22 Well, that would be an option. Most of those are not
23 going to go up very far anyway. Once they've got the jury
24 trial, they're happy.

25 JUDGE STANLEY:

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1 Having lived under this judicial system for ashile,
2 what changes would you make personally if you had your
3 choice of changes in the trial court system?

4 MR. HINSDALE:

5 Well, the last answer would be the first thing. Go
6 to trial de novo with a six or seven-man jury in District
7 Court. I think curtailing our rotation would help a little
8 bit because the judge would be able to spend a little more
9 time reading the advance sheet rather than driving home or
10 to the courthouse. That's not a problem you have so I
11 won't dwell on it.

12 JUDGE CALHOUN:

 We have some big circuits.

14 MR. HINSDALE:

15 And then, I think the third thing would be to try to
16 get merit selection for judges. And although I am for it,
17 I recognize it is not the cure-all. I just think it's
18 a little bit better than partisan election.

19 MR. HODGKINS:

 Are your District Courts courts of record?

21 MR. HINSDALE:

22 Yes. On the civil side, they have a reporter and
23 the record is verbatim. On the criminal side, it's a court
24 of record but you have trial de novo.

25 MR. HODGKINS:



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1 How do you pay your magistrates?

2 MR. HINSDALE:

3 Magistrates are paid in accordance with the hours
4 they work and the salaries run from eight to thirteen
5 thousand.

6 JUDGE GUESS:

7 All right. Your court system is set up on a general-
8 ist judge; he tries everything, as you said. Now, the Bar
9 is moving towards specialization. The law seems to be.
10 Now, your system was set up ten or fifteen years ago. Do
11 you see a time when you'll move into specialized judges?

12 MR. HINSDALE:

13 There's no movement underway to go back to specializa-
14 tion and I don't foresee one arising, not in the foresee-
15 able future. I think it would be a mistake. Our District
16 Court Judges can receive specialized training in juvenile
17 matters. And even in traffic court matters. It's unfortu-
18 nate that we do have some districts where none of the
19 judges is particularly sympathetic with juvenile matters.
20 But they're elected and we have no way of getting a judge
21 sympathetic to the juvenile problem on the juvenile bench.
22 But we do encourage them to go to school instate and out
23 of state. And we do hold seminars for them. And in many
24 counties, we do have first-class people who take the job
25 and do an excellent job at being a juvenile court judge.

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1 But if you allow them to specialize, you run the danger
2 that they will be prima donas in a very, narrow speciality.
3 That they'll do their job in twenty-five hours a week and
4 you'll create friction between them and all their other
5 judges on that level who are working a forty or a fifty-
6 hour week. That was the problem in the forties and fif-
7 ties nationwide. The literature shows that there was a
8 great deal of resistance to special judges and we got rid
9 of them pretty much in the sixties and seventies. If the
10 trend is back, it isn't anything new. It's just the cycle
11 repeating itself.

12 JUDGE REASLIEY:

13 Who controls the court reporters? Do they come under
14 the court system in any way?

15 MR. HINSDALE:

16 The Chief Judge or the Senior Judge hires his own
17 reporter under standards set by the Administrative Office.
18 The state pays them and they are allowed to charge, of
19 course, the attorneys for the extra transcript they prepare
20 for them.

21 JUDGE SMITH:

22 What's the average time to get a transcript?

23 MR. HINSDALE:

24 It's an enormous problem. However, our Chief Justice,
25 just ninety days ago, told Superior Court Judges that when



1 a reporter got, say, a hundred and fifty days behind in
2 delivery, that their salary would terminate until they got
3 up again. It's had a marvelous effect.

4 DEAN BEAIRD:

5 In your opinion, what would be the impact if you
6 simply abolish the magistrate and retain the remainder of
7 your system?

8 MR. HINSDALE:

9 You can't do it. You've got to have somebody avail-
10 able around the clock in every county, every town of the
11 state to service the police, the highway patrol and the
12 deputy sheriffs who make the arrests and issue the cita-
13 tions. It would be highly desirable to have a lawyer-
14 judge available to do that. But you're going to have to
15 pay a lawyer-judge fifty-thousand dollars a year to get him
16 to sit in these little stops from midnight Friday to
17 Saturday morning and midnight Saturday to Sunday morning.
18 And you do have to service these people. You just can't
19 lock them up and leave them forever. So we found no alter-
20 native to having a small board judicial official available
21 around the clock. Unfortunately there's no way you can do
22 without it. If you don't have them available, then on Mon-
23 day morning, your jail is going to have three people per
24 bunk and you're going to have chaos.

25 REP. THOMPSON:

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1 When you were doing your deliberations, did you con-
2 sider a one-tier system as opposed to a two-tier system?

3 MR. HINSDALE:

4 Yes, but not very seriously. The literature--unfor-
5 tunately, the one-tier system has become quite common in
6 the last ten years so there wasn't a great deal of it back
7 in the late fifties. I would very seriously consider, if
8 I were voting--and I'm not in the voting business; I'm a
9 professional researcher and draftsman. If I were in the
10 voting business, I would very seriously go after, I think,
11 a one-tier trial system. And I'll tell you why.

12 The number one reason that--it may not be the most
13 important reason but the ones that pops out to me right
14 now, is that we have professional jealousies between our
15 District Court Judges and our Superior Court Judges. Why?
16 District Court Judge tries a drunk driving case and the
17 guy, if he's convicted, appeals where he gets the jury in
18 Superior Court. A court without a jury is not nearly as
19 prestigious as a court with a jury.

20 JUDGE SMITH:

21 That six-man jury, though, would help solve that prob-
22 lem, wouldn't it?

23 MR. HINSDALE:

24 It sure would.

25 JUDGE SMITH:



1 And makint a direct appeal to the Court of Appeals by
2 application of certiorari rather than going to Superior
3 Court?

4 MR. HINSDALE:

5 It would be a big help. It would serve to eliminate
6 the biggest social as well as professional difference in
7 status between the misdemeanor judges and Superior Court
8 Judges--felony court judges. If they're all the same,
9 you'd eliminate a big problem.

10 JUDGE STANLEY:

11 You had the same situation in Illinois and it took
12 them ten years to go from a two-tier to a one-tier system
13 and there was all this jealousy and this sort of thing be-
14 tween judges and so forth. Let me ask you this. Does
15 your magistrate have any authority as far as involuntary
16 mental commitments in emergency situations?

17 MR. HINSDALE:

18 Yes. The involuntary commitment of the mentally ill
19 is handled under a statute just four years old in our state
20 that was written in areponse to the latest Federal case law.
21 The magistrate starts the proceeding by hearing the peti-
22 tioner who must prove that the respondent is mentally ill
23 and dangerous to himself or others. If the magistrate be-
24 lieves the affidavits, he sends the respondent to a local
25 doctor. He doesn't ship them away to an institution. The

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1 local doctor has to also say that he's mentally ill and
2 then he goes to a state institution where he gets a hear-
3 ing before a District Court Judge within ten days. Of
4 course as soon as he gets to the institution, the psychia-
5 trist sees him and it's the psychiatrist's work-up that
6 controls the outcome of the ten-day hearing in District
7 Court. But the magistrate starts it all. And that's an-
8 other reason why you've got to have a magistrate in every
9 city and county because there are thousands and thousands
10 of these cases.

11 JUDGE STANLEY:

12 That's a problem we've got in Georgia because of the
13 fact that your courts are not open twenty-four hours a
14 day and one of the emergency procedures is for taking affi-
15 davits before the Probate Judge. And you also have another
16 alternative of taking them to a physician. But the prob-
17 lem is, frequently, you can't get them there.

18 MR. HINSDALE:

19 Well, the doctors are highly resistant to operating
20 in these cases and you can't blame them because many of
21 them arise at midnight on Friday. The man is crazy with
22 liquor if not anything else. And the DA say, "I've had
23 trouble with him before and I don't want to run him through
24 the court system. Let's see if we can't run him this time
25 through the headshrinkers," and they get the magistrate out

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1 of bad and the magistrate hold the hearing and the Deputy
2 Sheriff takes the respondent off to the state hospital if
3 there isn't a local psychiatric unit available. In many
4 counties, there are. In most counties, there isn't so you
5 may have to take the man a hundred miles to a state mental
6 health facility and the hearing is held at that facility
7 within ten days by a District Court Judge. And we give
8 them state-paid counsel.

9 REP. SNOW:

10 Let's have one or two more questions; then we're going
11 to have to recess for lunch.

12 JUDGE CALHOUN:

13 I want to ask, what are your court reporters paid?

14 Are they on a salary?

15 MR. HINSDALE:

16 Yes, the salary is not impressive because many of
17 them--most of them will make fifty percent in addition in
18 selling transcripts.

19 JUDGE CALHOUN:

20 All right, now. You say the Chief Justice says we're
21 not going to pay them. He has the authority to cut off the
22 pay? Can he make it stick?

23 MR. HINSDALE:

24 Well, it hasn't been tested yet. But I talked to two
25 or three judges just this week who had already cut off the



1 pay of their reporters until they catch up. And then the
2 reporter quits going out and taking depositions and stays
3 with those stenotapes she's got and gets the cases in the
4 lawyer's office so he can perfect his appeal.

5 JUDGE CALHOUN:

6 I want to ask one more question. You mentioned back
7 some time that you had a judicial oversight committee which
8 I assume is somewhat tantamount to our judicial qualifica-
9 tions commission. Is this set up by statute?

10 MR. HINSDALE:

11 We had to amend the Constitution in 1972 to create
12 a Judicial Standards Commission, which is very much like
13 yours as I read the literature that Marty sent me. We have,
14 in the last four year--the Supreme Court has public cen-
15 sored five District Court Judges. The primary reason is
16 ex parte dispositions of criminal cases. And there are
17 two cases pending in which the Judicial Standards Commis-
18 sion has recommended the removal of a District Court Judge.
19 I'll know within sixty days what the Supreme Court Judge
20 is going to do with them.

21 JUDGE CALHOUN:

22 What is the membership of that commission? How is it--
23 how are they selected?

24 MR. HINSDALE:

25 It has seven members. There are two lawyers, two

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1 non-lawyers and two judges. Chief Justice appoints the
2 judges. I drafted the statute, but I've certainly forgot-
3 ten. I'm afraid to say right at the moment. I've got a
4 slip on it. I don't know who appoints the--our standards
5 commission is chaired by a judge of the Court of Appeals.

6 REP. SNOW:

7 Any other questions?

8 MR. COLE:

9 Mr. Chairman, if Ed would address something that you
10 all might be concerned about in your deliberations in re-
11 gard to the jurisdiction of the District Court in this
12 fashion. Civil jurisdiction--misdemeanor jurisdiction has
13 been addressed and criminal jurisdiction in general. North
14 Carolina is one of the state--there are very few--utilizing
15 a two-tier court system which does not have a firm consti-
16 tutional jurisdiction fix for civil matters in the Consti-
17 tution. It's a flexible situation wherein the litigant has
18 a proper docket for filing or proper place for filing and
19 that type thing. I wonder if you would address that from
20 the standpoint of benefits for future deliberations.

21 MR. HINSDALE:

22 Yes. Thank you, BC. Look on the back page of the
23 handout, if you will. District Court, original jurisdic-
24 tion--all civil jurisdiction is all in one pot and you file
25 a civil case and you're in court. And it doesn't matter

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1 which court you're in. You can't be thrown out arbitrar-
2 ily for having filed in the wrong court. Our statute says
3 the proper court for filing a controversy involving five
4 thousand or less is the District Court. If it involves
5 more than that, the proper court is the Superior Court.
6 But proper doesn't mean jurisdiction. And if the Superior
7 Court in a particular county has a backlog of civil cases,
8 the lawyer can file a hundred thousand dollar lawsuit in
9 District Court. He is subject to being transferred back
10 upstairs by the Superior Court Judge if he thinks he's
11 trying to pull a fast one just to judgeshop. But the
12 Superior Court Judge can make that decision and I have--I'm
13 personally familiar with a hundred thousand dollar lawsuits
14 that have been tried in civil court in District Court.

15 The parties don't object and the judge is highly
16 respected. This is not true in every county now. But
17 we've got some good--doggone good District Court Judges
18 that are highly respected. The local lawyers will go to
19 them and they can get on the docket there much quicker than
20 the Superior Court anyway. And the settle their lawsuit or
21 appeal on the record to the Court of Appeals. Likewise, if
22 you want to file a five thousand dollar case in Superior
23 Court, that's all right if the defense attorney doesn't ob-
24 ject and take you before the judge and say, "He's just try-
25 ing to avoid District Court."



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1 JUDGE SMITH:

2 Are you saying that a civil case tried in District
3 Court cannot be appealed to Superior Court; it must go
4 straight to the Court of Appeals?

5 MR. HINSDALE:

6 Yes. It's on the record because you had a reporter.

7 JUDGE SMITH:

8 Only in criminal cases in District Court can you go
9 to Superior Court?

10 MR. HINSDALE:

11 That's right.

12 JUDGE SMITH:

13 That's interesting.

14 MR. HINSDALE:

15 We get maybe ten percent. In each advance sheet I
16 see maybe one or two civil appeals from District Court for
17 the Court of Appeals.

18 JUDGE SMITH:

19 The District Court--you try that without a jury--just
20 before the judge?

21 MR. HINSDALE:

22 No, you can go either way. If he wants a jury, he
23 write--requests a jury on a plea.

24 JUDGE SMITH:

25 That's a twelve-man jury?

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1 MR. HINSDALE:

2 Twelve-man jury. If he doesn't want one and the
3 defendant does, he writes a request for jury on the plead-
4 ing and specifies what issues. He doesn't have to have a
5 jury for every issue in the case.

6 JUDGE CALHOUN:

7 If they do not request, would it be up to the judge
8 whether they get it or not? Suppose--

9 MR. HINSDALE:

10 Well, no. The judge wouldn't send it to jury unless
11 he wanted to use an advisory jury.

12 JUDGE CALHOUN:

13 Suppose they don't request a jury in the pleadings
14 and come up to trial and the lawyer says, "Judge, I just
15 made a mistake. I really wanted the jury"?

16 MR. HINSDALE:

17 It would be within the discretion of the judge to let
18 him do it. Most judges would probably say, no, you had
19 your chance.

20 JUDGE CALHOUN:

21 Is this true in Superior Court also? Do you have to
22 request juries?

23 MR. HINSDALE:

24 No. All sessions of Superior Court are jury sessions.

25 REP. SNOW:

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1 Any further questions? If not, we're in recess until
2 one o'clock.

3 [Whereupon, there followed a recess for lunch.]

4 REP. SNOW:

5 All right. This afternoon, we're very pleased to
6 have Judge Marion Opala with us from Oklahoma. He is
7 presently Judge of the Industrial Claims Court of Oklahoma.
8 He is former head of the Administrative Office of the
9 Courts. And Oklahoma, several years ago, revised their
10 Judicial Article. And I think, Marion, that you can give
11 us a lot of good details as to some of the problems that
12 you encountered and the progress that you've made and some
of the pitfalls that we possibly ought to avoid.

14 JUDGE OPALA:

15 Thank you very much, Mr. Chairman. It's a pleasure
16 to be here. I hope I can give you as crisp and crusty a
17 presentation as my counterpart did this morning from North
18 Carolina without maligning the smelly lower court judges.

19 Otherwise, I'd like to pursue the same format, with
20 your permission, and correct the Chairman, if he would
21 allow me to do so by saying that Oklahoma has had package
22 stores since 1960 but no cocktail lounges. We are allowed
23 to buy liquor but not to drink it.

24 Pursuing the same format, if you'll allow me, I'd
25 like to answer the first question posed by Marty. What



1 motivated the efforts to seek judicial revision? And the
2 answer is, probably just as crispy as that of my friend
3 from North Carolina. We had a judicial corruption scandal
4 affecting three justices of our nine-justice Supreme
5 Court. And it led to widespread public dissatisfaction
6 with what was termed to be the medieval, corruption-ridden
7 judiciary. As a result of it, efforts were made immediate-
8 ly by rather radical reformers to turn over to the Judici-
9 ary a self-government that would include--would have, if
10 successful, included the power to legislate procedure, in-
11 cluding rules of evidence to the exclusion of the legisla-
12 ture and the power to determine judicial appropriations to
13 the exclusions of the legislature as well as the number of
14 judges and where they should sit. And the proponents--the
15 radical proponents of reform circulated what's known in
16 Oklahoma as an "initiative petition." You are probably
17 familiar with the process by which, in many Western states,
18 people can legislate and also propose constitutional revi-
19 sion.

20 REP. SNOW:

21 Like Proposition 13?

22 JUDGE OPALA:

23 Right. Proposition 13 was very prominent on my mind.
24 I'm glad you interjected it. That's the kind of thing the
25 radical reformers initiated and the legislature, quick to

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1 feel threatened by that kind of extensive reform, initiated
2 its own effort to make changes in the Judicial Article.
3 As a result of the changes proposed by the legislature,
4 the new Judicial Article that the reformers wanted was de-
5 feated and the legislative proposal came to be adopted by
6 the people.

7 And we have now a kind of a modified Illinois system
8 which the legislature has given us. Since I did not bring
9 a handout, I would like to call your attention to my
10 scribblings on the board--the green board. And I will try
11 to explain to you as quickly, and hopefully as efficiently
12 as Mr. Hinsdale, about the new jurisdictional structures of
the Oklahoma system.

14 We continued in effect our dual system on appeal in
15 the two top courts. We have retained the Supreme Court
16 with nine justices as our court of last resort for civil
17 appeals only. And we retained in existence the three-judge
18 Court of Criminal Appeals with--which is a court of last
19 resort in criminal cases. But we added to the constitu-
20 tional proviso, which allows the Supreme Court freely to
21 transfer cases between the two courts. In other words,
22 where there is any conflict or any question about which of
23 the two top courts has jurisdiction, the Supreme Court
24 simply decides the question and, as a result of its deci-
25 sion, either retains the appeal or transfers it or enter-



1 tains a transfer from the Court of Criminal Appeals. That
2 eliminates the jurisdictional boundary between the two
3 courts. Anybody can file an appeal and no matter how wrong
4 the court may be in which the appeal is filed, it will land
5 in the proper court.

6 Then, we expanded our general jurisdiction court,
7 known as the District Court, to be an unlimited jurisdic-
8 tion, single-level court. And that court has the power to
9 handle any justiciable matter--civil or criminal, large or
10 small, probate, juvenile or whatnot. The District Court
11 level is the single-level trial court. It has judicial
12 officers of three ranks since we grandfathered in some of
13 the judicial personnel that at the time of the reform sat
14 below the District Court level.

15 We have sixty-eight District Judges, as we call them.
16 One in each county--we have seventy-seven counties; so one
17 in each county--seventy-seven Associate District Judges and
18 forty-eight Special Judges. The forty-eight Special Judges
19 replace some three hundred and forty fulltime and parttime
20 Justices of the Peace. So it took only a handful of full-
21 time judges to replace the justice of the peace system that
22 was just as unmanagable as that in North Carolina, as re-
23 ported to you by Mr. Hinsdale.

24 We didn't know--and never had an accurate inventory
25 or our justices of the peace. But we do know that we had



1 in excess of three hundred and forty.

2 Now, the Associate District Judges represent the
3 grandfathered in county judges--people who primarily
4 labored, before the reform, on the probate jurisdictional
5 level, misdemeanor court, juvenile judges and so on. The
6 sixty-eight District Judges represent the former general
7 jurisdiction judges.

8 Now, this--we have no jurisdictional compartments be-
9 tween those three officers of the District Court--no juris-
10 dictional compartments. The District Judges have manager-
11 ial authority--and that is how they differ from the other
12 two ranks of judges in the District Court. They have the
13 power to supervise, amanagerially, the other judges and
14 they have the power to distribute by assignment the busi-
15 ness of the court. And that makes them different. Aside
16 from that, they are elected in districts, most of which are
17 multi-county districts. Whereas, the Associate District
18 Judges, former county judges, are each elected in one
19 county.

20 The Associate District Judges have the same jurisdic-
21 tion as the District Judges in that they, too, may handle
22 any dispute, large or small, civil or criminal, juvenile,
23 probate or what not. The Special Judges, who replaced the
24 justice of the peace, had no jurisdictional restraints, but
25 only a limit on their statutory authority, which keeps the

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1 system flexible. No one can complain that there was a
2 jurisdictional failure when a Special Judge tried a felon.
3 We say that the Special Judges are under a statutory, as
4 distinguished from jurisdictional authority to act in such
5 cases because that limitation of statutory authority can
6 be waived by the parties when neither of them objects to
7 the Special Judge trying the case or the statutory limita-
8 tion of authority may be waived by the simple expedient
9 of the parties agreeing to having a Special Judge try the
10 case. In the absence of agreement or when there is an ob-
11 jection, the Special Judge is statutorily limited in crim-
12 inal cases to misdemeanors only; in civil cases, to contro-
13 versies with a value of not more than five thousand dollars.

14 I notice in your Constitution you propose to consoli-
15 date the magistrates, the Associate Superior Court Judges
16 and the Superior Court Judges in one single level, but you
17 still recognize jurisdictional boundaries between them. I
18 would strongly counsel you that if you--if it be your
19 pleasure to create a single-tiered system, that you do not
20 perpetuate any jurisdictional distinctions that make the
21 system very inflexible for management purposes. Rather,
22 I would suggest that you simply provide, if you so desire,
23 that some of these judicial officers be under a statutory
24 limitation of authority which could be waived or that you
25 simply provide, as a device more managerially flexible in

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1 my opinion, that the Chief Judge of the Superior Court de-
2 cide these matters by his power of assignment. In other
3 words, if the Chief Judge has an associate or a magistrate
4 who is a capable man or woman, he will be in a better posi-
5 tion to determine whether that associate should or should
6 not handle a certain class of litigation that might other-
7 wise be "beyond his jurisdiction."

8 So I urge you--there's no reform when you perpetuate
9 compartments between judges. You may as well just forget
10 about any kind of reform. Lastly, unlike North Carolina,
11 the urban power was so great in Oklahoma and the Urban
12 League so powerful, that we retained in existence some
13 three hundred and thirty mini city courts--mini city
14 courts. But provided a sweeping limitation of the juris-
15 diction of the city courts. City court cannot handle any
16 matters other than violation of penal city ordinances.
17 They stand limited by the Constitution to handling nothing
18 but violations of city penal ordinances and we dehorned
19 them in this manner.

20 Prior to the reform, some of the city courts could
21 handle state charges in criminal cases and entertain civil
22 disputes within certain limitations in civil cases. There
23 are three hundred and thirty of those mini courts. For
24 lack of a better term, I call them mini courts. By that, I
25 mean a city court which may not impose for violation of a

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1 penal ordinance of a city a higher penalty than thirty
2 days in jail and/or a hundred dollar fine. That limitation,
3 however, applies only to mini city courts staffed by law-
4 yer judges. If there is a mini city court staffed by a
5 non-lawyer judge, fines only may be imposed by such a mini
6 city court. Unfortunately, as you can see on the chart,
7 an appeal from the mini court lies by trial de novo to the
8 single-level District Court.

9 City courts are funded by the city. District Courts,
10 the courts of unlimited jurisdiction, is funded in a manner
11 that I will describe in a moment because it's rather com-
12 plex. Lastly, I want to explain to you the maxi city
13 courts. There are only two of those--one in Oklahoma City
14 and the other one in Tulsa, the two largest cities in
15 Oklahoma.

16 These courts are courts of record. They must be
17 staffed by a fulltime lawyer judge and they may impose
18 penalties for violation of city penal ordinances only, but
19 higher than mini court, up to three hundred dollars in
20 fines and/or ninety days in jail. Appeal from those
21 courts lies directly to the Court of Criminal Appeals on
22 their record.

23 Lastly, I want to explain an institution that is
24 peculiar to Oklahoma and Iowa--an intermediate Court of
25 Appeals that is--civil appeals--that is not even intermedi-



1 ate; that is an animal all of its own. We love it. The
2 judges staffing the court hate it. But generally the
3 agreement is that it's a good institutional design. All
4 of our civil appeals are lodged in the Supreme Court, which
5 is the civil appellate empire. And that Supreme Court de-
6 cides which of the appeals should go--should be farmed
7 out literally to the Court of Appeals and which are of
8 sufficient import to be retained for disposition by the
9 Supreme Court itself. And in this fashion, the Supreme
10 Court decides which cases it will take and decide and which
11 cases, theoretically of less importance, should go to the
12 appellate court.

13
14 There are six judges in the Court of Appeals. They
15 cannot sit in bank as in Georgia. They sit in two panels
16 of three judges. Once a panel decides a case, it cannot
17 be reviewed by that court in bank, but for the review if
18 at all, lies by certiorari in the Supreme Court and five
19 Justices must agree to the review by certiorari. So our
20 Court of Appeals has no jurisdiction. It has only that
21 kind of civil business that the Supreme Court gives it.

22 JUDGE SMITH:

23 I think your judges say they're the highest paid law
24 clerks in America.

25 JUDGE OPALA:

They don't--they hate it. They don't like it and they



1 don't feel that they are really a separate, independent
2 appellate empire. The legislature intended for the Court
3 of Appeals to be no more than a stage. The legislature
4 intended for the Court of Appeals' opinions to be memo-
5 randa only. Of course it didn't work out that way and
6 that proves to you that human institutions never work in
7 action the way they have been drafted on paper by the
8 legislature. The legislature creates only the bones. And
9 when, upon the skeleton, the ligaments, the muscles, the
10 arteries and the flesh get put on, the creature looks pro-
11 bably the very opposite from the skeleton that it had been
12 created for the creature. And our Court of Appeals is an
example--best example of it.

14 Then, funding. We made a terrible mistake by reason
15 of compromise in funding and that keeps haunting us. And
16 that's the reason why, Judge, the Oklahoma reform is still
17 in progress, if indeed it is reform--or implementation, I
18 might say--still in progress. We had a "no new tax" gover-
19 nor at the time this judicial amendment was adopted by the
20 people. Consequently, the legislature could not either in-
21 crease existing revenue sources or create new revenue
22 sources to take care of the additional funding that every-
23 one knew but nobody wanted to publicly admit it would take
24 to fund this new state court system.

25 And they latched upon a device by which they captured

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1 all of the court-generated revenue; they captured all the
2 fines, forfeitures, court costs and fees paid the Clerk
3 of the District Court, provided that all of the operation-
4 al expenses defined by the legislature, item by item, after
5 being paid locally by the Clerk or under the supervision
6 of the judges, be paid from that self-generated revenue
7 and the surplus, to be calculated by a very complex formula,
8 come to Oklahoma City where it is to be deposited in an
9 account out of which the legislature was to appropriate
10 the surplusage needed to fund the entire court system.

11 As a result of this, the newly-created 1968 vintage
12 Oklahoma court system has the following funding. It is
13 salaries, as far as judges are concerned and court re-
14 porters, by the state directly. It is--it derives its
15 operational expenses for the trial court from self-gener-
16 ated revenue and it is housed by the county without the
17 privilege of paying rentals. Instead of rentals and facil-
18 ities fees, as the counterpart of rentals is called in North
19 Carolina, the Oklahoma court system pays to the county for
20 the privilege of using county-provided building facilities
21 its share of the janitorial service expense, its share of
22 the telephone and other utility expense and that's about it.
23 That is the only authorized counterpart of rental paid.
24 Remember this. Once you create a unified court system, you
25 make judges guests in "their courthouses." From the moment

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1 you create a statewide court system, local government
2 finds judges--and rightly so because they're part of a
3 state system--to be guests in their courthouses. And you
4 will be very wise to do something that will give the county
5 government recompense for housing the state judicial
6 system. North Carolina did it by a facility fee. Oklahoma
7 should have done it by rental payments but did it by simply
8 contribution to utility expense and the janitorial service
9 expense.

10 Now, I would like to go on and present to you what I
11 consider, with my tainted perspective as a former admin-
12 istrator to be a far more important aspect of court modern-
13 ization than jurisdictional consolidation, either in a
14 single, double or a tripe-tier system. What I consider to
15 be far more important is the so-called--what is called
16 unification--and a word I despise and prefer to substitute
17 for it--giving the judiciary a managerial organization
18 system; allowing the judiciary to manage itself just as
19 the legislature manages itself through the Speaker and the
20 President Pro Tem, just as the Executive Branch of the
21 government has internal management procedures. A typical,
22 traditional American state Judiciary is not really a de-
23 partment of government. It is but a collection fo scatter-
24 ed institutions. Texas probably exemplifies this collec-
25 tion better than any other state. There, when another

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1 judge is needed, you literally create a new court. The
2 judge and the court are synonymous expressions in tradi-
3 tional, judicial America. Judges are institutions of
4 government, rather than functionaries of government. And
5 if they don't want to talk to each other, they don't have
6 to. They don't have to. They can simply ignore each
7 other, living in the comfort of compartmentalized jurisdic-
8 tion with forum shopping still being licensed in most areas.

9 I think the advantage of reform, far beyond the unifi-
10 cation of jurisdiction, lies in giving judges an opportu-
11 nity to manage their resources and manage their personnel,
12 judicial and supportive personnel, and allowing them the
13 flexibility for management that other departments of the
14 state have long enjoyed. And I submit to you that this
15 kind of management is a very difficult thing. Let me
16 explain to you by concrete example what you are creating
17 when you establish the Judiciary as a branch of the gov-
18 ernment.

19 You in effect make out of the Supreme Court, or what-
20 ever institution manages the Judiciary, a two-headed Hydra.
21 The top court, a judicial institution, and a top bureaucracy.
22 And it takes time and it takes understanding and it takes
23 conceptual, analytical thinking to distinguish. I'll try
24 to give you examples of it. Let's say that you have, as
25 in Oklahoma, a nepotism statute which prohibits the hiring

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1 of kinfolk. And you have a judge who marries his court
2 reporter. The court reporter wants to remain his court
3 reporter. The Chief Justice, or the Supreme Court, as the
4 case might be--the top management agency of the court--
5 Judicial Department must decide, as a managerial, bu-
6 reaucratic decision for us, whether a nepotism law is
7 violated.

8 Now, then, suppose the Chief Justice or the Supreme
9 Court, as the case might be, decides it's violated. And
10 that bureaucratic institution orders that court reporter,
11 being in violation of nepotism law, removed from the pay-
12 roll, a managerial decision, which is justiciable later on
13 when the excluded court reporter challenges that managerial
14 decision in court.

15 So when you create administration, you create a dual-
16 ity of function. On the left side of the ledger, the judi-
17 ciary exercises managerial function that is separate and
18 apart from its adjudicative function. It manages its re-
19 sources, its payroll, its personnel, its money, its equip-
20 ment. And in so doing, it function as any other executive
21 agency or corporate establishment. And then in adjudica-
22 tion, it continues deciding cases, settling disputes in
23 the manner it has done since 1066.

24 I submit to you that it's the addition of the manager-
25 ial function that makes the modernization as meaningful as

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1 the consolidation of jurisdictional levels. The latter
2 part--the managerial aspect of modernization--frequently
3 escapes our attention.

4 To those of your who are legislators, let me say very
5 candidly, yes, you do lose some power. But you pick up
6 more power because while the Judiciary before its modern-
7 ization is independent in some fashion in making its deci-
8 sion, as it should be constitutionally and ideally, and
9 becomes less so dependent on legislative prescription and
10 enactment in managing its internal operation, it becomes
11 wholly dependent on the legislature for funding--wholly
12 dependent on the legislature for funding. And whereas,
13 before such modernization, only one court level, the
14 Superior Court, looks to the legislature for regulation
15 by statute of salaries and maybe a few other things, after
16 the reform, the entire funding or financial survival of
17 the system depends on its good relations with the legisla-
18 ture. So you pick up more power than you lose.

19 JUDGE SMITH:

20 That's the way it is in Georgia now so they wouldn't
21 pick up a thing.

22 JUDGE OPALA:

23 No, sir, they--well, if your magistrates and asso-
24 ciates, as they ultimately will, will be paid by the state,
25 then they will be paid out of legislative appropriations.



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And that's your increased power.

The lobbying--well, I should correct myself for the benefit of some of the judges who would object to that term. The importance of good relations between the organized, managed, judicial department--no longer the scattered judges, but organized, managed department of the state known as the Judiciary and the legislature is of utmost importance in a modernized system. It is a matter of survival; whereas, in an unorganized, traditional American court system, it is not, in my opinion, nearly so important.

JUDGE CALHOUN:

Judge, let me ask you a question. Now, on your three hundred and thirty mini city courts, is that--is that as far as you're going or does your Constitution provide that you can have such other courts as may by law be established?

JUDGE OPALA:

Very good question. No, we prohibit the legislature from creating courts other than those which are enumerated. And we allow the--we empower the legislature to abolish but not create courts.

JUDGE CALHOUN:

Now, you have a lot of rural areas in Oklahoma like we do in Georgia, do you--have you ever gone to any type of concept of regional court set-up? We're required by our

1 Constitution to hold Superior Court in every county at
2 least twice a year, which means you have to maintain a com-
3 plete courthouse set-up, in some counties with less than
4 two thousand people. Do you have that same requirement?

5 JUDGE OPALA:

6 Yes, sir. There is--single-level District Court must,
7 by Constitution, sit in every county of the state. We have
8 a court clerk in every county of the state. The court
9 clerk is still elected. Unfortunately, the court clerk is
10 still a county-paid official, another item of reform that
11 is causing problems. The county would like to transfer
12 that funding responsibility to the state because the court
13 clerk--the county court clerk does--performs no function
14 for the county.

15 JUDGE SMITH:

16 He's not the keeper of the deeds or anything like
17 that?

18 JUDGE OPALA:

19 No, sir.

20 REP. THOMPSON:

21 Judge, I find it a little abhorrent that the same
22 conduct receives different punishment according to which
23 court it goes into out there. If it's your mini court,
24 your maxi court, or your mini court with a non-lawyer judge,
25 it receives one punishment. How do you get away with that?

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JUDGE OPALA:

I think it's--I agree with you, sir, that it's not only abhorrent, but constitutionally non-fragrant.

REP. THOMPSON:

You're right. It does stink.

JUDGE OPALA:

And the power--you cannot imagine how powerful the Urban League is in Oklahoma--I mean the Municipal League--its League of Cities. They are so powerful that we've been trying for ten years now to do away with with those city-funded courts and transfer their business, as it was done in Illinois and North Carolina, to the District Court level and even allow them all of the fines; remit all the amounts we collect in fines and we cannot accomplish that because the cities want their courts and their judges.

REP. THOMPSON:

Well if I can make this remark--I don't think I could go along with any system where we left that type of thing hanging.

JUDGE OPALA:

I agree absolutely. I think it's not only abhorrent; it's absolutely--two features, there is no equal penalty imposed which I think, if it isn't now, it should be constitutionally mandated. And lastly, it is wasteful because appeals lie by trial de novo. And a lot of time is

1 consumed in the District Court retrying those cases.

2 JUDGE STANLEY:

3 Judge, you speak of the management aspect as being so
4 important. How did you sell that concept to a county
5 court, for example, that's been independent and administer-
6 ed to itself? How can you sell them on that real gain to
7 them to be a part of the system?

8 JUDGE OPALA:

9 Let me be as candid as I can and as crisp as my
10 colleague here from North Carolina. The reformers smuggled
11 it in. The people never realized what was going to hit
12 them. Because at that time the managerial--the managerial
13 aspect of this reform smuggled in the Constitution under
14 administrative authority verbal label were never empha-
15 sized during the campaign that led to the adoption of it.
16 I doubt that anybody knew what administrative authority of
17 the Supreme Court meant. I doubt that they still do. We
18 are, to this day, having difficulty explaining, much less
19 making people buy it. And I submit to you that if you--if
20 it be your pleasure to modernize your system so as to cre-
21 ate management aspect, one of the most important things is
22 education. You can reform a system on paper and it will
23 fail unless prior to implementation you reform the mind
24 that will be functioning within the framework of that
25 system. And that is where we still have difficulties.

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1 Our judges do not accept the management concept and Ms.
2 Wilson is entirely familiar--she was living in Oklahoma
3 at the time of the reform and probably knows some of the
4 difficulties we had at the time and are continuously having
5 simply because judges traditionally feel, towards all
6 other judges, whether on the same jurisdictional level or
7 another level, as peers. And are not very eager to accept
8 managerial responsibility. That's another thing that I
9 should warn you about. Creating a management model for
10 the Georgia system will not mean that you will have manage-
11 ment. Judges are the most reluctant people in the world
12 to assume managerial authority over other judges because
13 it is so repugnant to their thinking. They think of
14 judges as being their peers. That's number one. Number
15 two, in management, the choice of alternatives, unlike in
16 adjudication, is is limitless. In adjudication, usually
17 thought not always, you have a choice of two alternatives,
18 between two arguing lawyers, one of whom wins; the other
19 one loses. And to hear their argument, you can decide on
20 the basis of an adversary process. In management, your
21 choice of alternatives may be literally illimitable. And
22 judges don't feel comfortable in the management process.

23 JUDGE SMITH:

24 Well, you're saying the same thing the Carolina man
25 said this morning in this statement you just got through

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1 with. You'd better put it on paper--what you want to do--
2 and sell it before you pass it.

3 JUDGE OPALA:

4 Absolutely. And that's why I find your approach in
5 the proposed constitutional amendment to be perfect. You
6 didn't put much in the Constitution about administration
7 except that it would be under the supervision of the Su-
8 preme Court. I like this. But before you sell it, you
9 should have implementing legislation that everybody agrees
10 on and everybody knows what to expect from the--

11 JUDGE SMITH:

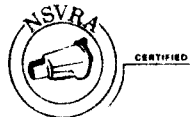
12 Otherwise, you're going to have a Constitution and
13 have nothing to go along with it?

14 JUDGE OPALA:

15 You have unreformed judicial minds working within the
16 framework of a modern managerial model they don't understand
17 and will not implement, either by assumption of authority
18 or subordination to the managerial model. You'll have both
19 sides, the subordinates and the managerial superiors un-
20 willing to accept their responsibility.

21 Now, the concept of being accountable in any way by
22 one judge to another judge is abhorrent to most judges.
23 Or at least, alien. And that's the kind of a concept you
24 have to sell before you can get the cooperation between the
25 judges that is essential to create a judicial department

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1 of government, which you don't have and we don't have
2 except on paper. Judicial department of government means
3 that the judiciary manages itself internally. We still--
4 six, seven, ten years after the reform--we have judges
5 going to the legislature trying to solve their internal
6 squabbles.

7 JUDGE CALHOUN:

8 Now, Judge, you say that this really came out of the
9 legislature?

10 JUDGE OPALA:

11 Yes.

12 JUDGE CALHOUN:

13 Because of some citizen's movement. Did it follow
14 the normal legislative process? Did the legislature
15 appoint a study committee or study commission; work it out
16 there and then before the various standing committees of
17 the legislature?

18 JUDGE OPALA:

19 Yes, sir.

20 JUDGE CALHOUN:

21 Was there any citizen input? Public hearing and
22 things of this nature?

23 JUDGE OPALA:

24 Yes, sir. But the concept of management was so new
25 that nobody clearly understood it and I submit to you,



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1 Judge, that the concept of management and the dichotomy of
2 managerial and adjudicative duties within the judiciary
3 is so very difficult that, to this very day, people don't
4 realize what they're going to have; what's sprung on them;
5 what new accountability and responsibility it sprung on
6 them when you organize judges into a department of the
7 state.

8 **REP. SNOW:**

9 Of course y'all had to do something rather rapidly
10 when you did it because most of your judges were either
11 under indictment or in jail.

12 **JUDGE OPALA:**

13 Right. And, secondly, we had to do it rapidly be-
14 cause the legislature was not about to yield to the radical
15 reformers who would have grabbed the power to legislate
16 procedure to the exclusion of the legislature to determine
17 the number of judges and the location of their service to
18 the exclusion of the legislature. So it was a radical
19 reform proposal that caused the process to be accelerated.

20 **DEAN BEAIRD:**

21 Where do administrative decision from state regula-
22 tory agencies enter the court system?

23 **JUDGE OPALA:**

24 Most of them--we have the APA, Administrative Proce-
25 dures Act, which provides--and most agencies are under it--

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1 that appeals be on the record to the District Court. And
2 most administrative appeals enter the court system on the
3 record in the District Court---some still by Constitution.
4 Utility rate appeal, by State Constitution unamended, as
5 in Carolina, enter the court system at the Supreme Court
6 level.

7 Now, I must add this. It is the Supreme Court and
8 not the Court of Criminal Appeals that is the top court
9 management agency under our constitutional management con-
10 cept. The Court of Criminal Appeals became jurisdiction-
11 ally independent, as always, but managerially subordinate
12 to the Supreme Court.

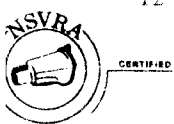
13
14
15
16
17 **JUDGE BEASLEY:**

14 How would you recommend we go about this educational
15 process so that we don't face the same thing that you all
16 did with regard to management?

17 **JUDGE OPALA:**

18 I think you sell it by--by a series of educational
19 meetings in which the day-to-day nuts and bolts aspect of
20 management and how it affects interaction of judges,
21 superior and subordinate, is explained. And the concept
22 of a self-governing judiciary sold on the idea that it
23 makes them a true branch of the government. Unless you
24 succeed in that, your management model will fail. You have
25 to sell to the judges the idea that they should recognize

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1 one of them as managerially superior.

2 JUDGE CALHOUN:

3 Is the judicial budget prepared for all courts by the
4 Supreme Court?

5 JUDGE OPALA:

6 Yes, sir.

7 JUDGE CALHOUN:

8 And submitted, I assume, to the Governor and then to
9 the legislature?

10 JUDGE OPALA:

11 No, sir. The budget is submitted technically to the
12 Governor. In fact, it's to the legislature.

13 JUDGE CALHOUN:

14 All right. And does the legislature--is there any
15 provisions about its adoption? Is it just like any other
16 budget or do they have to have more than a majority to do
17 anything with it?

18 JUDGE OPALA:

19 No, sir. It's just like any other budget except that
20 the entire judiciary is a single budgetary unit.

21 DEAN BEAIRD:

22 I just wanted to ask---I think you explained this
23 earlier and I'm not sure that I understood it. You have
24 sixty-eight District Judges; seventy-seven Associate Dis-
25 trict Judge; forty-eight Special Judges, all members of the

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1 District Court?

2 JUDGE OPALA:

3 Well, they are judicial officers staffing a single-
4 level District Court. That's the jargon we use.

5 DEAN BEAIRD:

6 Did I understand you correctly, though, when I believe
7 you said any one of those judges could hear any case with-
8 in the jurisdiction of the District Court?

9 JUDGE OPALA:

10 Yes. They sit on a court--all three ranks of judges
11 sit on a court of unlimited jurisdiction. So they are
12 jurisdictionally not limited. But there is, on the Special
13 Judges only, a simple statutory limitation of authority
14 that is waivable. As you and I know, jurisdiction is a
15 non-waivable concept. You cannot--if a judge is under a
16 jurisdictional limitation, the judgment in excess of juris-
17 diction is void on the face of the judgment rule. Whereas,
18 in order to avoid jurisdictional pitfalls and make this
19 model managerially flexible do you can use the entire man-
20 power, we destroy jurisdictional compartments.

21 DEAN BEAIRD:

22 So that any one of those judges would handle juvenile
23 matters, probate matters--

24 JUDGE OPALA:

25 Yes, sir. Absolute. Absolutely.

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1 MR. BRAUN:

2 You said that, I gather, the Associate District Judges
3 were those that were grandfathered in?

4 JUDGE OPALA:

5 Correct, sir.

6 MR. BRAUN:

7 Do you--does the system adopted in Oklahoma antici-
8 pate a continuation of that number of judges or, as the
9 grandfather people are lost by attrition, are they going
10 to be lost permanently?

11 JUDGE OPALA:

12 I'm sorry. I should have dealt with that question.

13 It's an excellent question. It was mentioned earlier this
14 morning that Illinois, the state from whom we took this
15 model, eliminated the middle rank--the associate rank. Now,
16 after about ten or twelve years, we don't have a constitu-
17 tional provision for attrition. We require, by Constitu-
18 tion--and this was put in as a matter of compromise--that
19 there be at least one Associate Judge in every county of
20 the state. If I were doing it today--and I counsel you to
21 do it that way--should you adopt the Associate Superior
22 Court Judge concept, I would provide a time limit at which
23 that rank will disappear from the system. An ideal single-
24 tier trial court does not require more than judges of two
25 ranks, the judge of general or unlimited jurisdiction and

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1 his aide, the magistrate, with flexible limitations of
2 authority so that you avoid jurisdictional compartments.
3 So my suggestion would be to amend the text of the Consti-
4 tution you now have to provide a terminal date for phase-
5 out of the Associates--ten years, twenty years, whatnot.

6 DEAN BEAIRD:

7 The work of the magistrate, is that performed also by
8 that group?

9 JUDGE OPALA:

10 I was listening with a great deal of interest to Mr.
11 Hinsdale this morning. We did not find any necessity for
12 lay magistrates scattered all over the state to replace the
13 three hundred and forty justices of the peace. The magis-
14 trates are really judges. The Special Judges are really
15 judges. They handle civil and criminal cases in addition
16 to issuing warrants and holding preliminary hearings in
17 felony cases. They try civil and criminal cases. We don't
18 consider them a counterpart of the North Carolina or Eng-
19 lish magistrate who does little more than issue warrants.
20 So, to that extent, our Special Judges are more than magis-
21 trates and they are full-fledged judicial officers.

22 JUDGE CALHOUN:

23 You find forty-eight a sufficient number to handle
24 seventy-seven counties?

25 JUDGE OPALA:

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1 Yes, sir. We find--I was amazed that North Carolina
2 needed these people in such great numbers to issue war-
3 rants. I know that in England the same system is used to
4 this day--as system of lay magistrates of whom there is a
5 tremendous number. And they do little more than issue
6 search warrants and arrest warrants.

7 JUDGE CALHOUN:

8 Do your Special Judges do that--hold preliminary
9 hearings in addition to presiding--

10 JUDGE OPALA:

11 Yes, sir. And there is not really--you'll find that
12 the justices of the peace did not do all that much busi-
13 ness. You'll find that a handful of Special Judges or
14 magistrates can effectively replace the justices of the
15 peace.

16 JUDGE CALHOUN:

17 Do they conduct arraignments?

18 JUDGE OPALA:

19 Yes, sir.

20 JUDGE CALHOUN:

21 I mean persons arrested; required by law to be taken
22 before a magistrate within twenty-four hours, could he
23 find one of these people somewhere?

24 JUDGE OPALA:

25 Yes, sir. And we find it very easy to work under that

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1 system.

2 MR. OLSEN:

3 Can your city judges issue warrants?

4 JUDGE OPALA:

5 Only city ones. In other words, city judges are con-
6 fined constitutionally to city law. They can have nothing
7 to do with state law.

8 MR. BRAUN:

9 Even if a state law is violated within the corporate
10 bounds?

11 JUDGE OPALA:

12 That is correct.

13 MR. BRAUN:

14 Do you differentiate between the judges in terms of
15 salaries?

16 JUDGE OPALA:

17 Yes, we do. And speaking of jealousies and rivalries,
18 it is productive of bad relations within the courtroom. It
19 generates odium, unnecessary friction and, if you're going
20 to have associates with a term of four years and Superior
21 Court Judges with a term of six years, you'll find that
22 they'll be running--that associates will run against Super-
23 ior Court Judges and that is not a healthy system to have.
24 I would, if I were counseling you--and forgive me; I didn't
25 come here to counsel you but simply to share with you the

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1 Oklahoma experience--but if I were suggesting a constitu-
2 tional amendment, I would consider the associate to be a
3 stopgap measure to last a certain limited period of time
4 between the reform and the ultimate implementation.

5 JUDGE CALHOUN:

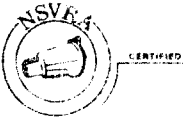
6 Would you tell us something about your educational
7 Process for judges? Do you have anything written into the
8 law of how is it handled?

9 JUDGE OPALA:

10 We don't have anything written into the law. The
11 Supreme Court, in the exercise of its powers as the top
12 management agency, implemented an extensive judicial educa-
13 tion program in 1968, at the time of the modernization.
14 We have sent, percentagewise, more judges to Reno than any
15 other state. We get ample state fund for judicial educa-
16 tion. We use some Federal funds but not as much as North
17 Carolina. And I nuderstand now it's all state-funded.
18 Aside from sending judges to both the basic course and
19 Graduate courses at Reno. We have at least two statewide
20 trial judge meetings per year at which the educational pro-
21 gram lasts about three and a half days.

22 We utilize the facilities of the state university law
23 school in most of that. Occasionally, we invite guest
24 speakers from out of state and pay them out of our funds.

25 MR. GREENE:



1 I was amazed at Mr. Hinsdale's emphasis on the need--
2 the great need for these magistrates after midnight on
3 Friday night for the deputy sheriffs and the state patrol.

4 JUDGE OPALA:

5 Yes, sir. I was amazed by it too. We don't find
6 that to be a problem at all in Oklahoma and we feel that
7 we are adequately staffed for judicial warrant-issuing
8 capacity. Of course the District Judges and the Associate
9 District Judges also have the power to issue warrants. So
10 you really have a hundred and eighty-some people who are
11 potential warrant-issuers.

12 MR. GREENE:

13 And could do it, I guess, on twenty-four hour basis
14 if it were needed?

15 JUDGE OPALA:

16 If it was needed. But I don't know of too many judges
17 who are bothered at night or during the weekend except on
18 occasions.

19 MR. GREENE:

20 The only two occasions I know of is the circuit war-
21 rant problem which comes up occasionally, you know, and
22 they feel under a great deal of pressure to make a search
23 adn this mental situation that occurs to some extent.
24 That's the only two I can think of. I just don't think
25 that's that much of a factor.

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1 JUDGE OPALA:

2 That's correct, sir. Now, I would like to tell you
3 about the three levels of management we have. The Supreme
4 Court, under the Constitution, is the top management author-
5 ity and the last word on management. Because of human
6 elements involved, the Supreme Court early in the game, as
7 early as 1971, decided that the job of managing the entire
8 system should ideally involve participation by those who
9 are to be managed. So the court convoked on its own an
10 assembly of presiding judges, which is assembly of region-
11 al supervisors. We don't have the conflict of a Chief
12 Judge of the Circuit as you do in the Superior Court.

13 We have the state divided into nine branch offices.
14 Each one is managed for the Supreme Court as a branch
15 office or territorial office by a judicial officer who must
16 be a District Judge and that is a management region. So
17 the chiefs of the nine management regions constitute an
18 assembly of managers on the intermediate management level.
19 And each county has a chief judge. So we have three man-
20 agement levels. The Supreme Court at the top. At the top,
21 the Assembly of Presiding Judges and individual Presiding
22 Judges as an intermediate level and the Chief Judge in
23 every county. That Chief Judge also must be a District
24 Judge. He may not be an Associate or Spacial Judge. So
25 in every county, a citizen can point to the top dog among

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the judges. In every management area, there is a top judicial officer in charge of management. And, whereas in a traditional system, if you find a county in which a case lingers on the docket for years, you know, and will not be set for jury trial, in a traditional system, you have to go to the Supreme Court or the Court of Appeals for a Writ of Mandamus to require the judge to put the case on the docket. In a system that is managed, you go to the Chief Judge in the county or if you want to avoid him, you go to the Regional Manager--the Presiding Judge of the management region. And you say, "Joe Doe won't put this case on the docket." And one telephone call is usually sufficient to get the case, without a Writ of Mandamus and many hours of lawyers' time, to get the case put on the docket.

JUDGE CALHOUN:

This is by court rule, not by statute?

JUDGE OPALA:

No, sir, this is by--management is all by court rule.

JUDGE CALHOUN:

We have the skeleton of a similar system in Georgia. I don't know whether you're familiar with it or not--what we call judicial administrative district--ten districts, headed by an administrative judge elected by the judges in that district. But it's--I am the administrative judge from our district, but I don't have any authority to tell Judge



1 Culpepper--I might tell him something to do down there
2 and, George, what would he do?

3 JUDGE SMITH:

4 He would raise more sand than a pegleg man at a drunk
5 wedding.

6 JUDGE CALHOUN:

7 But at any rate, does the Supreme Court delegate the
8 authority to the management supervisor, you say, or region-
9 al supervisor and he does have the power to direct that it
10 be done?

11 JUDGE OPALA:

12 The regional supervisor is a constitutional officer.
13 You see, the management was placed into the Constitution--
14 the management concept.

15 JUDGE CALHOUN:

16 All right. Now, each one of these regional offices,
17 do they actually have an office, a staff set up within the
18 region to handle the details and so forth?

19 JUDGE OPALA:

20 Yes, sir. They have a minimal staff. And the system
21 is not working as well as it should because the regional
22 management is elected by his subordinates. And of course
23 he wants to hold his office at the pleasure of the subor-
24 dinates as long as he can. Usually he is extremely loathe
25 to rub anybody the wrong way.

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1 JUDGE CALHOUN:

2 Well, our--we have a statute that sets up this admin-
3 istrative district and it specifically says that the ad-
4 ministrative judge shall not be relieved of any of his
5 other judicial responsibilities. It's really not that good
6 a job.

7 JUDGE OPALA:

8 And it doesn't pay anything?

9 JUDGE CALHOUN:

10 No, it doesn't pay at all.

11 JUDGE STANLEY:

12 What is the pay differential in Oklahoma between, say,
13 the Supreme Court and the lowest echelon?

14 JUDGE OPALA:

15 The Supreme Court Justices receive very close to
16 forty thousand. I would say about four hundred dollars
17 less than forty thousand; you may say forty. The judges
18 of the District Court--the District Judges, \$33,500. The
19 differential is 6.5 thousand dollars. The Court of Appeals
20 Judges--the Court of Criminal Appeals is on the same salary
21 level as the Supreme Court. The Court of Appeals is at the
22 \$36,500 level. It's between the District Judge and--which
23 you call the Superior Court Judge--and the Supreme Court.

24 JUDGE STANLEY:

25 What about the other two tiers of your trial court,

though, sir?

JUDGE OPALA:

Those--the Special Judge, which is probably a counter-
part of your magistrate, receives a salary of \$22,500.
And the Associate District Judges are on a pay differential
that is based on the population of the county. And it is
all the way from \$22,500 to, I believe, \$30,000, depending
on the population. It's a bad approach to salary manage-
ment and it's another convincing factor in my opinion that
this intermediate level should be never more than a stopgap
measure. Should have a cutoff date in the Constitution.
Otherwise, it's just an unnecessary tier in the judicial
system that causes problems in internal management and in
convincing the legislature that that tier should be ade-
quately salaried. So often, the legislators say, well, we
grandfathered them in. I don't know that they're neces-
sary. In other words, you depreciate that tier of judges,
much to the detriment of the entire system unless you put
in a cutoff date--termination date for that stopgap measure
in the Constitution itself.

MR. HODGKINS:

Do you mandate how much the city judges make and the
county clerks make? Does the state do that or is it set
by the individual--

JUDGE OPALA:



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The salaries of the court clerks in the seventy-seven counties is fixed by a formula across the board for all county officers that is based on gross valuation in the county and the population. It's a mixed formula.

JUDGE BEASLEY:

Valuation of what?

JUDGE OPALA:

Property valuation. Proposition 13-type valuation. Ad valorem tax. Total valuation for tax purposes.

JUDGE BEASLEY:

So you have rich clerks in rich counties.

JUDGE OPALA:

We have clerks that are rolling in dough and clerks that are not doing so well. Really we have not completed our modernization; we have just moved toward it.

JUDGE CALHOUN:

Do you have available or can you make available to Marty so he can distribute it your actual--the actual amendment which was adopted in more--I'd be interested in the actual court rules of the Supreme Court.

JUDGE OPALA:

Yes, sir. I'll be happy to send to Marty both the Judicial Article as amended and the rules on administration.

MR. GREENE:

Comment, again, on your non-lawyer judges. I heard



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1 you--it was mentioned but I didn't--

2 JUDGE OPALA:

3 The non-lawyer judges, all of them are on the mini
4 city court level. If there be a non-lawyer judge of a
5 mini city court, his jurisdiction in punishing for viola-
6 tion of penal ordinances of the city, is--he fines
7 thirty-five dollars only. That is all that a non-lawyer
8 city judge can impose.

9 MR. GREENE:

10 I believe you already said none of them have any
11 state jurisdiction, only jurisdiction for city ordinances?

12 JUDGE OPALA:

13 Correct, sir.

14 JUDGE BEASLEY:

15 Is there any of this system that particularly---that
16 the people of the state have riled up against or are dis-
17 grunted about?

18 JUDGE OPALA:

19 Back in '68 or at present?

20 JUDGE BEASLEY:

21 Now. Now that you've used it for a while. Is there
22 any part of it that--

23 JUDGE OPALA:

24 Yes. I think that the most sensitive aspect of
25 modernization is to afford ready and easy access to the

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small claims and tenant eviction divisions. As long as the landlord can have easy access for forcible entry and unlawful detainment and get their eviction suit filed and processed at a very low court cost, as long as people can litigate without lawyers small claims which we define at six hundred dollars, I think the system does not arouse public disapprobation. As far as lawyers are concerned, I think most lawyers find a great deal of advantage in a flexible, modern system. And if for no other reason, it is because in a complicated system you have to really know the ropes to find out where to go to file your lawsuit. And at times the jurisdictional boundaries are blurred. Then--and lawyers have to spend countless hours researching the law.

Under a system such as ours, the greenest of lawyers fresh out of law school, the day after admission to the Bar, can go to the District Court Clerk's office; file a lawsuit and be as stupid about it as possible. If he has a probate case and mislabels it as, let's say, divorce case--and some of them are that stupid--nothing can happen. Nothing. The judge will simply order the clerk to transfer it from the wrong docket to the right docket. There are no jurisdictional limitations; no constraints. He is in court, however stupid he is. So lawyers love it.

Now, there is another reason why judges like this

1 system. Take the Supreme Court of Oklahoma before this
2 modernization. It spent, on the average, fifteen to
3 twenty percent of its time determining jurisdictional dis-
4 putes--boundaries between courts, especially quiet title
5 versus probate. When can you quiet title to land? When
6 the deceased died only four months before its institution.
7 This kind of medieval nonsense; I call it medieval non-
8 sense.

9 JUDGE BEASLEY:

10 Do you allow lawyers in your small claims division?

11 JUDGE OPALA:

12 There are no--we allow lawyers in the small claims
13 division. But we require judges to handle those disputes
14 without lawyers if there aren't any. The other aspect--
15 the Supreme Court is spending no time on jurisdictional
16 boundaries.

17 JUDGE CALHOUN:

18 Any de novo--if you get before a Special Judge in a
19 District Court, of course you have--if it's a jury issue,
20 you have a jury there just like you would if you had a
21 regular District Judge?

22 JUDGE OPALA:

23 Yes, sir. Mr. Hinsdale explained that--in Oklahoma
24 it's very simple. If you have a misdemeanor case, however
25 petty crime, you're entitled to a six-person jury in the

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1 District Court--and in all likelihood, it's the Special
2 Judge who will be your trial judge. But any one of those
3 three ranks of officers can try it. So all trial--all
4 trials are on the District Court level. There is no
5 appeal by trial de novo from any case tried on the Dis-
6 trict Court level.

7 JUDGE CALHOUN:

8 Then your Constitution does not require a twelve-
9 person jury?

10 JUDGE OPALA:

11 No, not in misdemeanors and not in disputes in which
12 the value in litigation does not exceed five thousand
13 dollars.

14 JUDGE CALHOUN:

15 Do you require a unanimous verdict in all cases?

16 JUDGE OPALA:

17 In felonies, we require unanimous verdict; three-
18 fourths in civil cases.

19 JUDGE CALHOUN:

20 This is in the Constitution?

21 JUDGE OPALA:

22 That is--yes, sir. All of this. Also the number of
23 preemptory challenges in civil and criminal cases is in the
24 Constitution.

25 JUDGE CALHOUN:



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How many do you have?

JUDGE OPALA:

Preemptory challenges in capital cases, nine; in felony cases, five; in civil cases, three, and in misdemeanors, three.

MS. WILSON:

Do you think it should be in the Constitution?

JUDGE OPALA:

No, not necessarily. But when I see decision from the U. S. Supreme Court like in Williams versus Florida in this crazy thing they decided in Oregon, perhaps, yes. Because I think the United States Supreme Court has gone a long ways toward destroying trial by jury under the Federal Constitution by not requiring unanimous verdicts on felonies and by allowing, really, an institution as a one-man criminal jury--felony jury. So the Federal Constitution gives us no protection and I think, therefore, the state should.

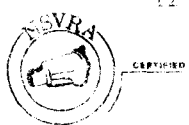
REP. SNOW:

Are there other questions? [No response.] Judge, we appreciate very much your being with us this afternoon, sir. You've been very helpful.

JUDGE OPALA:

Thank you. The pleasure was mine.

REP. SNOW:



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1 And very colorful too.

2 JUDGE OPALA:

3 As much as Mr. Hinsdale. Thank you.

4 REP. SNOW:

5 I have passed out a memorandum from Judge Beasley.
6 It's some recommendations that she had made. She suggest
7 that we possibly hear from some additional states also.
8 How is your feeling on that? Do you find these to be help-
9 ful enough to warrant some additional?

10 JUDGE CALHOUN:

11 I think they're very helpful myself, however I would
12 like to see the actual statute and the actual rules so that
13 we really could have some time to look at them and digest
14 them. And I guess Marty can get them for us.

15 REP. SNOW:

16 Can you handle that for us, Marty, and get some of
17 those before the next meeting?

18 MR. HODGKINS:

19 [Indicating affirmative response.]

20 JUDGE CALHOUN:

21 I believe I suggested a moment ago, Wayne--it seems
22 to me that it would be very beneficial to every member of
23 the committee if we could get Marty or someone else to may-
24 be prepare a digest setting forth briefly what's been done
25 in the other states--the ones we've heard from or some

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1 maybe we haven't heard from if this is available. Now--
2 Bo Cole isn't here now, but the National Center for State
3 Courts may already have this; I don't know. But I've
4 never seen it.

5 MR. HODGKINS:

6 What do you mean by--specifically, Judge?

7 JUDGE CALHOUN:

8 I mean specifically, a brief description of the Ill-
9 inois system and the Oklahoma system, Kentucky system and
10 so forth.

11 MR. HODGKINS:

12 States who have actually revised--

13 JUDGE CALHOUN:

14 Right. Within the last ten years, say.

15 JUDGE BEASLEY:

16 I think having these gentlemen come is awfully help-
17 ful because it becomes alive then and you can understand
18 better what they've gone through and get through recommenda-
19 tions of not only what they've done, but what they would do
20 differently. That part of it to me is the crux of it.
21 And if we can learn from their experience, not just what
22 they came up with in black and white.

23 JUDGE CALHOUN:

24 Dorothy, you've got two states named there, Florida
25 and South Carolina. I know we're contiguous to them. I

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1 think maybe one of them, we should have. But I think we
2 need to get out of the Southeast too. Now, we did Okla-
3 homa. But I'd like to hear from Illinois.

4 JUDGE BEASLEY:

5 That's all right. I'm just suggesting we hear from
6 more. If you want to go up North, don't say I said so.

7 REP. SNOW:

8 Maybe we ought to just go up there. Check on those
9 three--Florida, South Carolina and Illinois. Check on
10 Illinois first and if we can get someone--I think it would
11 be good for us to get someone, though, outside of the
12 Southeast and see what they are doing.

13 MR. DROLET:

14 The only thing that cuts against that from my own
15 experience is, I don't think Illinois' experience up there
16 is going to be as helpful as, for example, North Carolina's
17 was. I noted that coming out in Oklahoma's--Oklahoma is
18 like Illinois' and the law previously in Illinois lent it-
19 self to some of the revisions that they did up there. For
20 example, they didn't need JP's in Illinois because arrest
21 is by complaint in Illinois. When a wife gets beaten up by
22 a husband or something on a weekend, you just sign a com-
23 plaint and the person is arrested. So you don't need the
24 JP to put a person in jail. And I noticed they have that
25 in Oklahoma apparently also. So that affected the whole



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1 revision as far as whether or not they needed twenty-four
2 hour a day JP's. Well, North Carolina and Georgia are
3 similar apparently in historic framework of the judicial
4 system and authority and so forth and we have had JP's and
5 have not had arrest by complaint. And I'm not sure it
6 will really help us more to have Illinois or not.

7 REP. SNOW:

8 Well, you brought up a good point. I wasn't aware of
9 all this, Joe. We needed someone with your expertise pre-
10 sent to tell us.

11 MR. DROLET:

12 Plus I've practiced in Illinois. It isn't all that
13 great a system.

14 REP. SNOW:

15 Just any other state would be all right except Ill-
16 inois?

17 MR. DROLET:

18 No. Everybody looks at Illinois as being a classic
19 example of revision and--

20 REP. SNOW:

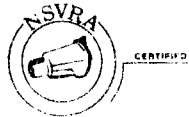
21 Well, everybody that's been here has mentioned it.

22 JUDGE STANLEY:

23 Mr. Chairman, I'd still like to recommend us hearing
24 from Florida.

25 REP. SNOW:

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1 All right. Florida and some state other than Illin-
2 ois.

3 JUDGE BEASLEY:

4 It wouldn't cost much to get somebody from South
5 Carolina; that's not very far away.

6 REP. SNOW:

7 Check Illinois, Florida and South Carolina and whoever
8 we can get here, we'll get them. Unless y'all know another
9 state outside the South that would be better. Do you have
10 a suggestion, Joe?

11 MR. DROLET:

12 No. Illinois is as good as any. It's just that I
13 think the analogy of a state like North Carolina, like
14 we've heard, is much closer and much more useful. I found
15 it more useful than I did Oklahoma because they--Oklahoma
16 was starting from a different place than we are.

17 JUDGE BEASLEY:

18 Wayne, you might want to consider New Jersey. That
19 was the forerunner of all reform and particular with regard
20 to administrative reform. And they're just ninety miles
21 down the road beyond what we are and we kind of see the
22 other extreme in a way if you want to do that. The person
23 I would suggest is Arthur Simpson. He was a judge and now
24 he's administrative chief of courts. He was a trial judge
25 and he's supposed to be very excellent in this particular

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1 area.

2 REP. SNOW:

3 Can we meet the Friday before Independence Day? Is
4 that a bad day?

5 JUDGE SMITH:

6 I'll be here. I was just thinking, you sure are
7 asking for trouble that day.

8 REP. SNOW:

9 June 30th? We need to get away earlier that day for
10 sure because of the traffic and getting out of Atlanta.
11 Okay. Ten o'clock then.

12 DEAN BEAIRD:

13 Mr. Chairman, I would like to reiterate what Judge
14 Calhoun said. I think it would be very helpful to have
15 the staff or if the staff needs some assistance, maybe
16 some can be provided.

17 REP. SNOW:

18 Can you help us some on that, Dean? Can we work with
19 some of the folks over there on that, Marty?

20 DEAN BEAIRD:

21 We'll be glad to help. I think it would be good to
22 get all this crystallized. For me, the issues are begin-
23 ning to come forth and I pretty well can anticipate what
24 people are going to say. I'm beginning to see, I think---

25 REP. SNOW:

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1 It is. It's clearing up some.

2 DEAN BRAIRD:

3 I think we're going to be to that point where we're
4 going to have to fish or cut bait ourselves on these
5 things.

6 REP. SNOW:

7 The document itself is really worthless to us unless
8 we've got the accompanying bills, the legislation, where
9 we can see it just exactly like the Judge said, on paper
10 and--

11 JUDGE SMITH:

12 If we can't show the folks what it's going to look
13 like when we get it passed, we ain't going to get anything
14 through anywhere.

15 REP. SNOW:

16 Well, Joe and Adam realize that we've got clerks in
17 the state that have no idea what effect it's going to have
18 on them.

19 JUDGE SMITH:

20 That's right.

21 REP. SNOW:

22 And if we can show them that they'll become a part of
23 a state system; that this is advantageous and that their
24 duties will be designed--that everything will be done on
25 a statewide basis from the standpoint of whatever job it

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1 is for a clerk to do that they'll all be doing the same
2 job.

3 JUDGE SMITH:

4 They want to see it in writing too.

5 JUDGE STANLEY:

6 You've got even more of a problem with the probate
7 courts unless you spell it out to them.

8 REP. SNOW:

9 Well, we've got a problem with the probate courts
10 because of the diversity within the probate courts and we
11 do have a big problem there.

12 I imagine we'll probably meet here. If it's differ-
ent, we'll advise you.

13 JUDGE BEASLEY:

14 Two things, if I might, suggested to Dean Beard.
15 This morning was terrific because we had that outline,
16 which is wonderful. So when you write to these other
17 people, ask them if they could bring an outline for every
18 one. This is very, very helpful for us to follow.

19 And the second thing is, on this little memorandum
20 which I had my secretary just do up during the noon hour,
21 there are two errors that are very significant. One, under
22 number two, 1) out in the righthand margin, the word is
23 jurisdiction, not juries. I'm not talking about appellate
24 juries. And then the second things is down at number three,
25

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1 after the words to be at the beginning of the first line,
2 should be thereafter. I certainly don't have any idea of
3 us studying it at the same time as distributing it.

4 REP. SNOW:

5 We will proceed with some subcommittee work, too,
6 after we have had the--all these hearings of the other
7 states. I think we need to get as much of this in as
8 possible before we start going into our individual studies.

9 MR. DROLET:

10 One other thing that ties in with what we were talk-
11 ing about this morning and which I think is needed, would
12 be either members of the committee or staff to come up with
13 a critique of our present system showing why it is we need
14 reform. Because really at this point we still don't have
15 something that we can hand out saying, you realize there
16 are all these inefficiencies and overlaps and problems
17 within the system which are creating the need for a new
18 system.

19 REP. SNOW:

20 Jerry, you're going to be able to work with Marty some
21 on this too? And some of the folks at the Institute of
22 Law and Government have expressed some desire to assist.
23 So if y'all can--

24 MR. BRAUN:

25 We can get a team together.

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1 REP. SNOW:

2 Everybody that can be participating in it, the more
3
4 the better.

5 JUDGE BEASLEY:

6 One more thing and I won't say another word. Judge
7 Marion Pope gave what I thought was an excellent and maybe
8 the best address at the State Bar meeting. And I asked him
9 for a copy of it with the idea of disseminating it to this
10 committee. I did get a copy of it and I think that it sets
11 out crystallly clear and frankly a lot of problems we're
12 trying to address. And I can submit and ask that it be
copied and distributed.

13 REP. SNOW:

14 All right. Give it to Marty and he can send it to
15 all members and they can utilize it too in the critique.

16 Folks, any other comments? If not, we're adjourned.
17 [Whereupon, the above-entitled proceedings were adjourned
18 at 2:45 o'clock, p.m.]

19 C E R T I F I C A T E

20 I hereby certify, as the court reporter, that the
21 statements that appear in the proceedings were taken steno-
22 graphically by me, and thereafter reduced to typewriting by me,
23 and that this transcript is a true and accurate record to the
24 best of my ability.
25

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Darlene Akins

DARLENE F. AKINS, CCR

Notary Public, Georgia, State at Large
My Commission Expires Aug. 3, 1980

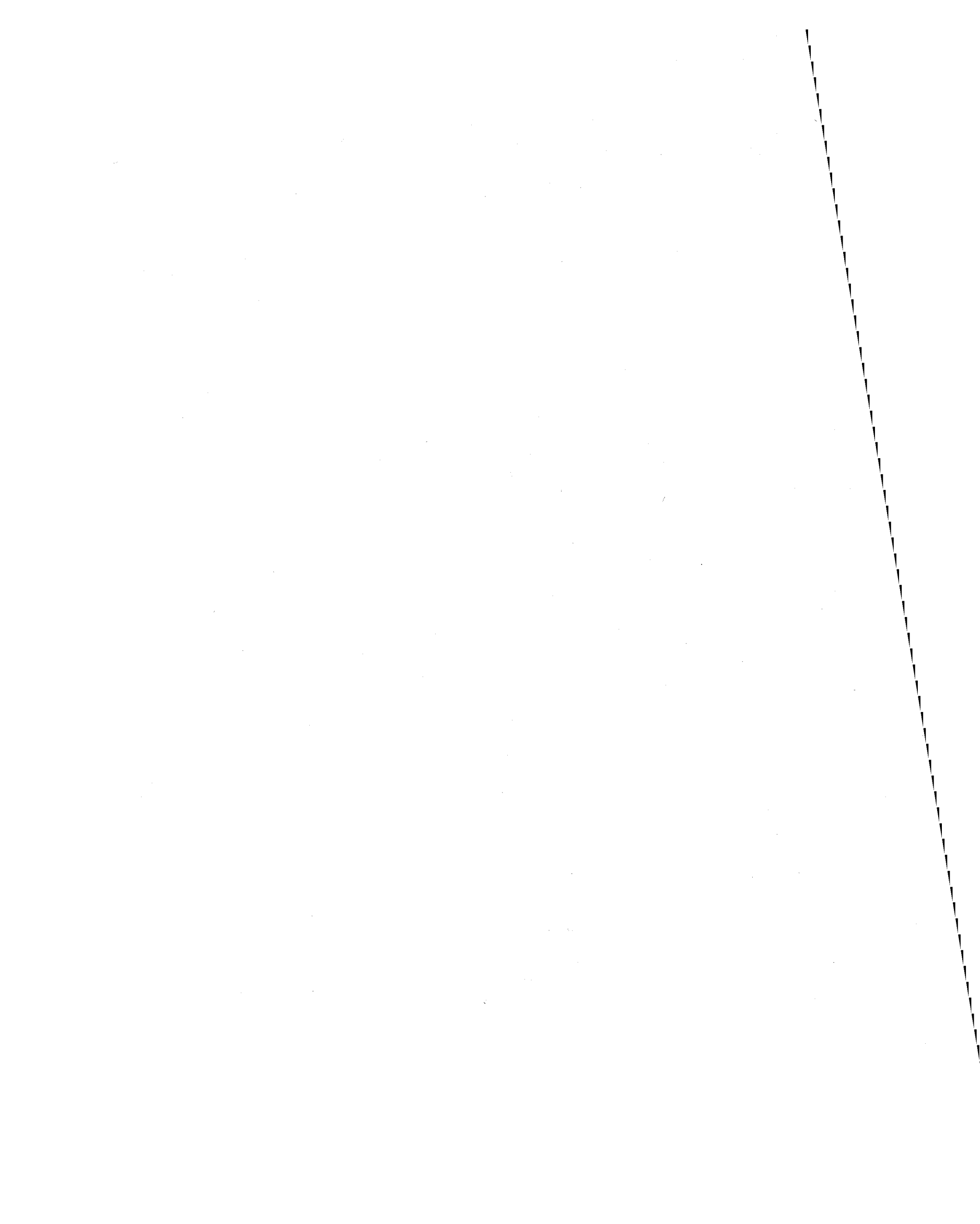


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INDEX

Committee to Revise Article VI

Full Committee Meeting Held on June 16, 1978

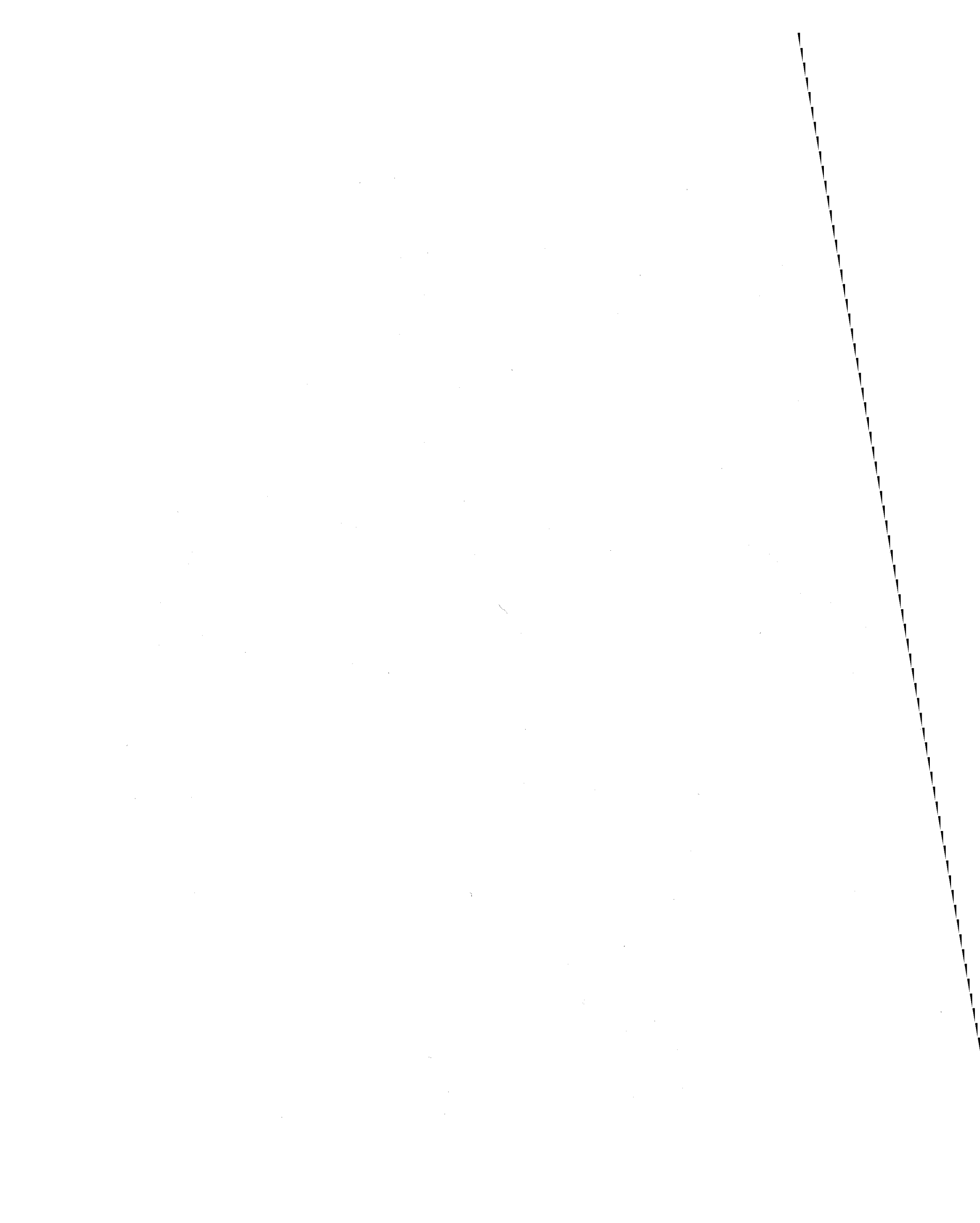


FULL COMMITTEE MEETING, 6-16-78

Proceedings. pp. 2-17

Information concerning some aspects of the North Carolina Court System. pp. 18-89

Information concerning certain aspects of the Oklahoma Court System. pp. 89-132



STATE OF GEORGIA

Proceedings of the Select Committee on Constitutional Revision, State of Georgia, Subcommittee on Judiciary, held on June 30, 1978, at 10:00 o'clock, a.m., in Room 416A, State Capitol, Atlanta, Georgia, and chaired by Representative Wayne Snow.

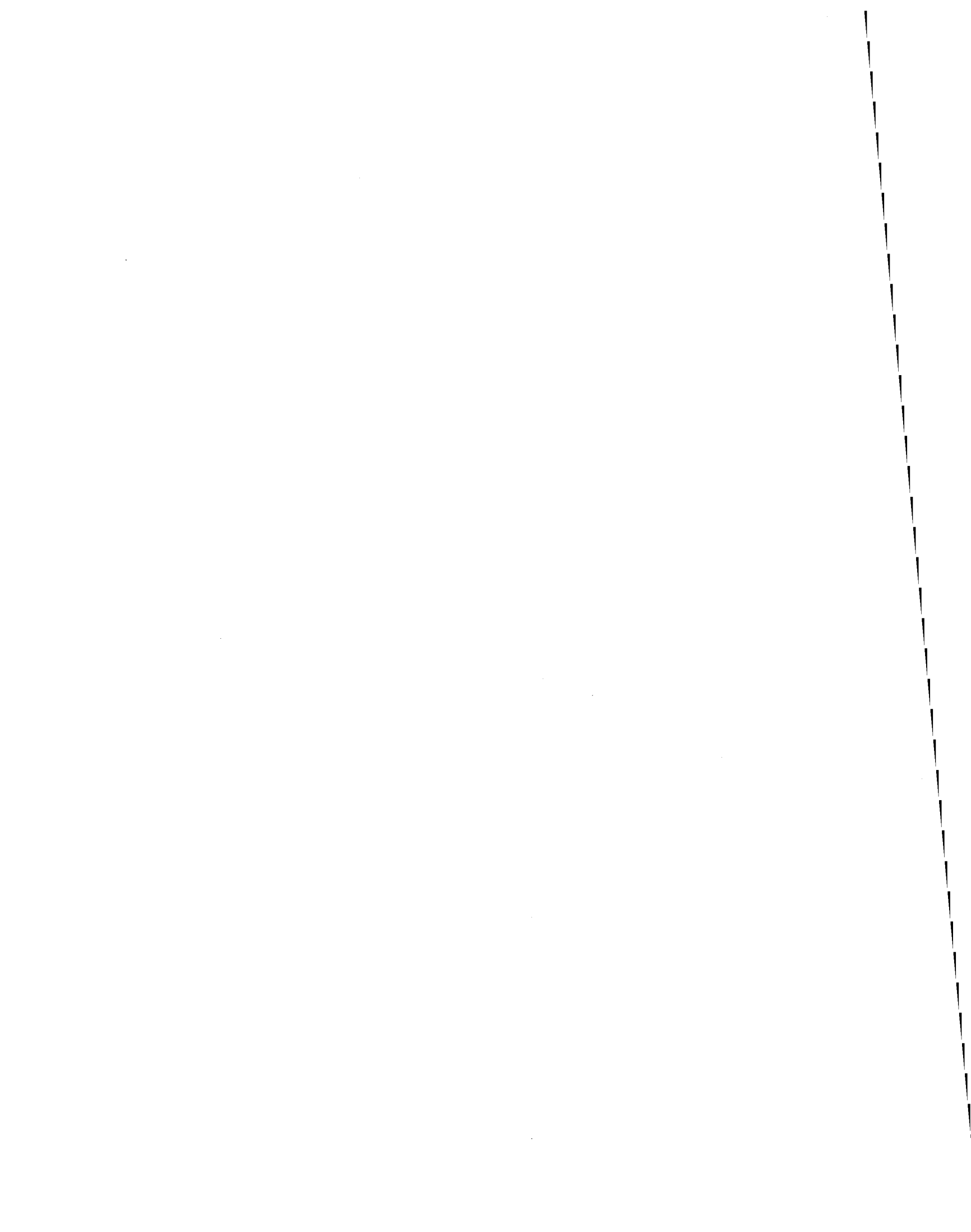
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DEPOSITIONS - ARBITRATIONS - CONVENTIONS - CONFERENCES



P R O C E E D I N G S

REP. SNOW:

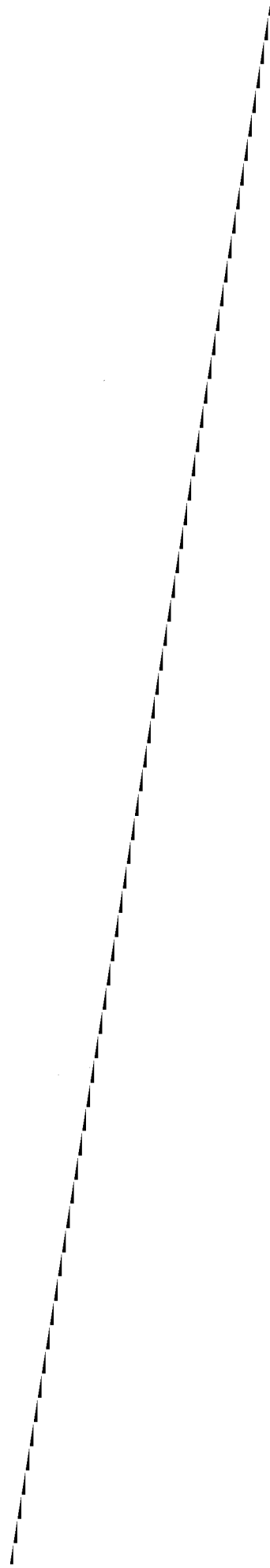
This morning we are delighted to have the Chief Justice of the State of Florida with us, Ben F. Overton. Mr. Overton has advised us that tomorrow morning is his last day as Chief Justice in the State of Florida. They rotate in that state for two-year terms.

He has also been very actively involved in judicial reform in the State of Florida and has served on the panel and commission on judicial reform in Florida--served as chairman of it and also served as chairman of the Judiciary Committee in the State of Florida.

Mr. Chief Justice, again, we're grateful for your coming, sir, and we look forward to hearing your presentation on some of the problems that y'all ran into in the State of Florida and the manner that you went about solving them and trying to help us to avoid possibly some of the pitfalls that you may have run into from time to time. So we'll turn it over to you, sir, and if you want to make a presentation to begin with and then we'll ask questions. We're rather informal. If you'd rather remain seated, that will be fine.

JUSTICE OVERTON:

There's still enough of the trial lawyer in me that I'd rather be on my feet. Let me say this. First of all,



I was asked to give you a little bit of the history and how and why Florida went to the judicial reform it went to.

First of all, I should say that the primary judicial reform at the trial court level took place in 1972. And it was a result of a special session, but it had been--it had been, I should say, involved both with the constitutional revision commission of 1968 and had been involved when the District Courts of Appeal--the intermediate court system was developed in 1957.


Governor Askew called a special session in 1971. And as a result of that special session came forth the amendment to the Judicial Article. It was not really a new provision from that time because it had been discussed at length through the commission of 1968 but did not go on the ballot because they didn't feel they had the votes in the legislature to put it on the ballot.

Now, the reason for the entire revision was the fact of the multiplicity of courts in the state at that time. In different areas of that state, you had different courts. You had--in some instances, the juvenile courts were in the county court. In others, there was a separate juvenile court. In other areas--in some metropolitan areas, the only thing that the county court had left in in its jurisdiction was probate. In other areas, it had juvenile; it had complete misdemeanor jurisdiction and small claims



court jurisdiction. In other areas, you had separate small claims courts; you had separate criminal courts of record; you had separate civil and criminal courts of record, in addition to having a circuit court of general jurisdiction.

Some circuit courts did not have any felony jurisdiction other than capital cases. Other circuit courts had complete felony jurisdiction. The matter of the consolidation of the court system, I think--or the trial court system was the principal reason and purpose for the unification of the system.



And it started out as a unification of that portion of the system and what I would call--would be probate, juvenile, general civil, the misdemeanor jurisdiction out of the state court, not municipal violations but state misdemeanor criminal offenses. And the matter of the civil--the complete civil jurisdiction. Then, at the last minute and just before the special session was going to meet, it took another turn and the proposals was made at that time that it was going to be a complete unification, that they were going to abolish all justices of the peace and abolish all municipal courts. And that's the way it went.

I might say to you that I was involved with it but not as a justice of the court. At the time, I was a circuit judge. I was an officer in the circuit judges' conference

1 and I was the one that was delegated by the conference to
 2 be the responsible individual with everything that was
 3 going on concerning the matter of judicial reform and, in
 4 particular, what was going to happen with the circuit
 5 courts or the court of general trial jurisdiction at that
 6 time.

7 The Conference of Circuit Judges of Florida supported
 8 the Judicial Article, which surprised a lot of people and
 9 I've got to say this. It was by no manner nor means unani-
 10 mous. In fact, I think when it passed, it passed by some-
 11 thing like a fifty-eight to forty-two vote on the matter
 12 of the support of the consolidation of the court system.
 13 And that was a consolidation of everything into a two-tier
 14 trial level. A circuit court for general trial jurisdic-
 15 tion, which would have jurisdiction over all civil above
 16 \$2500; would have jurisdiction on all juvenile matters,
 17 probate and all criminal felony jurisdiction.

18 At county court level, they would have misdemeanor
 19 jurisdiction and civil jurisdiction to \$2500. The matter
 20 of the consolidation of the--the matter of the bringing in
 21 of--the matter of the bringing in of the municipal courts
 22 was set forth on a time period. In other words, they all
 23 did not go in when the Article took effect on January 1,
 24 1973. The municipalities had until January 1, 1977, to
 25 bring their municipal courts into the state system. They



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still had to apply to the rules. And of course the rest-- I might say to you that within the first eighteen months, seventy-five to eighty percent of the municipal courts were consolidated into the system. We didn't get the rest of them until January 1, 1977. It's been during my term as Chief Justice and there were two metropolitan areas that did not come in. They were the Palm Beach area and the Broward County area. And that's finally pretty well settled down. I think you have to understand--I sometimes feel that there ought to be a prohibition on the number-- or at least a limit on the number of municipalities in one county. Palm Beach County, by the way, has thirty-seven separate municipalities within it. And Broward County has twenty-nine. That consolidation is complete with anywheres near what a lot of people felt was going to be some major problems.

There were some problems; I'm not saying there were not. Because of the fact we had tried to do this during the course--we did it with eighty percent of them but it was a step-by-step process in most areas working with the chief judge and with the officials of both the municipalities and the counties. But when you bring in that many in one county, you do have problems and we did have for about the first two weeks. And then things leveled on off.

I might say to you in this regard that--of course this

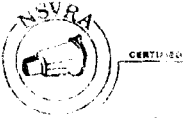
1 is--the idea from this--I initially had said, when it first
2 came on out, I didn't see how politically they could sell
3 it and how politically they would. Because I felt that the
4 League of Municipalities and the justices of the peace
5 would oppose it, which they did. I might say that the
6 Governor coined a phrase that went on out and he said just
7 one thing. He said, "We're going to do away with cash
8 register justice." And it passed with a seventy-six per-
9 cent vote.

10 Now, the other thing that this--and I think the prin-
11 cipal thing and the reason for the whole consolidation and
12 the purpose of it was to make the courts at the trial court
13 level more responsive to the needs of a particular commu-
14 nity and to better utilize the judicial personnel that were
15 there. It meant that you operated a judicial system with-
16 in a particular community or county on, very frankly, a
17 team approach and you have a captain of the team and it's
18 designated right in the Constitution that you have a chief
19 judge of a circuit. You have a chief justice of the court
20 that is the chief administrative officer. The judges with-
21 in that circuit are respon--the chief judge of that circuit
22 is responsible for the assignments within and, I might say,
23 that a circuit judge can be assigned to do county court
24 judge work and a county court judge can be assigned to do
25 circuit judge work if he's qualified. In other words, if

RECORDS SECTION - CIVIL RIGHTS DIVISION



1 he has been a member of the Bar for five years. I might
2 say that that assignment is working exceedingly well in
3 the semi-rural and rural areas where you just don't have
4 enough work for a county court judge for a full week. And
5 in many areas of the state that county court judge is
6 assigned to do both circuit and county--circuit court work
7 so he does both circuit court work and county court work.
8 And there's enough. There's enough for one judge. But
9 the other thing is the fact--and those--there are jobs
10 within the judiciary that are easier than others. And
11 it also looks at this. No one within our system can, by
12 reason of seniority, say, "I'm going to have this particu-
13 lar position"--and let me say this. There's no--the pro-
14 bate assignment frankly is probably the easiest assign-
15 ment administered within the system. But nobody can say,
16 that's going to be mine and I've got the seniority and I'm
17 going to be there. That's not the--it's--basically the
18 work level has to be--it's a fair apportionment within the
19 particular system on duties. And it's the matter of rota-
20 tion. We have not gone to mandatory rotation. But one of
21 the things that we've insisted on is judges, when they come
22 on the bench, know responsibilities within each of the divi-
23 sions so that if something happens, if somebody gets sick,
24 if somebody gets really tied up, if it's in a civil area on
25 a long malpractice case, that somebody else from another



1 area that has had cancellations, can come in and pick up
2 part of the calendar. On a criminal matter, which is
3 where--in probably--problems in the lower East Coast
4 brought about as much of the reasons for the change in the
5 unification as anything else. In these--that you can take
6 judges off the civil calendar and move them into the crim-
7 inal calendar when you need them or when there's--frankly,
8 in my former circuit, we did it on a daily, weekly basis.

9 That if the criminal trials got backed on up, that it
10 was not--and a judge on the civil calendar had all his
11 cases settled, the chief judge just said--the chief judge
12 kept track of that and knew that. Just made a call and
13 said, come on up; we need you to try this particular crim-
14 inal case. But of course it's a matter also of training of
15 judges as they come on the bench to make sure that they
16 know what and how to do--that it's not something new. We
17 feel that judges should not have tunnel vision in their
18 particular--in any particular area. And very frankly, as
19 far as the--in some areas, as far as the criminal division
20 is concerned, that when they're assigned to the criminal
21 division, that's the one area that you go to in some areas
22 that you don't have a vacation. That during the period of
23 the assignment, that's it. You understand that that's your
24 time in the barrel and that you go full force.

25 I might say that other things that had been done--and



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I feel that the unification brought forth probably what I consider to be one of the most efficient criminal justice systems in the country. We do have a twenty-four hour first appearance. In other words, where the individual has to be brought before a judicial officer within twenty-four hours from the time he is taken into custody. And I might say how that works, again, the judicial system works on a team. You can see--twenty-four hours on weekends--and the long weekend that's coming on up, how do you do that? Well, they go on--you just end up with a duty roster if you want to use some military terms and everybody goes on the list. And you've got your first appearance time and I kind of teased my colleagues. Because when I was appointed to the Supreme Court, the next weekend was my duty roster weekend.

But it's--the other is the fact that we were able to also require all criminal cases, misdemeanor and felony--all criminal intake went through the prosecutor. That's where it goes. It goes there first. Now, if he denies it, that doesn't mean they can't go to the judge. But it's got to go to the prosecutor first. And all criminal intake goes there. One of the things--I've got to say this to you--one of the things that we found out is, the prosecutor from my circuit said that when we went to that--he said, I didn't know there were that many good cases out there.

1 Now, why that was the case was that the officer--and
2 particularly from the municipality--would go in and make
3 out the affidavit pursuant to the JP and it would go before
4 the JP and he wouldn't know really what as involved and the
5 case would be dismissed. And he'd say to hell with it and
6 walk on out; the prosecutor would never see it. Well,
7 that's not the case now. The matter goes to--all criminal
8 intake goes straight to the prosecutor. We have the speedy
9 trial. It's ninety days for misdemeanor offenses. It's
10 a hundred and eighty days for felony offenses.

11 I might say that I was before the Senate Criminal
12 Justice Committee right after that went into effect or had
13 been into effect for about six to eight months. And one
14 of the members of that committee saw the president of the
15 Prosecutors' Association. He was saying--he said, this
16 Supreme Court Rule--this speedy trial rule, don't you think
17 that that ought to be changed or a statute ought to be
18 passed to repeal that particular rule or try to repeal or
19 get that rule out? And the president of the Prosecutors'
20 Association responded this way. He said, Senator, that
21 speedy trial rule is the best thing that ever happened to
22 the prosecution.

23 And of course the reason for that is the fact that
24 the prosecution is the one that has the burden of proof
25 and they're the ones that are hurt by delay. And it has

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1 required the legislature, very frankly, to fund the pro-
2 secutors' offices adequately to do the particular job.
3 Now, when I say that it has made the criminal justice
4 system more efficient, I guess I can point out and say
5 statistics and you can say, you're playing with statistics.
6 But when I finish with the statistics, I'm going to give
7 you a body count, so to speak. Because we do have twice
8 as many felony cases in the State of Florida as they do in
9 Illinois or as they do in Michigan.

10 Now, those two states--one has over a million and a
11 half more people than Florida and the other has three mill-
12 ion more people than Florida. We also have twice as many
13 cases in our District Courts of Appeal and twice as many
14 criminal cases in our Supreme Court. But when I say the
15 body count is the one that really shows that you're not
16 playing the games with statistics, is that in our state
17 prison system, we have twice as many in the state prison
18 system as Illinois and eight thousand more than Michigan
19 has.

20 I might say we have almost--we're right bumping be-
21 tween Texas, California and ourselves are the three states
22 that have the most in the state prison system. This--per-
23 centagewise on the number of cases, there's not that--
24 there's not that much difference. But there--the matter
25 --it kind of a little bit goes back to what I said on the

1 matter of criminal intake. And the prosecutor in my cir-
 2 cuit came to me and said when we ended up with double the
 3 number of felony cases in one year in my circuit--and I
 4 was chief judge of that circuit at that time--and that was
 5 partly what they felt to be the reason for it, is they
 6 found that there were cases out there they didn't know
 7 existed.

8 Now, the matter of the cost of the system--and I
 9 guess, you know, this is one of the things--it is a totally
 10 state-funded system. The entire judges' salaries, their
 11 staff, all the state's attorneys and their staffs, all the
 12 public defenders and their staff, the jurors and witness
 13 fees and those funds are all funded and paid for by the
 14 state.

15 Now, if you took what would be strictly Judicial
 16 Branch, which would be the courts, the witness fees and
 17 their costs and expenses including all their capital out-
 18 lay funds, it figures out to be seven-tenths of one per-
 19 cent of the state budget in Florida. If you figure all
 20 the states' attorneys and all the public defenders and
 21 their respective staffs, it figures out 1.5 percent of the
 22 state budget, which is pretty--pretty standard nationally
 23 on what is expended courtwise.

24 The matter of--I'll tell you one thing that the mat-
 25 ter of being a state-funded system does, it does make the



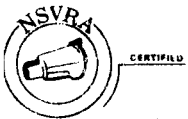
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1 Chief Justice a high-paid lobbyist for at least ninety
2 days out of each year. Because under the system, he is
3 the chief administrative officer for the justice system.
4 In the Constitution, it says there's a chief judge of the
5 circuit; there's a chief justice who is the chief adminis-
6 trative officer; there's a chief judge of each District
7 Court of Appeals and there is a chief judge in each cir-
8 cuit who is responsible for the administration of that cir-
9 cuit.

10 In other words, there is accountability. And if there
11 is a problem, if things aren't getting done, then it's up
12 to the matter of--it's up to that chief judge to see to it
13 that there are judges there to get the work done or to see
14 what can be done to do it. It eliminates the situation
15 where you have each judge having separate entities or
16 really looking at basically what his--we still are on the
17 individual calendar system and I don't mean to say that
18 we're off the individual calendar system. We're still on
19 the individual calendar system. But you have an overall
20 responsibility and there's a chief judge that has--he is
21 responsible. And if there's problems and if there's--what
22 I would call delay--if there's delays in the system, then
23 it's up to him to do something to take care of it and if he
24 can't, then he's supposed to go to the chief justice.

25 I might say that all civil cases--I've told you what

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1 is happening on the criminal side. But all civil cases in
2 all circuits, with the exception of one, can be tried
3 within nine months from the time they're filed. The one
4 area that we've got the problem with is in Broward County.
5 But very frankly, it's not a caseload problem because it's
6 --they're fourteenth in caseload and fourteenth in disposi-
7 tion. We've worked on that and we've sent some judges on
8 into there and we're working it on out. But it's--and I
9 might say this is one thing that I'd mention that we found
10 out. That when we started--where we had a unified system
11 --Judge Beasley's going to be a little bit surprised about
12 this--but when we went up with the unified system and
13 everybody counting cases the same way and we're auditing
14 them on spot check--not fully, but just to make sure
15 everybody's doing the same thing. And the we're able to
16 cross check as to, very frankly, how many jury trials
17 completed really are done in a particular area. You can--
18 you can check that type of statistical information basica-
19 ally that way.

20 We have found that judges in rural areas, in semi-
21 rural areas can receive and dispose of more cases than
22 judges in metropolitan areas. Now, it's not because the
23 judges in metropolitan areas are not working. It's because,
24 very frankly, what I consider to be a lawyer communications
25 problem. The lawyers in the semi-rural and rural areas

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1 talk to each other. And the Bar Association--very frankly,
2 I've talked to them in Bar and they've agreed with me.
3 They don't talk to each other until they get there before
4 the judge. And this is part of the problem that we've
5 been able to identify. So it's one of the things that has
6 kind of surprised me and partly because we've got a--you'll
see if you look at this constitutional provision.

8 The Supreme Court has the authority to certify the
9 need for additional judges. In fact the legislature--they
10 can create additional judge positions. But if they do,
11 without a certification from the Supreme Court, they need
12 a two-thirds vote from both houses. And in order to change
13 the certification, they've got to do it that way. But the
14 certification and need comes--is made by the courts. And
15 you know if it's made by the court, there happens to be one
16 individuals that's got to go before legislative committees
17 like House Judiciary Committees and justify that particular
18 need. And so we've kind of learned, in one respect, on the
19 matter of when the Chairman of the House Judiciary's Com-
20 mittee is--his circuit and his judges are not asking for
21 additional judges, they're receiving and disposing of more
22 cases than the circuits that are asking for judges, you know
23 you've got a problem.

24 But it has also made the judiciary in other areas of
25 the state look at themselves to see what they can do better.

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1 And I think, in the long run, without any question, it's
2 brought the judiciary closer together as far as looking at
3 the entire problem and what had to be done. I might say
4 to you this, I do not feel and I do not know how Florida
5 would have coped with what we call a law explosion that
6 occurred between 1971 and 1976. Because we ran--we were
7 running, in some areas of the state whether there were just
8 hundred percent increases in one year in calendars. And
9 of course part of the problem was not just due to the
10 courts or with that. I might say we had ended up with no
11 fault divorce, no fault insurance, comparative negligence--
12 all within one eighteen-month period, together with bring-
13 ing all the--Administrative Procedures Act--administrative
14 procedures appeals into the judicial system.

15 And coupled with the changes, very frankly, that have
16 taken place in the criminal justice system, that we've
17 been able not only to, I think, keep our heads above water
18 but we have been able to move ahead in most areas and par-
19 ticularly in the criminal justice area.

20 The initial article went to merit selection and non-
21 partisan election of judges. Two years ago, it went the
22 next step, which was, by the way, the original proposal and
23 went to merit retention of the judges in the appellate
24 structure. The revision commission that just finished on
25 which I served and was chairman of the judiciary committee,

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1 has put the proposal on the ballot to putting the trial
2 judges into the merit retention system also. And that will
3 be on the ballot in November.

4 I might say also that the--now, all judges now have
5 to be lawyers. The revision commission or the initial
6 provision allowed the legislature, as far as county judges,
7 to allow them not to be lawyers in certain counties--to
8 set the qualifications. And they did by statute and said
9 in counties under forty thousand, they did not have to be
10 lawyers. Well, then, as some of you know, North vs. Ken-
11 tucky came out two years ago and that presented some
12 problems on criminal matters, and particularly on first
13 appearances. And two years ago I started with the legisla-
14 ture trying to change it and they didn't change it. The
15 proposal went and is on the ballot this year that constitu-
16 tionally requires all county judges to be lawyers. Then,
17 on the last day of the session they passed the bill that I
18 had asked for two years ago and that finally got through.
19 So that now, both statutorially--it statutorially requires
20 all county judges to be lawyers and that puts everybody
21 within the judiciary having to be lawyers.

22 I guess I'll stop at this time and let anybody ask any
23 questions.

24 REP. SNOW:

25 All right. Let me ask you this this, when you did go

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1 to this statewide requiring all your judges to be attorneys,
2 did you have a lot of opposition from some of those coun-
3 ties at that time and did you make some provision for any
4 of those judges who were non lawyers to be--

5 JUSTICE OVERTON:

6 They were grandfathered in.

7 REP. SNOW:

8 They were grandfathered in for the retirement and
9 other things?

10 JUSTICE OVERTON:

11 And we have had a very extensive legal education pro-
12 gram at the University of Florida that has given them what
13 is equivalent to sixty-five percent of the law school curri-
14 culum over a course of three years and \$450,000, except
15 that they went four weeks--they went to school four weeks
16 over each year twice a year--well, it went twice a year
17 once and then they had four times of four weeks each on an
18 accelerated program at the University of Florida. It was,
19 by the way--the program was cited in North vs. Kentucky--
20 but to try to make them qualified. There is a grandfather
21 provision, both in the statute and in the Constitution re-
22 vision that leaves those on in who are there.

23 REP. SNOW:

24 Before we get into general questions, if you would,
25 explain to the commission how you worked your fines and

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1 forfeitures as far as your former city courts are con-
2 cerned and how you reimbursed them back. And, two, the
3 jurisdiction, say, of your juvenile courts or if you
4 specify for any of the judges. I think you covered some
5 of this, but just a little bit more detail as to what these
6 folks if there are any specialties as far as the court's
7 concerned. Do y'all select your juvenile court judges or
8 are they elected also?

9 JUSTICE OVERTON:

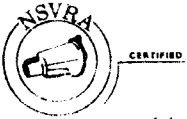
10 First of all, juvenile courts--juvenile jurisdiction
11 is in the court of general jurisdiction--is in the circuit
12 court. It can be a division of the circuit court. We
13 leave the matter of what divisions the circuits want up to
14 them by local rule that have to be approved by the court.
15 And I might say that that's the way I think that the divi-
16 sion should be established. Different areas, because of
17 geography and everything, have different problems. For in-
18 stance, in my former circuit, we had a division of the
19 circuit court in Pinellas County, which is where St. Peters-
20 burg, Clearwater and Tarpon Springs are.

21 But in the county to the north, which is Pasco County,
22 we had two judges up there and one sat in Data City and one
23 in New Port Ritchey. They both did everything in those par-
24 ticular areas. In other words, they did the juvenile work;
25 they did the probate work; they did the civil work and they

1 did the criminal work in each of those particular areas.
2 I might say they were forty-five miles apart so they're
3 not that close together. But in some areas of the state,
4 the circuit judge will do everything depending on really
5 what the caseload is.

6 Now, let me say this--and I have some strong personal
7 feelings about this--about the matter of judges getting
8 into something and wanting to stay just there. And par-
9 ticularly as it pertains to juvenile court work. I feel
10 that a judge that's on juvenile or on criminal or on gener-
11 al civil, doing domestic relations work, that each ought
12 to have the experience in the others. And let me tell you
13 why and this is--and I guess it's basically from my experi-
14 ence also as a trial judge. When you look at the juvenile
15 justice problem which I personally still consider to be the
16 major problem that we have, not just in the justice system,
17 but generally. But you have to understand that when you
18 get into the adult criminal justice system, that eighty-two
19 percent of those individuals that you have coming before
20 you for sentencing are the product of either a one--of a
21 broken home or a one-parent home, that when you--that the
22 matter of juvenile justice and what it does when you're in
23 the adult criminal justice system--it's kind of like one of
24 my colleagues said who had been a juvenile judge, I might
25 say, under the old system. We were working the criminal

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1 calendar together and he was going in for sentencing. And
2 his comment as he was going in the robing room--and he
3 said, "All I've got today is alumni." And he was seeing
4 the same faces back that he had seen as a juvenile judge.

5 But the matter of--and it's related to domestic rela-
6 tions. Because of that fact, that eighty percent of those
7 that you see in the adult criminal justice system are the
8 products in part of that domestic relation and that cus-
9 tody and those type of custody problems or not--I shouldn't
10 say eighty-two percent are probably custoday problems, but
11 they're related. And I feel, from personal experience,
12 that it was important for me, both in what I did on general
13 jurisdiction and domestic relations, to know what I did
14 when I was on the assignment on the criminal bench or to
15 know what the problems were as it pertains to the juvenile
16 justice system. And probably the juvenile justice system
17 is the place even in our state--and I've said this again--
18 that we still need to address more help. And very frankly,
19 the practicing Bar knows very little about what goes on and
20 how the juvenile justice system operates.

21 And it's an area--and partly because of that, it
22 doesn't, you know, people react to where--they put the oil
23 on the wheel that squeaks and, to a certain extent, there's
24 not enough squeaks there to get the responsiveness that it
25 needs. But I do not feel that you should have somebody who



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1 just has tunnel vision, that just stays permanently in a
2 juvenile justice spot. I don't think it's good.

3 And I know--I've heard the argument and I've got to
4 say one sequel to that. Because we had that argument very
5 substantially, particularly after the--this was one of the
6 arguments on the consolidation of the court system. There
7 were to judges that I know of that argued against it that
8 after they came on out and after they'd been assigned once
9 and went back in, agreed that this was the best way to go.
10 After they'd had the experience. Now, a lot of them were
11 a-prehensive about doing something they hadn't done before.
12 They were apprehensive particularly about going on the
13 criminal-calendar. I've got to say that. Because, bar
14 none, that's where most of the--as far as the judge is
15 concerned--most of the pressure comes on a judge. He's
16 not covered, you know, by the press anyplace else ordin-
17 arily but in the criminal courts and it's a little bit
18 different ballgame for a trial judge. And they were appre-
19 ensive about that. But most now are going--most circuits
20 have a type of training program--in-house training program
21 for new judges as they come on the bench, that they may be
22 assigned to one particular division. But then, for two
23 weeks for the next--for example, for a year, for two weeks
24 every two months or every third month, that they will go
25 and spend time, for instance, if they're on general-civil,

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1 they'll go spend two weeks and do nothing but juvenile.
2 And it doesn't really affect that calendar. And in two
3 weeks they'll do criminal; in two weeks, if they're in an
4 area that is on probate, they'll do probate that way. But
5 where during the course of the first--we would like to see
6 that within the first year to eighteen months, that a new
7 judge has had experience in all areas of the jurisdiction
8 of the court.

9 JUDGE BEASLEY:

10 Did you at all consider a family court which would
11 take all the related matters with regard to juvenile matters
12 and custody and divorce and child support and abandonment--
13 al those things together so that you would then have--

14 JUSTICE OVERTON:

15 The flexibility--the flexibility is there. The names
16 of the division are not in concrete and I do not suggest
17 that they go in concrete. I think one of the keys that
18 should be there is the matter of flexibility. We have a
19 family court division being tried in Dade County and in
20 Miami now. There are some problems--administrative prob-
21 lems with it. Primarily, because of the criminal standards
22 and rules that are applicable and the requirements of
23 counsel that are required in certain aspects of the family
24 court that are not in other aspects of it. But it's not--
25 I guess if there's one thing I suggest, it's don't put



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1 things in concrete; keep them as flexible as you can. In
2 the matter of divisions, we have. In two metropolitan
3 areas--they're not in my former one because--they've con-
4 solidated the probate division with the general-civil divi-
5 sion because they did not have that much probate work in
6 those particular divisions that really warranted one judge
7 or two judges being in a separate division.

8 JUDGE STANLEY:

9 Mr. Chief Justice, at one time were your probate
10 jurisdictions in the county court?

11 JUSTICE OVERTON:

12 Yes.

13 JUDGE STANLEY:

14 And it was transferred to the circuit court?

15 JUSTICE OVERTON:

16 Well, it was kind of split. And let me tell you why
17 it was split. Because trust administration was in the cir-
18 cuit court; probate was in the county court and if you were
19 trying any title to real estate, that trying that title to
20 real estate had to be tried in the circuit court. Now,
21 it's all one place.

22 JUDGE STANLEY:

23 Did you have some non-lawyer judges in county courts
24 that went into a circuit court at that time?

25 JUSTICE OVERTON:

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1 No. No. They had to be qualified as a circuit judge
2 to go. That juris--they could run as a county court judge
3 but the county court no longer had probate jurisdiction.

4 MR. DROLET:

5 What provided--what or whom provided the big push to
6 revise your judicial system? Was there some event or
7 politically something that happened that brought this
8 about?

9 JUSTICE OVERTON:

10 Well, we'd been working on it for twelve years. I
11 mean, they had an Article already--Judicial Article at the
12 '68 revision. You have to understand Chesterfield Smith
13 was chairman of that revision commission and they had a
14 Judicial Article but they could not get the votes in the
15 legislature to put it on the ballot--on the three-fourths
16 on the Judicial Article. So they just took the Judicial
17 Article out of it and then said that they would consider
18 that separately. And then once that passed, then they con-
19 sidered it at two legislative sessions. They didn't come
20 out with anything at that time. I'll tell you, I've got
21 two file drawers full on the history and going back because
22 I was an officer in the Circuit Judges' Conference at the
23 time. And then the Governor called a special session and
24 then they came out. But until the special session and right
25 before the special session, nobody had ever proposed that--

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1 the abolishment of the JP's and the municipal courts.

2 JUDGE BEASLEY:

3 How do you curb the growth of local rules and local
4 practices if the idea is uniformity and you allow the flex-
5 ibility of each circuit to decide what type of rules it has
6 and so forth? Isn't one of the primary purposes of this
7 consolidation is to have uniform rules so when a lawyer goes
8 from one place to another or a citizen goes from one place
9 to another in the system, they know what to do?

10 JUSTICE OVERTON:

11 The local rules have to be approved by the Supreme
12 Court.

13 JUDGE BEASLEY:

14 Well, are they still allowed to be quite different
15 from one area to another?

16 JUSTICE OVERTON:

17 Oh, yes. And you've got to understand--for instance,
18 in--if you--to give you an example, we'll take--I gave you
19 an example of the differences pertaining to my circuit in
20 Pinellas County. But then you take Brevard or the Eighteen-
21 th Circuit which is in the Cape Kennedy Area in Brevard and
22 you're talking about divisions in there. But really some
23 division just don't work well within that because Brevard
24 County is a hundred miles long. And they've got four
25 places where they have courts and have had. They've had



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special legislation that allowed courts to be in four different cities which were spread out from the north to the south. And so you have geographical problems that you've got; you have different population situations. And each one--it's a matter of being able to address each one properly.

Now, let me say this. I'm not saying that there were no problems. I, as Chief Justice, went to one circuit and said, you're freezing people into one area because of seniority and you're not giving a particular county that had--that was tied to them--it was a smaller county--you're not giving--they had enough caseload for more than one judge. But what they were doing, they were sending the judge from the metropolitan city to that particular county on ninety-day assignments and they were just--it just wasn't working right and the officials and everybody else didn't feel--the judge wanted to get down there and wanted to get out--do the work and get on out so the matter of emergencies just was not being taken care of. They didn't feel that they had representation. There were counties with less population that had their own judge. So basically I said, you're just going to have to change it and somebody's going to have to go at the next vacancy that occurs if you want to do it that way. That he's assigned down there or if somebody wants to volunteer, which is what happened, that's

1 fine. The other is the matter on what the plan was--they
2 had some senior judges that just didn't want to leave
3 where they were and they didn't want to do any other kind
4 of work. And, frankly, one of them had one of the easiest
5 jobs in the state as far as judicial workload was concerned.

6 JUDGE BEASLEY:

7 Basically, then, you have a comprehensive system--

8 JUSTICE OVERTON:

9 There's some principles that are involved but they can
10 adapt--

11 JUDGE BEASLEY:

12 --but not a uniform system?

13 JUSTICE OVERTON:

14 Well, it's uniform as far as jurisdiction--no ques-
15 tion about that. It's uniform as far as jurisdiction.

16 DEAN BEAIRD:

17 Do I understand from the handout that the decisions
18 from regulatory agencies, industrial relations commission
19 and public service commission cases go directly from those
20 commissions to the Supreme Court?

21 JUSTICE OVERTON:

22 I wish they didn't, but they do.

23 DEAN BEAIRD:

24 What I was wondering, what the theory was and how heavy
25 is the caseload?

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1 JUSTICE OVERTON:

2 Originally, the IRC, the Workmen's Compensation cases
3 came to the court because they had been in the circuit
4 court and then they had been reviewed by the district
5 courts of appeal. And then when they created the district
6 courts of appeal, the caseload went down in the Supreme
7 Court so much that it got really kind of bad so they agreed
8 to take the IRC jurisdiction. And now, the Supreme Court
9 has gone on up. There's no real reason for the IRC juris-
10 diction to be in the Supreme Court, particularly because
11 all APA reviews, all other administrative agencies' reviews
12 goes to the district courts of appeal. In my view, that's
13 where they ought to go. You ought to put all administra-
14 tive reviews in one place. And in the one level of courts.

15 The same--let me say this. As far as the Public
16 Service Commission, that again has been historical--has
17 always been in the Supreme Court. We're looking at that
18 now in addition to the IRC. But we would--my personal view
19 on that is that because of the issues that are involved with
20 the rate cases--utility rate cases ought to go--the review
21 ought to go to the Supreme Court. On the other hand, the
22 certificates of public convenience and necessity and common
23 carrier rates ought to go ahead and go to the intermediate
24 courts. I distinguish between the two. I particularly
25 distinguish between the two in light of three weeks ago, we

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1 had a petition for review on a certificate of public con-
2 venience for a wrecker service. I really don't think that
3 the Supreme Court needs to do that.

4 REP. SNOW:

5 Do you have a District Court of Appeals?

6 JUSTICE OVERTON:

7 That's correct.

8 REP. SNOW:

9 Is that similar to our Court of Appeals?

10 JUSTICE OVERTON:

11 Would be in one sense but would not be in another
12 sense as yours is set up. Because our districts--there
13 are four district courts of appeals and they have all the
14 appellate jurisdiction with the exception of when the con-
15 stitutionality--the validity of a statute is addressed and
16 the matter of debt cases. Those are the things that come
17 direct to us. Debt cases, bond cases and the matter of
18 a constitutional issue that has been directly passed upon
19 by the trial courts.

20 Now, we have a unique system on the matter on how the
21 District Courts of Appeal are final courts of appeal insofar
22 as if they want to appeal to the United States Supreme
23 Court, the way they come to us is they have to show juris-
24 diction. But they have to show conflict jurisdiction be-
25 tween another decision of a District Court of Appeal or a



1 decision of ours. Now, we've had some problems on that
2 conflict. It's kind of unique. It's the only system in
3 the country like that.

4 REP. SNOW:

5 I would think there would be with four separate dis-
6 tricts with final say.

7 JUSTICE OVERTON:

8 With the final say and, basically, with the suffi-
9 ciency of the evidence and that's where they--

10 REP. SNOW:

11 Do they have some procedure that they can afford--
12 district courts of appeals can get together to make some
13 determination on matters of--

14 JUSTICE OVERTON:

15 No, but if they think it's a matter of great public
16 interest or a matter that the Supreme Court ought to decide,
17 then they can certify the case to us. And then we consider
18 this.

19 DEAN BEAIRD:

20 They sit in four different areas of the state?

21 JUSTICE OVERTON:

22 Yes, they sit in four different areas of the state.
23 The First District Court of Appeals is in Tallahassee. In
24 fact, it's right in the Supreme Court building. Some
25 people don't think they ought to be there with the Supreme



1 Court. They're not going to be, frankly; they're getting
2 a new building. The Second District is in Lakeland, which
3 is in the center part of the state. The Third District is
4 in West Palm Beach and that serves the West Palm Beach,
5 Broward County area--that's the Fourth. And the Third Dis-
6 trict is in Dade County that serves just the Miami area.

7 MR. BRAUN:

8 Are judges from those courts selected from those
9 districts?

10 JUSTICE OVERTON:

11 Yes, but it's not required that they be that. We have
12 had some nominees come from other areas but there's never
been one selected from outside the district.

13 MS. WILSON:

14 Do they ever swap--in other words, can one District
15 Court of Appeals Judge serve in some other District Court?
16

17 JUSTICE OVERTON:

18 Well, we do--we've done that--I shouldn't say regular-
19 ly, but that is not unusual to be done, particularly--well,
20 you know, judges have divorces too. And we end up with
21 some actions or court actions involving--for instance, we
22 had one involving one of the judges on the District Court
23 of Appeals. And so we just moved in an entire--I just
24 assigned three judges, one from each of the other districts
25 to hear that particular case. But I mean--and that author-



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1 ity is generally, I might say, within the Chief Justice.
2 And also the Chief Justice has the ability to assign re-
3 tired judges.

4 REP. SNOW:

5 The Chief Justice told me earlier that in Florida in
6 the different divisions, the judges all make the same.
7 They have no supplemental income from any of the counties.
8 Which would give us some problems in this state with the
9 discrepancy in supplements that are paid by counties, I
10 think, if we tried to do that. But I personally think it's
11 a very desirable thing.

12 JUSTICE OVERTON:

 And I might say it's in the schedule that went in.

14 JUDGE STANLEY:

15 What's the difference in the salary of county judges
16 and circuit court judges?

17 JUSTICE OVERTON:

18 Not very much anymore. But it's basically--county's
19 \$38,500 and \$40,800, I think.

20 JUDGE STANLEY:

21 About two thousand dollars?

22 JUSTICE OVERTON:

23 Let me say this. You know, in some areas, they have
24 almost gone to the one-tier system by the manner in the
25 way of the assignment, particularly in the manner of how

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1 they've utilized their personnel. The county court judges
2 get paid the difference. There's isn't that much difference
3 per day for the work they do as circuit judges when they're
4 assigned. It's got to be approved by the chief judge of
5 the circuit and it's on a voucher.

6 DEAN BEAIRD:

7 Have you made an evaluation of how much the new system
8 has increased the cost of dispensing justice in Florida?
9 What's the total budget now for this year in Florida?

10 JUSTICE OVERTON:

11 Well, I gave you the percentages. But the total
12 budget--if you said, strictly the courts without the public
13 defender and the state court system, about thirty-four
14 million dollars. That includes capital outlay; that in-
15 cludes buildings that we're building--new ones. It in-
16 cludes a million dollars where we--

17 REP. SNOW:

18 Are y'all building courthouses?

19 JUSTICE OVERTON:

20 District Courts of Appeal are built out of that.

21 REP. SNOW:

22 Do you pay rent for your circuit courts?

23 JUSTICE OVERTON:

24 No. No. There's a statute--it may be in that
25 schedule in there--that says that the--there was a saving

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1 provision--I call it a saving provision. It says that the
2 counties will provide the facilities, personnel and equip-
3 ment, not otherwise provided by the statute.

4 DEAN BEAIRD:

5 Do you have a clerk for each of these courts--circuit
6 and county or--

7 JUSTICE OVERTON:

8 We did. You'll see in the schedule how--what they
9 did. Because we also had a mixed-up situation as far as
10 the clerks are concerned. But there is one clerk--there
11 is one clerk in almost all areas except two that I know of
12 because they grandfathered some positions in. The clerk
13 of the circuit court is also the clerk of the county court.
14 Now, let me tell you what the effect of--when the Article
15 was going in and people--and I spoke at civic clubs and
16 a clerk of the circuit court, frankly, was a good friend
17 of mine. They were asking what effect it was going to have
18 and I was speaking to his civic club. And I said, really,
19 on me, it's not going to make a damn bit of difference. I
20 mean I'm going to be doing the same thing as what I've been
21 doing. The flexibility is going to be there. But Pete's
22 going to have the one where it's going to really make the
23 difference. Because in my county, it consolidated thirty-
24 one separate clerk facilities into one. When you took the
25 municipalities and you took the separate clerk function of



1 the probate court, when you took the separate clerk's
2 function that came out of each of the justices of the
3 peace and everything, it came into one. And probably if
4 there's been an administrative saving, it's been princi-
5 pally right there.

6 REP. SNOW:

7 Well, what happened to these other clerks? Were their
8 jobs abolished or were they grandfathered in too?

9 JUSTICE OVERTON:

10 No. Those were abolished because they were--those
11 were abolished throughout. Now, they were absorbed as
12 deputy clerks if they wanted. In most instances, they were
13 absorbed in positions. But, for instance, I don't know
14 whether your JP system, whether they've got their own in-
15 dividual staff, but we had that. And then of course each
16 of the municipalities had their clerks and their individual
17 staffs. The other thing that also was done immediately--
18 right after within two years after the consolidation, was
19 the decriminalization of traffic offenses. And by having
20 a Fine Bureau--in other words, we decriminalized all but
21 five traffic offenses. And what that means is that they
22 can't put them in jail for that. They can lose their
23 driver's license or they can get their points and they can
24 lose their registration on the automobile if they don't
25 appear and they don't pay the fine. But they can't put

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1 them in jail. You eliminate the problems of Argassinger
2 vs. Hammond and you--the matter of--they just sign that
3 they'll go to the--it's a uniform traffic ticket citation.
4 It's a uniform amount that they pay for the particular
5 fines set by statute. So you don't have the variance from
6 place to place in the state and from county to county or
7 municipality to municipality. And it took seventy percent
8 of the traffic offenses out of the county courts.

9 DEAN BEAIRD:

10 Since the chief justice is the chief administrative
11 officer of the judicial system, what's the effect of
12 changing chief justices every two years?

13 JUSTICE OVERTON:

14 Well, now, I think one of the things--and of course,
15 now, you've got to understand Florida in fact because I
16 ended up serving four additional months, I think I've
17 served a longer continuous time by the four months--the
18 twenty-eight months than anybody as a chief justice of the
19 Florida court. We've developed throughout--I think, and
20 one of the things that I tried to do was to make sure that
21 everybody on the court had certain--well, I delegated ad-
22 ministrative responsibilities frankly. One justice is
23 responsible for the civil rules and the amendments to that.
24 Another one's responsible for the standard jury instruc-
25 tions. Another's responsible for the criminal rules and the

1 Governor's Council on Criminal Justice on LEAA. We've
 2 --each--and I think particularly in the rules area, it's
 3 frankly helped because it's given--each has some particu-
 4 lar area of involvement and in an area that they're inter-
 5 ested. And like with my going on out, I'm going back to
 6 doing some things in judicial education and the things that
 7 I had enjoyed. But one of the things that you can't dele-
 8 gate is the matter concerning frankly the dealings with the
 9 legislature, the matter of budget, the matter of fiscal--
 10 the fiscal review and the daily matters because this had
 11 not been done and this has been just a change before--that
 12 has come about.

13 But the Supreme Court and the Judicial Branch has been
 14 getting some pretty severe audit comments from our Auditor
 15 General and I think we've got those pretty well straighten-
 16 ed out. But one of the things that was required in doing
 17 it is that there is no change in budget items or budget
 18 amounts that are not approved by the chief justice now. And
 19 all of those things go across my desk and will go across
 20 Art's starting tomorrow.

21 REP. SNOW:

22 Will that be a difficult transition, though for him
 23 to take that part of it over?

24 JUSTICE OVERTON:

I've been breaking him in for two months. I'm ready



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1 to give him the collective bargaining problem right now.

2 SEN. OVERBY:

3 Mr. Chief Justice, do you personally appear before the
4 Judiciary Committees and the Appropriation Committees or
5 do you designate someone to present your--more or less your
6 budget request?

7 JUSTICE OVERTON:

8 I've got to say this. Now, principally before, my
9 predecessor did some; I've probably done more than he did.
10 I've taken the--I made the initial appearance before each--
11 the House and the Senate and I have spoken in a joint
12 session to them. And then, for the most part, it's the
13 state court administrator. I might say that we--also in
14 this--in the new system, we--you know, you start learning
15 as you go along in what you do. But the state court admin-
16 istrator's office is principally--his responsibility prin-
17 cipally goes to the matter of funding. And the responsi-
18 bility of coordinating the matters with the legislature
19 as to what the judicial needs are. So when we hired the
20 second--newest state court administrator, we hired the
21 former staff director of the House Judiciary Committee.

22 JUDGE STANLEY:

23 Mr. Chief Justice, let me see if I clearly understand,
24 now, in your transition, how you went about your county
25 court judges that were non-lawyers. As I understand it,

1 those in counties of over forty thousand had to be attor-
2 neys from the beginning; is that right?

3 JUSTICE OVERTON:

4 We grandfathered all county court judges that were
5 non-lawyers, were grandfathered in. Any JP's could run
6 for county court judge that were not lawyers. Any municipal
7 judge who was not a lawyer could run for a county court
8 position the first time around--the first time they went in.
9 After that, no more. But they could if they were a judge
10 at the time it became effective, either a JP or if they
11 were--see, there were new positions created--or municipal
12 judge and were not a lawyer or they were a county judge.
13 And some of those positions were up for election at the
14 time anyway. They could run for the county court judge
15 positions in that they were grandfathered to that extent.

16 After that, the only place they could run then--non-
17 lawyers could run in counties under forty thousand. We
18 still had non-lawyer county judges in Jacksonville, for in-
19 stance; we have three. We have twenty-nine non-lawyer
20 county judges in the state.

21 JUDGE STANLEY:

22 But they were required to go to the university law
23 school some weeks per year and--

24 JUSTICE OVERTON:

25 That was in a special program subsequent to that.



1 JUDGE STANLEY:

2 And was this required of them and they received some
3 kind of certification as a result of that work they did
4 then?

5 JUSTICE OVERTON:

6 They received a certification and they received a
7 letter from the chief justice requesting and suggesting
8 that they attend. And if they had any problems or any
9 problems on their coverage, to please advise the chief
10 justice and the chief justice also wrote to the chief
11 judge of the circuit to try to make sure that the county
12 judge who was a non-lawyer would attend. If you want to
13 call that requiring it, I guess you can.

14 MR. HODGKINS:

15 How many attended?

16 JUSTICE OVERTON:

17 All of them except two that got sick. All of them
18 have completed it except, I think, two that have gotten
19 sick and been in--I think one was involved in an accident.

20 JUDGE STANLEY:

21 Did the state pay for that expense?

22 JUSTICE OVERTON:

23 Yes, it was a very--the Circuit Judges' Conference was
24 kind of concerned about the amount of money that went into
25 it. Because there was--all told there will be about

1 \$390,000 expenditure during the course of a three-year
2 period.

3 JUDGE BEASLEY:

4 How did you get the localities to buy the proposition
5 of a totally state-funded system?

6 JUSTICE OVERTON:

7 Are you talking about municipalities or are you
8 talking about--

9 JUDGE BEASLEY:

10 Well, the municipalities as well. I suppose each
11 county before handled its own. And that's giving up a lot
12 of power and a lot of contracting authority and a lot of
local suppliers and whatnot.

13 JUSTICE OVERTON:

14 Well, you've got to understand. For instance, in my
15 county, all of a sudden they weren't going to have to pay,
16 just in salaries alone, forgetting clerk personnel--just
17 for getting judge personnel--in my county, they didn't have
18 to pay over \$500,000 a year in just salaries exclusive of
19 clerk personnel that was being consolidated into the clerk's
20 office.
21

22 JUDGE BEASLEY:

23 Well, weren't there any courts in the system, like the
24 municipalities, that were actually making money?

25 JUSTICE OVERTON:



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Well, that's--

REP. SNOW:

Tell them about the costs. You haven't mentioned the fines and forfeitures.

JUSTICE OVERTON:

Oh, well, that part--it's in the schedule that was adopted says this--I might say this was put in it and Sandy Delbert thought that the municipalities would come forth and support it; they didn't but they still got it.

"All fines and forfeitures arising from offenses tried in the county court shall be collected, and accounted for by clerk of the court, and deposited in a special trust account. All fines and forfeitures received from violations of ordinances or misdemeanors committed within a county or municipal ordinances committed within a municipality within the territorial jurisdiction of the county court shall be paid monthly to the county or municipality respectively."

See, they got a court system--they got their money and they got a court system for zilch. Now it does go on and say that costs expended--that cost that would be assessed would go to the state--into the state general revenue fund. That's the next sentence.

REP. SNOW:

But now your traffic violations and those funds--

1 JUSTICE OVERTON:

2 The traffic violations or funds would go back. And
3 let me say this and this was on the floor--

4 JUDGE BEASLEY:

5 Back? Back to--

6 JUSTICE OVERTON:

7 Back to the municipalities. In other words, if a
8 municipal policeman arrested an individual for a traffic
9 offense within the municipality, the fine for that particu-
10 lar offense went back to that to that municipality. If
11 the sheriff arrested an individual for a traffic offense
12 in the county--not in a municipality, the fine for that
13 particular offense went to the county. That's where it
14 goes now. The matter of assessment of costs, that goes
15 to the state in the general revenue fund.

16 Now, the matter of--one of the things about it was the
17 fact that there was going to be an independent judiciary.
18 That they were not going to be subservient or subject to
19 any intimidation of a city council in the matter of fines
20 or quotas that had to be met. And very frankly, there were
21 some former municipal judges who were in the House at the
22 time that gave the other members of the House a lesson in
23 the quotas and in being a municipal judge, and what was
24 expected of them. And it kind of surprised me that it was
25 able to get through the House. I was not surprised that it

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1 was able to get through the Senate. But because of,
2 frankly, two individuals that had been municipal judges
3 and just told them really what the facts of life were, it
4 went--

5 JUDGE STANLEY:

6 Mr. Chief Justice, if you had to go through the whole
7 procedure from the beginning again, would you do it any
8 differently than what you have done?

9 JUSTICE OVERTON:

10 Not much. And let me tell you where I think that the
11 proof of the pudding is. We have just had this constitu-
12 tional revision commission in Florida. Some of you may
13 have been reading about it. There's been some fine tuning
14 done in the Judicial Article including adding circuit
15 judges to the matter of merit retention. And removing a
16 matter of conflict--two major things were requiring in the
17 Constitution all county judges to be lawyers, which is there.
18 But there was no--frankly, there was no request even pre-
19 sented to the commission--and we had 890 proposals sub-
20 mitted to us to change the court structure and we had--we
21 had nine public hearings throughout the state. And accepted
22 them of course from any source available. And I guess
23 that's what I would call kind of the proof of the pudding
24 as far as the system is concerned.

25 DEAN COLE:



1 I was interested in the question of specialization of
2 judges. I was a little unclear about your comment. Would
3 it be correct in a metropolitan area, there would be divi-
4 sions set out by local rule and that judges, after they
5 got some exposure to the various divisions would tend to
6 stay in one?

7 JUSTICE OVERTON:

8 Well, let me say this. There's one other thing.
9 They do, to a certain extent, but not to another. I
10 frankly don't feel that somebody should be in juvenile a
11 hundred percent of the time. I think it's bad for them.
12 That's--and I don't think that somebody should be in crim-
13 inal a hundred percent of the time. There are certain jobs
14 within the judiciary that are easier than others. My for-
15 mer circuit has done it on rotation. That they rotate,
16 but they rotate in groups of three. There are some jobs
17 that are much easier than others. And to be real frank
18 with you, there's more pressure on a judge that's on a
19 criminal calendar than there is on any other. And my cir-
20 cuit had come to that conclusion as far as that--on the
21 other hand, the experience is necessary to be there. They
22 do tend to stay there. And let me say this. I'm pretty
23 well an advocate that there is a need for specialization as
24 far as the Bar is concerned. And then, I am not that in-
25 clined as far as the judiciary is concerned. You've got to

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1 remember that the rules of evidence are basically the
2 same. The decisional-making process is basically the same.
3 What you're doing and probably the most important thing is
4 the fact that the knowledge that you gain in one area is
5 very important to what you do in another area that's within
6 the judicial system, particularly as you're dealing in
7 criminal matters and domestic and juvenile. And even, I
8 might say, in civil cases as it goes to certain liability
9 in certain types of actions.

10 DEAN COLE:

11 Well, are you suggesting, then, that the best approach
12 would be a judge splitting his time up a third of the year
13 in each of the three divisions or that it's eighty percent
14 one but a healthy--

15 JUSTICE OVERTON:

16 Most of them are going on yearly basis, if they're
17 not quite yearly basis. Most of them are going on a year
18 basis.

19 DEAN COLE:

20 In one division?

21 JUSTICE OVERTON:

22 Yes. My circuit went--we went--my circuit went on
23 the matter, if you were on criminal, you were on six
24 months. You weren't on a full year but you took no vaca-
25 tions and no time off for the six-month period. That was

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1 a--you didn't have to worry about the matter of vacation
2 time in the criminal division because there just wasn't
3 any.

4 DEAN COLE:

5 The other thing that concerned me about your comments
6 and let me just verify my impressions; is that this system
7 helped tremendously in gathering statistical information
8 from across the state so that you could analyze and correct
9 problems where under the old system, that was much more
10 difficult; is that correct?

11 JUSTICE OVERTON:

12 That's correct. Well, I mean one of the--let me say
13 this. They collected much more information than they
14 needed to collect to begin with. The information that's
15 necessary is not that much when you come down--when you
16 really come down to what is usable. One of the things
17 concerning the matter of--you're interested in how many
18 hearings a judge has. But you're--one of the things, for
19 instance, on the civil and the criminal thing. You're in-
20 terested in the number of jury trials, for one thing. One
21 circuit was fussing about the number of judges that they
22 needed on their civil calendar that they were running be-
23 hind. And we did a case by case check and came out with an
24 average of nine jury trials per judge for a ten-month peri-
25 od on a criminal calendar. I said, now, you've got to be

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1 kidding. You're talking to somebody that spent ten years
2 on the trial bench. But you just have to--it does give
3 you information; it does--on how to manage--better manage
4 this system.

5 I guess the other thing it does. It allows you to
6 exchange. And we meet every two months with the chief
7 judges of all the circuits together and one of the things
8 we try to do is to make sure there's an exchange. Some
9 of the dockets in administrative procedures have worked
10 better and so you get that exchange that goes back and
11 forth in different areas of the state.

12 MR. BRAUN:

13 Does your chief judge of the circuit also sit in nor-
14 mal rotation of holding--hearing cases? Does he have the
15 same caseload of the other judges?

16 JUSTICE OVERTON:

17 Most. The one in Dade County takes no calendar but
18 he takes special assignment. One other does not. In most
19 others, they take the regular but they do have an adminis-
20 trative staff. Ordinarily, I do not suggest that a judge--
21 a chief judge of a circuit take a criminal calendar during
22 the time that he's a chief judge. That's the one place that
23 you can't adjust. The other places you can. Some take a
24 reduced calendar. It's done by what's necessary in the
25 particular area.



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1 MR. HODGKINS:

2 Do you have any problems of, especially I would
3 imagine, in the county courts or whatever, with your muni-
4 cipal and county officials claiming problems in getting
5 ordinance violations taken care of?

6 JUSTICE OVERTON:

7 There has been some and the problem has not been so
8 much that. That problem was whether or not the city wanted
9 to go with an individual prosecutor themselves to prosecute
10 it. In most area--in many areas, where there's been some
11 cooperation--it takes some cooperation with the prosecutor.
12 And in some areas where we've had the problem, the chief
13 judge has just sat down with them. In one, I threatened to
14 go down and sit down with them. But it's a matter of coord-
15 ination on the prosecuting sense. Because the general--
16 the state's attorney--and we're going to call him a district
17 attorney if it's passed--but it's--doesn't have the exper-
18 tise on building and zoning type of violations. And that
19 did present a problem. We had some statutory language
20 taken care of where the city could have their own city
21 attorney. In most areas now, they have even a written
22 agreement frankly on prosecuting the particular types of
23 offenses and that's worked out well. It's worked out very
24 well, very frankly, in my former area. They have about an
25 eight-page written agreement concerning everything, con-

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cerning all the different types of offenses, who would be responsible for it and, once that got on down there, there are no other problems with it.

REP. SNOW:

Prior to the time that y'all went into this change, were your juvenile judges elected or appointed?

JUSTICE OVERTON:

Elected.

REP. SNOW:

And they were elected in eac circuit or circuit-wide--

JUSTICE OVERTON:

County. And it depended. They--the juvenile jurisdiction, if nothing--if no special court was created within the county, the juvenile jurisdiction was in the county court.

REP. SNOW:

One problem we've got that you folks didn't have, we have a large number of counties in Georgia.

JUSTICE OVERTON:

Well, you don't--you don't need--let me say this. The initial proposal was not for an individual county judge in each county. It's again, named what you want to call it. If you want to call it a district judge--in other words, you could have, initially, there was not to be one judge for each county. It--what I call the Birchfield Amendment.

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1 I don't know whether you know him or not, but he was a
2 former representative and serves on the constitutional
3 revision commission. It's called the Birchfield Amendment
4 and required one for each county. It was initially stated
5 that there would not be one for each county. That you'd
6 come up with--there would be a district--a county court.
7 But the county court did not mean that it was only in one--
8 that the individual serving only served in one county.

9 REP. SNOW:

10 Well, I think there's consensus here on the committee
11 that there will be a juvenile division as far as each cir-
12 cuit is concerned. But we don't know whether that will be
13 integrated into just a court or not for general cases for
14 other than just juvenile matters.

15 JUSTICE OVERTON:

16 I kind of--and my suggestion is that you leave the
17 jurisdiction like juvenile or that, flexible enough so
18 you can do what you want. There's many things that are
19 changing. And to leave it flexible in that regard. I do
20 think that the jurisdiction of juvenile ought to be in the
21 court of general trial jurisdiction. It's an important
22 area and it should be--

23 REP. SNOW:

24 Well, I just have some problem with juvenile judges,
25 though, being elected. I think they have a unique situation

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1 with the folks that they have to deal with and you can get
2 some hard-nosed people in there sometimes that are not
3 sympathetic to the problems of juveniles if they're
4 elected.

5 JUSTICE OVERTON:

6 Now, you can go to merit selection and merit reten-
7 tion as an issue.

8 JUDGE STANLEY:

9 Mr. Chief Justice, why did you transfer your probate
10 jurisdiction to your circuit court?

11 JUSTICE OVERTON:

12 Well, I think I answered that in the beginning, is
13 because so that you had one court that could dispose of
14 everything that's in a probate matter. The matter of
15 trusts, the matter of trying property issues, the matter of
16 all of those things. And in fact in some instances, now,
17 we're trying all the litigated claims, liquidated and non-
18 liquidated, except negligence claims right before the same
19 judge that's got the probate.

20 MR. HODGKINS:

21 Was there any kind of organized educational campaign
22 to try and win the approval of this?

23 JUSTICE OVERTON:

24 The Governor's Council for Court Reform. I served on
25 it--Chesterfield Smith, Chairman.



1 MR. HODGKINS:

2 Did you have opposition?

3 JUSTICE OVERTON:

4 Not--well, the opposition was from the League of
5 Municipalities and even with getting all the money, they
6 were upset about not having the control over their judges.
7 And the Magistrates' organization. But it surprised me
8 the amount of support that it--well, it had all media sup-
9 port. But the League of Municipalities and the, I think,
10 every city in the state adopted resolutions against it.
11 Every time I turned around I saw a city council member or
12 mayor speaking against it at a civic club. And it passed,
13 as I said, by the seventy-six percent vote.

14 REP. SNOW:

15 Are there other additional questions? Well, again,
16 Mr. Chief Justice, we appreciate very much your taking your
17 time to be with us here today and you've been very helpful
18 to us. Y'all have done a lot of things down there appar-
19 ently we need to emulate here and we're very grateful for
20 your attendance.

21 JUSTICE OVERTON:

22 Glad to be able to be here.

23 REP. SNOW:

24 I think we will recess until one o'clock. We have the
25 State of Illinois that will be with us this afternoon.

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[Whereupon, there followed a recess for lunch.]

REP. SNOW:

We are pleased this afternoon to have Mr. Roy Gully, who is the Director of the Administrative Office of the Courts in the State of Illinois, to share with us some of the experiences that they've had in the State of Illinois and to advise us as to what we might do in comparison with what they've done and how they've gone about doing it and some of the problems they ran into. So, if you will, please, sir, we appreciate your coming here, especially on this, the Friday before a big weekend. We know it probably created some problems for you and we do appreciate very much your attendance here with us this afternoon.

MR. GULLY:

Well, thank you very much. I don't mind the coming down. I have been in this business for quite a number of years now and have been interested in the different efforts of states to revamp their judicial system. Maybe it would help to give a little background about myself. I'm a graduate of the University of Illinois Law School in 1946. I started my law school career before World War II and I was in the Navy for four years and came back and finished and took the Bar exam and practiced law--went to practice law in Southern Illinois--deep Southern Illinois in Franklin County in the coal mining area of Southern

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1 Illinois where I grew up.

2 I served a term in our state legislature in 1948 to
3 '50. In 1950 then, I was elected to judge of our county
4 court, which at that period of our state history was the
5 court which existed in each county which had jurisdiction
6 in probate matters primarily, misdemeanors, civil cases of
7 a limit of two thousand dollars and juvenile court juris-
8 diction.

9 I served as county judge of Franklin County, a county
10 of fifty thousand population, until 1957, at which time I
11 was elected a circuit judge in the Second Judicial Cir-
12 cuit. That was an area of Southern Illinois that included
13 twelve counties and had towns in it that you may or may
14 not have ever heard of, like Mount Vernon, Illinois, and
15 Fairfield, Illinois, and Mount Carmel and Lawrenceville
16 and Robinson--twelve counties altogether.

17 I served as circuit judge, which at that time was our
18 court of general jurisdiction--unlimited jurisdiction and
19 handled the felony and divorce and equity cases, cases of
20 more serious nature, from 1957 until 1964, at which time I
21 became chief judge of the Second Circuit under our new
22 Judicial Article, which was an amendment to the 1870 Con-
23 stitution in Illinois which was adopted by our voters in
24 1962 and became effettive on January 1, 1964.

25 I served as chief judge, which is the administrative

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1 position which operates the business of the circuit under
2 the new Article until January 1, 1968, at which time the
3 Supreme Court of the State of Illinois asked me to take
4 over the operating of our judicial system.

5 Our '64 Article provided that the general supervisory
6 and administrative authority over all the courts in the
7 state be vested in the Supreme Court to be exercised in
8 accordance with its rules by the chief justice of the
9 Supreme Court. So he became the operating head of the
10 judicial branch of government in our state. The Constitu-
11 tion further provided--the Article did--that the Supreme
12 Court should select an administrative director to assist
13 the chief justice in his constitutional duty to supervise
14 the operation of the state court system.

15 And that was the position that the Supreme Court asked
16 me to take on January 1, 1968, and I have continued to
17 serve in that position since that time. Now, that's just
18 by way of background. Before I start describing to you,
19 I think it would be well to tell you what we had in Illin-
20 ois prior to our Judicial Article--our reformation of our
21 Judicial Article. Because I--from what I see here, it's
22 very analagous to what you have in Georgia presently and
23 have had.

24 Illinois is a state that came into the Union subse-
25 quent to the time Georgia did, but early in the formation



1 of the Union and we adopted a Constitution back in 1818
2 and another one in 1840 and one in 1870, which lasted for
3 a hundred years in our state until we adopted a new Consti-
4 tution in 1970. The 1870 Constitution and the 1840 Con-
5 stitution were designed for a state rural in nature and
6 designed--the court system on a community by community
7 basis--a local basis. It became obvious of course when
8 Chicago developed and our industrial areas in Illinois
9 developed that the court system was behind times so far
10 as efficiency was concerned.

11 What happened in our state under our previous Consti-
12 tution was that the legislature was granted the power to
13 create courts and they did it. Legislators are wont to do
14 that. I don't want to hurt Representative Snow's feelings
15 but, being an ex-legislator, I can talk a little about
16 them. So what happened in our state was that courts were
17 created of special nature or to serve special jurisdic-
18 tions as the legislature saw fit to create them. We had
19 the county courts which were provided for by the statute.
20 We had the circuit courts which were provided for--by the
21 Constitution. The county court provided by the Constitu-
22 tion; the circuit court provided by the Constitution. We
23 had JP's in our state which were elected in township elec-
24 tions in each of the counties of the state, all provided
25 by the Constitution. And then the Constitution of 1870

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1 said that the legislature may create such other courts as
2 it sees fit. So they began to create courts then.

3 They created a probate court which was analagous to
4 the county court which had had probate jurisdiction but
5 existed in counties over seventy thousand population. So
6 what they in effect did is split the county court and cre-
7 ate the new probate court. They also created police
8 magistrate courts which were the same jurisdiction as JP
9 courts but they were limited to the geographical jurisdic-
10 tions of the cities that they were elected in. They
11 created city courts which had jurisdiction concurrent with
12 the circuit courts but limited, once again, to the geo-
13 graphical limits of the city. They created a municipal
14 court in Cook County which was the same as--jurisdiction
15 as JP's had but existed only in the City of Chicago.

16 They created a criminal court in Cook County and a
17 civil court in Cook County. We wound up, in 1948, '50,
18 along in there, with a myriad of courts throughout the
19 state, none of which were responsible to or under the jur-
20 isdiction of anybody. They were courts and judges were
21 elected and each of them had a clerk's office. And those
22 judicial officers then were autocrats in their own domain.
23 They did what they wanted to do so far as holding court
24 was concerned. The only responsibility they had was to
25 the electorate who got them into office or the appointive

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1 group if they were police magistrates appointed by the
2 mayors of the cities and so on. They had nobody to report
3 to so far as the hours they held court or the number of
4 cases they disposed of and so on. Our JP system and police
5 magistrate system got to be a disgrace to the public. They
6 were fee offices. And the salaries of the judicial
7 officers depended on the number of people who were brought
8 before him. So we had speed traps located throughout the
9 state because if they brought in fifty speeders and they
10 paid five dollars apiece a toss, they had two hundred and
11 fifty dollars in the till for that day. And we had collu-
12 sion between local police departments and the judge on
running the speed traps and so on.

13 So, as a result, the populace in our state got fed up
14 with it and a movement was started to redraft a new Judi-
15 cial Article as an amendment to our 1870 Constitution.

16 A blue ribbon committee was appointed with repre-
17 sentatives from two voluntary Bar associations--the Illin-
18 ois State Bar Association and the Chicago Bar Association--
19 representatives from our labor unions--the United Mine
20 Workers, the United Auto Workers, the other major unions--
21 representatives from the League of Women Voters, the Illin-
22 ois Farm Bureau, the service clubs--Kianis, Lions and the
23 other types of service clubs and so on, was formed to formu-
24 late a new constitutional Article--a new Judicial Article
25

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to the 1870 Constitution. This committee went to work in 1954. And I was a young county judge at that time and was a member of this committee because they needed somebody to represent the southern part of the state who was willing to go to committee members. And I served on this original Committee, never dreaming that at some point I'd get into the operation of the judicial system of the state.

But that committee met over a three- or four-year period and came up with a draft of a Judicial Article that we now have in Illinois and it was submitted to the voters in 1958 the first time. Now, all of these are items that Representative Snow asked me to talk about so I know I'm rambling, but I wanted to give you our timeframe--what it took to get it done on the thing.

This Article was first submitted to the voters in 1958. A very unusual thing happened in our state as you look back in its historical perspective in that what we did--what this committee did in drafting the Judicial Article was to adopt the American Bar Association and the American Judicature Society's Association recommendation of what a model judicial system should be so far as structure of the courts is concerned. What we did in Illinois was to put the total administrative supervisory authority over all the courts in the Supreme Court with them being in charge of all the courts in the state. We created an



1 intermediate appellate court which we did not have prior
2 to that time except by statute created by the legislature
3 under the 1870 Constitution and manned by circuit judges
4 who were assigned by the Supreme Court to the intermediate
5 appellate court. So the Article provided for the election
6 for the first time of appellate judges--intermediate
7 appellate judges who would serve fulltime in that capacity.
8 And then we created a single-level trial court--the cir-
9 cuit court of the state with no other--other courts in
10 existence. We abolished--it abolished all courts of
11 limited or inferior jurisdiction and winds up just with
12 the circuit court. Now, the--as I say, this was the model
13 which was advocated by the ABA and the American Judicature
14 Society for a state court system.

15 In 1958, when it was submitted to the voters, the
16 fight about the thing was not on the structure of the
17 court system. That wasn't the thrust of it although there
18 was a tremendous lobby against the unified trial court from
19 the people who served as JP's and the people who advocated
20 --oh, you're going to lose control in your local community
21 and so on and so forth, the township and county officials'
22 associations, people like that who are against it. But
23 the main fight in our state was the question of merit sel-
24 ection of judges in 1958. And--because it contained a
25 recommendation that judges--also advocated by the American



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1 Bar Association, American Judicature Society--and we were
2 located next to Missouri which had the Missouri Plan in
3 effect in St. Louis and Kansas City for merit selection of
4 judges. So that became the fight in our state--people
5 advocating merit selection and opposing merit selection.

6 The structure was not the center of the fight. So
7 in '58 when it was voted on by the voters, it got beat.
8 The Judicial Article got beat because of the merit selec-
9 tion issue. There was not--there was just a straight--if
10 you were for the Judicial Article, you were for merit
11 selection of judges. If you were against it, you were
12 against merit selection of judges. So the committee suf-
13 fered defeat in its constitutional revision article in
14 1958.

15 The committee then regrouped and began drafting
16 again and came up with a split question on merit selection.
17 And we--in effect, we had a--the structure part was left
18 just like it was in '58 with the Supreme Court in charge,
19 the intermediate appellate court and the one-level unified
20 trial court was left intact. The question on merit selec-
21 tion was split so that you could vote for straight merit
22 selection or for what we--was adopted by the voters in '63
23 when it was resubmitted and that was a bastardized system
24 that we had where a judge runs for election the first time.
25 He runs for office. He runs in a partisan election as a



1 judge at all levels except our associate judge level. And
 2 then after he's first elected, he runs for retention in
 3 office at the expiration of a six-year term for circuit
 4 judges and a ten-year term for Supreme and appellate court
 5 judges. He runs for retention on his record. And a sepa-
 6 rate ballot, not partisan st all, but just a ballot sub-
 7 mitted to the voters said, "Should Roy O. Gully be retained
 8 as circuit judge for another six-year term, yes or no?"

9 So when this was resubmitted in 1962, it passed with
 10 the Proposition B being selected by the voters. Proposi-
 11 tion A splitting the issue on selection of judges, being
 12 straight merit selection; Proposition B being the cross-
 13 breed type of tenure that judges have. And the structure
 14 part passed overwhelmingly. So we wound up with an amend-
 15 ment with a new Judicial Article to our 1870 Constitution
 16 which became in effect on January 1, 1964. Now, after
 17 the vote was completed and the people who had led the
 18 fight against it, being the local JP's and police magis-
 19 trates and so forth who held the positions, the smoke
 20 cleared a little bit, realized that starting on January 1,
 21 1964, we had a new Judicial Article in our state.

22 There were dire predictions of all the things that
 23 were going to happen because we no longer had the JP's and
 24 the police magistrates. Fortunately, none of those things
 25 --bad things happened. We found out that we had a very

MEMPHIS POLICE DEPARTMENT - SCIENTIFIC REPORTING



1 workable system on our hands. The new Article provided
2 that all judges had to be lawyers so we got rid of many
3 lay JP's and police magistrates which were in existence
4 all over our state, particularly in the downstate rural
5 areas. And the schedule of the constitutional Article
6 provided that they stay in office until the expiration of
7 their terms. So some of them were in office from January
8 1, 1964 when the Article went in effect, until as late as
9 1967. If they had been elected to a four-year term in
10 1963, their term didn't expire until 1967. They were
11 assigned duties by the chief judge in the circuit court in
12 cases that he felt they had the capability to sit on and
13 were kept as part of the system until their terms expired.
14 And then they were out of the system and we wound up with
15 our unified trial court which is one court--our state is
16 divided into twenty-one circuits. Cook County is a single-
17 county circuit and Du Page County which is next to Chicago
18 and has a population of about six hundred thousand people
19 is another single-county circuit. The rest of the state
20 is divided into circuits of various numbers--varying num-
21 bers of counties with the biggest one being the second cir-
22 cuit where I came from, is twelve counties. And they
23 average in size about five counties each. The Supreme
24 Court has the administrative authority over all the courts.
25 The day-to-day operation of the circuit courts is under

BRANDEGEONG B. HASTY - SC. - JUDGE DISTRICT



1 the authority of the chief judge of the circuit. The
2 Article provides that the judges themselves select one of
3 their numbers to act as chief judge of the circuit. And
4 he becomes, then, the administrative officer who tells the
5 judges where their assignment is going to be; the court re-
6 porters, where their assignment is going to be; the clerks
7 and the bailiff and the other people necessary to operate
8 the court and is in charge of the administrative operation
9 of the circuit--the chief judge is.

10 We abolished also, in addition to the courts of
11 limited jurisdiction, we abolished all the clerks offices
12 serving those courts and wound up with a circuit clerk
13 located in each county. And there's a branch of the cir-
14 cuit court in each branch of the state and a circuit clerk
15 in each county. And every case of any nature--any litiga-
16 tion of any kind whatsoever has to be filed in this office
17 of the clerk of the circuit court and has to be disposed
18 of in the circuit court.

19 This gave us, for the first time in our state, a
20 handle on how much litigation was being filed. Nobody knew
21 prior to that time because the clerk's offices were all in-
22 dependent operations. The courts were all independent
23 operations. And we had some idea in some areas how many
24 cases, but we wound up after '64, that any time any case
25 is filed, whether it be traffic, small claims, tax objec-



tion, divorce, felony, misdemeanor, partition--whatever the case is, it's filed in the circuit clerk's office in the county and disposed of by the circuit court. So we know, in our state, exactly how many cases are filed and how many cases are disposed of. We got out of the mystery of how many cases were pending in the courts because now we have a place where we can count actual numbers on the thing.

Now, we're the only state who's been able to do this. Several other states have tried to create unified court systems--North Carolina, Oklahoma, Colorado--and many of them will advocate that they have a single-level court system, but Illinois is the only one that's ever been able to completely eliminate courts of limited jurisdiction. Colorado, for instance, which patterned their Article after ours, but they weren't able to get rid of the municipal court in Denver. And it handles about half of the state's business, which the state court system ignores as part of the statistics that you get for Colorado. You get the statistics of the state court system but you'd have to go to the Denver Municipal Court to get a real count of how many cases were pending in the State of Colorado and how much litigation was being handled in Colorado. But we were able to get this through in our state, as I say, because our fight really was on the merit selection of judges



and so we were able to get it accomplished.

Now, we of course have in Cook County the largest trial court operating under a single administrative head of anywhere in the world. New York City's the biggest city; then, Chicago and Los Angeles--the county it's located in is about the same size as Cook County, but our system is about twice as big as their because they have fragmented court system. In New York City, for instance, you have circuit courts for each of the boroughs that have no connection. The Borough of Queens and the Borough of Manhattan--the circuit courts of those two circuits have no connection with each other; have different operating heads and different clerks offices. And so you don't have a unified system like you have in our Cook County system. And in Los Angeles of course, you have superior court and the county court and they still have JP courts in Los Angeles. So Chicago does have the greatest number of judges working under one administrative head of anyplace in the world.

Now, if we hadn't unified our system in 1964, I am convinced that we would be hopelessly in trouble in Cook County in both the felony work and in the personal injury work in Cook County and some of the other heavy call situations. Because what it gave us the capability of doing was to maneuver our manpower--to utilize our judicial man-



power.

When I became the administrative director of the courts in Illinois in 1968, the felony business--the disposition of criminal cases was not a particular problem. Our problem was the--handling the personal injury cases--what we call our law-jury division of the circuit court of Cook County where we had forty or fifty thousand personal injury cases being filed each year and having to be disposed of. And we had a situation where we were some five years or so from time of filing as case until you could get a jury trial, if you demanded a trial by jury. Because of the great number of cases that were filed.

Now, our problem was compounded in Chicago and it probably will become compounded in Atlanta for the same--one of the same reasons, that Chicago is the--a transportation hub of the nation. Atlanta is rapidly becoming a transportation hub of the nation. But in Chicago, we've got cases filed there on every railroad accident in the United States because all the railroads had headquarters there. We got all the airlines cases. We're still doing that. The--our Supreme Court just decided this week that all the cases that arise out of the raid at Entebbe are going to be filed in the circuit court of Cook County. The Canary Islands' cases--three hundred and forty-five deaths in the two planes down there, three hundred and ten

1 of those are filed in the circuit court of Cook County.
2 The British Airlines plane that hit Mount Fujiyama in
3 Japan--all those cases were filed in Cook County. Be-
4 cause all the airlines, both domestic and international,
5 have their headquarters or have offices in O'Hare Airport.
6 And so you can get venue on them by serving a copy of your
7 complaint on the defendant in the place where he does
8 business. And the same thing will happen to Atlanta. One
9 reason that it was so apparent that these cases--or that
10 the lawyers wanted the cases filed in Chicago was because
11 it was a metropolitan area; they could get the jurisdic-
12 tion over the defendant and then our juries were wont to
13 give large verdicts. So as soon as your Atlanta people
14 get sophisticated, which they're rapidly becoming already
15 and your transportation hub is, you can expect to start
16 getting cases filed in Atlanta.

17
18 Now, that's digressing a little bit. But we were in
19 a situation in '68 when I became director with the personal
20 injury business being the big--big problem. Well, now,
21 with the unified system and with the single-level trial
22 court in Cook County and with the administrative authority
23 being vested in a chief judge over all the judges in Cook
24 County, we were able to concentrate and to move judges into
25 the personal injury business and solve the situation. And
26 within five--or three or four years from '68, we got it

down to where cases were being tried in two years, which is about the normal time. Lawyers, from the time they file a case don't want to try it in much less than two years because it takes that long to get their discovery procedures completed, to get the injuries stabilized and so on. But we got a handle on that. So then, all at once --now, this was back in what we like to refer to as the good ol' days in '68 and '70, when the criminal business was not particularly a pressing problem. And then all at once we hit the time when our felony cases have just absolutely inundated us in Cook County like they have all over the country. I don't know--sometimes I sit or lay awake at night trying to ponder what's happened to this nation so far as the criminal business is concerned. With about the same number of people, our indictments in Cook County rose from maybe three or four thousand a year to where last year the state attorney in Cook County indicted eleven thousand people for felony cases. And I think that some of it is attributable to the more sophisticated equipment that policemen have, radios that they use to apprehend people and so on. But whatever the reason, we all at once found that we had almost twice as many felony cases as we'd previously had.

Now, we had to begin then to shift our manpower into the criminal division of the circuit court of Cook County.

And we went from about eighteen judges trying felonies fulltime to where this week we've got forty-two judges in Cook County trying felony cases. Now, we were able to do this because we had the single-level trial court with the chief judges having authority to shift these judges around. Before our Judicial Article, the criminal court had eight or ten judges; that's all they had. The superior court had a certain number and the circuit court had a certain number. And you could not have transferred a judge from the circuit court to the criminal court under our old system because he'd been elected to that particular court created by the legislature and that's where he had jurisdiction and the only place he had jurisdiction.

So, what it has done, it has given us maneuverability to use our manpower to the best advantage. Then, we can use them. Where the wheel is squeaking, that's where the grease needs to be applied. And that's what we have been able to do. Now, we have in our state under this system--we have circuit judges and we have associate circuit judges. We're also the only state to wind up with this position of associate judge of the circuit court. These judges in our Article are appointed by the full circuit judges. The full circuit judges are elected. And under the Judicial Article, they have the authority to appoint the number of associate judges per circuit that the



1 legislature prescribes that they have. And application is
2 made to the chief judge and all the circuit judges vote on
3 the associate judges. The reason for this position was
4 that--and it's turned out to be a tremendous training
5 ground for members of the judiciary.

6 When you eliminate the courts of limited jurisdic-
7 tion and wind up with a unified trial court, you still have
8 to dispose of the minor litigation. I don't like to call
9 it minor litigation because to the people involved, it's
10 the most important thing in the world. But you still have
11 the high volume business that's filed in your unified
12 trial court that was previously filed in the splinter
13 courts--the courts of limited and special jurisdiction and
14 so on--your traffic cases, your small claims cases, your
15 tax objection cases and things of that nature. So the
16 circuit courts needed judicial manpower to handle this
17 high volume litigation and that's why the drafters of our
18 constitutional Article came up with this position of asso-
19 ciate judge. He must be a lawyer and he is appointed by
20 the circuit judges and, as a general rule, is assigned to
21 calls that are the high volume calls---he traffic and
22 small claims and so on.

23 Now, what has happened in our state is these people
24 come into the system as associate judges and we now have,
25 after our system has been in effect some fourteen years or

1 so. We now have many circuit judges who got their first
 2 years of judicial training as associate judges and then
 3 have been elected to the circuit bench. We even have
 4 thirty-four intermediate appellate judges in our state and
 5 four of those are now people who started out their judicial
 6 careers as associate judges. None of them have made it to
 7 our Supreme Court yet, but I anticipate that this will
 8 happen in the near future. Because, really, fourteen
 9 years is not too long for our Judicial Article to operate.
 10 In historical perspective, when you figure that we had the
 11 one that was provided in the 1870 Constitution for a hun-
 12 dred years, from 1870 to 1970, fourteen years really is not
 13 very long for it to be in operation.

14 How does our court system operate? Well, as I say,
 15 you have a clerk's office and every case is filed. Now,
 16 in the larger areas--Cook County, for instance--we have
 17 created divisions of the circuit court. It's still the
 18 circuit court but we have a division. Cook County has the
 19 most sophisticated system of divisions because of the very
 20 size. Cook County has about six million people living in
 21 the county. So you can see the tremendous amount of liti-
 22 gation that's going to be involved with that many popula-
 23 tion. So in Cook County, we have divisions of the court.
 24 We have the criminal division of Cook Couty circuit court
 25 and a divorce division, a law jury division, tax division,

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1 a housing court division, a traffic division, a small
2 claims division. And the county is divided into municipal
3 districts for venue of cases, for disposition of cases
4 with the first municipal district being the Loop area, the
5 downtown area of Cook County. And then the county having
6 outlying municipal districts where traffic cases can go
7 to--all parts of the circuit court of Cook County. All
8 the judges work for the circuit judge or are subject to
9 assignment and control by the chief judge of Cook County.

10 We have in Cook County a hundred and sixty-eight cir-
11 cuit judges and a hundred and fifty-five associate judges.
12 So we have over three hundred judges who all have concur-
13 rent jurisdiction subject to assignment by the chief judge
14 to the circuit court of Cook County.

15 JUDGE BEASLEY:

16 Is that true of the associates too, that they can be
17 assigned anywhere?

18 MR. GULLY:

19 Yes. Yes. There's no limit on their jurisdiction
20 in the Constitution. They have concurrent jurisdiction.
21 And also our--well, let's--to answer your question, yes,
22 that's true; they have concurrent jurisdiction. Now,
23 what happened in our state? And now would be a good time
24 to explain this to you. This Article was adopted in 1962;
25 became effective in 1964 and it amended the 1870 Constitu-

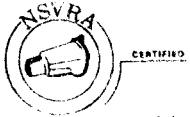
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1 tion. In 1970 then, we had a constitutional convention
2 in Illinois and a whole new state Constitution was adopted.
3 So we'd had six years of experience from '64 to '70 with
4 the Judicial Article--the new Judicial Article in the 1870
5 Constitution. The 1970 consitutional convention readopted
6 that Article almost the same as it had been for six years
7 because the people of the state were so pleased with the
8 way it had operated. In other words, we had a chance to
9 review the situation after six years of experience with
10 the new Article. By that time, all of the opposition--
11 well, I don't want to say all, because in any state--
12 Georgia may be an exception--but in our state, you never
13 get everybody to agree on everything. You've always got
14 some detractors. But at least the people who had said,
15 oh, if you do away with the JP and the police magistrate,
16 things are going to go to hell; we'll all sink in the
17 ground and we'll never exist again and so on, and there
18 were a number of people who took that attitude that, oh,
19 the big brother will gobble us up and so on if you take
20 away our JP and our police magistrate and our local courts
21 sort of thing. But the six-year experience, from '64 to
22 '70, the '70 constitutional convention readopted the major
23 provisions of the Article. They actually strengthened it.
24 This office of associate judge, from '64 to '70, we called
25 them magistrates of the circuit court. And in the '64

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1 Article had allowed the legislature to set their jurisdic-
2 tional limit. It provided that the legis--that the magis-
3 trates would have jurisdiction in those cases--areas pro-
4 vided by law. In 1970, the constitutional convention took
5 away the legislature's right to have anything to say about
6 the jurisdiction of the magistrates and left that up to
7 rule of the Supreme Court and changed the name of the
8 magistrates to associate judge because they wanted to get
9 away--some of the people who had served still had the image
10 of the old police magistrate who was a non-lawyer very
11 often and was the correspondent to the JP--to the justice
12 of the peace--but elected in a village or a city within
13 those limits. So to get away from that--what they con-
14 sidered rather a demeaning title--it isn't of course. The
15 title magistrate goes back to the old Roman law of course
16 when it was viable position and--but the term police
17 magistrate and JP had really fallen into disrepute in our
18 state--had really gotten awfully low. And so the 1970 con-
19 stitutional convention did away with the term of magistrate
20 and called these judicial officers associate judges. So
21 they now have concurrent jurisdiction with the circuit
22 court. They're subject to assignability by the Supreme
23 Court rule. And the Supreme Court rules have provided
24 that the associate judges can be assigned to any type case
25 in our state except the actual trial of felony cases which



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1 they also can be assigned to but there has to be per-
2 mission of the Supreme Court granted to assign an asso-
3 ciate judge to the trial of a felony case. What the chief
4 judge does if he has an associate judge that he feels is
5 capable of trying felony cases, then he asks the Supreme
6 Court for authority to assign that associate judge to the
7 trial of felony cases. And we do that all the time. Of
8 our three hundred and twenty associate judges in our
9 state, half of them in Cook County--a hundred and ten or
10 a hundred and fifty or eight in Cook County, more than
11 half of them have permission from the Supreme Court now
12 to sit in the actual trial of felony cases.

13
14 **JUDGE BEASLEY:**

15 What's the difference, then, between the two?

16 **MR. GULLY:**

17 There is no difference except the way they're sel-
18 ected--the way they're selected and of course there is a
19 salary distinction as there has to be a pecking order in
20 anything. Our associate judges start at thirty-seven
21 thousand dollars a year; our circuit judges get forty-two,
22 five a year. So--and but the method of selection is really
23 the only basic difference in the two positions at the
24 present time.

25 Now, as I say, we had dire forecasts of all the things
that were going to happen. There was--it was a difficult

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1 transition period. The '64 Article abolished all courts
2 of limited jurisdiction. It abolished the clerks offices
3 of all the courts of limited and special jurisdiction.
4 The schedule provided that the clerks offices would turn
5 their records and files over to the circuit court. And
6 there was a period of time when--it was a difficult period
7 of time in the transition because what happened was that,
8 on January 1, 1964, if you had a case pending, if you were
9 a merchant and somebody hadn't paid you a bill and you had
10 a case pending in JP court, that case was transferred
11 bodily, the file and everything, from that JP clerk's
12 office--and very often they act as their own clerks--into
13 the circuit court clerk. And it took a little time to
14 weed those things out--to get them disposed of.

15 Now, that didn't last very long because those cases
16 were all gone in the more populous areas of the state, it
17 was not a particular problem because, as I said a while
18 ago, the Article provided that the JP-police magistrate
19 continue to serve as an office--judicial officer in the
20 unified trial court until the expiration of his term. So
21 in effect, his cases went with him. Instead of being
22 handled in his JP court, they were handled in circuit
23 court. But he knew what his litigation was and he took it
24 to the clerk's office with him--these are the files--and
25 then he--it was disposed of by him in most instances where

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1 --and then of course when he went out of office, any
2 future cases were filed in the circuit clerk's office and
3 so it disappeared by attrition in a short period of time.

4 The JP and police magistrate terms were four-year
5 terms in Illinois at the time so the latest that this
6 situation existed was 1967 because they'd have had to have
7 been elected prior to January 1, '64. And the last elec-
8 tions were in November of '63 and those terms ran out in
9 November of '67. So by the end of 1967, all of the old
10 limited and special jurisdiction court judges and clerks
11 were out of the way; the cases were all disposed of and
12 we had our new system. But it was a difficult period of
13 time. I don't want to mislead you about that. There was
14 a lot of confusion. People didn't know what to do. There
15 was a lot of apprehension--the natural apprehension of
16 something new, a new system. Some of the judges were very
17 apprehensive because they had been completely independent
18 operators. I was there; I know. I had the same feeling
19 myself.

20 When I was a circuit judge from 1957 to 1964, I got
21 myself elected and after I got elected, man, I held court
22 or didn't hold court just as I saw fit. Nobody was in
23 charge of me. There were three circuit judges elected in
24 the twelve counties but we had equal power over each other.
25 Nobody was in charge. And if I wanted to go to Georgia and

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1 play golf for a month, which I did a time or two over in
2 the beautiful place of Callaway Gardens over here, I
3 didn't have to call anybody and say I was going. I didn't
4 have to let anybody know except I let the lawyers know
5 that I wouldn't be available for that period of time. I
6 was in complete charge of my court. The only persons I
7 was responsible to was the voters and of course you tried
8 to keep in good faith with the lawyers because that would
9 translate into people voting against you. But nobody
10 really to be responsible to for the way I operated my
11 court.

12 Now, after January 1, 1964, this changed. Because
13 our Supreme Court who had the administrative authority
14 over all the courts began to require that judges file re-
15 ports of their activity with them. You had a chief judge
16 that you had to check with before you went on your vaca-
17 tion because all the judges couldn't go on vacation at the
18 same time. And so somebody was in charge of the railroad,
19 for the first time in our state.

20 Now--and I say I was apprehensive about it. I'm sure
21 that my enthusiasm has switched completely because I got
22 in in 1968 to the administrative end of the thing and I
23 personally think that it has resulted in much better
24 judges in our state, more conscientious judges, more
25 efficient use of our manpower and, I think it has resulted

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1 in a better court system for the lawyers that practice in
2 our courts, very important elements of it, and the people,
3 the citizens who use our courts. And I think that we're
4 getting more for our tax dollar out of our court system.
5 I know we are that. We're getting much more for our tax
6 dollar out of our court system than we did when we had the
7 little fiefdom, the little independent court in each county
8 or each city who danced to his own tune and marched to his
9 own drummer and we're just getting a more--a better shake
10 for our money for our taxpayers under our present system
11 than we were under the old system.

12 Now, one of the things that Wayne wanted to know here
13 was, what is the reaction of local government, the public,
14 judicial personnel and others to the new system? Well, as
15 I say, the reaction of the township and government--local
16 government officials, their attitude was to be against the
17 Judicial Article when it was passed. The JP's, the police
18 magistrate, the clerks of these special courts of limited
19 jurisdiction were part of that. They were members of their
20 group. And so there was a lot of hostility about the
21 situation. After it passed of course, there wasn't any-
22 thing they could do about it, but there was some feedback
23 and some opposition to the thing. I think that that pretty
24 well has been overcome. Of course the JP's and the police
25 magistrates and the clerks offices are gone and were within

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1 three years or so. And so now, as a matter of fact, most
2 of them who were in office are gone. Some exceptions, but
3 the average age of our JP's, police magistrates in 1964
4 was probably fifty-five and that's fourteen years ago.
5 So those people are seventy years old now and many of them
6 are dead and they've gone to other occupations and other
7 businesses. So that type of resistance to the thing has
8 faded out by attrition.

9 There was some hostility evident in the legislature
10 after the passage of the Article because it, for the first
11 time in our state actually, recognized the provision of
12 the Constitution that's in the Federal Constitution and
13 very--every state Constitution that I'm aware of. And
14 that is the doctrine of separation of powers which says
15 that the legislature shall not run the judicial business
16 and the judiciary shall not run the legislative business
17 and the executive shall not be operated by either one of
18 them on the thing. So, for the first time, when the
19 voters of our state adopted a Constitution that said the
20 legislature could no longer create courts. There was some
21 resentment in the legislature about that because they
22 liked that power. In 1970, when it said that the legisla-
23 ture could no longer say what cases the associate judges
24 could hear, that was up to the judiciary to decide what
25 cases they were able to hear, there was some resentment in

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1 the legislature about that because some members of the
2 legislature thought that--they wanted to be able to say
3 where a judge was elected and what he could hear when he
4 was elected and so on. Now, I think that that pretty well
5 has disappeared in our legislature or when the voters
6 adopted it, they found there wasn't anything they could do
7 about it and they went on to other and larger things.

8 Really, the court system is not a large area in state
9 government for anybody to be concerned about, particularly
10 for legislators. In our state, four-tenths of one percent
11 of our state budget is all that the courts take--four-
12 tenths of one percent. We've got about a twelve billion
13 dollar budget in Illinois and our appropriation for our
14 judicial salaries and our court reporter salaries and the
15 other things that the state pays--our state legislature
16 appropriates money for is about fifty-two or three million
17 dollars. So, as I say, they had other things to go to and
18 I don't--I'm not aware of any real opposition in our leg-
19 islature or resentment still existing in our legislature
20 because the voters adopted the Article in '64 and then in-
21 cluded it in the 1970 Constitutional Convention.

22 Wayne, I think I've pretty well covered the picture.
23 I would be happy to answer any questions that anybody has.

24 REP. SNOW:

25 Let me just ask you a couple of general questions

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before anyone else asks any. And that's relative to your juvenile courts, probate courts and other courts. They-- did they come into your system--does your circuit court judge appoint them as juvenile court, as such or--

MR. GULLY:

No, no. No, they do come into the system certainly. In Cook County, we have a juvenile division. The person who--and we have about twelve judges in the juvenile division.

REP. SNOW:

Is that all they do?

MR. GULLY:

Well, that's all they may do this week. They're assigned there. They're judges of the circuit court, either full circuit judges or associate judges of the circuit court. They're assigned to the juvenile division by the chief judge. Now, what happens is, you have five or six of the twelve judges assigned to the juvenile division of Cook County who like juvenile work, who get recognized as juvenile experts. For instance, William Sylvester White, who has been chairman of the National Conference of Juvenile Court Judges two or three times, is the presiding judge of the juvenile division. So you wind up with five or six who like it and do a good job and the chief judge leaves them there and they'll stay there for a long time.

1 The other five or six juvenile division assignments
2 will stay in juvenile for maybe a year or two years and
3 then they'll be wheeled someplace else--be assigned some-
4 place else. It's a very demanding jurisdiction. I mean,
5 it will drive your right up the wall if you're trying to
6 figure out what to do with these kids in trouble. I
7 remember when I was county judge from '50 to '57, I had
8 the juvenile jurisdiction. Man, I wished somebody could
9 have assigned me away from that at that time.

10 But that's what happens. Now, also the same thing
11 will happen in the criminal division. We have forty-two
12 judges hearing felony cases in Cook County. Twenty or
13 twenty-five of those judges like to try felony cases. So
14 they will stay there on assignment. The chief judges finds
15 out who those are and they like--he knows they like assign-
16 ment there; they're competent, capable, experienced felony
17 trial judges. And so they'll stay there for several years
18 at a time. You have some other judges--and we have to get
19 up to forty-two, which we are now--who don't want to stay
20 in felony for very long--maybe two or three years--and then
21 they want to get out. Because it can also be very trying
22 on a man sending people to the penitentiary every day. So
23 they will sit on felony for two or three years; then they
24 go to law-jury or some other division over there.

25 JUDGE STANLEY:

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1 Do you find that true in probate matters? A few will
2 stay in probate area?

3 MR. GULLY:

4 That's true, yes. We had Duke Dunn--Robert Jerone
5 Dunn who was head of the probate division of the circuit
6 court of Cook County for many years--a national authority--
7 he stayed there. And it's the same thing. In our pro-
8 bate division, we've got probably eight judges and four
9 or five of them will be there ten years and others of them
10 who want to move on someplace else will be assigned some-
11 place else.

12 REP. SNOW:

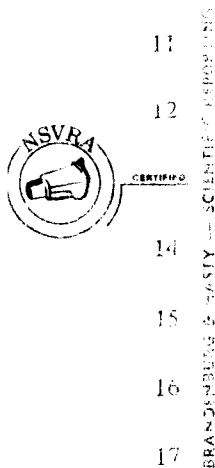
13 Have you had any experience, say, with a family type
14 court where the judges handle all domestic relations cases
15 and juvenile cases together or--

16 MR. GULLY:

17 No. We have never--we've never had the family court
18 concept in our state. The legislature has never provided
19 for that--I mean, our--we have a divorce act--a marriage
20 dissolution act and then we have our juvenile court. But
21 we have never gone to the concept of the family court
22 where you handle divorce and juvenile problems and every-
23 thing in the same--some states have.

24 MR. BRAUN:

25 What would be your appellate route if someone wanted



1 appeal from a traffic conviction?

2 MR. GULLY:

3 All right. Another thing that our constitutional
4 Article did. We had JP courts and county courts and cir-
5 cuit courts--trial level. If you got a case in a JP
6 court; you weren't satisfied with the verdict, you could
7 go to the county court on appeal and it'd be tried de novo.
8 Now, those of you who are lawyers know what that means.
9 Non-lawyers don't know. It means from the beginning. It
10 would just be tried over. If you didn't like what the
11 county court did, you could go to the circuit court and
12 get a trial de novo. So a clever lawyer--a lawyer that
13 wanted to delay things could try a case three times. This
14 got to be a very troublesome situation and you could
15 really get three bites to the traffic accident case or
16 debt collection case if you didn't like the verdict. And
17 of course you always hoped that a witness died or changed
18 his story or something by going on.

19 Our Article revised all that. Now, an appeal of any
20 case goes to the intermediate appellate court--traffic
21 case, small claims case, anything--any appeal. Because of
22 a unified trial court, no judge in the trial court has any
23 power of review of another judge in the trial court and so
24 any case that--any appeal goes to the intermediate appel-
25 late court. Now, in order to handle the problem, what do

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1 you do about the expense of that? The Article provides
2 that the Supreme Court shall adopt rules for expeditious
3 and inexpensive appeals. So if we have a traffic court
4 case that is appealed, you can get on a--you can use mimeo-
5 graphed briefs. You don't have to present a brief--or
6 printed briefs. And you can appear pro se in the review-
7 ing court if you want to do that.

8 Now, we found out--there was much consternation at
9 the time of the adoption of the thing. Well, boy, that'll
10 be terrible because if I want to appeal my traffic convic-
11 tion, I'm going to have to go to the appellate court. We
12 have five in the state. And so if you had somebody in
13 Carroll who got a traffic ticket, his appeal would be to
14 the appellate court in Mount Vernon and there was a lot
15 of--oh, this is terrible. We found out really that it has
16 not been a problem because you don't have many people who
17 appeal traffic tickets. Now, if you do--occasionally you
18 get somebody as a matter of principle. You know, they--
19 well, I was convicted--given a traffic ticket. I'm going
20 to appeal it and so on. The ones who have that much prin-
21 ciple and that much conviction, they don't mind going to
22 Mount Vernon. In fact they kind of enjoy taking their
23 appeal to Mount Vernon. So it really has not been a prob-
24 lem. But the route of appeal is from--anything in the
25 trial court goes to the intermediate appellate court.



1 REP. SNOW:

2 Is that final disposition of it there?

3 MR. GULLY:

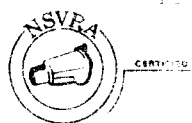
4 It is except in two or three instances. If there's a
5 constitutional question involved, you have a right to go
6 on to the Supreme Court. If the appellate court certifies
7 it on importance, it goes on to the Supreme Court. And
8 then you've got--you can go into the Supreme Court and file
9 a petition for leave to appeal and they can reach down and
10 bring the case up on the thing. You have direct appeal to
11 the Supreme Court in capital cases from the circuit court.
12 That bypasses the intermediate appellate court.

13 DEAN BEAIRD:

14 How do decision of regulatory agencies get into the
15 judicial system?

16 MR. GULLY:

17 Well, under our Administrative Review Act, the same
18 way they did before, except now they go to our unified
19 trial court. We have an Administrative Review Act. And
20 a decision of the Industrial Commission or the Interstate
21 Commerce Commission or Illinois Commerce Commission or any
22 of the other commissions, you can appeal on administrative
23 review to the circuit court. The circuit court then con-
24 sideres the record; has the power to ask for additional
25 evidence or to decide the case on the evidence before the



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1 commission and then the circuit court's decision, either
2 approving the commission or reversing the commission, is
3 appealable on to the intermediate court of appeals.

4 DEAN BEAIRD:

5 Do these court of appeals judges sit in various parts
6 of that state?

7 MR. GULLY:

8 Yes, the state is divided into five districts. And
9 we have thirty-four intermediate appellate judges elected
10 in the five districts.

11 REP. SNOW:

12 From that district?

13 MR. GULLY:

14 Yeah, yeah. Twenty are elected in Cook County--or
15 there's thirty-six--sixteen downstate and four districts.

16 JUDGE BEASLEY:

17 They don't switch--they can't be reassigned?

18 MR. GULLY:

19 The Supreme Court has the authority to reassign them
20 and we do it very often. We send down state divisions in-
21 to Cook County because they have so much business in the
22 first district appellate court. But they are elected from
23 a district and set primarily in the district in which they
24 are elected.

25 MS. WILSON:

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1 What's the smallest number of judges within a cir-
2 cuit and does this still lend itself toward assigning cer-
3 tain areas to--

4 MR. GULLY:

5 The smallest number of judges that we have in any
6 given circuit would probably be the--the Eighteenth Cir-
7 cuit, which is the other single county circuit in the
8 state--the six hundred thousand population. That circuit
9 has seven circuit judges and twenty associate judges; they
10 have twenty-seven judges working for the chief judges or
11 under--subject to assignment by the chief judge. The rest
12 of the circuits have various numbers depending upon the--
13 we have a provision in our Constitution that says that we
14 must have one circuit judge elected from each county. So
15 if you've got a circuit like the old Second Circuit I was
16 in--twelve counties--you know you've got at least twelve
17 circuit judges because you've got twelve counties.

18 MS. WILSON:

19 But those circuit judges, if they didn't have enough
20 to do, could you assign them to some other circuit to help
21 out?

22 MR. GULLY:

23 Yes. Yeah, now, another thing--this has also given
24 us things. I was a circuit judge in downstate Illinois
25 and Cook County is half our state and has over half our

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1 litigation and so on. And when I became the administrative
2 director with the problem in Cook County, I said to our
3 downstate circuit judges--and it was not a particularly
4 popular thing to say--I said, you're going to have to go
5 to Cook County. We've got three hundred and forty down-
6 state judges and if each of you will spend--expect to
7 spend at least three weeks out of the year on assignment
8 to Cook County, we can add some forty judge--the equiva-
9 lent of some forty judgeships to Cook County at no expense
10 to the state except to pay their expenses while they're in
11 Chicago.

12 So I started doing that and have continued to do it.
13 Now, this has had a tremendously beneficial effect with
14 the legislature in our state. I don't know how the Atlanta
15 population compares to the population of Georgia, but--

16 REP. SNOW:

17 It's about a third.

18 MR. GULLY:

19 But this was the thing that has given us the aspect
20 of having a real state judicial system as opposed to a
21 bunch of courts located throughout the state--state judi-
22 cial system--has been this assignment system to Cook County
23 and the legislators can see, well, by gosh, good ol' Judge
24 X down there, I thought he was just sitting down there on
25 his duff in the courthouse and not doing anything. Why, he



1 --when he gets spare time, Gully sends him to Chicago and
2 he's helping them up there. And this has done a lot to
3 help our--

4 REP. SNOW:

5 What did you do about your fees and forfeitures that
6 the cities--city magistrates had been getting? Are they--
7 have some means of compensating these small towns for what
8 they were losing in fines?

9 MR. GULLY:

10 Well, yes, we did. I mean, another strange thing
11 happened. And now you can look back, it's a historical
12 review now because we've had fourteen or fifteen years of
13 the thing. In 1963, the fines and fees reported in the
14 State of Illinois that the--that was the cost that the
15 JP's and the police magistrates got--they got the costs--
16 the court costs. That was part of their fee. The fines
17 then were turned over to either the county government or
18 the municipality and so on. The fines and fees reported
19 in our state amounted to some eleven million dollars. By
20 1968--calendar year 1968, the first full year that I was
21 the administrative director of the courts--and I didn't
22 have anything to do with it but it just--those fines and
23 fees had escalated to almost sixty million dollars a year.

24 REP. SNOW:

25 Somebody was pocketing something.

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MR. GULLY:

Well, I kind of wondered maybe if that wasn't what was happening. I mean--but now, the Constitution is silent on what happens to that. It does say we have no fee officers. Everybody has to be paid a salary. There's no more fee officers. But our legislature in its wisdom-- and I think it's a very wise thing to do at that particular point in time--provided that the fines collected by the court system would go back to the county unit of government or to the municipality if the arrest was made by the municipal police.

In other words, if a traffic ticket was issued by a city policeman, then the ten dollar speeding fine or whatever it was would be credited back to the municipality. If it were made by the state police or by the sheriff's department, it would go back to the county. So the county suddenly got a great source of revenue--the counties and the municipalities--that they hadn't had except what portion that was turned over to them and I'm surprised that an honest guy from Georgia might suspect so rapidly that they weren't all being turned in. But it was obvious that they were not all being turned in.

So, now, our annual revenue from the judicial system is up to about eighty-five million dollars in the State of Illinois. That's fines and fees collected.



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1 MR. HODGKINS:

2 And that's returned to the--

3 REP. SNOW:

4 Y'all keep the court costs just for the court system?

5 MR. GULLY:

6 Yes. The court costs are reported as earnings of the
7 circuit clerk's office and any excess of the operation of
8 his office goes into the county general funds. But the
9 fines are distributed to the municipalities and the county
10 unit of government. There are a few fines that go to the
11 state general revenue fund--overweight truck violations,
12 for instance, conservation offenses--hunting and fishing
13 offenses and so on go to the state. The other things go
14 either to the county unit of government or the municipal
15 unit of government.

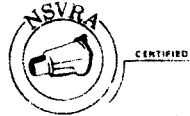
16 JUDGE STANLEY:

17 What kind of county arrangement--contract arrangement
18 with the counties do you have for payment for furnishing
19 facilities--court facilities?

20 MR. GULLY:

21 Under our statutes, the county has the responsibility
22 of furnishing the facilities for the judicial system, for
23 the local judges. They have to furnish the courtrooms and
24 the chambers, telephone and office supplies for their
25 judges. The judges' salaries are paid by the state.

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1 REP. SNOW:

2 Do you lease this space from your county courthouses?

3 MR. GULLY:

4 No. It's just the obligation of the county board to
5 furnish the facilities. So they do that at their expense.
6 Of course our state is like nearly all states where we talk
7 about the county courthouse. When you go in the county
8 courthouse, you'll find the Public Health Department and
9 the tax collector and a lot of things that have nothing to
10 do with courts. And--but our county boards generally have
11 been happy to furnish adequate facilities because of this
12 bonanze that they got out of the operation of the judicial
13 system. It kept several of our counties from going bank-
14 rupt, particularly after the interstate highway systems
15 were built and the revenues from ticketing and so on were
16 channeled into--away from the JP speed trap into the--we
17 still enforce our fifty-five mile an hour speed limit--
18 Carter's fifty-five mile an hour speed limit--in our state
19 and we have a tremendous amount of traffic violation busi-
20 ness around the interstate system through Chicago just as I
21 know you do here in Atlanta. But we're still a littler
22 larger--there are more people going through the Chicago
23 area than there is through the Atlanta area yet. That may
24 not be true for many years.

25 MR. BRAUN:

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1 You may have said this, but I missed it. What's the
2 term of the associate judges?

3 MR. GULLY:

4 Four years. And then they have to be retained only
5 by the circuit judges. They're appointed by the circuit
6 judges; they serve four-year terms. At the end of four
7 years, they have to be reviewed, "Should Roy O. Gully be
8 retained as an associate judge for another four-year
9 term?" But the only voters are the circuit judges.

10 MR. BRAUN:

11 As a practical matter, are there many who are not re-
12 tained?

13 MR. GULLY:

14 Well, there's been--from '64 to '70, there was no
15 term for the magistrate position that became the associate
16 judges' position under the 1970 Constitution. But in
17 1970, they named them associate judges and gave them four-
18 year terms. So there's only been one review. That was in
19 1975. There will be another one in 1979. In 1975, we had
20 about three hundred associate judges who were reviewed by
21 the circuit judges and nine of them were not retained for
22 another four-year term.

23 DEAN BEAIRD:

24 Now, they hear the same kinds of cases as the cir-
25 cuit judges?

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1 MR. GULLY:

2 Subject to assignment by the chief judge. They have
3 the authority. He can put them anywhere he wants to. And
4 some of them you will find trying felony cases right along
5 a full circuit judge. Now, the chief judge decides which
6 of his associate judges have the experience and so on to
7 hear particular--and he has the assignability power. He's
8 got all the cases in his circuit that have been filed by
9 county to be disposed of and he decides which judges--some-
10 times you have a circuit judge that doesn't have enough
11 sense to come in out of the rain and you don't want to
12 assign him to try a complicated felony case. So the chief
13 judge can assign that case to his competent associate judge
14 and have that circuit judge down here in traffic in that
15 week or month or however long he wants to.

16 JUDGE BEASLEY:

17 Doesn't that cause tremendous problems among the
18 judiciary?

19 MR. GULLY:

20 Well, it has--you'd be surprised how little problem
21 it's caused. Now, it's bruised--and in the beginning, it
22 bruised a lot of feelings. We had judges that said, oh,
23 my god, they're never going to get me to try a traffic case
24 or they're never going to get me to try this or that and so
25 on and so forth. Well, they've found out that they have to

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1 do it. And, really, it's helped our system tremendously.

2 When I was chief judge of the Second Circuit, I in-
3 sisted on taking my turn in the traffic court or in the
4 small claims court a week at a time or something. Because
5 what judges lose sight of is that ninety-five percent of
6 the people who get into the judicial system, get in at the
7 traffic court level or the small claims level. Only about
8 forty percent of our population ever get to any court.
9 That includes the traffic and the small claims court. Only
10 about forty percent--four out of every ten persons living
11 in your neighborhood have ever been in a court of any kind
12 for any reason.

13
14 Now, of that forty percent of the population, ninety
15 percent of the people who do get into court, get in at
16 the traffic court or the small claims court level. There
17 is no problem in maintaining the judicial image and the
18 appearance of granting justice in the Supreme Court or the
19 intermediate appellate court, or in the big courthouse in
20 Atlanta where the circuit judge tries felony cases and so
21 on. I mean, anybody who gets into to those courts doesn't
22 have--where the judge has a robe on and the bailiff raps
23 the gavel and everybody stands when the judge comes in--
24 nobody has any problem there getting the feeling that jus-
25 tice is being administered and this is a place that demands
respect and you ought to give respect to the law and that's

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1 what we have to have to control our population. It's the
2 respect of the law rather than the actual strength of the
3 law that keeps us operating as a society. Because--but
4 you don't have trouble maintaining it in those courts.
5 Where you have the trouble is down in the basement of the
6 courthouse or the City Hall where you have your Traffic
7 Court or your small claims court and you get fifty or
8 sixty people in a room big enough to hold twenty people,
9 standing outside and sweat--they always locate those
10 places next to the urinals down in the basement in our
11 state. I don't imagine Georgia is any different. And it
12 just smells like a bad place to be. And that's where you
13 have trouble maintaining the appearance of justice and
14 getting people to respect the system.

15 And what we were able to do--now, we had--and we've
16 got a hundred and two counties in Illinois. You've got
17 more in Georgia, I'm sure because Georgia--I looked at the
18 map one time and I was amazed at how many counties you had
19 down here. But we've got a hundred and two counties in
20 Illinois and there's a courthouse located in each county.
21 In those courthouses, there were, in the larger counties,
22 two or three, and in the smaller counties at least one
23 beautiful ornate courtroom. And that was assigned to the
24 circuit court, the circuit judge. And they had maybe two
25 or three terms of courts a year. And a term of court would

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1 last three months if there were four a year and four
2 months if there were three a year. And the circuit judge
3 would come to town and I was one of the circuit judges
4 that came to the town and you'd try the cases up there
5 for three weeks, maybe, and then you'd move on to another
6 county in your circuit. And that courtroom would be shut
7 up--locked up; the lights turned out and wouldn't be used
8 again till the circuit judge came back to town. Well,
9 now, in 1964, when we came to our situation, we changed
10 that too. We began to use those nice courtrooms. When
11 the circuit judge had the felony case to try or the chief
12 judge had the felony case to try, they could use them for
13 that. When he didn't have or the important case to try,
14 we started using them for traffic and small claims. And
15 we had people going into surroundings--they got away from
16 the urinals down in the basement of the courthouses. And
17 they began to see that the courts were different from the
18 impression they had about them before. And it's been of
19 great benefit to us from that standpoint. And we were
20 able to utilize these courtrooms that had not been really
21 utilized before.

22 Now, they were utilized when the case was being tried
23 and a lot of hard work--a lot of hard cases tried. I
24 tried a lot myself. But when I was in Mount Vernon, Ill-
25 inois, and when I got done with the circuit court in Mount

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Vernon, Illinois, and went on to another county, that courtroom there wasn't used till I got back. Now, it is used. We use it all the time now. And that's what we've been able to do with this system.

MR. OLSEN:

The warrant-issuing--are you on--do you have anyone other than your judges issuing warrants?

MR. GULLY:

No. No, we have--all judges--the judges issue all warrants--search warrants, arrest warrants--anything that has to go before a judicial officer and we have the requirement that there be one circuit judge located in each county. In addition to that, the circuit--I think the smallest number of associate judges within a circuit is four associate judges. And that would be in this Second Circuit that I came out of because you have twelve circuit judges. You have four--but that gives you at least one judge in every county and some of them have more than one judge. And that is the only--a judicial officer must issue the warrant. The chief judges makes provision that if the judge wants to go out of the county, the chief judge makes provision for somebody to cover so that the sheriff's department and the police know who's going to be issuing the warrants that have to be issued while Judge Gully's on vacation or something.

1 MR. OLSEN:

2 Two other questions. One is, you're a citation state,
3 aren't you?

4 MR. GULLY:

5 I don't know what you mean by that.

6 MR. OLSEN:

7 In other words, does Illinois--generally if someone
8 misdemeanors and such, a citation is issued?

9 MR. GULLY:

10 Yes. Yes. We have a notice to appear which I guess
11 you'd call your citation.

12 MR. OLSEN:

13 And your warrants are circuitwide? In other words,
14 any judge in the circuit could issue a warrant that would
15 be good anywhere in the circuit?

16 MR. GULLY:

17 Yes. Anywhere in the state for that matter.

18 MR. OLSEN:

19 Anywhere within the state?

20 MR. GULLY:

21 Yes, yes.

22 JUDGE STANLEY:

23 I just wanted to ask, in your small claims cases, are
24 the party litigants authorized to represent themselves
25 without attorneys?

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1 MR. GULLY:

2 Yes, they are. We have one division in Cook County
3 that we started about two years ago as an experiment,
4 Judge, where we do not allow lawyers. We have--it's a
5 completely pro se division of the small claims division
6 in Cook County. And the lawyers are not permitted in that
7 division. The rest of our small claims divisions are cases
8 tried as a small claim in any of the circuit courts of
9 the state; have the same rules on that, that you can repre-
10 sent yourself if you want to. But lawyers can be hired to
11 represent you if you want to except for that one division
12 in Cook County where we tried it as an experiment and are
not allowing lawyers in it.

14 JUDGE STANLEY:

15 Just looking at the citizens point of view on this
16 thing, did you have any feeling on the part of the citi-
17 zenry that, when you got away from your county courts and
18 your magistrates and so forth, that there were no judicial
19 officers that were, you know, the sort of local individual
20 that you could go talk to and that sort of thing?

21 MR. GULLY:

22 Well, I'm sure that there was some feeling of that
23 nature on the thing. There was a lot of apprehension about
24 it at the time. You know, you've got a situation that's
25 part of human nature involved here, that came into play



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1 with it where people say they want judges to be completely
2 fair and impartial and they want to have pure justice and
3 so on and so on and so forth. But then they wind up by
4 saying, I don't want to go in the new system because I
5 want to know who that judge is. I want it to be my neigh-
6 bor, in other words. What--in fact they want to know the
7 judge. They're probably looking to get a little advantage
8 themselves in their secret hearts. But the thing that
9 kept this apprehension from becoming a full-blown realiza-
10 tion was that the judges didn't change. They continued to
11 be the local man. The only thing he was working in a dif-
12 ferent system. I mean, we didn't move judges in except
13 on a temporary basis from downstate to serve in Chicago or
14 Vice versa.

15 Judge Gully, who had been a circuit judge--first a
16 county judge and then a circuit judge, then after the new
17 Judicial Article went into effect, I still lived in the
18 same house; still had the same neighbors. I hadn't changed.
19 I was just working under a different structure. But I was
20 still the same person as were all the other judges in the
21 state. So the apprehension did not come to fruition at
22 least, but it was there, Judge. I don't want to be dis-
23 honest about it.

24 JUDGE STANLEY:

25 I think that's one of the wisest moves you probably

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1 made is the fact that you retained a circuit judge in
2 every county and gave them some feeling of closeness there
3 to--

4 MR. GULLY:

5 Yes, I think that's right; I think that's true.

6 MR. MUNDY:

7 Yes, I wanted to ask you, at the time of your change-
8 over, did you bring all your records into one clerk's
9 office?

10 MR. GULLY:

11 Yes, yes.

12 MR. MUNDY:

13 And did that tax his filing cabinets?

14 MR. GULLY:

15 Yes, it did. It created--I say that first three
16 years was a little hairy. In other words, if you had a
17 county like--I don't want to talk about Cook County because
18 that's a special situation. I mean Cook County is bigger
19 than probably forty of the fifty states in itself. But
20 a typical county of sixty or seventy thousand population,
21 the situation you had was that on January 1, 1964, when
22 the Article went into effect, the JP's and the police mag-
23 istrates and the county court--now, the county court was
24 located in the courthouse at that time too so that was just
25 a matter--our old county clerk used to be clerk of the

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1 county court and then the circuit clerk was clerk of the
2 circuit court. So all that the county court clerk did--
3 and the county clerk had many other duties in addition to
4 being the clerk of the county court. He issued the marri-
5 age licenses and the death certificates and kept the tax
6 records and a lot of other things that in our state they
7 did. So all it was a matter of him doing was to transfer
8 his county court files over to the clerk's office.

9 Now, sometimes, in some of the courthouses, that was
10 accomplished just by changing a name on the room where the
11 county clerk--where the county court files were kept. It
12 used to say "Clerk of the County Court." Just retitled
13 that as "Circuit Court Clerk" and it became--sometimes it
14 had to actually be physically moved over into the circuit
15 clerk's side of the courthouse.

16 Now, in addition to that, the JP's and the police
17 magistrate in the city court that had been created by the
18 legislature who had clerks offices located in other parts
19 of the city or the county, they actually physically moved
20 their records into the circuit clerk. Now, this--what we
21 had to do in many areas was to rent space outside the
22 courthouse to house these records. And now, many of them
23 --of course we designed at the same time a recordkeeping
24 system under the jurisdiction of the Supreme Court and we
25 began to destory many of the insignificant things when the

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1 cases were completed and were able to weed out a lot of
2 the stuff so that in three or four years, the confusion
3 was gone. But it was confusing in the beginning.

4 MR. MUNDY:

5 Just briefly, on your--I'm interested in your record
6 retention and destruction. Don't go into, like, you know
7 --but is that pretty well along? Have y'all got a pretty
8 good system?

9 MR. GULLY:

10 Yes. We designed that in 1967-68; got it finished
11 and we have--basically any record prior to 1870, we do not
12 destroy unless we get permission--we send a notice--they--
13 the clerk of the circuit court, if he has a record prior
14 to 1870, he files a request with my office for destruc-
15 tion. I then have to submit that to the State Archivist
16 and he has a right to take any part of the record and
17 transfer it to the State Archives of anything he's inter-
18 ested in from a historical standpoint if it's over 1870.
19 From 1870 on, my office can give permission to the clerk
20 to destroy records of things that he has in his files on
21 the thing.

22 MR. MUNDY:

23 Is the clerk an elected office?

24 MR. GULLY:

25 The clerk is an elective office, right.

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1 MS. WILSON:

2 All clerks? I notice in your Constitution--

3 MR. GULLY:

4 The clerks of our reviewing courts are appointive
5 since 1970. Our Supreme Court clerk and the clerks of
6 our appellate courts are appointed since the 1970 Article.
7 The circuit clerks are all elected, one in each county.

8 JUDGE CRANE:

9 You don't have an overall clerk for the entire cir-
10 cuit?

11 MR. GULLY:

12 No. For the county.

13 REP. SNOW:

14 Then, do you--how about the deputy clerks? How are
15 they selected or--the clerk appoints them?

16 MR. GULLY:

17 Yes. He hires his own staff.

18 DEAN BEAIRD:

19 How many appellate court justices did you have prior
20 to the reorganization? You have thirty-four now.

21 MR. GULLY:

22 Oh, we had six in Cook Count in the First Circuit and
23 three each in the downstate circuits. They were circuit
24 judges who were assigned to the appellate court--intermed-
25 iate appellate court by the Supreme Court.

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1 DEAN BEAIRD:

2 Do you believe that the single-tier reorganization
3 resulted in a greatly increased appellate workload in the
4 state?

5 MR. GULLY:

6 Oh, yes, it did. I'm sure it did.

7 DEAN BEAIRD:

8 About how much could we expect in this state?

9 MR. GULLY:

10 Well, if you cut out the--which we did, which we felt
11 was a real necessary thing to cut out--the de novo appeal
12 or appeal from the JP to the county court and from the
13 county court to the circuit court. If you'd cut that out,
14 of course, then you're going to have to increase your
15 written, reviewing court capability. Now, that's what we
16 did in our state of course. And I don't know how many
17 cases you're trying. I suppose you could make a mathe-
18 matical progression population-wise between illinois and
19 Georgia and how many it's taken us to handle as opposed to
20 what--do you have an intermediate appellate court here
21 now?

22 REP. SNOW:

23 Yes. We have a Court of Appeals that sits here in
24 Atlanta. We don't have any division of it but--we have
25 divisions of it but it--

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1 MR. GULLY:

2 How does it get its cases? I mean where do they
3 come from?

4 DEAN BEAIRD:

5 Superior courts primarily.

6 DEAN PATTERSON:

7 Court of general and primary jurisdiction.

8 MR. GULLY:

9 I mean what happens in your--if you have a case tried
10 in your county court and there's an appeal. Where does
11 that go?

12 DEAN BEAIRD:

13 De novo, superior courts. We do like you did.

14 MR. GULLY:

15 De novo. That goes de novo to the superior Court. So
16 then the only appeal to the appellate is out of superior
17 Court.

18 DEAN BEAIRD:

19 Of course under our particular set-up, some of the
20 appeals go directly to the Supreme Court.

21 REP. SNOW:

22 We designate the jurisdiction of the courts in the
23 Constitution. Just like divorce cases--all of them still
24 go to the Supreme Court.

25 MR. GULLY:

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1 You mean the appeal goes to the Supreme Court?

2 REP. SNOW:

3 Yes, the appeal does. Other questions?

4 DEAN COLE:

5 Just curious as to what you perceive the advantages
6 to this single-tier system. It really sounds to me like
7 very close to a double-tier with the associate judges.
8 But what are the advantages of a single-tier over, say,
9 the Florida system which has circuit courts and county
10 courts?

11 MR. GULLY:

12 Well, I think it's--your great advantage is your
13 maneuverability. We don't have a double-tier system just
14 because the judges have different names. Because they all
15 work in the same court. And all the cases are in the
16 same court.

17 REP. SNOW:

18 And all of them do everything there is to do?

19 MR. GULLY:

20 Right. All of them do everything there is to do. It
21 wasn't unusual when I was--after the Article passed in
22 '64, I was still a circuit judge. And I'd go to Shawnee-
23 town, which was in my circuit, or to McLeansboro or where-
24 ever it was, it wasn't unusual at all for me to start out
25 in the morning and have a traffic case and then a divorce



1 case and then try--take a plea of guilt they got in a
2 murder case and wind up with something else, all in a
3 day's work. All the business of the clerk's office that
4 had to be tried, I did it on that day. Now, that's the
5 advantage to me on the thing is having it all there.
6 You've got one hopper. You put everything into one hopper
7 and one place where it comes out and I think it has tre-
8 mendous advantages.

9 DEAN COLE:

10 On one docket, you might have a whole variety of--

11 MR. GULLY:

12 Yeah, sure.

13 DEAN COLE:

14 What percentage of the circuit court judges are
15 associate judges?

16 MR. GULLY:

17 What percentage?

18 DEAN COLE:

19 Yes.

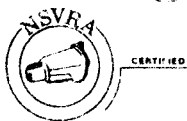
20 MR. GULLY:

21 Well, there's three hundred and eighty-five in the
22 state as a whole as circuit judges and about three hundred
23 and twenty associate judges.

24 MS. WILSON:

25 What sort of training is provided for judges?

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1 MR. GULLY:

2 Well, we have a--our own educational program for our
3 judges. We have a new judges' school each year which
4 gives a three-day training program for people who have
5 just gone on the bench. We have annual seminars for all
6 the members of the judiciary too--one for associate judges
7 and one for circuit and appellate judges. And then we have
8 regional seminars of three days each on criminal law,
9 civil law and juvenile law around the state. We anticipate
10 or we expect our judges to spend at least four days out
11 of every year in one of these seminars on the program.

12 In addition to that, we have been strong advocates of
13 the National College of the Judiciary. Illinois has had
14 more judges than any other state to graduate from the
15 National College of the Judiciary, which is now located in
16 Reno. That goes back a long time. I was a member of the
17 first class of the National College when I was a circuit
18 judge. It was then at Boulder, Colorado, instead of Reno,
19 Nevada. But that's what we do by way of education.

20 DEAN BEAIRD:

21 Does the state pay for that?

22 MR. GULLY:

23 Yes. Yes.

24 DEAN BEAIRD:

25 How much state money do you spend each year on judicial



1 education?

2 MR. GULLY:

3 Oh, I'd say probably--our judicial conference activi-
4 ties, the annual budget is about four hundred thousand
5 dollars a year and then we have a--we get a fifty thou-
6 sand dollar appropriation to reimburse judges who go to
7 the National College for Trial Judges.

8 MR. BRAUN:

9 That's four hundred thousand dollars of state funds
10 or is that LEAA?

11 MR. GULLY:

12 Well, it started out state paying it all. We have
13 worked in some LEAA grants in recent years. So this last
14 year the legislature probably provided three hundred thou-
15 sand of the funds and a hundred thousand from LEAA.

16 JUDGE STANLEY:

17 Is continuing legal education required--mandatory?

18 MR. GULLY:

19 It's not mandatory other than the Supreme Court in
20 calling its seminars, sends out invitations saying that
21 your attendance--you are expected to attend. We have no
22 statutory and certainly no constitutional requirement that
23 judges spend so much time in continuing legal education.

24 We do not--have not adopted in our state yet--although
25 there's some agitation on lawyers for--like, Minnesota has,

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1 for instance, and Iowa where the lawyers are required to
2 participate in continuing legal education. We have not
3 gone that route in Illinois yet.

4 DEAN COLE:

5 One quick question. You covered this and I've for-
6 gotten already. What--how are the associates judges
7 appointed--by the--

8 MR. GULLY:

9 By the circuit judges.

10 DEAN COLE:

11 --circuit judges as a group in that circuit?

12 MR. GULLY:

13 Yes.

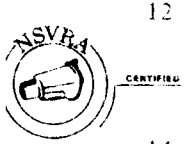
14 MR. HODGKINS:

15 You mentioned the budget figures for the courts. Did
16 that include things like district attorneys or--

17 MR. GULLY:

18 No. No, our district attorneys are elected county
19 officials in our state and that wouldn't--no, we got--I
20 guess--I hope--I left to come down here to Georgia and
21 when I accepted the invitation, I thought, oh, the legis-
22 lature will be finished because they always--they have to
23 adjourn on June 30th. They'll be finished and so on and
24 I'll have my budget all set to come. But I left last night
25 and they hadn't completed final action on my budget. The

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1 budget is fifty-three million dollars from the state appro-
2 priations to the expenses of the judicial system. And if
3 it gets through today, we'll have it. If it doesn't, I'll
4 be down here looking for a job.

5 JUDGE STANLEY:

6 Well, did you say that included clerks? Did it in-
7 clude equipment and that sort of thing?

8 MR. GULLY:

9 Not--it doesn't include the clerks because they're
10 county--that is a county expense, the clerk's office. The
11 clerk is elected in each county. And his expenses are
12 appropriated by the county board. Now, his earnings and
13 his office are set off against his expenses and any excess
14 turned over to the county board. But he is part of the
15 county system of government--the clerk of the circuit
16 court is, so far as his expenses are concerned. His office
17 is located in the county courthouse.

18 JUDGE BEASLEY:

19 His salary too?

20 MR. GULLY:

21 The salary is set by statute by the legislature, but
22 appropriated by the county board. He is just like any of
23 the other county officers.

24 MR. OLSEN:

25 How many of your state's attorneys service more than

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1 one county?

2 MR. GULLY:

3 None. We have a hundred and two state's attorneys.
4 There is a provision in our Article that they can be con-
5 solidated but nobody has ever done it yet.

6 DEAN BEAIRD:

7 I understood you to say that either the constitution-
8 al provision or the legislation requires the county to
9 provide physical facilities for the court system?

10 MR. GULLY:

11 The statutes do that.

12 DEAN BEAIRD:

13 Do you have difficulty in some counties providing
14 more adequate physical facilities than the others?

15 MR. GULLY:

16 Well, yes. Yeah, we do have. Some counties are just
17 able financially to do better than others.

18 DEAN BEAIRD:

19 There's a great disparity in the wealth of the
20 counties?

21 MR. GULLY:

22 Yeah, yeah.

23 DEAN BEAIRD:

24 Would it have been better to go the other route, do
25 you think?



REAR OF BUREAU OF MASTERY - SCOTT H. HERRINGTON

1 MR. GULLY:

2 Oh, theoretically, I think if I were designing a
3 system, I would go the other route. You would get more
4 flak if you went the other route from the people that
5 say, oh, you're turning it over to the state and we want
6 to maintain local control and so on. But I think that we
7 probably could have a better system if we had--from my
8 standpoint, at least--from an administrative standpoint,
9 and setting aside arguments for home rule, local control
10 and so on--you could have designed a better system and
11 assured yourself of better facilities if you had provided
12 that the revenues from the system went to the state's
13 General fund and the expenses come out of the state's
14 general fund.

15 Actually, the state would have been better off. I
16 mean the state's finances would be better off under that
17 system. Because our system is generating enough to pay
18 for the cost of the operation if you attribute all the
19 generation to the judiciary. Of course your police de-
20 partments will argue with you about that. Because if they
21 don't write the tickets, you don't get the revenue for the
22 court system.

23 MS. WILSON:

24 One other thing and that was retirement systems. Did
25 you take in any retirement systems and did your clerks

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1 have separate retirement systems or what--

2 MR. GULLY:

3 Well, the clerks were, at the time, part of our
4 county and municipal employees retirement system and have
5 continued to be part of that. There was no change in
6 that. The judges were part of the judicial retirement of
7 the state and have continued to be. There's no change
8 there. So--

9 REP. SNOW:

10 You just continued the same programs that you had?

11 MR. GULLY:

12 Yes. The official court reporters who--prior to the
13 Judicial Article, a court reporter was a county employee.
14 Under our Judicial Article, they're state employees. We
15 have five hundred and twenty official court reporters who
16 are state employees. They became part of the state em-
17 ployees retirement system and were allowed to transfer
18 their credits in their county system to the state system.

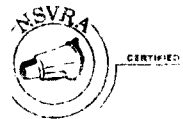
19 REP. SNOW:

20 Do we have some other questions? [No response.] Roy,
21 I want to thank you. We appreciate so much your being
22 with us this afternoon.

23 MR. GULLY:

24 I hope I've been able to answer the questions that
25 you have and I wish you well in your efforts. It's a long,

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1 hard struggle, I'll tell you.

2 REP. SNOW:

3 We may be calling on your for additional information
4 of your office from time to time. I think it's been very
5 helpful to us--the states we have heard from. And in
6 view of that, Dean Beard, if you will, sir, I want you
7 to head a subcommittee composed of you and Dean Cole and
8 Dean Patterson. Joe, I want you to serve on that--Joe
9 Drolet. And Judge Beasley, Judge Stanley, Judge Crane,
10 Mayor Medlock and Adam Greene. And the purpose of this
11 is for the subcommittee to come back with some of the
12 alternatives that--based upon some of the experiences of
13 some of these other states--that we may be able to go with
14 as far as a two-tier system or a one-tier system, both
15 in fact, as far as the alternatives are concerned.

16 I think that's quite a task.

17 DEAN BEAIRD:

18 It is but it's a necessary job.

19 MR. GULLY:

20 Let me say one thing in closing. Part of the great-
21 est opposition that we got in Illinois to our Article back
22 in '64 came from the judges themselves. They really had
23 their cages rattled. And I was one of them. If I hadn't
24 been a judge in our system, I couldn't talk a lot of the
25 way that I do. But I was there and I know. And they

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1 really were apprehensive. They thought, man, I've been
2 the big duck and I'm just going to be part of a system.
3 And as much opposition came from the judiciary itself as
4 came from the public. And it came awfully close to beat-
5 ing the thing--the judges themselves.

6 Now, I don't think that you can talk to a judge in
7 the State of Illinois now, fourteen years later, who won't
8 frankly admit that it's a much better system and they're
9 happier to be part of the system now than they were when
10 it was adopted. And I think that's been one of the great
11 proofs that our--that the change in our system was worth-
12 while. But they--

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REP. SNOW:

There seems more of a fairness in the system.

MR. GULLY:

Yes.

REP. SNOW:

You don't have some judges that are sitting on their
tails all the time and then others that are always busy.
You've got a busy judiciary and it occupies them.

MR. GULLY:

But you will find a lot of judges who will be resis-
tant and Georgians are no different than Illinoisians. So
I know that that will be an experience that you'll have.

DEAN BEAIRD:

1 That was the response to the original draft proposal.

2 REP. SNOW:

3 Dean, I would suggest that y'all meet when you can.

4 I think that probably Marty needs to get up some informa-
5 tion and some--probably some information from the court
6 reporter on some of the suggestions that have been made.
7 Or you maybe able just to use the handouts that have come
8 from each state in that respect. And of course call
9 meetings wherever most convenient. Just make arrangements
10 through Marty.

11 Now, I'm going to wait before we set another meeting
12 of the full committee, hopefully, so that we can have some
13 report back from you. Then, at the next meeting of our
14 full committee, we're going to kind of go through what
15 we've already done from the beginning through the alterna-
16 B that we've got, as well as the suggestions and recom-
17 mendations that you folks come up with. Of course we'll
18 probably be spending more time on what your alternatives
19 are going to be--I suspect that's what you're going to do,
20 is to present to the whole committee several different
21 alternatives.

22 But I think we're all getting a better understanding
23 and a better grasp of the whole thing and I think that
24 people are beginning to realize that no one is trying to
25 put it to any one particular group. We're not trying to

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1 do that. And you're totally correct, Roy. I think the
 2 biggest problem that we're going to have is, not communi-
 3 cating with each other so much as here, but communicating
 4 with--convincing, educating judges, district attorneys and
 5 others throughout the state that we've got a palatable
 6 alternative or a system.

7 [Whereupon, the above-entitled proceedings were adjourned
 8 at 2:45 o'clock, p.m.]

9 -oOo-

10 C E R T I F I C A T E

11 G E O R G I A)
 12)
 13 FULTON COUNTY)

14 I hereby certify that the foregoing transcript was
 15 taken down, as stated in the caption, and the questions and
 16 answers thereto were reduced to typewriting under my direc-
 17 tion; that the foregoing pages 1 through 126 represent a true,
 18 correct and complete transcript of the evidence given upon said
 19 hearing, and I further certify that I am not of kin nor counsel
 20 to the parties in the case; am not in the regular employ of
 21 counsel for any said parties; nor am I in anywise interested in
 22 the result of said case.

23 This, the 12th day of July 1978.

24 *Darlene F. Akins*

25 DARLENE F. AKINS, CCR-A-316
 Certified Verbatim Reporter



BRANDENBURG COUNTY, MISSISSIPPI

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Committee to Revise Article VI

Full Committee Meeting Held on June 30, 1978

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STATE OF GEORGIA

COMMITTEE TO REVISE ARTICLE VI

of the

CONSTITUTION OF GEORGIA

Room 416-A
State Capitol
Atlanta, Georgia

Friday, September 1, 1978

BRANDENBURG & HASTY

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3/15 COLONIAL TRAIL, DOUGLASVILLE, GEORGIA 30135

942-0482

DEPOSITIONS - ARBITRATIONS - CONVENTIONS - CONFERENCES

PRESENT WERE:

REPRESENTATIVE WAYNE SNOW, JR., Chairman.
DEAN RALPH BEAIRD
JUDGE MARCUS CALHOUN
MARTY HODGKINS
MR. JERRY BRAUN
MR. ERNIE TAYLOR
DEAN JOHN COLE
JUDGE DOROTHY BEASLEY
MRS. LUCY WILLIAMS
MAYOR RANDOLPH MEDLOCK
DEAN L. ROY PATTERSON
MR. ROBIN HARRIS
MRS. CAROL WILSON
MR. HARRY BEXLEY
MR. WILLIAM SLACK
JUDGE WILLIAM K. STANLEY
JUDGE FLOYD PROBST
MR. ADAM GREENE
MR. JOSEPH DROLET
JUDGE H. W. CRANE

Peggy J. Warren, Court Reporter

P R O C E E D I N G S

CHAIRMAN SNOW: We do have a quorum present. I wish we had some representatives of the news media present to publicize the fact that we are meeting on Friday afternoon, the day before the Labor Day weekend starts, but that has been our experience on this Committee since our creation and that is that we don't get much publicity except when we make a proposal and somebody decides to comment upon it, so I guess that's going to be the total history of the situation.

At our last meeting of the full Committee, we appointed a Subcommittee headed by Dean Beaird of the -- Dean of the law school of the University; Dean Cole, Dean Patterson, Joe Drolet, Judge Beasley, Judge Stanley, Judge Crane, Mayor Medlock and Adam Greene were on that Committee and subsequently to that I also appointed Judge Calhoun to serve with that Committee.

I think our order of business today would be to have the report of that Subcommittee and then after the report is made, for any comments to be made that anyone would like to -- or desire to make relative to it and then Judge Stanley has a minority report that he has filed to the full Subcommittee report and we will hear from Judge Stanley on that.

I suspect that the order would be, after the reports are made, for Dean Beaird to move the adoption of the Subcommittee report and then, of course, second to that and then for Judge

Stanley, after his presentation, to move to amend the Subcommittee report with his recommendation. Of course, that will require also a second and then we would vote on the substitute motion. Unless someone wishes to go to some other procedure, that will be the procedure we will follow, and at this time, if there are no objections to that procedure we'll call upon Dean Beaird to make the report of the Subcommittee.

Do we have copies of that in place for everybody?

DEAN BEAIRD: Thank you very much, Mr. Chairman. The Subcommittee developed this report and has met twice since the last Committee meeting and our first meeting, the Subcommittee considered two basic issues; one was if there is to be a unified judicial system for the State of Georgia, what agency or what unit should be the head of that unified system. There have been proposals in the past that for administrative purposes as well as adjudicative purposes, the administrative adjudicative head of the system be a judicial council. On the other hand, most of the states that have reformed their judiciary in the past few years, who appeared before this full Committee during the summer, all followed the route of naming in the Constitution the Supreme Court of the State as the head of the judicial branch.

The Subcommittee voted to have the Supreme Court, or to recommend the Supreme Court, as the head of the judicial branch of the State and the report reflects that.

The second major issue that was considered by the Subcommittee is whether there should be a one-tier or two-tier trial system. At our first meeting we considered at length the pros and cons, merits and demerits of a single tier versus two-tier system. We recognize that Kentucky seems to be operating well with a two-tier system and Illinois is operating well with a one-tier system, but throughout the course of discussion, it developed -- a consensus developed that a one-tier system providing for a transition -- an appropriate transition period, which provided for Associate Judges and creation of Magistrates, would give the State of Georgia the best mechanism, particularly from the point of view of flexibility, that we could recommend.

So after making those two basic policy decisions, I appointed a Subcommittee to the Subcommittee of Judges Calhoun, Beasley, Crane and Stanley to deal with the implementation of the one-tier system, how would it work, what impact would it have, currently how should that decision be implemented. They met in Macon, I was there to observe, and out of that meeting came a basic proposal which the full Subcommittee adopted this morning.

There were four amendments proposed this morning -- well more were proposed but four essentially were adopted or discussed with direction to the Executive Director Marty Hodgkins to come up with some language. I'll mention those in a moment. I think everyone has before them a copy of the Changes to

Subcommittee Proposal.

The first change which was approved recommended -- proposed by Dean Patterson and approved by the Committee, in fact substitutes for the qualification, Section 8, Paragraph 1. It substitutes practice of law to an active member of the State Bar for seven years.

The second change would provide that the expenses incurred, as well as revenues received, in the operations of the Circuit Courts shall be paid out of the State Treasury.

The third is simply to specify the duties of the Magistrates to be as prescribed by the Supreme Court.

And fourth, a provision is made for a Judicial Nominating Commission. We provide in the proposed article for a Judicial Qualification Commission, not for a Judicial Nominating. That is the structure of the Commission itself.

With these changes, as Chairman of the Subcommittee, I move that the report be adopted by the full Committee and ask Mr. Chairman that Judge Calhoun be given an opportunity to elaborate in some detail how the trial system would work. Then I will follow that with just a brief discussion on the appellate system and with that, we hope that there will be full discussion by everyone here and hopefully we can come out of this meeting with a Committee proposal that will be considered at the Judicial Convocation in Athens next Thursday.

CHAIRMAN SNOW: Judge Calhoun?

JUDGE CALHOUN: All of you have this blue book which was prepared by Dean Beaird and his staff.

On page 58 -- 57 I believe it is -- is the Judicial Article as revised. Page 58 deals with Trial Courts. Trial Courts would be Section 3 in the new Judicial Article and the first paragraph provides that "All original jurisdiction not granted to the Supreme Court... would "be vested in the Circuit Courts." And it states that "There shall be no other trial court." So the intent would be to bring all trials, all judicial issues, into the Circuit Court.

DEAN BEAIRD: You might want to call attention to the annotated provisions on page 67.

JUDGE CALHOUN: Maybe we should go there.

DEAN BEAIRD: This has the explanation after each Section.

JUDGE CALHOUN: If you'll turn to page 67, it does have an explanation, which will be interesting to you.

Paragraph 2 provides that we would have Judicial Circuits in the State and that the General Assembly, upon certification of necessity by the Supreme Court, you would have the authority to abolish, create, modify, join or do anything they wanted to with the Circuits. It would change the existing law. At the present time, the General Assembly has the power to do that but under this provision they could only do it if the Supreme Court said it was necessary.

Paragraph 3 provides that "Each ... circuit shall have such number of judges and magistrates as may be provided by law." Leaving it up to the General Assembly, but again they could only add or take away upon a certification of necessity from the Supreme Court.

Paragraph 4 provides for the term of election. It changes the term of most Superior Court Judges from four years to six years. It would reduce the term of Fulton Superior Court from eight to six, but it would not affect the term in which they are elected.

We should go back, we provide in the beginning of the proposed Article that the name of the Superior Court would be changed to the Circuit Court. There would not be any Superior Court. It was the feeling of the Committee that at the time these names were adopted, of course, you did have the system of inferior courts, so you designated them superior and inferior and we abolished all inferior courts, so we don't feel it's necessary to have that designation any more; that circuit courts are really more descriptive.

It provides that judges shall be elected on a non-partison basis. They would still have to run for office, but they would not run as Democrats or Republicans or Independents. They would be in a separate place on the ballot, a judicial section of the ballot running as individuals. It provides that the circuit judges, of course, would be elected in their circuits,

circuit-wide; magistrates on a county-wide basis. The proposed Article would provide that each circuit would have a Chief Judge, who would be responsible for the administration of each circuit under the direction of the Supreme Court and under the rules of the Supreme Court. This chief judge would be elected by all of the judges and magistrates in the circuit, but it would have to be a circuit judge, only a circuit judge could be elected but all other judges would have the right to vote.

It provides for the filling of vacancies by appointment by the Governor from a list prepared by the Judicial Nominating Committee or submitted to them by the Judicial Nominating Committee.

The proposed article provides that "Magistrates of the Circuit Court shall have such duties as may be provided by law." The amendment which Dean just read says the duties would be prescribed by the Supreme Court.

The we provide that "All judges, magistrates, and judicial officers ... shall serve on a full-time basis."

And another amendment I believe we adopted this morning would be that they would be prohibited from practicing law.

And that, Mr. Chairman, very briefly, is the provisions as to the Trial Court.

CHAIRMAN SNOW: Let me ask one question there. Why was the motion made relative to the magistrates having such

duties as may be prescribed by the Supreme Court rather than by law?

JUDGE CALHOUN: Well it's my feeling and I think it was the feeling of the Committee that this is a judicial function and the Supreme Court is the head of the judicial system and it would be almost as inconsistent to have the General Assembly say what the magistrate would do as it would to have the Supreme Court say what the legislative committees would do. I think it should be separate. That's my feeling and I think it was the feeling of the Committee.

MR. HODGKINS: That was a typographical error.

JUDGE CALHOUN: It was a typographical error in this original?

MR. HODGKINS: The draft without annotation shows it as the Supreme Court. It was just an error.

DEAN BEAIRD: I think part of the original thinking that went into the proposal initially, and this ties in with a number of the provisions that are being recommended here, is that through the operations of the administrative offices of the court, we will have data on workload, we'll have data as to need, judicial activity and so forth. It'll be a lot easier to meet those demands through a rule of the court rather than through a legislative enactment each time circumstances change that warrants changes, relocation of judges and this or that. It's an attempt to -- one of the general feelings that

goes throughout this whole proposal is that we want to make the judiciary responsive to felt needs and determine those through statistical operations in administrative offices of the courts and so forth, rather than having to run over to your committee and ask them to try to get through the legislature a bill that will add this or that. Of course, the court rules would be, to a large extent, on the advice of a judicial council which is not provided for in the Constitution but which is certainly contemplated by the committees that have made this proposal. We're trying to be consistent with one of the initial decisions made by the full committee, and that is limit the Constitutional provisions to essentials and leave it up to either rulemaking or legislative action to implement the general principles of the Constitutional provisions -- that the Constitutional provisions reflect. That provides maximum flexibility.

MRS. WILSON: You are counting on the legislature to create a judicial council. Is that --

DEAN BEAIRD: We do not deal with that in the Constitution. We all are aware of the fact that at the moment there is a legislatively created judicial council. We are also aware of the fact that the Supreme Court has created a judicial council. We didn't attempt to resolve that dispute in the Constitutional provision, if there is a dispute. I don't know that there is, but it is contemplated that there will be

a judicial council that will advise as is the case in the Federal system, in rulemaking.

I think one of the keys to this whole thing is that we want to depend upon -- we have a unified judicial system.

MRS. WILSON: That's what I'm concerned about.

DEAN BEAIRD: Logistics for that unified system, the needs will be determined through the operations of the administrative office of the court, which is consistent with existing legislation created in '73.

How best can those needs after it is once determined, be implemented? I think some of them, certainly changes, re-allocation of judges and so forth, would be best by rule.

MRS. WILSON: I just had some questions about the very first paragraph -- the second paragraph, where you say the unified judicial system. That would be part of one unified judicial system under the supervision of the Supreme Court. Is that enough? Do you think that will really take care of it?

DEAN BEAIRD: I think so far as the Constitution is concerned, I think it will. What it means is that -- this is consistent with the provisions in other Constitutions from states that we have heard from. It means that there is adjudicative supervision and administrative supervision by the Supreme Court of the judicial system.

MRS. WILSON: I was questioning whether there needed to be something said about court administrator.

DEAN BEAIRD: We don't think it needs to be in the Constitution, we don't think you need to provide the details in the Constitution. It is contemplated that -- one thing that hasn't been mentioned yet, and I think it's important, is that in this proposal, there is, on page 77, a schedule of Article VI. Now that's a device by which you adopt as an amendment to the Constitution, the method by which the transition takes place. This is not the total answer, there will be considerable legislative activity that will have to take place to implement the various proposals made here. It is thought by the Subcommittee that once this group agrees in principle to what is proposed a small task force -- small task forces would be set up, or at least we are recommending that this be the case, to draft legislation to implement this. We already have underway a study of the Institute of Government to study as best can be determined the cost of this proposal. What's going to be the cost, is it going to be prohibitive or not. They will let us know with ballpark figures by September the 7th, how much this is going to cost as contrasted with current cost of the system. One thing this proposal contemplates is that the financing of the judicial system for the State of Georgia will be a State expense.

CHAIRMAN SNOW: Total expense?

DEAN BEAIRD: Total expense.

CHAIRMAN SNOW: Of all of it.

DEAN BEAIRD: We do provide of course here, as did most of the states, Oklahoma, Illinois I think and others, that there would be revenue sharing with the local jurisdictions paying rent for the use of courthouses and things of that sort, all of which would be worked out legislatively; also provides in the Constitution that no person would lose a pension or vested rights and so forth, and that would require legislation to implement that.

CHAIRMAN SNOW: One of our primary objectives, of course, from the very beginning has been to get any of the statutory matter out of the Constitution.

MRS. WILSON: I realize that, but my fear is that if you don't put it under the Chief Justice or someone in particular, that there will be -- however many circuits, let's say ten circuits -- you'll have ten different systems unless somebody is named --

DEAN BEAIRD: There will be a unified system, the administrative system --

MRS. WILSON: Under the Supreme Court, that's a little vague to me, but okay.

CHAIRMAN SNOW: Well of course my initial question on this is based naturally upon a jealousy that exists between the legislative branch and the other branches of government. The legislature is prone to be reluctant to give up any of its powers and of course any recommendations that I in turn make, I

want to be fully aware of what I am doing and I don't want to be accused by everybody of giving up everything that the legislature now has. They are very jealous bodies. I am the only legislator here I think today and of course the courts would like to have the power and I know they would and I don't disagree with it, but I am just relatively sure there are going to be a few folks that are going to be objecting to so much power being vested in the Supreme Court of the State of Georgia and I just want to be as prepared as I can to counter-act it.

MRS. WILSON: So you think leaving it vague will help?

CHAIRMAN SNOW: I'm not talking about the part you were discussing, I don't think there's any question but that that is enough authority there to give the Supreme Court.

MRS. WILSON: If they'll take it, right?

CHAIRMAN SNOW: Well I think they'll take it. I don't think you need to worry about that. The problem might be taking more than what we might have intended for them to take. I don't think that'll be --

DEAN BEAIRD: Let me just comment on that a minute. I think the Subcommittee on one hand was very sensitive to this problem and I think on the other hand, they tried to figure out as best we could what would produce the most efficient delivery system for the taxpayer and it just seemed to us that it's clear

the circuit judges will have to be created under this proposal. It's clear that a lot of things will have to be done, but it was our thought that we ought to utilize the information gathering mechanism that we have, the administrative offices of the court and the court ought to have to justify to the legislature the need to create this or do this, and certainly we hope to accommodate the responsibilities of both the judicial and legislative branches. The burden would be on the court to say look, we need two new judges.

CHAIRMAN SNOW: And so forth and so on. If they can convince the legislature, fine.

MRS. WILSON: I agree with that.

CHAIRMAN SNOW: I believe strongly that the courts ought to run the courts. I don't think there's any question about that, and the legislature ought to control the purse strings and I think you've got a lot of power when you control the money.

JUDGE CALHOUN: That's the ultimate answer, Mr. Chairman.

MR. BEXLEY: What will be the mechanics in the Fulton and Dekalb County, with the whole operation, the magistrates and doing away with our State courts here? How are we going to get around that?

CHAIRMAN SNOW: I don't think we'll be abolishing the State courts, I think they'll be called by a different name

through legislation.

MR. BEXLEY: What will be the mechanics?

JUDGE CALHOUN: Well in the schedule which Dean referred to a few moments ago, which is on page 77 I believe, of this booklet, it provides that these state court judges, juvenile judges and other judges listed here on the effective date of this Article will become Associate Judges of the Circuit Court and they would hold that office until 1985 as Associate Judges of the Circuit Court, and then they could offer for one other term, four year term, as Associate Judges. After that time, the office of Associate Judge would expire. It is felt, or hoped, by that time, which would be 1989, that the Associate Judges who were interested and who were qualified, would have been taken into the system as Circuit Court Judges. This is the way we hope that will work and as far as magistrates are concerned the same assembly provision, that they will be taken in as Magistrates of the Circuit Court; that is, the judges who -- municipal judges and traffic court judges, small claims court judges, people who occupy these positions, would become Magistrates of the Circuit Court and would have a similar provision for them to serve in this capacity and also as a provision of the Supreme Court, it may provide legal training for them so that they can qualify as magistrates after their eligibility would expire under this schedule. That's the way we propose that they be taken care of.

DEAN BEAIRD: In a sense what it would be --

MR. BEXLEY: I notice this selection, does that mean election or selection?

JUDGE CALHOUN: It's supposed to cover both ways, either appointment or election, that's why we used the word selection.

MR. BEXLEY: Well how will they be magistrates, will they be elected?

JUDGE CALHOUN: It provides for original appointment and then they'll have to run for office.

MR. BEXLEY: Under the system, they would be originally appointed?

JUDGE CALHOUN: Right, if there's a vacancy, just like we are now, really. It provides for appointment by the Governor from a list selected by the Judicial Nominating Committee, just like judges.

MR. BEXLEY: And this is after that term runs out?

JUDGE CALHOUN: Right. They also have the opportunity to offer for one other term.

MR. BEXLEY: Then you're saying all original magistrates would be appointed by the Governor then after the term runs out?

JUDGE CALHOUN: Yes -- wait just a minute --

MR. BEXLEY: Will have to be re-appointed.

JUDGE CALHOUN: Probate Judges become Associate

1 Judes, how does that read?

2 DEAN BEAIRD: What is does essentially, the proposal
3 puts the entire judicial system in one unified framework.

4 MR. BEXLEY: Right.

5 DEAN BEAIRD: Under the supervision of the Supreme
6 Court insofar as work load and so forth is concerned. It
7 contemplates a transition in places like Fulton, those that
8 are currently sitting would become Associate Judges and over
9 the next eight to ten years, as the system starts to develop
10 and gets into place, put into operation, a determination will be
11 made as to need. It may very well be that the functions now
12 being served by the city courts and so forth will require two
13 magistrates or two circuit judges rather than under the current
14 structure, but what it does, the essential thing is, it
15 provides for flexibility so that there will be judicial offices
16 available to meet the needs, not having been frozen through
17 legislation into a system where there is really no accounta-
18 bility in the sense that this one provides for accountability,
19 it provides for a flexible system so that judicial needs of
20 the community or county or circuit can be met upon a showing
21 of necessity.

22 JUDGE CALHOUN: And I was mistaken when I answered
23 your question that all would be appointed. That's not true.
24 The office would be open to anyone qualified just like it is now,
25 just like any judge is now, an elected office, at the time of

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1 the election anybody who is qualified can run for the office.

2 MR. BEXLEY: Well this is what I --

3 JUDGE CALHOUN: It would be on a non-partisan basis.

4 MRS. WILLIAMS: May I ask a question about this
5 paragraph 7, the non-attorney associate judges will be provided
6 legal training. To what extent does that go? Do the taxpayers
7 pay for their legal training?

8 CHAIRMAN SNOW: Yes, I would think that that would be
9 provided at the expense of the State.

10 DEAN BEAIRD: What happens here is the basic principle
11 of this proposal is that all persons serving in a judicial
12 capacity shall be legally trained. Now we provide the transition
13 that the appropriate judges -- Judge Stanley, how many of the
14 159 probate judges are legally trained?

15 JUDGE STANLEY: Twelve I believe.

16 DEAN BEAIRD: What this would do is provide for
17 transition and those that are not -- those that are not legally
18 trained could take the continuing legal education courses
19 prescribed by the Supreme Court so that they could continue to
20 do this service function and once they completed that training
21 stand for an election as an Associate Judge once and a Circuit
22 Judge for the next term.

23 MRS. WILLIAMS: But my question was, do the taxpayers
24 pay for this legal training?

25 DEAN BEAIRD: As a matter of fact, they already do that

to a certain extent now.

JUDGE CALHOUN: This doesn't require -- that would really be left up to the legislature I think. It says following the effective date of this Article the Supreme Court shall prescribe a course of legal training for the non-attorney. It doesn't place any requirement on the State to furnish that, as I read it.

CHAIRMAN SNOW: As far as the legal training, if there is to be legal training, I am sure that the State will assume the cost of it. It's the only logical way.

DEAN BEAIRD: The Committee thought it would come under the Institute of Continuing Judicial Education, which includes the three accredited law schools in this state, representatives of the State Bar and so forth. Does that answer your question, Lucy?

MRS. WILLIAMS: Yes.

JUDGE BEASLEY: I'm having some serious second thoughts about that; number one, we're going to eventually then have non-attorney judges, if that's what we want, fine, I wonder whether we do. Secondly, would a non-attorney Associate Judge have a right and be able to bring a suit to require the State to set up a system where two or three or ten or twenty people, the only people who are going to go through it, a whole range of education to qualify them to be circuit court judges where they have not gone thorough law school, so you're going to have



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1 to give them a lot more than you would anybody else and really
2 duplicate law school.

3 CHAIRMAN SNOW: Are we not talking about one election
4 here?

5 JUDGE BEASLEY: That's even worse.

6 CHAIRMAN SNOW: A one time shot.

7 JUDGE BEASLEY: That means you're going to have to
8 set up these whole courses and everything else for these few
9 people.

10 DEAN BEAIRD: What we're trying to do, as you well
11 know, Judge Beasley, and correct me if I'm wrong on this, Judge
12 Calhoun, when you get to this provision and the provision to
13 continue Justices of the Peace for two years, what the
14 Committee attempted to do is to balance several very important
15 interests over the long haul and we're trying to create a
16 Constitutional provision here that will last for some time.
17 Over the long haul, the Committee thinks that judicially trained,
18 a legally trained judiciary is important, it's a goal we should
19 strive for. As a matter of fact, it may ultimately be consti-
20 tutionally mandated. We are moving in that direction in a
21 number of instances. Secondly, you've got a structure here
22 that you can't just change overnight and you need a period of
23 time in which to provide for transition, and that's simply
24 what we're doing.

25 CHAIRMAN SNOW: Judge Stanley?

JUDGE STANLEY: I just want to make some comments on why I proposed the minority report to the Committee. As Dean Beard and Judge Calhoun have said, we were operating under the constraints of preparing some proposals for a one-tier trial court. As I envision a one-tier trial court, we are talking about one tier of judges, not just administratively, but one tier of judges. So that ultimately, you would have only circuit judges; magistrates -- I don't know whether that would be a second tier in itself or whether it would be some other category ascribed to them or not. But as this proposal is submitted, the associate judges, that is, probate judges, juvenile court judges, state court judges and all those others that are enumerated there; assuming that the effective date of this is January 1, 1983, would then have one more four year term as it was proposed, in which they could serve and then that office would terminate, which would mean that all associate judges were going to have to be out of office at the end of that time unless they had the qualifications to become a circuit court judge.

I propose in lieu of the '89, a one six-year term which would extend this date to 1991, the six-year term being because in our meeting we had tried to treat equally all judges; that is, each would run for a six-year term. We tried to treat them all on the basis that now they would be running in a non-partisan election, they ought to be running for the same six-year term. So that this would give associate judges that were

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non-attorneys at least a five year period in which they could attend this Institute for Continuing Judicial Education or whatever the Supreme Court mandated as the type of course that they would have to take, as they did in Florida, and which I understand was very effective.

My concerns in this thing were in relation to practicality and coming up with something that would be acceptable to the judiciary as a whole now and had an opportunity for passage when it is submitted to the people in a general election. One of the things that I was confronted with as far as probate judges are concerned, and I think I could also probably speak for general court judges and state court judges as well, is the fact that of those few that presently are qualified as attorneys, thirty years of age, private practice of law seven years, they should be qualified and grandfathered in on the effective date of the Act as full circuit court judges and not as associate judges. You've got to consider in mind what they're giving up and what benefit is it to them, if you want to look at it just from their point of view, they are now independent, they operate their own courts, they employ their own staff and the only real objection that I find with probate judges who are legally trained is the fact that they don't have adequate jurisdiction. If they had full power jurisdiction, equity powers and so forth like the judges that are qualified in the metropolitan counties generally, they'd be

perfectly satisfied like they are. So we're trying to show them something that might be worthwhile as far as the judicial system in Georgia is concerned and the administration of justice will benefit from it and that will be in the best interests of the people of the State as a whole. The way it's now drawn is you're saying to these people, by 1985, you're going to have to run against an incumbent and that puts them in a very difficult position and you are providing in your transition schedule that there will be only so many circuit court judge slots as exist on the effective date of the operation, as set up by the Supreme Court at that time. Presumably, the Supreme Court probably would create some additional slots, but there is no guarantee of that. So they feel like that you're really putting them in a position where my particular judgeship is going to self-destruct and either I'm going to run against an incumbent, and that's a very bad position to be put in. I have talked to several of the judges who are qualified to feel out their attitudes about it, and they have told me, without hesitation that they object to this stringently and they are absolutely opposed to it.

On the other hand, you've got a number of non-lawyer judges of probate court, 147. How many of those would be willing to take judicial training I have no idea, but if they do, then they should be given some guarantee in the Constitution of in this transitional schedule that they are going to have some sort

of job as an associate judge so long as they can run and be re-elected and so forth and be grandfathered in on that basis.

In talking about grandfathering in the attorneys as circuit court judges to begin with, if you're talking about full time judges; that is, probate, juvenile and state court judges, you're talking about only a small number of people, 37 I believe is the number. In my alternate provision, I set out in 2A that they all would be -- that I would entertain an amendment to my motion to bring in only those that are full time now or at the time of the effective date of the Act if the Committee saw fit to do that, but these are matters I think that should be given some serious consideration if we have any hope of getting this thing before the General Assembly and getting them to adopt something to submit to the people and to submit something to the people that would be acceptable to the people, you need to consider such things as what are their present salaries, are they going to lose salary-wise because of the adoption of this unless there is some guarantee in there.

CHAIRMAN SNOW: Do you have a question for Judge Stanley?

JUDGE BEASLEY: I was going to say the problem I see with the reasoning is that by 1985 or whatever the year is down the road, if you end up with extra judges that are not needed -- in other words, every probate judge, state judge and so forth would have to run against an incumbent because the

Supreme Court and the General Assembly did not feel that there was the necessity of another judgeship, then you're simply ending up with people that don't have work to do.

Now if you need an extra judge, there's going to be a vacancy so you don't have to run against an incumbent.

MR. HARRIS: Incumbents like opposition, don't they?

JUDGE BEASLEY: Yes, if they win.

JUDGE STANLEY: One other thing I wanted to point out too, Chairman Snow, and this should be in the Constitution and not in the schedule, is the fact that I think the Clerks of the present superior courts should be grandfathered in as Clerks of circuit courts and they ought to be elected from the county in which they are residing. This brings into the issue the whole idea of who is going to employ and discharge all the clerical personnel in the court system. Who is going to supervise them, is it going to be the chief judge or is it going to be his court administrator or is it going to be the clerk. These matters haven't been addressed at all and I think they are important enough that they probably ought to have some constitutional consideration rather than just relying on the legislature to do it; although I have high respect for the General Assembly.

CHAIRMAN SNOW: I'm the only one here, Judge Stanley.

JUDGE STANLEY: Well I do want to move in favor of these attorney judges that are qualified, in particular. Judge

Probst is here and I wish he would just make a comment to the Committee. Would you mind speaking? He speaks far more eloquently than I can.

JUDGE PROBST: Would you entertain that?

CHAIRMAN SNOW: Certainly.

JUDGE PROBST: I'd like to say first that I am interested in reform, as interested as anybody in this room, and when you have a draft in front of you and you react to it, it makes you sound like maybe you're against reform. The only thing I'm against is some of the things in this draft. And secondly, I'd like to say if you've got a man standing on a ladder and there's a limb up above it and you pull the ladder out from under him, you shouldn't accuse him of being grasping or an opportunist if he reaches for the limb. And what is happening here to the probate judges and juvenile court judges and state court judges is that the ladder is being pulled out from under us in 1985. We've got a deadend job. Now nobody has a vested right to a judgeship or any state job, none of us believe that the citizens owe us a job. The question is a question of fairness, of what you do with people that are already in the system and ran for office and got elected under certain expectations.

Now we had Mr. Doss of the Administrative Office of the Courts this morning tell us that 37 was the maximum number of juvenile, probate and state court judges that are full time,

seven year members of the -- in good standing of the State Bar of Georgia, residents of the circuits, thirty years of age, so that they would meet the qualifications.

Now I think there are 102 present Superior Court judges. Mr. Doss stated that without reservation you would need 102 plus 37 judges to handle all of the work that is now being handled by superior court, state court, juvenile court and probate courts in 1985. Now my proposal is that rather than just making us insecure and just having a vague promise out there or hope that there will be some additional judgeships created, that you just go ahead and grandfather in the people that have the same qualifications as the superior court judges. And I think that the objection that more may be elected after say 1980 is the next election where all probate judges come up for election every four years and all of them come up at the same time, the next time is 1980 -- now if the General Assembly passes this and a man runs for probate judge knowing that it's a deadend job in 1985, that's fine and I don't see why he should necessarily be grandfathered in, but if somebody is already a probate judge and already has a slot and already is an incumbent, then I think those people should be grandfathered in. And frankly, it seems a little bit perverse to me why the committee would refuse to grandfather them in, because if you know you've got the business, it's not a problem of having excess judges sitting around doing nothing. By grandfathering

these 37 in, it may not even be 37, because some juvenile court and state court -- the statutory requirement is three years, not seven years for them, so there may be some of them -- there may be some in that 37 that don't even meet the requirements that you've got in your draft for circuit court judge. The only people I'm talking about grandfathering in are the people that meet the qualifications of circuit court judge and actually are in office on the effective date or whenever -- not the effective date of this bill, but whenever the General Assembly first passes the thing to get the ball rolling. In other words, you see what I'm saying?

CHAIRMAN SNOW: Yes. Let me ask the Dean relative to this. Did your Subcommittee consider that particular proposal, Dean, of just those 37?

DEAN BEAIRD: We discussed this at some length this morning and I think what we have is this situation. There are several basic principles that the committee attempted to include within the constitutional amendment and there is no real disagreement or argument with respect to these basic principles. One is that ultimately the judiciary should be legally trained. Two that the administration of the unified judiciary should be of such a type so that decisions regarding need for judges, availability of judges and so forth should be based upon data that is not presently available and to which a number of people in a non-unified system do not have access.

Now we tried to accomodate in this transition period the concerns of Judge Probst, Judge Stanley and others, one, by providing that there will be -- any associate judge -- anyone that becomes an associate judge on the effective date of this Constitutional amendment, could remain in office for the term to which they were selected or until the January 1, 1985, and may seek another additional four year term, so you're providing here a considerable period of transition during which time the process provided by the Constitution, that is determination of need, certification of need by the court to the legislature, nomination by Judicial Nominating Commission and so forth, can operate. I don't have any doubt but what people of the caliber of Judge Probst and Judge Stanley and others would be the circuit judges down the road. It's simply a question of whether you want to, by Constitutional amendment, put them in now or have the process that's provided for here, that of certification of need, nomination and so forth, be effective. I think the majority of the Subcommittee thought that would be the appropriate transition, that would be the appropriate way to go. There's a lot of work that has to be done between now and the effective date of this provision. The AOC, represented by Mr. Doss over there, has to determine what the judicial activity is in each circuit, what the needs are, give that information to the court and the court will have to certify to the legislature that we need three circuit judges here, so

forth here, so forth here and so forth, and the people I'm sure that will be chosen to fill those positions are those with the experience and legally trained and it does not guarantee, as it does current superior court judges, for the next ten years a continuous tenure of judges, but I think it provides a wise long-term mechanism for doing it.

CHAIRMAN SNOW: Judge, before I recognize you, let me just make this statement too. You know, we do have the conclave coming up in Athens next week. We are going to meeting over there, we're going to have an awful lot of input from different judges as to the proposals that we're making and primarily today I think we are coming out with some proposal. This is a proposal. Alternates are also and would be considered in Athens and I think that will be what many of you will probably want to be doing, is see what the reaction is from those who are present to some alternates that you may have. So we are attempting to reconcile maybe some differences today, but primarily we are interested in having a proposal of some sort coming from maybe a majority of the members as this is what -- the direction that we are presently going. Now we stand to have this direction altered if enough of you suggest to us that there should be an alteration and give us some good reasons for it and that, of course, is the whole purpose of the Athens meeting.

JUDGE PROBST: I understand -- go ahead.

CHAIRMAN SNOW: Go ahead.

JUDGE PROBST: I understand we're going to have the convocation in Athens. The reason I'm over here today though is that I would rather what is presented in Athens say what I'm proposing than what's in there and it's just like going into a contract negotiation, I would lots rather try to defend my clause that's in the contract than try to argue with somebody why they should take theirs out and put mine in. So there is some difference in having it aired now and having it presented over there as part of the Committee's plan.

CHAIRMAN SNOW: Sure. I wasn't suggesting we weren't going to take a vote on it or anything, we're certainly going to get the majority feeling here, but I just wanted to point out to the Committee members themselves that this is not as such the way -- that there will be a final determination as far as this Committee is concerned. I mean I'm sure that there are going to be several other changes, like there were some changes that were made apparently this morning. There will be other suggestions that are going to be adopted from time to time. But go ahead.

JUDGE PROBST: Just very briefly. I don't even disagree with Dean Beard that the number of judges ought to be based on the number of necessary judgeships. I think we both agree on that, but the thing that I can't understand is if Mr. Doss is willing to say right now we know we need at least 37 more

1 than the 102, why can't we put that in, what difference does it
2 make whether you need 50 or 60, if you know you need 37, why not
3 put it in.

4 The last thing I'd like to say is that if you reject
5 that idean, then I would like to suggest, in keeping with the
6 idea that it be solely on the basis of the number of judgeships
7 needed, that the Committee adopt resolutions that the AOC will
8 provide -- will make a study and decide how many judgeships are
9 needed and if the thing is going to be effective January 1, 1985,
10 then in the elections in 1984, you just let anybody that meets
11 the qualifications of a circuit court judge, thirty years old,
12 full time -- just not even let them be a full time judge, just
13 let them be thirty years old, seven year member in good standing
14 of the Bar and a resident of the circuit and let him run for
15 that vacancy. That way superior court judges could run for
16 the vacancy they wanted to run for, probate judges could run,
17 state court judges could run, juvenile court judges could run
18 and the only objection that I can see coming about that proposal
19 is somebody would say, yeah, but the superior court judges are
20 already qualified and they already have all this experience
21 and my answer to that is, they can say that when they run. And
22 if you believe in electing judges, then I don't see how you
23 can argue with that.

24 JUDGE CALHOUN: You have that already, Judge. If my
25 term expires in 1984, anybody who is qualified can run right now.

That wouldn't change anything.

JUDGE PROBST: Somebody is going to be sitting in a superior court slot that is going to automatically become a circuit court judge on the day of this Act.

JUDGE CALHOUN: That's true.

JUDGE PROBST: And I'm saying that that is not in the interest of the public, because the duties of the circuit court judge are different from the duties of a superior court judge. On the effective date of this Act, circuit court judges are going to have original, exclusive jurisdiction of probating wills, of doing anything else that is in the exclusive original jurisdiction of probate courts, juvenile courts and state courts. Your circuit court judges are going to be doing that and I don't see any reason that they ought to -- my second suggestion is instead of just automatically putting somebody in as an incumbent, let's just find out how many slots are needed and let people that meet the minimum qualifications run for it. And if they think they have special qualifications they can advertise that.

CHAIRMAN SNOW: Dorothy, did you have another comment?

JUDGE BEASLEY: I did on that, but first I have a question. Are these proposals, this blue book that we have now, going to be sent to all of the participants of the convocation in advance or are we going to have to spend most of the time explaining to them what's in it and having to respond like that?

DEAN BEAIRD: It'll be sent in advance to the people who are registered.

JUDGE BEASLEY: To everybody that's registered.

DEAN BEAIRD: We'll get it out Monday.

CHAIRMAN SNOW: What's the matter? Labor Day is a good day for people to labor.

JUDGE BEASLEY: Our convocation is not going to be very --

JUDGE STANLEY: Will my report also go out in this material?

CHAIRMAN SNOW: Judge, I don't think there'll be any reports being sent out in advance because of the time element involved. Your report will be available at the same time that the others are picked up on Wednesday morning -- Thursday morning.

JUDGE BEASLEY: It's really going to be educational rather than --

DEAN BEAIRD: From the word that I've gotten way over in Athens, this report, segments of it have gone around the State three or four times already. As a matter of fact, I have received letters from people saying a law dean shouldn't be involved and this kind of thing.

CHAIRMAN SNOW: I am inclined to think too that everybody that's going to be there is going to be looking and seeing a particular section that applies to them. It's not going to

taken them too long to have some questions about that particular area.

JUDGE STANLEY: I do want to move my motion in this area and let it be voted on.

CHAIRMAN SNOW: You're moving a substitute motion, is that correct, sir?

JUDGE STANLEY: Yes.

CHAIRMAN SNOW: Did y'all have further comments to make on your report?

DEAN BEAIRD: No.

MRS. WILSON: I would like to get back to the clerks, what happens to the clerks?

DEAN BEAIRD: Clerks are not in the original draft, they're not in the current Constitution, they're not in the current judiciary article. We discussed this morning as to whether or not they should be included here.

MRS. WILSON: They were in the other draft.

MR. HODGKINS: The '77 draft.

DEAN BEAIRD: They were?

MRS. WILSON: They were, they were in Section 3, paragraph 9, "Superior Court Clerks. Each county shall have a Clerk of the Superior Court."

DEAN BEAIRD: Well we discussed this morning and decided, I think a consensus was reached, to consider both clerks and district attorneys and so forth as something separate



1 from the judiciary article as to whether or not they should be
2 treated separately. My view is that -- and I have discussed
3 this with Adam -- we probably need to know a little more. We
4 devoted most of our time to the judicial system as such, judges
5 and so forth. We probably need a little more time for the
6 thoughts and input of those people vitally affected like Adam
7 Greene, to come up with some specific proposal on clerks.

8 MRS. WILSON: Are you saying as to whether or not
9 they should be Constitutional offices?

10 DEAN BEAIRD: No, I'm not saying that at all. I'm
11 saying how to treat them, whether they are to be put in the
12 Constitution or how to treat them if they are should be left
13 for a little later date.

14 MRS. WILSON: Okay.

15 JUDGE STANLEY: I thought we were going to discuss
16 the clerkships this afternoon in the full committee. Did I
17 misunderstand?

18 DEAN BEAIRD: I was saying my proposal is that if
19 we want to, as a body of 25 or 30, draft the article, that's
20 fine, it's certainly agreeable with me. I don't know that we
21 have all Labor Day weekend to do it. I frankly don't know enough
22 and I want to be educated by someone like Adam as to precisely
23 what, given the circuit court structure, the role of the clerk
24 should be. Now we got an idea this morning as to what his views
25 are, but it would seem to me to be a better part of valor on our

part to simply say let's have maybe a subcommittee to deal with the clerks and a subcommittee to deal with the district attorneys -- while it is part of this package here -- to come back at a little later date with a very concrete proposal, a well thought out proposal, that's all I'm suggesting and I think that's what Adam --

MR. GREENE: I really think that would be more desirable.

CHAIRMAN SNOW: All right, we'll do that then.

MR. GREENE: When we're finished discussing this business of grandfathering the judges in and you people lay that to rest -- or is that still --

JUDGE PROBST: Can we take a vote on it?

CHAIRMAN SNOW: I'm inclined to think we ought to go ahead and take a vote if we're through discussing their recommendations. A motion has been made and it's a substitute motion. I need a second to the substitute motion.

MR. DROLET: What is the substitute motion?

CHAIRMAN SNOW: It was from Judge Stanley relative to grandfathering in of 37 -- well he's got a full substitute here, relative to the -- it's an alternative draft Section 2. It's paragraph 2A, 2B, 2C to take the place of paragraph 2.

JUDGE STANLEY: But I'm really moving at this time just 2A and I'm amending that by saying full time.

CHAIRMAN SNOW: That all the judges of the Probate,

State Courts, Juvenile Courts and all other courts of record that possess the requisite qualifications as prescribed in Paragraph 1, Section 8 of this Article shall automatically become a Judge of the Circuit Court of the circuit in which they are domiciled. For the purpose of this Paragraph, seven years service as judge of a court of record in this State may be substituted for seven years practice of law in this State."

Is there a second to Judge Stanley's motion that Paragraph 2A be adopted?

JUDGE STANLEY: Mr. Chairman, I ask that the words "full time" be added before the word "All full time Judges...".

MR. BEXLEY: So that it will be considered, I'll second the motion, so it'll be considered.

CHAIRMAN SNOW: All full time judges. All right, do you have a roll there of those that are present, Jerry?

JUDGE STANLEY: In relation to the change the Committee made this morning in the Article itself that it would be members in good standing of the State Bar, as substituted this morning, I think you should delete that second sentence out of there.

CHAIRMAN SNOW: What sentence, Judge?

JUDGE PROBST: The Committee this morning agreed to delete the seven years practice as substitute -- and substitute seven years membership in good standing of the State Bar of Georgia and Judge Stanley is suggesting striking the last sentence

of Paragraph 2A, since you would be a member in good standing for seven years whether you served on the bench or practiced law.

CHAIRMAN SNOW: Okay. All right, we will proceed to call the roll on the vote.

MR. GREENE: Is discussion through?

CHAIRMAN SNOW: No, not if you have something --

MR. GREENE: I would like to remark real briefly, Mr. Chairman, on that. I did not do so this morning, but ladies and gentlemen of the committee, I can't imagine why there would be any objection to this provision for these two reasons. One is that we all know that 102 superior court judges cannot handle the additional work load that would be immediately cast upon them should this Article as it is now written go into effect. I think everybody concedes that. I don't see how they could. Mine couldn't. I don't know, maybe we've got some over in the other parts of the State that are not overloaded with work, that may be. I doubt that really from all I hear, but in any event, if we don't do this we do two things. One is, we immediately create a need for a study to establish some additional judgeships if we don't do what is proposed here, what this motion now is all about, the way I see it. The second thing you do, if we don't adopt this is, in my judgement, you are going to greatly reduce the chances of this Article getting very much further. You're going to remove a major roadblock the way I see it, to its proceeding on down the road without this in there, but the

main thing I think -- I don't know if this committee has to be necessarily that much concerned about that at the present time, I realize that -- but I just can't see any sense in not allowing these full time, and I am heartily in agreement with the full-time phrase being put in there, full time judges who are qualified immediately becoming circuit court judges upon the enactment of this Article and not to have to down the road either be phased out or face the prospect of running against an incumbent, because if you make that kind of provision, like I say, before that eventuality even takes place, you're going to have to immediately have a study made to determine how many more judges are needed. No question. Judge, don't you agree you'll need more?

JUDGE CALHOUN: I agree you'd need them, but you're going to have them for nine years as associate judges or circuit court judges. I think that takes care of that.

MR. GREENE: But you're doing exactly what Judge Probst says you're doing, you're placing upon them the possibility of having the ladder snatched out from under them if you go this route when all the time we all know you're going to need more judges. Your present superior court judges cannot do everything that will be thrown on them. You'd have the task of dealing with what five people in your county is doing now, thrown on you. I'm not blowing your trumpet but I don't believe you've got enough hours in the day to deal with all those things.

You'd have to have some help immediately, wouldn't you?

JUDGE CALHOON: Yes.

MR. GREENE: So by putting these people in there and giving them something that they can see down the road, these people who are not qualified I say they're going to have to somewhere down the line get qualified or they're going to be out someday and I think they realize that, but on the other hand, if they can get themselves qualified then they ought not to be out, because in my judgement, there will have to be a place for them, the workload will demand it. And either you can do it this way or you can immediately throw upon the AOC the task of making a survey and determining how many. It may be down the road that you've got too many, so be it. Make a study and reduce them, that could be done, but you are eliminating, in my opinion, a major roadblock if you adopt this proposal.

MR. HARRIS: Mr. Chairman?

CHAIRMAN SNOW: Yes Robin?

MR. HARRIS: Two questions. One, as written, what would be the effect of the amendment with respect to judges of the civil court of Fulton County? It's not called State Court.

JUDGE BEASLEY: State Court.

MR. HARRIS: Have you really become a State Court?

JUDGE BEASLEY: January 1, 1977.

MR. HARRIS: And secondly, there would be included in

the class of judges grandfathered in some judges who have never been elected.

JUDGE CALHOUN: A substantial number.

MR. HARRIS: Juvenile Judges of Dekalb County, for instances.

JUDGE CRANE: All of them. There's no way to elect a Juvenile Court Judge.

MR. HARRIS: Have never been elected.

JUDGE PROBST: That could be true of a Superior Court Judge that was grandfathered in.

JUDGE STANLEY: You've got a lot of Superior Court Judges that were appointed even before you had the Judicial Nominating Committee because you just had a governmental appointment then and many of them are still on the bench today.

DEAN BEAIRD: One of the difficulties that I see in proposing it as Adam stated is that the net effect of what we would be doing, of course, we wouldn't be doing it alone, we would be proposing it to the legislature and then ultimately to the people that this be done, is that we would be moving into circuit judge status people not elected to circuit judges or approved through the judicial nominating procedure. We don't have any doubt that many of the judges legally trained now sitting in state court, probate judges and so forth would be the circuit judges, but we simply think that this process ought to take place rather than this group and then the legislature

simply saying that group shall be the new circuit judges in the State. I think it is vitally important that we follow the process. Dorothy?

MR. HARRIS: I really sit in a quandry. Politically I think it appropriate to adopt the amendment as a practical political expediency and yet, on the other hand, idealistically I'd like the way the draft is presented.

JUDGE CALHOUN: I'm not sure that's true either. What you're talking about is making 37 people happy and 142 unhappy because you are going to incur the enmity of the probate judges who are not qualified and I believe it will be a political detriment rather than a political asset.

CHAIRMAN SNOW: Dorothy?

JUDGE BEASLEY: I wanted to say just briefly; one, I think we're letting the tail wag the dog when so much of our discussion is on the transition period, although that has to be taken care of but we really ought to be devoting our time in this sense I think to devising and agreeing on the principles of what is the best ultimate system for the State and the transition will take care of -- the grandfathering and so forth, that's working out something but we have not yet agreed upon the basic principles. We're letting the tail wag the dog.

JUDGE STANLEY: Judge Beasley, this was done in Florida. I assume they thought it was a proper thing to do, they did this very thing in Florida.

JUDGE BEASLEY: Secondly, as to simply grandfathering in these people, while it is true you would automatically be making superior court judge circuit court judges, they were selected whether by election or qualifications as the best qualified people as judges of general jurisdiction, of the highest trial court jurisdiction. Whereas if you just automatically grandfather in people who were selected, either by election or appointment, for judicial duties of a limited nature, whether it's probate, juvenile, that's what they were selected for. You are automatically giving them general jurisdiction over the most significant cases, trial cases in the state without any regard whatsoever as to whether they are qualified for that kind of jurisdiction. So it's an automatic elevation, not to say that many people wouldn't be qualified, but you are just across the board doing it, whether it be me or anybody else that's in the more limited jurisdiction kind of situation.

JUDGE STANLEY: I'd like to take issue with that. The chief judge will make assignments and if he thought you were good only in the probate area or family law or so forth, he'd assign you to that I guess, that's going to be his responsibility. He might not assign you to a felony case if he didn't want to watch you try that.

JUDGE BEASLEY: But you would be coming in encumbered, you would be coming in as a superior court judge, paid as a superior court judge, you'd be qualified for service in any

division as a superior court or circuit court judge and yet you wouldn't be. So you'd be coming in with a handicap.

JUDGE STANLEY: If the judge -- any case that the judge thought he wanted to assign me to, if he thought I was competent, I'd do it, but personally as far as the judiciary philosophy, I think we ought to have some specialization in areas where people are competent, have spent their whole lifetime and years on the bench in that area. If they want to do that, the chief judge ought to be willing to say yes, I'll go along with you on that. If somebody else says it doesn't make any difference to me, if you want me to alternate from one segment to another or one division to another, go ahead, we'll do that, we'll swap you around every six months or two years. That's just basic philosophy to me.

CHAIRMAN SNOW: Okay, any other discussion? If not, we'll call the roll on Judge Stanley's motion.

Dean Cole?

DEAN COLE: I'd be opposed to the motion, if I could say just very briefly, I was on the fence this morning and we had a long discussion about it because I could see some merit to the proposal, but I think, having thought more about it on the ground that the judges who would be so elevated are randomly apportioned around the state, I don't think there's any relation to where we need another circuit court judge right now and where those seven -- I'm thinking now of the probate court -- where

those seven attorneys sit, so we would be creating seven circuit court judgeships without any demonstration of need in that particular circuit. I am sympathetic with the idea that they are getting treated differently and worse than the superior court judges who do not even face a potential threat of a dead-end situation. On the other hand, I don't know how to get around that and I don't think it's that important because I don't think these judges will be that disadvantaged. I think there will be openings available. There may be many probate and state court judges who will be retiring within the next ten years and it will not affect those. So in balance, I would be opposed to grandfathering them in as circuit court judges and comfortable with grandfathering them in as associate judges.

CHAIRMAN SNOW: Judge Beasley?

JUDGE BEASLEY: No.

CHAIRMAN SNOW: Mrs. Wilson?

MRS. WILSON: No. May I say I think you are -- there probably is another way to handle that such as giving them first consideration when an appointment comes up or when a new judgeship is created. I think there is another way to do it.

CHAIRMAN SNOW: Mayor Medlock?

MAYOR MEDLOCK: Yes.

CHAIRMAN SNOW: Dean Patterson?

DEAN PATTERSON: No.

CHAIRMAN SNOW: Robin?

MR. HARRIS: Judge Beasley convinced me. No.

CHAIRMAN SNOW: Wilson.

MRS. WILSON: You already called me.

CHAIRMAN SNOW: Mrs. Williams?

MRS. WILLIAMS: No.

CHAIRMAN SNOW: Harry?

MR. BEXLEY: I wish there was some other way we could handle this because I'm sure he brought out a good point and that he's trying to get this thing passed. I'm familiar with the courthouses in 59 counties, if there is some way that we could amend this. I agree with Judge Beasley, I'm not one for inserting some incompetent people that would be slotted in this as associate judges or circuit judges, but somehow or another I think these people should be taken care of in some form or fashion that we could get this reform bill passed. Certainly I wouldn't want to lead the Court of Ordinary and that association in opposition to a lot of good stuff that's in here. If there's any way that we could amend this, maybe not in total that they have here, but in some other fashion that we could compromise --

CHAIRMAN SNOW: I didn't get whether you said yes or no.

MR. BEXLEY: I'm going to vote no for the reason I stated awhile ago, but I do wish that we could.

CHAIRMAN SNOW: All right, sir. Judge Stanley.

JUDGE STANLEY: I'm going to vote yes. I'm going to say this to you --

CHAIRMAN SNOW: That surprises me.

JUDGE STANLEY: Surprised? We're going to meet with the probate judges next week, I hope they're going to turn out in force, I don't think they will. I hope we're going to have a good turnout, but I know what their thinking is, I know from the attorney point of view and from the 147 non-attorneys and I'm going to have to report back to the general convocation what their attitudes are, but so be it.

CHAIRMAN SNOW: Maybe we'll just have an old fashioned revival meeting over there in Athens. Okay. Adam?

MR. GREENE: Well everybody else seems to have spoken in support of his vote so I will do so and I'm not trying to make anybody happy and I think those of you who have voted no, what you're saying in effect is we've got too many judges in Georgia because every one of these jobs you're talking about are being done now and a goodly number of them by full time judges and if you say what you seem to be saying, -- I vote yes, incidentally -- but we don't need all these people, so we're going to eliminate a good part of them and start over again, and I don't think that's what is in the best interest of the judiciary. I don't think that's true.

CHAIRMAN SNOW: I have just been advised we're going to have 69 probate judges in Athens, so that will be a good

number. Joe?

MR. DROLET: I'm going to vote no, but like everyone else, I want to explain.

CHAIRMAN SNOW: Well I think you ought to.

MR. DROLET: I think the problem is the deadending of everybody but superior court judges. I don't think this really addresses that question. The proposal we have now makes the presumption that the only people we know we need are superior court judges and that the majority of the judiciary in this state are not needed and we're going to erase them and go back to point zero and have to justify their existence. I'm not convinced of that at this point and I think this measure just goes part way and takes 37 of them, says we're pretty sure 37 are needed. But I think we need to answer that question, whether or not we're going to make these people associates and leave them in the system because they're needed and I think that's what we really need to deal with rather than doing it this way and only partially deal with it. For that reason I am voting no.

CHAIRMAN SNOW: Judge Crane?

JUDGE CRANE: I'm going to vote no. I was frankly in favor of a more or less two-tier system with the associate judges being able to stay in office at least until completion of their service, whether it be by re-election or the term they chose to take. I don't see that any of the people we're talking

about elevating are in an office that requires the same qualifications that the highest general jurisdiction court requires today and that's basically the reason I'm opposed to elevating any of them to circuit court judges.

CHAIRMAN SNOW: Okay. Judge Calhoun?

JUDGE CALHOUN: I'll vote no because I think that the schedule, the transitional method set up in the schedule adequately takes care of the work load for a period of time, which will give the Judicial Council, Supreme Court and the legislature an opportunity to provide for the judgeships which are needed.

CHAIRMAN SNOW: Dean Beaird?

DEAN BEAIRD: No.

CHAIRMAN SNOW: All right, those voting in the negative are Cole, Beasley, Wilson, Medlock -- Medlock voting yes -- Patterson, no; Harris, no; Williams, no; Bexley, no; Stanley and Greene, yes; Drolet, no; Crane, no; Calhoun, no; Beaird, no.

The motion now before us is on the adoption of the Subcommittee Report. This, of course, will be the Subcommittee Report on the Trial Court System in the Judicial Article and is contrary to what we initially had as our two-tier system, so this is the Subcommittee Report. Yes, sir?

MAYOR MEDLOCK: Before you take the vote on it, I'd like to point out that you've got about 375 municipal courts

that are being abolished under Jurisdiction on page 67 and, of course, this just came out and as of now we have no resolution or direction from any of the Georgia cities asking for their courts to be abolished. We're going to have to dissent when it is written. As I told the Subcommittee this morning, we would like to file a minority report on it, we have some questions we'd like answered why should they be abolished, doing away with local control and also the convenience of the people. I don't think the circuit judge is going to travel and hold court at night so they don't lose days from work and if they've got some problems in the present system, which we don't know about, then I think we can address those problems and correct them rather than eliminating the courts, so I would like to reiterate that we want to file a minority report in that respect.

CHAIRMAN SNOW: I'm just as sure as I'm sitting here, Mayor, that the superior court judges and the circuit court judges are not going to be handling the business of the cities and that there will be magistrates selected some way or another as provided by law or the courts, but I can't quite conceive of that situation occurring where you don't have courts of some sort. Now as to whether they have the money, the revenue being shared and such as that, then that is something I think we can work out, but I understand what you're talking about at this time.

DEAN PATTERSON: Mr. Chairman, I'd like to point out what I think is one typographical error and one inconsistency in paragraph 4 of Section 2, "The Supreme Court shall exercise appellate jurisdiction of appeals from the Superior Court." I think it should be Circuit Court.

DEAN BEAIRD: There are two or three places where Superior was used instead of Circuit.

DEAN PATTERSON: On page 57. And in that same paragraph, it says, "The Superme Court shall have no original jurisdiction..." and in Section 3, paragraph 1 pertaining to Trial Courts, it says "All original jurisdiction not granted to the Supreme Court by this Article..." Section 3, paragraph 1.

DEAN BEAIRD: We noticed that. That's clean up stuff. We didn't want to go back and tear the page out.

CHAIRMAN SNOW: That will be cleaned up though?

DEAN BEAIRD: What do you call it in the legislature, you've got an editorial committee or something?

CHAIRMAN SNOW: We sometimes fail to find some of them though and we have to have a repealing session the next year to ~~cure~~ those things.

Who was first? Mrs. Wilson?

MRS. WILSON: I had another question about why the -- in Section 2, paragraph 3, any person appointed who shall not have served six month prior to the next general election shall

serve until the first day of the year following the second general election following appointment. Why was that six months added in there?

CHAIRMAN SNOW: That was an area that we had some full discussion on in some meetings of the committee before you were appointed to it, and that was so as to allow them to serve at least two years I think before they would stand for re-election.

MRS. WILSON: Why elect them if you're going to do that?

DEAN PATTERSON: Wasn't the essential problem the problem of qualification?

MR. HARRIS: The primary election process --

CHAIRMAN SNOW: In having that time element there, yes, so that you wouldn't --

DEAN BEAIRD: To mesh into the election machinery and all that.

MRS. WILSON: That's pretty obvious.

JUDGE CALHOUN: I think that should be taken out, I think it ought to be a legislative matter really. I think it's a good provision but I don't see any reason for it to be in the Constitution.

CHAIRMAN SNOW: Well we had some problems with it in the Committee and that's the reason we put it in there, was because of the logistics I think before election time.

JUDGE CALHOUN: That's true.

DEAN COLE: A person appointed could not run under the circumstances.

DEAN BEAIRD: We could define it as we go along, but there were problems.

CHAIRMAN SNOW: Check back on the transcript of that day and get the exact reasoning behind our putting that in there.

MRS. WILSON: You've got six months in there, nobody is going to run against you anyway.

MR. HARRIS: As I recall, if you take six months after November, you get into May. Generally qualifying for primaries are up until May, closed in June.

MR. HODGKINS: I think another reason why we did it was people who take over terms sometimes have to qualify both for the remainder of the term and the new term and you've got a double qualifying fee and that type thing.

CHAIRMAN SNOW: This would prevent them from having to have two -- run in two different elections at the time.

JUDGE CALHOUN: Aren't we off the track? Aren't we talking about Trial Courts? This is not in the Trial Court section.

MRS. WILSON: I thought we were talking about the whole proposal.

JUDGE CALHOUN: Well it is in both sections, really.

CHAIRMAN SNOW: See like when Sam Nunn ran for the

Senate, he had to qualify for the unexpired term as well as to run for the full term.

MRS. WILSON: But that can happen anyway. If your judgeship is say for six years, it can still happen.

CHAIRMAN SNOW: Well this provision was provided so if you were elected you would serve for that remainder of that year as well as for the next two years, until the next election.

JUDGE BEASLEY: I thought the whole idea was to give a brand new appointee an opportunity to serve before he had to face the public. I think that's what it really boiled down to.

MRS. WILSON: That's the way I sort of read it and if you do that --

MRS. WILLIAMS: It was George T. Smith that had to pay two qualifying --

CHAIRMAN SNOW: That's where it all came up and I think after that meeting George T. got mad at somebody on the floor of the Supreme Court and he hasn't been back to a meeting since.

DEAN BEAIRD: I think he got made at --

JUDGE STANLEY: Clarify one point. I hate to be so ignorant about this but I want a clarification really in my own mind inasmuch as the vote went the way it did a few moments ago. Let's say that the Supreme Court finds a certificate of necessity

1 for a new circuit court judge in a given circuit and the
2 General Assembly approves of it. If there is a person in that
3 as an associate judge at that time, is he going to be -- is
4 that appointment going to be made by the Nominating Commission,
5 route through the Governor? Is that the way it's going to be
6 handled?

JUDGE CALHOUN: Yes, under this provision it would.

8 JUDGE STANLEY: If you are a probate judge and an
9 associate judge at that time, then you are either considered
10 as one of the nominees perhaps or you are -- you run against
11 that incumbent, some other incumbent at the next general
12 election, is that right?

CHAIRMAN SNOW: Yes.

JUDGE STANLEY: You give up your job you've got at
13 that time, I assume that you would resign, is that right?

JUDGE CALHOUN: I don't think you'd have to.

JUDGE PROBST: You don't have to resign, you're
14 abolished.

JUDGE STANLEY: Before 1985.

CHAIRMAN SNOW: No, you wouldn't have to resign. I
15 don't think you'd have to resign, not if you ran for another
16 one, if you still had an unexpired term. You would resign if
17 you were elected to the other office, at the time that you
18 were qualified to take that office. That's when you would have
19 to resign from your other office.

MR. HARRIS: I take exception to a quick answer that Judge Calhoun gave. It wouldn't necessarily follow when the legislature created additional circuit court judgeships that they would be filled by appointment. The legislation could provide for a new judgeship to be elected as was done in Cobb County this time and a couple of other circuits.

JUDGE CALHOUN: With this language that may not be true though, it says -- is that a vacancy when you create a new judgeship?

MR. HARRIS: It wouldn't be a new judgeship until January 1, so there is no vacancy.

JUDGE CALHOUN: I'll bow to the superior knowledge of a former Chairman of the House Judiciary Committee.

MR. HARRIS: Of a businessman.

JUDGE STANLEY: I'm just asking the committee, since y'all voted the way you did. Can you come up with some sort of system on this thing that gets us a little more fairness or equity in it than this type of procedure.

MRS. WILSON: I would go along with giving a person consideration.

CHAIRMAN SNOW: Your concern is that the Judicial Nominating Committee might not select the sitting associate judge, is that it?

JUDGE STANLEY: Very possibly might not.

CHAIRMAN SNOW: I think probably --

JUDGE STANLEY: He's been elected to the job that he's holding at that time, the people think well enough of him to elect him, but the slot which is going to take his place when it self-destructs is going to be an appointed --

CHAIRMAN SNOW: Judge, we're going to have another meeting while we're in Athens too of this committee, we're going to meet sometime over there. We're attending the convocation ourselves, but we are also going to have a meeting of this committee sometime during that, probably on Thursday afternoon as soon as the proceedings of that day are over. I hope we don't meet very long, but if there is additional language that can be presented at that time, we certainly will consider that, especially after having an afternoon session, the first initial afternoon session and getting some input from some of the participants.

MR. DROLET: As a parliamentary matter, is it necessary that we vote at this point either yes or no on the proposal that we have?

CHAIRMAN SNOW: I think it would be good if we had at least a proposal that the committee has considered by the majority of the committee.

JUDGE BEAIRD: We move that the proposal be adopted in principle. We understand the differences in language, a one tier system and all that.

CHAIRMAN SNOW: I'm sure there's going to be a lot of

discussion in Athens relative to the two-tier system.

MR. DROLET: What worries me is getting a position where it appears that this committee has the draft, the proposal which many of us might not feel completely comfortable with, since it doesn't solve some of these problems which then opens them up to the same problem we had last year; namely, tremendous opposition to it by everybody that's cut out.

DEAN BEAIRD: The purpose, instead of re-inventing the wheel each time we meet, is to have a proposal to which people can add specific amendatory language. I think we'll be doing this through the year 1990 if we go back and start from scratch every time. If we're ever going to get anything done, we'd better start with this vehicle and amend it if the majority wants to amend it.

CHAIRMAN SNOW: There is nothing that preempts us, as a committee, of having a total substitute to this section recreating the two-tier system for that matter. But I would like for us to go over there and at least present something that is amendable.

DEAN COLE: A point of clarification. What are we talking about basically? This document includes changes recommended by the Trial Court Subcommittee, are we considering that in toto now, that includes the District Attorney.

CHAIRMAN SNOW: We're going to have two more votes.

We're voting now on the Subcommittee Report and then if the Subcommittee Report is adopted and that in turn adds to Article VI, the Trial Court Section, then we're going to vote on the total proposal including the Supreme Court, Court of Appeals and all the rest of it, including the Trial Courts. We're going to have two votes.

DEAN COLE: Where do we find the first?

CHAIRMAN SNOW: The motion that we've got before us now is the original motion and that's Dean Beaird's motion that the Subcommittee Report, and I think you may have it --

DEAN COLE: That's what I want to find.

DEAN BEAIRD: Annotated it's on page 58 -- I mean unannotated. Annotated is on page 67.

MRS. WILSON: Are we talking about just Section 3, Trial Courts.

DEAN COLE: Just Section 3, okay. Now I have one question about that and I suppose this could open up another long discussion. I hope it doesn't but we didn't discuss it this morning, the question of the magistrates and their development in Section 3 and I take it that was the Subcommittee's view, that this was kind of a compromise position as far as I can see, of the single-tier system, where we really are going to have kind of a tier and a half or a two-tier system which has magistrates and circuit court judges. Is my thinking correct in that, that that is kind of a compromise arrived at in the

Macon meeting?

JUDGE CALHOUN: I don't know if it was a compromise. I think the Subcommittee felt and recognized there is always a need for someone to handle matters as traffic and things of this nature, but we felt it should be under the same court system, rather than having a separate clerk for a magistrate court and a separate administrative system for the magistrates. It would be administratively under the circuit court, but they would be having matters of different gravity of jurisdiction.

DEAN COLE: Lesser kinds of things?

JUDGE CALHOUN: Yes.

DEAN COLE: And the Supreme Court could then apportion jurisdiction to the magistrates or the circuit court as they saw fit?

JUDGE CALHOUN: That's right.

CHAIRMAN SNOW: This is where you come in with the city recorders and city judges and your folks who will be handling the warrants in the counties. That's got -- I don't know how much of that ought to be spelled out in the Constitution. I think this is something that should address itself as need requires rather than having it pinpointed in a Constitution.

DEAN COLE: I agree. I just wanted to make sure I understood.

CHAIRMAN SNOW: All right.

MRS. WILSON: I'm sorry. I have one more question and

that was about the JP's. In paragraph 9 it says two years from the effective date of this Article, shall remain in office for two years. What if some of them were elected for a four year term. Can we do that?

MR. HARRIS: Yes you can.

CHAIRMAN SNOW: In the Constitution you can do it.

MRS. WILSON: Would that just automatically change the term they were elected for?

CHAIRMAN SNOW: We had that situation arise with the Treasurer of the State, did not fill his full term and the courts ruled after we passed the Constitutional amendment, it abolished his office.

MRS. WILSON: That's fine.

JUDGE STANLEY: In order to be fair with all the judges in this thing, we're talking about -- the presumption is or assumption is that this might be submitted to the people in '80 or '82 and maybe passed in one of those two general elections and we're making the effective date January 1, '83. The probate judges, as Judge Probst said, would be up for re-election in 1980 which would be to '84 under the present Constitution and my suggestion in my alternative was that then they be given a one six-year term, which would be 1991, instead of 1989, and I would like to move that as a change from the original draft there. It would maybe take a little bit longer to get the full transition into place, but most states have

taken 10-15 years anyway to transitionalize their system.

JUDGE CALHOUN: Mr. Chairman, don't we have a motion before the floor?

CHAIRMAN SNOW: Yes we do, the motion would be --

MR. HARRIS: Would that motion address itself back to Article XI -- Section 11 instead of Section 3?

CHAIRMAN SNOW: I think it would address itself to the other schedule.

DEAN COLE: Another question. This is either profound or stupid and I can't tell which. Is there any problem with electing officials from a county who is under the direct control of an official elected from a circuit?

CHAIRMAN SNOW: Not if it's in the constitution.

DEAN COLE: I was thinking I guess of general constitutional principles so that that magistrate could actually be assigned to another county conceptually under this, although he is elected in one county. That sounds a little strange to me.

DEAN BEAIRD: You've got the problem --

MR. HARRIS: The Superior Court now assigns to different circuits.

CHAIRMAN SNOW: We're not putting everything in here but I hope we're contemplating some state court judges now who are part time judges that will be full time judges. They will work the circuit rather than working a county like they presently



do.

DEAN COLE: All right.

CHAIRMAN SNOW: All right, on the motion. Any further discussion? This is Dean Beaird's motion. Those of you who favor it will answer either yes or no.

MR. HARRIS: If we favor it, can we answer yes and if we're opposed, answer no?

CHAIRMAN SNOW: Well why dn't you vote yes or no.

JUDGE STANLEY: Would you state the motion, Mr.

Chairman?

CHAIRMAN SNOW: The motion is on the adoption of the Trial Court Section 3 as it appears on page 58. All right, Dean Cole?

DEAN COLE: Yes.

CHAIRMAN SNOW: Judge Beasley?

JUDGE BEASLEY: No. May I state my reasons, or would you wish not to have that done?

CHAIRMAN SNOW: Do we have to go through all that again? If you want to, you can, but I mean really.

JUDGE BEASLEY: Let me just state because this goes back to the original mandate that we had when we were working; number one, it does not provide for a two-tier system of either limited jurisdiction judges or limited jurisdiction courts or for specialized courts like probate and family. And secondly, it does not provide for the merit selection of judges and



thirdly, it includes the -- I'm not sure if this is Section 3,
the District Attorneys -- I'm sorry.

JUDGE CALHOUN: Not in this section.

JUDGE BEASLEY: Okay, two reasons.

CHAIRMAN SNOW: Mrs. Wilson?

MRS. WILSON: Yes.

CHAIRMAN SNOW: Mayor Medlock?

MAYOR MEDLOCK: No.

CHAIRMAN SNOW: Dean Patterson?

DEAN PATTERSON: Yes.

CHAIRMAN SNOW: Robin Harris?

MR. HARRIS: Yes.

CHAIRMAN SNOW: Mrs. Williams?

MRS. WILLIAMS: Yes.

CHAIRMAN SNOW: Harry?

MR. BEXLEY: No.

CHAIRMAN SNOW: Judge Stanley?

JUDGE STANLEY: Could I ask the question, does this
include the transitional schedule?

MRS. WILSON: No.

CHAIRMAN SNOW: No, this is just section 3.

JUDGE STANLEY: I vote no.

CHAIRMAN SNOW: Adam?

MR. GREENE: Yes.

CHAIRMAN SNOW: Joe?

MR. DROLET: Yes.

CHAIRMAN SNOW: Judge Crane?

JUDGE CRANE: Yes.

CHAIRMAN SNOW: Judge Calhoun?

JUDGE CALHOUN: Yes.

CHAIRMAN SNOW: Dean Beard?

DEAN BEAIRD: Yes.

CHAIRMAN SNOW: Those voting in the affirmative, Cole, Wilson, Patterson, Harris, Williams, Greene, Drolet, Crane, Calhoun and Beard. Those voting negative, Beasley, Medlock, Bexley, Stanley. The motion carries.

All right, now we are -- we need a motion to adopt as amended --

MRS. WILSON: One question. We did include in this the changes that were a part of Section 3 here?

CHAIRMAN SNOW: Yes.

MRS. WILSON: Okay.

CHAIRMAN SNOW: We need a motion for the adoption of a proposal to present in Athens as Article VI as amended.

DEAN BEAIRD: I so move. I move that the Article contained on pages 63 annotated, as amended by this committee, be presented as the position of this committee in principle for discussion purposes in Athens.

CHAIRMAN SNOW: To be presented as the position of this committee for discussion -- in principle, for discussion

in Athens.

JUDGE STANLEY: Here again, this does not include the transitional schedule?

CHAIRMAN SNOW: Yes, this includes the whole thing.

DEAN COLE: Page 63 to the end I take it.

DEAN BEAIRD: That's right.

CHAIRMAN SNOW: I would think that your motion would be in order here, Judge Stanley -- well you've already made a motion. Okay, it wouldn't be. We have a motion before us that it be approved for presentation in Athens, as amended, in principle -- approved in principle.

DEAN COLE: One cleanup thing. In the page handed out, "Changes to the Subcommittee Proposal", the first paragraph of that page where we changed it from "practice of law" to "active member of the State Bar", I think after the meeting we really intended to say "shall have been a citizen of this State and an active member of the State Bar of Georgia for seven years." Of this state and of Georgia were left out and I think that should be inserted.

CHAIRMAN SNOW: Any objection to that insertion?

(No response.)

CHAIRMAN SNOW: No objection, then it's adopted. Dean?

DEAN PATTERSON: I think it would probably be better to say, instead of "shall have been domiciled in this circuit", "shall be domiciled in the circuit from which selected".

DEAN BEAIRD: My motion is not to adopt every precise word here, it is to adopt in principle.

DEAN PATTERSON: Okay.

DEAN BEAIRD: I'm sure the Committee would welcome all the cleanup language -- all I'm saying is that there are about twenty basic principles enumerated here; unified court system, supreme court as the head of the court system, those things, that's what I'm talking about. Even though there is disagreement as to some of the transition and all, I think those principles are pretty well agreed upon and that's what I --

CHAIRMAN SNOW: The principle of transition is all we need to agree on, is that right?

MRS. WILSON: Could I ask for an explanation of Section 4, paragraph 1, where you say "Uniformity Provided For" and then you say at the bottom, "This uniformity must be established by the General Assembly." Can you explain exactly what you mean by that?

CHAIRMAN SNOW: I've got it on 70.

DEAN COLE: Basically it's just to be sure it means uniform.

MRS. WILSON: By the General Assembly?

DEAN BEAIRD: That's basically it. There is a lot of implementing legislation that has to be passed. There are a lot of statutes that this would touch upon and we want it

uniformly to be the responsibility --

CHAIRMAN SNOW: Each class -- for uniformity, each class of courts --

MR. HODGKINS: That probably really could be cleaned up quite a bit, we only have one class of courts really.

MRS. WILSON: That's what was confusing me a little bit.

MR. HODGKINS: It probably isn't even necessary.

DEAN COLE: As a follow up to what I just said half seriously, let me get a little more serious. Aren't we to vote at this time in principle on Section 11? In other words, the fundamental notion that we need to get across it seems to me is that the unifying principles, maybe twenty basic principles, but I don't think this Section 11, which is of course the red flag, is necessarily something we should -- it might be better to go to the convocation and say here's an idea of one of the transitions without saying in principle we think this notion is correct.

DEAN BEAIRD: It seems we're going to have to bite the bullet on this. If you'll read the first part of this report, you will see what I call the graveyard provision, good judicial ideas of reform that have gone to the graveyard over the past decade. Now we can fiddle around with it, I'm not being critical or anything, I'm just saying at some point in time, in our lifetime hopefully we will bite the bullet and say there

is a need for reform, this is the shape it should take. Now I would certainly welcome anyone here, Judge, scholar or what not, taking this document and re-editing, reforming it, articulating their ideas and presenting them in Athens, but somehow or another we've got to get before that crowd in Athens some ideas and this book is the only thing I know of to do it.

CHAIRMAN SNOW: How long have we been trying to do it, Robin? Sixteen years?

MR. HARRIS: I started in 1960 or '61.

JUDGE CALHOUN: Mr. Chairman, if it's in order, I'd like to make a substitute motion that we adopt this provision with the elimination of Section 5, which is the Attorney General and Section 6, which are the District Attorneys, because I do not believe that the Attorney General or District Attorneys are judicial officers. They are officers of the Executive Department and they should be in the Executive Article. Also, I would like to add to that motion that we remove from Paragraph 2, Section A, a requirement that there be a District Attorney on the Judicial Qualifications Committee, the District Attorney is a lawyer, that's what he is, he represents a particular branch, section of clients, but he's represented by the members of the State Bar who are on the Judicial Qualifications Committee. I don't think the District Attorney, as such because of his office, should be on the

Judicial Qualification Committee.

CHAIRMAN SNOW: Any objections to that deletion?

MR. DROLET: We object to that. I think if Bob Stubbs were here, he would object to.

CHAIRMAN SNOW: Anybody else except Drolet object to it?

(No response.)

CHAIRMAN SNOW: If not, we will eliminate it.

JUDGE CALHOUN: Very good.

CHAIRMAN SNOW: Just eliminated as a part of our proposal at this time, we're going to have --

DEAN PATTERSON: That's the Attorney General and the District Attorneys?

CHAIRMAN SNOW: I'm going to have a subcommittee to look into that further.

MR. DROLET: We'll be happy to serve on that.

MR. GREENE: I want to request, I don't guess this needs a motion --

CHAIRMAN SNOW: We'll teach Bob Stubbs not to come to these meetings.

MR. GREENE: -- the subcommittee to consider the wisdom of including District Attorneys and Clerks in this Judicial Article.

CHAIRMAN SNOW: What was that now?

MR. GREENE: I'd like to request the subcommittee.

to study the district attorneys and clerks, the question of their inclusion in the Article.

CHAIRMAN SNOW: The question is called. Those of you who favor the presentation of this in Athens. Dean Cole? As amended.

DEAN COLE: No 5, no 6, right?

CHAIRMAN SNOW: No 5 and no 6.

DEAN COLE: Yes.

CHAIRMAN SNOW: Judge Beasley?

JUDGE BEASLEY: Before I vote, I want one clarification. I heard the motion differently than you stated it. As I heard the motion, the idea of accepting this at this time was for the purpose of presenting something in Athens for discussion on the principles contained therein, whereas as you presented it, it goes as the recommendation of the committee to be accepted.

CHAIRMAN SNOW: No, I certainly didn't intend for it to sound that way. It is the -- it is presented in principle to the convocation in Athens for discussion to have a basis upon which we can operate.

DEAN COLE: Is it fair to say it reflects the current thinking of the committee?

JUDGE CALHOUN: The majority.

CHAIRMAN SNOW: That's why we're taking a vote.

JUDGE BEASLEY: As a mechanism to get something before

the convocation I vote yes.

CHAIRMAN SNOW: Something that can be dissected.

JUDGE STANLEY: But this does not contemplate being the recommendation of the committee though.

CHAIRMAN SNOW: It's the recommendation in principle.

DEAN COLE: I think in strength it reflects, if it does, the current thinking of a majority of the committee and it leaves it open. It isn't just an idea.

CHAIRMAN SNOW: Dean?

DEAN PATTERSON: Mr. Chairman, why not present this as a preliminary draft proposed by the committee?

CHAIRMAN SNOW: I think that's a good idea. Do you agree with that?

DEAN BEAIRD: That's fine.

CHAIRMAN SNOW: A preliminary draft to be presented in principle.

DEAN BEAIRD: We've got 300 of these books printed, I sure as hell don't want to have to pay for them. We've got to have something for them to talk about over there. Call it anything you want to.

CHAIRMAN SNOW: All right, we'll start over again.
Dean Cole?

DEAN COLE: Yes.

CHAIRMAN SNOW: Judge Beasley?

JUDGE BEASLEY: Yes.

CHAIRMAN SNOW: Mrs. Wilson?

MRS. WILSON: Yes.

CHAIRMAN SNOW: Mayor Medlock?

MAYOR MEDLOCK: Since that elimination of the courts,
no.

CHAIRMAN SNOW: Dean Patterson?

DEAN PATTERSON: Yes.

CHAIRMAN SNOW: Robin?

MR. HARRIS: Yes.

CHAIRMAN SNOW: Mrs. Williams?

MRS. WILLIAMS: Yes.

CHAIRMAN SNOW: Harry?

MR. BEXLEY: Yes.

CHAIRMAN SNOW: Judge Stanley?

JUDGE STANLEY: I'm going to vote no.

CHAIRMAN SNOW: Adam?

MR. GREENE: Yes.

CHAIRMAN SNOW: Joe?

MR. DROLET: No.

CHAIRMAN SNOW: Judge Crane?

JUDGE CRANE: Yes.

CHAIRMAN SNOW: Judge Calhoun?

JUDGE CALHOUN: Yes.

CHAIRMAN SNOW: Dean Beard?

DEAN BEARD: Yes, sir.

CHAIRMAN SNOW: All voting in the affirmative with the exception of Drolet, Stanley and Medlock.

All right, at the end of the meeting, I want to get together with you, Joe, and Adam relative to a subcommittee to work on some of these matters. I'll select that subcommittee after I have talked to y'all.

Is there further discussion at this time or any statements that anybody would like to make?

DEAN BEAIRD: I move we adjourn.

CHAIRMAN SNOW: We'll have another meeting in Athens. A motion to adjourn takes precedence.

JUDGE BEASLEY: I have some questions. Would it be permissible for me to have -- to send to Mr. Hodgkins the proposals which I made which were not fully discussed so that we can just look at them and see the reasons therefor?

CHAIRMAN SNOW: Certainly.

JUDGE BEASLEY: Thank you.

CHAIRMAN SNOW: We are adjourned until Athens, Georgia and I wish to thank the subcommittee for its diligence.

(Whereupon the meeting was adjourned at 3:10 p.m. on September 1, 1978.)

C E R T I F I C A T E

I, Peggy J. Warren, CVR-CM, CCR No. A-171, do hereby certify that the foregoing 77 pages of transcript represent a true and accurate record of the events which transpired at the time and place set out above.

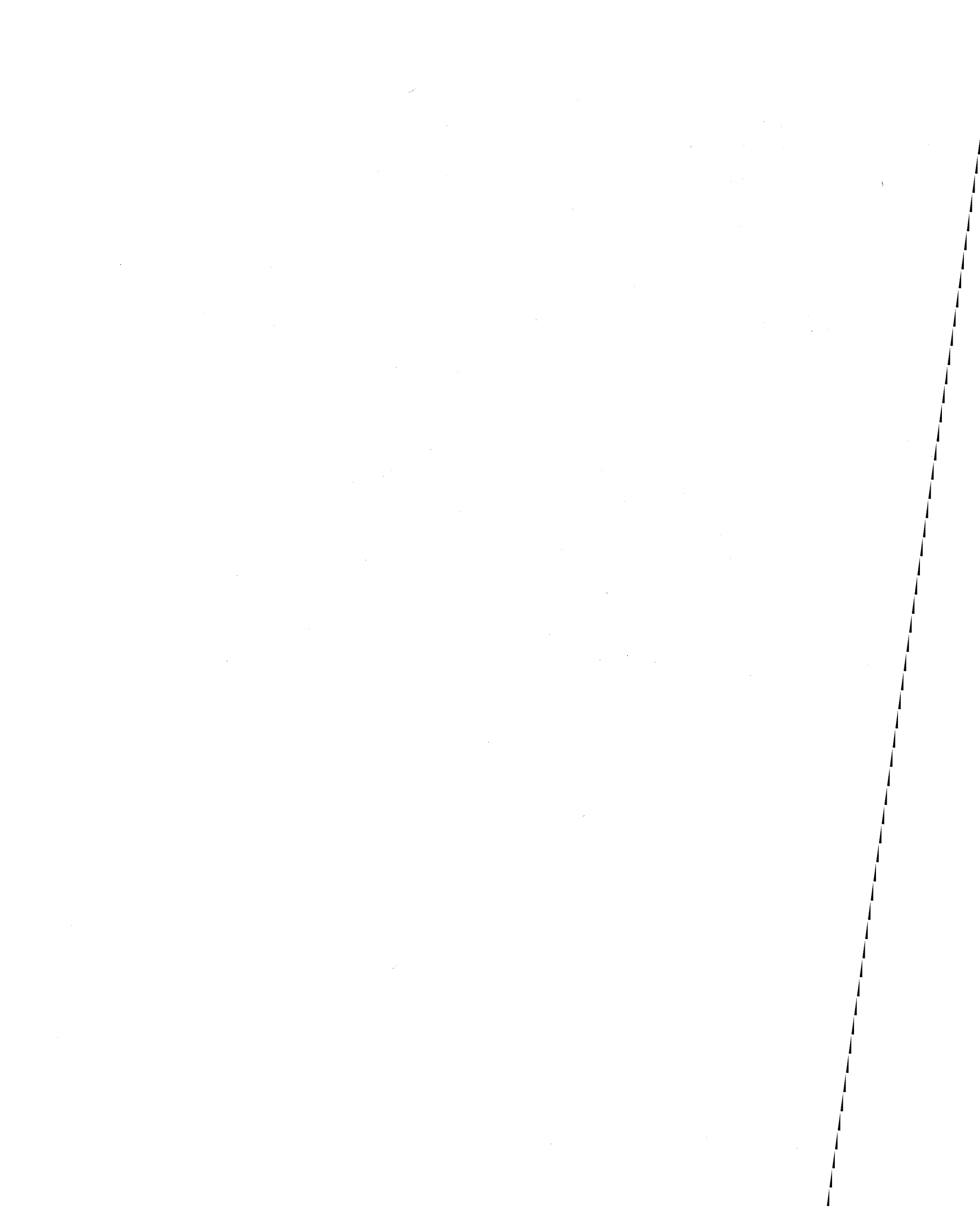


PEGGY J. WARREN, CVR-CM, CCR A-171

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Committee to Revise Article VI

Full Committee Meeting Held on Sept. 1, 1978



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STATE OF GEORGIA

COMMITTEE TO REVISE ARTICLE VI

of the

CONSTITUTION OF GEORGIA

Room 133
State Capitol
Atlanta, Georgia

Friday, October 6, 1978

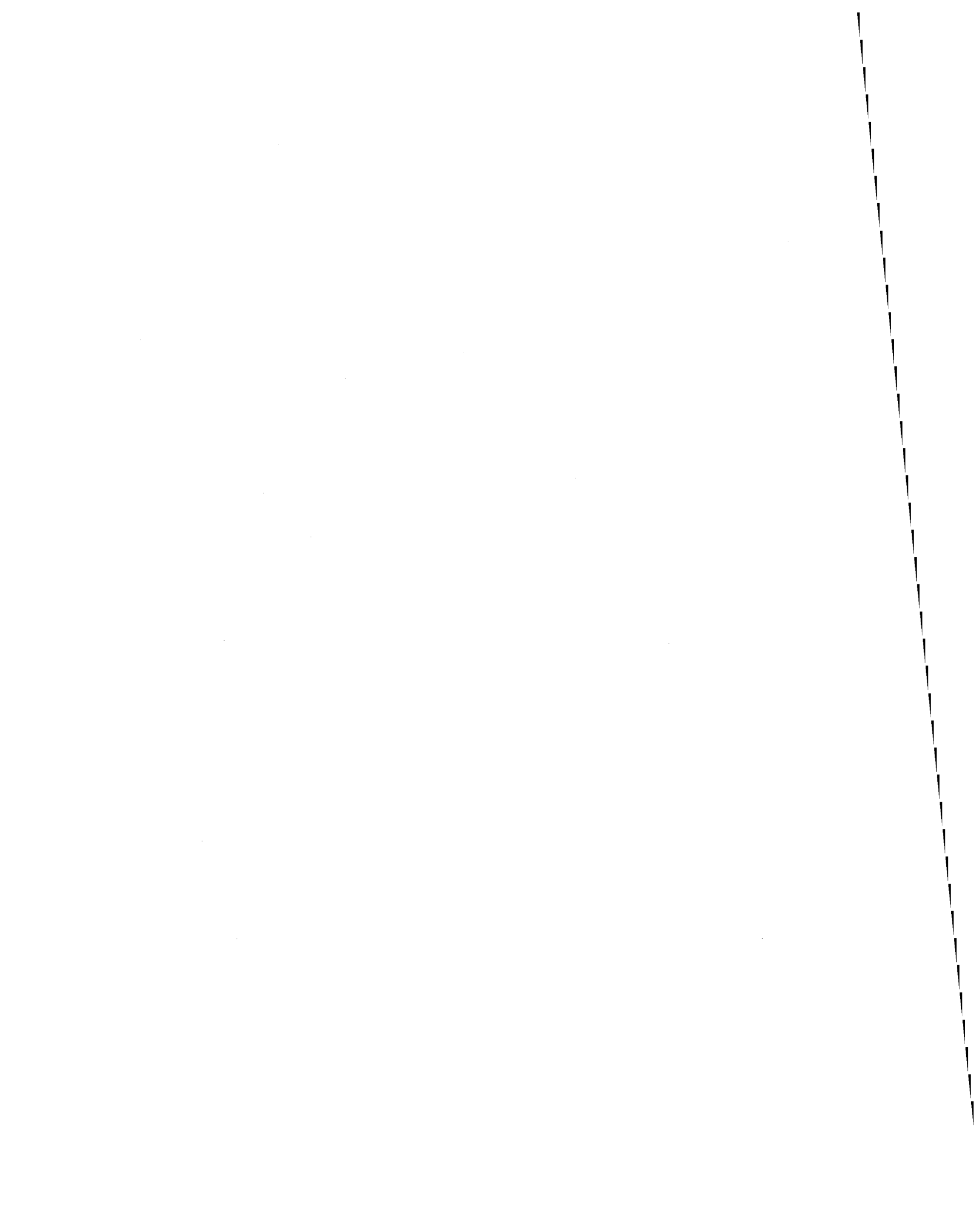
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DEPOSITIONS - ARBITRATIONS - CONVENTIONS - CONFERENCES



PRESENT WERE:

REPRESENTATIVE WAYNE SNOW, JR., Chairman
DEAN RALPH BEAIRD
JUDGE MARCUS CALHOUN
MARTY HODGKINS
JUDGE DOROTHY BEASLEY
MRS. LUCY WILLIAMS
DEAN L. ROY PATTERSON
MRS. CAROL WILSON
JUDGE WILLIAM K. STANLEY
JUDGE FLOYD PROBST
MR. JOSEPH DROLET
JUDGE H. W. CRANE
REPR. ALBERT THOMPSON
MR. TONY HEIGHT
JUDGE GEORGE T. SMITH
JUDGE BERRY BROCK
MR. CHARLES OLSON
JUDGE LUTHER ALVERSON
JUDGE CHARLES WELTNER
MR. HINSON MCAULIFFE
MR. MUNDY



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P R O C E E D I N G S

CHAIRMAN SNOW: A quorum is now present and we will commence our meeting this morning.

Do we have a copy of the agenda?

MR. HODGKINS: No.

CHAIRMAN SNOW: I want to just make a statement relative to the fact that I thought we had a good meeting in Athens at the convocation and it was interesting. We certainly got a large number of varied views and certainly find that we are dealing with a subject that has generated a considerable amount of interest. Thusfar, most of the interest apparently has been among those who are most affected by it, but I think that may continue for some time. I hope that our public hearings will have the effect of bringing in and causing considerable more interest on the part of other members of the public also, but I am hopeful that we will have and especially after today's presentations that we're going to have presented that we will have several viable alternatives too that can be considered at the public hearings that we hold and that we can get ideas about the various alternatives that are available as well as, of course, new ideas for people that we will be meeting throughout the state.

First, I would like to call on Judge Alverson, who has requested time before the Commission this morning to

present the unique situation that exists in Fulton County to the Commission for its consideration and with that, we will proceed with you, Judge.

JUDGE ALVERSON: Thank you very much, Mr. Chairman. Ladies and gentlemen of the Commission, I appreciate very much the opportunity for coming and speaking briefly to you. Hopefully, I'm here representing most of the superior court judges of this state on the subject that I'm about to address you on.

I would like to state that 78% of the superior court judges in the state now receive county supplements in addition to their regular salaries.

My interpretation of the document that we had over at Athens was that that language by implication would keep judges in the future from getting in any kind of circuit supplement and I would like to respectfully suggest to you that such language be added to that paragraph that would preserve the constitution and the laws now existing with reference to supplements and permit the legislature to pass such laws in the future. I think it's very meaningful and it's -- there's a great body of judges, as you can tell, in the state. Each judge is certainly interested in his supplement and it would be most important and helpful if you would do so. I didn't know whether you really knew the exact number of judges that were receiving supplements at this

time.

CHAIRMAN SNOW: Judge, do you have any figures on that from the standpoint of the highest supplement that's paid?

JUDGE ALVERSON: Yes, I do. I have figures here that was prepared by Mr. Boss and the Judicial Council. It has all of the judicial supplements that I can leave here with you, Mr. Chairman, so that you will have a copy of the exact problem.

CHAIRMAN SNOW: If you'll furnish that to us, we'll make copies for the Commission members.

JUDGE ALVERSON: Each of the circuits throughout the state. It's very meaningful, of course, to the judges and these supplements have been -- supplements have been enacted by the General Assembly and by governing authorities of the various states. In fact, our supplement is in the Constitution and it was passed in 1920, and has been -- It was in the old Constitution of 1895, and then was brought forward in 1945 Constitution. So, it's been in effect that long and, of course, it's very meaningful to us and I'm sure each of the other judges and those who don't have supplements I'm sure would like to have them.

CHAIRMAN SNOW: I haven't seen a judge yet that didn't want as much as he could get.

JUDGE ALVERSON: That's right. He wouldn't have the




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intellect to sit on the bench if he didn't. I wouldn't want him to pass on my case. Machiavelli settled that a long time ago. That's about all I have to say about that. I told you I'd just take a few minutes.

↓ But I would like to address myself to another part of the judicial article and suggest to you that there is a movement across the United States with reference to judges that their terms be increased and I would like to respectfully request you to increase the terms of the judges of the Superior Court to eight years. As you know, it's fixed in the Constitution now at four years. We had a constitutional amendment in Fulton County that gives us an eight year term, which we have had over a quarter of a century, in other words about 28 years. We have found that it has really been extremely beneficial to our court. It helps to remove judges from politics and if you -- For example, if you remove a judge from politics, I think you have a better court. I can say that in Fulton County I think we have the finest court now that we've had since I've been on the bench and I'm in my 27th year. It has been very helpful to us to have more continuity from the bench. I know that some lawyers and many people are disturbed if you get the wrong man, well, what happens? At the present time, most of the judges are appointed initially. Some are elected by the people, but most of them are appointed by the governor and each of those judges

have to run in a general election within two years from the time of their appointment, in other words, the maximum would be a two year period. That existed, of course, years ago and has always been true, but we now have in the judicial article and it is continued in the judicial article that you have here, a method of removal and discipline which has not been -- which has not been in the Constitution before. Well, it was passed and put in the Constitution a couple of years ago, but it is now in the Constitution and, therefore, you have a body that can remove a judge if he isn't doing his job properly and for many other reasons he can be removed. This did not exist until recently.



I think the fact that we're going to vote on our legislators this year and I would certainly recommend this -- When I was over in the General Assembly I had to spend my time working all the time politicing for the next term. It certainly would be helpful, and I personally am going to vote, to double the terms of the legislators. It certainly should be done and I think you'd have more continuity.

CHAIRMAN SNOW: You have gained a lot of support from Albert and myself.

JUDGE ALVERSON: Well, I think it would just absolutely -- It's just terribly difficult to run continuously all the time and I think it's extremely important.


I would like to say that, for example, with

reference to an eight year term of judges, that California has twelve year terms, New York has fourteen year terms. Many other states have longer terms. There may have been some reason to have a four year term in the old Constitution, but please don't fix it in this Constitution at less than eight years. You might say -- Mr. Snow may say, well, the legislature won't pass it. Well, I would think this committee wishes to recommend the very best and what they think would be the best for our state and then/^{if}the legislature wishes to cut or reduce it, they certainly have that prerogative to do so. But there is a strong belief --

CHAIRMAN SNOW: I don't think this term business has been the biggest hangup in the legislature.

JUDGE ALVERSON: For example, with reference -- I think I'd like to just revert back for a moment to the local supplements. I think that if judges do the right kind of job and if they perform, and the people in their communities certainly know whether they're doing the job, they're willing to pay them additional compensation. We have found it that way because we work awfully hard on our court, as Judge Weltner will tell you. For example, we have 11 judges in Atlanta and San Francisco has about the same kind of courts that we have and they have 39 judges and in San Diego, they have 37 judges, which is smaller than Atlanta, and in Mobile, Alabama, for example, they have 11 judges and

just think about the comparison between Mobile and Atlanta. It will give you an indication of what's involved. We work awfully hard and we think we deserve every dime that we get and we hope that you will permit us to -- that is, permit additional supplements over and above the amount that's being paid. It would be difficult to equalize it all over the state and I'd like to say this, we on our court very definitely support the unified court and the new constitution. We're for judicial reform and we hope that you will help us to do a better job in the superior courts of this state. Thank you very much, Mr. Chairman.



CHAIRMAN SNOW: Thank you, Judge. Let me just make a few comments and maybe there will be a couple of questions. I don't know that we have really spent a lot of time here on the Commission -- we haven't really talked about the supplements much. Our primary objective, as you know, is to try to get some degree of uniformity between the courts. Now, I don't think there's any effort and I think we would be doing a disastrous thing if we tried to reduce the salaries that are now being received by the superior court judges in this state. I can't conceive of us doing that. I do see, though, the need to probably put a limit on what can be paid as supplements with the hope that in the future this would be very remote that the state would eventually come in and make it a uniform salary throughout the state taking that highest

amount and all judges making the same. That would be, to me, an ideal situation.

JUDGE ALVERSON: I would support that 100%.

CHAIRMAN SNOW: I have always found it difficult to see why any of our superior court judges in this state would be making more than some of the other would because of the responsibilities in the circuit. Some are more than others, but overall they're primarily the same or should be the same and the case load should be equal hopefully. Eventually, under this new constitution if we can adopt it, that is the way it will be. There will be more uniformity and there will be more equalization of the work load throughout the different circuits of the state. The problem I have had with supplements has been that it has always been a situation that it seems like the judge shouldn't have to be going to the county for anything. He shouldn't have to subject himself to the county commissioners and their whims and their designs as to whether or not they're going to furnish him with certain materials and some circuits, it's been difficult for the judge to get the proper materials, just the paper to run his office. He's had to do it himself in some areas because of county commissioners. I think the state ought to have the full and total responsibility for the court. I understand we should never be in a position to take anything away from what you're presently doing, but I strongly feel like it's the state's

function and at no time should you be subjected to the county or to any possible pressures that might exist there on you because of supplements from the county. I just hope eventually we will be able to wipe it clear totally.

JUDGE ALVERSON: I think the other judges in the Superior Court and the state should make what we make. I think they ought to have it. I feel that --

CHAIRMAN SNOW: I do hope that whatever we do we will place a limit on it, that it would not be increased on the local level. Some counties just simply -- Their financial situation is such that they feel like they can not afford to pay a supplement. I think some judges who are presently getting them and even though they're authorized, I think they've had to almost threaten with a court order to get it paid sometimes because of the financial situation in those counties.

JUDGE ALVERSON: Let me just tell you about our court. We did not get any additional judges in Fulton County for 18 years. We have 2 additional judges in the last 18 years and just think of the growth in Fulton County. We have had continuous session in Fulton County. I try criminal cases one week and civil cases the next week. Every eleventh week I preside and have to handle all the nonjury business of the court and it's a continuous hard taxing job and I'm sure all the other superior court judges have jobs equally as taxing, but it's been more difficult for us to get help. I remember

when I was in the legislature here that -- representing Fulton County, although at that time we didn't have but three, but I felt as though I was an illegitimate child in the will-reading because we had difficulty getting things, but it isn't that way now and we're so pleased. I remember one year I was over here, the State just gave us \$75,000 to fill up the holes in the state highways in Fulton County, but that's changed and we're so glad it has changed. It does not exist today, but I certainly agree with you. It would be wonderful to have every judge in the state making the same thing that we make and I would hope in some way this could be done.

CHAIRMAN SNOW: Well, I would like to eventually see it taken out of the counties' prerogative.

JUDGE ALVERSON: And I think an eight year term would help all of the judges a great deal in this state.

CHAIRMAN SNOW: I don't think any of them would be opposed to it.

JUDGE ALVERSON: I think the removal and discipline law that we now have would take care of any judges that were not performing as they should do so, but thank you very much.

MRS. WILSON: If we continue allowing the supplements wouldn't that get very, very confusing if you're trying to help out a circuit such as Atlanta-Fulton Circuit by moving in a judge from some other circuit to help with that? Isn't that going to be awfully confusing about who's going to pay

the supplement?

CHAIRMAN SNOW: I don't think that judge would be entitled to the supplement.

MRS. WILSON: Well, it's going to be rather difficult to try to find somebody that's going to want to come to Fulton County and help out up there at a lower salary than the judges that are sitting in Fulton County are getting.

JUDGE ALVERSON: Well, there's quite a bit of difference in coming in and trying a case or coming in and helping out a week or -- and having the responsibility of being elected in the circuit and having the responsibility --

MRS. WILSON: Of course, I would rather not see the judges elected.

JUDGE ALVERSON: I think he -- Judge Weltner can tell you how much it costs to get elected in Fulton County. I haven't had opposition for the last 25 years, but what I'm speaking about is an eight year term. I'm speaking for the judges cause I don't know how long I'll be on the court, but as long as I have good health I will be and can keep my faculties I expect to stay on the court, but it's very meaningful to Judge Weltner and other judges, younger judges who are on the court now.

MRS. WILSON: I'd like -- I'd rather not see judges elected.

JUDGE ALVERSON: Well, that's the optimum. I would

rather now see judges elected too, but I think it's a good idea for judges to have to go before the people. I think it's a good idea.

MRS. WILSON: Well, maybe as a review.

JUDGE ALVERSON: I think it's a good compromise.

CHAIRMAN SNOW: Judge Stanley?

JUDGE STANLEY: I concur, Mr. Chairman, with your concept, but until the state takes that responsibility I certainly agree with Judge Alverson that the county supplement should be allowed.

CHAIRMAN SNOW: I was going to suggest to the Commission, since we have not really addressed it, that we have some language drafted on it and that what I would like from the Commission, if you would, to sort of put a ceiling on it as far as what the counties can do, possibly the highest being paid right now in the state.

JUDGE STANLEY: I did want to ask Judge Alverson if he advocated eight years for all judges?

JUDGE ALVERSON: Absolutely. I think all judges should be elected eight years. What happens in many instances, especially in small circuits, good judges are defeated because of one decision on an injunction or something of that nature when he was absolutely and eminently correct in it and yet he's alienated some particular group that takes out after him and spends a lot of money to defeat him. He needs to be

1 independent. You need judges to follow the law. You need
2 judges to live like judges and act like judges and they can
3 do this if they have some security in their position and if
4 he is the kind of a man that shouldn't be on the court, we
5 have this constitutional committee that can remove him. He's
6 been elected for eight years, they can kick him out of office
7 immediately. If he's drinking too much and loafing on the
8 job, they can do anything. This can be done. It can be
9 supervised. They can be supervised, but I think eight year
10 terms would be appropriate for every judge in this state.

11 CHAIRMAN SNOW: What do you think about a ceiling
12 on the supplement?

13 JUDGE ALVERSON: I wouldn't argue with that one bit,
14 not at all.

15 CHAIRMAN SNOW: The objective is to be able to
16 eventually wipe it out totally.

17 JUDGE ALVERSON: It can be over a period of years.
18 I have some language here that I'll put at the end of that
19 section having to do with salaries to say: Provided, however,
20 any law or constitutional provision now existing affecting
21 judicial supplements shall continue in full force and effect
22 and the General Assembly shall have the authority to pass
23 such additional law; and you could put not to exceed those
24 supplements now existing, just add that to it.

25 CHAIRMAN SNOW: Would you take care of that?

1 Marty, is there any objection? I don't think there's been any
2 intent -- Dean.

3 DEAN PATTERSON: I'm not sure what problem we're
4 addressing here in terms of the draft. Does the current
5 draft preclude supplements?

6 JUDGE ALVERSON: Yes.

7 DEAN PATTERSON: Does it provide that the
8 compensation of judges shall be made by the state?

9 JUDGE ALVERSON: Yes.

10 DEAN PATTERSON: Completely?

11 JUDGE CALHOUN: It doesn't say completely, but it
12 could be construed and probably would be construed, I believe,
to say --

13
14 JUDGE ALVERSON: May I read it? "Compensation and
15 allowances of Justices, Judges and Magistrates. The justices of
16 the Supreme Court, the judges of the Court of Appeal, the judges
17 of the Circuit Courts and the magistrates of the Circuit Courts
18 and the district attorneys shall receive such adequate compensa-
19 tion and allowances as may be provided by the General Assembly,
20 which shall not be reduced during their term." This is the
21 sentence, "Compensation, allowances and necessary expenses of such
22 justices, judges, magistrates and district attorneys shall be
23 paid out of the state treasure." That would cut out supplements.

24 JUDGE CALHOUN: Would the elimination of that
25 sentence take care of it?

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JUDGE ALVERSON: Yes. Well, it wouldn't continue those existing.

JUDGE CALHOUN: I think it would continue those existing. Why wouldn't it? It doesn't abolish them.

JUDGE ALVERSON: Well, you have a new constitution.

JUDGE CALHOUN: A lot of them are not constitutional.

CHAIRMAN SNOW: Dean?

DEAN PATTERSON: I was wondering if the problem could be taken care of by a sentence to the effect that the compensation of judges from whatever source shall not be reduced under this provision.

JUDGE ALVERSON: That would be all right. It surely would be.

DEAN PATTERSON: It seems to me you really get to the problem that way.

JUDGE ALVERSON: I wouldn't argue with that at all.

CHAIRMAN SNOW: All right, let's work on some language on it. I certainly don't think it's been our intent at all to reduce the amount that any superior court judge in the state is making. Well, we just haven't addressed it from that standpoint.

JUDGE BROCK: Can I ask one question? Judge, on your eight year terms and the method now for removing judges, how many judges have we had since that's been effective that's gone before the committee? Any?



JUDGE ALVERSON: Oh, yes. There's some judges that have been sent before the Committee and of course that's confidential. I just happen to know of some judges that have had to go.

JUDGE BROCK: Have we had any removed?

JUDGE ALVERSON: Yes. One judge in Americus was removed.

CHAIRMAN SNOW: I think probably if that committee has an effect of just giving a warning and it seems to straighten folks up quite a bit.

JUDGE ALVERSON: It looks over your left shoulder all the time. A judge has to stay in a glass bowl and let everyone see what he is doing. That's important, that's the way it should be.

CHAIRMAN SNOW: But don't you think that warning really has a good effect?

JUDGE ALVERSON: I do. I supported it 100%. I think it helps the court. It gives us the right kind of judges. We get the right kind of results.

CHAIRMAN SNOW: We have discussed -- I think the supplement business can be handled without any problem with appropriate language. The eight year terms has given members of the Commission some problems and we've kind of compromised that at the six year, but we will give it further consideration too and you were quite correct about the legislature. Of

1 course, this Commission is supposed to present the very best
2 idea that it can and I don't know how it will go in the
3 General Assembly. We haven't presented it.

4 JUDGE ALVERSON: I believe, Mr. Chairman, if you
5 came out with eight you might get six. I think if you go with
6 six you're going to get four.

7 CHAIRMAN SNOW: You think if we started with twelve
8 we might get eight?

9 JUDGE ALVERSON: We might start with fourteen if
10 you want to. Any other questions? Thank you so much, Mr.
11 Chairman, ladies and gentlemen, for giving me the opportunity.

12 CHAIRMAN SNOW: Anybody else not a member of the
13 Commission, do you have a question you'd like to ask Judge
14 Alverson or any comments? Would you like to make any comments?

15 JUDGE WELTNER: I agree with what he said.

16 CHAIRMAN SNOW: I figured you did. All right, thank
17 you so much, judge. Judge Stanley, you have some remarks
18 concerning the recent meeting of the probate court judges?

19 JUDGE STANLEY: Yes sir, Mr. Chairman. If you
20 recall, over in Athens we were delighted to have you sit with
21 the probate judges in one of our sessions over there. We had
22 some 72 judges over there, which I thought was pretty good.
23 That was about 50% and that's about the best we can count on
24 at any meeting, but after a rather vocal discussion --

25 CHAIRMAN SNOW: I ~~sat with them~~ largely because I



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thought there was some protection just in the number that was there.

JUDGE STANLEY: Well, we appreciate your being there. We had quite a discussion there for the full two hour period and instead of voting up or down on the proposal that had been submitted by this committee, they elected instead to appoint a committee which was a good cross-section of probate judges from the metropolitan, the immediate population and your small counties, rural counties in Georgia to consider it and to make recommendations both to this committee and to a seminar of probate judges which will be meeting on the 24th of this month. This committee met in Macon on the 29th of September and a proposal was submitted by Judge Probst on my right here of Fulton County as a means by which we might try to work out the differences that exist in the probate judges area. These differences result largely from the fact that you have a few probate judges, as you know, who are attorneys and whose problems basically are in the area of fragmented jurisdiction and the problem of the *denovo* hearing and -- whereas in the way judges now holding office as probate judges, and that's the majority of them, I believe it is, their problems are different, especially those in the small counties. And I was happy to learn at that meeting that one of our judges, Judge Earnest, had taken a poll of the judges in the counties under 20,000 population in Georgia prior to that

1 meeting and there are 109 such counties, 109 with population
2 of less than 20,000. Well, their problems, of course, are
3 quite different from those that might be in Bibb County or
4 Fulton, DeKalb, Cobb, Richmond, Muscogee, Chatham and so forth.
5 So, at this meeting we had a discussion of what we thought
6 might be acceptable both to the attorney, probate judges and
7 more or less the metropolitan areas and those lay judges in
8 smaller counties. As a result of that, we've come up with
9 this proposal, which you have been furnished a copy of this
10 morning. Since it was Judge Probst's basic proposal that we
11 were discussing, I took the liberty of inviting him here this
12 morning to let him present this to you. With the permission
13 of the Committee, I would like to open the floor and let
14 Judge Probst make his presentation.

15 CHAIRMAN SNOW: Judge Probst.

16 MR. HODGKINS: Before you go, does any member of the
17 Committee not have a copy of that?

18 JUDGE PROBST: It has a cover letter by Judge
19 Stanley attached to the front of it, a two page cover letter
20 by Judge Stanley, and then it has four pages legal sized.

21 CHAIRMAN SNOW: All right, judge.

22 JUDGE PROBST: O.K., thank you. This is basically
23 a one tier system in the sense that there would be one unified
24 trial court. There would be three types of judicial officers.
25 There would be circuit judges, county judges and magistrates.

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1 All superior court judges, all state court judges, all
2 juvenile court judges and all probate judges who are members
3 of the Bar would become circuit judges. All probate judges
4 who were not members of the Bar would become county judges
5 and you would solve the denovo problem by providing that if
6 a timely jury demand was made in certain cases, which is
7 spelled out on the bottom of the first page, then that would
8 be heard by a jury before a circuit judge. Otherwise, it would
9 be heard before the county judge and the constitution would
10 provide that the county judges would have the current
11 jurisdiction of probate judges plus such civil and criminal
12 jurisdiction as shall be provided by law. All other judges
13 or judicial officers would become magistrates and that would
14 include the justices of the peace and municipal court judges
15 and so forth. Then all circuit judges or county judges have
16 terms of six years is what we put in, but that's not essential
17 idea. Circuit judges and county judges would be elected.
18 Magistrates would also be elected. Circuit judges and county
19 judges would have to devote full time to their judicial
20 duties. County judges and magistrates would not be required
21 to be members of the Bar. The General Assembly could change
22 the composition and number of the circuit courts and the
23 number of circuit judges and magistrates, but not the number
24 of county judges. The office of county judge could be
25 abolished by a referendum of the people voters in that county



1 and if it was ever abolished it could be recreated by the
2 same method, a majority vote of the voters in the county.
3 There would be no county judge in a county where the probate
4 judge was an attorney and became a circuit judge unless the
5 voters in that county voted to create the office of county
6 judge. As a condition of continuation in office, all circuit
7 judges, county judges and magistrates would be required to
8 participate in continuing judicial education as prescribed by
9 the General Assembly upon recommendation of the Supreme Court
10 and we did not attempt to draft language to cover a lot of
11 other problems which would have to be covered such as pension
12 rights. We think the county supplements or the language that
13 Dean Patterson suggested would have to be in there. That's
14 the basic plan and this was drafted jointly by Judge Weltner
15 and myself and he is here and ~~may~~ have some comments. The
16 proposal was also distributed to the Fulton County State
17 Court judges and I have a letter from Judge Alexander.
18 Actually it's a copy of a letter to you, Mr. Snow, that says,
19 just a note to say that I fully support and recommend the
20 proposed draft of the judicial article submitted by Judge
21 Weltner. It's my opinion that the draft is a substantial
22 improvement of earlier proposals. I would like to see your
23 committee adopt it if possible. I will attend your committee
24 meeting later this morning. I am writing this letter since
25 I may not be able to attend. I believe that Judge Pope, who



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1 is the past Chairman of the Judicial Council is here and has
2 an opportunity to review it and may have some comments and
3 Judge Berry Brock representing the justices of the peace is
4 also here and may have a few things to say. In summary, I'd
5 just like to say we felt like, Judge Weltner and I, in
6 drafting this, we felt like the issue of a one tier system was
7 really not fairly presented over in Athens because of the
8 second class judge idea that was involved in it. The problem--
9 The problems that the probate courts have are not going to
10 be solved by combining them with the state court and the
11 juvenile court. The problem that the probate courts have
12 result from the split jurisdiction between us and the superior
13 court. It's the same think I understand with the state courts.
14 The problem would not be solved by lumping them in with the
15 juvenile and probate courts. The problem is the split
16 jurisdiction between the state courts and the superior courts.
17 So, we felt like a unified trial court was the thing that made
18 the most sense. As you know, there are a lot of probate
19 judges and a lot of other kinds of judges who would rather not
20 change anything at all and we consider it a substantial
21 accomplishment to have gotten a majority of this cross-
22 sectional committee to agree on any type.

23 CHAIRMAN SNOW: I think you're quite correct.

24 JUDGE PROBST: We feel like there are really two
25 considerations. One is that any plan should benefit all the



1 constituents and the public, and secondly, it should have a
2 reasonable chance of passing. Otherwise, if both of those are
3 not met, you are not getting a good return on your time that
4 you spend. I mean, we think that this proposal meets both of
5 those criteria. It's a good plan as far as what it would do
6 for the public and it's a good plan, the best one I've seen,
7 as far as its chances of passage.

8 CHAIRMAN SNOW: I think primarily my observation at
9 the Athens meeting is that the majority of the folks who
10 attended it, to begin with, came with very closed minds,
11 resisting any type of change of any sort whatsoever and were
12 determined to present that. I do think, toward the end of the
13 meeting, things were opening up and there was a greater
14 understanding of -- that the intent was good. It was not bad
15 what we were trying to do and that we really weren't trying to
16 adversely affect anyone. I think we had to -- If we had two
17 or three more days or if we could have had at Camp David and
18 kept everybody closed up, we might have been able to accomplish
19 more. Judge Weltner, do you have something you would like to
20 add to that?

21 JUDGE WELTNER: I think Floyd has very well presented
22 it.

23 CHAIRMAN SNOW: Judge Pope?

24 JUDGE POPE: I preface my comments that I have just
25 been able to look at/ it. Judge Probst did talk to me on the phone



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1 yesterday evening. I've been on a trial. I think practical --
2 from a practical political standpoint, it has merit and ought
3 to be given serious consideration by this subcommittee. I
4 can see where some of the metro probate judges, Atlanta,
5 DeKalb, Bibb, Cobb and other places, already lawyers could
6 come right in to the circuit judgeship arrangement and render
7 a very valuable service and try cases, those that are lawyers
8 could help the courts tremendously.

9 If I might be given the benefit of referring to my
10 own circuit, I have state court judges who could immediately
11 help out in the entire service -- circuit. It could immediately
12 aid in all ~~cases~~. I have a general court judge who's a lawyer,
13 who could immediately begin to hear cases in the entire circuit,
14 misdemeanors and traffic cases which are a terrible burden to
15 us with the backlog of felonies we have.

16 CHAIRMAN SNOW: I'm sure you'd hate to get rid of
17 those traffic cases.

18 JUDGE POPE: That would be a tremendous help to us
19 because we can't try them. We know we can't try them.

20 From a personal standpoint, it has benefit to the
21 Blueridge circuit. It would be a tremendous help. I can see
22 that the probate judges that are not lawyers in the five
23 counties, I think probably until they were trained, they would
24 have to exercise probably probate jurisdiction.

25 CHAIRMAN SNOW: All five of them handle elections?

1 JUDGE POPE: And elections. We do have them handling
2 traffic under the present law because I think they're paid
3 \$100 a month if they handle some traffic cases and I think they
4 do that on a monetary consideration. We do have some that
5 desire to handle traffic cases because of the supplement they
6 get, but I think it has merit and I think I can see where such
7 excellent judges as Probst, Guess, Stanley and Vernon Duncan
8 and Cobb, who I know personally, could immediately under this
9 arrangement be of great service.

10 CHAIRMAN SNOW: What are there 12 in the state,
11 Judge Stanley?

12 JUDGE STANLEY: I thought there were 10. Marty told
13 me there were 8, is that right, Marty?

14 MR. HODGKINS: I think those are the ones that were
15 serving full-time and met the qualifications of superior court
16 judge.

17 JUDGE POPE: I think you ought to support too of
18 a great number of probate judges. I refer to the political
19 practicalities and the state court judges, the majority of the
20 state court judges, would support such an idea at becoming a
21 circuit judge. I think that would have a great help. The
22 JP's are a tremendous political force in this state and I know
23 some of them would be very helpful as magistrates in some other
24 jurisdiction. I think we're coming down to when the water hits
25 the wheel. We're going to have to consider the political

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1 aspects in support of the judiciary. I think any sort of
2 compromise that we might be able to come up with, not all the
3 support, I don't expect to get it, but enough support to get
4 it past the General Assembly and on the ballot. I feel maybe
5 rightly or wrongly, but I feel the people of this state will
6 vote for it once it's placed on the ballot and I would, as I
7 say with the limitations of having just looked at it, I wouldn't
8 want to adopt it without great serious study by this
9 committee and further study on my part to totally endorse it.
10 I know there are a lot of ramifications and details that have
11 to be worked out that I haven't even begun to consider, but I
12 see no real serious problems generally. I like the one tier
13 concept. In Athens, I had reservations about it and I did
14 support the two tier system at that time because I didn't
15 particularly like some of the provisions in the one tier
16 concept that was presented, but I am firmly wedded to some
17 judicial reforms. I feel those that don't have got their head
18 in the sand at least from a trial standpoint and that's all
19 I'm engaged in continuously. We are crying for some sort of
20 help, some sort of reform in this state. I don't believe
21 judges are kings. I don't, they have what they want, they're
22 happy with it. I think they need some help and I think they
23 need some reformation and improvement and I look to this
24 committee and the General Assembly and you as a leader in the
25 judiciary and I rest my case with you. I do think it's a good



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1 idea and I came all the way from Canton to say those words.

2 CHAIRMAN SNOW: You're very kind, judge. Do you
3 want to answer that, Judge Smith? Our maverick judge of the
4 court of appeals has joined us since we got started.

5 JUDGE SMITH: The maverick is the most popular car
6 Ford had, remember?

7 JUDGE CALHOUN: And one of the most dangerous they
8 say.

9 JUDGE SMITH: But that's only when somebody else
10 runs into it.

11 JUDGE CALHOUN: I'd like to ask Judge Probst, it
12 seems to me this is essentially what we had before with the
13 exception of lawyer trained judges on the various courts
14 becoming circuit judges rather than associate judges. How is
15 this a one tier system where you have a separate system of
16 county courts?

17 JUDGE PROBST: What is the question?

18 JUDGE CALHOUN: Under your proposal, you're creating
19 another court, a county court which is separate from the
20 circuit court.

21 JUDGE PROBST: No sir, it would all be one court,
22 but you do have separate types of judicial officers. In some
23 counties there would be a judicial officer called a county
24 judge and in other counties there wouldn't. You're right about
25 that.



JUDGE CALHOUN: Isn't this the same except that we called him an associate judge instead of a county judge?

JUDGE PROBST: Not the way I understood your proposal. You had a deadline. There's no schedule attached to this draft, nor intended to be. This would not be the type thing that somewhere down the road there was this certain number of deadend jobs and also there would be no second class judges in terms of the state court juvenile court or probate judges that were attorneys.

JUDGE CALHOUN: I see that difference, but your proposal, the county judges, are they going to be a part of the circuit court?

JUDGE PROBST: Yes sir, and the magistrates too.

JUDGE CALHOUN: But you're going to call them a county division of the circuit courts, something of that nature. The nonlawyer judges, aren't you giving them the same duties that they had as associate judges?

JUDGE STANLEY: Add to them --

JUDGE PROBST: I think the point -- one of the points you're right that under the ~~other~~ plan associate judges were going to have the same duties as circuit judges as full judges, but they weren't going to be paid the same, they weren't going to have the same title. There were certain things that a full circuit judge could do like be the chief judge of the circuit that an associate judge couldn't do and a lot of the judges

1 that were going to be associate judges, you know, didn't go
2 along with that idea.

3 JUDGE CALHOUN: You think they would rather have the
4 name county judge, although their responsibilities would be
5 about the same as associate judge?

6 JUDGE PROBST: And also not have a deadend job.

7 JUDGE CALHOUN: Well, as I understood the intent of
8 the original proposal was to somewhere down the line have
9 nothing but circuit judges where every judge would be qualified
10 to handle every case.

11 JUDGE PROBST: Well, there was -- one of the things
12 that the probate judges, the nonlawyer probate judges, have
13 constantly advocated is what some people call a people's court
14 or a court in the county where people can go to and there are
15 even some members on this select committee that have advocated,
16 you know, a court that was close to the people and we don't really
17 consider it a defect in the plan that there would be a local
18 officer there in each county.

19 JUDGE CALHOUN: Well I don't consider that a defect
20 either. I think that's a very fine asset. I certainly support
21 the idea of having courts available at the place where the
22 business is.

23 DEAN BEAIRD: What would be the judicial --

24 REPR. THOMPSON: I would like to ask you this,
25 a county that has elected not to have the county



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1 judge, and I understand that's permissible, who would exercise
2 the probate jurisdiction in that county?

3 JUDGE PROBST: The circuit judge except what was
4 delegated to the magistrates. It would be a thing that would
5 just be decided based on that situation, but if you had to
6 file a paper you would file it with the clerk of the circuit
7 court and then it would be a matter of internal administration
8 of the circuit court what happened to it then, but the lawyer
9 wouldn't have to worry about whether he has to file with the
10 magistrate.

11 CHAIRMAN SNOW: This anticipates that all filings
12 will be with one clerk. Beverly -- I mean, Dorothy --

13 JUDGE BEASLEY: Aren't you really combining state
14 court judges and probate judges into one thing?

15 JUDGE PROBST: You're combining them with circuit
16 judges though and I think the problem --

17 JUDGE BEASLEY: Into the county judge. I'm talking
18 about the county judgeship.

19 JUDGE PROBST: The only people that would become
20 county judges are probate judges who are not lawyers. All
21 state court judges and all juvenile court judges would become
22 circuit judges.

23 JUDGE BEASLEY: So, in essence, you really would
24 still have the two types judges, wouldn't you, after a period
25 of time?

1 JUDGE PROBST: You mean county judges and circuit
2 judges?

3 JUDGE BEASLEY: Well, would you really have county
4 judges? They would only be part-time people?

5 JUDGE PROBST: No, they would have to be full-time.

6 JUDGE BEASLEY: Well, what kind of jurisdiction
7 would the county judges have?

8 JUDGE PROBST: The county judge would have all the
9 jurisdiction that a probate judge has now, plus whatever else
10 was added by the legislature.

11 JUDGE BEASLEY: I see that's the way you worded it,
12 but I don't know what you envision.

13 JUDGE PROBST: I don't envision anything particular.

14 JUDGE BEASLEY: If they're not going to be legally
15 trained people, it seems to me they're going to be no
16 different than magistrates or should be no different than
17 magistrates and I just don't see that you're going to have
18 intermediate court at all, any court of limited jurisdiction
19 if you have just magistrates and untrained -- unlegally
20 trained probate type judges, plus everybody else being a
21 circuit judge.

22 JUDGE PROBST: Well, we thought that -- The thing
23 is, politically and realistically speaking, it's hard to get
24 somebody to give up what they're doing now. It's hard to get
25 somebody that you call a judge who has the title of judge and



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1 who is hearing nonjury contested cases, it's hard to tell him,
2 and has not been getting that many complaints. And one of the
3 things we heard over in Athens was that there were not that
4 many complaints directly about the probate court, but the
5 problem was that it was going to be an overall judicial reform
6 or there needed to be because of certain problems in other
7 courts and the question was whether you just leave out the
8 probate courts completely, which was really what was done under
9 Judge Sidney Smith's draft presented to the judicial council
10 a year or two ago, which was not a good idea. So, the problem
11 is how do you work -- If you have these other problems in the
12 judicial system and you want overall court reform, how do you
13 work the probate courts into it and how do you get the work
14 that they're doing done? And it appeared to us that the best
15 way to do it was from a practical point of view and just an
16 ideal point of view was to have this people's court in each
17 county where the probate judge wasn't an attorney and then have
18 him exercise all the jurisdiction of the probate -- that the
19 probate judge exercises now, plus what was added. In other
20 words, what I'm trying to say is, these county judges are
21 hearing contested cases now. They would not be doing any more
22 under this plan than they're doing now without getting a
23 significant number of complaints except what the legislature
24 gave them and then it would just be up to the legislature if
25 they wanted to give them extra jurisdiction, small claims or

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whatever.

JUDGE STANLEY: They're unanimous in the fact that they want to be full-time judges and they want enough jurisdiction added to what they're doing presently to make it full-time.

JUDGE BEASLEY: I think that's fine to have intermediate or lower limited jurisdiction type of court, but I have great problems with it when it's not made up of legally trained people as an ultimate. I'm not talking about people who are in office right now. I'm talking about what the permanent plan that they're going to have small claims court.

CHAIRMAN SNOW: I thought there was a provision in here.

JUDGE PROBST: Well, the thing -- One of the things I tried to do was to come up with some proposal that would be acceptable to the nonlawyer probate judges and the things that they have constantly objected to was the idea of having the county -- the probate judge would have to be attorneys and not just -- even if they were grandfathered in and they didn't have to be attorneys. They felt like you would just get a better quality county judge if you didn't put that stipulation on there and if an attorney wants to run, fine, and if he can run the election, fine, but they just thought that was too narrow.

CHAIRMAN SNOW: Dean Beard.

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DEAN BEAIRD: I think maybe my question has been answered, but as I understand it from what explanation I have heard, what you really have here is a two tier system, one tier legally trained and the second tier nonlegally trained. Isn't that basically what it amounts to?

JUDGE PROBST: You could say that.

JUDGE WELTNER: Could I respond to that?

CHAIRMAN SNOW: Yes.

JUDGE WELTNER: The way that I visualize this is it's one court, as it ought to be, and the court is made up of three kinds of judicial officers; circuit judges for each county, a county judge and magistrates. But all of the work of the judicial power of the state would be exercised by that court through the various judicial officers of that court. So, it is a one court, it's a one tier system, three types of officers, but one court only. I think that's important and significant. It needs to be understood on this draft.

DEAN BEAIRD: I think this would be the only reform that's taken place in this century where we have increased in effect the number of nonlegally trained court personnel rather than decreasing it.

JUDGE WELTNER: I disagree with that, the same people are there now. It's not going to be one body in one public office after the implementation of this that was not there before and the work that's being done is still going to

1 be there to be done. Somebody has got to do it. So, that is
2 in reality not correct, I believe.

3 DEAN BEAIRD: Well, my point really is though that
4 one reason for the reform is to move toward -- At least as I
5 understand it, one reason for the reform in most states is
6 to move toward a legal trained judiciary.

7 JUDGE WELTNER: I agree.

8 DEAN BEAIRD: This would not do that.

9 JUDGE PROBST: I don't think it would increase the
10 number of positions where you didn't have to be an attorney.
11 In other words, the county judges -- the people that would
12 become county judges would be the nonlawyer probate judges and
13 they aren't required to be attorneys now.

14 DEAN BEAIRD: What would be the attitude of the
15 nonlawyer probate judges to adopting the uniform probate code
16 proposed by the Commissioners on Uniform State Law whereby
17 the nonlegally trained probate judges would be called
18 registrars and their functions basically would be that of the
19 court clerks and so forth? What would be the attitude of the
20 people to that?

21 JUDGE PROBST: They wouldn't like that.

22 DEAN BEAIRD: Why wouldn't they?

23 JUDGE PROBST: Because they are hearing contested
24 cases now, whereas the registrar and the uniform probate court
25 wouldn't hear contested cases and they are called judges now

and they want to be called judges after.

DEAN BEAIRD: But one of the defects in the current system is, isn't it, that the cases that they're hearing now are appealable denovo to the superior court? Isn't that one of the defects?

JUDGE PROBST: Right.

DEAN BEAIRD: And wouldn't that cure that defect?

JUDGE PROBST: That might cure it if you said that --
Oh, I don't think it would cure it in the sense that the uniform probate court. It's my understanding that the registrar does -- basically performs ministerial duties. He doesn't hear contested cases, does he?

DEAN BEAIRD: Under the uniform probate code, what they've tried to do, as I understand it, they've tried to identify those functions that require lawyers or judicial officers and those functions that do not. There are two aspects to the uniform probate code. One is the procedural reform in effect and the other is the substantive reform. The impact of the substantive reform would be to make a probate -- the probating of wills and so forth a more simple process and it could be called consumer oriented legislation I would think, but I think one of the problems that we are faced with here is that -- which could be remedied under the initial committee proposal, is that we attempted to identify those functions within the judiciary that require legally

1 trained personnel and limit the judiciary to that over a period
2 of time. I think that's the way that most of the reforms have
3 gone in the other states. We would be deviating from that.

4 That may not be bad, I don't know.

5 JUDGE PROBST: I'd just like to go back to one point
6 you made at the beginning though and clarify it. I don't
7 think it would increase the number of positions where you
8 didn't have to have an attorney. At the worst, it would
9 maintain the status quo.

10 DEAN BEAIRD: But it would not decrease it?

11 JUDGE PROBST: That's right.

12 CHAIRMAN SNOW: Carol first, and then Representative
13 Thompson.

14 MRS. WILSON: Two things, I can't remember whether
15 it was Tennessee or Kentucky that they took a poll to see what
16 people thought about handling -- about having nonlawyer judges
17 and the report that we got was that they were very surprised,
18 that 77% of the people wanted their judges to be lawyers. The
19 other thing is you say that there could not be any nonlawyer
20 judges added. Well, how about this provision that you've got
21 in here that county can create a court judge if they want to?
22 Now, you take a county that's got a lawyer probate judge and
23 he becomes a part of the circuit and they come back in --

24 JUDGE PROBST: You're right.

25 MRS. WILSON: So, there could be some more.

JUDGE PROBST: But it would be like ten.

MRS. WILSON: It's still an addition.

JUDGE PROBST: But -- You're right, but if I could try to explain the practicalities. First, you would be limited in an absolute number by the number. The maximum number would be equivalent to the number of probate judges that became circuit judges. Secondly, there would have to be a vote of the majority of the voters in the county to create the office and I just don't believe that in many counties they would create it. Like in Fulton County, I don't foresee that they would create it.

CHAIRMAN SNOW: O.K., Albert.

REPR. THOMPSON: Can we talk about the money that this will cost the State of Georgia for a minute? We been cursed all along with having 159 counties, many of them with populations less than 5,000. Are we talking about a uniform state salary for county judges which would compensate a county judge say in Fulton County and would also pay a county judge in the smaller counties the same amount of money?

JUDGE PROBST: Well, I think the idea -- Let me say this, that would be a possibility. The thinking so far by the probate judges was that it would allow county supplements to any type judge.

REPR. THOMPSON: But would it be a uniform salary paid by the state to county judges?

JUDGE PROBST: Under our idea, there would be a uniform state salary paid to county judges. There would also be a uniform state salary paid to circuit judges, but then the counties could supplement any type judge's salary if they wanted to was our idea.

REPR. THOMPSON: What I'm thinking about is we've got a county down there, Chattahoochee, which may have maybe 3 or 4,000 people. I believe I'll move to Chattahoochee and run for county judge. They have such a small amount of business.

JUDGE PROBST: Well, why don't you set a minimum?

REPR. THOMPSON: As we have it now, I think we have the population brackets for pay of probate judges, if I'm not mistaken, is the same thing as sheriffs and other people and what a probate judge in Chattahoochee County makes is based on the population of Chattahoochee County. Now, if we make a uniform salary for county judges, then the cost to the state is going to be almost prohibitive. At least I think it may be prohibitive. If we make a uniform state salary for county judges and we put one in 159 counties, many of them who really don't need that type of set up and pay them a uniform salary, what's it going to do to the cost structure?

JUDGE PROBST: I think the salaries is a separate issue from the basic plan. In other words, whether you agree with the basic concept of a one tier court with these three

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1 type judicial officers and the jurisdiction, that's one
2 question, then how you compensate these judicial officers is
3 a different question and I wouldn't argue with you. If you
4 wanted to make it a sliding scale based on population for
5 county judges, that's fine. I don't see really why it should
6 be a sliding -- Seems like to me if it's a sliding scale for
7 county judges, maybe it should be a sliding scale for circuit
8 judges, but that's up to y'all really.

9 REPR. THOMPSON: But realistically looking at the
10 amount of work that a county judge would have to do in
11 Chattahoochee County or Echols County and comparing it to what
12 he would have to do in Fulton County, do you think those two
13 positions --

14 JUDGE PROBST: I don't think they should make the
15 same. I don't think they should be compensated the same.
16 The idea of the probate judges that met was that that difference
17 would be taken care of by supplements, but if you want to
18 change that and make it a sliding scale, that's fine. What
19 I'm trying to say is you're getting into an area that we really
20 didn't consider that fully and we didn't consider it -- We
21 considered it a separate issue from the issue of what kind of
22 court structure do you want.

23 CHAIRMAN SNOW: Let me just comment, Albert, on that.
24 I think what we're going to have to address would be the
25 legislation that would set up a similar sliding scale for

county judges like we have now. I do think that the state ought to be the one paying for it. I think the state should have started paying for it when we started mandating to these counties that they had to pay anything at all.

REPR. THOMPSON: But I can't separate the financial because I think its members were responsible.

CHAIRMAN SNOW: Dorothy, then Hanson.

JUDGE BEASLEY: I agree with Representative Thompson. What's been bothering me about automatically elevating, one of the things, automatically elevating the state court judges, the juvenile court judges and the probate judges to circuit court judges is that we're adding a tremendous amount of cost, as I see it, to the system and as a practical matter, I think that getting -- Even if that were a wise thing to do, which I think it is not because I don't think you need to go in with a bulldozer, that is the circuit court judge, when a shovel will do, a judge of limited jurisdiction. But when you get into the practical matter, you have to realize that people of the state are not going to buy the plan if they are aware that it's going to cost more, significantly more, and I think that this plan will cost more if you make everybody that now is a judge of limited jurisdiction a circuit court judge because I don't think the circuit court judge is going to want to take lesser salaries depending on where they are in the state, at least to any

significant degree.

CHAIRMAN SNOW: We've got to address this, Dorothy, but there's no question from the very beginning that we recognize that as far as the cost of the state, it's going to be a considerable increase because we will be assuming a lot of the costs that are now being handled by the local counties for their local judges.

JUDGE BEASLEY: Yes, but I'm talking about the bottom line, the ultimate costs regardless of whether it comes from the county or the state.

CHAIRMAN SNOW: It would compare with what the new system would cost.

JUDGE BEASLEY: I think the taxpayers are going to want --

CHAIRMAN SNOW: I'm not sure that's true.

JUDGE STANLEY: You've got the supplements and paying the probate judges in the metropolitan counties is pretty good salaries to begin with and they probably wouldn't make any more than paid by the state than they are in the local counties. In the second place, you've got an awful lot of state and juvenile court judges that are part-time that are not going to want to give up their law practice and they're going to give up that judgeship. They don't want to be a full-time judge, so for that reason they're going to give it up.

CHAIRMAN SNOW: Hinson.

MR. MCAULIFFE: Let me introduce myself. I'm Hinson McAuliffe. I'm solicitor of the state court of Fulton County and I am presently the President of the State Court of Trial Judges in the Solicitor Association. I want to make it abundantly clear, however, that I've got no mandate from the state court judges or solicitors as to what I'm saying here. As I view this proposed legislation, the first comment that I would have to make is that one of the things that we want to go for above everything else, as far as I can see, is uniformity in the state court system and, of course, this would not provide the uniformity. One of the main things that lawyers talk about all across the State of Georgia is that they don't know how to practice law because when they go to the county -- from county to county the rules change, the jurisdictions change and they don't really know how to practice law. So, one of the things to me that we ought to be going for, striving for above everything else, is uniformity. If we had a situation created where because a certain probate court judge, for example, was not a lawyer that that in that county they would be a county court judge and in other counties they would not be county court judges, then of course this does away with uniformity. To me, whatever we do, we ought to have the same kind of courts in every county in the State of Georgia. Now, in regards to this situation, again, this latest proposal, we have a situation where there would be plenty of deadend jobs.

The proposal is to give all the state court judges and all of the probate court judges that are lawyers and all of the juvenile court judges a circuit court judgeship, but obviously, as Representative Thompson stated a moment ago, there's going to be such a cost involved in this thing the legislature is going to have to in the process of time do away with some of those circuit court judgeships and when they do away with those circuit court judgeships then somebody is going to be in a deadend job. There's no provision here as to how you do away, how you decrease the number of circuit court judgeships. There's another problem here as far as my people would be concerned, is that there's no provision at all for the solicitors and what you do with solicitors. So, all of the solicitors in the state apparently would have a deadend job.

CHAIRMAN SNOW: I thought we were going to abolish them.

MR. ACAULIFFE: I think that would be true, but I want to make it abundantly clear too that I've got 30 years in or near 30 years in and I'm personally not too much concerned with that. But another thing that occurs to me is that we've lived with the system of courts that we have in the State of Georgia now for near on to 210 years. I think what we ought to all be going for is an absolutely ideal judicial system in the State of Georgia with uniformity uppermost in mind as far as jurisdiction rules and everything else is concerned, have an

1 implementation date as far as the legislature and the
2 constitutional changes concerned, say 10 years down the road,
3 and then let everybody run for the jobs that are created by
4 that particular change in the constitution. This way it would
5 remove politics from it as far as I can see. I've attended
6 several of these meetings and I've seen the football bounce
7 back and forth and everything and the reason that it bounces
8 back and forth is because of politics involved with certain
9 groups being represented and I think if you remove that from
10 it and have an implementation date 10 years down the road
11 where everybody will understand that there are no present
12 office holders and everybody will have to run for the jobs
13 then created, I think you'll come up with the most ideal
14 system and probably a better system of courts than any other
15 state in the United States. That's what we ought to be
16 striving for.

17 CHAIRMAN SNOW: Berry, you're next on my agenda and
18 you will have some comments to make relative to this too, so
19 you want to just go ahead?

20 JUDGE BROCK: The only thing I wanted to say, Wayne,
21 was that in reading over this, and of course I've also got a
22 draft from Marty there, the inferior courts of which I have
23 been a municipal court judge and also a justice of the peace --
24 We don't really have any qualms with this thing. Actually
25 what you're saying in both of these drafts is what we've been



after for about the past 8 years. At the time I became President of the Association for the Justices of the Peace and Constables, we were asking for reform back then and we had some people in the General Assembly, as you know, that listened to us and some that didn't and finally this past year we got the mandatory training bill through. So, my comment is that we have no qualms with this. There are certain things we've been asking to be changed and I think they're being taken care of in either one of these drafts, the ones that Marty has or the one that judge over there submitted. One thing I would like to point out to Judge Beasley over here is that when we talk about costs, if you go out here and hire attorneys to be the magistrates and I think me and Mr. McAuliffe went through this some time ago and we came up with about a \$200,000 minimum cost in South Fulton County for magistrate court. Isn't this right, Hinson?

MR. MCAULIFFE: Somewhere close to it.

JUDGE BROCK: This was minimum. We have no idea what it really cost once you got into it. That same year they paid the justice of the peace \$8,000 out of the county treasury.

MR. MCAULIFFE: I believe it was a little bit more than that, but that was in the ballpark.

JUDGE BROCK: Thirteen, eight, as well as I remember. So, we would object to the magistrates being lawyer judges. I

1 think that the people would object to this because of the
2 amount of cost involved. I have no objection to us putting it
3 to a vote of the people, but I think when we put it to them
4 we ought to be sure that they understand what they're getting
5 and what they're going to get and I think the committee should
6 understand here what the jurisdiction at this time of the
7 magistrates. Maybe some people here don't understand. I know
8 Marty and I had a long discussion about this. To begin with,
9 let me state the justice courts are community courts. They're
10 located out in the community themselves. They hold civil
11 court and most of them have \$200 jurisdiction on civil and
12 they have probable cause and committal hearing on criminal,
13 criminal being county-wide and the civil being district-wide
14 or adjoining districts where there are no JP's. There are two
15 types, one is elected and one is appointed. We have both
16 part-time and full-time and we have both lawyer and nonlawyer
17 justices of the peace. The fees -- They are on a fee system
18 at the present time and it's prescribed under Georgia Code
19 241601 and, of course, we have constables that are officers
20 of the court that are appointed by the justice of the peace
21 and their fees are described under 24802 .

22 We have discussed over the past 8 years the
23 recommended changes that we have had and one of the latest
24 ones that we have had recently was to rename the justice court
25 or the small claims court or the municipal courts to magistrate

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courts. We have discussed this many times in our association meetings, which is one of the things you have here. We have also recommended they set salaries at 12,000 for full-time and 5,000 or 4,000 for part-time, whichever the case may be, that they be allowed to use court rooms where they have dignified surroundings to hold the courts, that they be given access to the law books. We have recommended that they elect the full-time and appoint the part-time magistrates. The appointment system -- I disagree with the appointment system on one of these and I don't remember which one it was that went to the appointment. I believe it was one that Marty had. I really think that the system now for appointment is probably better than what we put in here because the grand jury now investigates and recommends and the superior court judge has the authority to appoint. We do agree that no judge or magistrate should practice law and we've got some very good reasons for this. We can tell you some horror tales about some JP's that are attorneys that are using their office to bring people in and get a large fee out of them when the people originally went there to see a judicial officer. We agree there should be a committee to supervise and investigate and hold hearings and act upon complaints against magistrates and we definitely feel like a para-legal trained magistrate can do the job.

Two of the biggest complaints we have now are the

1 fee system and no supervision, no one to answer to. I think
2 this problem has caused the justices of the peace and
3 probably municipal court judges more problems than anything
4 else and I'll be glad to try to answer any questions.

5 CHAIRMAN SNOW: I think it is your feeling probably,
6 as it is most of the feeling of the commission, that those
7 justices of the peace in the different areas that have been
8 doing a very good job would continue to be magistrates and I
9 don't think we have any questions about that. It also gives
10 us an opportunity to rid ourselves of some areas where we have
11 vacancies as well as where we have those positions filled with
12 very inadequate personnel at the time.

13 JUDGE BROCK: Right. I would just like to make one
14 more comment. I think going back to the costs, I think one of
15 the biggest things on this thing is going to be the cost of
16 it. I think the people are going to look at this. Everybody
17 is tax conscious. Let's say we go back and use -- Don't get
18 me wrong, I think eventually we should have all judges legally
19 trained. I'm not sure they should be past the Bar, but I
20 think they ought to have at least a law degree. But let's go
21 back to this, if we take an attorney out here and put him on
22 a \$12,000 job, what have we got? I don't know of any attorney
23 that I know of that would work for \$12,000 a year when they
24 can get \$60 an hour.

25 CHAIRMAN SNOW: You've got harassment of legislators



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1 to get pay increases.

2 JUDGE BROCK: That's absolutely right, so what have
3 you got? I just wanted to mention that.

4 CHAIRMAN SNOW: O.K., are there any other comments
5 on the proposal as made by the probate court? Did you have
6 anything further you wanted to say about this proposal? Did
7 you have anything -- I had you on the agenda. Did you have
8 anything else?

9 JUDGE BROCK: That covered what I wanted to say.
10 This is briefly the way the JP's feel on this thing. We're
11 about 1600 strong and if we go along with this I think I can
12 sell this to the justices of the peace.

13 JUDGE CALHOUN: Mr. Chairman, you asked for any
14 comments on this proposal. Of course, this is a -- in part,
15 essentially a proposal that Judge Stanley and Judge Probst
16 have brought up before and I think somebody else raised this
17 question at a previous meeting. If you provide that probate
18 judges who are lawyer trained become circuit judges and then
19 we have an election and a lawyer runs against one of the
20 present probate judges, say in Echols County, which is the
21 population of 2800 and 400 registered voters, and is elected
22 probate judge, would he become a circuit judge without having
23 to run anywhere else in the circuit?

24 JUDGE PROBST: No. One thing that Mr. McAuliffe
25 said was the there was nothing in there about the judgeships.

1 JUDGE CALHOUN: What you're saying is that only those
2 lawyer probate judges now, those 8 people, would become circuit
3 judges?

4 JUDGE PROBST: Right.

5 JUDGE CALHOUN: Any other lawyer who becomes -- runs
6 against a probate judge or a county judge --

7 JUDGE PROBST: He doesn't automatically become a
8 circuit judge because the number of authorized circuit judge
9 positions has not been increased.

10 JUDGE CALHOUN: O.K.

11 JUDGE PROBST: The paragraph nine said the General
12 Assembly upon recommendation of the Supreme Court may change
13 the composition and number of circuit courts and the number of
14 circuit judges and magistrates thereof and that includes
15 reducing. So, there is something in there on that, but we go
16 back to what Judge Weltner said that anything who is working
17 full-time now, if it takes a full-time man year to do his work
18 before the effective date, it's going to take a full-time man
19 year to do the same amount of work after the date and we're
20 just not concerned that the number would be decreased.

21 JUDGE SNOW: O.K., let me make this comment first
22 before we hear from Judge Calhoun. I -- If there are any votes
23 that anyone wants to take today on any of these, we can take
24 them. I do suggest though that we have these different
25 proposals just as viable alternatives for our public hearings

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1 and go with the tentative proposal that has been made by the
2 subcommittee as the -- as what we are recommending and then
3 the suggestions from folks throughout the state based on the
4 other documents that we will have that they can comment on to
5 see how they feel about them and then we'll come back after
6 our public hearings and be able to take advantage of all that
7 we've heard at that time. However, that's my idea of it, but
8 if y'all have anything further toward the end of the meeting
9 that we can take any suggestions and any motions that might be
10 presented. I also want to comment or not comment, but there
11 are some folks back here in the back and feel free to move
12 anytime you want to and the ladies restroom is outside this
13 door and the men's room is right around the corner and only
14 for the benefit of the court reporter because I kept one here
15 too long one day and she wanted to be excused. Now, if you
16 would like to get up and walk around, the door is right over
17 there. Let's do take about a two or three minute break in
18 case somebody might want to leave and get a coke.

19 (A short recess was taken.)

20 CHAIRMAN SNOW: If anybody ever has any doubts as to
21 why I usually don't go on breaks, you can always tell when we
22 get back that the attendance is much less. All right, Marcus,
23 Judge Calhoun will make a report on the judicial administrative
24 districts.

25 JUDGE CALHOUN: Mr. Chairman, and members of the

1 commission, one of the things that everyone seems to be
2 interested in is trying to keep the courts as close to the
3 people as possible and I think that is a very worthwhile
4 objective and in an effort to do that, you know, in 1976, that
5 the -- at the urging of the Governor, the General Assembly
6 created 10 judicial administrative districts. As the idea was
7 originally conceived, this was to include all courts. As it was
8 passed, it included only superior courts, but it was felt
9 that eventually all courts would be included in this. It
10 provides sort of a self-governing agency for the judges within
11 the congressional districts primarily, although the present
12 judicial administrative districts do not follow exactly the
13 congressional district lines. So, I would propose that we
14 preserve the idea of judicial administrative districts and that
15 we write into our proposal -- It looks like it would logically
16 go in paragraph C of Section 1, which is the unified judicial
17 system, by adding a separate sentence which says the judicial
18 administrative district shall be established for the
19 administration of trial courts.

20 JUDGE SMITH: Where do you propose that would come?

21 JUDGE CALHOUN: It's on page 57 of this blue book
22 and I would propose that we amend that paragraph 2 by -- so
23 it would read for the purpose of administration, all the courts
24 in the state shall be a part of one unified judicial system
25 under the supervision of the Supreme Court that we add

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Judicial administrative districts shall be established for administration of the trial courts, period. This would leave it up to the Supreme Court or the General Assembly make-up of the judicial administrative districts, but it would require some administrative districts out in the state for the trial courts.

CHAIRMAN SNOW: It would constitutially mandate. Do you feel like it needs to be in the constitution?

JUDGE CALHOUN: Well, I think a lot of judges feel like it should be in the constitution and I don't propose that really for the benefit of the judges, but I think having the courts and the administration of the courts as close to the people as possible is for the benefit of the people, not the office holders.

CHAIRMAN SNOW: Do we have any questions, any commission members, relative to --

JUDGE SMITH: Is that going to be a sentence under paragraph two or a new paragraph?

JUDGE CALHOUN: It would be a sentence.

JUDGE BEASLEY: Would you read it again?

JUDGE CALHOUN: Judicial administrative districts shall be established for administration of the trial courts. That may not be as polished as it could be, but it gets the idea across.

DEAN BEAIRD: Do you think it would be more

appropriate there or in Section 3 under the trial court section? It really probably doesn't make too much difference. Section 1 talks about the whole system.

JUDGE CALHOUN: Well, we're talking about the unified system. It seems to me that would be the best place, but I certainly am not wedded to that. You could put it Section 3, paragraph one, just add it to that under trial courts, but it still is a part of the unified system and still under the supervision of the supreme court.

CHAIRMAN SNOW: Charlie.

MR. OLSON: It doesn't really affect me, but you lock yourself into an administrative system far in the future-- At some future time you decided to -- For management purposes it would be better to administer them at the circuit level or at the state level. You would have no authority. It would be very difficult to do so because you would have this district.

JUDGE CALHOUN: It wouldn't prohibit the circuit level. It would require some administrative control of districts outside of the state level and that's the purpose of it.

MR. OLSON: I wonder why you need to lock that into the constitution?

JUDGE CALHOUN: A lot of people feel it should be in there so that it would be in there. It's in the statute

1 right now, but we all come up with a bugaboo. You know, that
2 the present Supreme Court is all right and the present court
3 of appeal is all right, but who knows what's going to happen
4 next year? Have you heard that argument?

5 CHAIRMAN SNOW: We're going to vote no and see if
6 the present court of appeals is all right.

7 JUDGE SMITH: You want me to leave the room so you
8 can feel free to express it?

9 CHAIRMAN SNOW: Do you propose this to be voted on
10 now?

11 JUDGE CALHOUN: It doesn't make any difference, if
12 we're not voting on anything else now.

13 CHAIRMAN SNOW: Let's keep this under advisement
14 and get some more feeling on it. I really am reluctant myself
15 to want anything in the constitution other than what is
16 absolutely essential.

17 JUDGE CALHOUN: Generally, that's my idea too.

18 CHAIRMAN SNOW: Let's talk about it a little bit
19 more.

20 JUDGE CALHOUN: O.K.

21 CHAIRMAN SNOW: O.K. Marty, how many of y'all have
22 got to leave shortly? I would like to get into our dates here
23 a little bit and our public hearings before we start with you,
24 Marty. I had planned to probably conclude this meeting by
25 around 1:00 at the latest or at least 1:30 anyway, if that's

1 agreeable with everyone, but maybe we'd better take up this
2 subject of public hearings right now and the locations of
3 them and if y'all will get your calendars out --

4 JUDGE BEASLEY: Representative Snow, could I say
5 one thing before we go to that?

6 CHAIRMAN SNOW: Yes.

7 JUDGE BEASLEY: It seems to me in our consideration
8 of this as I keep listening to it, we're going to consider
9 more again what the various jurisdictions should be. We seem
10 to be paying much more attention to the people that are
11 occupying the positions to be judgeships as such, whether
12 incumbents or those that we're going to have in the future,
13 than to the distinctions among various types of jurisdiction
14 as to what should be covered by a person in a magistrate's
15 position, for example, or whether we should have a limited
16 jurisdiction type of court and our emphasis seems to be and
17 our complete context seems to be talking about the people who
18 are going to fill the positions that are going to need to
19 service those jurisdictions and I would like to see us put
20 more emphasis on the jurisdiction itself. That is what will
21 best serve the people in the way of breakdown of court
22 services, judicial services. For example, we just keep talking
23 about probate as it exists now. Maybe we should separate
24 probate jurisdiction into several different things and then
you would have the judges taking care of the judge type things

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1 and clerks taking care of clerk type duties. In other words,
2 we're not really addressing the delivery of the judicial
3 services question in my mind.

4 CHAIRMAN SNOW: Joe.

5 MR. DROLET: Assuming we're on that general topic, I'd
6 like to go along with what Judge Beasley is suggesting. I think
7 Mr. McAuliffe has suggested it already and we've been working on
8 this thing for two years and it always ends up boiling down to
9 the question of who's going to be where and who's going to
10 protect their own interests? We do it as DA's, of course. We're
11 interested in DA's. Everybody seems to be interested in protect-
12 ing their own jobs and their own futures. Seems to me, maybe we
13 ought to take this whole proposal and throw it out as being some-
14 thing that will not affect any of us, will take effect at some
15 future date, which will eliminate the possibility of affecting
16 any of us, 20 years hence maybe, rather than 10 years hence so
17 that we can get down to the simple question of what is the best
18 system, taking the best of what we have now and the best of what
19 we can determine from what other states have done and writing
20 a system without thought to where I will be or where anyone
21 else will be 20 years from now, presuming it will not affect
22 any of us presently in office or existing at this time. I
23 keep seeing everything we're doing, as Judge Beasley is
24 suggesting, being in terms of how is it going to affect
25 existing concepts of existing positions rather than the idea.

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1 I'll just throw that out, that maybe the only way to do it is
2 to say whatever we're writing is not going to affect any of us
3 and we're here merely as experts who are familiar with it to
4 try to come up with the best thing which won't affect any of
5 us cause it's going to be way off in the future somewhere.

6 JUDGE BEASLEY: I wonder if it would be incomprehen-
7 sible to do something like this, a listing of the service that
8 are provided by the judicial system. That is administration
9 of the states and break it down by jurisdictions of the various
10 courts and then take that listing and say where does it best
11 belong? How can it most easily and most cheaply be accomplished
12 for the people who need that particular service? Claims under
13 \$300, committment hearings, landlord-tenant, traffic. Maybe
14 we should have a separate traffic court, I don't know. In
15 my opinion, we shouldn't even have traffic as an offense, but
16 take it out of the court system entirely and make it an
17 administrative thing, but that type of thing -- What services
18 are we performing and go about it that way and then fit it
19 into a logical pattern rather than talking about the existing
20 jurisdiction lines.

21 JUDGE CALHOUN: May I respond to that? All
22 judicial services ought to be one court, period. The circuit
23 court, and then you can divide it out into divisions to handle
24 whatever service is needed and I think, of course, what you
25 say has a lot of merit, but I don't think it has the merit in



1 a discussion of the constitution because we're really talking
2 about details now and we say in our draft -- Well, we don't
3 say that. I started to say jurisdiction will be provided by
4 law. We don't say that, we say venue, but it all ought to
5 be in one court. That's where it all ought to be in my
6 opinion.

7
8 DEAN PATTERSON: I think what Judge Beasley is
9 saying is that all of the functions that we now view as
10 judicial functions are not, in fact, judicial functions. When
11 you get to the question of probate of wills, for example,
12 primarily that is an administrative type function. If you
13 don't have any disputes, no caveat, there may be several areas
14 that -- of that kind. Traffic offenses are almost handled
15 administratively or could be handled administratively and I
16 think that's the problem that Judge Beasley is addressing
17 herself to, which is, it seems to me, relevant to the kind of
18 judicial system we're trying to come up with. Am I correct in
19 interpreting it?

20 JUDGE BEASLEY: Yes, exactly, and I think we ought
21 to address that question from that perspective to fit it into
22 the types of judgeships that we come with.

23 DEAN BEAIRD: Speaking only for myself, as one
24 member of the subcommittee, I think I have attempted to do that
25 in doing work on this committee report and on the drafts that
26 we've gone over. There are certain basic principles that

1 whether we recognize it or not we have accepted, at least
2 initially, in recommending or adopting for purpose of public
3 discussion the report here. One of those principles is, I
4 think as reflected in this Jim Kilpatrick column, there are
5 judicial functions that are very important and you need a highly
6 qualified person trained properly to handle all judicial
7 functions whether it be a first degree murder case or a
8 traffic ticket and we, in fact, have accepted subject, however,
9 to the allegation of jurisdiction to magistrates and so on
10 the fact that there should be, as they have in Illinois, one
11 single trial court that handles all judicial functions. Now,
12 the ~~committee~~ -- I didn't distribute it, but we all recognize,
13 Judge Stanley recognized it, that one of the big problem areas
14 in this -- Whatever change is made here is in the probate
15 area and one of the problems was that there were denovo
16 hearings. ~~When the probate~~ judges made judicial decisions
17 they started at a completely new denovo hearing at the
18 superior court level. Now, I asked the Institute of
19 Government, working up this draft, to go through the various
20 courts as they now exist, probate court for example, and list
21 all of their functions and I'll be happy to distribute that.

JUDGE BEASLEY: I would like that.

DEAN BEAIRD: Same way with the state court. Of
course, juvenile courts it's fairly easy to do that, but all
I'm saying is I think we have made initially some very basic

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policy decisions that are now going to be presented, have first been presented to those vitally affected them. I will agree with the Chairman that I thought at the end of the meeting in Athens that we were getting to the point where there was some recognition that possibly some change should be made and I could understand completely the initial attitude of those that are going to be vitally affected by the change that takes place. We tried to immuriate that a little bit by providing for a 10 year transition period, but I think the important thing right now is to identify those principles, articulate them, even though they're only implicitly in the document now, and take them to the people. I think we may be surprised, but I think that the people will probably react to these as they have in the other states and through these public hearings we'll know whether or not they want legally trained judiciary or whether they want a single tier system or what. We'll be in a good position, I think, coming back from these hearings, hearing from the people, getting reactions, to sit down and go back and analyze it again to see if we've made some -- taken some bad positions or whether or not we're on the right track.

JUDGE STANLEY: In relation to the probate court, several years ago I think I gave a copy to some of you and I don't know -- my recommendation to the Governor's Commission on Court Reorganization and Structure, in which I tried to

break down what were the judiciary duties and responsibilities of the court and what were purely ministerial acts, trying to point out where the judge ought to be handling the judicial aspects of the article and letting the clerk or somebody else handle these ministerial acts and I think that's still true today. I just think that's important, of course, to resolve those things, but I think it can be done under the one tier court.

DEAN BEAIRD: I think it was probably your paper that was used as a basis for that. What they attempted to do was to identify those areas of probate judge's statutory responsibilities that were judicial in nature and those that were ministerial in nature and separate them out and I believe they did use your paper as a basis for doing that.

JUDGE CALHOUN: Mr. Chairman, I would like to suggest that Dean Beaird furnish this information to Marty and let him circulate it to the committee.

CHAIRMAN SNOW: All right, that will be done. O.K., y'all get your calendars out. How about October 26th and 27th, Albany, Georgia, on the afternoon of the 26th, and Columbus on the morning of the 27th, starting at 1:00 on Thursday and at 10:00 on Friday morning in Columbus?

JUDGE BROCK: Mr. Chairman, let me ask a question. When you hold these public hearings, are you trying to get the people out there?

CHAIRMAN SNOW: We're going to send notices to news media, to all the elected officials in that particular area.

JUDGE BROCK: Can I make one suggestion? Just from being -- not being able to afford the privilege of not having to work for a living, it would be much better if you had these set up in some evening hours or on the weekend where the people could get to them. I don't think you're going to get a thing. I'll just throw this out for your information.

CHAIRMAN SNOW: Well, our experience with the only public hearing we've had thusfar was on a Saturday morning and we set it up for that sole purpose, to try to get members of the public, but we didn't have anybody but elected officials who were directly affected by that.

JUDGE BEASLEY: But it was not well publicized.

JUDGE BROCK: I just mentioned this cause I happen to work a 9 to 5 job and I know if you hold one like this one here I could not attend it if you hold it in Atlanta.

CHAIRMAN SNOW: Let me ask you, Albert, if we hold a meeting say in Albany, well, of course, weekends are not that good for meetings.

JUDGE BROCK: Evenings was really --

REPR. THOMPSON: That would pose some real problems for those of us who have to travel. I'm just talking about evening ~~meetings~~ for people who have to drive a long way to

get there. If you have to leave after that meeting trying to get to the next place is going to pose a real problem if you have to get up a 5:00 in the morning to drive to Columbus from Albany.

CHAIRMAN SNOW: Of course, the problem that I think we recognize is that just as we're having meetings in our home area for schools and some of you are going to have a few people that are going to show up, the rest of them are not, if you can get the media coverage then you can get it out to the other members of the public. I think the format is more or less going to have to be on the basis of the afternoon and morning meetings for the convenience really of the commission as well as hopefully to have some coverage. I agree with you totally.

JUDGE BEASLEY: I don't think there's much sense in going if we're going to have it during working hours. I really don't because people are not going to be able to come unless you have them at night. We might as well not spend all the money and be racing back and forth ourselves and every member of the commission doesn't have to go to every place. The idea is to get the input.

CHAIRMAN SNOW: I was getting ready to ask Albert if he was going to be president over the meetings in Albany and Columbus.

REPR. THOMPSON: I suppose I could if you wanted me

to, but, Mr. Chairman, in looking at these things, frankly I don't think the general public is going to turn out, that's number one. The people who are going to be there are those that basically who have a vested interest and I don't think anyone else is coming. I don't care what time we hold these meetings. That's been my general experience with public hearings of any kind that we've held in the General Assembly and I'd like for the people to come, but those who have enough of an interest -- And it's like going to a doctor or going to a lawyer, there's no sense in practicing law after sundown and expect folks to come. Folks like to get off work to go see the lawyer, they like to get off work to go see the doctor and I think the same will be true here. If this is important enough to them they will get off from work to go and attend.

JUDGE BEASLEY: I disagree about people coming. I think the whole thing depends on the publication of it first. Of course, you're not going to get many people if you don't publish it and if you don't drum it up, nobody is going to come to your party. But I would thoroughly recommend that we follow the procedure that was used in the State of New Mexico. They indicate when they went around with their public hearings that a significant turnout of citizens came and the input often resulted in the modification of standards and the creation of new standards. They held hearings in six different places in the state and had a newspaper out the Sunday before,

which gave all the questionnaire as to the various things and they got over 5,000 responses just to the questionnaire itself in the newspaper that people had to cut out and send in. This is in the State of New Mexico where I don't guess there's a whole lot more than 5,000 people in the whole state, but I really would like to take the time to read this letter because part of it -- or part of it at least. The newspaper supplement was included in 12 Sunday editions in different cities around the state. Coinciding with the appearance of the supplement, the governor proclaimed the week as commitment against crime week. During this week they were revising the criminal justice system. During this week the executive director of the council and his staff attended six public hearings held in each geographic region of the state. The week became known as blitz week. Preceding each hearing a media blitz in each region occurred with television and radio spots by the governor explaining the purpose of the hearing and the standards and goals or the commission's proposal explaining in advance in addition and, of course, it was explained in the newspapers. Significant members of communities in each region were contacted by phone prior to the hearing by the governor's counsel staff to invite them to the hearing. The result was a significant turnout of citizens and often resulted in modification of the standards or the creation of new standards and the supplement, as I indicated, included a questionnaire.

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Over 5,000 responses were received and about 1/3 of them included detailed letters offering comments and as a result -- It goes on to say as a result, to just boil it down, what was proposed was accepted by the people of the state, so that when it came up for a vote it passed overwhelmingly.

JUDGE CALHOUN: Were these meetings held at night?

JUDGE BEASLEY: Yes, I believe they were.

JUDGE BROCK: Let me say one thing, the reason I mentioned this awhile ago, I understood the meetings were for the public and in order to get the public in most of the public is a working public, believe it or not, even though we have a large welfare thing in the state, most of us work. I think in order to get this out to the people, you know, one of the complaints I've heard among the citizens out in South Fulton County is that while we're about judicial reform they're going to do it like they do everything else. They're going to put something on the ballot we don't understand and we'll vote it in or vote it out not knowing what we voted for. I hate to see this. I hate to see our citizenry feeling this way about our form of government and I'd just like to see everybody get a chance. If they don't come, they don't have much complaint.

DEAN BEAIRD: I'd like to suggest that Marty arrange to send an invitation over the signature of the Chairman to significant groups within these areas and invite them specifically to be there, maybe send them a copy of the

committee's proposal or some other material, the editor's of the newspapers, the League of Women Voters. I think there's a greater likelihood that they will attend if they are specifically invited to come and present the views of their groups.

CHAIRMAN SNOW: I've already discussed this with Marty. Have you got a list of those folks?

MRS. WILSON: If you do night meetings, you're going to have city council meetings or somebody else is doing something. Night meetings are just headaches.

JUDGE SMITH: There ain't no good time to have them.

CHAIRMAN SNOW: There's conflicts. Joe, you had something?

MR. DROLET: I was just going to say the key, I think, is the amount of publicity. If we had the publicity that's being referred to here, I don't care when we have the meeting, there would be a lot of people. I agree with Representative Thompson, whether it's afternoon or evening, certain people are going to come. They're going to be there, particularly like on a matter of the revision of the judicial article. That's going to draw a certain kind of crowd no matter when we hold it and certain people are not going to come no matter when we hold it and it will depend purely on that publicity.

DEAN PATTERSON: Mr. Chairman, what about the idea of getting a local organization to sponser the appearance of

the commission such as the League of Women Voters, ask their help in getting people out?

CHAIRMAN SNOW: Well, the League is more active in some areas. They could be helpful in some areas more than they could in others I think.

MRS. WILSON: Yeah, at the moment we don't have a League in Albany. We do have some --

REPR. THOMPSON: What about the Bar Association?

CHAIRMAN SNOW: Let me go through the list we are going to notify. Sometimes I think that's a poor excuse to do anything. These are the folks that will be specifically invited: The judges of the superior, state, juvenile, probate, small claims and other such courts in any area that we're going into; your county officers, including the county -- including the Commission Chairman of the County Commissioners, superior court clerks, sheriffs and attorneys in each area will receive specific notices; municipal officers, including the mayors and judges of municipal courts; all area legislators, we're going to split the state up for the different area we're going to be in; all district attorneys; all solicitors; all radio and television stations; all newspapers; pertinent statewide organizations, including the State Bar, League of Women Voters, Common Cause and others that we might have in any particular area; others that y'all might suggest.

REPR. THOMPSON: Wait. What about instead of making

1 it the League of Women Voters, I think each of those places
2 has a bar association of some type or another. Columbus
3 Lawyer's Club, for instance, they have a vested interest in
4 this. Could we develop some guidelines and write to the
5 president of each of those associations and ask them to handle
6 the publicity for this and specify that we want you to
7 publicize it in your newspapers to invite specific interest
8 groups and make suggestions, League of Women Voters, Common
9 Cause, the NAACP or whatever you have there, have them to
10 specifically contact those groups and ask if they will
11 cooperate with us? If they don't do it, what about the
12 Jaycees?

13
14 CHAIRMAN SNOW: Jaycees would be good in areas.

15 They will get out and get some interest and things. That would
16 be fine. Of course, I was under the impression that what we
17 ought to do from the state office here though is to get so
18 that we know that the notices have been sent out, to get the
19 notices out from here on some of this, but if we could them
20 as a sponsoring organization the additional help that they
21 would give us would be tremendous if they really went out.
22 But I think basically we have to make sure that the
23 information has been sent out and then if it doesn't bring
24 any better response than what we've gotten sometimes in the
25 past, it's not really our fault. We've done what we can do
26 on it from that standpoint.



JUDGE BEASLEY: Why don't we work directly through the media too, the newspapers and television and radio? It seems to me that that way you really can reach a lot of people a lot better than if -- If you had a message from the governor, it sure would be good on television. There's a lot of suggestions.

CHAIRMAN SNOW: We might be able to get him to film something.

JUDGE BEASLEY: You know, if we could put an insert like they did.

CHAIRMAN SNOW: Did the newspapers carry that for them without cost?

JUDGE BEASLEY: I believe they did, yes, as a public service. It was an insert in the Sunday papers is what it was.

CHAIRMAN SNOW: Marty, check into that and see if we can get the Journal and Constitution.

JUDGE BEASLEY: WAGA-TV, when Paul Raymond presented something on our disorderly court system, commenting on Chief Judge Nichol's remarks at the convocation, I called him about it and he thought that it would be -- they'd be most helpful to us in trying to get our public hearings broadcast and he said he was going to assign Dale Clark to look into the matter of additional publicity on this whole thing. He gave this editorial on the 11:00 news and then he said you, all

Georgians, need to know that our court system is in need of repair. It should serve justice and the public, not lawyers, special interest or criminals, period, with nothing as to how the public is supposed to have an input because he didn't know about the public hearings, but they're interested in helping out, I think, and there are people who would do it.

MR. DROLET: Is it within the capabilities of Marty and the committee really to organize that kind of press efforts, blitz, referring -- Could we get somebody to do it?

JUDGE SMITH: He can't do it in two weeks.

MR. DROLET: It would be tough in two weeks.

JUDGE BEASLEY: To me, we're just not going to get that much of a turnout if now we're saying there should be public hearings in two weeks.

JUDGE SMITH: That's three weeks, I'm sorry.

DEAN BEAIRD: I think the press release could be written around the Chairman, some of his statements and so forth that could be sent out and used. Jaycees or the Bar would probably call on for help. The Jaycees can run up a pretty good group, but I agree, I think this committee has the responsibility of making the initial contacts.

MR. DROLET: It's a big job to notify Jaycees and bar associations so they'll announce it, you know, things like that. Whether or not anybody actively coordinates t.v. appearances for somebody like ~~Wayne~~ or somebody to announce

that there's something coming up and you ought to be at a hearing or something like that to make sure something is produced which appears in newspapers, even if they'll print it for free requires considerable effort on the part of someone. Do we have that capability or can we get that capability?

DEAN BEAIRD: We could get a spot for the Chairman on the University t.v. station, but I don't know whether that would be as effective.

JUDGE BEASLEY: We need the governor.

CHAIRMAN SNOW: I think Dorothy thinks the governor can do a better job than I can for some reason or other.

JUDGE BEASLEY: No, he couldn't do a better job, but at least he's recognized more.

JUDGE BROCK: I don't know.

CHAIRMAN SNOW: Some recognition you get you don't want.

JUDGE CALHOUN: Are the dates definite, Mr. Chairman?

CHAIRMAN SNOW: No, I'm throwing the dates out really for discussion.

JUDGE BEASLEY: What about Saturday mornings if nighttimes or council meetings and such as that --

MRS. WILSON: Saturday nights you're not going to get people in for sure.

JUDGE CALHOUN: Only those with special interests

1 will come then either. They'd rather go fishing or play golf.

2 DEAN PATTERSON: I think the key to this is going
3 to be a well orchestrated publicity campaign, as Judge Beasley
4 has suggested. Unless the people are aware of it, you aren't
5 going to get them in anytime and it might be well for the
6 committee to consider what we can do in orchestrating a
7 publicity campaign in preparation. Certainly, it seems to me
8 it would be worthwhile for at least one public hearing to see
9 if we could do it.

10 JUDGE BROCK: If you got out a notice on this thing
11 similar to the utility bills that we decided to raise all the
12 court costs, that should bring them in.

13 CHAIRMAN SNOW: That would get them out, wouldn't
14 it?

15 DEAN BEAIRD: I will volunteer, Mr. Chairman, whatever
16 use you want to make of it, on behalf of the President of
17 PRNT staff of the University, for press releases and t.v.
18 spots and so forth, however you want to use it.

19 CHAIRMAN SNOW: Well, what about these dates on the
20 26th and 27th?

21 JUDGE CRANE: Mr. Chairman, it seems to me we might
22 ought to do a little checking locally before we set times in
23 a particular community. It might be the worst day in the world
24 to have a hearing in Columbus on the 27th, for instance.

25 JUDGE SMITH: They might be having a possum

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convention.

CHAIRMAN SNOW: And we ought to go where the people are.

JUDGE SMITH: They don't want a possum convention when they're stuck with this.

JUDGE CALHOUN: There might be a mule day.

JUDGE SMITH: They'd sure go to mule day before they'd go to this.

MR. DROLET: For purposes of discussion, I move that we use these dates until we find out otherwise.

DEAN BEAIRD: I second it.

CHAIRMAN SNOW: O.K., 1:00 on Thursday and 10:00 on Friday, were those your suggestions?

MR. DROLET: I'll go the whole list so we'll have a starting point.

JUDGE CALHOUN: Mr. Chairman, so you won't believe that only Fulton County judges try cases, I'll say I'll be on jury trials in Lyons County that week, but I'll try to arrange it.

DEAN BEAIRD: It's agreeable with me.

CHAIRMAN SNOW: We'll get with Dean Beaird on the t.v. part. They can start sending out information for us, both the House and Senate information, to these folks.

JUDGE SMITH: If you'll find out the place you're going to hold it and let us know?

1 CHAIRMAN SNOW: I would suspect that in Albany and
2 in Columbus we would hold it either at the court house or at
3 city hall. Of course, you have a combined situation.

4 REPR. THOMPSON: We could get a courtroom I'm quite
5 sure.

6 CHAIRMAN SNOW: Would you coordinate that through
7 Albert since that's Albert's area too? I'd like you to
8 preside, especially at that meeting in Columbus.

9 REPR. THOMPSON: You must have heard from the
10 municipal court people down there.

11 CHAIRMAN SNOW: Well, I figure you can handle them
12 in Columbus better than I can. You say they already commented
13 about it to you?

14 REPR. THOMPSON: Yes, I've heard from them. I'm sure
15 you'll have some people at the hearing in Columbus, I don't
16 know about any place else.

17 CHAIRMAN SNOW: I'm going to try to make those --
18 make all of these meetings, but I'm not sure that I can make
19 them all in the different parts of the state. In Savannah and
20 Augusta for November 2nd and 3rd. Why don't we change that
21 to Augusta on the 2nd?

22 MR. OLSON: That's right in the middle of the DA's
23 and Judge's conference.

24 CHAIRMAN SNOW: Well, why don't we -- We could make
25 the meetings then for August the 2nd -- I mean October --

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1 November. Maybe we could meet in Macon. Could we get two
2 hours of your time sometime that all of you can come over and
3 attend the meeting?

4 MR. HEIGHT: Are you talking about Athens?

5 CHAIRMAN SNOW: What was this thing in Macon?

6 MR. HODGKINS: That's the County Offices Association.

7 JUDGE STANLEY: That's in Cordele on the 24th.

8 CHAIRMAN SNOW: Well, maybe we ought to -- In
9 conjunction with that, why not -- Well, Augusta would be better
10 than Athens probably since we're going to be meeting in
11 Gainesville too.

12 JUDGE SMITH: When is the Cordele meeting going to
13 be?

14 MR. MUNDY: The 24th through 27th of October.

15 JUDGE STANLEY: I don't think there's anything
16 scheduled on Thursday the 26th of October in relation to the
17 County Offices Association in Cordele. I don't know whether
18 you'd want to work it into that slot or not.

19 MR. MUNDY: What do you mean anything scheduled?
20 Nobody's meeting except the probate judges.

21 JUDGE STANLEY: Are you sure?

22 MR. MUNDY: Yes sir.

23 JUDGE CALHOUN: He still says we're starting on --

24 DEAN BEAIRD: You're always going to find conflicts,
25 Mr. Chairman.



1 CHAIRMAN SNOW: I don't see how the DA's would
2 affect us that much anyway.

3 REPR. THOMPSON: Maybe we'd better off --

4 CHAIRMAN SNOW: Without them. We've always
5 accomplished more every time they haven't attended a meeting.

6 MR. HEIGHT: I want y'all to know I haven't said a
7 word all day.

8 CHAIRMAN SNOW: I have Augusta and Savannah down for
9 the 2nd and 3rd. When is your meeting over?

10 JUDGE CALHOUN: It's over at noon on Thursday the
11 2nd.

12 CHAIRMAN SNOW: Y'all are through on --

13 MR. OLSON: Friday on the 3rd.

14 CHAIRMAN SNOW: And you'll be meeting in --

15 MR. OLSON: Athens.

16 JUDGE CALHOUN: It's through noon on the 2nd. I don't
17 know about the DA's.

18 MR. HEIGHT: The judges are through a day ahead of
19 us.

20 CHAIRMAN SNOW: Well, I thought it would be better
21 if we met on Thursday and then we could on to Savannah for
22 Thursday night and be in Savannah Friday morning and we'd have
23 a little time to enjoy River Street. We might as well enjoy
24 ourselves when we go on these things a little bit too.

25 JUDGE CALHOUN: Does this come under the heading of

a junket now? I've never been on one..

CHAIRMAN SNOW: I don't care what you call it.

REPR. THOMPSON: You'll find out what a junket is after you go on this trip. That's going to be hard work.

JUDGE SMITH: What time on November 2nd, Mr. Chairman?

CHAIRMAN SNOW: That would be at 1:00 in the afternoon, and again 10:00 the next morning in Savannah.

MR. HEIGHT: Y'all ought to have the Savannah meeting on Saturday.

CHAIRMAN SNOW: That would be a good time to have a Savannah meeting, it really would.

MR. HEIGHT: It really would.

JUDGE SMITH: Why? It suits me, I was just curious. You don't have to give a reason. I'll withdraw that question. If it takes you that long to figure up an answer, it's not a good answer and I'll just withdraw it.

CHAIRMAN SNOW: Would the 3rd in Augusta and the 4th in Savannah suit everybody?

JUDGE BEASLEY: Yes.

JUDGE SMITH: The Bulldogs are playing on the 4th.

REPR. THOMPSON: Are you changing the dates?

CHAIRMAN SNOW: We hadn't changed it. Let's just keep it Thursday the 2nd and Friday the 3rd and those of us that live a long way away will have a day for travel anyway and we can come back through Athens Saturday and go to the

1 ball game. November the 9th and the 10th, Gainesville,
2 Georgia at 1:00 and Dalton --

JUDGE SMITH: Which one is this now?

CHAIRMAN SNOW: This is the 9th and 10th, Dalton,
3 Georgia at 10:00 the next morning.

JUDGE SMITH: Gainesville on the 9th?

CHAIRMAN SNOW: Uh-huh, at 1:00 and Dalton at 10:00.
4 There's not much distancewise there. Would it be more
5 convenient for folks to reverse those two? You're going in
6 the northwest corner on Friday, but it's a pretty time of the
7 year also. All right. Now, I really think on the 17th
8 Atlanta to wind things up, but we need to get Macon in there
9 somewhere. Would you like to meet in Macon on the afternoon
10 of Friday and have another Saturday morning meeting in
11 Atlanta?

JUDGE CALHOUN: George is going to Auburn that week,
12 I know, aren't you, George?

JUDGE SMITH: I don't ever go out of the state. I
13 just go to the Athens. The State Bar meets in Columbus that
14 weekend, the State Board of Governors.

CHAIRMAN SNOW: Well, now, the State Bar, I've
15 already agreed to speak to them on this thing at their
16 midwinter meeting. That's on the 16th here.

JUDGE CALHOUN: The Board of Governors meet --

JUDGE SMITH: That's December. This is the Board of

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Governors right here.

CHAIRMAN SNOW: It's Novem-- No, I'm sorry.

JUDGE CALHOUN: The State Bar is, I think, --

JUDGE SMITH: I got it right here. They meet Thursday night -- Thursday and Friday the 30th of November and the first of December in Atlanta-Peachtree Plaza Hotel.

CHAIRMAN SNOW: All right, it's the 30th of November. O.K. How about Macon on Friday afternoon at 1:00?

JUDGE SMITH: What date?

CHAIRMAN SNOW: That would be November 17th in Atlanta at 10:00 here at the Capitol and 341 Upstairs at 10:00 on Saturday morning.

JUDGE STANLEY: I believe I'm going to the National College that weekend, but y'all can come to Macon and Mr. Greene will be there I'm sure.

CHAIRMAN SNOW: Well, I was hoping at the Gainesville meeting that Senator Overby would preside at that one and I was hoping that you would preside at the one in Macon, but you won't be there?

JUDGE STANLEY: No sir. The National College runs from -- three days, from the -- I believe Wednesday the 15th till the 17th.

CHAIRMAN SNOW: So, you'll be meeting through the 17th?

JUDGE STANLEY: Yes.

CHAIRMAN SNOW: It's just real hard to pick dates for everybody. All right, what do you think about that schedule?

MR. DROLET: That sounds good.

JUDGE BEASLEY: Representative Snow, I think we should make some initial inquiries at these localities to determine whether or not it is feasible to hold a meeting at those times.

CHAIRMAN SNOW: Marty, if you'll get on with that.

JUDGE BEASLEY: With the additional question of would there be a better time at which more members of the public would come?

CHAIRMAN SNOW: We'll set this as a tentative schedule as of right now and the notices will be sent out the first of the week to the members of the commission verifying this as the schedule after we've made some inquiries.

JUDGE SMITH: Are we going to discuss any particular plan or particular --

CHAIRMAN SNOW: We will have copies of the commission's proposal in principle. We will have drafts of the proposal of the -- that has been presented here today by Judge Stanley. We will have drafts of a two tier system that Marty is fixing to talk about for a few minutes that I requested just as a matter of having a viable alternative that would be available for discussion at the public hearings so

1 that the folks will have an opportunity -- And, of course,
2 Marty, some of those we will need to be sending out in advance
3 so that they can get something themselves to look at to see
4 what they have -- how they felt about it as well as, hopefully,
5 that they will present other proposals and give their views
6 and ideas. That's my feelings about it.

7 JUDGE CALHOUN: Mr. Chairman, may I suggest that when
8 Marty sends a notice to the committee members or counsel
9 members that he ask for a reply? I think it would be right
10 embarrassing if you had a meeting in Augusta and only one
11 member of the commission was there. Of the dates you suggest,
12 it looks like I can make the Albany and Columbus and that's
13 all because I have commitments at the other times already,
14 but I may be able to change some of them. But I believe we
15 should find out if you can have, you know, a reasonable
16 representation of the commission members of these before you
17 set them definite.

18 CHAIRMAN SNOW: We can do that. Pat can help you
19 on that polling the commission members by phone. Let me ask
20 most of those who are here --

21 JUDGE SMITH: I can be at every one of them except
22 Atlanta and Macon.

23 CHAIRMAN SNOW: How many of you feel like you can
24 make all of the meetings except one?

25 JUDGE SMITH: You mean of Friday and Saturday

1 combination?

2 CHAIRMAN SNOW: No, just one. All except two, which
3 would be a combination? All except three or four? Of course,
4 we've got others on the commission that are not present here.
5 So, I guess really the best way is to have them polled. I do
6 think it's necessary to have the commission -- several members
7 of the commission present. We want the seating arrangement to
8 be such where they also get to face the audience.

9 JUDGE BEASLEY: But the spotlight will be on you.

10 JUDGE STANLEY: If we're not going to have any more
11 meetings before then, I wish the commission would take the
12 time to consider a little further this transitional schedule
13 if that's going to be the principal proposal given to the
14 people. I think that's the thing that's caused the most
15 problems.

16 CHAIRMAN SNOW: Joe?

17 MR. DROLET: Along those lines, I hope we don't just
18 have a principal proposal because if we do everybody is just
19 going to shoot at that. I would hope if we have three
20 different things we can send them out and say these are three
21 alternatives that this committee is considering and we want
22 your comments on them. We haven't voted finally on any one of
23 them. Otherwise, which ever one --

24 CHAIRMAN SNOW: We haven't voted finally on any of
25 them.



MR. DROLET: I think that should be very clear, otherwise, everybody is just going to come up with a shortcoming for whichever one it is.

CHAIRMAN SNOW: We did vote on the initial proposal in principle for the presentation before the convocation.

MR. DROLET: For the limited purpose of presentation.

CHAIRMAN SNOW: There have been other proposals that have now been made that the commission has since that time taken no action on any of them.

DEAN BEAIRD: I think the purpose is served by sending out, as you propose to do, the three proposals.

MR. DROLET: Just so they get more than a proposal.

CHAIRMAN SNOW: Is that what you're talking about?

JUDGE STANLEY: This is just a proposal, not with any priority or recommendation or anything of that nature. You're going to submit three different proposals and say look them over and pick out what you like.

CHAIRMAN SNOW: Yes. Is there any further discussion or comments on the public hearings? Of course, that could be subject to some change based upon our contacts with the different cities involved as well as on our contacts with the members of the commission. If we find that attendance is going to be real poor on the part of the commission members at any of those meetings -- Berry?

JUDGE BROCK: Marty, are you going to mail out a list

1 of these to each one of the member's dates and then we'll
2 come back as they come along and get a notice that this meeting
3 is coming up?

4 CHAIRMAN SNOW: Yes.

5 JUDGE BROCK: If you'll get me a list of those, I'll
6 get them to our group and they'll mail them out statewide.

7 CHAIRMAN SNOW: Good. And also, all those folks
8 that I mentioned earlier, they will all get direct notices
9 from us and hopefully we might be able to get some groups such
10 as the Jaycees and others in the local areas to get some
11 publicity out on it. I can help some with the Jaycee groups
12 up in northwest Georgia area for the Dalton meeting. I am not
13 any longer a member of the Jaycees, they kicked me out at 36 --
14 kick you out at 36, I had to leave about a year ago.

15 O.K., Marty, you want to discuss briefly the report
16 of the Cole subcommittee as well as the draft for the two tier
17 trial system?

18 MR. HODGKINS: Dean Cole asked me to report for you.
19 He's out for an interview for the Dean's position for some
20 other school. Each of you has a report of the vote on the
21 points that we discussed. The committee met principally to
22 discuss the location of attorney general, district attorneys,
23 clerks and -- in the constitution and also discuss the office
24 of solicitor and how exactly that should be handled, whether
25 they should make any recommendations about it? Basically, in

1 their discussion, there was several points for retention of
2 those offices in the judicial article and several argued for
3 retention in the article. Against retention in the article
4 were such things as desire for the article relates solely to
5 the court and the judiciary, brevity, feeling perhaps that the
6 attorney general and district attorneys are more properly
7 placed in the executive article, have more executive type
8 functions and judicial functions and with regard to the clerks,
9 it was noted that they are not now presently mentioned in the
10 constitution or at least in the judicial article. As far as
11 retention arguments for retaining them, it was noted that
12 there's a history and tradition of them being in that article
13 and most specifically and the strongest argument that was made
14 was that the location of the judicial article grants them a
15 degree of independence from the executive from any possible
16 or potential influences, pressure, whatever from the executive
17 branch and gives them a degree of perhaps impartiality and
18 neutrality by being in that article. We also discussed as
19 a possible alternative that they were not to be located in the
20 judicial article. They would be located in a separate article
21 by themselves rather than being placed in the executive or
22 another article. You have a --

23 I wrote a brief report of the votes. We took a
24 telephone poll after the meeting and, as you can see, five of
25 the six member committee -- five members of the six member

1 committee voted to retain the district attorneys and attorney
2 general in the article and four voted to place the superior
3 court clerks in the judicial article and regarding the office
4 of solicitors, the subcommittee was divided. Two felt that --
5 Two members felt that they should not be mentioned in the
6 statute, but should be retained as a statutory office if
7 needed.

8 CHAIRMAN SNOW: Not be mentioned in the constitution?

9 MR. HODGKINS: Two members felt they should not be
10 included in the judicial article if there's a one tier court
11 system. However, they did support their inclusion if a two
12 tier system is adopted and two members felt that the district
13 attorneys should handle all prosecuting and that there should
14 not be an independent office of solicitor with a dual function
15 and duplication of services and that is their recommendation to
16 you.

17 CHAIRMAN SNOW: They seem not to have much
18 unanimity in their -- All right. We've gone over it several
19 times before for the members of the commission here, a motion
20 as to whether or not we should retain the attorney general in
21 the judicial article. Do I hear such a motion?

22 MR. DROLET: I so move.

23 JUDGE STANLEY: I second it.

24 CHAIRMAN SNOW: Those of you who favor the retention
25 of the attorney general in the judicial article will indicate

1 by raising your right hand. Eleven. Nine. Those opposed?
2 One. Nine to one. All right. Is there a motion that the
3 district attorneys be retained in the judicial article?

4 MR. DROLET: I so move.

5 JUDGE SMITH: I second that motion.

6 CHAIRMAN SNOW: Motion made and seconded. Those
7 who favor the motion will indicate by raising your right hand.
8 Eleven. Those opposed? One. The motion carries, the DA's
9 will be retained in the judicial article. Now, this means,
10 of course, any proposal that we might finally adopt.

11 JUDGE CALHOUN: That is unless there's a motion to
12 reconsider, huh?

13 CHAIRMAN SNOW: Yes, of course. As we muddle along
14 on this commission, we find that that frequently occurs.

15 JUDGE STANLEY: Could I ask for a point of
16 information? Is there any problem in relation to the
17 solicitors and the district attorneys, say, solicitors being
18 part of the district attorney's office, is there a problem
19 involved in that? I'm just not familiar with it.

20 MR. DROLET: No.

21 CHAIRMAN SNOW: No, not really I don't think.

22 MR. OLSON: Two of the DA's in the state courts
23 currently have the responsibility for their state courts and
24 they do it as a division of the DA's office.

25 JUDGE STANLEY: Mr. McAuliffe mentioned this



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1 morning that the solicitors were not covered and I was just
2 wondering --

3
4 CHAIRMAN SNOW: From the subcommittee's report,
5 would it not be proper to forego any vote on either the clerks
6 or the solicitors as to their appearance in the judicial
7 article until such time as we have more -- have pinpointed
8 exactly what type of article we wind up with with a one or
9 two tier system?

10 MR. DROLET: Particularly as to solicitors, I think
11 that was the feeling I got on the committee.

12 CHAIRMAN SNOW: Presently the clerks are primarily
13 statutory. Is there any feeling on that?

14 MR. MUNDY: I'd like to respectfully point out to
15 you, Mr. Chairman, that we are in the judicial article in
16 more states in the union now than any other office we've
17 talked about.

18 CHAIRMAN SNOW: I think I've indicated my own
19 personal interest in seeing that there be one office of the
20 clerk for the courts.

21 MR. MUNDY: You mean county-wide?

22 CHAIRMAN SNOW: Yes, in each county.

23 MR. MUNDY: I've found a lot of interest in that
24 regard among the judges.

25 CHAIRMAN SNOW: Then all papers will be filed in
26 one office and everything be in that one office.

1 JUDGE STANLEY: That also answers Judge Beasley's
2 questions or someone question about if you've got county
3 judges handling probate matters in one area and circuit judges
4 in another, the confusion involved or the unanimity -- I
5 believe it was Mr. McAuliffe this morning. If you've got one
6 clerk where you're filing all papers, I think that eliminates
7 a great deal of that concern about where do you file, where
8 do you go?

9 CHAIRMAN SNOW: Well, do I have a motion as it
10 regards the clerks of the superior court?

11 MR. MUNDY: Not including solicitors, right?

12 JUDGE BROCK: I'd like to vote for it.

13 JUDGE STANLEY: I second it.

14 CHAIRMAN SNOW: Let's get -- get at this, that there
15 be a clerk in each county -- a circuit court clerk in each
16 county in which all legal court proceedings will be filed,
17 something similar to that.

18 JUDGE SMITH: Couldn't you just put in the
19 constitution there would be a clerk -- county-wide clerk in
20 every county and not put in there that all papers be filed,
21 do that legislatively?

22 CHAIRMAN SNOW: That's fine.

23 MR. MUNDY: I think the language is in there now.
24 So, what you're talking about sufficiently covers it.

25 CHAIRMAN SNOW: Those of you who favor that motion



1 will indicate by raising your right hand.

2 DEAN BEAIRD: I may be recorded in favor of this
3 after I think about it a minute, but go ahead and take the
4 vote.

5 CHAIRMAN SNOW: Nine. Those opposed?

6 JUDGE CALHOUN: I'll be the one here, but my reason
7 is that I don't believe the clerk's office performs any
8 function which should be constitutionally guaranteed to the
9 people and I think this is what the constitution is. I think
10 their duties are ministerial, not judicial, and I don't think
11 we ought to enlarge the constitution to include offices which
12 are not now in it if that office does not protect some
constitutional right that the people have.

14 JUDGE BROCK: I have a question, judge. Is the
15 clerk now not included in our constitution?

16 JUDGE CALHOUN: He is not.

17 CHAIRMAN SNOW: He's a statutory office.

18 JUDGE CALHOUN: But as Adam pointed out, he's in a
19 lot of other state constitutions.

20 MR. OLSON: He's got some constitutional protection
21 as a county officer. It said they're constitutional, but
22 they're not a named constitutional officer.

23 CHAIRMAN SNOW: I think, don't we mention in this
24 already in the proposal though something about the clerks?

25 MR. OLSON: In the original draft, yes.

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1 CHAIRMAN SNOW: I thought so. I do think we need to
2 wait further before we take a vote on the solicitor part of it.
3 The vote on the clerks was nine to one and one abstention.
4 All right, Marty, you've got just a few more minutes.

5 MR. HODGKINS: At Wayne's request, I drafted up
6 pretty hurriedly a proposed two tier system and I'll just
7 explain it real briefly. I think the major difference in the
8 two tier system that I sent out and the one tier system, which
9 we adopted September 1st, took up the judicial convocation,
10 was that rather than having the Supreme Court as the
11 "administrator and supervisory head of the judiciary", a
12 constitutionally created judicial council would perform that
13 function. The chief justice would serve as the chairman of
14 that body, but it would be the administrative policy making,
15 this type role would be carried out by the judicial council
16 rather than the supreme court. The second major difference is
17 that I proposed the creation of a county court in each county
18 and I think I included just some basic recommended
19 jurisdiction. Again, all this was done just for the purpose
20 of discussion and provided -- suggested full-time judges of
21 probate, state, juvenile and certain special courts like civil
22 courts in some of the counties, the municipal courts,
23 Columbus, Muscogee would become judges of the county court and
24 the county court would have certain divisions. It might have
25 larger counties, probate division, this type thing. Also



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1 I created the office of county and municipal magistrates,
2 County magistrates would essentially be -- have the authority
3 to issue warrants, hold commitment hearings, perhaps hear
4 traffic cases and you have municipal magistrates who would
5 essentially be your municipal judges and that, I believe, is
6 really about the only difference in the system. I added a
7 couple of things like section 7. We did not have a -- We did
8 not have this. I suggested that the judicial council be
9 authorized or shall provide the rules and procedures for all
10 courts. We don't mention that specifically in any other draft.

11 A couple of other things that I would suggest,
12 other changes, is that the original jurisdiction would be
13 granted to the circuit courts unless it was granted to, say,
14 a county court by law and to handle certain cases where
15 perhaps there are counties which don't really require a
16 full-time county court judge. In paragraph three of section 3,
17 it reads, there shall be at least one judge of the county
18 court in each county. You could just add something -- an
19 additional phase, unless otherwise provided by law, so that
20 in those counties where after this has been implemented and
21 it's shown that there's not really a need for a full-time
22 county judge that perhaps the General Assembly could come in
23 and abolish that office and leave it with the magistrate to
24 have a multicounty court district, something along this line.
25 There's just some counties that perhaps don't really require

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1 a full-time judge and that's basically what the draft says.

2 CHAIRMAN SNOW: Any questions or comments on this
3 draft?

4 JUDGE BROCK: I have one question. Marty, how does
5 the members -- how are they appointed to this judicial council?
6 What mechanism?

7 MR. HODGKINS: Whatever is provided by law. I didn't
8 think that it was really necessary to go into such detail with
9 the judicial council as there is with the judicial
10 qualifications.

11 CHAIRMAN SNOW: The judicial council is now set up
12 in the general law. It is not a part at all of the
13 constitution.

14 JUDGE CALHOUN: One draft we got out that I received
15 says it would be -- It ~~gives~~ the composition.

16 MR. HODGKINS: But it doesn't say how it's selected.

17 JUDGE CALHOUN: Yes, it does. It says two appointed
18 by the governor, one circuit judge by the supreme court and
19 so forth.

20 JUDGE SMITH: I think that ought to be made up of
21 people that are elected by the various bodies which they
22 represent.

23 JUDGE STANLEY: That's what this draft recommended
24 that I read.

25 JUDGE CALHOUN: No, that's not true.

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1 JUDGE STANLEY: The one I did said that. I don't
2 know where I got it from.

3 JUDGE BEASLEY: I think that was mine, judge.

4 JUDGE SMITH: I think the body that's represented
5 on that judicial council should be -- should select the member
6 that he wants to represent him.

7 JUDGE CALHOUN: I agree.

8 CHAIRMAN SNOW: I agree with that.

9 JUDGE SMITH: You and I agree on something.

10 CHAIRMAN SNOW: Let's make sure we've got that.
11 Folks, I appreciate y'all being here today. Is there any
12 other comments that anyone might have about this?

13 JUDGE SMITH: I think you've drug it out about as
14 long as you can, Mr. Chairman.

15 CHAIRMAN SNOW: O.K., folks, we'll get notices out
16 to your shortly on the -- and you will be hearing probably by
17 telephone ~~better than~~ by mail on these meetings because we've
18 got to let you know something and you've got to let us know
19 whether you're going to be able to attend or not too.

20 (Whereupon, the meeting was adjourned at 1:03 p.m.
21 on October 6, 1978.)
22
23
24
25

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C E R T I F I C A T E

I, Peggy J. Warren, CVR-CM, CCR No. A-171, do hereby certify that the foregoing 99 pages of transcript represent a true and accurate record of the events which transpired at the time and place set out above.


PEGGY J. WARREN, CVR-CM, CCR A-171



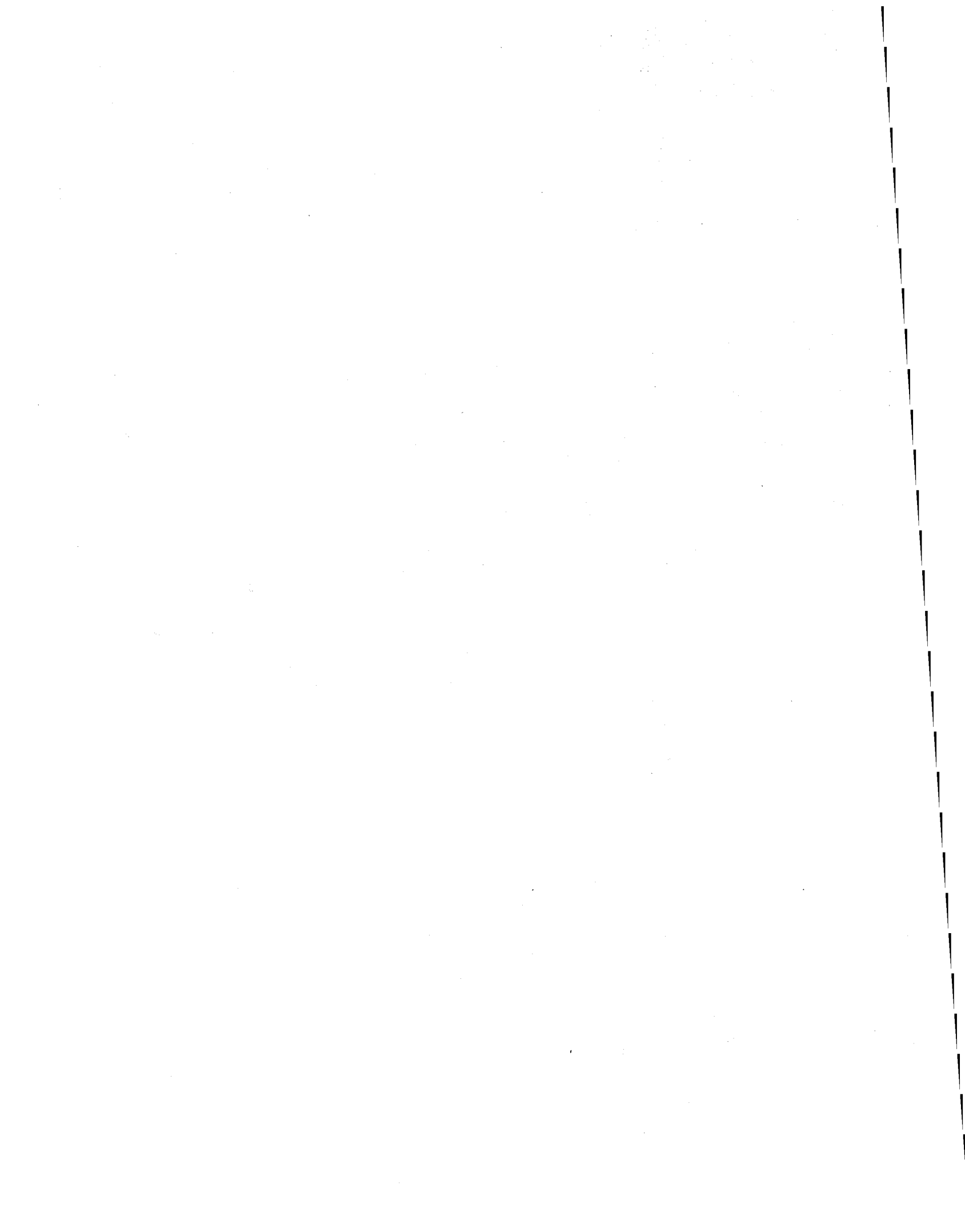
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Committee to Revise Article VI

Full Committee Meeting Held on Oct. 6, 1978



FULL COMMITTEE MEETING, 10-6-78

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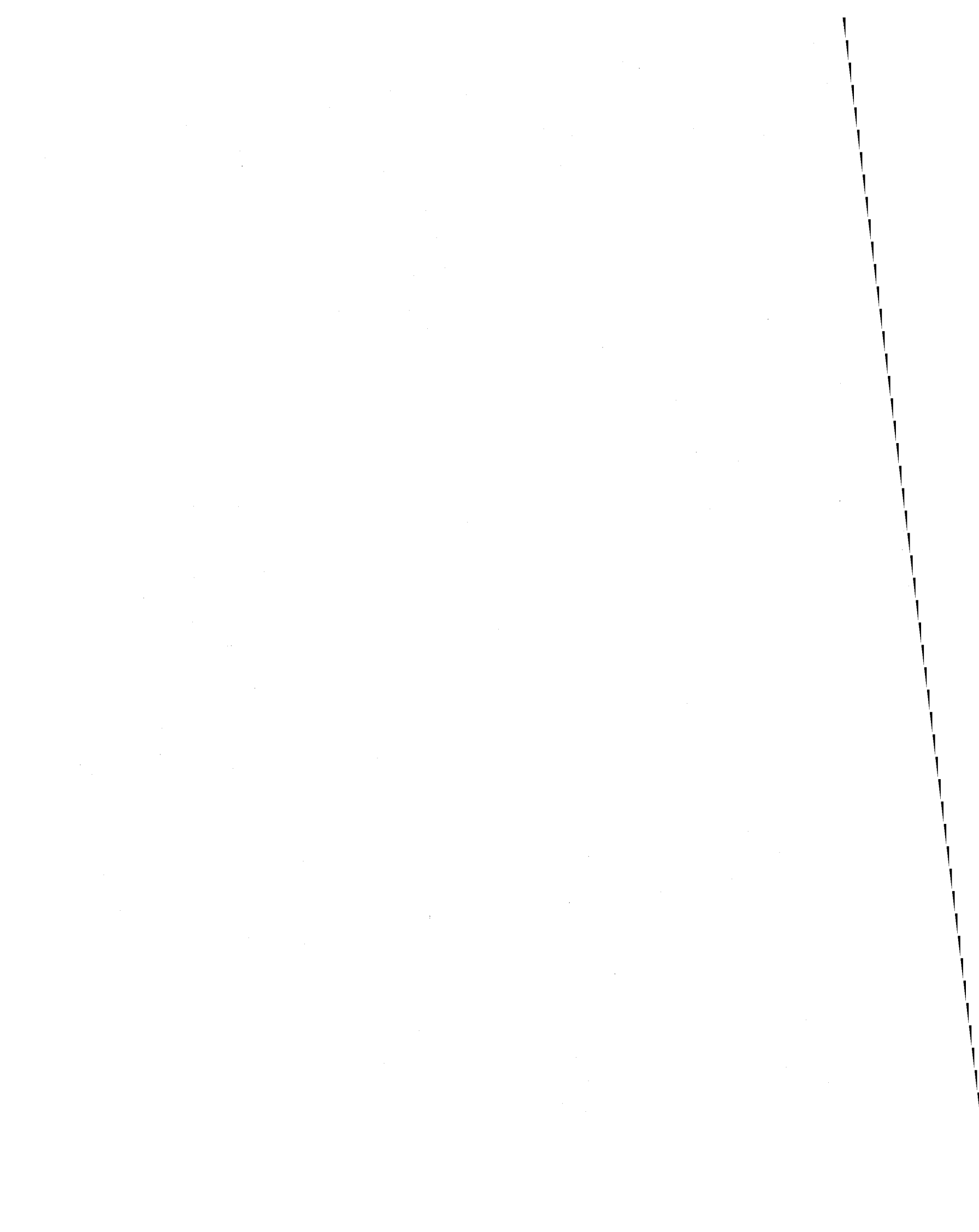
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1 STATE OF GEORGIA,)
2 RICHMOND COUNTY)

3
4 County Commission Meeting Room
5 Richmond County Courthouse
6 November 2, 1978

7 Proceedings of a public meeting held by the
8 Select Committee on Constitutional Revision before the
9 Honorable Wayne Snow, Jr., Chairman of the Commission
10 for the Revision of the Judicial Article and Chairman
11 of the Judiciary Committee of the House of Representatives
12 of the State of Georgia, and other members of the
13 committee, commencing at 1:00 o'clock P. M. at the
14 above stated date and place.

15
16
17 Paul C. Blanchard
18 Certified Court Reporter
19 Certificate Number One
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24



1 MR. SNOW: Let me at this time, before we proceed
2 with the meeting, introduce to you the members of the
3 committe who are present here for this, the first of our
4 public hearings on recommendations that have been made,
5 and that we will hear from you on making to the Commis-
6 sion as to the changes in the Judicial Article of the
7 Constitution, which we hope to run through the General
8 Assembly and then submit to the public for the ratifica-
9 tion at the 1980 General Election.

10 To my immediate left is Joe Drolet, who represents
11 the District Attorneys Association of Georgia, as a mem-
12 ber representing that association on the Judicial Commis-
13 sion for the Judicial ARticle.

14 To my immediate right is Carol Wilson, who repre-
15 sents the League of Women Voters, as a member of the Com-
16 mittee for Revision of the Judicial Article.

17 Then is Martin Hodgkins, who is the Executive
18 Secretary to the Select Committee on Constitutional Revi-
19 sion, which is chaired by the Governor along with several
20 others who are members of that Committee.

21 I am Wayne Snow, Jr., from Chickamauga, Georgia,
22 and I chair this Commission for the Revision of the Judi-
23 cial Article, and I am also the Chairman the Judiciary
24 Committee of the House of Representatives.

1 Also present today is, of course, your own Senator
2 Jimmy Lester, who has been a good friend of mine for many
3 years, who represents this area in the State Senate, and
4 will, of course, be seeing more of this when it does get
5 to the Senate. Now, hopefully, some version of it will
6 get to the Senate sometime before the Session in 1980.

7 And one who will see it before y'all even see it,
8 when we introduce it in the House, will be Representative
9 Warren Evans, who is here. He comes from this vicinity
10 and he's a member of the Judiciary Committee of the House
11 and a person whom I rely upon tremendously, and a large
12 amount of the time, for the good service that he does for
13 those of us in the General Assembly relying upon his
14 expertise in so many respects, and we do appreciate that,
15 Warren, and . . .

16 SENATOR LESTER: Richard Dent came in.

17 MR. SNOW: Hey, Mr. Dent, I didn't see you come in,
18 sir. That's one of the finest gentlemen that we've ever
19 had serve in the General Assembly of Georgia - Richard
20 Dent - and he sits right up in front of me. When I need
21 to know something, Richard is always there, and he can
22 help me out a whole lot. We appreciate your presence
23 here this afternoon, Mr. Dent.

24 We have been involved in the Constitutional Revision

1 ever since I've been in the Legislature of Georgia, and
2 that's been since 1963. As you know, two years ago we
3 passed a new Constitution - Constitution of '76 - which
4 provides that we can go forth and amend the Constitution
5 on the basis of each article. And this time, on November
6 7, you will be voting on two of those articles which have
7 been approved by the Select Committee and which have
8 passed both Houses of the General Assembly.

9 We also submitted the Judicial Article at the same
10 time for, hopefully, submission to the people in 1978.
11 However, we did find that the Judicial Article contains
12 several provisions of considerable interest and concern
13 to the extent that it was utterly impossible to try to
14 get a consensus without having what we're doing today,
15 and what we'll be doing in other cities throughout this
16 State, and that is hearing from the people and getting
17 your ideas as to how we can improve the court system in
18 the State of Georgia.

19 We recognize in the General Assembly, and those of
20 us who have been there for several years, that we've got
21 some things that are going wrong, and that the directions
22 that we're headed in are not the best directions we might
23 be able to move forward in. And, what I'm talking about
24 there are the number of Small Claims Courts and other

1 courts that we're creating throughout the State, where
2 we're not keeping some degree of uniformity as far as
3 jurisdiction is concerned, and that we're not looking at
4 the basic needs, possibly, for some of those courts in
5 the State. And, if we're going to have those courts,
6 then we need also to have a degree of uniformity in them
7 as far as jurisdiction is concerned, and not to have
8 different jurisdictions overlapping one another. This,
9 in the opinion of many of us, is not in the interest of
10 the public.

11 There are still a lot of courts in this State that
12 rely upon the fee system. There are many of us in the
13 General Assembly that find this to be a system that is
14 repugnant to our ideas of justice. We prefer to think --
15 at least I do -- that judges will serve on a full time
16 basis, and that there will be an elimination in the
17 future -- and I'm talking about not in the immediate
18 future, but in the distant future -- of any part-time
19 judges, and that all judges in the State will be full-
20 time judges.

21 As we all know, our courts are too often considered
22 to be sources of revenue in an area, and I'm sure that
23 you've heard many others refer to what we call "Cash
24 Register Justice", and that is not the type of justice

1 that I think we're interested in pursuing in this State.

2 I hope that we will be able to come up with some
3 system that will give us a uniform system of courts, that
4 we can institute Statewide, and that courts of the same
5 class will have uniform jurisdiction; that most, at
6 least, if not all judges of the State, will also serve on
7 a full time basis, and that the use of fees and compensa-
8 ting judges or judicial officers shall be absolutely pro-
9 hibited. That when additional courts, anywhere in the
10 State, are created; that if additional judgeships are to
11 be established, that these will be done on the basis of
12 need and recommendation and approval, either by a recom-
13 mendation or certification by the Supreme Court or by
14 Judicial Council, that will be composed of members repre-
15 senting all of the different branches of the courts
16 throughout the State. That the judges be elected on a
17 nonpartisan basis, that they not stand election as to
18 whether they are Democrats or Republicans, or whatever
19 else might be considered, but that they will have a sepa-
20 rate ballot and will be elected on the basis of their own
21 positions and their own qualifications, rather than upon
22 representative of any political party.

23 I hope that we can come up with a Judicial Article
24 that will provide for some type of legal training, not

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1 necessarily membership in the Bar of Georgia, but some
2 legal training for all of our non-attorney judges.

3 I am especially interested in a provision that the
4 Courts be totally funded from State funds rather than
5 from any local funds, or from revenues which are gene-
6 rated from the operations of the Courts on a local level.

7 We have before you three basic drafts of the Judi-
8 cial Article; you will see them as Appendix Draft A, B,
9 and C. One of the recommendations is from the Committee
10 itself, which has adopted one of the drafts in principle,
11 for the consideration of those of you who will be addres-
12 sing the subject.

13 Another draft provides for a two tier system of
14 course. The Committee recommendation in principle pro-
15 vides for only a one tier system in the trial courts and
16 that, of course, is where everything in a one tier system
17 would be the Circuit Court. All of the State Court Jud-
18 ges who are presently part-time judges, or Juvenile Jud-
19 ges and others who are qualified as attorneys, or Probate
20 Judges who are qualified as attorneys under that system,
21 would be come part of the Circuit Court on a full time
22 basis. The other division there would be Magistrates who
23 would handle the duties presently of the J.P.'s or duties
24 of the City Recorders or City Judges.

1 The two tier system provides for a further breakdown
2 from the trial courts into what we call County courts,
3 where there would be at least one judge per each county,
4 one or more judges in each county. That would keep the
5 concept of the Superior Courts and the concept of the
6 Inferior Courts intact, which is similar to what we have
7 in areas now. The duties and functions of the Magistrate
8 would remain or stay somewhat similar to what they would
9 be under the one tier system; in other words, affecting
10 primarily the J. P. Courts and the City Recorders Courts.

11 The other provision, the other draft, was submitted
12 by the Probate Courts as to how they would like to -- or
13 at a meeting they had; when was that meeting they had,
14 Marty, when they . . .

15 MR. HODGKINS: Back about March.

16 MR. SNOW: That was a subcommittee from the convoca-
17 tion that we had in Athens; a subcommittee was appointed
18 by the Probate Judges and they, in turn, got together and
19 made some recommendations which is Draft C, I think, of
20 the recommendations that you see before you.

21 With that, I'm going to turn this over to any other
22 members of the committee that might want to make a state-
23 ment, and then we will start the hearings. Carol, would
24 you like to say anything?

1 MS. WILSON: No, I don't believe so at this time.

2 MR. SNOW: Okay; Marty, would you like to? Joe?

3 MR. DROLET: You covered it.

4 (Mr. Hodgkins indicated no)

5 MR. SNOW: All right. Let me get some ground rules.
6 How many do we have that have indicated they would like
7 to be heard? Let me see that, and then I can determine
8 relative to the time that we are allotting here. I don't
9 want us to be in a position where we are trying to
10 restrict -- okay, we have only five who have signed, but
11 then there may be others. We'll go through this, as they
12 appear here. We had thought that we would try to limit
13 all of the oral testimony to fifteen minutes, but cer-
14 tainly, if anyone wants to go beyond that, we don't want
15 to be overly restrictive on it, especially in view of the
16 number we have who have signed up thus far. Then after
17 these folks have been heard, then there may be comments
18 that others of you would like to make.

19 Members of the Committee here will, of course, be
20 possibly asking questions of those of you who do testify.
21 Any of you who do have some written remarks that you
22 would like to leave with us, we will make part of the
23 record also, beyond what you would like to read or to
24 have put on the record from your remarks. We will be

1 delighted to have those, or any written remarks that
2 someone else may have sent to the Commission by you.

3 So, with that, I will call upon Mr. Bob Knox, Jr.,
4 with G.M.A., the Mayor-elect of Thomson, Georgia. We're
5 very pleased to have you with us, Bob.

6 MR. KNOX: I really don't have any prolonged comments
7 to make, but first of all, let me identify myself. I'm
8 Bob Knox from Thomson, Georgia; I'm a law partner of
9 Warren Evans, who you introduced earlier. I, too, count
10 on him very heavily, and I don't want y'all to work him
11 too hard in Atlanta, so we can help get plenty of work
12 out of him in Thomson, too.

13 MR. SNOW: Do you think we keep him in Atlanta too
14 often, too much?

15 MR. KNOX: No, you don't keep him there too much,
16 but just don't keep him there too much more than you do.

17 I am an attorney, obviously, since Warren and I are
18 in the same law firm; I'm a member of the City Council
19 of the City of Thomson, and have been the Records Court
20 Judge for the City of Thomson Records Court for the
21 last three years. Beginning in January, I will be the
22 Mayor of Thomson, and will continue that same capacity as
23 Records Court Judge and, frankly, I'd like to pretty
24 well limit my comments to the area of Municipal Courts.

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1 The notation was also made by me that I represent
2 G.M.A.; I'm the Chairman of the Governmental Affairs
3 Committee of the Georgia Municipal Association, and in
4 these two capacities I'll be making my comments. I'll
5 put these in writing afterwards and send each of you a
6 copy, so you'll have it for your files.

7 Basically, my comments as they relate to the Munici-
8 pal Courts and how they fit into these proposed changes
9 are; first of all, one's a question -- I'm not really
10 sure how that's to be accomplished, but more specific and
11 more to the point, I frankly question the need for changes
12 as far as the Municipal Courts are concerned.

13 Without getting into real specifics, I think the
14 problem I see, as far as Municipal or Recorders Courts
15 are concerned, revolves around the question of these
16 very Inferior Courts who, as in my court's case, deal
17 with minor traffic offenses and that's about it. That's
18 all we deal with, that's all we handle. As a matter of
19 fact, I think our City Charter limits possible fines to
20 \$200.00 in this particular court that we have, so you can
21 see as a result of that, we're limited to very minor
22 traffic offenses.

23 My problem is seeing how that particular type Court
24 can fit into a new unified type structure, if that's the

1 way you want to call it. Now, the problems that I see
2 are several. You mentioned revenue just a minute ago; I
3 agree that justice has to prevail in court systems,
4 rather than the concept of producing revenue but, still,
5 there is the practical impact of Municipal Courts, of
6 what happens to revenue that has been generated by Muni-
7 cipal Courts and has been used by cities in their general
8 funds. I don't know what other cities' circumstances
9 are, but I know in my city's case, a good little bit of
10 money that we use in our general fund comes in from this
11 Recorders Court. It would probably be very surprising
12 for me to give you the figures. But, the point is, if
13 that is eliminated and if the unified system goes to a
14 concept where all the money goes to Atlanta, cost, fees
15 or expenses are paid and then the money comes back to the
16 City -- if that's the way it's to be, but I have a ques-
17 tion as to whether that's going to be done or not -- but,
18 if that is the case, I can envision that there's going
19 to be little or no money left to come back to the cities,
20 and the only alternative we're going to have, in that
21 case, is to come up with that money to handle our general
22 funds somewhere else, and that somewhere else -- you know
23 where that is -- that's property taxes. So, I see prob-
24 lems from that standpoint.

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1 The second situation that I see possible problems in
2 is, as far as Municipal Courts are concerned, gets back
3 I guess to the basic question of expense. Frankly, we
4 can handle a Municipal Court situation with very little
5 expense. I think the money they pay me to be Municipal
6 Recorder is something like \$740.00 or \$750.00 a year.
7 That, plus the administrative cost that we have and other
8 costs that are associated with the situation are not as
9 much as I think would be the case if you got this Court
10 into a unified system.

11 Now, I give you those comments to get back to the
12 original question that I posed; and that is, Courts who
13 handle very minor traffic type situations, I just wonder
14 if it's feasible to stick them into a unified system,
15 where you're controlling everything on a Statewide basis.
16 To me, that does an awful lot to destroy the practical
17 effect of those very small courts. Others, obviously
18 may disagree, but that's my impression.

19 Now, Randolph Medlock, who's a member of your Commis-
20 sion -- Mayor of Stone Mountain, I believe -- has filed
21 a Minority Report, I think it's called, that deals with
22 some of G.M.A.'s position about this very thing that I'm
23 talking about. They didn't get into any of the specifics
24 as I'm trying to do, but I'm trying to give you, as best

1 I can, a couple of examples from one particular Court --
2 my Court -- that I know about and the possible problems
3 that I would foresee if that Court were put into a
4 unified system like we're proposing.

5 Now, what the answer might be, I really don't know.
6 Whether it's to eliminate -- I wouldn't say all Recorders
7 Courts or all Municipal Courts because, as I understand
8 it, there are some Municipal or Recorders Courts that
9 have a whole lot more jurisdiction than the minor type
10 court that I'm talking about. As a matter of fact, just
11 recently, a District Court Judge here has ruled that the
12 local Recorders Court here in Augusta has got to change
13 some of its procedures.

14 Again, though, I think that gets back to the ques-
15 tion of what the jurisdiction is to begin with. It is a
16 very minor, limited, traffic court type jurisdiction.
17 The best way to handle that traffic court jurisdiction
18 and situation, I think, is to leave that court under the
19 complete control of the city or municipality involved;
20 less expense; swifter justice, and more complete justice
21 I think.

22 That really is the gist of what I had to say. If
23 you have any questions, I'll be happy to try to answer
24 them. As I say, I'll give you a written report.

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1 MR. SNOW: Not so much questions -- let me keep you
2 there a minute, though, just on some comments and see
3 what you think about what we've got presently.

4 In some areas, you've got your Recorders Courts,
5 which are the City Courts, . . .

6 MR. KNOX: Right.

7 MR. SNOW: . . . which are not meeting on regular
8 times. They're part-time judges, Bob, and they don't
9 always meet when they ought to be, and so there's no set
10 pattern. We're talking here in terms of saying that that
11 Court shall meet at least once a month maybe; we're say-
12 ing, mandating that that Court meet at least once a month.
13 We are thinking in terms of some type of schedule which
14 would not be a part of the Constitution, but which would
15 be authorized in the Constitution as a law that we could
16 say, this is the amount that any city in Georgia -- if
17 you are caught exceeding the speed limit by ten miles an
18 hour, this is the amount you're going to pay regardless
19 of where you are in Georgia. Those funds are not neces-
20 sarily going to go into the State treasury.

21 Alabama, when they revised their Judicial Article,
22 what they did on it, they took over the whole total cost
23 of the matter from the State level, but in order to gene-
24 rate some support in the local areas, they sent all the

1 money that was being generated in those local areas, back
2 to the local areas. We haven't said that we couldn't do
3 that in Georgia. I don't know whether the General Assem-
4 bly will buy it, or whether the people will buy it or not,
5 but I think that makes sense.

6 The problem is not having some degree of -- we've
7 had some problems in this State with some of the cities
8 -- not with yours, you know that -- . . .

9 MR. KNOX: I understand that; sure.

10 MR. SNOW: If you had been one of the ones guilty of
11 all of the problems, you wouldn't be up here before any
12 Commission publicly testifying, . . .

13 MR. KNOX: That's right.

14 MR. SNOW: . . . because those folks aren't going to
15 come before this Commission, but we know about them. We
16 know of Little Witch End and others, but I think it's
17 better in those places now, but they've been rather
18 notorious.

19 MR. KNOX: Well, I don't think there's any question
20 but that there needs to be some uniformity, not only of
21 procedure, but also of a fine system that is maintained
22 in those courts. I think that would be a very good
23 thing Statewide, if that could be done. The way my
24 point is, if you're going to try to accomplish that by

1 incorporating all of these very minor courts into this
2 total unified system, I just really don't think, in
3 practicality, it's going to work. That's the bottom line
4 of what I'm saying. Now, it may, but I just really don't
5 think it will. My experience has been that the more you
6 centralize, control in one area for larger groups, the
7 more you -- when you get right down to the bottom level
8 to that lowest type court, the less effective those
9 courts tend to be in practical application of what they
10 are supposed to be.

11 I realize you have to have some centralization;
12 that's just what I said, I think we need that in proce-
13 dures and fine systems and whatever but, at the same time
14 in the practical way that that's going to work - those
15 systems are going to work - I think there may be a prob-
16 lem in practicality.

17 MR. SNOW: Well, I don't believe that the Commission
18 is anticipating, at this time, that there would be any
19 change in manner, possibly in the way that you presently
20 appoint your court on that particular level. But it is
21 to go to the extent of requiring that court to meet at a
22 time certain, at least once a month -- not to put it in
23 the Constitution as to when they meet, . . .

24 MR. KNOX: Sure.

1 MR. SNOW: . . . but that court would have to meet
2 at least once a month, or maybe more often, because some
3 of them just aren't doing it. Some cities are having
4 trouble getting the REcorder to come and hold court.

5 MR. KNOX: I can understand that. I've heard,
6 obviously, situations where that exists.

7 MR. SNOW: So, we don't have an overall good system
8 right now, as far as the Municipal Recorders Courts are
9 concerned, even though some of them are doing a beautiful
10 job.

11 MR. KNOX: We've come up with a Statewide system
12 that, at the same time, would produce practical benefits
13 and results as those courts should do, and I think that's
14 fine but I think that what I've seen in these proposed
15 drafts; of course that's just the structure, but I ques-
16 tion whether it can be done within that structure or not,
17 and I think that's the gist of what I'm saying.

18 MR. SNOW: Well, that's what we need to find out
19 from you and others who have got experience in that field.
20 Are there other questions? Joe? By the way, Howard
21 Thompson, member of the Commission from Columbus, Georgia
22 has just arrived. It took you a long time to get here.

23 MR. THOMPSON: I got lost; can't get here from
24 Columbus.

1 MR. SNOW: You know, you can't hardly get to Colum-
2 bus from anywhere in Georgia. Okay, Joe?

3 MR. DROLET: I was curious; we have as you know, a
4 multiplicity of different "Inferior Courts with different
5 jurisdictions". Under any proposal, I guess we're going
6 to end up with some lowest tier of the court system.
7 What jurisdiction do you think such a court ought to have,
8 whether we call it a Recorders Court or a Magistrates
9 Court, or whatever?

10 MR. KNOX: Well, frankly, I have some difficulty
11 with a system that would incorporate Inferior Courts
12 Countywide, say, where you've got cities within that
13 county. That gets back to the basic question of the old
14 thing, double taxation, that we hear from city people --
15 and I'm not going to get into all that -- but I think
16 that touches on that same question, because if you've got
17 city police forces, and you've got people who are charged
18 with responsibilities for a city's law enforcement, to me,
19 you're getting into awful far ranging problems -- opening
20 up Pandora's Box -- when you put those people as well as
21 Sheriffs or other folks all in one inferior system.

22 And that's why my point is that as long as you've
23 got cities, counties; that you need a separate court,
24 especially on the inferior, lowest level, for each of

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1 those areas.

2 MS. WILSON: I'm just not sure why you say you need
3 a different court for a city and county.

4 MR. KNOX: Well, if you've got about two or three
5 hours, after this meeting is over, I'll be happy to sit
6 down and go over the ramifications of who pays for what,
7 where the money comes from -- that is the real issue
8 when you get to cities and counties.

9 And, when I'm a Mayor who has to look at what I and
10 my Council, what kind of property taxes we charge the
11 property owners in my community, who also pay county
12 taxes for the support of county courts, then that's what
13 we're really getting down to, I think.

14 MS. WILSON: But, if the courts were supported by
15 the State, instead of cities and counties, wouldn't that
16 cause less problems?

17 MR. KNOX: That might alleviate some of the problems
18 but that might not cure the situation where you've got
19 different jurisdictions; city police, county police, who
20 are both funneling things into that same court. Now,
21 that may be able to be worked out. If you can work out
22 the cost system from a State standpoint, that would help
23 no doubt, but I think you've still got things that you've
24 got to resolve as to who has the ultimate control, if

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1 that's what you want to say, of police forces, county
2 sheriff departments -- you know, if you're going to get
3 into that, then we maybe ought to just unify police sys-
4 tems all over, and that gets into entirely different
5 areas.

6 If you're going to unify the court system, I don't
7 know that you can do it where you've got cities and
8 counties, unless they are unified.

9 MR. SNOW: Well, I don't want us to get beyond the
10 unification of what we're talking about here. We've got
11 enough problems with this.

12 MR. KNOX: This is only one minor aspect of this
13 whole thing that you're talking about, so that's why I
14 wanted to present my case first, and then sit down and
15 let these other folks . . .

16 MR. SNOW: Let me make this statement to you, Bob,
17 and I think I can speak on behalf of the Commission when
18 I say this; I think even further beyond that, the Judi-
19 ciary Committee, especially the house -- and I can't go
20 beyond that -- but the sentiment that I feel is that if
21 there is a unification of the system, it will be largely
22 what I said earlier, that there will be fines and forfei-
23 tures that there be a set basis on.

24 Now, we can't get into this matter of ruling on

1 local ordinances and things of that sort; that's going to
2 be up to the local judge to do that, and the Magistrate,
3 or the City Recorder, or whatever, at the time. But, I
4 have no doubt but what there will be at least a sharing
5 of fees and forfeitures, even though they would go into
6 the State treasury, there will be a sharing of them, if
7 not all of them, returned to the point of origin -- and
8 I think I'm pretty much at liberty to make that statement
9 on behalf of the Commission.

10 MR. KNOX: Right.

11 MR. SNOW: So, we appreciate your appearing . . .

12 MR. KNOX: I appreciate being here, and I appreciate
13 being able to testify.

14 MR. SNOW: Yes, sir; thank you very much, Bob. Let
15 me see, the Judge of the Small Claims Court of Warren
16 County; that's Judge Pierce? Pilcher.

17 JUDGE PILCHER: I was Postmaster for forty years,
18 and I retired. And I was asked to take over Small Claims
19 Court, which I did. The merchants and business people
20 want, and want to continue, the Small Claims Court. Per-
21 sonally, it doesn't make any difference to me because I
22 draw a pension from the Post Office Department, but I was
23 asked to take this job. But I think the majority of
24 businesses want - in Warren County - to see the Small

1 Claims Court continued.

2 I'm under Judge Stevens in Thomson, and if I have
3 any legal problems, I go to him with them. I was Post-
4 master for forty years, and I didn't have anyone to
5 train me to be Postmaster, and I stayed in there forty
6 years.

7 I don't think it's a good idea, I'm against it, and
8 I don't know who brought it to a head, but I just want to
9 express my opinion on it and any questions you want to
10 ask me. If you're familiar with the Small Claims Courts,
11 you know that there should be some uniformity, if they're
12 retained.

13 MR. SNOW: That's what we're interested in so that
14 there will always -- there's a need for a Small Claims
15 Court . . .

16 JUDGE PILCHER: Mine is \$1,000.00; somebody else is
17 \$2,000.00 -- my fee is a certain amount and another man's
18 is a certain amount -- that should be clarified and made
19 uniformly if you are going to continue, . . .

20 MR. SNOW: Yes.

21 JUDGE PILCHER: . . . and I just want to express my
22 opposition to abolishing the Small Claims Court.

23 MR. SNOW: Well, I don't think the intent is to
24 abolish the concept of a need for Small Claims Courts.

1 I think there probably can be a combination of some of
2 the Court systems that we have in the State.

3 JUDGE PILCHER: In my particular county, we don't
4 have anybody doing any collection except me.

5 MR. SNOW: We have part-time County Courts right now,
6 who are State Court Judges. They work on a part-time
7 basis. We have an ultimate concept that these County
8 Court Judges in the future -- if you go on the basis of
9 a two tier system -- the third jurisdiction can be
10 broadened, and they can take in this business of the
11 Small Claims, as well as the other type cases that they
12 now handle. We're talking in terms of eight or ten
13 years from now, as when some of these things would take
14 effect, sir.

15 So, it's not a matter of doing away with what is a
16 basic need in some areas, because Small Claims are, or
17 we wouldn't have this proliferation.

18 JUDGE PILCHER: Do you have one in your County?

19 MR. SNOW: No, sir, we do not, . . .

20 JUDGE PILCHER: You do not have one?

21 MR. SNOW: . . . but we need to have something to --
22 we've got a void there right now, but we do have a State
23 Court Judge in my county and he's a part-time judge. I
24 would like to see that Court become a Circuit Court,

1 where that Judge has the jurisdiction over some traffic
2 cases and other things throughout the whole circuit,
3 rather than just in one county.

4 But, that's kind of limiting to what our needs are,
5 and we're really talking about the whole State, as a
6 whole, but it can be done -- I think it can be done, and
7 I think we need to address it from the standpoint of what
8 we've got already available, and to utilize these folks
9 -- to utilize you, maybe in an instance where if in that
10 circuit, there is a need for Small Claims throughout that
11 circuit, then you're available to have it full time on
12 that circuit basis, but that of course, again, would be
13 based upon qualifications and other things that come up.

14 MR. THOMPSON: I'd like to ask you this, Judge;
15 what you're saying is that you aren't particularly inte-
16 rested, as far as you are concerned, but . . .

17 JUDGE PILCHER: Not particularly.

18 MR. THOMPSON: . . . you think the concept of a
19 Court that would have the jurisdiction that you have is
20 what we need?

21 JUDGE PILCHER: I certainly do.

22 MR. THOMPSON: And, if we were able to develop a
23 unified court throughout the State, you wouldn't have any
24 objection to it, that maintained that jurisdiction . . .

1 JUDGE PILCHER: I mean, personally, I don't have any
2 objection to any of it. I just came down here -- I did
3 not know anything about the meeting, and Mr. Williamson
4 in Thomson told me, and asked me to come down here with
5 him. I don't have an objection to -- in other words, I
6 don't want to see where people who have businesses can't
7 collect their monies.

8 MR. SNOW: Yes, sir, and I think they should be able
9 to, and I think a lot of them -- and some Small Claims
10 ought to be able to do it in certain areas, without having
11 to go through an attorney to help them collect it. I
12 think there should be a limit there, \$500.00 to \$1,000.00,
13 where they can go and just present a claim.

14 JUDGE PILCHER: We have two attorneys in Warrenton,
15 and neither one of them will handle any collections what-
16 ever.

17 MR. SNOW: I can understand that.

18 JUDGE PILCHER: So, that's my position.

19 MR. SNOW: We appreciate your appearing, sir, and
20 are there any other questions of the Judge? Okay; Judge
21 James W. Williams, Judge of the Small Claims Court of
22 McDuffie County.

23 JUDGE WILLIAMS: Mr. Snow, I feel about the same way
24 that -- we're in adjoining counties. We have a real good

1 cooperation between us, and I'm satisfied - as he is -
2 but I agree with him and the Committee about if you can
3 do us some good, you know, . . .

4 MR. SNOW: Some uniformity?

5 JUDGE WILLIAMS: Right, and even educate us. I'm
6 not an attorney; I've been a Small Claims Court Judge
7 there in McDuffie County for right at four years, and
8 we . . .

9 MR. SNOW: How long have you had a Small Claims
10 Court? Was it created about three years ago?

11 JUDGE WILLIAMS: About eight years; yes, sir, and
12 I think we're serving our purpose, and I'd like to call
13 us -- well, it's not exactly -- the poor man's attorney,
14 that's what I call it; the people that can't afford to
15 obtain an attorney -- I don't mean as such in legal mat-
16 ters, you know. In other words, . . .

17 MR. SNOW: Well, I think you come under what we're
18 envisioning here under this Magistrate provision. That's
19 where I think you come under . . .

20 JUDGE WILLIAMS: Well, that's what . . .

21 MR. SNOW: The Magistrates, as we envision it - or
22 those of us on the Committee -- are the J.P.'s, the City
23 Recorders, some of your county courts that have limited
24 jurisdiction in some matters, and I think that's what

1 we're talking about.

2 I've told some folks, and I strongly believe this,
3 that those who have been involved in these jobs, have
4 been doing them, they're going to be the ones that want
5 to keep doing them even under these new provisions, be-
6 cause they're the ones that know how to do them.

7 JUDGE WILLIAMS: Yes, sir. I feel like, as far as
8 your further education, your program and all that you
9 mentioned there, I'm for that one hundred percent because
10 it can make me do my job, and my fellow judges do their
11 job better, and I'm for that. I feel pretty much like
12 Mr. Pilcher.

13 MR. SNOW: Okay, sir. Any other questions? Marty?

14 MR. HODGKINS: Judge, do you feel that the jurisdic-
15 tion of your court could be increased as being a local --
16 like you said, being a Magistrate or something along that
17 line on a county type basis? Do you think that would
18 help, not only you, but the citizens in your county per-
19 haps, if you had a greater jurisdiction or a full time
20 basis? Do you serve on a full time basis now?

21 JUDGE WILLIAMS: Yes, I am full time.

22 MR. HODGKINS: But, if you could have additional
23 jurisdiction, what do you think you should be given to
24 retain the . . .

1 JUDGE WILLIAMS: It could work, and I think it would
2 benefit the people. I don't mean going into somebody's
3 area, but if you're going to have it set up like you're
4 talking about, combining -- well, it would work, you
5 could do it. But I think certainly there's a need for
6 your Small Claims Court. We've got a need, especially
7 in these smaller counties . . .

8 MR. SNOW: Well, as you know right now, you've got
9 a large number of provisions in the Constitution for
10 Justices of the Peace that are not actually filled,
11 because there's nobody to take the job or that want them.
12 You'd have a limited amount of jurisdiction that is
13 allowed a Justice of the Peace by law, by Constitution.
14 By the Constitution, \$200.00 except where it's been amen-
15 ded by a local Constitution Amendment.

16 You have several counties in the State where the
17 J.P.'s have, as such, been involved in some of the larger
18 counties, but there is this area throughout the State
19 where we, by some name, there have got to be people who
20 are issuing warrants, there have got to be folks who are
21 handling some claims of a small amount, but an amount
22 that has to be larger than \$200.00, if it's to be effect-
23 ive. That just is not an effective court any longer, so
24 it's got to be something in the neighborhood of \$500.00

1 to \$1,000.00, and that's what we envision when we talk
2 about Magistrates, and when we talk about at least one
3 per county.

4 MR. THOMPSON: Judge, may I ask you one or two ques-
5 tions?

6 JUDGE WILLIAMS: Yes, sir.

7 MR. THOMPSON: What do you do now if someone requests
8 a jury trial?

9 JUDGE WILLIAMS: We just bind it over -- in other
10 words, the way our system . . .

11 MR. THOMPSON: You don't have jury trials?

12 JUDGE WILLIAMS: No, sir. In other words, they have
13 a right to go right onto Superior Court with it. Now,
14 of course, in our Courts you have the right to an attor-
15 ney with you, to represent you at our hearings.

16 MR. THOMPSON: How do you resolve the technical,
17 legal questions that come up? I understand Judge Pilcher
18 to say that he had access to an attorney who could advise
19 him. Is the same thing true in your area?

20 JUDGE WILLIAMS: Yes, sir, Judge Stevens, the
21 Superior Court Judge there, which he's in the Courthouse
22 at McDuffie County, too, and I don't mind or hesitate to
23 call on him one minute, if there's any doubt at all in my
24 mind. Of course, they have that right -- and I stress

1 that in any hearing, that they have that right to have
2 legal representation of an attorney present at the hear-
3 ing, and they have that right to go right onto the
4 Superior Court with it -- bind it right on over.

5 MR. THOMPSON: Thank you.

6 MR. SNOW: Any other questions of the Judge?

7 MR. HODGKINS: I'd like to ask; do you issue warrants
8 at all?

9 JUDGE WILLIAMS: Yes, sir, we can issue warrants.

10 MR. HODGKINS: Do you do that often, or is it . . .

11 JUDGE WILLIAMS: Well, as a rule in our county, the
12 Justices of the Peace handle that -- we have two Justices
13 of the Peace -- now, if ever there's the necessity to --
14 in other words, I have the power to do it, but we have
15 two part-time Justices of the Peace, and usually they
16 handle the majority of the warrants.

17 MR. SNOW: Are you presently handling a lot of the
18 business in your Court that, at one time was handled in
19 the J. P. Courts?

20 JUDGE WILLIAMS: Yes, sir. And, there's one other
21 comment I'd like to make; your individual citizens, the
22 Small Claims Court is as important to them as your busi-
23 nesses or anything else. That individual may have some-
24 thing he needs, you know, to settle.

1 MR. SNOW: Let me expand on that to this extent; I
2 would think that in your Small Claims Courts, or those
3 courts of small jurisdiction, traffic courts and other
4 things, that more of our citizens will see justice done
5 in those courts than they will in other courts, . . .

6 JUDGE WILLIAMS: I feel like . . .

7 MR. SNOW: . . . and that's why they're vitally
8 important, and that's why we vitally need to do something
9 on a uniform basis, as far as the State is concerned.
10 There's no reason to have "Hallway Justice" also, as well
11 as "Cash Register Justice". Many times, the bigger
12 courts are the ones that get all of the attention when,
13 actually, the smaller ones are handling more of the
14 people's business, on the standpoint of the number of
15 people that are involved. Thank you, Judge Williams.

16 JUDGE WILLIAMS: Thank you, sir.

17 MR. SNOW: All right, sir, we have now Woodson
18 Daniel, who is Clerk of the Pulaski County Superior Court,
19 home area of John Henry Anderson, who was a distinguished
20 member of the General Assembly for many years prior to
21 the time he became your County Commissioner.

22 MR. DANIEL: Now he's sole Commissioner down there,
23 and very good.

24 MR. SNOW: I'm sure one of the finest in this State.

1 Of course he's a fine man, and you tell him I said so.

2 MR. DANIEL: He'll appreciate those compliments, and
3 I'll certainly carry them back to him firsthand, too.

4 Mr. Chairman, ladies and gentlemen of this Committee,
5 I'm Woodson Daniel, Clerk of Superior Court down in
6 Pulaski County. In addition to that, the Clerks of
7 Georgia saw fit to name me their President this year. In
8 past years, they've had fine leadership of Joe Mundy from
9 Jonesboro; previous to that, Adam Green in Bibb County.
10 I reckon they ran into a dry spell, just like the farmers
11 did, and consequently I was all they came up with but, in
12 any event, I appreciate and we Clerks appreciate the
13 opportunity to come here and participate in this Hearing
14 to hear the thoughts that you people on the Committee
15 have, the thoughts that others who may appear here have.
16 There are a number of Clerks here, matter of fact,
17 because we have a sincere interest in the subject at hand;
18 we have an interest in the level of justice and the swift
19 administration of it here in Georgia, and in our own
20 Courts at home where we serve.

21 I hope that my remarks won't be too rambling, but
22 of course . . .

23 MR. SNOW: Adam serves on the Committee?

24 MR. DANIEL: Right; exactly. Adam Green has been a

1 member, and is a member of your Committee, and he is a
2 very dedicated person at whatever job he undertakes, and
3 I'm certain that on this Committee, you have found him to
4 be that with you. He commands a great deal of respect
5 from most of the Clerks, and most other officials over
6 the State.

7 I've written out here a few thoughts, just to keep
8 myself on track. I don't find it necessary to come here
9 and read you some recitation, but when I get up before a
10 distinguished group, such as you, I'm not at home at all.
11 So I may appear to be rambling and hesitant, and I'll
12 ask you not to charge that to the other Clerks.

13 A few years ago, there was the question before us of
14 a unified court system of Georgia, and that hasn't been
15 long ago -- maybe two years. At the time, that was a
16 short, one sentence subject on the ballot. I never did
17 find very many people who had a clear understanding of
18 what that meant. I think it meant, whoever you asked,
19 whatever he happened to think, that he had on his mind at
20 the time.

21 I hope now, and maybe now is the time, when this new
22 Judicial Article will present an opportunity to be defini-
23 tive about that in the State of Georgia; definitive to
24 us, the people who work in the Court by title, and

1 preserve a part to each of us who have, through the
2 years, worked and seen the Courts grow and helped carry
3 the load, and made it a workable system, however slow it
4 may have appeared to be to some.

5 I'm a Clerk with a lot of respect for the integrity
6 of every officer of the Court, starting with the Judges
7 or starting with the lawyers, depending on where you
8 think the top is or where you think the bottom is. In
9 between, you have a lot of people, and in between, you
10 certainly find those of us who provide and perform the
11 necessary functions that go on in the Clerk's Office,
12 and help in our way to see that the Court runs as smoothly
13 as it does.

14 I come here asking that this Article, whatever the
15 final draft of it may be -- and I know that you have had
16 several. I was in Athen at the Judicial Convocation; not
17 by invitation directly, but a few weeks earlier, in con-
18 versation with Justice Nichols, he mentioned the Convoca-
19 tion and suggested that I and one or two others who were
20 present, might be interested in attending, and we did.

21 I jokingly told my Judges, Judge O'Connor and Judge
22 Rawlins, that I was there listening over their shoulder
23 to see what they had to say about the Clerk because, at
24 that point in time as I understand it, y'all had adopted

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1 a draft that excluded the Clerk, or at least did not pro-
2 vide or mention them by name and recognize them as being
3 a part of the judicial system in this ARticle.

4 When I say the judicial system, to me, that gets to
5 the heart of the matter. When I talk about the judiciary,
6 I may be talking about judges and I may be talking about
7 lawyers; but when I talk about the judicial system, I'm
8 talking about the totality of the thing, the system that
9 the man on the street sees; if he wants to see somebody
10 in the judicial system, who he might go and look up to
11 find out where his place is in the Courts.

12 I don't know what it is in your hometown or in your
13 counties; I would suggest that in my county and in the
14 county of these Clerks who are here today, probably one
15 of the first stops that the man on the street makes,
16 other than to his lawyer, would be to come into the
17 Clerk's Office and find out about some business that's
18 going on in the Courts.

19 As a juror; I suggest that all of you well know the
20 Clerk's Office provides a source of information and an
21 identity that that person can go to, as a member of the
22 Court, as an officer of the court and part of the judicial
23 system, to find out and to try to anticipate what he may
24 be confronted with, not in a legal question sense, but

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1 in the function, in the normal flow of the business in
2 Court.

3 I've heard about the one-tier system, the two-tier
4 system; I think perhaps there's a draft that includes a
5 two and a half tier system, and I don't profess to be
6 conversant with every part of it. I've tried to acquaint
7 myself with some parts of it, and particularly, the parts
8 of interest to me as a Clerk, and the interest of all of
9 us as Clerks of Superior Court. The only one that I find
10 that comes close to adequately recognizing us is one that
11 is a fairly recent proposal -- it doesn't have a heading
12 here, it's simply marked "A Draft", and I think it prob-
13 ably may be the last one that you adopted.

14 In coming to this meeting, I got some material from
15 your table there, and perhaps it's more nearly a part of
16 Draft B, I'm just not certain, but in any event, the one
17 here -- as I understand the last that was adopted or dis-
18 cussed or recognized by your Committee, is the one that
19 provides for the Clerks, designates them by name, recog-
20 nizes them as being a part of the judicial system, pro-
21 vides for them in the judicial act, in this Article.

22 In my humble opinion -- and I would yield to anyone
23 who has a better concept of this -- I think we are a part
24 and I think we rightfully can be recognized in that sort

1 of way, and provided for rightly in the act, right up
2 front, setting out, and forever -- I hesitate to say
3 forever -- but for the moment and for the time, that this
4 Article recognize us for what we are, not to necessarily
5 enhance us, but to recognize us as the Clerk.

6 I may be jumping ahead, but in some of your Hearings,
7 you have people coming from other states who describe
8 their systems. Some of those systems, as I understand
9 them, that were described, the Clerk of Superior Court -
10 in the revision - became the Clerk of Courts. I know I
11 get many calls now anticipating that I'm the Clerk of
12 some court of which I'm not.

13 In the reorganization, I suggest to you that, number
14 one to preserve us as Clerks of Superior Court is just
15 recognizing the fact that is this: number one, if the
16 reorganization goes to the extent of recognizing us, or
17 designating a Clerk of Courts, I think logically, we may
18 be the embodiment of what is in the minds of most people
19 when they think of that.

20 I think, to suggest that, is not to take away from
21 any of our friends and any of the Inferior Courts who may
22 act as their own Clerks, or whatever; but rather to raise
23 them up and to present themselves in the form of a Judge
24 that would command the respect that they, as Judge, ought

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1 to command, rather than have them dealing with the nuts
2 and bolts of records and paperwork that goes on during
3 the course of any business that comes into Court.

4 In any event, while in Athens at this Convocation,
5 I was certainly interested in your address to the group;
6 I heard Governor Busbee's address; I heard Chief Justice
7 Nichols address, and I thought those addresses recognized
8 the practicalities of the various persons who would be
9 involved in a reorganization as I understood it, of the
10 Courts.

11 They seemed to suggest to me that, while there may
12 be a reshuffling of some of the functions, that whatever
13 the services that were presently being provided, would
14 be provided by somebody - perhaps by a different name or
15 title or designation - but that they would be provided.

16 Consequently, I was pleased to think that by so
17 doing, recognize that we as Clerks of Superior Court were
18 a fact of life, and that we would still be considered as
19 part of our judiciary. When I say our, I'm talking about
20 the totality as a whole, or legal profession, or the
21 Judges.

22 Sometimes, it has seemed to me when I've heard dis-
23 cussions on this Article, that it seems to involve per-
24 haps nothing but Judges. But, when you get down to the

1 final bottom level, the Judges do less than dignify them-
2 selves when they don't use the services of the support
3 groups, and I think that as a fellow officer of the Court,
4 in our own capacity, we lend ourselves to dignity as well
5 as themselves.

6 I know any number of Clerks who perform very well in
7 their jobs, and I think they are to be complimented on
8 the work that they do.

9 I've been rambling in what I've said to you, and I
10 apologize for rambling, but this is a subject very close
11 to me, personally as well as in my position as represent-
12 ing the other Clerks of Superior Courts of Georgia, and
13 I'll not hesitate to try to defend, as well as justify,
14 being recognized in the way that I have suggested, and I
15 hope I don't offend anybody in so doing.

16 MR. SNOW: Howard?

17 MR. THOMPSON: I have a tremendous amount of respect
18 for Clerks; I know the Courts would come to a screeching
19 halt if we don't have Clerks, but besides putting them
20 in the Constitution; the office, couldn't it be recognized
21 by Statutory Law rather than the Consitution? Let me
22 preface that by saying the United States Constitution is
23 a very simple document; it doesn't include everything,
24 and it's stood the test for over a long period of time.

1 The Georgia Constitution is full of a lot of trivia and
2 we have amended -- in fact, we have 118 Amendments to the
3 Georgia Constitution coming up on this particular ballot.

4 Some of the scholars on the Commission -- and I'm
5 not stuck with this -- some of the scholars seem to think
6 that what we should do with the Judicial Article is to
7 get a simple, clean document which covers only the really
8 important portions of this, and that which could then be
9 created by Statute. Would you have any objection to the
10 Clerk's position being established by Statute as opposed
11 to being a Constitutional office?

12 MR. DANIEL: Yes, sir, I do. I take objections to
13 that point . . .

14 MR. SNOW: Let me interpose this before you say any-
15 thing; my understanding is, right now, that the Clerks
16 are not a part of the Constitution, that you are a Statu-
17 tory office today, just as the Sheriffs Office and
18 others. It's not a part of the Constitution of Georgia.

19 MR. DANIEL: My understanding of that is that we are
20 a Constitution Officers by judicial interpretation, resul-
21 ting from a Court suit, perhaps in 1930 or so, . . .

22 MR. SNOW: But not included in the Judicial Article
23 as such.

24 MR. DANIEL: No, sir, we're not presently included

1 in the Judicial Article, as such, but I think that has --
2 while the case on which that point turns may be totally
3 out of context to us, in the context in which this sub-
4 ject is being discussed now, I think that that has been
5 the important thing to the Clerk. It has removed us to
6 be able to say that we are Constitutional Officers, even
7 by the judicial interpretation. It has removed us from
8 possible control, or certainly pressures that might tend
9 to be brought. We're subject to answering for ourselves
10 each four years, as you well now, and if we don't perform
11 satisfactorily, somebody else will be sitting in that
12 seat.

13 But, in the meanwhile, it has provided the security
14 and comfort, and enabled us - without prejudice and impar-
15 tiality - to perform whatever function we find ourselves
16 performing in, in the past, as opposed to always being
17 concerned that because of the inability or the refusal of
18 a Woodson Daniel, for instance, not going along with
19 somebody's point of view who may be in a position of
20 power. That person, then, at some appropriate time
21 through a legislative act or whatever, being able to
22 bring me more directly under their control.

23 Certainly, all of the duties that are performed by
24 Clerks of Superior Court are set out by legislative act,

1 but there is never the fear - such as with some - that
2 you may be totally just wiped out, without a fourth party.

3 MR. SNOW: Let Carol first.

4 MRS. WILSON: If you notice in this first Draft, on
5 about Page 6, Section 7, Paragraph 16; it refers to
6 Court Administrators, and I really sort of think of
7 Clerks as Court Administrators more than just simply
8 Clerks. That's really sort of my interpretation of a
9 part of what this is talking about.

10 MR. DANIEL: I'm delighted that you mentioned that,
11 and this gets back to the gentleman's question that was
12 first asked, if we couldn't live with being provided for
13 by Act, just as well as having been provided for in this
14 Article, which is what we ask.

15 Court Administrators in Georgia, by in large, is a
16 new breed to us. It's a new animal. Of course, we have
17 the District Court Administrators, and some of the other
18 courts, they have a Trial Court Administrator. Certain
19 functions and duties are left to those people specific-
20 ally, except in the case of a District Court Administra-
21 tor who, as I understand it, his function is to gather
22 statistics, help out and evening up case loads within a
23 given geographical area, and lending other assistance.

24 Except for him, any duty that any other type Admini-

1 strator that I'm familiar with, has taken away from the
2 duties of the Office of the Clerk of Superior Court, and
3 put those duties and that person, that Administrator,
4 more nearly under the direct control of another Officer
5 of the Court.

6 Now, if that has been satisfactory for them, I
7 don't have any fuss with it; I would hope -- and I think
8 I can go and say without fear of contradiction -- that
9 the Judges in our Circuit have not found any need,
10 because of lack of service by Clerks of Superior Court,
11 to create a Trial Court Administrator or any other type
12 of Administrator.

13 Consequently, in our area, the only thing we have is
14 a District Court Administrator who does whatever is set
15 out as his duties and functions and, of course, he is
16 subject to the Administrative Judge in that district.
17 There again -- and I know some of these other Court
18 Administrators that you're talking about -- uneasy lies
19 in a lot of their heads as opposed to the Clerks of
20 Superior Court, knowing that they are elected for four
21 years, yet they come back up for review again within four
22 years, and if they have not performed adequately, they
23 are answerable to those people who put them there to
24 start with. Not only are they answerable to them, but as

1 a matter of efficiently getting the job done with the
2 material at hand, we are also answerable to the Court
3 itself. At the same time, we are independent enough
4 that we don't become coffee boys for some of the other
5 court personnel.

6 MRS. WILSON: I was not interpretating Court Admini-
7 strators to mean as they exist now, but if you would feel
8 more comfortable for this to say The General Assembly,
9 upon recommendation of the Supreme Court, may authorize
10 the employment of court administrators and clerks, would
11 that . . .

12 MR. DANIEL: I think you've hit on a key word there
13 when you say employment. I don't mean to suggest that
14 the clerks out to be constitutional officers to slow
15 down the process, or that we feel we would not be able
16 to maintain our balance, if we were simply employed.
17 But, we as Clerks of Superior Court under our present
18 setup, feel a bit more independent than that sentence
19 there would suggest to me.

20 And, when I say independent, I don't mean to the
21 point of being uncooperative, but I mean to the point of
22 exercising sound discretion on the occasions when it's
23 necessary to do so.

24 MR. SNOW: Joe?

1 MR. DROLET: I'm a little confused as to the actual
2 position of a lot of clerks, based on the fact that under
3 the present system, it would appear that the clerk is an
4 independent county officer with a wide variety of func-
5 tions, some judicial, some matters like recording deeds
6 and various other matters.

7 Is there a concern among clerks that if they were
8 included in the Judicial Article, they might be like the
9 Clerk of the Supreme Court, appointed by that Court doing
10 only the judicial functions, and perhaps the General
11 Assembly creating another county officer, Recorder of
12 Deeds, and those we now see as clerks being reduced in
13 authority and power and responsibility, to being one who
14 just works for a court and keeps their records.

15 Is there an inconsistency in those positions or have
16 people really thought about the possibility of this hap-
17 pening, which I think has happened in other states.

18 MR. DANIEL: Yes; on one hand, there may be an in-
19 consistency there with having non-judicial functions in
20 an office that we're talking about devotes itself to
21 judicial functions, and carries the title that suggests
22 judicial functions.

23 I think that perhaps the General Assembly, in its
24 own time and way, can deal with that proposition. I feel

1 that every Clerk of Superior Court that I know, is proud,
2 number one, to carry the title; number two, performs the
3 duties that are required in the courts, and I think that
4 if you truly had -- and this is my personal opinion, and
5 some other clerk may express a different opinion -- but
6 if you truly had a Clerk of Courts, then you would have
7 something different from the way that we operate now.

8 And, in that point in time, the General Assembly I should
9 think would look at that situation and see what needs to
10 be done.

11 I think, too, that if you look at some of the other
12 states, you would find that perhaps, even where revision
13 has taken place, that you have an office of Clerk of
14 Court and Recorder, which does exactly what we're doing
15 right now: that is, performs the duties as related to the
16 Courts, as well as the non-judicial functions such as
17 recording deeds.

18 That is a subject that certainly bears some discus-
19 sion perhaps, and the choice there, it may be another
20 discussion altogether from this. I'm not certain and I'm
21 not trying to dodge that question, but I suggest to you
22 that, number one, if the General Assembly saw fit to do
23 so and people under this Article, to create an office of
24 Clerk of Courts or Clerk of Superior Courts, that the

1 clerks now would be very well functioning their way. If
2 the General Assembly or the Constitution Article, or the
3 people by vote, saw fit to create an office of the Clerk
4 of Courts and Recorder, the duties there would not be new
5 to them, and they would carry on perhaps in a more effi-
6 cient way, as provided in this Article.

7 MR. DROLET: Do you think the clerk, if he is an
8 officer, should be appointed or elected?

9 MR. DANIEL: Everybody would have his own opinion
10 about this. My opinion is that to be elected creates
11 this degree of independence that I'm talking about,
12 causing us to be answerable right back, for instance, to
13 the same folks that the Judge is answerable to.

14 Right now, they run with or without opposition -- I
15 think your proposal here says he runs on his record -- in
16 any event, he is subject to the vote of the people.

17 I think that to remove ourselves, to further remove
18 the courts and the people -- the person or the office-
19 holder -- that the man on the street has more accessibil-
20 ity to him in an official capacity, and who this official
21 can immediately recognize as having to answer to again
22 each four years, creates a good balance there, and also
23 creates the independence that allows him to perform
24 without being dominated by any other person.

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1 For instance, I don't think that under the present
2 setup, the Superior Court Judges feel dominated by Court
3 of Appeal Judges or Supreme Court Judges. We have all
4 levels of officers there, and I think our reaction to
5 each other is independent to each other in the same sort
6 of way that the Superior Court Judge's action is indepen-
7 dent to the Court of Appeals or Supreme Court Justices,
8 and consequently, hold ourselves closer to the people and
9 source of administrative justice therefrom.

10 MR. SNOW: Let me first introduce Representative
11 David Swan who is with us, from the Augusta area. David,
12 we are pleased to have you with us this afternoon and
13 thank you for coming. All right, Carol?

14 MRS. WILSON: I've got a couple of questions. Are
15 you suggesting that the Court should be -- the clerk under
16 a Clerk of Court should not be really a part of the uni-
17 fied system? In other words, not answerable to the
18 Supreme Court?

19 MR. DANIEL: Oh, no, I'm not suggesting that. I
20 understand, under this proposal, that there would be
21 rules and certain criteria under which they would operate
22 that would be more definitive now than the law under
23 which we operate. Personally, while I like my indepen-
24 dence, I also don't mind anything that would help us

1 become more -- by way of rules and regulations -- that
2 would help us become a more efficient and responsive
3 court.

4 MRS. WILSON: Okay, and the other question I want to
5 ask is just putting it down, say to your level; how did
6 you become Clerk? Were you appointed or did you run?

7 MR. DANIEL: No, ma'am, I ran.

8 MRS. WILSON: How many terms have you got?

9 MR. DANIEL: I'm in my fifth term.

10 MRS. WILSON: How many times have you had opposition?

11 MR. DANIEL: I had opposition the first time I ran.

12 MRS. WILSON: And that's all?

13 MR. DANIEL: That's right. The voters in my home-
14 town have been very good to me and, consequently, I have
15 tried to respect the job and respect them in the way that
16 I conducted my business there and, hopefully, that's the
17 reason I've had no opposition.

18 MRS. WILSON: And when you ran the first time was
19 because there was a vacancy?

20 MR. DANIEL: The clerk who had preceded me had been
21 in office 46 years, and he had done a very good job. He
22 was widely respected and known over the State. Time has
23 probably erased his name from a lot of folks who have
24 come along since him. His name was Mr. Israel Manhein.

1 and time just simply caught up with him and he wore his-
2 self out in the Clerk's office, but the fine records that
3 he made and kept in that office are still totally relied
4 on, and without any problem.

5 MRS. WILSON: That's not really my question; what
6 I'm trying to get at is, so often judges and clerks, even
7 D.A.'s, so seldom have any opposition that you wonder
8 whether maybe a better choice of running for office might
9 not be to, after the first time they're elected, simply
10 have a voter review, where a voter just simply says yes
11 or no instead of going through the whole election process
12 again.

13 MR. DANIEL: If that were the method under which I
14 had to run - yes or no - I would not have any hesitancy
15 about that. Let me say this, in the years past, the
16 Clerks of Superior Court have not had the benefit of
17 training or know-how, coming together and exchanging
18 ideas or whatever. In the more recent years -- and with
19 myself for the past ten or so years -- I have attended an
20 institute at the University of Georgia, for continuing
21 education that is solely devoted to upgrading ourselves,
22 to acquainting us with whatever changes there may be in
23 the law.

24 I would hope that under the Supreme Court rules that

1 you suggest -- I'll use the word encourage -- that all of
2 the clerks could be encouraged to attend.

3 This past Spring at the University -- and I'm going
4 to use round figures because I simply don't remember the
5 exact figure -- we had something over 100 clerks to
6 spend two and a half days there, trying to improve them-
7 selves. We had a meeting last week, in which 55 clerks
8 took a day out to acquaint themselves with improvements.

9 We're looking for help; we want to be a part and we
10 want to continue to be a part of the judicial system and
11 I think, to me, that is the key thing.

12 Judiciary; we're talking about judges, but the
13 judicial act and judiciary, we're talking about clerks
14 also, and we want to improve ourselves so that we can be
15 a compliment to the Court that we think this Article, if
16 adopted, would create.

17 MR. SNOW: Any additional questions? I recall back
18 in 1975, when we were doing the revision of the Constitu-
19 tion, and that's when we were passing on whether or not
20 we would be able to vote on it on an Article by Article
21 basis as we're now doing, just as we're taking the Judi-
22 cial Articles now, but there was a tremendous number of
23 folks that got upset. I remember George Bagby was running
24 around and Jack Cullen, and they were both representing

1 the Sheriff's Association, and they were concerned
2 because the Sheriffs had been totally left out of the
3 Constitution. So, I got together with some folks and we
4 were concerned too, because we hadn't intended to leave
5 them out, but come to find out about it, they never had
6 been included in the Constitution anyway. As soon as
7 they realized that they had never been a part of it, then
8 they were no longer concerned about having been left out
9 of the new Draft.

10 This is an interesting question that is posed to us,
11 as to whether or not and who we're going to put in, that
12 we haven't had in the Constitution before. We've got the
13 possibility of maybe adding the Judicial Council of
14 Georgia, representing the Superior Court Judges, the State
15 Court Judges, Probate Judges, possibly the Clerks being
16 represented on the Judicial Council and others, as to
17 whether or not we want to add that to the Constitution or
18 not, or whether we want to put the Clerks in or any
19 others, or whether we want to further limit the verbage
20 in the Constitution, to make it as simple as possible as
21 far as being able, in the future, to be as responsive as
22 the General Assembly may see it necessary to be, to what-
23 ever the needs might be. Because there are some that
24 could even present the question, sometime today, do we

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1 really need a clerk in every county of Georgia?

2 I would anticipate that if we have the clerks in
3 the Constitution, it will be that there shall be at least
4 one clerk of the courts in each county of the State.
5 Now, I would anticipate that, because that would be a
6 reasonable assumption to make, but I wonder if we really
7 want that in the Constitution. With 159 counties in the
8 State, do we really need, maybe twenty years from now, to
9 have one clerk in every county if folks in that particu-
10 lar area may not really want it, or should they have to
11 go to Constitutional Amendments to maybe provide for one
12 clerk for the circuit, if they wanted to do it that way?
13 Or, should they be able to go through their local legis-
14 lators to do it?

15 These are legitmate questions and another one is as
16 to what the duties and the functions of the clerk should
17 be as to the records that he should keep. Should he just
18 keep the records of the Superior Court, or should all the
19 records of the courts be available in one office -- in
20 one clerk's office -- with as many deputies as may be
21 necessary there, to take up the other folks who are act-
22 ing as clerks of maybe some of the other courts now?

23 How many different officers do you really need to go
24 to, to get records to follow through on an abstractive

1 title? Do you say they should all be together? These
2 are questions that we're addressing as a Commission, and
3 I hope we will come up with some answers on it.

4 We appreciate your presence here, Mr. Daniel.

5 MR. DANIEL: May I make one further comment?

6 MR. SNOW: Yes, sir.

7 MR. DANIEL: You mentioned the Judicial Council in
8 one of the drafts, as part of the Article, and I noticed
9 that the clerks were not provided for with representation
10 on the Judicial Council.

11 A couple of -- well, perhaps three or four members
12 who are people other than judges -- I think this goes
13 back to . . .

14 MR. SNOW: I think that addresses us to, if we do
15 keep the Judicial Council and we don't have the clerks,
16 as such, in the Constitution within the Judicial Council
17 and the makeup of it, that you should have some input
18 there. I think that would be something that we should
19 address. Marty, if you'll make a note of that?

20 MR. DANIEL: And, under the one-tier or two-tier
21 system, I would urge that we consider it together, and
22 examine certainly, what is the best approach. I suggest
23 to you that these are records, duties and functions that
24 we are already familiar with, and that we want to further

1 familiarize ourselves with, to enhance this Court and
2 this judicial system that you anticipate having created
3 under this Article. Thank you, so much, for letting me
4 speak.

5 MR. SNOW: Yes, sir, we appreciate it.

6 MR. HODGKINS: There is one mistake in the Draft
7 that many of you picked up. Under Draft B, which is the
8 Draft that Mr. Daniel mentioned, the Clerks of Superior
9 Courts weren't included in that Draft, and they were in
10 the Draft. Unfortunately, in retyping this and getting
11 it prepared for mailing, we skipped from Section 9 to
12 Section 11, and Section 10 actually does provide for the
13 clerks.

14 It was an oversight; I'm sorry it happened, but it
15 just escaped us.

16 MR. DANIEL: It's in the Summary but not in the
17 Article?

18 MR. HODGKINS: Yes, it's mentioned in the Summary.

19 MR. DANIEL: Yes, I noticed that and I was concerned
20 about that.

21 MR. HODGKINS: In the mailing that was sent out,
22 there was an Amendment that was attached that included
23 that Section 10 and indicated where it went. I just for-
24 got to bring a copy of that, but they were included.

1 MR. SNOW: All right. Now, Mr. Watson, who is the
2 Clerk of McDuffie County Superior Court. William C.
3 Watson; Mr. Watson?

4 MR. WATSON: Chairman Snow, lady and gentlemen of
5 the Committee, and ladies and gentlemen of the audience,
6 my remarks will be brief as Mr. Daniel has covered pretty
7 much all that I have to say.

8 As a citizen of the United States and of Georgia, I
9 am particularly concerned about keeping Government at the
10 level of the people. I can envision under one or more of
11 the plans that have been put forward, the complete con-
12 trol and perhaps tyrannical control of the court system,
13 by a relatively small group. The Supreme Court in one
14 instance, the Judicial Council of Georgia in another
15 instance.

16 There has been a recommendation in one of the drafts
17 put forward to increase the term of Supreme Court Judges
18 to eight years, rather than the six which they now serve.
19 Why might that not be lowered to four, to keep Government
20 with the people, even though people have begun to vote
21 less and less.

22 I can envision the appointment of virtually every
23 member of the court system by some group, rather than the
24 election thereof. And while I, as a Clerk of Court, am

1 elected by the political process and am involved in poli-
2 tics, you don't know what politics would be until you
3 start appointing a whole judicial system.

4 I can envision the elimination of the lay office-
5 holder, or county official, under the systems that have
6 been put forward, in that everyone would have to have
7 legal training -- perhaps pass the Bar -- that would en-
8 tail a great deal of additional cost, or you would wind
9 up with people who could not make a living practicing
10 law.

11 There was a discussion a moment ago why the clerks
12 might be separated from recorders, and I am particularly
13 concerned about costs in Government. If the clerks can
14 both keep the records of the courts and record deeds and
15 other instruments, then I'm in favor of that office being
16 combined to reduce the cost therein, because I am parti-
17 cularly concerned about the cost.

18 As a Clerk of Superior Court, I suppose everyone
19 wants to grind his own axe. I would like to see the
20 Office of the Clerk of Superior Court designated in the
21 Constitution as an elective office and answerable to the
22 people, so that Government could be kept with the people.

23 Gentlemen, that about covers -- and young lady --
24 that about covers all that I have to say, and I shall be

1 happy to answer any questions that you might have.

2 MR. SNOW: Let me make the comment that under all
3 the proposals that we have thus far, all of the judges
4 are going to continue to be elected. This one provision
5 bothers me a little bit. There's one set of judges I
6 don't think should be elected, personally, and that would
7 be the Juvenile Judges. I think they're unique, and I
8 think they should be appointed. But, other than that
9 judgeship, all of them should certainly be elected, I
10 agree with you. We don't have any provisions for any
11 appointments.

12 That may be a different situation on the Magistrate
13 level, but we've provided where they will have limited
14 jurisdiction and will be non-attorneys in that -- in
15 those type situations but, primarily, everybody will be,
16 and will continue to be, elected by the people.

17 The terms are increased under the proposal, but of
18 course, that's still got to go through, also, the poli-
19 tical processes in the General Assembly, and that will
20 have a great deal of discussion when it gets before the
21 Senate and House Judiciary Committees, I'm quite sure.

22 MR. WATSON: I should like to add one other thing;
23 I am not opposed -- in fact, I strongly favor uniformity
24 in our judicial system. I can envision where one judge,

1 say in my County, could give a term of five years for
2 burglary; and in another circuit - in a big city circuit
3 - he might even give probation. Certainly, this is . . .

4 MR. SNOW: Yes, this is creating a tremendous prob-
5 lem in our present systems.

6 MR. WATSON: . . . something that should certainly
7 be straightened out. I'm not opposed to education or
8 higher qualifications for people who hold office. I
9 think they should be increased, improved, from time to
10 time. Educational opportunities should be made available.

11 MR. SNOW: Okay; Joe?

12 MR. DROLET: Would you be in favor of concentration
13 of all the clerk functions within a county, under the
14 Clerk of the Superior Court, so a person could only go
15 one place and be able to file any papers or find any
16 records, or do you believe in keeping what we have now,
17 as far as smaller courts and their own clerks and record-
18 ing systems, or is that something we've been trying to
19 address?

20 MR. WATSON: I'm in favor of keeping the system
21 somewhat as it is, and most necessarily so. Whereas we
22 have a great deal of records to keep now, and the addi-
23 tion of another set of records, or type of records, would
24 in my opinion, be superfluous or be an increase in the

1 workload.

2 MR. THOMPSON: Forgive me for walking out while you
3 were talking. I had to go to the door. I did not mean
4 to be rude. I was interested in your comments on appoint-
5 ment of judicial officers. You said that we are endan-
6 gering the public when we get to the place that officers
7 are appointed.

8 Does your thinking go to the Judicial Selection Com-
9 mission, where a commission selects a number of qualified
10 attorneys to recommend for a judgeship, recommends them,
11 and those people only would be eligible for that posi-
12 tion?

13 MR. WATSON: No, I shouldn't think so because at
14 least the people have a choice among several people who
15 are equally qualified. We do not have total democracy
16 in this Country. We couldn't possibly vote on everything
17 that comes to be considered for law. We do not have com-
18 plete democracy; we do have representatives for the
19 public.

20 MR. THOMPSON: Well, would you like better for any
21 lawyer who feels he is capable of being a judge, to be
22 able to run for it and . . .

23 MR. WATSON: Well, I would like for him to be quali-
24 fied. I mentioned the fact that there should be qualifi-

1 cations -- that they should even be improved or increased
2 from time to time.

3 MR. THOMPSON: Don't you think the people can make
4 a selection as to whether or not a particular lawyer is
5 qualified to be a judge? Isn't that the process normally?

6 MR. WATSON: If he meets certain qualifications as
7 to a number of years of practice . . .

8 MR. THOMPSON: Well, that's written into the law
9 now, . . .

10 MR. WATSON: Yes.

11 MR. THOMPSON: . . . that to be a Superior Court
12 Judge, you have to be a certain age and practice so many
13 years.

14 MR. WATSON: Right.

15 MR. THOMPSON: Is that the only criteria you would
16 place on it, other than approval by the voters?

17 MR. WATSON: Right.

18 MR. SNOW: Any additional questions? Thank you, Mr.
19 Watson. There have been some that have come in since the
20 list was initially prepared. Are there others here who
21 would like to be heard? All right, sir, would you come
22 forward and tell us your name and your position?

23 MR. HUNNICUTT: Thank you for inviting me. My name
24 is Bob Hunnicutt and I'm Judge of the Small Claims Court

1 of Burke County presently, and prior to that I was
2 Recorders Court Judge in Waynesboro, and I'm here today
3 because I'm concerned about several things.

4 Not the continuance, so much, of the court system
5 as it is, because I realize there's an awful lot of over-
6 lapping jurisdictions, and in some places we need stand-
7 ardization and training and so forth, and I'm not against
8 that.

9 As you know, last year the Small Claims Court Asso-
10 ciation, working with some legislators, intended to
11 introduce a bill standardizing the fees and so forth of
12 the Small Claims Court, and because the Judicial Council
13 was considering things, they asked us at that time not to
14 introduce it because, at that time, they didn't want to
15 create any more courts in the state pending the outcome
16 of your findings, so we didn't.

17 The Small Claims Court Association of Georgia is not
18 against improving the education or the standardization or
19 any of those things. As a matter of fact, we're for them
20 but there's a couple of things I would like to point out:
21 number one, you said that some of these Inferior Courts,
22 the funding might be through the State. We don't send
23 anything to Atlanta from down here that we get back all
24 in one piece. In other words, if we send a dollar to

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1 Atlanta, we don't get a dollar back down here. And the
2 Inferior Court system in Georgia - the Small Claims Court
3 and so forth - is currently financed by the people who
4 use it. In other words, the litigants themselves pay for
5 the cost, not the taxpayers in general, which I think is
6 sort of a people tax that is preferable to other forms of
7 tax.

8 We're not against your standardization or education,
9 we think that's great, but I think you ought to look at
10 the operation of some of the Inferior Courts. When a
11 Merchants Association asked me to take my position, they
12 told me it was a two day a week job and now I'm working
13 seven days a week, and we have three full time people in
14 the office. My personal income from the fees, I think
15 over the last quarter, was three hundred and some odd
16 dollars after paying expenses of the office, so I'm not
17 up here to ask you to keep the Small Claims Court so we
18 judges can get wealthy off the fees, but I am concerned
19 about some things.

20 MR. SNOW: Well, we definitely want to abolish fees.

21 JUDGE HUNNICUTT: Well, I think probably . . .

22 MR. SNOW: Put everybody on a salary.

23 JUDGE HUNNICUTT: . . . that might eliminate some
24 temptations, but again, it spreads the cost over people

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1 who are not using the system.

2 MR. SNOW: Yes, sir, but it does one other thing
3 which bothers me tremendously sometimes in Court, and
4 that is as to whom you're representing in the Courts.
5 If you're just representing the Merchants Association,
6 then you've got to worry about that other fellow too,
7 so . . .

8 JUDGE HUNNICUTT: You're absolutely right.

9 MR. SNOW: . . . we do want to see justice done, and
10 we don't want you being paid by one particular group.

11 JUDGE HUNNICUTT: No, we hardly probably as much
12 stuff for individuals in my Court . . .

13 MR. SNOW: I realize that . . .

14 JUDGE HUNNICUTT: . . . as we do for Merchants.

15 MR. SNOW: . . . but you kind of left that open and
16 I just didn't want any misunderstanding about it. But,
17 there are some areas, I think we've got some of the Small
18 Claims Courts that are representing -- some of the J.P.
19 Courts that are representing particular clients that have
20 got a fee right there to pay out, and when it comes to
21 administering justice in that particular court, their
22 justice-is one-sided to those who are paying the fees.

23 JUDGE HUNNICUTT: That's always the temptation on a
24 fee system, I'll agree with that. The other thing . . .

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1 MR. SNOW: I find it repulsive.

2 JUDGE HUNNICUTT: Well, that is the type of situa-
3 tion that our Association would like to see eliminated
4 through qualification standards, training and education.

5 The other thing is the very grass root system where
6 John Jones get picked up on a warrant and carried to the
7 jail; somebody has to set a bond for him or else he stays
8 there, his availability to him of people -- I get up at
9 two or three o'clock in the morning to go to jail to set
10 bonds and issue warrants, and I don't think that you're
11 going to find, in your proposed system, people who are
12 going to be willing to do that.

13 MR. SNOW: How about the J.P.'s in your area, do you
14 take their place now in large . . .

15 JUDGE HUNNICUTT: Well, I issue about half of the
16 warrants - I imagine - in our County. We have several
17 J.P.'s that are inactive. Besides myself, I only know of
18 two in the county that are active and issuing warrants
19 and so forth. It's a matter of people being able to get
20 to some place where they can get justice quickly, or get
21 a warrant quickly, for their protection and so forth.

22 The elimination of the fee system might help some
23 of this, but I never have - in my Court - refused to
24 issue a warrant for anybody because they didn't have any

1 money; I've never refused to file a claim in my Court to
2 anybody who didn't have the necessary fees, because that
3 is not what we're there for.

4 MR. SNOW: I think I indicated earlier before you
5 came in, sir, that I anticipate under any proposal that
6 finally results here, that those of you who have been
7 active in these areas and have been doing this job, will
8 be the logical people that are going to receive either
9 the election or the appointment to continue in these
10 capacities. I can't imagine the courts not continuing
11 on with those who have either been J.P.'s or Small Claims
12 Judges who have been issuing warrants. I know the
13 Superior Court Judges don't want to do it. I don't think
14 there's any question in anybody's mind that they do not
15 want to issue warrants.

16 That came up not long ago when we had this situation
17 in the last session of the Legislature about that. They
18 started going to the Superior Court Judges to issue war-
19 rants. Well, the hollering that was done then by the
20 Superior Court Judges then was tremendous, so there's no
21 question that they're not trying to take any of those
22 responsibilities away, but those of you who have been
23 doing -- you will be, in my opinion, still functioning
24 under any proposed or new article that we may come up

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1 with for the new Constitution, and probably under a dif-
2 ferent name.

3 JUDGE HUNNICUTT: Our county is part of the Augusta
4 Judicial Circuit, and all four of our judges live in
5 Richmond County, so it's difficult to reach one of those
6 in a hurry for various reasons, so I understand . . .

7 MR. SNOW: It would be more difficult to reach them
8 if they had to issue warrants. I don't think you've got
9 any problem there.

10 JUDGE HUNNICUTT: They come down to the jail and set
11 bonds and hold middle hearings to keep people from having
12 to stay over the weekend.

13 MR. SNOW: Okay; Joe?

14 MR. DROLET: Are you in favor of or opposed to the
15 concept of the consolidation of some of these functions
16 under one person?

17 JUDGE HUNNICUTT: No, sir, I'm not as long as we
18 have someone down at the grass roots that you can reach
19 when you need to.

20 MR. SNOW: That's on a twenty-four hour a day basis,
21 it's got to be done that way.

22 MR. HODGKINS: How do you feel, say, if you had a
23 county magistrate system that combines several functions
24 of your office with Justice of the Peace and things of

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1 sort? How do you think the officer or judge, magis-
2 trate or whatever his title is, should be selected?
3 Should he be elected or appointed by someone?

4 JUDGE HUNNICUTT: No, sir, I don't think the Magis-
5 trate should. I think the Magistrate should be appointed
6 possibly by the Superior Court judge, for several reasons.
7 You know, anytime you have a dispute in your court, fifty
8 percent of the people leave unhappy and, for that reason,
9 I don't think the people at the grass roots should have
10 to be elected because then you get into running a popu-
11 larity contest instead of doing your job.

12 MR. SNOW: Sure.

13 JUDGE HUNNICUTT: Our court was created by the act
14 of legislature, as all Small Claims Courts are, and our
15 particular act calls for supervision by the Superior
16 Court Judge who is entitled to come in and make the
17 rules and things, from time to time for the operation of
18 court -- our court.

19 MR. HODGKINS: How would a system, say like an
20 appointment by a Grand Jury, how would that be? How
21 would you react to that?

22 JUDGE HUNNICUTT: Governor Busbee told the Small
23 Claims Court Association some time back that he didn't
24 think the Governor had any business in the appointing

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1 business, and the bill that we introduced -- was going
2 to introduce and we considered having introduced on our
3 behalf -- called for selection by the Grand Jury, with
4 the appointment by the senior Superior Court Judge,
5 and . . .

6 MR. SNOW: I'm inclined to think that's a better
7 way of doing it, too. Okay; any further questions?
8 Okay; thank you so much, Judge.

9 JUDGE HUNNICUTT: Yes, sir.

10 MR. SNOW: Okay; is there anyone else who would like
11 to speak?

12 JUDGE POPE: Hello, Mr. Snow; ladies and gentlemen.
13 This is Iree Pope, Judge, Probate Court, Richmond County,
14 Georgia.

15 MR. SNOW: Okay, Judge.

16 JUDGE POPE: There is one question I'd like to ask,
17 or maybe several. One is why aren't all judges given
18 the same length of time of service, rather than six
19 years and drop others down to four years? It seems if
20 you're going to increase the Supreme Court, Court of
21 Appeals, and all the others; why not increase all the
22 other judges to six years so they won't have to get out
23 and scramble around on off terms? You know, after all,
24 all of us have to be elected and I heard someone say that

1 they agreed on appointments and I'd like to go down on
2 record as saying that I'm opposed to any appointment to
3 any office in which anyone is accountable to the tax-
4 payers for any money that is spent in any way, shape or
5 form.

6 There should not be appointments; there should
7 always be treasurers; if there's any county administra-
8 tors or anything like that, let them run for office the
9 same as we've always had to run for office. I think it's
10 nothing but fair that all offices should be filled by the
11 electorate and not by just a chosen few, just to get
12 political cronies a job occasionally.

13 Now, the next thing is what education do you pre-
14 scribe for the non-attorney probate judges, or any other
15 official? I'm assured -- I saw in here that it is as
16 recommended by the Supreme Court Judge, but what sort of
17 legal training would you recommend in this law?

18 MR. SNOW: Let me answer my feelings about it; I
19 would favor some type legal training that would be as
20 provided by law, that would not be the Supreme Court man-
21 dating any type legal training in it. I'm giving you a
22 personal view; each one here can give you their personal
23 view on that.

24 JUDGE POPE: Well, when we went to Athens the other

1 day, . . .

2 MR. SNOW: There were several different proposals
3 that were made in Athens; such as legal seminars every
4 so often in Athens or some place, or at the universities
5 or junior colleges with prescribed courses that could be
6 held throughout the State, that you could attend for a
7 week or so, or for a weekend, things of that sort.

8 So, there are as many suggestions, I guess, as there
9 are people. That's the complication, but it would need
10 a lot more study than what we've put into that phase of
11 it thus far, as to determining what course of legal
12 studies should be . . .

13 JUDGE POPE: You didn't let me finish what I started
14 to say.

15 MR. SNOW: Okay; I'm sorry.

16 JUDGE POPE: What I took with me to Athens, that you
17 had sent me before, said that the non-attorney associate
18 judges, if they had been in office as much as seven years,
19 I believe, would have the same recognition as an attorney.

20 Now, I have not had time to read this, but I do not
21 see that same proposal in this, in either one. Has it
22 been stricken, or have I overlooked it? I think our
23 years in office should certainly account for something.

24 MR. SNOW: That should be in Draft A.

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1 JUDGE POPE: Then I must have overlooked it. If
2 it's in there, then I apologize. But, certainly, I think
3 that any person who has served a length of time in office
4 should be given recognition for that.

5 Now, as I said, no appointments except perhaps the
6 Governor appointing for an unexpired term of any judge
7 or legislator or something like that. I think the people
8 should vote, and that's the only thing that I'm speaking
9 for.

10 I see a lot of good things in both of them, and if
11 you could just take the good things out of both of them
12 and combine them into one, then you'd have it made.

13 MR. SNOW: We sure would, Iree. Thank you.

14 JUDGE POPE: Thank you, so much.

15 MR. SNOW: By the way, on the first question you
16 posed on the amount of time -- the years that you'd be
17 running for; that, of course, was a suggestion that was
18 made and I think I commented earlier that the length of
19 time here, in terms of offices, will be given much fur-
20 ther consideration as we proceed in this Commission, as
21 well as when it gets to the floor of the House of Repre-
22 sentatives and the Senate.

23 MRS. WILSON: May I ask one question? You said that
24 you don't think that appointments should be made except

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1 when there is a vacancy in the office. That is precisely
2 what is happening now; almost all of the judges are being
3 appointed by the Governor or somebody, and . . .

4 JUDGE POPE: I said to fill an . . .

5 MRS. WILSON: To fill a vacancy.

6 JUDGE POPE: If you will remember, I said to fill
7 an unexpired term.

8 MRS. WILSON: Okay, to fill an unexpired term. That
9 is precisely what is happening now. Most of the judges
10 are being appointed to fill an unexpired term, then when
11 they come up for election, there is no opposition. Now,
12 presumably, all of them are doing such a good job that
13 nobody wants to run against them, but is it necessary to
14 continue with that form, or would you also expect simply
15 a voter review, by people just saying yes or no they
16 approve of you staying in office?

17 JUDGE POPE: I think if your name is on the ballot
18 -- I think it's a law now, that if you don't have opposi-
19 tion, your name doesn't go on the ballot, isn't there?
20 I'm not sure, I don't handle elections anymore, so I
21 don't know.

22 MRS. WILSON: No, I'm just saying do we have to go
23 through the whole election process all the time?

24 JUDGE POPE: Oh, no, no. I'm saying if there is a

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1 vacancy, or if there is a job created someplace, let the
2 person run for it. Don't appoint him, let the people
3 have their say.

4 MRS. WILSON: Without anybody suggesting names that
5 are or might be eligible?

6 JUDGE POPE: I think that's a very good idea.

7 MR. SNOW: The big problem we having in setting up
8 legislation sometimes, when we provide for an election
9 rather than an appointment; sometimes the Governor
10 doesn't sign that particular bill if he can't make the
11 appointment, you see? So, we've run into all kinds of
12 problems there, too.

13 JUDGE POPE: I didn't say not ever make appointments,
14 I didn't mean to say that at all.

15 MR. SNOW: Batch, do you want to finish our conver-
16 sation?

17 JUDGE FLYTHE: No, thank you. I think everybody has
18 asked the questions. I appreciate it.

19 MR. SNOW: We appreciate you being here. Anybody
20 else have anything to say? The Court Reporter has indi-
21 cated to me that he felt like he couldn't miss an oppor-
22 tunity also, to have his say, and he has asked for two
23 minutes.

24 MR. BLANCHARD: My name is Paul Blanchard; I have

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1 been an Official Reporter in Superior Court in Augusta
2 for thirteen years; I am a past member of the Board of
3 Court Reporting of the Judicial Council; I am the current
4 President of the Georgia Certified Court Reporters
5 Association and, in this respect, there is one particular
6 thing that needs attention, whichever of these positions
7 prevail.

8 You talk about wanting to get away from the fee
9 system and the Court Reporter, in most places in the
10 State of Georgia, is still on the fee system. Most Court
11 Reporters do not receive a salary for their duties; that
12 is, official reporters of courts of record -- the State
13 Court and Superior Court are the ones I'm referring to
14 primarily.

15 In the larger communities, they do receive salaries
16 and they do have some fringe benefits. In the vast
17 majority of the State, they don't receive a salary; they
18 receive a per diem figure if they're working in Court.
19 If they're sick and can't work, they make no money. Con-
20 sequently, qualified people who can do a good job -- and
21 there is a great deal of skill involved in doing a good
22 job as a Court Reporter -- consequently, qualified people
23 are not attracted to work in these areas where they can-
24 not make a decent living.

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1 As a result, many people who have very marginal
2 qualifications -- or, frankly in some cases, none at all
3 -- have been filling the positions of Court Reporters in
4 the various Superior Court Circuits throughout this
5 State. This is a crime; it's depriving the parties liti-
6 of an accurate record on which to go forward and try to
7 get regress if they're not satisfied with the jury ver-
8 dict.

9 And, I strongly suggest that a State salary be
10 created; that these officials, who work in Courts of
11 records, be paid a State salary, be taken out of the
12 collection business when they try to collect their fees
13 from the various parties litigate. And, if you have a
14 plaintiff that loses a case, you have a pretty good
15 chance of not collecting your fees from that party.

16 I suggest this strongly be looked into, and that
17 some appropriate action be taken. Now, whether this
18 addresses itself to this body or not, I don't know, but
19 I felt that needed to be said, and that's my two minutes.

20 MR. SNOW: I don't really think it addresses itself
21 to the Judicial Article, as such, since we would not have
22 a place in the Judicial Article for Court Reporters as
23 such, but those representatives in the General Assembly
24 are aware of the problems that exist.

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1 Just as recently as last week, we discussed it with
2 some Court Reporters in my area, who are on a salary,
3 but realize there is a unique situation in other parts
4 of Georgia.

5 MR. BLANCHARD: Thank you.

6 MR. SNOW: There are several Court Reporters who
7 ought to be indicted in other Circuits as well, for doing
8 one thing or another. The D.A.'s Office over there
9 feels everybody ought to spend six months in jail, keep
10 them out of trouble. Isn't that right, Joe?

11 MR. DROLET: It's eight months.

12 MR. SNOW: Eight months now. Anything else? We do
13 have questionnaires over here and, if you would, pick one
14 up. We'd appreciate your filling it out and sending it
15 in to the Commission, and we will appreciate your follow-
16 ing the activities of this Commission as we work through-
17 out the rest of this year and the first part of next
18 year. We will continue this Public Hearings again in the
19 major cities of this State during the next few weeks, and
20 we're anxious to hear from you on part of this Judicial
21 Article as we approach that, both as a Commission and
22 when we do take it over to the General Assembly. We want
23 it to be reflective of what the people of this State feel
24 they want their Courts to do for them, and that's exactly

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1 what the objective is of this Commission. Thank you for
2 coming.

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4 (Meeting adjourned at 3:07 P.M.)

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C E R T I F I C A T E

1
2
3 I, Paul C. Blanchard, do hereby certify
4 that the foregoing seventy-nine typewritten
5 pages constitute a true, accurate and complete
6 transcript of the hearing as set forth herein
7 and that said transcript was typed under my
8 supervision and is correct and complete to
9 the best of my skill and knowledge.

10 I further certify that I am not related
11 to nor employed by any of the parties hereto.

12 IN WITNESS WHEREOF, I have hereunto set
13 my hand and seal this 22nd day of November,
14 1978, at Augusta, Georgia.

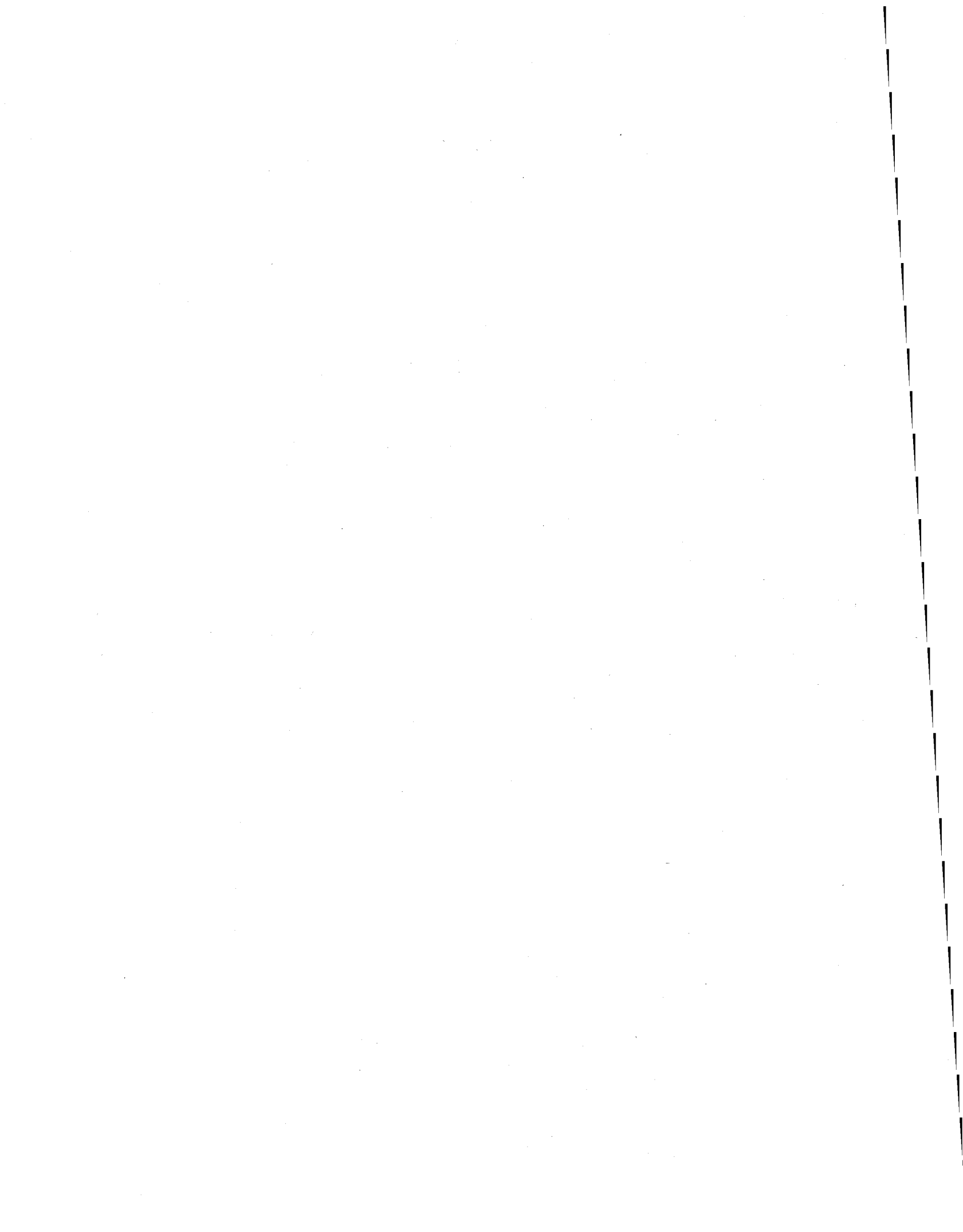
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18 _____
19 PAUL C. BLANCHARD,
20 Certificate Number One
21 Certified Court Reporter

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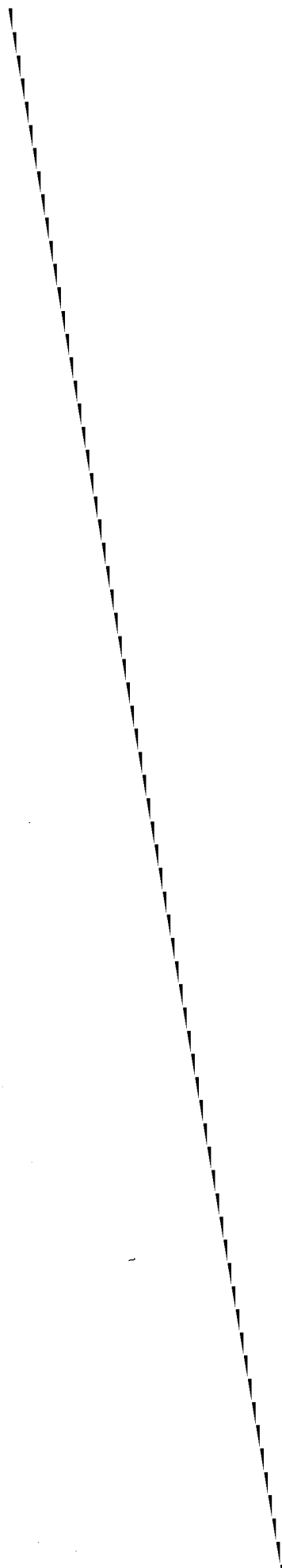
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ARTICLE VI

JUDICIARY

SECTION 1. Courts Enumerated

Paragraph 1. Courts Enumerated. The judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, and the Circuit Courts.

Paragraph 2. Unified Judicial System. For the purposes of administration, all of the courts of the State shall be a part of one unified judicial system under the supervision of the Supreme Court.

SECTION 2. Supreme Court and Court of Appeals

Paragraph 1. Supreme Court. The Supreme Court shall consist of seven justices who shall from time to time, as they deem proper, select one of their members as Chief Justice, and one as Presiding Justice. The Court shall have power to hear and determine cases when sitting as a body under such rules as it may prescribe. A majority of the Court shall constitute a quorum. When a justice of the Supreme Court is disqualified from deciding any case, the remaining justices may designate a judge to participate in said case.

Paragraph 2. Court of Appeals. The Court of Appeals shall consist of such number of judges as may now or hereafter be provided by law. The Court may from time to time select one of their members as Chief Judge and such number of Presiding Judges as may be prescribed by its rules. The Court may adopt such rules of practice in cases before it and the manner of hearing and determining cases as are not inconsistent with the rules applicable to the Supreme Court. The decisions of the Supreme Court shall bind the Court of Appeals as precedents.

Paragraph 3. Term of Office. The justices of the Supreme Court and judges of the Court of Appeals shall hold their offices for eight years, and until their successors are qualified. They shall be selected by the people at a general election on a nonpartisan basis as provided by law. Every vacancy caused by death, resignation or other cause shall be filled by appointment of the Governor from a list presented by the Judicial Nominating Commission. A person appointed shall serve until the first day of January of the year following a general election in which a successor can be selected or as otherwise provided by law.

Paragraph 4. Jurisdiction of Supreme Court and Court of Appeals. The Supreme Court shall have no original jurisdiction, but shall exercise appellate jurisdiction of appeals from the Circuit Court in all cases in which a sentence of death has been imposed; in all cases in which a law has been declared unconstitutional; in all cases from the Court of Appeals as a result of an equal division between the judges of that Court when sitting as a body for the determination of cases; in all cases where the Supreme Court has prescribed by rule that it shall have jurisdiction; and any case the Supreme Court may require by writ of certiorari to be certified to the Supreme Court from the Court of Appeals for review and determination of a question of law.

The Court of Appeals shall exercise general appellate jurisdiction in all cases except those in which jurisdiction has been conferred by this Constitution upon the Supreme Court, or cases where the Supreme Court by rule has prescribed that the Supreme Court shall have jurisdiction.

The Court of Appeals may certify a question to the Supreme Court for instruction, provided that the Court of Appeals shall be bound by any instruction given by the Supreme Court.

The Supreme Court and Court of Appeals shall have the power to issue all writs as may be necessary to the proper exercise of their respective jurisdiction and shall have the authority to hear and determine the same.

Paragraph 5. Disposal of Cases. The Supreme Court and Court of Appeals shall dispose of every case at the term for which it is entered on the court's docket for hearing or at the next term.

SECTION 3. Trial Courts

Paragraph 1. Jurisdiction and Venue. All original jurisdiction shall be vested in the Circuit Courts, and venue shall be as provided by law. There shall be no other trial court.

Paragraph 2. Judicial Circuits. The State shall be divided into judicial circuits consisting of one or more counties. The General Assembly, upon certification of necessity by the Supreme Court, shall have the authority to abolish, create, or modify judicial circuits.

Paragraph 3. Number of Judges and Magistrates. Each judicial circuit shall have such number of judges and magistrates as may be provided by law. The General Assembly, upon certification of necessity by the Supreme Court, shall have the authority to modify the number of judges and magistrates. There shall be at least one magistrate in each county.

Paragraph 4. Term of Office and Election. The term of office of judges and magistrates of the Circuit Court shall be six years and until a successor is duly selected and qualified. Election of judges and magistrates shall be on a non-partisan basis. Judges of the Circuit Court shall be elected circuitwide. Magistrates of the Circuit Court shall be elected countywide.

Paragraph 5. Chief Judge. The judges and magistrates of the Circuit Court in each circuit shall elect biennially a Circuit Court Judge as Chief Judge. The Chief Judge shall exercise in the administration of the circuit such authority and perform such duties as may be prescribed by the Supreme Court. The Chief Judge of each circuit may assign all judges and magistrates to such duties as deemed appropriate, subject to the approval of the Supreme Court.

Paragraph 6. Vacancies in Office. All vacancies in the office of judge or magistrate of the Circuit Court shall be filled by appointment of the Governor from a list presented by the Judicial Nominating Commission. A person appointed shall serve until the first day of January of the year following a general election in which a successor can be selected or as otherwise provided by law.

Paragraph 7. Duties of Magistrates. Magistrates of the Circuit Court shall have such duties as may be prescribed by the Supreme Court.

Paragraph 8. Nature of Employment. All judges, magistrates, and judicial officers of the judicial system shall serve on a full-time basis. Judges and magistrates of the Circuit Court shall not engage in the practice of law during their term of office.

Paragraph 9. Abolition of Certain Courts. On the effective date of this Article all courts of this State except the Supreme Court and the Court of Appeals and the Circuit Courts, shall cease to exist. The General Assembly by law shall provide for the jurisdiction to transfer and complete all pending cases and enforce all prior orders and judgments of such abolished courts and for the transfer of all records and property held by the courts hereby abolished. Provided, however, that any Probate Judge of any county that serves as the administrative officer of a county as of the effective date of this Article shall continue to exercise such authority unless otherwise provided by law. Further provided, however, all Justices of the Peace in office on the effective date of this Article shall remain in office for two years and may continue to collect such fees as provided by law. At the expiration of the two years provided in this Paragraph, the Office of Justice of the Peace shall be abolished.

Paragraph 10. Access to Courts. Any county or municipality may petition the Chief Judge of the circuit to direct that a judge or magistrate sit in any county or municipality on a regularly scheduled basis. Such petition shall be in the form of a resolution approved by a majority of the county or municipal governing authority. The Chief Judge may agree to such a request, but in the event that such request is refused, the county or municipality may appeal for a reversal of the decision to the Supreme Court.

SECTION 4. Compensation, Revenues, and Expenses.

Paragraph 1. Compensation and Allowances of Justices, Judges, and Magistrates. The justices of the Supreme Court, the judges of the Court of Appeals, the judges of the Circuit Courts, and the magistrates of the Circuit Courts shall receive such adequate compensation and allowances as may be provided by the General Assembly which shall not be reduced during their term. Compensation, allowances, and necessary expenses of such justices, judges, and magistrates shall be paid out of the State Treasury.

Paragraph 2. Revenues and Expenses. All revenues derived from the operations of the courts, including all court costs, fines, and forfeitures, shall be apportioned between the State, counties, and municipalities as provided by law. The expenses incurred in the operations of the Circuit Court shall be paid out of the State Treasury.

SECTION 5. Qualifications of Justices, Judges, etc.

Paragraph 1. Age, Citizenship, and Practice of Law. No person shall be a justice of the Supreme Court, a judge of the Court of Appeals, or a judge of a Circuit Court unless at the time of selection such person shall have attained the age

of thirty years, and shall have been a citizen and an active member of the State Bar of this State for seven years, and any judge of a Circuit Court shall be domiciled in the circuit from which selected. No person shall be a magistrate of the Circuit Court unless at the time of selection such person shall have attained the age of twenty-five years, is licensed to practice law in this State, and shall be domiciled in the circuit from which selected.

Paragraph 2. Discipline, Removal, and Involuntary Retirement. There shall be a Judicial Qualifications Commission. It shall consist of seven members, as follows: (i) two judges of any court of record, each selected by the Supreme Court; (ii) two members of the State Bar, who shall have practiced law in this State for at least ten years and who shall be elected by the Board of Governors of the State Bar; (iii) two citizens, neither of whom shall be a member of the State Bar, who shall be appointed by the Governor; and (iv) one other member selected by the Supreme Court. The members in office on the effective date of this Article shall serve out the remainder of their respective terms and until their successors are elected or appointed and have qualified. Thereafter, all members shall serve for terms of four years each and until their successors are elected or appointed and have qualified. Whenever any member ceases to hold the office or to possess the qualifications which entitled him to be appointed a member, his membership shall terminate, and the appointing authority shall select his successor for the unexpired term. No member of the Commission shall receive any compensation for his services but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties. No member of the Commission except the judges shall hold any other public office or be eligible for appointment to a State judicial office so long as he is a member of the Commission. No member shall hold office in any political party or organization. No act of the Commission shall be valid unless concurred in by a majority of its members. The Commission shall select one of its members to serve as chairman.

A justice, judge, or magistrate, of any court of this State, in accordance with the procedure prescribed in this Paragraph, may be removed or otherwise disciplined for willful misconduct in office, or willful and persistent failure to perform his duties, or habitual intemperance; or for conduct prejudicial to the administration of justice which brings the judicial office into disrepute; or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. The Commission may, after such investigation as it deems necessary, order a hearing to be held before it concerning the removal or retirement of any official subject to the provisions of this Paragraph, or the Commission may in its discretion request the Supreme Court to appoint a special master to hear and take evidence in the matter and to report thereon to the Commission. If, after hearing, or after considering the record and report of the master, the Commission finds a good cause therefor, it shall recommend to the Supreme Court the removal, other discipline, or retirement, as the case may be, of any official subject to the provisions of this Paragraph.

The Supreme Court shall review the record of the proceedings of the law and facts, and in its discretion may permit the introduction of additional evidence and shall order removal, other discipline, or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, such official shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, such official shall thereby be removed from office, and his compensation and allowances shall cease from the date of the order.

The Supreme Court shall prescribe rules governing privilege, confidentiality, and practice and procedure in all proceedings brought hereunder. An official who is subject to the provisions of this Paragraph and who is a member of the Commission or Supreme Court shall not participate in any proceedings involving his own removal, other discipline or retirement.

Paragraph 3. Judicial Nominating Commission. The General Assembly shall provide by law for a Judicial Nominating Commission. The Commission shall meet as necessary to recommend a list of candidates to the Governor to fill any vacancies that occur in the office of justice of the Supreme Court, judge of the Court of Appeals, judge of a Circuit Court, and magistrate of the Circuit Court.

SECTION 6. Jury Trial

Paragraph 1. Right of Trial by Jury. The right of trial by jury, except where it is otherwise provided in this Constitution, shall remain inviolate, in criminal cases and on demand in civil cases, but the General Assembly may prescribe any number, not less than six, to constitute a trial, or traverse jury, except in capital felony cases.

Paragraph 2. Selection of Jurors. The General Assembly shall provide by law for the selection and compensation of persons to serve as grand jurors and traverse jurors.

SECTION 7. Schedule to Article VI

Paragraph 1. Effective Date. Unless otherwise provided, this Article shall become effective January 1, 198 (3).

Paragraph 2. Associate Judges. On the effective date of this Article, all judges of the following courts shall become, if they so desire, associate judges of the Circuit Court for the circuit in which they reside: all State Court Judges, all Probate Court Judges, all Juvenile Court Judges, all judges of the County Court of Baldwin County, all judges of the Civil Court of Bibb County, all judges of the Municipal Court of Savannah, all judges of the Athens-Clarke County Magistrates Court, all judges of the Recorder's Court of DeKalb County, all judges of the Magistrate's Court of Glynn County, all judges of the Municipal Court of Columbus, all judges of the County Court of Putnam County, all judges of the Civil Court of Richmond County, all judges of the Magistrate's Court of Rockdale County, and all judges of such other courts as may be prescribed by the Supreme Court.

Paragraph 3. Term of Office and Election of Associate Judges. All judges that become associate judges of the Circuit Court by operation of Paragraph 2 of this Section shall remain in office until January 1, 198 (5), or the remainder of the term of office to which they were selected, whichever is less, and may seek an additional four-year term of office as associate judge.

Paragraph 4. Duties of Associate Judges. Associate judges shall be assigned such duties as prescribed by the Supreme Court, provided, however, that such duties as are assigned each associate judge shall be compatible with the qualifications and experience of individual judges.

Paragraph 5. Assignment of Associate Judges. The Chief Judge of each circuit may assign all associate judges to such duties deemed appropriate, subject to the approval of the Supreme Court.

Paragraph 6. Election of Chief Judge. All Associate Judges shall participate in the selection of the Chief Judge for the circuit in which they serve.

Paragraph 7. Non-attorney Associate Judges. Following the effective date of this Article, the Supreme Court shall prescribe a course of legal training and each non-attorney associate judge shall be provided an opportunity to complete such training prior to January 1, 198 (8). Upon successful completion of the prescribed legal training, non-attorney associate judges may seek selection to the office of judge of the Circuit Court in the general election preceding the expiration of their term. In this general election, non-attorney associate judges, in lieu of the requirement that circuit judges shall have practiced law in this State for seven years preceding selection, may substitute seven years service as a judge of a court of record.

Paragraph 8. Attorney Associate Judges. All associate judges who are active members of the State Bar of Georgia may seek election to the office of judge of the Circuit Court in the general election preceding the expiration of their term.

Paragraph 9. Abolition of Office of Associate Judge. Effective January 1, 198 (9), the office of associate judge of the Circuit Court shall be abolished. Any vacancies in the office of associate judge of the Circuit Court following the effective date of this Article shall not be filled.

Paragraph 10. Magistrates. On the effective date of this Article, all judges of Small Claims Courts, if they so desire, shall become magistrates of the Circuit Court for the circuit in which they reside. All judges, if they so desire, of such other courts as prescribed by the Supreme Court shall become magistrates of the Circuit Court for the circuit in which they reside. Judges of Probate Courts, if they so desire, may become magistrates for the Circuit Court of the circuit in which they reside, provided, however, that no magistrate shall become an associate judge.

Paragraph 11. Term of Office and Election of Magistrates. All judges who become magistrates by the operation of Paragraph 10 of this Section shall remain in office until January 1, 198 (5), or the remainder of the term to which they were selected, whichever is less, and may seek selection to one additional four year term.

The provisions of this Paragraph shall not apply to attorney magistrates, who at the expiration of the term of office to which they were selected shall be eligible for selection to the regular six year term of office as provided in Paragraph 4, Section 3 of this Article.

Paragraph 12. Non-attorney Magistrates. Following the effective date of this Article, the Supreme Court shall prescribe a course of legal training and each non-attorney magistrate shall be provided an opportunity to complete such legal training prior to January 1, 198 (8). Upon successful completion of the prescribed legal training, non-attorney magistrates shall always be eligible to seek election to the office of magistrate of the Circuit Court of the county in which they reside.

Paragraph 13. Judges of the Circuit Court. On the effective date of this Article, all persons serving as judges of Superior Court shall become judges of the Circuit Court. Judges of the Circuit Court shall not engage in the practice of law during their term of office.

Paragraph 14. Number of Judicial Circuits. The number of judicial circuits existing on the effective date of this Article shall continue until modified as provided by this Article.

Paragraph 15. Terms of Judges Elected at the Same Time as Ratification of the Article. The term of office of six years provided in this Article for judges of the Circuit Court shall apply to all such judges elected at the general election at which this amendment is ratified.

Paragraph 16. Court Administrators. The General Assembly, upon recommendation of the Supreme Court, may authorize the employment of court administrators and such other personnel as are necessary for the efficient operation and administration of each judicial circuit.

Paragraph 17. Continuing Education. The Supreme Court may prescribe a program of continuing education for all judges, magistrates, judicial officers, and employees of the judicial system.

Paragraph 18. Protection of Retirement Benefits. The General Assembly, upon recommendation of the Supreme Court, shall provide for the protection of retirement benefits that have been earned by associate judges, magistrates, judicial officers, clerks, and other employees of the courts affected by the operation of this Article. The General Assembly may provide by law for the transfer of existing retirement funds of all persons affected by the operation of this Article from local retirement systems to the appropriate state retirement system or systems.

Paragraph 19. Deletion of Obsolete Language. The Special Commission created by Article XIII, Section I, Paragraph III, shall have the authority to delete from this Article any portion of Section 7, including this Paragraph, when such portions are no longer applicable. The Special Commission may also transfer any paragraph or portion of this Section to any other paragraph or portion of this Article or Section when deemed necessary to accomplish the purposes of such paragraph or portion. All actions of the Special Commission affecting this Article or this Section shall be subject to judicial review.

SUMMARY OF DRAFT A

Draft A creates a single tier trial court system operating under the general supervision of the Supreme Court. Under this draft, terms of office for appellate court (Supreme Court and Court of Appeals) judges are increased from six to eight years. The Supreme Court is granted limited appellate jurisdiction, but may bring other matters within its jurisdiction by writ of certiorari. The Court of Appeals will have jurisdiction for all appeals, excluding those classes of appeals specifically assigned to the Supreme Court.

Circuit Courts of general and original jurisdiction are created, and are to be the only trial courts in the State. Judges and Magistrates of the Circuit Court will be the only judicial officers of the trial courts. Both judges and magistrates of the Circuit Court will be elected on a non-partisan basis for terms of six years. Judges will be elected circuitwide, magistrates countywide. A Chief Judge for each circuit will be elected by all judges and magistrates within that circuit. The Chief Judge will exercise certain administrative authority, and will be able to assign judges and magistrates to duties within the circuit as needed. Magistrates will be assigned such duties as may be prescribed by the Supreme Court. All judges and magistrates will be required to serve on a full-time basis, and will be prohibited from practicing law during their term of office. The Article abolishes all other trial courts, except the Circuit Courts, however, Justices of the Peace will continue to serve for two years. Following the two year period, that office will be abolished.

The compensation and allowances of all justices, judges, and magistrates shall be paid from State funds. All other expenses incurred in operating the judiciary will also be paid from state funds. The General Assembly is granted authority to apportion revenues generated by the courts between the state and local governments.

Qualifications for appellate and Circuit Court judges are generally retained as they presently exist, although state citizenship requirements have been increased from three to seven years and "active membership in the State Bar" for seven years is substituted for seven years practice of law. Magistrates will be required to be licensed to practice law in Georgia.

The present procedure for discipline, removal and involuntary retirement of justices and judges is retained, and magistrates are included under this procedure.

A Judicial Nominating Commission is created, and is designed to provide to the Governor a list of qualified candidates for use in filling vacancies which occur in appellate or trial court judgeships.

The right to a trial by jury is preserved, although the General Assembly can provide for six person jury trials for all but capital felony cases.

The Schedule to Article VI is designed to be a transitional mechanism, to be gradually eliminated as its provisions are no longer applicable.

The Schedule creates the office of Associate Circuit judges, and provides that all judges of State, Probate, Juvenile, and certain "special" Courts will become Associate judges. All Associate judges are eligible to seek an additional four year term, however, the office eventually will be abolished. Non-attorney Associate judges are given an opportunity to complete a course of legal training. Following completion of this course and prior to the abolition of the office, all non-attorney judges will be eligible to seek the office of Circuit Court judge. All attorney Associate judges will also be eligible to seek the office of Circuit judge prior to the abolition of the office of Associate judge.

Associate judges will be assigned duties commensurate with their qualifications and experience, and will be subject to further assignment of the Chief Judge of their circuit.

Judges of Small Claims Courts, and Probate Court judges who so choose, will become Magistrates. Non-attorney Magistrates will be given an opportunity to complete a course of legal training, following which they will always be eligible to seek re-election.

The present Superior Court judges will become Circuit Court judges, and the present judicial circuits will be retained until modified. Judges of Superior Courts elected at the same time the revised Article is ratified will serve the six year term, rather than the present four year term.

The Supreme Court is granted authority to prescribe continuing education for all judicial officers. The retirement or pension benefits of all judicial officers and personnel affected by the Article are expressly protected.

In addition to establishing a single tier trial court system, the Article grants sufficient authority to the Supreme Court to act as the administrative head of the judiciary. By requiring "certificates of necessity" to be issued by the Supreme Court prior to modifying the number of judges or magistrates and circuits, it is felt that such modifications will occur in the basis of proven need. Although the General Assembly may lose a degree of detailed control over the courts, its influence on the judiciary may well be strengthened. Through the appropriations process, the General Assembly will require the judiciary to fully justify its budgetary requests.

ARTICLE VI

JUDICIARY

Section 1. Courts Enumerated.

Paragraph 1. Courts Enumerated. The judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, the Circuit Courts, the County Courts, and such other judicial magistrates as provided by this Article.

Paragraph 2. Unified Judicial System. For the purposes of administration, all courts of the State shall be a part of one unified judicial system under the supervision of the Judicial Council.

Section 2. Supreme Court and Court of Appeals.

Paragraph 1. Supreme Court. The Supreme Court shall consist of seven justices who shall from time to time, as they deem proper, select one of their members as Chief Justice, and one as Presiding Justice. The Court shall have power to hear and determine cases when sitting as a body under such rules as it may prescribe. A majority of the Court shall constitute a quorum. When a justice of the Supreme Court is disqualified from deciding any case, the remaining justices may designate a judge to participate in said case.

Paragraph 2. Court of Appeals. The Court of Appeals shall consist of such number of judges as may now or hereafter be provided by law. The Court may from time to time select one of their members as Chief Judge and such number of Presiding Judges as may be prescribed by its rules. The Court may adopt such rules of practice in cases before it and the manner of hearing and determining cases as are not inconsistent with the rules applicable to the Supreme Court. The decisions of the Supreme Court shall bind the Court of Appeals as precedents.

Paragraph 3. Term of Office. The justices of the Supreme Court and judges of the Court of Appeals shall hold their offices for eight years, and until their successors are qualified. They shall be selected by the people at a general election on a nonpartisan basis as provided by law. Every vacancy caused by death, resignation or other cause shall be filled by appointment of the Governor from a list presented by the Judicial Nominating Commission. A person appointed shall serve until the first day of January of the year following a general election in which a successor can be selected or as otherwise provided by law.

Paragraph 4. Jurisdiction of Supreme Court and Court of Appeals. The Supreme Court shall have no original jurisdiction, but shall exercise appellate jurisdiction of appeals from the Circuit Court in all cases in which a sentence of death has been imposed; in all cases in which a law has been declared unconstitutional; in all cases from the Court of Appeals as a result of an equal division between the judges of that Court when sitting as a body for the determination of cases; in all cases where the Supreme Court has prescribed by rule that it shall have jurisdiction; and any case the Supreme Court may require by writ of certiorari to be certified to the Supreme Court from the Court of Appeals for review and determination of a question of law.

The Court of Appeals shall exercise general appellate jurisdiction in all

cases except those in which jurisdiction has been conferred by this Constitution upon the Supreme Court, or cases where the Supreme Court by rule has prescribed that the Supreme Court shall have jurisdiction.

The Court of Appeals may certify a question to the Supreme Court for instruction, provided that the Court of Appeals shall be bound by any instruction given by the Supreme Court.

The Supreme Court and Court of Appeals shall have the power to issue all writs as may be necessary to the proper exercise of their respective jurisdiction and shall have the authority to hear and determine the same.

Paragraph 5. Disposal of Cases. The Supreme Court and Court of Appeals shall dispose of every case at the term for which it is entered on the court's docket for hearing or at the next term.

Section 3. Trial Courts.

Paragraph 1. Jurisdiction and Venue. Unless otherwise provided by this Article or by law, all original jurisdiction shall be vested in the Circuit Courts, and venue shall be as provided by law.

Paragraph 2. Judicial Circuits. The State shall be divided into judicial circuits consisting of one or more counties. The General Assembly, upon certification of necessity by the Judicial Council, shall have the authority to abolish, create, or modify judicial circuits.

Paragraph 3. Number of Judges and Magistrates. Each judicial circuit shall have such number of judges as may be provided by law. The General Assembly, upon certification of necessity by the Judicial Council, shall have the authority to modify the number of judges. There shall be at least one judge of the County Court in each county. The General Assembly, upon certification of necessity by the Judicial Council, shall provide for the number of County Magistrates and Municipal Magistrates.

Paragraph 4. Term of Office and Election. The term of office of judges of the Circuit Court and the County Court shall be six years and until a successor is duly selected and qualified. Election of judges shall be on a nonpartisan basis. Judges of the Circuit Court shall be elected circuitwide. Judges of the County Court shall be elected countywide. County Magistrates and Municipal Magistrates shall be selected and serve such term of office as may be provided by law.

Paragraph 5. Chief Judge. The judges of the Circuit Court and the judges of the County Court shall elect biennially a Circuit Court judge as Chief Judge. The Chief Judge shall exercise in the administration of the circuit such authority and perform such duties as may be prescribed by the Supreme Court. The Chief Judge of each circuit may assign all judges and magistrates to such duties as deemed appropriate, subject to the approval of the Judicial Council.

Paragraph 6. Vacancies in Office. All vacancies in the office of judge of the Circuit Court and judge of the County Court shall be filled by appointment of the Governor from a list presented by the Judicial Nominating Commission. A person appointed shall serve until the first day of January of the year following a general election in which a successor can be selected or as otherwise provided by law. Vacancies in the office of County Magistrate shall be filled by appointment of the

Chief Judge. A person appointed shall serve the remainder of the term to which appointed. Vacancies in the office of Municipal Magistrate shall be filled as provided by law.

Paragraph 7. Duties of Magistrates. County Magistrates and Municipal Magistrates shall have such duties as may be prescribed by the Judicial Council or by law.

Paragraph 8. Nature of Employment. All judges, magistrates and judicial officers of the judicial system shall serve on a full-time basis; provided, however, that County Magistrates and Municipal Magistrates may be appointed to serve on a less than full-time basis. Judges of the Circuit Court and judges of the County Court shall not engage in the practice of law during their term in office. The Judicial Council may prescribe by rule for the practice of law by any magistrate serving on a less than full-time basis.

Paragraph 9. Abolition of Certain Courts. On the effective date of this Article all courts of this State except the Supreme Court, the Court of Appeals, the Circuit Courts, and the County Courts shall cease to exist. The General Assembly by law shall provide for the jurisdiction to transfer and complete all pending cases and enforce all prior orders and judgments of such abolished courts and for the transfer of all records and property held by the courts hereby abolished. Provided, however, that any Probate Judge of any county that serves as the administrative officer of a county on the effective date of this Article shall continue to exercise such authority unless otherwise provided by law.

Paragraph 10. Court Sessions in Municipalities. Any municipality may petition the Chief Judge of the circuit to direct that a County Magistrate sit in any municipality on a regularly scheduled basis. Any municipality may abolish the office of Municipal Magistrate and may petition the Chief Judge of the circuit to direct that a County Magistrate sit in such municipality on a regularly scheduled basis. Such petition shall be in the form of a resolution approved by a majority of the municipal governing authority. The Chief Judge may agree to such a request, but in the event that such request is refused, the municipality may appeal for a reversal of the decision to the Judicial Council.

Paragraph 11. Appeals. The General Assembly, upon recommendation of the Judicial Council, shall provide for a method of appeals from all decisions of the County Court, County Magistrates, and Municipal Magistrates.

Paragraph 12. Creation of Additional Courts. The General Assembly shall create no additional courts other than those courts provided by this Article.

Section 4. Compensation, Revenues, and Expenses.

Paragraph 1. Compensation and Allowances of Justices, Judges, Magistrates, and District Attorneys. The justices of the Supreme Court, the judges of the Court of Appeals, the judges of the Circuit Court, judges of the County Courts, County Magistrates, and district attorneys shall receive such adequate compensation and allowances as may be provided by the General Assembly which shall not be reduced during their term. Compensation, allowances and necessary expenses of such justices, judges, magistrates, and district attorneys shall be paid out of the State Treasury. The General Assembly, upon recommendation of the Judicial Council, may provide that the compensation, allowances and necessary expenses of Municipal Magistrates be paid out of the State Treasury.

Paragraph 2. Revenues and Expenses. All revenues derived from the operation of the courts, including all court costs, fines, and forfeitures, shall be apportioned between the State, counties, and municipalities as provided by law. The expenses incurred in the operations of the Circuit Courts, the County Courts, and the offices of the district attorneys shall be paid out of the State Treasury.

Section 5. Qualifications of Justices, Judges, etc.

Paragraph 1. Age, Citizenship, and Practice of Law. No person shall be a justice of the Supreme Court, a judge of the Court of Appeals, or a judge of a Circuit Court unless at the time of selection such person shall have attained the age of thirty years, and shall have been a citizen and an active member of the State Bar of this State for seven years, and any judge of a Circuit Court shall be domiciled in the circuit from which selected. No person shall be a judge of a County Court unless at the time of selection such person shall have attained the age of twenty-five years, is licensed to practice law in this State, and shall be domiciled in the county from which selected. Qualifications for the office of County Magistrate and Municipal Magistrate shall be as provided by law; provided, however, that all magistrates, unless members of the State Bar, shall be required to complete such training as may be prescribed by the Judicial Council prior to assuming office and from time to time thereafter. No person shall be a district attorney unless at the time of selection such person shall have attained twenty-eight years of age, shall have been a citizen and an active member of the State Bar of this State for five years, and shall be domiciled in the circuit from which selected.

Paragraph 2. Discipline, Removal, and Involuntary Retirement. There shall be a Judicial Qualifications Commission. It shall consist of seven members, as follows: (i) two judges of any court of record, each selected by the Supreme Court; (ii) two members of the State Bar, who shall have practiced law in this State for at least ten years and who shall be elected by the Board of Governors of the State Bar; (iii) two citizens, neither of whom shall be a member of the State Bar, who shall be appointed by the Governor; and (iv) one district attorney selected by the Supreme Court. The members in office on the effective date of this Article shall serve out the remainder of their respective terms and until their successors are elected or appointed and have qualified. Thereafter, all members shall serve for terms of four years each and until their successors are elected or appointed and have qualified. Whenever any member ceases to hold the office or to possess the qualifications which entitled him to be appointed a member, his membership shall terminate, and the appointing authority shall select his successor for the unexpired term. No member of the Commission shall receive any compensation for his services but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties. No member of the Commission except the judges shall hold any other public office or be eligible for appointment to a State judicial office so long as he is a member of the Commission. No member shall hold office in any political party or organization. No act of the Commission shall be valid unless concurred in by a majority of its members. The Commission shall select one of its members to serve as chairman.

A justice, judge, or magistrate of any court of this State, the Attorney General, and any district attorney, in accordance with the procedure prescribed in this Paragraph, may be removed or otherwise disciplined for willful misconduct in office, or willful and persistent failure to perform his duties, or habitual intemperance; or for conduct prejudicial to the administration of justice which brings the judicial office into disrepute; or he may be retired for disability seriously interfering with the performance of his duties which is, or is likely to become, of

a permanent character. The Commission may, after such investigation as it deems necessary, order a hearing to be held before it concerning the removal or retirement of any official subject to the provisions of this Paragraph, or the Commission may in its discretion request the Supreme Court to appoint a special master to hear and take evidence in the matter and to report thereon to the Commission. If, after hearing, or after considering the record and report of the master, the Commission finds a good cause therefor, it shall recommend to the Supreme Court the removal, other discipline, or retirement, as the case may be, of any official subject to the provisions of this Paragraph.

The Supreme Court shall review the record of the proceedings of the law and facts, and in its discretion may permit the introduction of additional evidence and shall order removal, other discipline, or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, such official shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, such official shall thereby be removed from office, and his compensation and allowances shall cease from the date of the order.

The Supreme Court shall prescribe rules governing privilege, confidentiality, and practice and procedure in all proceedings brought hereunder. An official who is subject to the provisions of this Paragraph and who is a member of the Commission or Supreme Court shall not participate in any proceedings involving his own removal, other discipline or retirement.

Paragraph 3. Judicial Nominating Commission. The General Assembly shall provide by law for a Judicial Nominating Commission. The Commission shall meet as necessary to recommend a list of candidates to the Governor to fill any vacancies that occur in the office of justice of the Supreme Court, judge of the Court of Appeals, judge of a Circuit Court, and judge of a County Court.

Section 6. Jury Trial.

Paragraph 1. Right of Trial by Jury. The right of trial by jury, except where it is otherwise provided in this Constitution, shall remain inviolate, in criminal cases and on demand in civil cases, but the General Assembly may prescribe any number, not less than six, to constitute a trial, or traverse jury, except in capital felony cases.

Paragraph 2. Selection of Jurors. The General Assembly shall provide by law for the selection and compensation of persons to serve as grand jurors and traverse jurors.

Section 7. Rules of Courts.

Paragraph 1. Rulemaking. The Judicial Council shall provide rules of practice and procedure for all courts of the State.

Section 8. Attorney General.

Paragraph 1. Election and Term of Office. There shall be an Attorney General of this State who shall be selected by the people, and as otherwise provided in this Constitution for the selection of executive officers.

Paragraph 2. Duties. The Attorney General shall be the chief legal officer of the State of Georgia and shall provide legal representation to the State of Georgia, its agencies, authorities, boards, commissions, departments, and the officers thereof in connection with official acts in any civil litigation in any court. The Attorney General shall represent the State of Georgia in criminal cases when required by the Governor and in all proceedings before the Supreme Court of the United States. The Attorney General shall give advice, when requested by the Governor or an executive officer of this State, upon any question of law, the resolution of which is necessary to the proper performance of the duties of the Governor or such executive officer. The Attorney General shall also perform such other services as shall be required by this Constitution or by law. Notwithstanding any other assignment of duties by this Constitution or by law, the Attorney General shall nonetheless be an officer of each Court of this State and empowered to perform any service and to exercise any right associated therewith. The Attorney General is authorized to provide such legal assistance to the General Assembly as may be required by law.

Paragraph 3. Qualifications. No person shall be eligible to hold the office of Attorney General unless at the time of selection such person shall have been a citizen of the United States for ten years, and domiciled in this State for six years, shall have been a member of the State Bar of this State for seven years, and shall have attained the age of thirty years.

Paragraph 4. Discipline, Removal, and Involuntary Retirement. In addition to any other provision of this Constitution relating to the disability of executive officers, or to any law enacted by the General Assembly, pursuant to this Constitution and not inconsistent therewith, relating to the suspension of Constitutional officers and department heads, the Attorney General shall be subject to the same provisions for discipline, removal, and involuntary retirement as justices of the Supreme Court of Georgia.

Section 9. District Attorneys.

Paragraph 1. District Attorneys. There shall be a District Attorney for each judicial circuit. The term of office of a District Attorney shall be six years and until a successor is duly selected and qualified. District Attorneys shall be elected circuitwide. All vacancies in the office of District Attorney shall be filled by appointment of the Governor. A person appointed shall serve until the first day of January of the year following a general election in which a successor can be selected or as otherwise provided by law.

Paragraph 2. Duties. It shall be the duty of the District Attorneys to represent the State in all cases in their respective circuit courts and in all appeals to the Supreme Court and Court of Appeals, and to perform such other services as may be required by law.

Section 11. Judicial Council.

Paragraph 1. Judicial Council. There shall be a Judicial Council. The Judicial Council shall consist of eleven members, as follows: (i) the Chief Justice of the Supreme Court, who shall serve as Chairman; (ii) the Chief Judge of the Court of Appeals; (iii) two citizens, neither of whom shall be members of the State Bar, appointed by the Governor; (iv) one judge of a Circuit Court, who shall be selected by all judges of the Circuit Courts; (v) one judge of a County Court, who shall be selected by all judges of the County Courts; (vi) one County Magistrate, who shall be selected by all County Magistrates; (vii) one

Municipal Magistrate, who shall be selected by all Municipal Magistrates; (viii) the Chairman of the Senate Judiciary Committee; (ix) the Chairman of the House of Representatives Judiciary Committee; and (x) one member of the State Bar, who shall be appointed by the Board of Governors of the State Bar. The Council shall elect one of its members to serve as vice chairman. The General Assembly shall provide by law for the terms of office of members of the Council, filling any vacancies that occur on the Council, terminating membership on the Council, and for the compensation and allowances for members of the Council.

Paragraph 2. Duties. The Judicial Council shall have such duties and responsibilities as are provided by this Article or by law.

ADDENDUM

The following language was inadvertently omitted from Draft B:

Section 10. Clerks of Circuit Courts.

Paragraph 1. Clerks. Each county shall have a clerk of the Circuit Court who shall be elected in the manner provided by law and who shall perform such duties as may be provided by law.

SUMMARY OF DRAFT B

Draft B proposes a "two and a half tier" judicial system for the State, a system operating under the general supervision of a constitutionally-created Judicial Council. As with Draft A, terms of office for appellate court judges are increased from six to eight years, and the Supreme Court will function as a "court of last resort."

The major difference between Drafts A and B lies with the system of trial courts. Circuit Courts are continued, however, County Courts are created as are the offices of County Magistrate and Municipal Magistrate. Each county will have at least one County Court judge, and the number of County and Municipal Magistrates will be provided by law. County Court judges and Circuit Court judges will be elected on a nonpartisan basis for terms of six years. Circuit judges will be elected circuitwide, County judges will be elected countywide. County and Municipal Magistrates will be appointed to office and serve such terms as provided by law. (For instance, County Magistrates could be appointed by the Chief Judge of a circuit following recommendations of a county grand jury. Municipal Magistrates could be appointed by the municipal governing authority under the authority of a general law). A Chief Judge for each circuit is also provided in this draft. All Magistrates will be assigned duties by the Judicial Council or by law. All Circuit and County Court judges will serve on a full-time basis, and may not practice law. However, Magistrates may be allowed to serve on a part-time basis, and may be allowed to practice law under restrictions imposed by the Judicial Council. All courts, except appellate, Circuit and County Courts, will be abolished.

Any municipality not possessing a resident Municipal Magistrate or that abolishes the office may petition for a regularly scheduled court session, presided over by a County Magistrate.

The General Assembly, upon appropriate recommendations, will provide a method of appeals from the decisions of County Court judges, County Magistrates, and Municipal Magistrates. The General Assembly is prohibited from creating any other courts.

Draft B also provides that the expenses of operating the judiciary will be paid from state funds, except for the office of Municipal Magistrate. However, the General Assembly is authorized to pay the expenses of Municipal Magistrates when so recommended. Court revenues will be apportioned between the State and local governments as provided by law.

Qualifications for appellate and trial court judges are retained generally as they presently exist. For non-attorney County and Municipal Magistrates, a certain level of legal training is to be required prior to assuming office and periodically thereafter.

Current provisions for discipline, removal, and involuntary retirement are retained, however, all magistrates, the Attorney General and all district attorneys, will be subject to the provisions for discipline, etc.

A judicial Nominating Commission is created, and is designed to provide to the Governor a list of qualified candidates for use in filling vacancies which occur in appellate or trial judgeships. However, vacancies in the office of County Magistrate are to be filled by appointment of the appropriate Chief Judge, while vacancies in the office of Municipal Magistrate will be filled as provided by law.

The right to trial by jury is retained, however, smaller juries may be provided for all but capital felony cases.

The Judicial Council is granted authority to promulgate rules of practice and procedure for all courts.

The Attorney General and District Attorneys, are retained as constitutional officers. Clerks of the Circuit Court are also given constitutional status.

A constitutionally-created Judicial Council is created, and is generally granted administrative authority over the judiciary. The requirement for "certificates of necessity" to be issued by the Judicial Council (rather than the Supreme Court) prior to legislative action modifying the composition of circuits or number of judges and magistrates is retained in this draft.

By the operation of Draft B, a uniform system of County Courts will be created in each county. It is anticipated that all Probate Court judges will become judges of County Courts, as will full-time judges of State, Juvenile, and "special" Courts. Judges of Small Claims Courts will become Magistrates, as will certain Justices of the Peace. Judges of Municipal Courts will become Municipal Magistrates.

The Circuit Courts will retain their jurisdiction in those cases involving significant crimes or issues. The County Courts will exercise broad but limited civil and criminal jurisdiction, perhaps on an exclusive basis. In counties where the County Court judge is an attorney, he could be granted additional jurisdiction. Generally, it is anticipated that the County Courts would be granted civil jurisdiction in matters not exceeding \$2,500.; misdemeanors; local ordinance and traffic violations; probate and administration of estates; mental incompetency hearings; and possibly family and domestic relations. Six person jury trials would be available in the County Courts.

County Magistrates would be granted jurisdiction in small claims matters involving 1,500. or less; accepting guilty pleas for minor misdemeanors, ordinance violations and traffic violations, issuing warrants; and holding commitment hearings. Municipal Magistrates would be limited to jurisdiction of municipal ordinance violations and traffic violations. (The description of jurisdiction granted to each court or judicial officer is intended merely to demonstrate the proposed functions of each court).

ARTICLE VI

JUDICIARY

Section 3. Trial Courts.

Paragraph 1. Circuit Court Established. There shall be one trial court of general jurisdiction within each judicial circuit, as now or hereafter established by law, to be known as the Circuit Court. The judicial power of the State shall be exercised exclusively through the Circuit Court as a court of first instance.

Paragraph 2. Judicial Officers. The judicial officers of the Circuit Court shall be circuit judges, county judges, and magistrates.

Upon the effective date of this Article the following shall become circuit judges: all superior court judges, all state court judges, all juvenile court judges, and all probate judges who shall then be members of the State Bar of Georgia.

On the effective date of this Article, all probate judges who are not members of the State Bar of Georgia shall become county judges, and shall exercise, in addition to their present judicial duties, such civil and criminal jurisdiction as shall be provided by law; provided, however, that the following matters shall be determined before a circuit judge if timely jury demand is made: permanent guardianship of adults; involuntary sterilization or hospitalization for mental illness; the validity of wills; year's support; and the determination of heirs at law. Final determinations of a county judge shall be appealable to the Supreme Court or the Court of Appeals.

On the effective date of this Article, the following shall become magistrates of the Circuit Court: all state court judges and juvenile court judges who shall elect not to become judges of the Circuit Court; all justices of the peace, whether elected or appointed; all other persons then serving as judges, magistrates, or recorders of all courts, including small claims courts, created pursuant to legislative charter or special enactment of the General Assembly, probate judges only excepted. Magistrates shall perform such services on behalf of the court as shall be provided by law.

All persons who shall become circuit judges or county judges shall remain in office until the expiration of the terms for which they shall have been elected prior to the effective date of this Article, and shall be eligible to succeed themselves for successive terms of six years upon election by vote of the people

All persons who shall become magistrates shall remain in office until the expiration of the terms to which they shall have been elected or appointed and, thereafter, being eligible to succeed themselves, until their successors shall be elected by vote of the people as shall be provided by law.

Paragraph 3. Nature of Employment and Qualifications. All circuit judges and county judges shall devote full time and attention to their judicial duties. After the year 1984, no person shall be elected or appointed to the office of circuit judge without having attained thirty (30) years of age, and having been admitted to the practice of law for a period of seven (7) years, and no person shall be elected or appointed to the office of county judge or magistrate without having attained twenty-five (25) years of age. Circuit judges and magistrates shall be residents of the circuit wherein they preside, and county judges shall be residents of the county wherein they preside. The General Assembly, upon recommendation of the Supreme Court, may prescribe additional qualifications for the office of county judge and magistrate, provided county judges and magistrates shall not be required to be graduates of a law school or members of the State Bar of Georgia. The judicial officers of the Circuit Court shall devote their full time and attention to their judicial duties, with the exception of magistrates, who shall serve full-time or part-time, as provided by law. No judicial officer of the Circuit Court shall practice law.

Paragraph 4. Number of Courts and Judges. The General Assembly, upon recommendation of the Supreme Court, may change the composition and number of circuit courts and the number of circuit judges and magistrates thereof; provided no office shall be abolished prior to the expiration of its term.

Paragraph 5. Abolition of County Courts. The office of county judge shall be abolished within those counties wherein probate judges shall become circuit judges by operation of this Article, and in such other counties where the electors shall vote, by referendum as provided by law, to abolish such office. In any county wherein the office of county judge shall now or hereafter be abolished, such office may be re-created by vote of the electors of such county by referendum, as provided by law.

Paragraph 6. Principal Assistants for County Judges. A county judge shall have the power to select a principal assistant to aid in the discharge of the duties of his office, who shall also be under the supervision of the Clerk of the Circuit Court.

Paragraph 7. Continuing Judicial Education.

As a condition of continuation in office, all judicial officers of the Circuit Court may be required to participate in continuing judicial education, as prescribed by the General Assembly upon recommendation of the Supreme Court.

(Additional provisions to be supplied assuring continuation of pension rights, the legality of county supplements, and other matters pertaining to emoluments).

SUMMARY OF DRAFT C

Draft C, which relates only to the trial courts portion of Article VI, creates the Circuit Court as the sole trial court in Georgia, and provides three distinct judicial officers. The judicial officers created by this proposal are Circuit Court judges, County judges, and Magistrates.

The draft provides that present judges of Superior, State, and Juvenile Courts will become judges of the Circuit Court, as will all Probate Court judges who are members of the State Bar. Non-attorney Probate Court judges will become County judges. The draft further provides that judges of all other courts, including Small Claims, Recorders, Municipal, and Magistrate Courts will become Magistrates of the Circuit Court. Also, judges of State and Juvenile Courts may elect to become Magistrates of the Circuit Court, rather than Circuit judges.

Non-attorney judges of Probate Courts who become County judges will continue to exercise their present jurisdiction, and such other jurisdiction as may be provided by law. However, if a jury trial is demanded for certain matters, the case would be transferred to the Circuit Court.

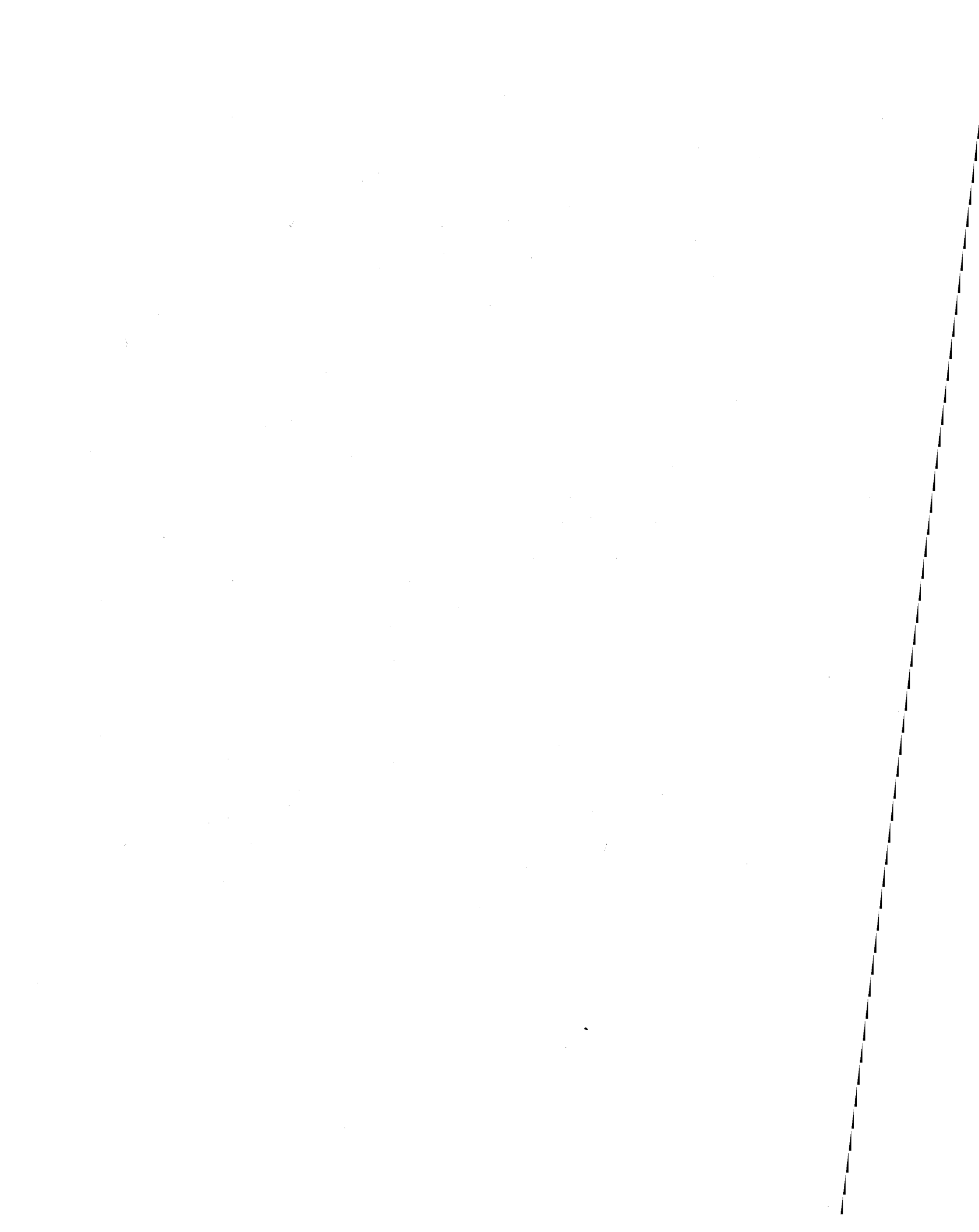
The draft allows all Circuit Court judges to serve successive terms, and Magistrates also will be eligible to succeed themselves in office.

All Circuit and County judges are required to serve on a full-time basis, and are prohibited from engaging in the practice of law. Circuit judges eventually will be required to be at least 30 years of age and to have practiced law for seven years. County Court judges and Magistrates will be required to be at least 25 years of age, and the General Assembly is granted authority to impose other qualifications. However, the draft contains a direct prohibition against requiring either be graduates of law schools or members of the State Bar. Magistrates will be permitted to serve on a less than full-time basis.

In those counties where the judge of the Probate Court becomes a Circuit Court judge, there shall be no County judges. In other counties, the office of County judge may be abolished by referendum and re-created in the same manner. County judges are granted authority to select a principal assistant.

The General Assembly may require continuing judicial education as a prerequisite for judges remaining in office.

In effect, Draft C creates a single tier trial court system with three classes of judicial officers. A local court is retained in virtually all counties through the creation of the office of county judge. In those counties where this office does not exist, the local judicial responsibilities will be met by the Magistrates.



HEARING HAD IN THE CITY OF GAINESVILLE
COUNTY OF HALL
STATE OF GEORGIA

PUBLIC HEARING ON JUDICIAL ARTICLE REVISION
sponsored by Sub-Committee on Judicial Article
on 9 November 1978.

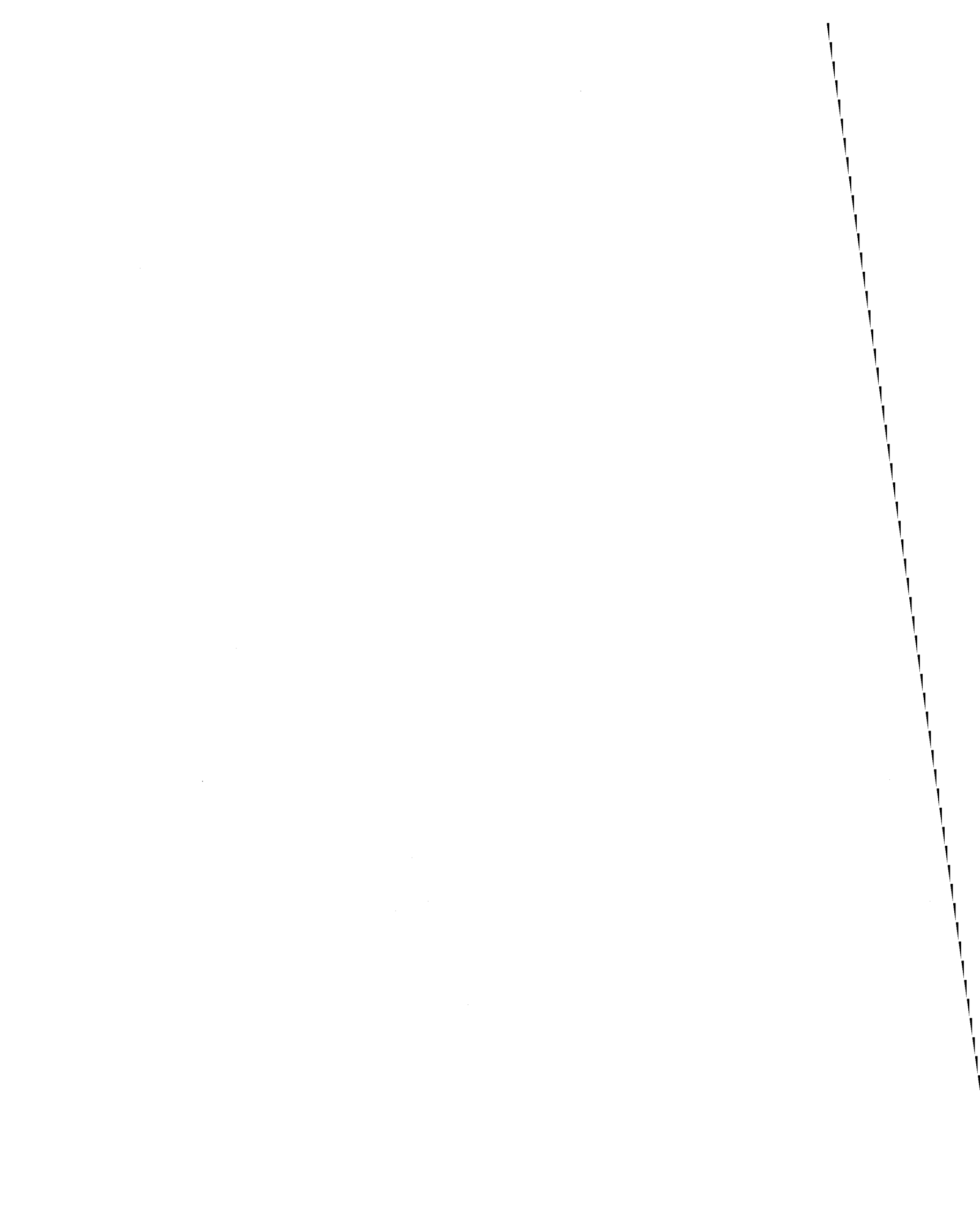
SUB-COMMITTEE MEMBERS PRESENT:

Senator Howard T. Overby	- Vice Chairman, presiding
Judge George T. Smith	- Member
Judge Dorothy Beasley	- Member
Mr. Bob Stubbs	- Member
Mr. L. Martin Hodgkins	- Select Committee Executive Director.

ENDSLEY & ASSOCIATES

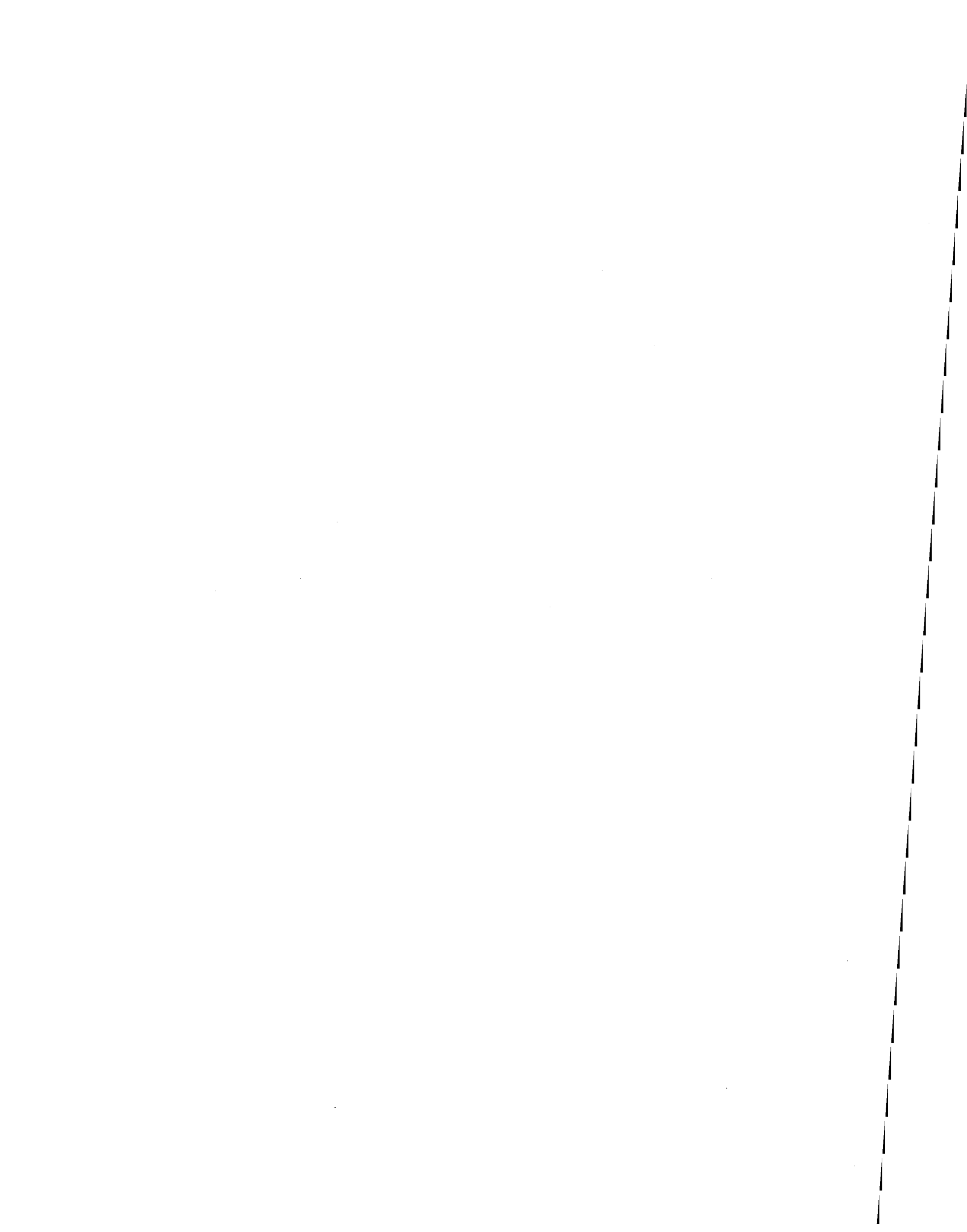
COURT REPORTING AGENCY
DEPOSITION AND HEARING REPORTERS
GAINESVILLE, GEORGIA 30501

(404) 532-7678



1 I N D E X - Of Speakers Appearing Before Sub-Committee along
2 with responses from Sub-Committee Members:

3 <u>SPEAKER:</u>	<u>Page No's.</u>
4	
5 MR. STEVEN B. GILLIAM - Attorney 6 (Hall County - Gainesville)	7 - 18
7 JUDGE C. WINFRED SMITH - State Ct. 8 (Hall County - Gainesville)	18 - 33 50 - 51
9 MR. BAYNE R. BUNCE - City Manager 10 (Habersham County - Clarkesville)	33 - 39
11 JUDGE JAMES E. PALMOUR, III - Superior Ct. 12 (Hall County - Gainesville)	40 - 50
13 JUDGE ROBERT H. HARRIS - State Ct. 14 (Stephens County - Toccoa)	51 - 52
15 JUDGE J. T. WILKES - Probate Ct. 16 (Jackson County - Jefferson)	52 - 54
17 JUDGE ANITA LAWSON - JP Ct. 18 (Jackson County - Jefferson)	54.
19 JUDGE JACK GUNTER - Superior Ct. 20 (Habersham County - Cornelia)	54 - 66
21 MR. CHARLES SMITH - Attorney 22 (Hall County - Gainesville)	66 - 72
23 MR. W. L. APPLE SAVAGE - Mayor 24 (Rabun County - Clayton)	72 - 76
25	



1 This Public Hearing came on to be had in
2 the Courtroom of the Hall County Courthouse located in
3 Gainesville, Georgia at 1:10 p.m., 9 November 1978.
4 -----

5 MR. OVERBY: Ladies and Gentlemen, we running a
6 little bit late. there were three more members of the Committee
7 to arrive, they've probably been delayed, but in the interest
8 of time and with the pretty good number of people we have
9 here we'll proceed. First let me state that I certainly
10 appreciate all of you coming. Wayne Snow is Chairman of the
11 Committee and was not able to come today and I'm presiding
12 as Vice-Chairman of the Committee. You are familiar with the
13 Committee on Constitution Revision headed up by our Governor,
14 and this is what we refer to as the Subcommittee on Judicial
15 Article, and we have present today Judge George T. Smith of
16 the Court of Appeals, and to his right Judge Dorothy Beasley
17 of the State Court of Fulton County, and to her right Bob
18 Stubbs who is Deputy Assistant Attorney General on the Committee,
19 and they'll be here to answer questions that you ask, and we
20 do have our Executive Director Mr. Marty Hodgkins, and I'm
21 going to recognize him, but before doing that, we are -- the
22 Committee is meeting trying to hear, all over the State.
23 Certainly we could not appear in every town in the State of
24 Georgia but we have tried to cover it as much as possible.
25 We've already had a meeting in Augusta, Savannah, and this is

1 the third one here, and then -- in trying to get it publicity
2 and see, because the matter is something that reflects itself
3 to everybody in Georgia what this Committee is charged with
4 the responsibility of doing. I'm going to recognize our
5 Executive Director, Marty Hodgkins, at this time for a few
6 remarks and fill you in on the background. Marty?

7 MR. HODGKINS: Thank you, Senator. Briefly I'd
8 just like to give you all a little background on some of the
9 issues, principles, whatever the Committee has used in reaching
10 its recommendations, making certain determinations and electing
11 to chose to follow certain patterns. I'll just run over these
12 real briefly, and if you have any questions just ask them.
13 The first point is that the Committee has felt throughout
14 the past eighteen months of work that to the maximum extent
15 possible Judges and other Judicial Officers have a judicial
16 function to serve on a fulltime basis, feeling that parttime
17 Judges perhaps do not devote enough time to their duties and
18 it would be more professional to have fulltime Judges and
19 Judicial Officers wherever possible. The second point is
20 that the Committee felt the Judges and Judicial Officers
21 should be professionally trained; not all should be licensed
22 Attorney's. For Judges who are not Attorneys should be required
23 to attend certain training programs either prior to or
24 immediately upon assuming office, and then thereafter periodically.
25 The feeling is that changes in the Law, Statutes and everything

1 affect people so much that people should be trained when they
2 do serve as Judicial Officers. The third point they felt
3 very strongly; financing the Court system should be the
4 responsibility of the State rather than the local Governments.
5 They feel this is one way to help professionally -- salaries,
6 and really the guts, makes it a State Function and should be
7 paid for by the State. The Committee has also felt the
8 election of Judges should be obtained ^{/by the} electorate, however
9 feel it should be on a non-partisan basis rather than partisan
10 basis. The Committee feels that Judges who are elected on a
11 non-partisan basis allows the voters who are actually looking
12 at the candidates to select a candidate with greatest quali-
13 fications and the candidate that perhaps takes those positions
14 is most --. The fifth point the Committee is also talking
15 about is the use of the fee system, it should not be retained
16 as a means of compensating Judicial Officers. Presently in
17 the State there are a great number of Judges compensated by
18 a fee system. The Committee feels that this should not -- the
19 ability of a person to pay should not have any real bearing
20 on the judicial process. The sixth point, jurisdiction of
21 Courts of the same type and same class should be uniform,
22 and that to the extent possible and feasible within the system
23 of Government -- that the judicial branches of the State
24 Government of Georgia should be established as a separate
25 branch, and by this it doesn't mean they have total power and

1 run themselves without any interference from the Executive
2 and Legislative Branches, but they should have a degree of
3 control over internal administration, and one last point.

4 AUDIENCE: Sir, we're having a terrible time
5 hearing.

6 REPORTER'S NOTE: At this time Mr. Grady
7 Watson, Clerk of the Superior Court of Hall County arose from
8 the audience and attempted to adjust the microphone system.

9 MR. HODGKINS: This better? The final point is
10 the Committee has felt the number of Courts should perhaps
11 be reduced, To include all Courts in Georgia there are
12 probably about twenty-five hundred Courts today. The Committee
13 has also discussed some other things, although they are of
14 statutory nature, but they feel that these points perhaps go
15 along with some of the recommendations that they have tentatively
16 adopted. One that we discussed is limited establishment of
17 a uniform system of fines, fee's , bonds and this type of
18 thing, especially traffic related. A second point in discussion
19 of making certain traffic cases an administrative procedure
20 rather than judiciary, and finally we ask -- that's essentially
21 what remarks I have. The only other thing I ask is that when
22 you do step up to make presentation or remarks and ask questions,
23 please introduce yourselves so our Court Reporter can get your
24 full name.

25 MR. OVERBY: I would like to recognize everybody, I

1 appreciate them all coming. I particularly want to recognize,
2 we have a Committee from the Grand Jury and I think it's very
3 significant that they see fit to have a Committee to come up
4 and attend and we're delighted to have you. Also delighted
5 to have the number of our County Officials that are here from
6 Hall County, and have a number of County Officials from other
7 Counties that are present. We have one of our Members of the
8 Legislature, Jerry Jackson is here, Judge Kenyon of the Superior
9 Court is in attendance, the Clerk of our Superior Court Mr.
10 Grady Watson is here, Justice of the Peace Tankersley is in
11 the rear, and we have a number of other Officials who are
12 here, and I again say we're delighted to see the large atten-
13 dance that we have, a little bit larger than we had at some
14 of the other places. I don't know whether or not it hadn't
15 been sufficiently publicized in some of the other places or
16 not, but we do appreciate you coming, and if there are any
17 questions -- now I'm going to recognize these who have turned
18 in on the list to be heard. The first one we have is a Member
19 of the Local Bar, Steve Gilliam, representing the City Attorney's
20 Office, and Steve, we'll recognize you at this time.

21
22 ----- The remarks of Person's to be Heard
23 before the Committee begins on Page 7 ---
24
25

1 MR. GILLIAM: Thank you.

2 MR. OVERBY: Will you identify yourself for the
3 record, Mr. Gilliam?

4 MR. GILLIAM: My name is Steven B. Gilliam, I'm
5 here for John Smith who's the City Attorney for the City of
6 Gainesville, Georgia. Judge Smith, Judge Beasley and Mr.
7 Stubbs, I have several questions just to ask you with respect
8 to how the abolishment of the Municipal Courts would be
9 affected, and how fines, forfeitures and monies presently
10 used from those fines, forfeitures to support certain local
11 law enforcement activities, what affect this will have. My
12 first question would be, if the Municipal Court's are abolished,
13 and it's my understanding that under, I believe, two of these
14 proposals that it would be abolished all Municipal Court's,
15 is that correct?

16 JUDGE BEASLEY: (Indicated yes).

17 MR. GILLIAM: And I believe; I just noticed it
18 today, that there is another proposal that would have a separate
19 Magistrate system for a Municipal Court, is that correct?

20 JUDGE BEASLEY: (Indicated yes).

21 JUDGE SMITH: But I oppose abolishing Municipal
22 Courts so from now on any answer I give would be totally
23 biased in your favor.

24 MR. GILLIAM: I guess the question, it would be
25 directed toward Proposal A and Proposal B, under those two

1 proposals who would be responsible for the enforcement of the
2 Municipal Ordinances, and this would not only be the Municipal
3 Ordinances for traffic offenses but also violations of
4 Municipal Ordinances that pertain to other things, such as,
5 I assume, you know, your zoning laws, if there are certain
6 violations, and if there are violations of certain civil
7 ordinances and things like that, who would be responsible
8 for the enforcement of these?

9 MR. STUBBS: Are you talking about in terms of
10 police enforcement or Hearings involving the Judicial Proceed-
11 ings?

12 MR. GILLIAM: Say, in certain circumstances, say
13 for example if you have certain violations of a Sewer
14 Ordinance, if you have too much discharge or something, and
15 under certain circumstances it allows for a fine within the
16 Municipal system; this is not a traffic offense but yet it
17 can be referred to, say, like your local Municipal Judge to
18 be heard as a violation before him.

19 JUDGE SMITH: What you're really talking about is
20 who's going to enforce the Criminal Ordinances of the City?

21 MR. GILLIAM: Yes, sir.

22 JUDGE BEASLEY: Let me try to answer that as one
23 of the Judges on the lower level. Under one of the plans,
24 and it really doesn't matter whether it's A, B, C or whatnot,
25 as a matter of fact there's now a fourth proposal, a Fifth

1 Plan , and there probably will be others, we don't know, but
2 at any rate one of the concepts is to have every type of
3 case in one Court, so obviously it would take care of that
4 too, and traffic for example would be a decision of the
5 Circuit Court, or what we now have as the Superior Court,
6 but everything would be general jurisdiction, Judges, and
7 they would handle everything from the smallest traffic,
8 and ordinance violations all the way up to the **murder** and
9 rape and robbery and hundreds of thousand dollar cases, and
10 just rotate or do an administrative thing, whichever way
11 the Administrative Judge of that Circuit would desire, would
12 find it feasible and flexible. Under another of the proposals
13 there would still be a separate Municipal type Court, or a
14 separate lower limited jurisdiction Court, and then again
15 there is a proposal that we would have a Municipal Court if the
16 Court system is addressed to have one, and it approves that
17 the Municipality needs to have one, a separate Municipal
18 Court, but at the -- under all the present proposals the
19 Municipal Court would be subduded in the unified system, and
20 obviously the jurisdiction would follow.

21 MR. GILLIAM: Okay, if I could follow up on that
22 then; assuming that they are abolished and is placed in one
23 unified Court system would it be the Circuit Court Judge that
24 would administer -- that would deal with violations, or would
25 there be another Judge under him that would be specifically --

1 other proposal there would be a one unified Court System,
2 and then if a need was determined to create a Magistrate or
3 a Municipal type Court, then it could be done -- it could be
4 created if there was a need. Who would this proposal be to
5 and who would make the determination whether there was a need,
6 and who would create it?

7 JUDGE BEASLEY: Well, the creation of any Court
8 really couldn't be done under the Constitution, it would be
9 just a part of the existing Court structure in that particu-
10 lar area, it would still answer to it, but you have a separate
11 -- it would really be like a division , and the Magistrate's
12 again -- the Magistrate that would be in charge of it would
13 be either elected or appointed by the Superior Court depending
14 on which system you select, that is, do you want to appoint
15 Magistrate's or do you want them elected, but the creation
16 of any additional Judgeship's or sub-divisions of that type
17 would be upon certificate of necessity from the head -- the
18 Administrative Head of the State to the General Assembly.
19 You wouldn't have to do that with the Municipal ones however,
20 that would be -- the buck would stop with the Administrative
21 Head of the Circuit Court.

22 MR. GILLIAM: Okay, I'm not sure if I understand
23 your question -- your answer. Would a Municipality, who would
24 they turn to to have --

25 JUDGE BEASLEY: The Superior -- what would be the

1 Superior Court.

2 MR. GILLIAM: So the Municipal Governing Authorities
3 would have to come to the Circuit Court Judge --

4 JUDGE BEASLEY: Correct.

5 JUDGE SMITH: Senior Court Judge.

6 MR. GILLIAM: -- and state that they wanted a --

7 JUDGE BEASLEY: Separate Municipal Court.

8 MR. GILLIAM: -- separate Municipal Court?

9 JUDGE BEASLEY: Right.

10 MR. GILLIAM: Then he would make a determination
11 of whether there would be a need for that. Then he would
12 recommend that to who, or whom?

13 JUDGE BEASLEY: Well, he would have the authority
14 to do it.

15 MR. GILLIAM: Himself, without going to the General
16 Assembly or anything?

17 JUDGE BEASLEY: Right.

18 MR. GILLIAM: Okay. Under any of these proposals
19 I guess the most important question for the Municipalities
20 would be -- at the present time of course they administer
21 their own fine and forfeiture system, at the present time
22 they retain this money for violation of Municipal Ordinances.
23 Under any of the proposed systems how would these fines and
24 forfeitures be handled, and I make specific reference to one
25 of the proposals that's -- Section 19, I can't recall the

1 Article, it's there toward the end, where it states -- I
2 believe this is under Proposal A, Paragraph 19 of Article --
3 of Section 11, Schedule through Article 6. Paragraph 9 states
4 all revenues derived from the operation of the Courts, in-
5 cluding all Court costs, fines and forfeitures shall be
6 apportioned between the State, Counties and Municipalities
7 as provided by law. What I'm asking with reference to that
8 is, is there a proposed law that would apportion this, or is
9 there again an Administrator that would be apportioning it
10 and how would this be determined?

11 MR. STUBBS: Exactly how it would be determined I
12 don't think we could answer right now. The concepts of one
13 of the fundamental principles that was substantially agreed
14 upon by the Committee was that the financing of the system
15 would be at the State Level, and that that system embraced
16 the local Courts and that would also absorb fines and for-
17 feitures, which really is not all that explosive because the
18 proposal was made four or five years ago as I recall by a
19 Committee of the County Commissioner's Association down in
20 Calloway Gardens to a group representing the Judges and the
21 Judicial Council for planning purposes to determine which
22 method of financing would be better. I don't know that any
23 dollar and cents valuation of cost was ever made, but at least
24 it was recognized that if the State took over the local Court
25 system then the fines and forfeitures that were created through

1 that Court system would go to the State rather than being
2 retained locally. Now, going further with the idea that this
3 would be a State administered -- a State financed system
4 within the Judicial Branch after the appropriation by the
5 General Assembly the management of the Judicial Branch's
6 budget would be essentially within the Administrative Office
7 of the State Courts, but beyond that I think we're getting
8 into the specifics that either legislation would take care
9 of or Rules of Court, and I don't know that anybody on the
10 Committee has gone that far in his or her thinking.

11 MR. GILLIAM: Well, I guess my question is; it
12 states that it will be apportioned as provided by Law. There's
13 no consideration then been given to a Law that would determine
14 what apportionment would be made?

15 JUDGE BEASLEY: I might note right here since you
16 raised that question, that wherever it says in these proposals
17 that it's to be done according to Law, or as provided by the
18 Law, that -- those details have not been worked out, there are
19 no accompanying legislative proposals yet, but the idea is
20 that it would be up to the General Assembly to decide the
21 apportionment or whatever it is. Whenever this plan says,
22 as provided by Law, that would leave it to the General
23 Assembly as opposed to putting it in the Constitution so that
24 you have a flexibility of change.

25 MR. GILLIAM: I guess one thing again that Municipalities

1 are extremely concerned about is this type of system would
2 of course take away their source of revenue from the fines
3 and forfeiture system -- system of the Court's here. Then
4 have any -- has any discussion, or any proposals been made
5 to offer them alternate methods of funding through these
6 various proposals that would make up for this loss of revenue?

7 MR. STUBBS: Not through this Committee, and I
8 might say, and I don't want to sound like a Preacher or any-
9 thing else but one of the thoughts that came out it was that
10 the Judicial System shouldn't be in the business of making
11 money, and some of the complaints that have filtered up
12 through the various levels of Government and have really
13 brought about the consideration of State Financing has been
14 the fact that many Municipalities use their Court System to
15 make money, and I'm not saying it shouldn't be economically
16 sound, and I don't really want to make a value judgment on
17 it one way or the other, but merely to report that that is
18 a complaint that we hear quite often, and one of the approaches
19 taken by the Committee was to look at State financing to
20 obviate that system and to eliminate that type of criticism,
21 but that doesn't answer your question, and where your money
22 would come from I don't know, but the legislature has been
23 imaginative before.

24 JUDGE SMITH: But I would imagine they'd say raise
25 it at home, more taxes. I don't know how in the hell you'd

1 get it out of Atlanta.

2 MR. GILLIAM: Is this record going to be kept open
3 for further response, that's my last question.

4 MR. STUBBS: You mean today's proceeding?

5 MR. GILLIAM: Yes, sir. I mean, is there someone
6 who can be contacted, letters written too.

7 MR. STUBBS: Oh, lord, yes.

8 JUDGE BEASLEY: Marty.

9 MR. STUBBS: Marty.

10 JUDGE BEASLEY: For anybody that wants to make a
11 note of it, it would be Marty Hodgkins (H O D G K I N S -
12 spelled), right? And what is the new address --

13 MR. OVERBY: We'll make that available to anybody,
14 Marty's address, where you can communicate with him.

15 MR. STUBBS: We've had so many proposals that for
16 the Committee to undertake -- the Committee's been unable
17 to reach a conclusion on a number of things at the trial
18 level jurisdiction is probably the most -- I don't know,
19 Dorothy said, four, I must have nine or ten proposals that
20 have been made in respect to the management of the trial
21 jurisdiction, both in terms of adjudication and fragmentation,
22 going both ways, carving out local jurisdiction and Magistrate's
23 jurisdiction, Special Divisions. We've received information
24 from several other State's which have recently modified their
25 judicial structure in an effort to try to be responsive to the

1 precept which we got which was to propose something which
2 would represent the best of all possible worlds.

3 JUDGE BEASLEY: I want to make one comment on these
4 fee's and forfeiture question. The overall concept is that
5 the Judicial Branch, the Court System, the Judicial Branch
6 is a separate branch of Government, starting off with that
7 principle, and consequently it should be funded by the State,
8 and its operation should be funded by the State, and as a
9 part of that what it receives in the way of fines and for-
10 feitures and penalties and sentences and everything else
11 should be -- and costs -- should be then into the State
12 Treasury for that purpose to help run it, and that it should
13 not be done on a local level because if you have it on a
14 Statewide level the concept is that then there would be more
15 uniform delivery of the judicial services all over without
16 regard to how much money is coming in from that locality.

17 MR. GILLIAM: But wouldn't you then also be funding
18 the State system by fines and forfeitures just as you would
19 even now on the local level?

20 JUDGE BEASLEY: If you want to talk in terms of
21 just a Municipality, yes, it would be contributing to the
22 overall judicial system, but it is part of that. After all
23 they are -- as you know as a Lawyer a Municipality is not
24 a separate sovereign, it is part of the sovereignty of the
25 State. It's not like the difference between Federal Government

1 and State, which is two separate sovereigns. The Municipality
2 is only a part of the State Sovereignty, so this carries
3 through that theory.

4 MR. GILLIAM: Okay. Thank you for your time.

5 MR. OVERBY: Thank you, Mr. Gilliam. I'm going
6 to recognize next the Judge of our State Court here in Hall
7 County, Judge Winfred Smith.

8 JUDGE WINFRED SMITH: My name is C. Winfred Smith,
9 I'm the Judge of the State Court of Hall County. Before I
10 begin what remarks I have I'd like to say, my predecessor
11 that just spoke before me, that I'd hate to see the Municipal
12 Court of the City of Gainesville abolished because I was the
13 one that created that Court. I was the Judge of the last
14 Court of Recorder's Court that created that Municipal Court,
15 so I have a selfish motive first there, secondly it's doing
16 a good job down there. The first question that I have is whose
17 brainchild is this to start off with? I can answer that, but
18 I wonder if the Committee can answer it. Aren't we really
19 talking about procedural questions of the Court rather than
20 a reform, unified, simplified system of the Judicial System
21 of Georgia? We're really talking about Rules of Court and how
22 you practice in that Court or this Court and the other Court
23 more so than we really are the judiciary itself. Just like
24 the general public sometimes does not distinguish between the
25 judicial system and the penalization system. The tend to think

1 that the penalization is a part of the judicial system, which
2 is entirely wrong. Once the Judicial System gets through
3 with those that appear before it then the penalization system
4 or another department of Government takes them, and if they
5 turn them loose before the Jury gets out of the box the Judge
6 or Jury can't help it. The first thing is, I object to the
7 whole thing, both in toto and in each and every Article or
8 Section of this proposal. Another question I would like to
9 pose at this time, is you have come to Gainesville and we
10 welcome you with all the heartily welcome we can extend to
11 you and hospitality, but you bring to us three proposed
12 Articles here of our Government; Constitution for the State
13 of Georgia, how confusing can you be? How can you ask us,
14 the public, to put a stamp of approval on anything that you
15 can take back to the full Committee when part of us may agree
16 with part of each part of the three agreements, but when you
17 put those parts together that one agreement we've agreed on
18 is bad for the State itself. Here we don't even know how to
19 chose between three agreements. Another thing that I feel
20 is very --

21 /Judge Smith,
22 JUDGE BEASLEY: /Can I interrupt right there, please,
23 where you are before I start forgetting your questions?

24 JUDGE WINFRED SMITH: Yes.

25 JUDGE BEASLEY: It's, you know, like the lawyer
who asked the poor old witness sixteen questions, and he

1 doesn't know where to start with his answer.

2 JUDGE WINFRED SMITH: Yes, ma'am.

3 JUDGE BEASLEY: With regard to having the group in
4 Gainesville, that is, those people who are interested in
5 agreeing on anything, the objective of the Hearings is to
6 begin to get some public input into what the public believes
7 is necessary to improve the existing judicial services in
8 the State, if they perceive there is some improvement necessary.

9 JUDGE WINFRED SMITH: Judge Beasley, I hate to
10 interrupt, but I'm not limiting this to Gainesville and Hall
11 County, I'm taking it to the State of Georgia, and you have
12 heard me speak on this subject on many occasions, and you
13 know what my feelings are on it, and I do not want to interrupt
14 but I would like to state this, that as far as the structure
15 itself, in this structure we have abolishing Courts in this
16 State, and no one yet at any meeting has ever given any reason
17 why any of the Courts ought to be abolished. Second, what
18 this is doing is even the Attorneys, the Judges, and the
19 Honorable George T. Smith, one of our Appellate Court Judges
20 from the Court of Appeals is here that knows that all the
21 Members of that Court is not in agreement with all of this,
22 that all the Supreme Court Justices are not in agreement with
23 it, the Superior Court Council, all of them that we've found
24 in Athens are not in agreement with it, the State Court Judges
25 Association and Solicitors are not in agreement with it, the

1 Juvenile Courts Council is not in agreement, we found that
2 out in Athens, and then when we all got back together and
3 Senator Overby presided we come up with nothing, and we
4 appreciate it, we appreciate -- and I appeared before the
5 Grand Jury yesterday, and I asked if they'd come up if they
6 could, or send a Committee to see a part of their Government
7 in operation, and I appreciate you all being here, and this
8 is what I'm trying to get across that we're building something
9 here now that we've got to live with for years and years to
10 come, and I think we're talking about procedural matters more
11 than structure. Now if we're talking about a unified system
12 here so that someone can manage this thing, and whoever is
13 going to manage it we're going to have to hire somebody that
14 majored in Business Administration. We don't need a Lawyer
15 or a Judge to administer it we need an Administrator, and I
16 don't think we need Court Administrator's, I'm opposed to
17 them. We need them like we need a hole in the head. If the
18 Judge can't perform the duties of his own Court that he's
19 elected to do then he ought not be in the Office, but what
20 I'm trying to say here, that you have brought three proposals
21 and no one will know when you leave today here in Gainesville,
22 Savannah, or Athens or Rome, or wherever you hold, if you
23 submit the same three how to give you any input on what part
24 they agree on and what they don't.

25 JUDGE BEASLEY: That's one of the reasons why the

1 principles have been drawn out, and that it really should
2 be a discussion of principles that are involved. The various
3 proposals simply work out the various principles. The questions
4 should be directed to the principles themselves, whether the
5 people want for example to have all fulltime Judges, or want
6 all of their Judges to be legally trained, these are the
7 kind of things that are then worked out in detail, as well
8 as -- that was the reason we drew up the questionnaire, because
9 it takes each one of these concepts, and do you agree or dis-
10 agree, then the proposals work those things out, but it's
11 really more than a change in procedure, because for example,
12 it would make all -- let's say we kept the State Courts, it
13 would make all State Courts of equal jurisdiction. Now as
14 you know, I'm sure your jurisdiction is probably different
15 than mine --

16 JUDGE WINFRED SMITH: Yes, ma'am, we're a Constitutional
17 Court.

18 JUDGE BEASLEY: -- and the idea being that all the
19 State Courts in the State would have the same jurisdiction.

20 JUDGE WINFRED SMITH: Well, this is why I say it's
21 procedure, we're not talking about structure.

22 JUDGE BEASLEY: It would be more than procedural
23 though it's a variable --

24 JUDGE WINFRED SMITH: It's procedural, that's
25 procedure, that's not structural.

1 JUDGE BEASLEY: Well, if all of us were answerable
2 to a single Administrative Head it would be more than procedural.

3 JUDGE WINFRED SMITH: No, ma'am, I don't want a
4 King on the Throne telling me what to do if the people elected
5 me.

6 MR. STUBBS: Judge, let me respond to one of your
7 comments as to where did this thing begin. It began in terms
8 of a formal audittrail, if you will, in 1975 and '76 Sessions
9 of the General Assembly, which prepared -- reviewed and
10 prepared and submitted for ratification by the people the
11 1976 Constitution, and as a part of the Resolution accompanying
12 that a Select Committee was resolved and that in turn invited
13 a number of Agencies having interest in the Judicial Article
14 to submit proposals to a Committee -- a Sub-Committee of that
15 Select Committee which was to review those proposals and
16 to prepare, not for a direct ratification by the people, but
17 for the General Assembly, to consider a possible replacement
18 of the existing Judicial Article.

19 JUDGE WINFRED SMITH: Mr. Stubbs, I'm familiar with
20 the background of this, and the amendment on the ballot as
21 we have just seen just the day before yesterday, that's just
22 like are you for motherhood and against sin when they put on
23 there; do you want to authorize the Legislature to editorialize
24 the new Constitution, and then that's what we voted on, and
25 then that we would also adopt it in increments which we're

1 doing now, by increments, and --

2 MR. STUBBS: Replacing it by increments.

3 JUDGE WINFRED SMITH: That's what I say, that we're
4 doing it by increments, and this is one of the increments is
5 the Judicial Article, Article 6 of the Constitution, and just
6 like one of the most dangerous -- I haven't seen the reports
7 but I sure hope it's beat, but I'm afraid it's carried, was
8 Amendment Number 3, it was really slid in there; shall a
9 Special Committee be appointed to Amend the Constitution
10 without having to put it on the ballot, and so we'll have a
11 Blue-Ribbon and Silk-Stocking Committee that if it carries
12 to just amend the Constitution when they get ready without the
13 people voting on it.

14 MR. STUBBS: Judge, I think you're in the wrong
15 Church, that's a complaint to the General Assembly not to this
16 Committee.

17 JUDGE WINFRED SMITH: Well, I'm stating my position
18 in several areas, but I will go on I do not want to take up
19 all the time, but I'm concerned greatly and that's the reason
20 I'm at length with some of the discussions that I have.

21 MR. STUBBS: Let me interrupt a minute again, if I
22 may, Judge. There were at least three separate Commissions
23 and Committee's appointed, one by the Chief Justice by the
24 Governor at the request of the Chief Justice and the Chief
25 Judge of the Court of Appeals approximately three years ago to

1 look into the question of jurisdiction at the Appellate level.
2 That Committee was chaired by present Attorney General Bell.
3 A second Committee was created, again, at the request of the
4 Chairman of the Judicial Council, the Chairman of that
5 Committee was one of your own people from Gainesville, Sidney
6 Smith. A third --

7 JUDGE WINFRED SMITH: That's Federal Court, this is
8 State we're talking about now isn't it?

9 MR. STUBBS: That's correct, Judge Smith was then --
10 had already left the Federal Bench. The Third Committee was
11 appointed by the Governor and was chaired by Robbin Harris,
12 former Chairman of the Judicial Committee -- Judiciary Committee
13 in the House, and each of those groups had prepared comprehensive
14 reports and recommendations as well as the data in support of
15 them, all of which was made available to this group.

16 JUDGE WINFRED SMITH: The next question that I
17 would like to address myself a portion of this to, particularly
18 a very important part that I feel should be answered, is why
19 is it necessary to have a two tier Appellate system when it is
20 very important to have only one tier trial system. One of
21 these -- at least one of these here says that we're just going
22 to be all Associate Superior Court Judges, and I just can't
23 see that, is why is it so important we have one trial Court
24 and yet two Appellate Court systems. You know the Supreme
25 Court under this says, we ain't going to try nothing and hear

1 anything except Constitutional questions and Capital Felony
2 cases, and the rest of the time we're going to be administering
3 this plus the Bar and many other matters. The Poor Court of
4 Appeals sitting down there, and they say they've got the worst
5 workload according to statistics that have been put out
6 recently of some two hundred and some cases per Judge.

7 JUDGE SMITH: Two hundred and twenty-six.

8 JUDGE WINFRED SMITH: And here we are we're going
9 to unload all the extraordinary remedy cases and equitable
10 cases and all other matters that previously been heard by
11 the Supreme Court back down on the Court of Appeals, and add
12 their work load, but I don't believe it adds any other addi-
13 tional Judges. It's going to add to their work and yet we've
14 got seven other Justices up there that's going to be sitting
15 there just trying two fields of law, and yet we got one trial
16 tier down here, and yet if this were adopted by the people
17 then being the State Court of Hall County I'll still be doing
18 the something, just the Chief Judge of the Superior Court
19 or Circuit Court, or whatever you all finally define or to
20 pass and the people adopt, then we'll be Associates, but we'll
21 still be doing the something; The Probate Judge or Ordinary
22 will be doing the same thing. Your JP, they've changed him
23 to Magistrate, they'll be doing the same thing. So really
24 what did we accomplish, except that we just got somebody just
25 saying, you're going to do this, and you do that, and so forth

1 and so on. For over two hundred years I think we've got a
2 proven fact; now I don't say that we don't need a little oil
3 in the system somewhere, or maybe a new part here and there,
4 but I sure don't think that we need an overhaul of the entire
5 system. Now the next thing that I'd like to address myself
6 to is the election portion, and the election portion here --
7 really it does bother me, and I think it says that they'll
8 be elected on a non-partisan basis, is that correct?

9 MR. OVERBY: That's correct.

10 JUDGE WINFRED SMITH: YOU know, this concerns me
11 quite a bit. Of all the people of all professions of all
12 systems the judicial system, the legal system, take it away
13 from these people out here that elect you and me, or at least
14 Judge Smith and Judge Beasley in Fulton County, and me here
15 in Hall County, actually take away from them the ballot box.
16 Now the answer to that is, no, probably, it would come from
17 the Committee or some wild eye'd Liberal, because they say
18 you can vote for the record. Well if, under one precept or
19 concept, unless it's been changed, I haven't read all of it
20 completely full; if Brunswick down there were to be behind,
21 they'd send me down there, and then send me back up here for
22 my people to vote on my record, they ain't going to know much
23 about my record whether I've done a good job or not, and then
24 the Governor appoints somebody so they get it, so why take
25 the ballot box away from the people? I'm not afraid of it

1 here in Hall County, and they may beat me some day but I'm
2 not afraid of the ballot box. What are they going to take
3 away from us next if they take away electing the Judges, does
4 anyone have an answer to that question?

5 JUDGE BEASLEY: I don't understand what you mean
6 about taking away the -- there's no proposal to not have
7 elected Judges that I'm aware of.

8 JUDGE WINFRED SMITH: No, it says non-partisan,
9 but that means that I can run against my record, just yes or
10 no, but you couldn't, if you moved to Hall County you couldn't
11 run against me.

12 JUDGE BEASLEY: No, that's not what it means.

13 JUDGE WINFRED SMITH: Well, that's what it says in
14 there.

15 JUDGE BEASLEY: No, it's not, it's not the Missouri
16 Plan.

17 JUDGE WINFRED SMITH: Well, that's what it says in
18 one of the plans there, I don't know which plan it is.

19 JUDGE BEASLEY: No, anybody could run against you.

20 JUDGE WINFRED SMITH: What?

21 JUDGE BEASLEY: You'd be running on your record as
22 a matter of fact, but as a matter of law -- well, I shouldn't
23 put it that way --

24 JUDGE WINFRED SMITH: This is what I say, you can't
25 answer it.

JUDGE BEASLEY: No, others can enter the race against

1 you, the same as it is now. The idea would be that everybody
2 in the State regardless of which party he's in would have
3 the opportunity to vote for the Judge, which is not the case
4 now, because when you vote in the Primary if you select the
5 ballot in which the Judge isn't running then you don't have
6 any choice, and as you know that's mostly the case, so for
7 example Republicans don't vote for Judges.

8 JUDGE WINFRED SMITH: If I have anything to do with
9 it they sure will.

10 JUDGE BEASLEY: Well, this is the way of achieving
11 that.

12 JUDGE WINFRED SMITH: Another thing is, why is it
13 necessary to change the terms of the Court -- of the Appellate
14 Court Judges to eight years from six years. Originally it
15 was just for the Supreme Court, now they've added the Court
16 of Appeals to have eight years. The rest of us if we're
17 lucky enough there we'll get a six year term, they've moved
18 that from four, do you have any answer to that one, because
19 most of the Appellate Court Judges, as my good friend Judge
20 Smith there knows, served as Speaker of the House for many
21 years, you can serve about two terms in the Georgia Legislature
22 and then get elected twice to the Court of Appeals and you're
23 ready to retire on a good pension.

24 JUDGE SMITH: I'm not a party, I don't --

25 JUDGE WINFRED SMITH: I know you're not a party, I

1 know you aren't Judge --

2 MR. OVERBY: There's little doubt Judge Smith
3 opposes this.

4 JUDGE WINFRED SMITH: And I've known you've been
5 opposed to this system all along, but we have two other
6 members --

7 MR. STUBBS: You don't know how we vote either,
8 Judge.

9 JUDGE WINFRED SMITH: Sir?

10 MR. STUBBS: There are about eighteen people on
11 the Committee.

12 JUDGE WINFRED SMITH: Yes, sir, and I appeared
13 before them also as you know, especially the public hearing
14 that they're suppose to have in October of 1977 and they
15 didn't send me notice. I don't know how they was going to
16 have a public hearing without the public there. Of course
17 Judge Smith was there and he heard me speak at that time,
18 and I apologize to Judge Smith and Beasley for hearing this
19 orientation over. I do not recall, you could have been there --

20 JUDGE BEASLEY: Let me say, I agree with you one
21 hundred percent about these public hearings, and it was at
22 that public hearing I appeared, also as a member of the public,
23 and consequently down the line finally became a member of the
24 Committee, but I think the more input we have from the public
25 the better we'll know what they want, and what will best serve.

1 If they want to keep exactly what we have now then of course
2 that's what we should do --

3 JUDGE WINFRED SMITH: Well, this was the first
4 question I had.

5 JUDGE BEASLEY: -- but let us find out how we can
6 improve, that's the idea.

7 JUDGE WINFRED SMITH: This is the first question
8 I asked, Judge Beasley, as you come here with three proposals
9 how are these people out here that are lay-people going to
10 tell you or put any input in it at all, when I as an Attorney
11 and charged with an Attempt to be a Judge here can't even
12 understand it myself.

13 JUDGE BEASLEY: Well, the public exposure of it is
14 one of the ways to get to the ultimate objective of having
15 people educated so that we know --

16 JUDGE WINFRED SMITH: Yes, ma'am, I understand that
17 this is what it is, and I appreciate your being here, and I
18 again want to compliment you, and I hate that you got to put
19 up with me, but I'm very versifierous of things that I'm for
20 and I'm against, and I'm just opposed to this because this is
21 a very dangerous piece of legislation, and if this thing is
22 adopted these people ain't going to have no input, output or
23 both-puts, they're going to have both feet in it, this is
24 what the problem's going to be, but what I'm concerned with
25 is each and every item of this. As I say, until the Committee

1 as a whole can come up sound piece of proposed legislation
2 that will be initiated in our Constitution that all the people
3 of Georgia will have to live with in the future for years and
4 years, the present Constitution having been amended more than
5 nine hundred times in about thirty-eight years, and I hope
6 that we won't have to amend the one that we finally adopt in
7 Nineteen and Eighty, but I'm afraid that the Committee is
8 going to have to go back into session and come up with some-
9 thing that the people can understand in lay terms, because not
10 many of them are going to speak probably today because they
11 don't know what to speak about, and I'm not criticizing them,
12 it's just a lack of knowledge. I won't know how to talk on
13 how to prepare a heart by-pass, and they don't know how --
14 about the Court's, they're here to learn, and only those that
15 are involved in it from day to day can speak on it, and I hope
16 that I'm speaking for even some of them that are present here
17 today. I'm very happy to say that our Probate Judge, Lloyd
18 Smith here in Hall County has asked me to state that he concurs
19 one hundred percent in the opinion and observations and state-
20 ments that was made by this Speaker, and I'm fixing to sit
21 down at this point, and state that I am unalterably opposed
22 to the entire three types of proposals at this time until the
23 Committee can come back and give the Committee, or, the people
24 of this State some concrete piece of Legislation that we can
25 really discuss and let the individual lay-person understand to

1 do then I think that it should be tabled from now on. There
2 is going to be public exposure in this area, as I stated,
3 because I'm going to be one of them that's going to be giving
4 it as much exposure as I can. Thank you very much.

5 MR. OVERBY: Appreciate it, Judge. I would like
6 to state to everyone here that there has been no concrete
7 proposal adopted. Three have been mentioned, I've seen some
8 eight or nine, and I don't think the Committee is going to
9 do anything except try to determine what we can come up with,
10 and when we do come up with something certainly the public's
11 going to be made fully aware of it, and this is a matter in
12 the final analysis that directs itself to the Judicial
13 Committee in the House and the Judiciary Committee in the
14 Senate, and certainly I think that there will be full Hearings
15 conducted on whatever plan this Committee proposes. At this
16 time the third speaker -- I would like to recognize, who has
17 come in since we started, Judge Jack Gunter, who's Judge of
18 the Mountain Circuit in Cornelia, we're glad to have you, Judge.
19 Judge Horace Wood, Judge of the State Court of Jackson County,
20 we're glad to see you, and Judge Palmour has come in, Superior
21 Court of Hall County. Mr. Bunce, City Manager of Clarkesville,
22 we'll be glad to hear from you now.

23 MR. BUNCE: Distinguished Ladies and Gentlemen, you
24 want a layman's opinion you're going to hear it, and this is
25 really going to be addressed just at the question of the

1 Municipal Courts. Since hearing of the possible abolition
2 of the Municipal Recorder's Court I've been trying to stress
3 the necessity of retaining this vital Court. I am frustrated
4 because it seems that every good idea we get we carry to
5 extremes where it becomes self-defeating and destroys much
6 of the good it was intended to do. Take for example this
7 proposed Judicial Article recommended in good faith originally
8 I understand by our Chief Justice, he is recommending a
9 single tier judicial system. It's probably being patterned
10 after the Florida system and has single Court record. This
11 is good, it simplifies, but it is carried to extremes and
12 becomes self-defeating. How is it self-defeating? It is
13 self-defeating by destroying the single largest judicial
14 impact in the system, which is the local Recorder's Court, or
15 the Mayor's Court. It is here that most juveniles, young
16 men and young women first come in contact with the Law. It
17 is at this time that we divert them into good citizens, or
18 lose them to become irresponsible citizens or criminals. It
19 is this Court also where most elderly citizens inadvertantly
20 run afoul of City Ordinances and need help, and can be dealt
21 with with understanding and with the time consuming compassion.
22 Let's pause and ask, what do we want from our Judicial System?
23 First, you want justice, put away the bad and help the good,
24 and be fair while you're doing it. You want responsive justice,
25 responsive to the needs of the people involved, and timely.

1 You want accessible justice where people can talk freely,
2 economically within reach of people and close by where you
3 can feel comfortable with them, and above all you want pre-
4 ventative justice. By preventative justice I mean prevent
5 reoccurrence of problems. Well, I think if you pass this new
6 Judicial Article and you abolish preventive justice to a large
7 extent in Georgia. Let's look at a layman's view of what you
8 get in the State Court, First, you get justice, you get
9 fairness, yes, but you better bring your lawyer. Responsive,
10 no, you wait too long for the Court date, and then with the
11 continuation it can easily go to a year or two. The State
12 Courts meet four times a year, the Superior Courts three times
13 a year. Accessible, no. Most Judges, reasonably, keep their
14 distance from all those except the Legal Profession. Preventa-
15 tive, not really. You constantly read of repeated offenders.
16 Let's look at the Recorder's Court, or the Mayor's Court.
17 Justice, yes, and you all hear about it if it isn't, very
18 quickly, and you don't need a lawyer. Responsive, yes. You
19 have two areas that it's very responsive. First, timely, it
20 meets at least once a month, more often if need be, and it is
21 responsive to the client's needs. There is no need for Grand
22 Jury Indictments and there is no need for trial to Jury.
23 Accessible, yes. Both sides can approach the bench and discuss
24 the issues, both during, before, or after the Court. Preventa-
25 tive, definitely yes. Most offenders are not repeats, and the

1 punishments are nicely tailored to individuals. Most offenders
2 are teenagers and young adults who if treated correctly with true
3 empathy never repeat. Alternative sentencing is available
4 and leads the first time offenders to find themselves in the
5 City Square with a broom, not in jail with hardened criminals.
6 They end up helping clean trucks or writing essays. Can you
7 imagine a Superior Court Judge having time to review an essay
8 from somebody who's had it ordered as a punishment, or to take
9 time to know the family situation. Here is where we correct
10 the image of Law Enforcement from hostile to benevolent, from
11 antagonistic to cooperation and help and further support, it
12 is not available in the higher Court's. The abolition of the
13 Recorder's Court would also prevent the offender from the
14 need of privacy and preclude the embarrassment of family
15 details that should not be made public. The abolition of
16 Recorder's Court will terminate the only low cost Court that
17 we have in the land. Having gone through the differences in the
18 State and Superior Court and Recorder's Court, let's look at
19 the overall judicial system with a view to what changes could
20 be helpful if incorporated in the Judicial Revision. We have
21 too many Court's at the present time, you agree and I agree.
22 We have the State Supreme Court in Atlanta, you have the
23 Georgia Court of Appeals, you have the Superior Courts for
24 felonies and misdemeanors across the State, you have the State
25 Court or County Courts for misdemeanor's. The last two Courts

1 are concurrent jurisdiction in civil matters, except in equity
2 cases. We have recently added the Small Claims Court, and
3 then you have the Recorder's Court or the Mayor's Court. You
4 need, and I support you, to have a single tier Superior Court
5 System. It should consist of the Supreme Court, a Court of
6 Appeals and Circuit Courts. This should not impinge or pre-
7 clude the continuation of Recorder's Court which solves
8 innumerable problems. The Superior Court system is for State
9 Offenses, the Mayor's or Recorder's Court is for the City
10 Ordinance enforcement, let's keep them separate. Now there
11 are two more items that should be considered, the Recorder's
12 Court is the only Court where the Constitutional Right to
13 trial by jury does not extend; for those who want to check this
14 I do have the Key versus Stewart, State of Georgia 1972. It
15 is interesting in the Clarkesville Recorder's Court that no
16 one has exercised the right to remove the Case to a higher
17 Court, to the State Court. The second item, we know the
18 Recorder's Court is not perfect, it is virtually unfunded
19 and needs help. Let's help it, not abolish it. How can we
20 help it, we can help it by setting minimum standards for a
21 Recorder. For example, he must be qualified before the Bar.
22 We can have the Georgia State Judicial System prepare a
23 monthly bulletin in which Recorder Court problems and achievements
24 are cited. We can ask the Governor, George Busbee to introduce
25 a program similar to the City's AllStar Program, or Certified

1 City Programs, where standards are set and goals identified
2 and achieved. The Governor could establish training sessions
3 for the operation of the Recorder's Court to achieve more
4 uniformity across the State. In closing, keep the Recorder's
5 Court, it is fair, timely, economical, understanding, private,
6 and above all preventative as no other Court is. Thank you.
7 I've got several other comments but I'm going to keep them
8 for a later time.

9 MR. OVERBY: Mr. Bunce, we appreciate your being
10 here and the remarks. On any Court we do have people object
11 to how different Court's are being running. I'm glad to say
12 at least that you recognize there were some problems in the
13 Recorder's Court, because I can think back to the days of
14 the Recorder's Court or Mayor's Court the complaints all over
15 the State of speed traps and all of that, so I am glad you
16 recognize that there have been some problems in the past. I
17 know you have a good Recorder's Court in Clarkesville, but
18 unfortunately that's not true all over the State of Georgia.

19 MR. BUNCE: I think there are problems, and we have
20 problems, but I think the basic system is close to the people,
21 and you're close to the problems and I think it's important
22 to keep it there. I do not see that the two systems are
23 really in conflict with each other, I think they are serving
24 two separate areas, and particularly in small towns.

25 MR. OVERBY: We appreciate your remarks and --

1 JUDGE BEASLEY: Let me just say that --

2 MR. OVERBY: Question by Judge Beasley.

3 JUDGE BEASLEY: You have -- not a question but a
4 comment. You have just demonstrated the very purpose of these
5 Hearings and why they are being successful, or why they can
6 be successful or how they can be successful to the point
7 that they're organized and why I'm up here rather than in
8 Court. This is the kind of input that we desperately need
9 because our perspectives are different than yours and we need
10 that, so I commend you for taking the time to draw this up
11 because I know that that took a lot of organization to do
12 that, but it shows exactly what problems do exist and what
13 needs to be done to improve them, to solve them, and maybe
14 one of these three plans isn't going to solve the problems
15 that exist out in the field. We are not here as salesmen
16 at all but rather as listeners. Thank you.

17 MR. OVERBY: We appreciate those remarks and the
18 time it took.

19 MR. STUBBS: For a Layman you know a lot more than
20 a lot of lawyers that we see.

21 MR. OVERBY: We only had the three, but I would
22 like -- I know that there are others here that would like to
23 be heard, and the object of this is to hear from as many
24 present as would like to appear and give us your ideas on it
25 because that is the object of this Committee, to try to get

1 opinions throughout the State, not only members of the judiciary
2 and attorney's but the Lay-Public, and we're here for that
3 purpose and we'll be glad to recognize anybody at this time.
4 Judge Palmour of the Hall County Superior Court.

5 JUDGE PALMOUR: I got in a little late, I'm sorry,
6 and I apologize to you at the outset, I have a cold and I'm
7 taking some rather strong medicine, and I don't talk very clearly
8 anyway, and when I have a cold I just mumble all over. I'm
9 probably in the vast minority, I heard one of the members
10 speech at the Judicial Meeting in Athens and I realize that
11 he didn't like the three proposed drafts or any change in it.
12 If asked I would go along, or would feel that Draft A was
13 probably the best. I'm not really married to any particular
14 draft here, I just want to address myself to the fact that
15 if something is not done toward the judiciary being policed
16 then I feel that the administration of the Courts will get to
17 the point where it will be very difficult to rescue the Court's,
18 and I mean this; I don't know of anyone that has any control
19 over what I do as a Superior Court Judge. I know the Appellate
20 Courts can reverse me, they can direct that I do something,
21 but nobody checks my workload, nobody knows what I do.

22 JUDGE SMITH: Who do you think ^{we} ought to do it, Judge?

23 JUDGE PALMOUR: Well, that I'm going to leave up to
24 someone else. I -- let me --

25 JUDGE SMITH: You ought to know better than anybody

1 else, you're the Judge, you ought to know who ought to check
2 on you.

3 JUDGE PALMOUR: I do. Okay, let me finish, I
4 mean give me a little minute, I'm not through yet.

5 MR. OVERBY: He can reverse you later, Judge
6 Palmour, go ahead.

7 JUDGE PALMOUR: I know it. The only difference
8 between me and you is you got the final say so, I understand
9 that. When I took over this job I did a count of the cases
10 I had, there were six hundred and forty-four or forty-five.
11 Mr. Watson could tell you; how many Mr. Watson?

12 MR. WATSON: Six hundred and sixty-seven.

13 JUDGE PALMOUR: Six hundred and sixty-seven pending
14 Civil Cases in my half of the Superior Court of this Circuit,
15 just in Hall County. Now the oldest case that I tried; there
16 was a hundred and fifty-five pending civil cases in White
17 County, fifty-five in Dahlonega, and there again my Clerk from
18 up there will have to tell me. The oldest case that I tried
19 was seven years old. It was a condemnation case, and as you
20 know a condemnation case is suppose to take priority, and it
21 was a condemnation case that I tried, it was seven years old
22 and had never been placed on a calendar. It had even been
23 dismissed once under the five year rule, but was reinstated
24 luckily, and I think your Court ruled on that reinstatement.
25 I had nothing to do with that. Since that time -- I'm not

1 bragging on myself, I'm just telling you how it is. My Case
2 load right now in Hall County is below two hundred, and that
3 accounts for everything I got pending. Now you ask me who's
4 to police this, I think someone should, I think it either
5 ought to be the Supreme Court, the Chief Justice, if you
6 want to use the Judicial Council or the Appellate Court, it
7 suits me fine, but I do know this, I do know that you're not
8 getting justice when, in a condemnation case, the Attorney's
9 Fee's in that seven year old condemnation case exceeded the
10 value of the appraised value of the land by the highest
11 appraiser in Court on the day it was tried, if you understand
12 what I mean. In other words, the Attorney's Fee's in that
13 case exceeded what the appraisers said that the land was worth
14 seven years before that, and that's not justice, and I'm just
15 saying somebody ought to be watching us.

16 JUDGE SMITH: How could somebody that was over you
17 have remedied that situation and kept the Attorney's Fee's from
18 being larger than the condemnation was, how --

19 JUDGE PALMOUR: By making it get tried within a
20 reasonable period of time. Don't you think seven years is
21 a little long to try a condemnation case?

22 JUDGE SMITH: Yeah, but I don't know but what the
23 Attorney's Fee's wouldn't have been as much when they tried
24 it the first time --

25 JUDGE PALMOUR: Well, there wouldn't have been any,

1 for one thing the law says you couldn't get them back then,
2 but then they changed the law, but I'm just saying, that's
3 just one example. Nobody watches what I do except you all,
4 and, fine, I agree with that, that's the system, but I'll tell
5 you in the Federal System over there -- a lot of people don't
6 like the Federal System, I happened to be a Law Clerk for a
7 Federal Judge, we reported in every six months and anything
8 that was over a certain period -- went over a certain time
9 period or time frame or got too old we just had to explain it,
10 and all I'm saying is I don't -- these things don't bother
11 me at all, I'll do my job, and if I do it wrong there's a
12 remedy for it. Just like if you do your's wrong there's a
13 remedy for it, I assume there is one for the Supreme Court
14 of Georgia too, but what I'm saying is, nobody watches my
15 case load, nobody knows what I'm doing, and there are a lot
16 of folks that aren't working in the judicial system, I know
17 it and you know it, and I'm just saying someone ought to watch
18 us.

19 JUDGE BEASLEY: Judge Palmour, I think what you're
20 looking for is a checks and balances system within the third
21 branch of Government, and that is in addition to -- the only
22 one we're relying on now is the ballot box, and you're saying
23 the ballot box really isn't sufficient because people don't
24 know what's pending or something, or how many cases you tried,
25 or how much your flow is greater than the Judges in adjoining

1 Counties, Circuit or whatnot, and that's one of the issues
2 that's addressed by, really all of the Plans, and the principle
3 that there should be a unified system under one administrative
4 head so as to allow an accountability and flexibility by way
5 of equalizing the system, and for example if the Judge in
6 another Circuit for some reason of local happenings there gets
7 way way behind and you have some time you could go down and
8 help him out for a month or so, that's the idea.

9 JUDGE PALMOUR: However, I don't have a solution
10 to the problem, I just say the problem exists and --

11 JUDGE BEASLEY: Kind of equal work for equal pay,
12 thank you.

13 JUDGE PALMOUR: I don't think any of us are over-
14 worked, now that may come as a shock to everybody. I work
15 pretty hard, you know, I got some complaints last year from
16 one of the County's for having too many jury trials, so I had
17 to quit, I went way over the budget, and what we budgeted
18 here in Hall County for Jurors, exceeded it by a substantial
19 amount, but we got rid of a lot of cases, but it just took it
20 to where I think pretty current now. We're as good as anybody
21 in the State caseloadwise, as to how old our cases are. I'm
22 just making the observation that if some system is not imple-
23 mented to check on them, what the Court's are doing, then the
24 Court's are literally going to go Bankrupt because they're just
25 not handling -- I know another Circuit, a fellow, a Judge, he

1 let's the lawyers stipulate what they're going to try, and then
2 after five years he just chalks them off, now that isn't
3 justice. I've found the lawyers don't particularly want to
4 try a case when I'm ready for them to try it, but yet the
5 client don't know anything about it, and they go out and tell
6 the client, say, hey, the Judge continued your Case. I have
7 never continued a case on my own Motion unless I was dis-
8 qualified, now that's wrong, and what I'm saying is some
9 Judges let them stipulate them so they just never get to trial.

10 MR. STUBBS: Judge, if I can respond to some of your
11 comments, and I might say facetiously that we're watching you.
12 In the Attorney General's Office, as many of you all may know,
13 we represent the State in all civil litigation and quite a
14 number of other cases, and our lawyers probably have the most
15 complete grapevine on performance of Judges, not who -- whether
16 they Rule for us or not, but if we get a fair shake in Court.
17 Now I don't know whether you're up for election or not, Judge,
18 but our kids say we get a fair shake in your Court. As you
19 know many of the things that are now in the Constitution, or
20 in the Statutes were outgrowths of the Governor's Commission
21 on Judicial Process, part of the brain-child Judge Smith was
22 speaking about earlier that was created under Governor Carter
23 and which has carried on. One of those is the Judicial Quali-
24 fications Commission. When a Judge gets to a point that he
25 mishandles his workload to the detriment of the people in that

1 circuit if a complaint is made, and complaints are now being
2 made to that Commission, there is an inquiry under the Consti-
3 tution into the performance by the Court. Another recommendation
4 that bore fruit was the creation of the Administrative Office
5 of the State Courts, and through the work of that Office, not
6 exclusively, but through its efforts we've been able -- or,
7 the State has been able to identify many of the things which
8 you have noted. It has permitted evaluation of the workload
9 in different Circuits, the type of backlogs, the division of
10 work between Judges and among Judges, and this in turn has led
11 to the creation of the Administrative Judicial Districts. We
12 have ten in this State now with one of the Superior Court
13 Judges serving as a Senior Administrative Judge to provide
14 some coordination, supervision and help out when you get an
15 unbalanced workload; I know Judge Palmour knows these things.
16 It's along these lines the complaints that people have regis-
17 tered to different persons, to the Governor, to Members of the
18 General Assembly, to certain members of the Judiciary that
19 stimulated some of these Committee's and Commissions that have
20 been invited to submit recommendations and reports to the
21 Judicial Article Review Committee. Now one of the things that
22 is in here is an effort to provide some sort of coordinated
23 administration in the Judicial Branch, which hopefully would
24 address some of the things that you're speaking of, but as
25 Judge Beasley observed I think ultimately the big brother, the

1 one who's watching you is going to be the voter. I don't
2 think there's any purpose on the part of anybody on the
3 Committee to remove Judges from elections, I think we're all
4 in accord on that.

5 JUDGE PALMOUR: The voter can cure the problem, but
6 in order for the voter to cure the problem; Number One, the
7 Judge has got to have opposition. Number Two is the opposition
8 has got to have enough sense to know how to beat him with his
9 own record.

10 MR. STUBBS: This is a problem that --

11 JUDGE PALMOUR: And they don't know, and it's a
12 question of, you know, if you've ever run for Judge, which
13 I have -- I did, you got to make a decision, are you going
14 to run and tell on the other fellow or are you going to run
15 a nice clean campaign and be Mr. GoodGuy, these are hard
16 decisions to make. The same way when he ran for the House
17 of Representatives, Howard ran and all that, those are decisions
18 you got to make; do I want to jump on another guy's record
19 or not, and if I choose not to then the record never comes
20 out and we go to the polls and the people vote on who's the
21 nicest fellow, and if you jump on him they may say, well, you
22 know he jumped on that fellow he isn't even nice, and all I'm
23 saying in answer to your question is this, I don't care who
24 does it, I'm telling you that there are Judges all over the
25 State not doing the job. Now you just pick up these statistics

1 that I get from the Administrative Courts every year and
2 you'll see that's very deceiving. If I put a criminal case
3 on the Dead Docket I've handled it and it gets counted as a
4 case handled, and if I nolle pros a case, they keep track
5 of the ones I nolle pros, but I know one thing I know that
6 if you keep going like you're going without anybody telling
7 us what we should be doing, or even calling to our attention
8 that we're getting behind then we're going to be in real
9 trouble in the Courts, and it's going to compound your all's
10 troubles. I'll be honest with you, I haven't had time to sit
11 down and research, as I think that I should, any case up
12 until about the last four months to adequately research to
13 determine whether I was right or wrong. Now that might sound
14 strange to you, I just had to read the Brief's that were
15 submitted in Court, what the Lawyer's told me, and do a little
16 bit of, you know, just scanty research and rule. I figured
17 that it was better that I got all this backlog caught up
18 and then go to work on the other. I've been reversed some, I
19 don't deny that, any Judge that hasn't been reversed ain't
20 been up there, but I'm just saying you got to have somebody
21 to tell you, hey, you're behind, you got too many divorce
22 cases, they're too low. You pick any time frame you want to
23 pick. How many have you all got behind, have you got any
24 cases over a year old?

25 JUDGE SMITH: We can't get behind, they get six

1 months old we're in trouble. We got to get it out in six
2 months.

3 JUDGE PALMOUR: But why are you in trouble?

4 JUDGE SMITH: Because the Legislature says we got
5 to get it out in six months.

6 JUDGE PALMOUR: Right. There ain't nothing tells
7 me. There's nothing tells me, I can sit on a case until I
8 die, and there ain't anything you or anybody, there ain't
9 nothing the Legislature can do about it. If there is, tell
10 me. It happens, I'm telling you it happened in a condemnation
11 case up there, and I don't know why it happened, I don't have --
12 I wanted to ask what happened, but seven years old in a con-
13 demnation case, that's ludicrous.

14 JUDGE BEASLEY: Well, aren't you perhaps -- this
15 problem, and I recognize this problem too, could be overcome
16 by passing a Law that says that there shall be no cases kept
17 longer than such and such a year.

18 JUDGE SMITH: You got a five year limitation on it
19 now.

20 JUDGE PALMOUR: Well, you got a five year limitation,
21 but if the Judge let's the five years go by and dismisses it,
22 is that justice. We don't need a five -- I don't need a five
23 year Rule, I can live with a two year Rule, cause I'll guarantee
24 you -- you ask Senator Overby, the Lawyers are just up in arms
25 about me putting them on trial too quick. The people aren't,

1 the lawyers just cannot get ready. You know, I don't care,
2 you know, it's just you got to make a decision, are you going
3 to satisfy the lawyers or the public, and I have decided that
4 my job is for the citizens and not for the lawyers, and that's
5 a little different thinking than what they usually had.

6 JUDGE BEASLEY: Here's an illustration of what
7 could be done, cause I know some Federal Judges, and that
8 doesn't make it right, it makes it a way to handle the problem,
9 is require by law if you want to that there shall be no
10 continuance unless agreed to expressly by the client, that's
11 one example, but I think you're absolutely right, there should
12 be some accountability in the system, which there is not now.

13 JUDGE PALMOUR: Well, I know there's none, I mean
14 if there is I'll be, you know be one of the first ones to tell
15 you. I appreciate your time, and I hope its been of some
16 benefit to you. I've got to run, I've got another meeting up
17 here at three.

18 MR. OVERBY: Thank you, Judge Palmour, for coming
19 by, I know the Committee appreciates it. We'll be happy to
20 hear from anyone else present.

21 JUDGE WINFRED SMITH: May I just make one observation --

22 MR. OVERBY: Suppose you go ahead and then I'll
23 recognize Judge Harris, State Court of Stephens County.

24 JUDGE WINFRED SMITH: In view of the last statement,
25 and I overlooked one -- this is C. Winfred Smith, Judge of the

1 State Court. I overlooked this question; Judge Beasley there
2 on the Committee here many times referred the questions to
3 other speakers there that this was going to be supplemented
4 as provided by Law. If we're going to have a Constitution
5 why not go ahead and include it in the Constitution. If
6 we're saying we want to be a separate branch then why should
7 it not be included to start off with. They're trying to get
8 it out of the hands of the Legislature it looks to me like,
9 and yet they're saying, as provided by law, which means that
10 the Constitution is going to have to be supplemented by
11 Legislative Act later after this is even initiated, if it is.

12 MR. OVERBY: Thank you, Judge Smith. Judge Harris?

13 JUDGE HARRIS: My name is Robert H. Harris, I'm
14 Judge of the State Court of Stephens County. The one important
15 thing that I see is needed -- the most important thing that
16 I see is needed in our change of our system is to achieve
17 uniformity which seems to be lacking all over the State, and
18 the Lawyer never knows what to expect when he goes from Court
19 to Court, and if the Lawyer doesn't know what to expect, and
20 he's had an opportunity to presumably try to find out, that
21 how much more confusing it must be to the individual who comes
22 into Court, and I think this is a great crying need for our
23 system, some uniformity, so that a person knows what to expect
24 when he gets in a Recorder's Court, or State Court or Superior
25 Court. There are any number of illustrations that I can point

1 out to you, but I know every lawyer has run into these, so
2 again I say the great need is uniformity of the Court system
3 in the State of Georgia. Thank you.

4 MR. OVERBY: Thank you, Judge Harris. Are there
5 others who would like to be heard? I tell you what, we've
6 been running an hour and a half and then we'll hear from you.
7 Let's have a break for about ten minutes and then we'll come
8 back in session.

9 The Committee recessed at 2:30 p.m., 9 November
10 1978, and later reconvened at 2:40 p.m., this same date.

11 MR. WILKES: Mr. Chairman, Ladies and Gentlemen,
12 I appreciate the opportunity of the Public Meetings where
13 we can voice our opinions on subjects that is very vital to
14 all of us. Now I'm Probate Judge of Jackson County. I am
15 not an Attorney. I've been in the Office of Probate Judge
16 since January 1, 1973 --

17 MR. OVERBY: For the Record, for the Court Reporter,
18 identify yourself, Judge.

19 MR. WILKES: I'm sorry, I'm J. T. Wilkes, Judge of
20 Probate, Jackson County.

21 MR. OVERBY: (W I L K E S - spelled), for the
22 Court Reporter.

23 MR. WILKES: Yes.

24 MR. OVERBY: Go ahead.

25 MR. WILKES: It is my belief that the present Article

1 as it is now drawn is objectionable to me in its entirety.
2 I conceive the necessity possibly of requiring education for
3 us non-attorney Judges and I would welcome any opportunity
4 to participate in education to further my ability and know-
5 ledge to serve the people of Jackson County. I feel that in our
6 Court, the Probate Court, and I think in most every County, is
7 the nearest thing to Family Court that we can have in any
8 County. I can foresee if this Article is adopted and we are
9 put in position of not having a Court similar to the Probate
10 Court, the people not having anywhere to go to express their
11 opinion, file their cases, get advice, and in every day life
12 to have someone that they can confide in and someone to help.
13 I believe that our job is to the people, and I feel that I
14 can best serve the people in the Office of Probate Judge as
15 it now is. I do not think that the abolishing of the Court
16 would help anyone in any way. I can only see additional
17 costs, additional burdens on someone else. One other thing
18 I'd like to say is that it seems that our Court, the JP
19 Court and the State Court as being the ones picked on in this
20 Article. I've been there since '73 as I said before, and
21 I've had three cases appealed. One of them was reversed and
22 the other two are still pending. I cannot see that our Court
23 is creating an overload for any other Court, and if we can't
24 handle our own cases then I would say we would need some help,
25 but I would ask you to please consider the people, the people

1 of the State of Georgia, my County, your County and every
2 other County before you do something that in my opinion is
3 very foolish. Thank you very much.

4 MR. OVERBY: Thank you, Judge Wilkes for appearing.
5 Judge Anita Lawson is here representing the Justices of the
6 Peace and we'd be glad to hear from you at this time.

7 MS. LAWSON: Thank you, Senator Overby. I'm Anita
8 Lawson, I'm Justice of the Peace. I'm on the Board of Director's
9 of the United Justices of the Peace Association, and also
10 on the Executive Committee of the Georgia Association of
11 Justices of the Peace and Constables. I would like to say
12 that both organizations are strongly opposed to the Unified
13 Court System. We are a grassroots Court system, we cater
14 to the people of our District and we feel that with a little
15 bit more legal training that we possess the common sense of
16 the Court and judiciary system, and we can keep costs low
17 for the State, and that to have so much power totally in the
18 hands of Attorney's would not benefit the people of the State
19 of Georgia. Thank you.

20 MR. OVERBY: Thank you very much for appearing.
21 Do we have anyone else that would like to be heard? Judge
22 Gunter from the Mountain Circuit.

23 JUDGE GUNTER: Senator Overby and distinguished
24 Committee, I was one of the fellows that opposed the Organ-
25 ization of the State Bar, I opposed the creation of the

1 Judicial Council, and I opposed the establishment of the
2 ten administrative districts, and as the years have gone by
3 I have found that my opposition to those things was less than
4 enlightened because I've been very pleased with the operation
5 of the organized Bar, the Judicial Council, and even most
6 recently the ten Administrative Districts, so I made up my
7 mind that I'm not going to oppose this Article till I know
8 more about it, and I came here today mainly to listen and not
9 to speak, but since we had the opportunity, it looks like you've
10 run out of anybody to say something, there are one or two
11 things that I would like to comment about. One thing, I
12 favor the Unified System and one level of Courts. Now as I
13 understand it, and this is the reason that I favor it, this
14 revision would not put any present office holder out of a
15 job, I think that's the intent of this legislation, but it
16 would over a period of time evolve into a system where those
17 who deal with issues of law will have had some training, and
18 as I understand it; two, it would eliminate appeals between
19 lower Courts. There are certain matters that can be appealed
20 from JP Courts, and certain matters can be appealed from the
21 State Courts and the Probate Courts to the Superior Court,
22 and as I understand this in the future when you have one tier
23 of Courts the appeals would be direct, I would hope that is the
24 intent anyway. Now I suppose more cases are reversed because
25 of mistakes made in JP Courts, and I know this is an unpopular

1 thing to say, especially following this lovely young lady who
2 just spoke, but I believe the JP Courts are responsible for
3 as many reversals in the Appellate Courts, and sometimes
4 having cases thrown out in the Superior Courts as any one
5 factor. Even among highly trained lawyers and Judges of the
6 Superior Court it is sometimes difficult to know what Probable
7 Cause is. Even Justices and Judges of our Appellate Courts,
8 and the United States Supreme Court is sometimes split five
9 to four on what Probable Cause is. So I think the people
10 that deal with the issuance of Search Warrants and Arrest
11 Warrants and the other things that JP's have to deal with
12 should have some legal training. Now as I understand this
13 system eventually it would evolve into that, and I would hope
14 that no present office holder would be thrown out. Now I
15 do not understand the Section on Non-Partisan elections, the
16 same way Judge Smith did. I understand that it just means
17 that everybody's going to run for Judge whether he be Democrat
18 Republican or Communist runs in one General Election and every-
19 body gets a crack at him and everybody joins in the decision.
20 I am a native of North Carolina, and am aware of a situation
21 that resulted up there about fifteen years ago when that State
22 switched from Democrats to Republican, and by voting the straight
23 ticket about half or better of the Appellate Courts were just
24 wiped out. It didn't have a thing to do with the ability of
25 a particular office holder, and to me that was a tragic situation,

1 and it could happen in Georgia. Now the reason that no one
2 has been concerned about it is that Georgia is a one party
3 State, pretty much is now and has been and maybe still be
4 until sometime in the future. North Carolina was too when I
5 was a kid, but it's pretty well balanced today, and that was
6 a tragic situation. Then too, if you have not run in a
7 County that's half Democrat and half Republican, Judge Smith,
8 you just haven't lived, it's a real experience.

9 MR. OVERBY: Is that ~~Tenn~~ in County, Judge?

10 JUDGE GUNTER: I'm not calling any names, but we
11 do have some Counties where everything that has to do with
12 judiciary is viewed in light of whether or not it's a Democratic
13 move or a Republican move, and to me that is just ridiculous,
14 and I would very much like to run non-partisan, give everybody
15 a chance to vote in the same election for the Judge. Now,
16 Judge Smith commented about he couldn't understand why we
17 wanted to have only one level of trial Courts and two levels
18 of the Appellate Courts, and I'd like to know that too. When
19 I was in the Legislature a few years ago I introduced a Bill
20 to consolidate, underline, the two Appellate Courts --

21 JUDGE SMITH: I think it's a good idea.

22 JUDGE GUNTER: Thank you. I had hoped more people
23 would think so. We see today, and we have seen in the past,
24 even among these most highly principled scholars and gentlemen
25 on our Appellate Courts a tad-bit of backbiting and jealousy

1 witness the fact that there's a five hundred dollar a year
2 difference in their take -- well, not the takehome, but their
3 salaries, and from time to time if you attend enough meetings,
4 you would hear a comment one way or the other about those
5 Squirrels on the other Court, and it's a little bit unprofessional,
6 I think it degrades the whole operation, and I believe the
7 public would be better served by one tier, one Appellate Court.
8 Now if you want to read something ridiculous pull the Case of
9 Fair versus the State, that was my good bootlegging friend
10 Marvin Fair, Habersham County, who is now gone to his reward.
11 It came out about 1963 or '4, and in that Case we appealed
12 to the Court of Appeals, which had jurisdiction, we thought,
13 of that kind of case. The Court of Appeals refused to review
14 the Case on the grounds that it did not have jurisdiction.
15 I certiorari'd that Ruling to the Supreme Court of Georgia,
16 they reversed the Court of Appeals, said you do have juris-
17 diction. Back to the Court of Appeals it went, and the Court
18 of Appeals said, okay, if we have jurisdiction we have to
19 Rule on it, and we'll rule on it, and they ruled on it and
20 used the basis of their ruling the same reason that they would
21 not take jurisdiction of it in the first place. Well, back
22 to the Supreme Court we go on the grounds that the first
23 decision of the Supreme Court had established the law of the
24 case and that had to be the law of the case. The Supreme
25 Court again reversed the Court of Appeals, and back to the

1 Court of Appeals it went again for them to rule on it now,
2 and not to rule on it on the point of law that they had first
3 thrown it out. Well, that time the Court of Appeals said,
4 okay, we got jurisdiction; okay, we can't rule it out on the
5 point that we had ruled on before, we'll rule it on the any
6 evidence rule and out she went, and of course there's not
7 much appeal from that, so that was a little case, and my
8 client didn't make all that much money selling moonshine and
9 we poured it with all that bouncing around among the Appellate
10 Courts. It would have been so much better if he could have
11 had one appeal, one decision and let that be final. Now you
12 got sixteen Judges up there, no reason that they can't do
13 as many cases as one Court, probably they can do more because
14 they don't have to fool with this certiorari thing, and I
15 believe -- the Legislative Counsel was kind enough to run a
16 survey for me at the time I introduced this Bill, and they
17 found that thirty-three States just have the one Appellate
18 Court.

19 JUDGE SMITH: Did your Bill get out of Committee?

20 JUDGE GUNTER: The Bill got out of Committee and got
21 onto the floor of the House, and the night it came out of
22 Committee some damn fool over at the Atlanta Constitution
23 drew a headline, said, Legislator Proposes Abolishing the
24 Supreme Court of Georgia, now that was the headline that came
25 out in the Atlanta Journal the next day, so naturally with

1 that kind of publicity the Legislature could not seriously
2 consider the Bill and they never did, but I still think that
3 one Appellate Court is all you need, cause you don't need
4 but one Appellate Decision, and Justice Nichols has been
5 a champion of the idea of streamlining the legal procedure,
6 there would be one case that you could really streamline.

7 JUDGE SMITH: I'd tell them that the only man that's
8 right is the one that has the last guess at it anyhow.

9 JUDGE GUNTER: Well, this is right, and you see,
10 what we're seeing, and I suppose it's because there's been
11 such a turnover on the Appellate Courts, but my God, what's
12 law last week is a different law tomorrow and--

13 JUDGE SMITH: The majority of the Supreme Court now
14 was on the Court of Appeals at one time, so you can't say
15 they get better brains up there than down here, cause they
16 go up there.

17 JUDGE GUNTER: That's exactly right.

18 MR. STUBBS: As a matter of fact Judge after you
19 left the Legislature and became a Judge, Judge Hall's Governor's
20 Commission on Judicial Processes in '73 or '74 had a Bill
21 drawn that would do that as one of the alternatives to the
22 present parallel type jurisdiction that the Court has.

23 JUDGE GUNTER: Well, it seems to me where you got
24 two Courts and one of them can only hear Equity and a certain
25 other class of case, and the other Court can hear only a certain

1 type of case that if the workload of one gets greater than
2 the workload of the other, if they were combined in one Court
3 you could distribute that workload out.

4 JUDGE SMITH: We have two cases to their one.

5 JUDGE GUNTER: Right.

6 JUDGE SMITH: We have about two hundred and twenty-
7 six this year, they'll have about a hundred and twelve or
8 fifteen per Judge.

9 JUDGE GUNTER: Well, see, but that's probably one
10 of the reasons that the Supreme Court wouldn't be too much
11 in favor of this but I expect all the Members of the Court
12 of Appeals would be, but I'm not talking from their standpoint,
13 I'm talking from the standpoint of people that pay the tax.

14 JUDGE SMITH: I think you're so right.

15 MR. STUBBS: Your comments are the first ones that
16 I've heard in years along this line. This just might make
17 these people that you say have a tad of disagreement now and
18 then --

19 JUDGE SMITH: I think he's right, I think he's
20 totally right. You have sixteen Judges up there, you could
21 have five panels of three each and the Chief Justice Administer
22 the Court.

23 MR. STUBBS: One of the objections to that was that
24 it would turn an inbank proceeding into the Circuit that you
25 have in the Fifth Circuit but --

1 JUDGE SMITH: You don't have to have an inbank
2 unless there's a dissent on one of the panels of three.

3 MR. STUBBS: You could change the rules on that.

4 JUDGE SMITH: You could change it on that, that's
5 right.

6 MR. STUBBS: That's a good point.

7 JUDGE SMITH: Of course I can't say anything
8 about it, if I do they'll say I'm trying to promote myself
9 to the Supreme Court, so you can do it.

10 MR. STUBBS: /Judge,
11 Would you like me better if I proposed
it at the next meeting.

12 JUDGE SMITH: I wish you would. It's something
13 that needs to be done, you're so right. It will solve a
14 lot of problems.

15 JUDGE GUNTER: Leaving all the politics aside, it
16 is very difficult to explain to your client, after you have
17 appealed his case, and won his case in the Court of Appeals
18 why he doesn't get his money.

19 JUDGE SMITH: I can't explain it to him either, and
20 I'm up there.

21 JUDGE GUNTER: That's right, then you've got to
22 wait ten days and file a Motion for Rehearing and certiorari
23 up to the Supreme Court, and about one out of every seventy
24 to a hundred, I don't know what the exact statistics is, but
25 they accept certiorari on a few of them, and then your client

1 who has already won his case down here, he stands either to
2 be affirmed after a long delay or else reversed, and my God,
3 how are you going -- he says, well, I thought I won the darn
4 case, and then it's reversed. So I don't see how you're getting
5 any better quality of Justice by going through two tiers of
6 Appellate Courts when you could put all those brains in one
7 Court. Now, one thing that I don't know whether this Article
8 addresses it or not, that is the business of selecting the
9 Jury. You will recall that before I went to the Legislature --
10 I keep referring to that but I enjoyed it so much I have to
11 once in a while --

12 JUDGE SMITH: Was fun, wasn't it?

13 JUDGE GUNTER: Yeah. The State Court used to have
14 a separate Jury Box so that in each County where there was
15 a State Court you had a State Court Jury Box; didn't have a
16 Grand Jury for that, the Superior Court Traverse Jury and the
17 Superior Court Grand Jury. Now I think the Grand Jury and
18 the Traverse Jury of the Superior Court is by the Constitution
19 and you can't change it unless you do change the Constitution.
20 It's been a mystery to me, Senator, why you've got to be more
21 upright and intelligent to find Probable Cause and return an
22 indictment then you do to sit on a case and rule whether a
23 man lives or dies, or whether ten million dollars should go
24 to this party or that. The point is that the Constitution
25 says that the Traverse Jury, the Trial Jury would be made up

1 of upright and intelligent citizens of the County, but the
2 Grand Jury will be made up of the most upright and most
3 intelligent citizens of the County. It's always a mystery
4 to me how these most upright and intelligent people are
5 determined because they're selected by a group of five Jury
6 Selector's, and there's no such qualification about those
7 five Selector's, they're just anybody that the Judge wants
8 to appoint. Now you meet Mr. Smith on the street and he says,
9 now I've been living in this County for fifty years and I've
10 never been called on the Jury. You go on down the street and
11 here's Mike Freeman or somebody who says, look, I served
12 last year on the jury for the State Court, January of this
13 year they pulled me in on the Grand Jury, and now by golly
14 you got me here in the Fall and I got to serve on the Traverse
15 Jury. So that results when you have multiple boxes in the
16 County, and why we just can't have one Jury Box and draw our
17 Grand Jury and our Traverse Jury from that box I'll never
18 know. I wish somebody would think about it. Now I'll tell
19 you why, one of the reasons, that you get opposition when you
20 get into this area, the Grand Jury makes certain appointments,
21 they control certain Boards in the County, and they have a
22 lot of influence on County affairs. It's very much to the
23 advantage of a few selfseeking important people in the County
24 to control the Grand Jury. They can do that by having it in
25 a separate box, by having it to be a small and separate part

1 from the Traverse Jury Box. We had one County that had less
2 than two hundred and fifty people in the Grand Jury Box, so
3 that about every third or fourth time the Grand Jury met the
4 same people would likely be back on it, especially when it
5 was revised every two years, and if they didn't finish all
6 the people were thrown back in the same box, and you might
7 have a man serving on the Grand Jury just before it was revised
8 and after it was revised and thrown back in the box he'd be
9 pulled right back and serve on the first Grand Jury out of
10 the new revised box. One jury box is all any County needs,
11 they can draw the State Court, the Superior Court Traverse
12 and the Grand Jury out of the same box. I've taken too much
13 time, more than I intended to, but there is one other thing
14 that I wish this Constitution would address itself to; Judge
15 Nichols has mentioned it, and if I might say so I think
16 for the first time the Bench and Bar has got a man there that
17 comes out bareknuckles fighting for you, and some people don't
18 approve of the way he's going about it, maybe I don't either
19 in some instances, but I know that without him some of the
20 needed changes would not have been made, and he's certainly
21 asking for a lot of things that I believe the average person
22 in the public is in favor of. One of the things that he's
23 upset, and I believe -- I know there are a lot of people
24 that don't believe in capital punishment, but they haven't
25 read McCorkle versus Georgia and some other cases, but

1 this business of dragging a case out six, seven, eight years
2 through all the Appeals up to the Supreme Court of the United
3 States, and then it coming back to Georgia where the man's a
4 vicious criminal, a mad-dog, had been convicted, and that
5 case coming back down here, and the Governor not having the
6 guts enough to pull that switch but sending it over to the
7 Pardon and Parole Board for them to make a final review, if
8 there's anything in Law that gives them that right I don't
9 know what it is, and I think the Constitution should make it
10 ample -- crystal clear, as we used to say in the Legislature,
11 that when that appeal is final there's a certain number of
12 hours and days before the switch is pulled. Thank you,
13 Committee.

14 MR. OVERBY: Judge Gunter, I appreciate you appearing
15 before the Committee. Anyone else who would like to be heard?
16 Charles Smith, a local Attorney.

17 JUDGE GUNTER: Senator, thank you, and excuse me,
18 I've got a meeting with Judge Kenyon.

19 MR. OVERBY: Thank you, Judge Gunter, appreciate
20 you coming.

21 MR. C. SMITH: Charles W. Smith, Jr. I'm am a
22 practicing Attorney here in the Northeastern Judicial Circuit.
23 I'm also the Recorder or Police Court Judge for the City of
24 Oakwood here in Hall County. I'd like to address -- first
25 of all I would oppose the abolition of the lower Courts, the

1 lower Trial Courts whether it's Municipal Courts, JP Courts,
2 the Probate Courts or the State Courts. Down in our Court;
3 we have a small Municipality, but we handle and dispose of
4 between six and seven hundred cases a year, having Court
5 once a month. This is six or seven hundred cases that the
6 State Court of Hall County or your Circuit Court would not
7 have -- does not have to mess with. The salary of the job
8 is not on a fee system. I practice law every chance I get,
9 and I'm sure the Municipal Court for the City of Gainesville
10 disposes of a great many more cases that are not clogging
11 the State Court or your Circuit Court now. They are disposing
12 of many cases and I don't see how doing away with these Courts
13 will help the administration of justice or speed it up any.
14 Also, it seems that trial by jury is, if not to be abolished
15 but at least to be seriously curtailed by cutting a jury in
16 half. Now I practice in the Superior Courts and in the State
17 Court, have twelve person juries in each of these Courts, I've
18 never seen it take more than a couple of hours to strike a
19 jury, and that's in a capital felony case, in a murder case
20 or an armed robbery case, much less trying to strike one
21 for misdemeanor, I've never seen it take over twenty minutes
22 to strike one for a twelve person jury in a misdemeanor case.
23 Yet you would say you would cut it in half, you'd have less
24 diversity of opinion on the jury. You'd have more of a chance
25 for conviction because you'd have less indians on the jury. You

1 would have more of a chance to find for the Plaintiff in a
2 civil case even though the defendant may be right because
3 you have less opinions, less pairs of ears listening to the
4 evidence. Finally, not to belabor the point I feel any time
5 that you want to curtail the use of the ballot box by the
6 people of any County or any Circuit in the selection of their
7 elected officials then you're getting away from the general
8 idea of what this Country and this State is all about. Now
9 I don't understand this Judicial Article the same way Judge
10 Gunter does, that non-partisan means you would not run by
11 political party. I understand it to mean that you would run
12 against your record, you would just be the only one on the
13 ballot if you were a Judge, and it would be a yes or no type
14 of proposition, but you wouldn't be running against -- I
15 couldn't run for a Judgeship unless that Judge was defeated
16 at the polls by a majority of no votes, that's the way I
17 understand it, and I feel that this is not giving the people
18 an adequate chance -- this is something Judge Palmour brought
19 out that I agree with that in order to select Judges and to
20 leave -- especially the trial lawyer -- to leave this in the
21 hands of the people you should have the ability -- they
22 should have the ability to vote on more than one person if
23 they wish, rather than just voting on somebody's record. Also,
24 you don't get in the situation they got in California now with
25 their Supreme Court Justice, Chief Justice out there, where

1 she's under fire for partially reversing a decision on the
2 sentencing things on rape case, but she can't answer it
3 because the judicial ethics out there don't let her fight
4 back, yet she can be slandered and liabled on the television
5 and newspapers and not be able to fight back --

6 MR. OVERBY: Judge, just let me -- I mean, Charles,
7 let me break in now, as one member of the Committee, and I
8 think I speak for the rest of the Committee, there's no desire
9 whatsoever to eliminate Judges from running, that's not the
10 purpose of the Committee to do that, I want to clear that
11 point up.

12 MR. C. SMITH: Well, it does have on this questionnaire,
13 it's Number 32, that Judges should be appointed rather than
14 elected, and Number 33, they should be appointed on the basis
15 of merit thereafter periodically face the electorate on their
16 record. Of course one of them does say Judges should be
17 elected. Also, has on there, Clerks of Circuit Courts shall
18 be appointed by the Judges rather than elected.

19 MR. OVERBY: That's correct on the questionnaire.

20 MR. STUBBS: The idea of the Missouri plan was
21 considered a long time ago and shot down by the Committee.
22 There was never any -- as far as I know -- no purpose on the
23 part of the Committee that non-partisan election be equated
24 to the Missouri Plan, it just meant it would be taken out
25 of the partisan primary. You would vote in a General Election

1 for a Judge, both the Judge and his opposition running outside
2 of party labels.

3 MR. C. SMITH: What's the difference between doing
4 it in a Primary where you cull out half of them at the
5 Primary level and doing it in a General Election where you
6 have a free-for-all?

7 MR. STUBBS: Well, there are a lot of reasons, one
8 of them is the straight ticket. You get the Judge out of the
9 politics of other people that are attached to him by virtue
10 of his party affiliation.

11 MR. C. SMITH: Well, those levers run both ways.

12 JUDGE BEASLEY: For example, a Judge can't go to
13 the Democratic Party meetings, and yet I have to expect that
14 they're going to support me because I'm a Democrat, it doesn't
15 make sense, but let me --

16 (AUDIENCE): Say that again?

17 MR. STUBBS: She said, a Judge under the Code of
18 Judicial Ethics in Georgia she can't participate anyway in
19 politics.

20 JUDGE SMITH: I can't even go to a political meeting
21 yet I have to depend on people to elect me.

22 MR. C. SMITH: Well, maybe you ought to abolish
23 that part of the Judicial Ethics.

24 JUDGE BEASLEY: Oh, no, we're suppose to be impartial,
25 and not partial to anyone particular political party, but I

1 want to clear something up right now about this questionnaire,
2 the questionnaire doesn't contain in it just the principles
3 that are adopted in these three plans. There's a broad range
4 of principles contained in the questionnaire to try to get the
5 sense of the people as to whether they want this -- they're
6 very anasthetical, one towards the other. As you can see
7 for example one says, there should be a single trial court;
8 the second one, there should be a multi-level trial court,
9 you know, the question is, what do you agree with --

10 MR. C. SMITH: Well, do the people know what you're
11 saying when you say, should there be -- but do you think the
12 people understand those two statements, what you're talking
13 about? Should there be a single trial court or should there
14 be a multi-level trial trial court?

15 JUDGE BEASLEY: If the problem is that the people
16 don't understand the question that was proposed then we have
17 to change the questionnaire.

18 MR. C. SMITH: I understand what you're talking
19 about, but the average -- the electorate may not. Two, how
20 is it going to change anything if you got 'X' number of cases
21 that are going to be filed -- made every year, and it tends
22 to grow with the population, how is changing the names of the
23 people that are going to be deciding these cases going to do
24 any good to actually relieve any backlog, if there is a backlog;
25 we don't tend to have one in this Circuit, I don't know what

1 it is in these other Circuits, but how is changing the name
2 going to protect the innocent, as it were?

3 JUDGE BEASLEY: It won't. If you just change the
4 name it won't.

5 JUDGE SMITH: Charles, what happened to the Chief
6 Justice out in California, have you heard?

7 MR. C. SMITH: I didn't hear the outcome, I assume
8 it was decided Tuesday.

9 JUDGE SMITH: It was, I didn't know whether you
10 heard what happened.

11 MR. C. SMITH: But that's the kind of thing that
12 you can run into when --

13 JUDGE SMITH: I read that thing, that's vicious,
14 that was vicious.

15 MR. C. SMITH: In fact she wasn't guilty of any
16 kind of misfeasance or anything like that, the people didn't
17 understand it.

18 JUDGE SMITH: Yeah, they didn't agree with her
19 decision and she didn't have anything to run against; you
20 can't run against it.

21 MR. C. SMITH: Of course trial lawyers tend to dis-
22 agree with the Appellate Courts often anyway.

23 MR. OVERBY: Thank you, Charles. Anyone else like
24 to be heard?

25 (AUDIENCE): Colonel, I got just a word or two

1 here I want to ask a question --

2 MR. OVERBY: Would you identify yourself?

3 MR. SAVAGE: I'm W. L. Apple Savage, Mayor of the
4 City of Clayton, Georgia, and also a parttime radio announcer
5 and flunky. To begin with we started off here, and I under-
6 stood that this wasn't going to be going back to become a
7 part of the Constitution, now I don't understand that, maybe
8 I misunderstood wrong. I'm not hearing too well today and
9 something's rolling, but to have a Uniform Judicial Courts
10 I understood it was going to be done some other way except
11 through the Constitution. Am I correct in what I thought I
12 heard or did I get what I think I heard?

13 MR. OVERBY: The Article if adopted will be a part
14 of the Constitution if the people approve it.

15 MR. SAVAGE: Well now, I understood that it wouldn't
16 be going to -- like the Constitution that we just had forty-
17 eleven of them, am I right or wrong now?

18 MR. STUBBS: I think I may have misled you --

19 MR. SAVAGE: Somebody did.

20 MR. STUBBS: Yeah, well that may have been I.
21 Whatever comes out of the Committee will go to the Select
22 Committee, which includes the Governor, and the Lieutenant
23 Governor, the Speaker, The Attorney General, I forget who
24 all.

25 JUDGE SMITH: Chief Justice.

1 MR. STUBBS: Chief Justice.

2 JUDGE SMITH: Chief Judge.

3 MR. STUBBS: There are about seven Members, and then
4 they will make a recommendation to both houses of the General
5 Assembly, which will then determine what if any resolutions
6 they will adopt which will then be offered to the people
7 as an Amendment to the Constitution.

8 MR. SAVAGE: Okay, that's what I wanted to know,
9 because I thought -- I didn't see how in the world you can
10 have something like this without legislative action, I mean
11 I didn't see no way in the world that that could happen, you
12 know, so I was sitting there thinking about two or three
13 things, and I believe the word's Statutory and legislation,
14 where local legislation is introduced and it comes back
15 and so forth, and then ~~once~~ that becomes a part of the Municipi-
16 pality, that's the same as the Constitution that the Legislature
17 has to go by as a Charter of the City as Legislature goes by
18 State Government, am I correct again? I think I am -- I've
19 sure been doing something wrong. Well, now to abolish this
20 they're going to have to amend all State Charters -- what
21 have I done here, I see about forty heads shake, so tell me.

22 MR. STUBBS: The Constitution would take preference
23 over any statute, which would include the local legislation
24 that created the Charter.

25 MR. SAVAGE: In other words that would amend that

1 Charter, that part of the Charter out, like the Supreme
2 Court has thrown parts of Charter's out. --

3 MR. STUBBS: It will probably be construed to
4 be self-executing.

5 MR. SAVAGE: -- you know, Civil Rights Discrimination --
6 that's one of the things I was wanting to know. I think
7 you're entirely wrong when you try to take local home rule
8 out of any kind of thing of this nature. I don't know
9 exactly the words I want to use here, and I don't want to be
10 misconstrued wrong, I'm for good Courts, I'm for good every
11 day lawabiding justice, and I'm for good lawyers, and I got
12 nothing against bad lawyers, but if you got to have four
13 years, and in one of these plans I believe I understood it
14 that the Magistrate or JP, or any kind of thing that's set
15 up that comes out of this, these hearings that you're having,
16 don't you think it's kind of ridiculous, I mean, really? I
17 mean, I do. You know, at home we kind of want to look after
18 our own affairs, that's just about the way it is. Now most
19 places that I've ever been it's just a good proud people, and
20 when it comes to little old misdemeanors and things like
21 that you don't need an Appellate Court or somebody to come
22 down of that nature to look after something like that. He
23 don't need four years of law books, look across at him and
24 call him by name and say, that's Joe Blow or whatever it might
25 be, or John Doe, I've known him a long time and he's been in

1 trouble, I'm going to be a little heavy this time and kind
2 of rack him up a little, what have you. Oh the other hand
3 I can understand your feelings of having a Uniform Court
4 system so when you go into another or other Judicial Circuits
5 that you want something that's uniform, it seems to me that's
6 what this Committee is trying to find out, what could be the
7 input of good uniformity, I think that's right, and my good
8 friend George Smith here, Judge Smith, if I'm wrong then you
9 tell me this, don't most people when it comes right down to
10 it want to look after their own affairs?

11 JUDGE SMITH: Yeah.

12 MR. SAVAGE: Damn right they do. Thank you

13 MR. OVERBY: Thank you, Apple. Is there anyone
14 else that would like to be heard? If not I want to thank
15 all of you for attending and being here today. The meeting
16 is now adjourned.

17 This Committee Meeting was adjourned at 3:25
18 p.m., 9 November 1978.

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1 HEARING HAD IN THE CITY OF GAINESVILLE
2 COUNTY OF HALL
3 STATE OF GEORGIA
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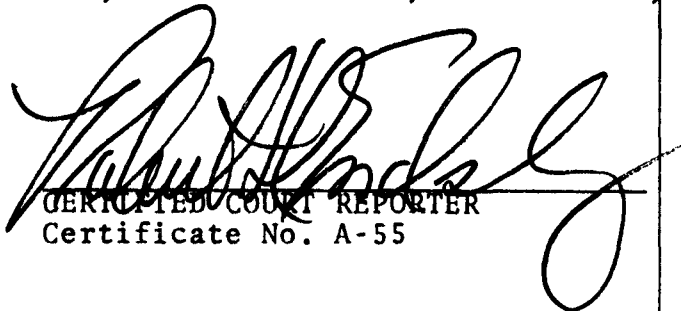
6 PUBLIC HEARING ON JUDICIAL ARTICLE REVISION
7 sponsored by Sub-Committee on Judicial Article
8 on 9 November 1978
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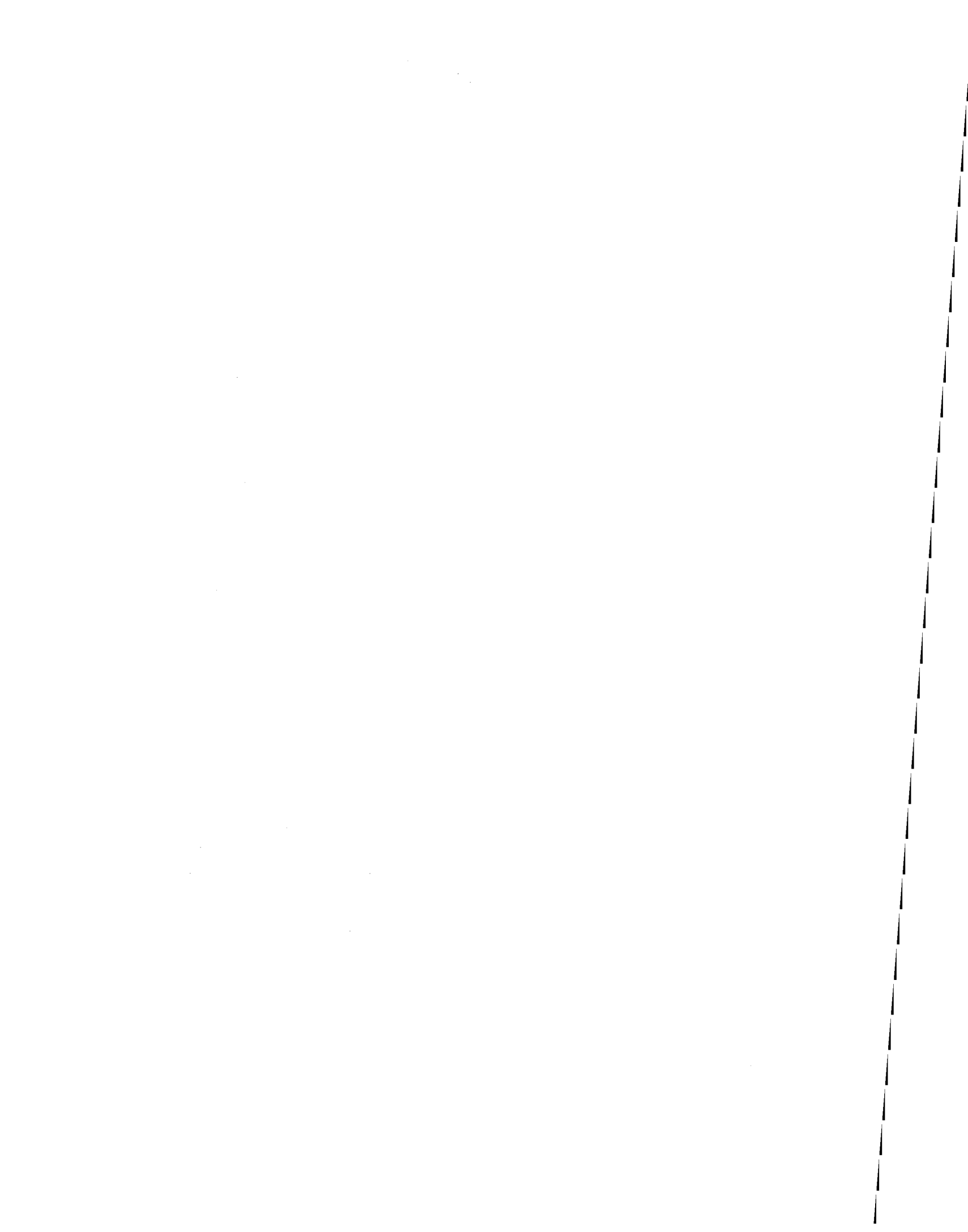
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14 REPORTER'S CERTIFICATE & SEAL:

15 I, ROBERT D. ENDSLEY, a Certified Court Reporter
16 do hereby certify that the foregoing pages contain a true
17 and correct transcript of remarks of persons appearing before
18 the Sub-Committee along with the responses by the Sub-Committee
19 Members to those particular remarks or inquiries.

20 I further certify that I am neither kin nor counsel
21 to any party at interest herein, this the 6th day of December,
22 1978.

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25 
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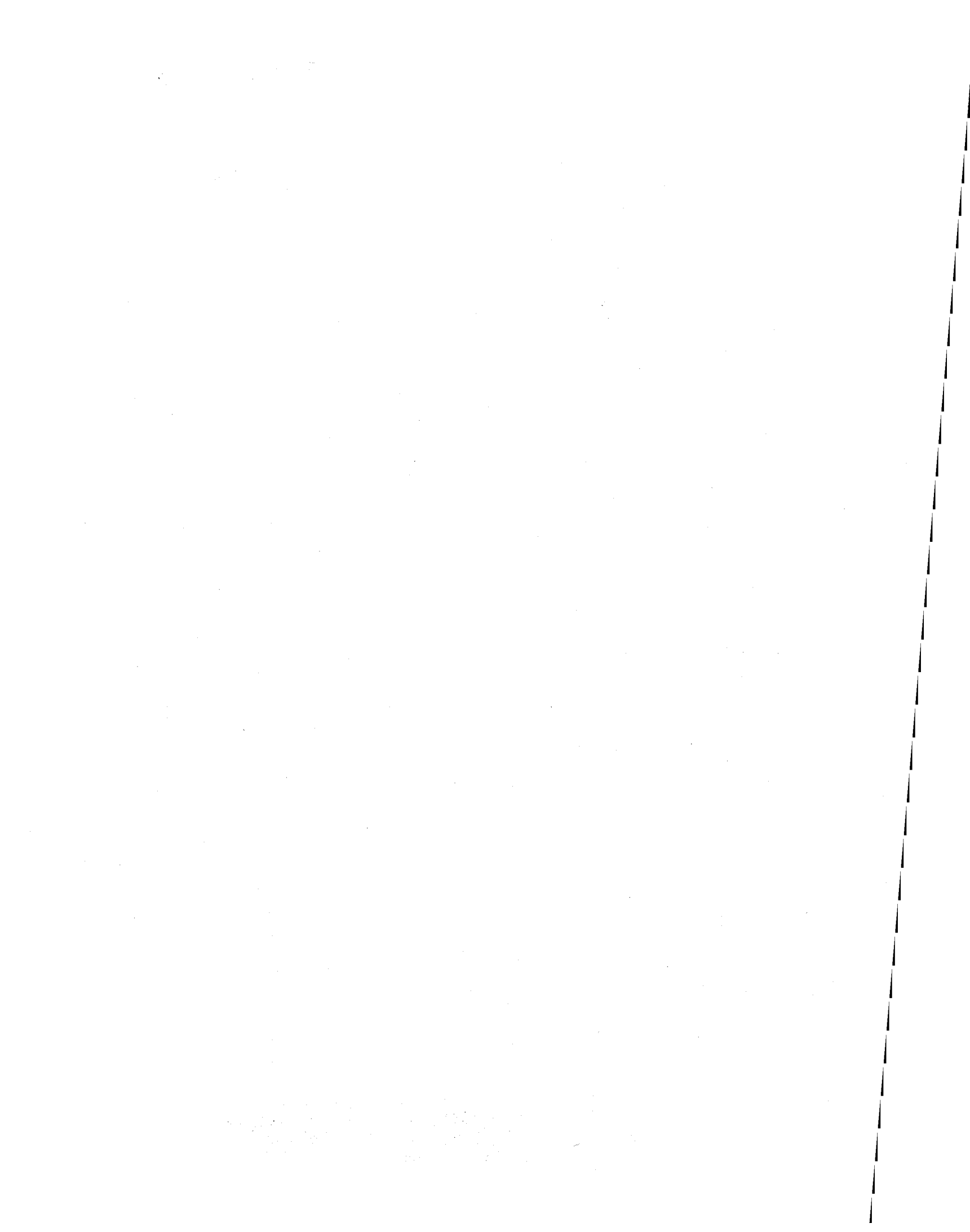
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HEARING TO REVISE THE JUDICIAL ARTICLE

HELD IN THE GRAND JURY ROOM

AT DALTON, GEORGIA

NOVEMBER 10, 1978

MR. SNOW: I'm Wayne Snow, Jr., the chairman of the Commission for the Revision of the Judicial Article, and a member of the Select Committee on Judicial, not judicial, but on Constitutional Revision, which is chaired by the Governor, and a number of members of the public as well as the General Assembly of Georgia. I also serve in the House of Representatives as the Chairman of the House Judiciary Committee. To my immediate left is Judge Dorothy Beasley, who is a member of this Commission, and who is a Judge of the State Court in Fulton County, Georgia, and to my immediate right is Marty Hodgkins who is the Executive Secretary by appointment of the Select Committee for Constitutional Revision, as Executive Secretary to that Commission.

We are in the process, as you know, of holding public hearings throughout the State. This is the fourth of our hearings. We have already had meetings in Savannah, and in August, and in Gainesville, Georgia, and this being the fourth one in Dalton. Next week we will be in Macon and in Atlanta, and the first week of December we'll wind up the public hearings on this phase of our work in Albany and in Columbus. Our concern, of course, is to seek as much public input as we can receive prior to the time that some measure is introduced or recommended by the Commission itself for adoption by the General Assembly, and then for ultimate ratification by the people in November of 1980. We hope that we will have considerable -- , we know we will have considerable controversy, considerable input,

and your recommendations are sought, and we are anxious to hear from you from time to time as we take up different phases of the Judicial Article.

As part of the background, let me suggest that we are, as you know, amending the Constitution of the State of Georgia on an article by article basis. And before I go further too, let me introduce Representative Roger Williams of Whitfield County. Roger, we're glad to have you with us here today. This was approved by the voters in the referendum or as a Constitutional amendment in 1976, that we would be authorized to amend the Constitution on an article by article basis. In the last general election held this past Tuesday, we adopted the first two articles in this, which were the first two amendments that you voted on which were amended articles to the Constitution greatly reducing the verbage that is in the present Constitution, or in those particular articles. So we're on our way, and we probably are dealing here with the Judiciary, and what is the most controversial of any of the articles in the Constitution. We probably will run into some of those additional difficulties when we deal with the Home Rule Article, but other than that I would venture to say that this is the most difficult of our articles. Senator Bill Fincher has just come in. Senator, we're glad to have you, and as people come in, we do have a list here of those who may want to be heard, and if any of you would like to sign up on this we will be glad to hear from you.

Why are we meeting, and what are we doing? We have three drafts that have been presented to you which are available here at the table. One is an adoption in principle by the Commission which is Draft A, which sets up a one tier Court system in this State. In other words, there would be just the Supreme Court, Court of Appeals, and then a one tier trial system which would be composed solely of a Circuit Court, rather than the present system of Superior Court, State Courts, Juvenile Courts, Probate Courts,

and there would be just one Court, and then a system of magistrates in the State which would involve the Mayor's Courts or the Recorder's Courts or the J.P. Courts, or in what we call the City Courts in some of the Cities. The Draft B is a proposal which encompasses a two tier system which would retain in the trial courts the Superior Court, and then a second tier which would be composed of your State Courts of which folks like Judge Beasley are members of that Court, and your Probate Courts with whatever jurisdiction we might provide in the proposal, but we are seeking to have uniform jurisdiction throughout the State. The third proposal or the third draft, Draft C, is a draft that has been presented by a Special Committee appointed by the Probate Judges, and is included for the consideration of those who are interested as members of the public, as well as for the consideration of the Commission.

We are concerned in the Legislature especially at the large number of new courts that have been created in the past few years. The hodge-podge courts, our hodge-podge system of courts, such as your large numbers of small claims courts, all of which are being created with differing jurisdiction and differing amounts, maximum amounts that those courts can handle. We feel that there should be uniformity in these Courts. We feel that there is an area here where your Justice of the Peace Courts, some of your State Courts possibly, which are part-time, your small claims Courts can be combined for full-time judges in these courts with the maximum amount of jurisdiction, and to call some of them magistrate Courts where you will not have full-time attorney's possibly in them, some proposals call for full-time lawyers, others call for legal trained attorneys or legal trained persons to be the judges of those Courts. We feel like that in principle that there should be --- the Commission does, that there should be uniform jurisdiction, and that jurisdiction of different courts which are now over-

lapping, that this should incur a degree of uniformity. Our judges frequently are non-lawyer judges, lack training, we feel like there should be some type of legal training for all the Courts. We do have a large number as you well know of Judges on a part-time basis, and most any provision that we have, I think, will provide for full-time Judges.

Courts are too often viewed as sources of revenue, and they should be viewed as sources of justice, and we do have a lot of cash register justice in this State, and I don't think there's anyone that can question that to any large extent. We have had a history in many areas of that. I don't know that we can come up with any article that will totally avoid it, but we can certainly discourage it by the Judicial Article itself.

There are recommendations or there will be statutes which will possibly return under the provisions if we retain or if we include the Mayor's Courts or your Recorder's Courts, whichever you call them with your City Courts, and if as to whether or not they would retain the funds or the funds there would be returned back to them in toto or whether there would be a partial return of the fees that are collected there, fines and forfeitures, that would be a matter that would address itself to statutory legislation which should be prepared at the same time that any recommendations are made to the voters by the General Assembly for adoption and ratification of a new Judicial Article. So the accompanying statutory laws will be passed, that will become effective at the effective date of the ratifications, so that there will be no question in anybody's mind as to how they are going to be effected by the Judicial Article, if it is ratified. So with these comments and with questions that you may have later after the folks have been heard, then we would seek to answer those questions. I will assure you there are some 20 members of the Commission. We have different folks who attend at various public hearings that we have, and the Commission

members are interested. They are attending at various of these public hearings as they can do so. We have Representatives on the Commission from the various Courts of the State, as well as some public interest groups such as the Grand Jury's Association, the League of Women Voters, the Georgia Press Association, the Chamber of Commerce, the AFL-CIO. We feel that we have a good representation and a cross-section of folks who are serving on this Commission. With that, Dorothy, would you like to make any statement before the hearing starts?

MS. BEASLEY: Yes, I think I would. There is as you see -- don't try to read all these proposals now because it really does take quite a bit of study for you to understand the various proposals, but in perhaps your remarks which would be most helpful to us is your comments on the principles that Wayne has suggested to you as being considered, and the first page of this number of pages that you have does suggest the basic principles, and it is those things about which we should be talking, and not the details of how this would be implemented in a procedural basis or in a Court structural basis. But we want to know basically from you what the ideas are that you have for improvement of the existing system, because obviously we can adopt a Constitutional Amendment that is identical to what we have now and just keep what we've got in Georgia if that's what everybody wants, but we've had it; it has grown up over 200 years. A lot of it has grown up because of needs at one time that perhaps are not in existence now in the growth of our State. The mobility of our citizenry, and the object is to provide a system of Courts in the State which meet the needs of the people as quickly as possible and as cheaply as possible for them, so that we can dispense the justice to which they're entitled and for which we're paid in a better way than we're doing it now. And one of the concepts, I think, is to make it uniform, and one of the reasons for that is that we

have existing now over 2100 Courts in this State if you count every one. Many of which have differing jurisdictions so that even lawyers don't know where to go, and it's sort of a practice of "When in Rome, do as the Romans." You really don't know, maybe where you are, and Judges don't. If you would just look through the Appellate books, the Courts of Appeals and Superior Courts so many decisions are based on jurisdictional questions. This is a tremendous waste of manpower, effort and confusion and frustration for the citizen involved and for the lawyers too. So at this point I think that since these proposals have been discussed primarily only within the Committee, primarily it has just begun to hold these public hearings, that at this juncture we're anxious for the public to begin to become educated as to what the proposals are. So that as we go down the line we will then be able to get educated feedback from the public. The basis for this hearing is for us to listen really, and that's why we're here.

MR. SNOW: Let me further add to that. That two of the areas of concern that we anticipate, that in the recommendations for the Judicial Article that there will be a non-partisan election of Judges, and that all of the Courts in this State will be financed from State funds rather than from local funds, and that -- or from funds that are generated by the operation of the Courts. With that I'm going to call on the Clerk of the Superior Court, Louis Couch.

MR. COUCH: I don't have any comments at this time.

MR. SNOW: All right, sire. All right, Mr. Burdette, the Mayor of Calhoun.

MR. BURDETTE: I'm certainly privileged to be able to meet here today and say what I have to say. Although I have to admit that I'm not familiar with all this. I haven't had time to really go through it, so I want to make you aware of what I am concerned about, on what I know about it at this time. Of course, I serve as the Mayor of the City of Calhoun and as

such I preside over the Mayor's Court of the City of Calhoun. I'm in my fifth year in this position, and we have a good Court. It's a formal Court. We have an Attorney, a member of the Bar present in our Court at all times. The Mayor serves as the Judge. Of course, in my instance, I am not an attorney. I do have a law degree, but I'm not a member of the Bar. I do not feel like the Municipal Courts such as our's or the Mayor's Courts such as our's -- and of course, we're a small city of around 7,000 at this time, I suppose. But I do not feel that these Courts should be taken over by the State. I feel like the Court should be controlled and operated by the City. Of course, the jurisdiction of our Court is within the City Limits of the City of Calhoun and applies only to misdemeanors. I feel like there is really no objections to the way our Court is operated, or at least I know of none in the years that I have operated it. I do not feel like the State should take it over. I feel like this is just taking more away from local Government, and that the Court should be operated by the City of Calhoun. And that the fees, of course, we do not depend on the fees. I think our Court takes in less than \$100,000 a year in fines. We spend approximately \$400,000 or better on the operation of our Police Department. So it's certainly not operated for fees and I do not have this in mind. I do feel like we need to have our Courts in the State more uniform. I realize that there is a need for uniformity in our Court system, and I agree with many of the principles that are listed here, and I certainly agree that we do not need some kind of something done with our Court system, but I'm opposed to our City Courts or Mayor's Courts such as ours being abolished. And I'd like to -- this is a point that I would like to make here today. And also I feel like there should be more that should be looked into to see what is wrong with our Municipal Courts or our Mayor's Courts, or why is there a need to abolish them, rather than just to include them in a wholesale effort to abolish all the State's and set up a new system. Thank you.

MR. SNOW: All right, do you have any questions of the Mayor?

MS. BEASLEY: When you say, Mayor, if I may ask you a question, that you do agree that there should be some uniformity, I take it that you would agree then that all Mayor's Courts or Recorder's Courts or City Courts or whatever you call them, should call them the same things, and you'd like to have the same type of jurisdiction wherever they exist.

MR. BURDETTE: Yes, I certainly ---

MS. BEASLEY: And have the same type of qualifications for whoever is serving, and the same rules or procedure that applies, that kind of thing, is that what you mean?

MR. BURDETTE: Yes, as nearly as possible. I don't feel like this might not be possible under --- the way the Courts are set up at the present time, but I do feel like there needs to be as much uniformity as possible.

MS. BEASLEY: For example, you say you always have a lawyer present.

MR. BURDETTE: Yes.

MS. BEASLEY: Well, that very well could be a good procedure, and a good safeguard, and it could be made a Statewide regulation. Would you feel that that sort of thing ought to be covered under this ---

MR. BURDETTE: Yes, the reason we have a lawyer there, and it's not --- we don't --- he's not a prosecutor, or City prosecutor, he's there strictly for the protection of the accused. And, of course, we never hesitate to transfer a court or a case to the Superior Court if it's requested at all. In fact, I'd much rather see it transferred than to be appealed.

MS. BEASLEY: Do you have any civil jurisdiction?

MR. BURDETTE: We have no civil jurisdiction at all. Only the jurisdiction over misdemeanors.

MS. BEASLEY: Do you think that you as the Mayor and the Mayor's Court and this type of Court you've got in the State ought to have some limited civil

jurisdiction over small claims?

MR. BURDETTE: Yes, I certainly do, because we run into the problem frequently where accidents are involved, and where there is small property damage that I think could be handled better in a Court such as ours than elsewhere. And of course, we don't have any jurisdiction, all we have jurisdiction over is the violation of the ordinance, and many people do not understand, you know, they think when they come to Court that they're going to, if they've had an accident and they've been damaged, property damage in a small amount, that they should receive some relief from our Court, and, of course, we have no jurisdiction over this. So I feel like that would be good up to a certain amount. Small claims.

MR. SNOW: Do you have a set time that you have Court each month?

MR. BURDETTE: Yes, our Court is held at 5 o'clock on each Monday.

MR. SNOW; Everybody knows then the specific time that you have it?

MR. BURDETTE: Oh, yes, It's been held that way for the last 25 years.

MR. SNOW: That would be another thing that we would be interested in doing is making sure that every Recorder's Court or Mayor's Court in the State did have a set time that they met.

MR. BURDETTE: And also each of our entire session of Court is recorded, and these tapes are filled at our City Hall. So they are available at any time.

MR. SNOW; Thank you, Mayor.

MS. BEASLEY; You do more than we're doing in a State Court. We are not a Court of Record, and we don't record very much.

MR. BURDETTE: Well, I find this is real helpful, And we do --

MR. SNOW: Questions come up, don't they?

MR. BURDETTE: Yes, they do.

MR. HODGKINS: Mayor, may I ask you one or two questions?

MR. BURDETTE: All right.

MR. HODGKINS: Number one, what is the majority of your case load, is it

traffic?

MR. BURDETTE: The majority -- well, of course, yes, it's practically all traffic. Of course, we have some violations, fighting, and disorderly conduct and that sort of thing, but the majority of our cases are traffic cases, and I would say driving under the influence, Public drunkenness, and this sort of violation.

MR. HODGKINS: Do you have any idea what your caseload was for, say the last calendar or fiscal year?

MR. BURDETTE: Yes, yes, I would say it averages around 60 cases per week, or from 2,500 to 3,000 cases per year.

MR. SNOW: Anything else, Marty?

MR. HODGKINS: (Shook head no)

MR. SNOW: Thank you, Mr. Mayor. All right, County Manager Lenard Whaley. Mr. Whaley, would you state your name, and the County, you're from Whitfield County?

MR. WHALEY: Whitfield County, yes sir. My name is Lenard Whaley, I am the County Administrator here in Whitfield County. I think that -- here again, maybe I'm not as familiar with the changes as perhaps I should be. I think our main concern here would be basically, you know, probably the Court system originating maybe from Atlanta or from the ---. I guess if I understand this correct that actually the Supreme Court, the Justice of The Supreme Court would be making some of the final decisions, the appointments ---

MR. SNOW: Draft A which you have, would make the Supreme Court the rule making authority. It would give the rule making for procedural authority in the Supreme Court, and it would also give the Supreme Court authority to certify the need for new Judges that may be established by the General Assembly before they would become effective. Now that does do that. The second draft provides that it might be the Supreme Court or a Judicial

Council which would be composed of different members --- persons on the Courts, or the Clerks representative and Probate Court representative and other Courts that would be represented on the Judicial Council. They would have that rule making authority.

MR. WHALEY: Okay, I think that this would be, you know, this would be one of our objections to it is that, you know, it would appear to us that maybe some of the local authority or local input into the decision of the Courts would be ---

MR. SNOW; Well, this rule making authority is now in the General Assembly.

MR. WHALEY: Okay. The other items that we're concerned of here in the County, I think is perhaps take --- I'm just using one for example, the Probate Court, for instance, you know, I think most people prefer to, you know, we can't understand why it would need to be an attorney to be the Probate Judge. It's basically records, and this is another one of our objections to it is that, you know, that every appointment or every Judge has to be an attorney.

MR. SNOW: Let me answer that the same. For the non-judicial functions performed in the Probate Court office it would not require a Judgeship.

MR. WHALEY: Okay, so maybe this will clear up some of the problems.

MR. SNOW: Only the judicial functions would be transferred to another Court, which would be a full-time judge under the proposals.

MR. WHALEY: Okay, well maybe I could summarize this in saying that, you know, as long as the local people still have a voice in their court system, you know, I think this would be, you know, this would be something that we would be more acceptable to, and you know, if I'm getting some of the feedback is that, you know, if these proposals were adopted that this would not be the case, you know, and if I'm wrong in this then probably we need to ---

MR. SNOW: Well, I think we all need to look at it much more closely. There've

been a lot of things that have been said that are misleading, and not intentionally, but because there have been no real proposals yet that have been adopted by the Commission as such that have been finalized for recommendations in principle only. So that's the reason for these hearings before any finalization of any proposals, and then, of course, when we get it in the General Assembly, we will again hopefully be hearing from different groups for the next two years before it can even be ratified by the public. So there's a lot of time involved, and we hope there will be greater understanding and less misunderstanding about it.

MR. WHALEY: Okay, our other concern it ---

MR. SNOW: There are some areas where folks will not have the present positions that they have. Now, there is no questions about that. There will be a total abolition or name change of what we now know as Justice of the Peaces. There will be a Magistrate. There will be a total abolition of what we know as Small Claims Courts, I think, under any proposal. These will be combined. The JP's as new Magistrates. Probably the same procedure that they're now appointed by through the Grand Jury will continue to exist, but they will be Magistrates, they will have jurisdiction possibly up to a \$1,000 or \$5,000. There will be no Small Claims Judges though. This will be where all that jurisdiction is contained.

MR. WHALEY: Okay.

MR. SNOW: And you won't have a JP for every Militia District. You'll have at least one Magistrate in every County.

MR. WHALEY: Okay, then the other items. I think as far as County Government is concerned in this ---

MS. BEASLEY: Before you leave that one, I'd like to make a comment on it too. This system, regardless of which one your talking about proposals all still retain elected Judges as such. So you've got that kind of local control. The

proposition is to possibly make it non-partisan, but it still would be elected judges.

MR. WHALEY: Okay, you're talking about local Judges in the Circuit?

MS. BEASLEY: What ever judges we come up with.

MR. WHALEY: Okay, then ---

MS BEASLEY: Regardless of whether we have tiers or throw them all together or still have seperate Courts or whatnot, you'd still have elected judges.

MR. WHALEY: Okay, getting on to real County Government level of this system that we're talking about now. The more we get into State and County operations in a Courthouse, you get half your employees are State employees, half of them are county employees, you know, these are problems that we're finding in County Government. That, you know, people really don't understand who they work for, and allocating space, you know, if we're going to have a system, is it going to be completely operated by the State Government? Do they provide the space?

MR. SNOW: No, we anticipate under all proposals that the County will still furnish the Judges and others the space, but not the materials, supplies, and things of that sort.

MR. WHALEY: Okay ---

MR. SNOW: All supplies, office equipment, everything will be provided by the State.

MR. WHALEY: Okay, but as far as the space and so forth is concerned, you're still talking about ---

MR. SNOW: Let me expand on what I said a moment ago about this area of the Legislature now doing much as far as procedure is concerned, and rule making which we do through Legislation. The Courts increasingly feel stongly that they are a seperate branch of Government. They are supposed to be under the Constitution. They're supposed to be.

MR. WHALEY: I understand that.

MR. SNOW: They don't really function in that respect. We keep a great deal of control over them other than just by the purse strings, because we tell them when they going to have new Judges, we tell them when they're going to have this or that or something else, as far as the rules are concerned, the rules of procedure. Really I don't personally as a Legislator think we ought to be providing rules of procedure for them. I think the Courts ought to adopt certain rules as far as procedure, uniform throughout the Courts. There are many attorneys that would disagree with that statement, but nonetheless, I think that they are a separate branch of government. I think that there has to be something other than political consideration when you start having new Judges in the State, and that's the purpose of having some control over new Judgeships. Now we presently, and since I've been chairman of the Judiciary Committee, we have not provided for any new additional Judgeships in this State that have not been recommended by the Judicial Council, but we're not bound by their recommendation. We are just following that as a procedure that I follow as Chairman of the Committee. We just will not approve them unless the need has been assessed by the Judicial Council. I think personally that ought to be made a part of the Constitution. That there shall be no new Courts unless there has been a certification need of that Court established by some other group within the Court system justifying that need.

Otherwise, see, we have no control in our committee over local Legislation right now to set up new Small Claims Courts. Well, they're just setting them up by the dozens, and because it can be done without any of us knowing about it through local legislation. And it's just political many times. They got a friend they want him to have a Court, and they set one up. Well that's foolishness.

MR. WHALEY: Of course, we have one in Whitfield County here or we just --- you know, we just initiated one.

MR. SNOW: You just set it up? Okay,

MR. WHALEY: And I'm sure we're still working on that. I'm not sure whether or not it's political or what, but we felt like there ---

MR. SNOW: No. There is a need because there has been a laxity on the part of JP's in many areas to properly function, they have a limitation on what they can do. So they need --- there's a need because of additional jurisdictional amount over the \$200 that we now limit the JP's to. So see what we've got, we've got too many different --- it's hodge podge system like I called it before.

MR. WHALEY: I understand.

MR. SNOW: So that's where we need uniformity.

MS. BEASLEY: I'd like to just make a comment on what Representative Snow is saying too, is the theory behind making it a unified system that is all Courts are part of the Judicial system, whereas now so many of the Courts operate independently of the Judicial system, really. They are part of the place by their nature of being a Court, but that's all. There's no answer, there's no accountability, nor is there any ability by the Judicial system itself to monitor itself, to look after itself, to manage its internal affairs as the Judicial system, and if it were unified, that is even if you had an independent Mayor's Court that is separate from the Superior Court structure, it still would be answerable to the same overall administrative body so that we could have uniformity per se I think we could have all the Mayor's meetings and whatnot, and have some uniformity there. That's the theory behind the unified system concept as opposed to uniform.

MR. SNOW: We're not trying to interrupt you in your presentation, but I do think these are areas for explanation that need and will help everybody

else to hear them too.

MR. WHALEY: Okay, these are our primarily questions, and then my final comment would be this in regard to finance and cost of --- I agree with the other gentlemen that, you know, the Court system is not a money making proposition, but nevertheless, you know, we have to pay our bills, and do I understand that the finance or the collection of the fees would return to the State, and then the State assumes the cost of ---

MR. SNOW: Under possibly one proposal it would, the State would then pay you for all the costs of the operation of the Courts and under another proposal that we have, and similar to what Alabama has done, all the fees and forfeitures come into the State, but then are returned to the point of origin in toto, with the State still paying, though, for the cost of the operation of the Courts.

MR. WHALEY: Okay, the greatest cost or the increase in cost now is the Court system. As far as Whitfield County's concerned, and I, you know, I think we, you know, this we do have a concern even though we credit the amount of collections, but basically, we still have expenses --- expensive system. But you know, but I think and my final comment would be this: you know, we'd like to see the present system try to be improved, you know, before we completely did away with the system that we already have. I think this is some of our problems, you know, we think by creating another system we eliminate our problem, and I've found this not to be true all times. That just by creating another system it doesn't eliminate your problem. And I think we would like to, you know, we would like to see improvements in the system, but make sure you've got something better to replace it with before we do away with ---

MR. SNOW: Many of the things that you're talking about can be handled through statutes too. Our Constitution is a Constitution of Limitation right now,

which prevents us sometimes from making some improvements because of the manner in which it's written, and we are trying to improve the verbiage in the Constitution so that we will have some leeway in the future, where we wouldn't be in a position where these Small Claims Courts have to be created where we could -- instead of doing that, we could have increased the jurisdiction of JP's, and called them Magistrates or something else without having it being tied to a Constitution that requires Justice of the Peace's in every Militia District in Georgia; where half of them are not filled. Of course, you don't need that many, and there's a difference in the manner in which they're selected. Some are elected, some are not, some Counties don't even have them anymore, they've abolished them such as Whitfield and Dekalb and others. So just trying to get some uniformity.

MR. WHALEY: Okay, thank you.

MR. SNOW: Yes sir.

MS. BEASLEY: And flexibility. If it were a uniform and a unified system, there would be more flexibility where changes could be made by the Legislature or --

MR. SNOW: Rather than having Constitutional Amendments that upset an awful lot of people when they have to go vote on them. Unless they get a lot of news coverage on them such as four year terms for Legislators or something like that. That's where you get the publicity. I told Dorothy earlier that in order to get this Constitution changed, we needed a good scandal and so we made it.

MS. BEASLEY: We're working on it.

MR. SNOW: All right, Attorney H.E. Kinney.

MR. KINNEY: I'm not going to say much. I might say, and I've read this over hurriedly. There are a number of things that I'm opposed to it. In the first place, I notice on all of them you're increasing the terms of Superior Court

Judge to 6 years and 8 years. Well, I think we've learned fairly recently what people think about increasing terms. Now, I been up here 30 years and practicing in your County and various Counties around, and I think the people would want this to remain four years where it is now. And I think if it's tied in one package, I believe that alone will defeat it.

MR. SNOW: I've recently had experience with term changes.

MR. KINNEY: Yes sir, and another thing. I think it will create -- well, one of the biggest bureaucracies we've ever had. Now, we'll send all the money -- a lot of the money will go to Atlanta. Just like we send money to Washington, if we send a dollar to Washington, we get back 40 cents. Now where the other 60 cents goes, I don't know. But a number of things, and I think it will create entirely too much power in the Supreme Courts and maybe in occasion in the Superior Court. Now we been very fortunate in this County to have fine Judges. I have been practicing law for 30 years, and I'll say before the Judges that are here, some of my Court practice has been in Judges in other counties that were anything by good Judges. You might recall one or two of them. And I'm against a six year or an eight year term, and I think the people will be against increasing the term. Now we have had ---

MR. SNOW: Let me suggest one thing on that. You know, it increases the term to six years, but it decreases the terms from Atlanta where they have eight year terms now to six years.

MR. KINNEY: Well, I'm talking about ---

MR. SNOW: They're opposed to reduction down there.

MR. KINNEY: I'm talking about our particular area. Now --

MR. SNOW: It makes it uniform.

MR. KINNEY: I been here 30 years, and as far as I can remember we may have had a token opposition to a Judge but other than that we haven't even had them in our County we haven't even had an opposition to a Judge. And there

are very little opposition, and very little oppositions to the Appellate Judges and everything. But I feel --- a lot of people won't agree, I think we'd be in better shape if maybe ever eight or ten years that the Federal Judges would have to run for office. I don't think we'd be buying chalk for the Boston School System if we had that, and a lot of other things. I think it would create an expensive bureaucracy, I don't think it would help a thing. I think there are some things that need changing on the thing, and there are a lot of these things. The Probate Court now. By and large it's true our Probate Courts are not lawyers. Probate Judges are not lawyers. I think over the State of Georgia I can truthfully say I know some of them that are lawyers and I think frankly know more law. I won't point them out, but I've had experience before that. But the main thing--- the main objection I have to it, it will create too much of a bureaucracy. I don't think we need it. I think we need some reforms probably but not this way, and I think it will create too much authority in the Supreme Court, over the whole Court system and everything else. I personally --- your 12 and six man jury should be allowed for misdemeanor and civil cases involving less than \$100,000. Now a number of those things there that I won't go into. But the terms and a number of other things I don't think the people want. I know they don't want them in this County, in my opinion now. That's one man's opinion. I'm going to hush and let somebody else talk.

MR. SNOW: Dorothy, do you have some questions of Mr. Kinney?

MS. BEASLEY: Yes, Mr. Kinney, from your long practice and exposure you apparently have some ideas about how to improve. Have you crystallized those yet or is it too early for us to ask you to do that because this is the kind of thing ---

MR. KINNEY: Not really, and I haven't crystallized all of this because there's so much of it and so many of them that I don't understand it myself. I need to study more on that, but a number of things I can pick out right in the

beginning that I'm strongly opposed to changing.

MR. SNOW: We would appreciate your views on those later too.

MS. BEASLEY: As far as six man jury, do you agree that we should have it for under \$100,000, or disagree?

MR. KINNEY: I think the amount ought to be lowered. I'll tell you, I've tried too many cases where one or two --- and Warren and a number of others in here, --- where one --- after all, you don't get a 12 man jury or a 6 man jury in many cases. In most cases you get one or a two man jury. He'll get out there and control the whole thing. I remember a case I tried a good many years ago they went out and voted 11 to 1. Well, that one man pulled over the other eleven, now and if you get one strong person on that six man jury, well, you've really got a one man jury. I would personally prefer a 12 man jury in all cases, in any amount over \$2,500 or \$5,000. However, I think the six man jury, regardless how I feel, is coming more and more into effect.

MR. SNOW: Thank you so much, Mr. Kinney. The City Administrator of Powder Springs, Mr. Bill Leachman.

MR. LEACHMAN: I'm Bill Leachman, City Administrator for the City of Powder Springs. Needless to say, I will address the Municipality from the standpoint of what my standpoint is. The study --- or the Committee's study had generally revealed that there are problems within the Judicial System of the State, especially related to the dual Appellate systems, the over-lapping Court jurisdiction, but it has not pointed out any problem in local courts, City courts, Municipal Courts, Recorder's Courts, Mayor's Courts, whatever they may be called. It seems according to the minority reports filled with the GMA that the recommendation that Municipal and local Courts be abolished has been made simply for the sake of unification rather than for any practical purposes. The problems with the local Courts, as I've said, have not been

pointed out, although you've admitted yourself there are many problems with the State Courts, from JP Courts on up.

MR. SNOW: I thought I mentioned cash register justice.

MR. LEACHMAN: Case register justice, I believe, would be a charge in any Court and have to be proven. That's one man's opinion again, Mr. Snow. Unification for unification's sake is absurd. With the abolishment of Municipal and local Courts the need for law enforcement on the local level, I feel would be virtually eliminated. If you're going to do away with the Courts, you may as well do away with the Police Department. In Cobb County, for instance, strictly an estimate, a basis of 300,000 people, six municipalities plus a County Police force of over 200 units. What kind of Court would you have to set up there to handle all the traffic alone? Disregarding other local ordinances; housing violations; building violations; electrical violations; drunk and disorderly; or whatever you want to call them. Granted agreeing with the Mayor of Calhoun the majority of the cases are traffic cases. Again many of us are controlled by the State on traffic cases already, generally by the adoption of the Uniform Rules of the Road, which again gives us the authority to try such cases in our City, but yet this proposal will undermine that order, the Uniform Rules of the Road. Again as you can tell, I am speaking on behalf of the Municipal Courts, the local Courts, the Mayor's Courts, I guess in summation conformity for conformity's sake is assinine. I don't think that the Municipalities are going to go along with having the majority of their jurisdiction in their locale done away with. Thank you.

MR. SNOW: Wait a minute. Go ahead.

MS. BEASLEY: I have a question, and that is one of the overriding concerns that prompt the idea of a unified system is the concern of the lack of accountability in the overall Court system. Accountability both as to the performance and as the fees.

MR. LEACHMAN: As to the fees, are you talking about a schedule of fines and forfeitures, or the actual fees collected?

MS. BEASLEY: Both. One is that there are not uniform fines and fees in Court. Two, that there is no oversight -- overseeing mechanism now for accountability.

MR. LEACHMAN: Having been a member of the Clerk's and Finance Officers Association of the State of Georgia, and the State President in 1975, I believe the Legislative Committee from GMA and also the Clerk's and Finance Officers of the City Manager's section approached the General Assembly four years in a row to try to get out a unified or uniform fiscal management system required by the State for all Municipalities. It would not even let it get out of Committee. There is your physical responsibility. There is no requirement by the State for fiscal responsibility, budgets, accountability, auditing, whatever fiscal method is available in the State. There's no requirement that any City do that. Why should we be required to do it on one faction of our operations?

MS. BEASLEY: You see it then as -- we're all talking about the something, there should be some accountability. We're concerned with there being accountability within the Judicial system itself, and you're saying the accountability should be the three branches of Government.

MR. LEACHMAN: That's absolutely right, Judge.

MS. BEASLEY: Totally.

MR. LEACHMAN: You're talking about accountability in Judicial, and I'm talking about total Government accountability.

MR. SNOW: Well, the Judicial Article itself -- what we're talking about here, the accountability part, comes statutory, and would not be a part of the Constitution that we're addressing ourselves to at this time. I think we could do this from a Statute standpoint as far as the the uniform fines and

and forfeitures would be concerned. Of course, your Association is very much represented on the Commission, and we will be hearing from the Cities a great deal more before this comes up for ratification in 1980.

MR. LEACHMAN: I'm sure you will.

MR. SNOW: But we are much concerned about -- well, I'm somewhat concerned about your feelings as to the Judges themselves, and the fact that they -- I don't think there's any effort to abolish any of the Judges in the Courts of the Cities. There would still be Magistrates who would be serving the areas, and there would be no limitation on the number as to need. At least one in each county would be available in one of the proposals there in Draft A, I think it is. That there would be a Judge who would be considered a Magistrate; a non-attorney Judge possibly.

MR. LEACHMAN: Don't get me wrong, Representative Snow, I'm not really concerned about the abolishment of the Judge himself. I'm concerned with the abolishment of the function -- control of the function. Are you an attorney?

MR. SNOW: Yes sir.

MR. LEACHMAN: Do you think that you could go into Cobb County and handle a Court in each of the six Municipalities and also the County, and have a fair Court on local ordinances; not traffic? How long and how costly would it take you as an individual to familiarize yourself with the local statutes so that you could function properly in a Court?

MR. SNOW: Well, I don't really know how to answer that question. It would be according to what the ordinances were, but in many instances I can see where there should be somebody outside coming in, where there might be a conflict of interest in local ordinances, in zoning ordinances, especially. It would probably be -- justice might prevail somewhat better.

MR. LEACHMAN: Well, as I --

MR. SNOW: In some areas. Again, I'm going -- and I hate to ever refer to

what I read in newspaper, see -- I just don't trust them that much, but there apparently are some problems in some of the local courts throughout the State. We're not going to abolish those by any change in the Judicial Article, there's still going to be some problems. We can improve it, but we're not going to do anything that's going to take away people's local rights and local control. Other than from the standpoint that the Courts belong to the people. They do not belong to any City and they don't belong to any County.

MR. LEACHMAN: But the operation of them do. The responsibility for it does.

MR. SNOW: Certainly. The operation of them belongs to --- it's the responsibility of the people to provide for the Courts, yes. But we're talking about a Judicial Article. There's still a lot -- we can confuse a lot of things here between what Statutory law is and what a Judicial Article providing for the establishment of certain Courts and certain rules of procedure. See we could do one thing. If the people would ratify it, they could say there shall be a Judiciary in the State of Georgia, and its jurisdiction and its function shall be as provided by law, period. Period.

MR. LEACHMAN: And then the next year the General Assembly says that all Municipal Courts are abolished and the State's going to operate them.

MR. SNOW: Well, you could do that if your Legislators in the General Assembly would vote to do it, but we have to answer a little bit to the folks back home too. We don't go around just doing things like that.

MR. LEACHMAN: I agree. I agree.

MR. SNOW: Marty, you got any questions?

MR. HODGKINS: No sit.

MR. SNOW: All right, thank you, Bill, thank you, All right, Clerk of Floyd County, Clerk Joe Johnston.

MR. JOHNSTON: Representative Snow, I'm Joe Johnston, I'm the Clerk of

Floyd Superior Court, and I'm here on behalf of all our elected officers, they are in court and couldn't be here, and I'm fixing to tell you how they feel. They feel just like I do; they're opposed to this thing. And for one reason is it would put too much power in Atlanta. You'd be taking it away from the local people, you'd be transferring it to Atlanta. That's what we're hollering now all us about everything being transferred to Washington, everything that's being done is being done in Washington. And the cost would go up. I don't know whether ya'll figured on that or not; you talking about everything going to Atlanta, the State is going to pay for it. Who is the State but the people of the various counties? That's what you're always talked about you're going to get this Federal grant back. I never have understood that. People say, oh, we going to get a grant up here. That's money you are paying for.

And we're opposed to it just because of changing something just for the sake of change, and if it's going to be improving things we'd be for it, but we can't see where it's going to improve anything. And second, we're against the longer terms that gentleman was talking about. Four years is long enough, I think for a Superior Court Judge, because ours hasn't been changed. We've had only one change since I've been there, and that's 20 years, so we're against that. And certainly we're against not electing the Clerks of the Court. I don't believe the people would stand not electing the Clerks or the Probate Judges -- Sir?

MR. SNOW: Clerks will continue to be elected. There is no --

MR. JOHNSTON: I don't see a thing in the world about it in here.

MR. SNOW: No sir, you won't because the Clerks are not a part of the Constitution.

MR. JOHNSTON: I know they're not, but you ought to have a little something in there; that's confusing, and at our meeting, we ---

MR. SNOW: It would have to be changed in Statutory law. We're not trying to add to the Constitution here, we're trying to simplify the present document that we have.

MR. JOHNSTON: Usually when they simplify it down there, my book just came out, the law -- they're that thick two of them I got the other day, and half of them were amending laws they passed last year.

MR. SNOW: We ought to abolish about half of them.

MR. JOHNSTON: That's right. You should have one term, and all you do is repeal them.

MR. SNOW: I agree.

MR. JOHNSTON: I'm not throwing off on you, now, don't get me wrong on that.

MR. SNOW: I'm not disagreeing with you.

MR. JOHNSTON: Now, about the JP Court, I think something should be done about the JP's. I only have 38 in my County, and we have 19 elected and 19 appointed. Now I'm not for abolishing the JP Courts as such, but they should be combined in to a smaller group.

MR. SNOW: Do you agree with what I was talking about relative to the Magistrates; a Magistrate in the County full-time to handle some of these Small Claims matters?

MR. JOHNSTON: Well, if you had say five JP's or something like that, some system in my County, that's about all that does any work anyway, there's about five in the various parts of the County, and if they function it would be as good as Magistrate. With the training. With the training,

MR. SNOW: Well, you can call them a Magistrate, it doesn't make any difference what you call them.

MR. JOHNSTON: I do have 38 and it gets to be something when you've got to prove all those warrants they write and everything and I never have figured out ---

MR. SNOW: I think the provisions there only say at least one Magistrate in each County. That doesn't limit you to your needs, if you need more than one.

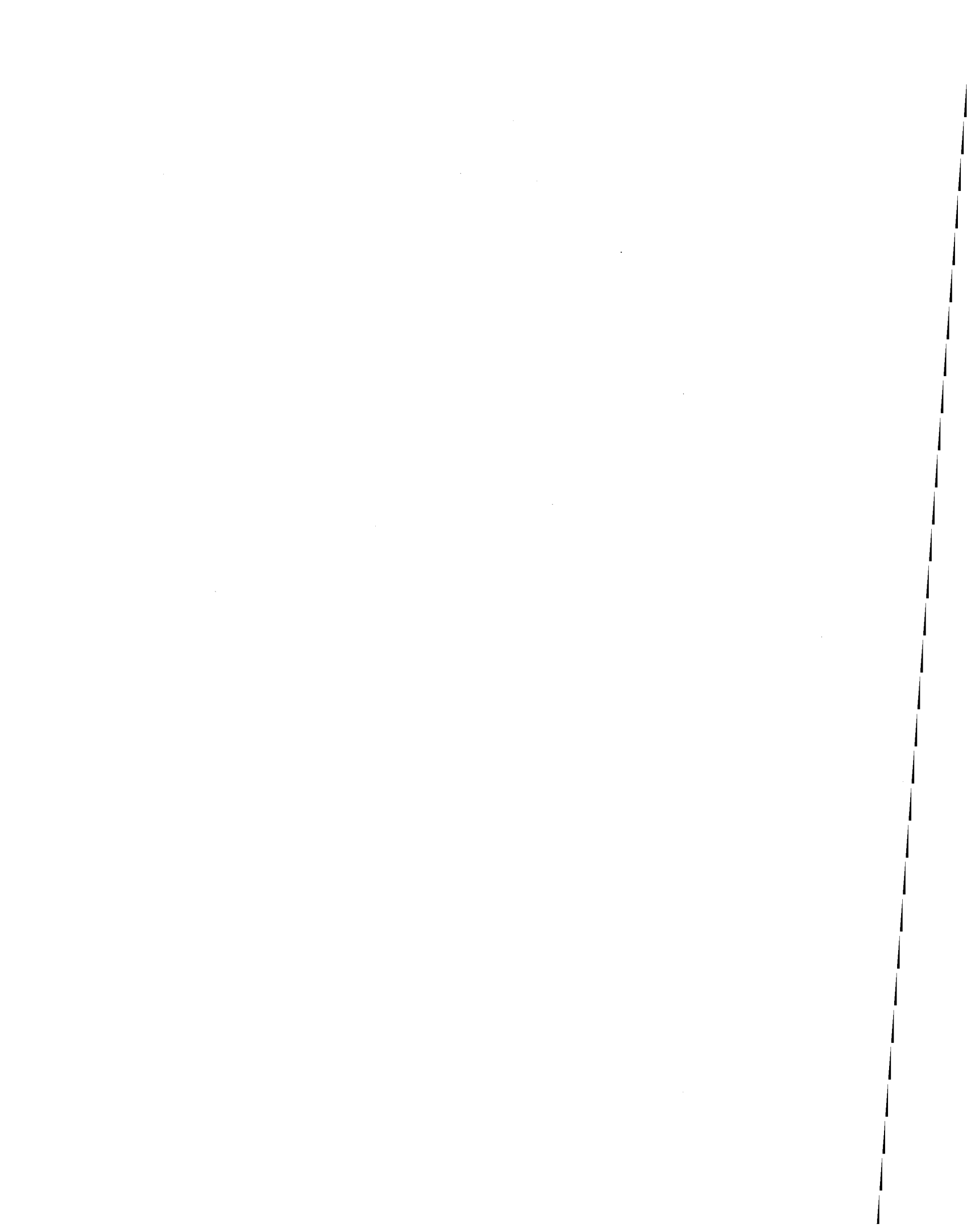
MR. JOHNSTON: I don't know whether we would need anymore than that or not, but I just wouldn't be in favor of just throwing them out, I mean as far as that goes. Now this lady was talking about the fees. I don't know whether she's talking about the fees in the Clerk's office, they're set by the State, in my Court now, maybe in others they don't.

MS. BEASLEY: Well, we're talking about the whole Judicial system including every type of court, and they're not necessarily uniform throughout the State.

MR. JOHNSTON: And, of course, it doesn't concern me too much. I mean, it does concern me because his name is Harry Johnston, and my name is Joe Johnston, but he's the Probate Judge, and I think in my County if we thought about doing away with Harry Johnston, not electing Harry Johnston, they'd run us all out of the County. And a lot of you know Judge Harry Johnston, And you're talking -- this gentleman was talking about the ordinary knowing more law than maybe a lawyer; I've had a little law training myself but you take Judge Harry Johnston, I suspect he knows more about the Ordinary laws in the State of Georgia than my lawyer that we have. And so I don't know where you necessarily need him to be a lawyer or not.

MR. SNOW: I have had some to point me in the right direction.

MS. BEASLEY: Well, the question is not with Harry Johnston because he had the training now by experience. We're talking about, for example, new people coming in that should have some requirement or some training, if they're going to handle things as important as those things which are handled by Probate Judges. Or any Judge has such important duties and responsibilities that it seems to those who are on the Committee now or at least in general



here that there should be -- if you're not going to require all Judges to be lawyers at least there should be some required legal training. Now, we're not talking about those who are currently in office who have the training by way of experience who don't need any training. We're talking about those who could just come in, you know, without any legal training whatsoever.

MR. JOHNSTON: Well, I think they should have some training, but I don't necessarily think if they can do the job they should be an attorney. Because I have seen some attorneys lately that I -- pardon me, but in my job everyday I see some that it's sort of --- I don't know where you'd want them down there or not. But I do appreciate you listening to me, if you have some questions.

MR. SNOW: Marty, you have any questions?

MR. HODGKINS: You did say though that you would support some sort of system of Magistrates on a county wide basis?

MR. JOHNSTON: Yes sir. I think our whole County would. Because you see, we got 38. We got 19 elected and 19 appointed.

MR. SNOW: Let me ask you this. You were talking about everything going to Atlanta. I can't quite follow that, what do you mean?

MR. JOHNSTON: Well, you said the fees and all the money would go to Atlanta, and then shoot it back, You were talking about that Alabama deal. Now, --

MR. SNOW: That's what they do down there. They shoot it all back.

MR. JOHNSTON: Every time some of it does down there, some of it is going to stay.

MR. SNOW: They don't -- they just send it back to the point of origin there completely.

MR. JOHNSTON: Why do that then?

MR. SNOW: Personally, I wouldn't. I wouldn't favor that. I think it ought to be prorated personally, but that would be my -- But I thought you were

mostly concerned about the procedure matters; I personally think there ought to be somebody causing some uniformity of rules within our Courts. If you go in Superior Court in Whitfield County, you ought to expect the same thing if you went in a Superior Court of Fulton County.

MR. JOHNSTON: Well, you could do that, Mr. Snow, without changing all this.

MR. SNOW: Well, I know, I think you're correct there, too, sir. But you also have local rules of Court sometimes.

MR. JOHNSTON: That's right, we have them.

MR. SNOW: I just think there ought to be some uniformity.

MR. JOHNSTON: And some of them I don't agree with, but still they got them. But I think you could have, just like your pre-trials, some Circuits don't have that pre-trial.

MR. SNOW: Yes sir, there needs to be some uniformity in the Courts.

MR. JOHNSTON: Just like we have a little old thing that if you don't send a stipulation in on a little old thing like that, they send it back to you.

MR. SNOW: Well, the question arises as to who is going to do that rule making. Are we going to do it in the General Assembly, which we have some authority to do some of it now, or should it be within the Court systems themselves. Is there a separation of the branches of Government?

MR. JOHNSTON: Well, the way it is now it probably isn't, but still I think you could pass something down there where you could make them all have the same sets of rules or give the Supreme Court the right to formulate those rules. Just like ya'll passed the rule where the -- that they could pass on to me to sign the --

MR. SNOW: This is where the big question comes in. As to whether the Supreme Court ought to have that authority, or whether it ought to be vested in a Judicial Council.

MR. JOHNSTON: Well, to give them all this business here, all this power,

would you have to change everything to do that?

MR. SNOW: No, it could be just one simple amendment. But we're not talking about one simple amendment, we're talking about the whole Judicial Article here. That's what we're working on. The entire thing.

MR. JOHNSTON: That's right. I would be for some uniformity in the rules for every Supreme Court, any Superior Court in the State, but I'm not for change just for the sake of change.

MR. SNOW: All right, sir,

MS. BEASLEY: I have on other question. Since you have the experience of having both elected and appointed JP's, which do you think is the better way to do that JP system, whether we call them Magistrates or JP's?

MR. JOHNSTON: Well, the one that does the most work is an appointed one now in our County, and he's, you know, since the Supreme Court ruling came out about you had to pay -- that each county had to pay for the warrants, he's been doing a land office business, but --

MR. SNOW: Ya'll do it through the Grand Jury?

MR. JOHNSTON: Sir?

MR. SNOW: The Grand Jury appoints ---

MR. JOHNSTON: The Grand Jury recommends --

MR. SNOW: And the Judge ---

MR. JOHNSTON: On the basis of three vacancies, he recommends three and then one's appointed.

MR. SNOW: One's appointed?

MR. JOHNSTON: Of course, that's usually a political friend of his, but I don't blame them for that. But I think maybe that something should be done in that order, because you have so many warrants and they're processed through the Court it costs the Court so much money. Thank you very much.

MR. SNOW: Thank you sir. Mr. Brian Hall.

BRIAN HALL: I'd like to give a couple of comments and then you can shoot back at me, if I know the answers I'll give them to you. I think that the cost of lawyers type versus the present type individuals in these particular positions would be astronomical, I don't think we could afford it. I think giving a man a 6 year term versus a 2 year term, you get a man there for 6 years you got to live with him 5 years and 9 months before he can ever go out. If he doesn't do his job in the first 3 or 6 months you can get rid of him in two years, you can vote him out. I think they should have a training program required for newly elected City Court Judges, Municipal, Mayor Council's, or whatever type is holding that particular Court, he should be some kind of a trained program mandated by the State to give him some formality on how to conduct a Court, But the people that have been in there various years should not be required to take this program. You're talking about one per County versus -- at the present time in Walker County we have four active JP's, and I feel that a JP's access to the needs of the people at the time that the offense happens should be instantaneous, not to wait two or three days until a guy comes out of Rome or comes out of Chattanooga or Rossville 'til he gets back to our area and be able to take the warrant out. The warrant should be taken out as soon as the offense happens to justify the need for the warrant. Talking about putting everybody in the same Courthouse, you're talking about State versus County employees. There would be different holidays. One would be -- today's a holiday, the State people are off today, you can't find anybody that works for the State unless it's an elected official like you or I. You can find them those days, but the people that work for a salary are not in their office today because it's a holiday.

MR. SNOW: I don't see how that could change. What --?

MR. HALL: Okay, the City of Lafayette doesn't get a holiday today. Our

people work, yet --

MR. SNOW: The County officials don't get a holiday today either. State officials that work in the Courthouse are getting a holiday. I agree with that, --

MR. HALL: Well, yeah, it would be a morale factor for the people --

MR. SNOW: But I don't know how that's pertinent to what we're talking about here.

MR. HALL: Well, you're talking about these people are going to be paid by the State or they're going to be State employees, right? At the present time they're not State employees. They work for the Municipalities, they work for the County that they're elected from. Now, if you're going to give a holiday to --

MR. SNOW: Oh, you're talking about these additional Judges, yes.

MR. HALL: Yes.

MR. SNOW: Okay.

MR. HALL: That man is not going to be available today because today is a State holiday, and it will be a morale factor for the guy next door if he's having to work today and the other guy's out bird hunting. Okay, the cost for City Court type operation versus total cost for County or State-wide would be like I said before, it would just cost too much. I think one of the smartest things people did this time was put a JP training program for all elected JP's. I think it's mandated that a man should have some knowledge of law. Previously you could pick anybody off the street, if he got enough friends to vote for him, he could be the JP, he had no knowledge about what he's supposed to do, how to conduct it when he starts conducting it. I think that's one real good requirement you people did state-wide this time. Those are my complaints. I think that it's just -- the present system is much better than anything that we can adopt, and I would like to also say these

things should have been sent to the elected officials or people interested prior to this morning. I had no idea what was coming off until I got here this morning, and just so with a Sears and Roebuck catalog. It's impossible --

MR. SNOW: Well, you got two years. You've got til 1980 on it. But these are just some proposals anyway, and that's what they're out here for, and they're questionnaires too that you can answer and send back in to the Commission.

MR. HALL: I plan to send it back, but I'm saying if these were sent to the cities or the various county offices, these people could look at these things; saw what our problems were going to be pertaining to this morning and have more knowledge about what questions to ask.

MR. HODGKINS: They were sent to the city mayors and --

MR. HALL: We got one copy, and ours came through the Georgia Municipal Association.

MR. SNOW: Well, we sent our 7,000 mailings.

MR. HALL: Well, maybe we are only a small organization and we got one copy.

MR. SNOW: I think one was sent to the mayors, is that right?

MR. HODGKINS: Yes, one was sent to your mayor, I believe was sent to the City Administrator.

MR. SNOW: Now, on this business of the JP's, let me ask you, of course, again you say that you haven't had time to look at it, so probably it would be better to get your opinions about it later after you've -- as far as the Magistrates are concerned, we're concerned about that. You were talking about the warrants. We anticipate that that will be one of the functions of the Magistrates, who would replace Small Claim Judges or JP's as such. These folks would be on a full-time basis, they would issue warrants. Fees would be abolished. The fee system in Georgia, I personally am totally opposed to it, and if I can do anything to abolish it anywhere, I'm going to

do so. And have tried -- we worked that out pretty well in Walker County already, but we still have the fees in the JP area. Okay, Marty.

MR. HODGKINS: Do ya'll have a Mayor's Court or --?

MR. HALL: We have a Mayor's Court, I tell you, it's really the Recorder's Court, not the Mayor's Court, its the City Recorder's Court.

MR. HODGKINS: How often does that meet?

MR. HALL: It meets twice a month.

MR. HODGKINS: What's it -- the bulk of its cases, are they also traffic?

MR. HALL: Traffic violations. We handle probably 1400 or 1500 a year.

MR. SNOW: It does meet regularly?

MR. HALL: Right.

MS. BEASLEY: Do you have a Small Claims Court?

MR. HALL: No, we don't have.

MS. BEASLEY: Do you feel that the Mayor's Court or that kind of Court whatever Court Recorder's or City Court or whatever, ought to have some Civil jurisdiction too on small claims?

MR. HALL: Well, I think the City Recorder's Court could handle Small Claims Court if he went through a training program. Have a seminar, have him know what he's going to do when he gets a particular type of incident before him, don't just throw all of a sudden a civil action against him, and he has no idea what's going on. But by going and being schooled, he could handle those Small Claims.

MS. BEASLEY: One of the ideas -- one of the proposals is that there should be a smaller -- not smaller, but a limited jurisdiction, a very limited jurisdiction court, civilly and criminally, where you would have at least training, not lawyers, but at least some legal training, where the Judge would have claims maybe under \$500 or something of that nature. But instead of putting it in four or five different types of Court, which is what we have

now, put that all in one place. For example, I'm on the State Court of Fulton County where we have the Small Claims division and also I handle traffic cases which are outside of the City of Atlanta, but in Fulton County. We really don't need a State Court Judge doing that. That's the kind of thing we are trying to make uniformity about. And maybe have a Magistrate to handle all of those things. What do you think about that? From your jurisdiction?

MR. HALL: Well, I'd have no objection -- but the biggest thing would be the Magistrate, if he isn't available when a warrant is to be taken, he's going to replace the JP also, if he's up 20 miles away and he's already got scheduled to be there x number of hours, x number of problems up there, then you've got a problem down here in the southern part of the County. The man wants to take that warrant out at that time because he just got knocked in the head 15 minutes ago, he doesn't want to wait until tomorrow morning to take out against his brother-in-law or neighbor or what have you, he wants some instant results for that offense that happened to him. I don't feel that one man or two men versus the size of the population of the County can justify and keep the people happy, and we're here to serve the people.

MR. SNOW: I envision that this in many counties, larger counties, especially that you're going to have to have somebody on a 24 hour basis that's available to work in shifts as a Magistrate for warrants.

MR. HALL: Well, we have that at the present time now. I don't know of any active JP that you can't be reached 24 hours a day.

MR. SNOW: Well, we're not trying to abolish this particular -- we're not even talking about this function as such. We're talking about trying to increase the jurisdiction to some extent of what is now the function of the JP's into a Magistrate where you can also handle some Small Claim matters and have somebody full-time.

MR. HALL: Yes, I'm saying if you take that JP and give him some seminar training which you haven't at the present time, you can teach him how to handle small claims, he's elected by the people, he serves two years or four years, whatever the term of office is. He's not a lawyer, therefore, he's going to work for a hell of a lot less than a lawyer. A lawyer will cost you a lot of money. I'm sure that you know that you wouldn't work for --

MR. SNOW: Well, we're not anticipating, I don't think, there's any way they will ever require a full-time lawyer, or that we would ever get any such thing as that passed in the General Assembly.

MR. HALL: I was under the impression that everyone of these positions was going to be filled by qualified lawyers. Is that not correct or maybe I missed the paragraph on that.

MR. SNOW: No sir, no sir, not in all the recommendations. It would be either by attorneys in some of the recommendations, or by folks who have some legal training. And what we're talking about there, the Jp's is legal training.

MR. HALL: Okay, where is that man going to come from, is he going to be appointed by the Superior Court Judge or --?

MR. SNOW: No, I think it would be done just like we doing some of them right now in Walker County. We have the Grand Jury make recommendations, and the Superior Court Judge will appoint one out of the three that the Grand Jury recommends. Now we have only one that is elected by the City of Lafayette, and I don't think we need to go into those problems that we got before everybody here.

MR. SNOW: Any other questions? Okay, thank you Brian Hall, Grady McCollum, City Manager of the City of Lafayette.

MR. MCCOLLUM: I'm Grady McCollum, the City Manager for the City of Lafayette, and I'm concerned about the Municipal Court. The other doesn't bother me very

much in that I am a City official charged with the responsibility of properly administering the affairs of the City as designated by the City Code and the Code of ordinances adopted by the Mayor and City Council for the City of Lafayette. I appreciate this opportunity. One of the things I came over here with my mind already made up that you had a pretty good proposal here, but I changed it after listening to some of the arguments today. And another point that's not relative to our discussion here today, but I see, and I'm appalled by it, that the State and Federal Government are taking away many of the rights of the people at the local level to make their own decisions. And I'm afraid that we are seeing another example of this in the Court systems that we are going to allow the State to mandate certain rules and regulations that are going to govern the Courts or our Municipal Courts, and today it might not be too bad, but ten years from now I'm concerned about what the results might be. And also the qualifications concern me that we're going to be telling the people that they are not smart enough to elect the right person for a given job, that they've got to have certain qualifications or they have got to be trained. I think the people of this State are smart enough to elect good competent people to manage the affairs, whether they be in the Court of Mayor or County Commissioner, or the Governor of Georgia. And the uniform fee charge concerns me, that you're again taking away the right of the local elected official to determine the amount of the fines or the forfeiture. I think this should be left to local discretion. I don't want to see us in Lafayette, Georgia, have to charge the same thing for a traffic violation that they charge in Waycross, Georgia, which is at the other end of the State. The local situation may make it that it should be more or less in a given locale. And I am opposed to the fines and forfeits being collected and sent to Atlanta and then come back. The sales tax situation is a good example of that. There is a surcharge of the amount collected for the

administrative costs, and I can see that in the future that there would be certain charges made against the fines and forfeits that are collected, because as the gentleman said earlier, we are the State's people, we're going to pay for it one way or another, sooner or later it would be a charge made to us. I'm opposed to those things I think that our Court in Lafayette, that there's been no criticism of the Municipal Court that I'm aware of. I think our Judge, who is non-lawyer, he has done an adequate job, and he's up for election this year, and I think the people will have an opportunity to decide whether he's done an adequate job or not, and there is opposition in the race, for the Recorder's Court, it's not a Mayor's Court. But again speaking to the minority report that was filed by the Georgia Municipal Association, I think as a member of that body, that I would certainly support the minority report.

MR. SNOW: Dorothy, do you have some questions?

MS. BEASLEY: Although you would be opposed to the uniform fines and forfeitures, I gather that what you're talking about is the mandatory setting of one.

MR. MCCOLLUM: That's true.

MS. BEASLEY: And that there would be more discussion with the Judge. It really gets down to whether or not there should be uniform sentences, is that right?

MR. MCCOLLUM: I think the fines and forfeits should be left to the discretion of the elected officials of that Municipality.

MS. BEASLEY: All right, do you have the same feeling or not as regard to the procedure, the way things are run, what a person or a lawyer or just a normal citizen can expect in a Mayor's Court, how it's run, and the procedure of it in Lafayette, as well as in South Georgia or anywhere else?

MR. MCCOLLUM: I'm opposed to the State mandating rules and regulations to the Municipalities. We're the Government closest to the people and we are con-

trolled by the people, and I think this is where it should stay.

MS. BEASLEY: So in other words, it shouldn't necessarily be the same everywhere?

MR. MCCOLLUM: No ma'am.

MR. SNOW: Marty? Thank you, Grady. Okay, Warren.

MR. WARREN COPPEDGE: Thank you, Mr. Chairman. I'm Warren Coppedge, and I do not have Mr. Kinney's long experience of practicing law, but I have some. And I have several observations to make. First, it appears to me that the basic issue is an economic issue, that the people of this state and other states for that matter desire to get the best quality for the lowest price. Therefore, if the consolidation of the Court system as proposed can result in a net cost reduction, I think that it should be very seriously considered, as long as it does not compromise the quality of justice. On the other hand I believe that if whatever you are proposing will end up costing net dollars more, then you ought to quit it right now.

MR. SNOW: Let me suggest this. There is no way that we have ever come up with anything that would suggest that this is not going to cost a whole lot more as far as the State dollars are concerned.

MR. COPPEDGE: Well, I'm not talking about the State dollars, I'm talking about total tax dollars, because tax payers don't only pay taxes to the State, they pay taxes to Cities and Counties, and in this County we are now paying JP's, we're paying the Juvenile Judge, we're paying a lot of administrative costs for all of this, and I think you look at the total expenditures, and I know the Legislators want to look at the State costs because that's what you're about, but I think the taxpayers need some coordination between the local and State tax.

MR. SNOW: Let me expand on that too. There will be -- we're having a study made right now as to the possible cost of this, both from the standpoint of

what the additional cost will be to the State, as well as what the savings will be to the local Governments, because if they're not having to finance their Courts, all of the courts, then there should be some savings there.

MR. COPPEDGE: Yes sir.

MR. SNOW: Over all, I'm quite confident that the proposal will wind up costing the taxpayers more State wise than what is the present system.

MR. COPPEDGE: If it does, I think that's a serious problem, and --

MR. SNOW: I think it's a serious problem.

MR. COPPEDGE: And then you're going to need to weigh the effect on what's called the quality of justice. You know, when I go pay my taxes, and I think this is true with all citizens, we really don't care whether we paying it to the City or the County or the State, it's costing us dollars. Now insofar as the consolidation of Courts and reorganization of courts is concerned, I do not have and have not experienced any problems with the Superior Court system that would be solved by any changes in that system. I agree with Mr. Kinney a hundred percent about the terms of office, and about the basic organization of the Court system. I do not think that the Supreme Court ought to have more authority. As a Deputy Assistant Attorney General of this state, I don't believe that the Attorney General should be under the Judicial Branch of government. I think he needs to stay under the executive branch, the reason being is he is an advocate representing the State of Georgia. He represents the Department of Revenue or the Department of Transportation or whatever Department, and he really has a client who is the State, and I don't believe that a lawyer who is an advocate representing a client should be under the control of the Judicial system. It doesn't work, in my opinion, where Judges control Public Defenders. So I agree with Mr. Kinney completely concerning the Superior Court system. I do have some problem with the lower Court system and the intake system where most of the people meet with the Justice system,

and that is that it is a problem to have various rules and regulations from County to County and within a County, and I think that very serious considerations ought to be given to consolidating a County Court which would have basic misdemeanor criminal jurisdiction, victimless crime jurisdiction, traffic jurisdiction, jurisdiction where a District Attorney might choose to waive imprisonment as a possible sentence, and allow only on the fine provision of the law where the State law provides both fine and/or imprisonment. That ought to be within the power of the District Attorney. There are circumstances that effect every case, and every case is different that I've ever tried, and I suppose there always will be. I think that there ought to be in that County wide Court system a civil jurisdiction of some reasonable amount; \$2500 - \$5000. I think it ought to be a pay as you go system, and that is that the people who use it ought to have to pay sufficient cost to pay for it when they file their civil case in County-wide Court. I think that it ought to provide for service by mail of a prospective defendant, that if that defendant does not respond within the time limited then it becomes an administrative procedure so you don't have to call a calendar or set up anything, but if a defendant does respond then a time for hearing needs to be set. I think it should be a lawyerless, juryless court, and I think there ought to be a provision for appeals to the Superior Court for questions of fact or directly to the Appellate Courts for questions of law, but I think that they right of appeal should have with it some cost bond provision, to try to stop meritless delay appeals, once there has been a Judicial determination. I agree that the small or the County Court system, if it's established should have a lawyer as a Judge, and I think he ought to be paid well, because he's going to be doing a lot of work. I think he ought to have perhaps, or consideration should be given to giving him juvenile jurisdiction. I see in the questionnaire where there's something about child abuse jurisdiction and spouse assaults and

batteries. I think that ought to go back to the question of whether a District Attorney elects to proceed for imprisonment or he proceeds for just a fine and if it's a bad case -- you know what happened up in Cleveland, Tennessee, you read about it; it was in all the papers. They had a toothless Court up there that could not do anything with some minor child abuse, and so finally the man killed his child, and he'd been to Court before. So I think that ought to be open to a District Attorney and a Police Officer's discretion as to how to bring that type of offense. I don't think you can slot that in a small claims Court or a County-wide Court or in a Superior Court. There's going to have to be some discretion on the part of the prosecuting officials, based upon the facts of each particular case.

I agree with those who have stated that fines should be kept on a local level. Now, if you have a County-wide Court it seems to me that it would be merely an accounting procedure with that Court; as to whether the traffic charge is brought by the City Police or the County Police or Sheriff's Office where any resulting income would go into whose treasury, the City or County. That doesn't bother me about a County-wide Court is provision is made to allocate the fines to the Governmental Agency that actually brings the charge and incurs the expense of enforcement. But I don't think it ought to go to Atlanta, you know, Bobby Rolen several years ago made what I consider to be a marvelous speech about making syrup on his daddy's farm when he was talking about Federal reserve sharing, he says when you grind the cane the syrup goes into one bucket and you carry it from that bucket and put it in the pot, and cook the pot, and dip it out in a dipper and you put it in jars, but every bucket and every dipper it ever was in some of that syrup sticks, and every time you pass that money through somebody's hands some of it's going to stick. It's going to cost, and I think the fewer hands that can get on that money the better off we all are from a cost effective standpoint. Finally, I would

mention one thing. There is mention of the Probate Court. I would be very hesitant before I put the Probate Court in with the County-wide Court. I think the Probate Courts by and large do an excellent job, whether they're trained lawyers or whether they attain their expertise by experience. I have in my experience never had a problem with the Probate Court in this County or in small Counties or in your County. They handle estates, wills, and guardianships, and they're local people and they know what's going on, and I would just be very hesitant to put that type of Probate jurisdiction into a County-wide Court. I am not so hesitant to put traffic jurisdiction in some other Court. I think that part of it could be split off very logically. I don't have any other comments. I appreciate your time; if you have any questions?

MR. SNOW: Dorothy, do you have any questions of Warren?

MS. BEASLEY: Yes. While I am conscious of the County Court system that you have mentioned, we're referred to that before or at least I have too, would you see that as consolidating within it then all of these minor types of Courts? Then when I say minor, I mean minor jurisdiction, that is the City Courts and Recorder's Courts, and small claims Courts, and so forth, that it would be part of the County-wide system?

MR. COPPEDGE: Yes ma'am. I think you might also consider now that the Legislature has deemed divorces to be granted just, you know, on filing the papers if a divorce is uncontested, and there's no property or child involved in it.

MS. BEASLEY: Would you then proceed -- getting back to the County Court system, to where one County Court there perhaps would have provisions within the municipalities?

MR. COPPEDGE: Well, I'm not sophisticated enough to know how many Judges you need for so much population, and what types of Court, if that's what you're

asking.

MS. BEASLEY: Well, where for example would you -- where would the jurisdiction be for ordinances?

MR. COPPEDGE: It would be in the County Court.

MS. BEASLEY: Okay, the other question I have with regard to the Probate Court, as I understand it and talking to some Probate Judges also, a lot of the functions that are handled by a Probate Court are really non-judicial type functions, and I agree with you perhaps that it ought not to go into a State Court, limited jurisdiction type thing, but since the real judicial functions as I understand it relate to the land records and so forth, it would seem, and I have talked to several Probate Judges about this, that those things if we're going to transfer it to a judicial body would be in the Superior Courts matters, and since they've now split jurisdiction on wills; the Probate Judge has some jurisdiction over some questions, while others have to go to Superior Court, and it would make sense to put it all in Superior Courts and perhaps make the Probate Judges non-judicial functions the functions of a different type of county administrative offices.

MR. COPPEDGE: They are in my opinion not judicial from the standpoint of adversarial advocacy, but they are judicial from the standpoint of exercising discretion in allowing or awarding certain things. In terms of guardianships; in terms of probate ---

MS. BEASLEY: But that doesn't require a knowledge of law as much as it does a matter of common sense.

MR. COPPEDGE: No, but it requires discretion. There's a lot of difference in recording a deed and exercising discretion.

MS. BEASLEY: Yeah, well, you didn't hear what I said. It's a matter of common sense where you don't need a lawyer necessarily. That's what I'm trying to get at, you don't need someone who can go read the lawbooks for some of that

type of thing, you need someone who has experience and whatnot in life, and not necessarily a lawyer, but those type of ---

MR. COPPEDGE: I think there's discretion involved in the wills and estate and probate and guardianship areas that is different from the mechanical recording of deeds, and I think for that reason -- it's not adversarial, sometimes it can be, and if it is, it's usually appealed to Superior Court anyhow. But it's not adversarial in the sense that we usually think of Superior Court jurisdiction litigation and that type of thing. But for those areas, I think the Probate Courts serve a very, very valid function.

MS. BEASLEY: Okay, I have one other question and that is with regard to the proposal for County Courts which would be lawyerless and juryless with an appeal to the Superior Court. Would you feel there is a need for a de novo appeal to the Superior Court, or would it be on record?

MR. COPPEDGE: I think it depends on whether or not there is a record in the lower Courts.

MS. BEASLEY: Well, if there isn't one?

MR. COPPEDGE: Then it has to be de novo. There is no record.

MS. BEASLEY: Well, then you would have to provide --- in your record if you're going to give a right for a de novo appeal.

MR. COPPEDGE: Well, I think I said an appeal to the Superior Court on questions of fact, the appeals to the Appellate -- directly to the Court of Appeals on questions of law, and now you know we rely on Court Reporters all the time, we have one here. But we used to, we relied on a brief of evidence, if you recall that. That's not -- as a matter of fact I had to do that last week when the machine broke down. I hope it doesn't today.

MS. BEASLEY: But you don't see the necessity of guaranteeing a de novo appeal?

MR. COPPEDGE: No.

MS. BEASLEY: That is if it's a question -- if it looks like it's going to be a question of fact where the parties should have the burden of saying at the beginning, you aren't required now, we're going to wind up in Superior Court, so make it on the record. I think one of the great waste of time in the judicial system in our State is the position for de novo appeal.

MR. COPPEDGE: If the parties ask for the record, I think they would have to pay for it at the time, and I also mentioned that if an appeal is taken from this lawyerless, juryless Court, that there should be some appeal bond requirement which ought to eliminate the frivolous appeal. I think the Courts ought to be open to people to come in as cheaply as possible to begin with, but once there has been a decision or determination then the losing party ought to have to come up with something to continue his litigation. Frankly, I think that ought to be done before you go to the Court of Appeals, I think you ought to raise the interest rate on judgments. It's horribly low.

MS. BEASLEY: Thank you.

MR. SNOW: Thank you very much, Warren. All right, Ernest McDonald, attorney, represents the Probate Courts of the State of Georgia. Ernest is the last one I've got down here, does anyone else want to be heard?

MR. MCDONALD: Representative Snow, I only represent the retirement system of the Probate Judges. I do --

MR. SNOW: That's the most important part.

MR. MCDONALD: Is that it?

MR. SNOW: To a lot of them, isn't it?

MR. MCDONALD: I first want to say that I'll try to speak what I think is the sentiment of the Probate Judges over the State of Georgia from what I have gleaned from attending meetings with them. Probate Judges don't want to take the position of being opposed to everything that's offered. They want to approach the thing from a constructive standpoint. Realizing in listening to

the discussions here today we've been talking about a lot of things that direct themselves to the statutory law rather than Constitutional law. We think that the Constitution ought to be as simple as possible and as short as possible, and accomplish the needs and desires of the people. For instance, I've heard the term used here today of the Courts being accountable. It's my personal opinion that the Courts ought to be accountable to the people rather than to some high bureaucracy of some kind. Getting down to what we think the Constitution ought to contain, if there is going to be a consolidation or if there is going to be a revision of the Judicial Article. I want to address myself to the proposals that have been offered. The proposals that have been offered that I have reviewed and as I have heard reviewed in various meetings that I've attended, some of them which you have attended also, it appears to me that there wouldn't be a possibility of passing in the State of Georgia the Constitutional revisions that have been offered. I think some concern ought to be directed to what it's going to do to our Superior Courts if we're going to put the responsibilities of all jurisdiction in the Superior Courts. It's my fear that we may run off some good Superior Court judges really, because it's a unheard of responsibility to supervise all jurisdictions in their Circuits, I personally oppose a one-tier trial Court system. I think this is a key to your whole Judicial Article. I don't think --- call them Circuit Courts or Superior Courts or whatever you may call them, that all jurisdiction ought to be placed in that Court. Frankly, the Probate Judges feel that if there is going to be a change in jurisdiction and inferior court substitute that there ought to be one County Court. And that if the Legislators sees fit do so the Superior or Circuit Courts ought to embody the jurisdiction now possessed by State Courts. City Courts or whatever you may call them, to have jurisdiction similar to the Superior Courts. Possibly these might be consolidated, but dealing primarily

with the County-wide Court I disagree with Mr. Coppedge a little bit. I think that the Probate Court ought to be a part of the County Court. I feel that the Probate Courts constitute a good nucleus and you have one in every county to which you can build a County Court. I think perhaps to approach these things practical and you've got to meet the wishes of the people; you've got to have the approval of the people to adopt any system. I believe that the Probate Judges ought to be grandfathered in as the Judges of the County Courts. I think the qualifications of any future judges of your Probate Courts ought to be made qualified for the Judges of the County Courts. And in some counties, I realize that there's going to be a heavier load in some counties than they are in other areas. In some counties, I'd say a majority of the counties in Georgia, the Probate Courts hold Probate Court once a month. The County is necessarily burdened with the financing of a Court with County-wide jurisdiction here. In a lot of instances, those judges can take on a good bit more responsibility in their Counties and become full-time Judges. My thinking that so-called administrative jobs should be given to the Clerk of the County Court, thus, relieving the Judge of that court from so much administrative work, and make them a full-time judicial officer. I think that in some counties where there is more work in the Probate Court and naturally in County-wide jurisdiction you're going to have to provide for ample Associate Judges in those Courts to take care of this work. And I think that it's going to be a very full-time job to administer a County-wide court, and it's something that does not need to be piled upon a Superior Court Judge. Superior Court Judges had serious decisions to make in their jurisdiction; they need a time for consideration; a time for ample hearings; a time for ample research; and they don't need to have to clutter their minds with what's going on in all the inferior Courts, and as far as the appeals are concerned, this could very well address itself to Legislative Act, if you

limit your constitution to such an extent to do so, but generally I'll address just briefly the reason I think it's very important. Your appeals I think should not be de novo. I think this is creating burdens tremendously, I think it ought to be a Court of Record, I think transcripts ought to be provided, and I think within the wisdom of the General Assembly the manner of appeal ought to be provided in a way where probably by certiorari or something like that to the Superior Court where the Superior Court can take a look at it and see whether the certiorari ought to be granted. In some instances; some instances might ought to have a direct appeal to the Appellate Court. I think the records ought to be provided. Now, I will say this that the Probate Judges in the State of Georgia have for many years sought to improve their Courts. At one time, they voted unanimously to recommend to the Legislature which was several years ago before your time in the Legislature I'm sure, but they proposed at that time that any County where there was an attorney -- some Counties don't even have an attorney in it -- a county where there was an attorney, the Judge of the Probate Court ought to be an attorney, or a Probate Judge who had had a certain amount of experience. This was never acted upon, and the recommendation died. In several instances they sought funds to have a study made by the University of Georgia or someone who could make recommendations about County Courts and County jurisdictions and what could be done to improve them, nothing was ever materialized from this. Probate Judges, of course, are not insisting on tremendous changes in the Constitution, and certainly something that is not going to be practical. As I said, my judgment in hearing people talk from all over the State -- I recently attended a meeting Cordele, Georgia, where they had County officers meeting there, and it appears to me that to be practical about it that in order to pass a judicial article it got to be made more practical; it's got to be made more in line with what the people think and what they want.

Having served from the Legislature myself, I recognize some of the problems of Legislators in trying to improve the laws, and there's one thing you must always bear in mind that you have to meet the wishes of the people. Frankly, some of the things that have been mentioned here does not need Constitutional attention at all. For instance, uniform fees. This is a Legislative matter and can be corrected without a Constitutional Amendment, at least in most instances. I don't know of any instances where fees are set by the Constitution.

But generally we would recommend that if there is going to be a judicial article, that there be a two tier trial system. That one tier have County-wide jurisdiction, and the other have District-wide or Circuit-wide, or whatever you want to call it. That the County-wide -- County Court be given more authority to make a complete determination on any subject that is within the jurisdiction. This will eliminate burdening the Superior Court and additional expenses. I think there has to be some way of appeal if there is error made. I think if it is a Court of record, and a person wants to make an appeal, he ought to be able to submit his transcript of the evidence and the ruling of the Judge to the Superior Court for consideration either by certiorari or by direct appeal. I don't think they ought to be de novo hearings in the Superior Courts, because this is re-doing what ought to have been done in the first instance.

Some reference has been made to trying to clear out cash-register justice. I don't know of many Courts that I would classify as issuing cash-register justice. In most instances traffic violations, ordinance violations, must be handled and punishment must be dished out in the way of a fine. It's not serious enough to carry other types of sentences. So I'm sure that the Judges are faced with having to assess a fine in those cases. I think this is a matter that addresses itself to the Legislature rather than to the

Constitution. Most of your Courts that you have have been created by the Legislature. I think the Legislature by drawing a pattern line about creating Courts, could certainly limit the number of courts of all kinds being created. I know a lot of them are created by local Legislation, that the Legislature has a rule of going along with what the local representatives want, which may or may not be good, but I think the Legislature ought to have a look at it. Insofar as the County Court is concerned, I'm a little bit concerned about trying to deprive Cities of trials of their ordinances. I'm not sure that City Ordinances ought to be a subject of any court except the Municipal Court. I think these matters address themselves to the Municipalities concerned, and I think that possibly some consideration ought to be had in allowing all municipalities to have a court to try the ordinances only of the City. I'm not prone to allow the City to enter into the disposition of cases involving State Statutes prolifically. There may be some instances where it may be justified, but I think it ought to be uniform as to whether they do or whether they don't. I think there ought to be a line drawn fairly safe to uniformity to jurisdiction, whether it's going to be in the County Court or in District Court. Most of the Cities as far as I know, and as far as I hear from the public, and I think this is a true criterion on which you must base anything, most of your particularly Municipal Courts are not getting a lot of criticism. I know in our County here, the City of Dalton has a municipal court that performs a very important function. As far as I know, it's a very efficient Court; we have no criticism of it as far as I know. In fact, I think that this alone would defeat the article in this area in seeking to take away from the City of Dalton the right to have their Municipal Court. I think the people would beat any effort to abolish the Probate Court. Getting down to the Justice of the Courts, I realize that we do have a problem. Here again, I think most people are satisfied with the Justice Courts, if they can

be operated in some form other than as provided by law really. I believe we have 36 Justices in Whitfield County or the provisions here. We have about three that are actively functioning. Right now the County Commissioners have done something that I suspect may be illegal, but to get away from the fee system they have in some criminal cases, they've arranged to pay a contract price to these three Justices of the Peace that serves on criminal cases, rather than keep all the records in reference to insolvent funds. This is not a thing that addresses itself to this Constitution either, because in this County from the size of population we have a Court could be created with County-wide jurisdiction to handle these matters, and JP's abolished. And I think this could be handled without Constitutional attention really. So far it hasn't happened, but I think that possibly some movement might be under way to get something done about it. Generally as I see it, it's my opinion that the bill and proposal as is now offered would mean disreputing itself, and if there is going to be a proposal, it must be revised to keep the County Courts close to the people. I think the people are going to demand that they have some County Court in which they can be heard if they can't afford a lawyer, that they can go themselves, and plead their own cause. And I don't think that every cause demands a lawyer. I don't think that every Court demands a lawyer for the Judge. I'm like some of the other attorneys that's spoken here. I have tried cases within the last year before Probate Judges who are lawyers, and before Judges who are not, and the only ones I've had to appeal the verdict was those went before a lawyer as Probate Judges. I am very strongly in favor of keeping those people who are already trained. As you know the Probate Judges go to the seminar at Athens regularly, most of them are given training in this field, and most of them are more expertise in probate work than lawyers. So I might pose the question as to where has there been any criticism in Probate Courts? Where has there been any criticism of

the present system of Superior Courts? Where has there been any criticism of the present system of Appellate Courts? I think that just making a change in our Constitution for the sake of making a change is not enough to justify it. I believe that certainly a great deal of study ought to be made to determine a need before we move into trying to adopt something, and the question should be first determined whether we need it. I can realize that there may be some areas that need changes. I listened to Judge Nichols and his treatment of the situation, and I realize some areas that Judge Nichols speaks of there may be some justifiable criticism in so far as the Appellate Court procedure is concerned. He seems to direct him primarily to the inability to end appeals. I don't know of any way that we can do away with habeas corpus. This would address itself to the Federal Constitution, I don't know of any way that Judge Nichols could do away with it by any change to our State Constitution. As I understand it the appeals that are prolonged primarily would be habeas corpus proceedings after you've exhausted your usual proceedings and appeals. I hope you don't have any serious questions to ask me, but I'll be happy to answer anything that might fall within my knowledge.

MS. BEASLEY: I have just one. You've proposed in the County Court also, as mentioned by several others, that a court of limited jurisdiction but on a County-wide basis.

MR. MCDONALD: That's correct.

MS. BEASLEY: However, I want to know if you could make that a little clearer. What jurisdiction -- what types of things do you perceive to be in that Court as opposed to the Superior Court on one hand and the Municipal Courts dealing with ordinances on the other hand?

MR. MCDONALD: Well, of course, obviously ordinances would be out I think in a County Court. County Courts shouldn't concern itself with Municipal Ordi-

nances. I think this is a matter that addresses itself to the Municipalities. I think a County Court should have jurisdiction in small claims up to a reasonable jurisdiction. I think this could have jurisdiction in probate matters. I think they should have jurisdiction of traffic violations.

MR. HODGKINS: Excuse me, would that be traffic violations within the unincorporated counties, or the counties and municipalities?

MS. BEASLEY: You talking about State traffic violations?

MR. MCDONALD: State traffic violations.

MS. BEASLEY: As opposed to city Ordinances?

MR. MCDONALD: That's right. I think some thought ought to be given to giving jurisdiction in other fields where there is insufficient reason to go into the Superior Court. Warren Coppedge mentioned some of those and I agree with Warren on some of those, that as the District Attorney in some instances probably they ought to have the discretion to bring the case in the County Court if it's within certain qualifications, or bring it in the State Court if it's in another category. I would like to urge upon the Committee the importance of trying to listen to the people. I'm sure this is what you're having these meetings for, is to listen to the people, and to try to determine what is going to serve the needs of the people. Because after all this is the main situation, and I think whether you have Judges four years, six years, eight years or what, I think they ought to be elected by the people and I think that they ought to be accountable to the people, rather than being accountable to an internal situation. I can see some reason for the State making studies and surveys for the purpose of advising people what's going on in the Courts, and give them some input or some insight into what the needs are, but for the Court themselves to take over the functions of being accountable to themselves only I don't think separate powers under the Constitutional branches of government requires that. I would disagree with the idea that

Courts can be created only on recommendation of the Judicial Council. Because I think this rather than separating powers, it imposes upon the powers, -- it takes away from the powers of the Legislature. I think that all Courts ought to be created by the Legislature. The Legislature ought not to be hinged to the Judicial Council saying you can't act unless the Judicial Council recommends it. This would prohibit the Legislature from creating Courts from dire needs sometimes if the Judicial Council just said, we're not going to recommend it. I think this is imposing on the jurisdiction of the Legislature rather than separating powers, taking the power from the Legislature and putting it in a third party, so to speak.

MR. SNOW: Well, let me make one comment relative to that. The Judicial Council -- I sponsored that Legislation a few years ago and have been rather supportive of it, and their recommendations, and probably to an extent beyond what others would be, but they have been very wise, I think in the recommendations they've made thus far. Now that doesn't say that they will always be wise, but I think it's very helpful to a General Assembly to have these recommendations on need, and we have made many mistakes in creating a large number of Judgeships in the past -- not the past few years, but in years in the past in creating Circuits where they certainly have not been done in any orderly fashion. The Judicial Council has been created, and was created solely as an advisory group, and there's been a lot of misunderstanding about what their functions are supposed to be, but they're not supposed to be making or setting policy. We're talking about a possibility of their setting policy, and I don't know what the result is going to be now that they have petitioned to become a part of the Supreme Court on their own volition, but they were set up as a part of the General Assembly, to advise us.

MR. McDONALD: This is what I was addressing myself to. I agree with you wholly that the Judicial Council has been in my opinion of great assistance

to the Legislature, but I think they must be held to a status of recommendation only, and not to be given power over the Legislature.

MR. SNOW: That's our intent totally.

MR. MCDONALD: As I understood there has been some proposal to say that the Legislature could not create a court without their recommendation.

MR. SNOW: That's draft B, uh huh. That would be in lieu of the Supreme Court how. There's a great deal of opposition to the Supreme Court having a great deal of power.

MR. MCDONALD: I don't think the Supreme Court ought to have that power. This is power that belongs to the Legislature and ought to remain there.

MR. SNOW: If you can come up with something that can -- and give us some thought, What we're trying to find is some way to do, or any of you, is to -- we're not trying to put all this power into any one group, but we're trying to do this one thing. To have somebody to recommend where these courts ought to be, and to have possibly some veto power of some sort without having to go through and set up these local Courts, to put some limitation on the Courts. Constitutional Courts or local Courts, set up by local legislation, where there's just one or two folks that are setting them up. That's why we're saying in the Constitution there shall be no new Courts created unless such and such. Now what we need to know is how we can do that, without putting too much power into somebody.

MR. MCDONALD: Well, I sympathize with your position there, because there have been many Counties that have been overburdened with Courts created for political reasons only in my opinion.

MR. SNOW: Sure

MR. MCDONALD: And I feel like that if you do away with creating of local Courts without a need, and I would hope that the Legislature would address themselves to this. They're not going to create them unless the need is shown.

Now, I don't think that you're going to solve this by taking the power away from the Legislature and giving it to the Supreme Court, or giving it to the Judicial Council, or anybody else. In fact, I think this would be almost an unconstitutional act within itself, taking the legislative powers and putting them somewhere else. I think the legislative powers ought to remain there. I think the cure is going to have to come about in the Legislature really, rather than taking the power away from the Legislature and vesting it somewhere else.

MS. BEASLEY: It wouldn't take it entirely away from the Legislature. The concept is that the Judicial branch as a separate and co-equal branch of Government with the Legislature should have more control over its internal management. If you view a Court as less than another office, in other words, where the executive can set up ---, of course, you've got the checks and balances of having to do it through the Legislature.

MR. MCDONALD: May I ask you a question that might answer that?

MS. BEASLEY: Uh huh.

MR. MCDONALD: Is the creation of the court and internal matter?

MS. BEASLEY: Well, that's -- no, it's not entirely internal, not entirely internal, but as perceived by a legislator of long standing to put 100 percent decision making as to the creation of new courts in the Legislature, has been apparently an undue burden on that Legislature, and making it too political as opposed to basing it on need, and the Legislature is looking for a way apparently to get more input from those who know about the need on a non-political basis.

MR. MCDONALD: I have another statement, does the Legislature believe that the Judicial Council will make a thorough and adequate study of every Court that's proposed and make their recommendations to the Legislature, that the Legislature will follow wise advice.

MS. BEASLEY: Well, you're saying just on a recommendation basis, not on a specific need or necessity?

MR. McDONALD: That's right. I don't think you ought to impose anyone over the Legislature in their jurisdiction.

MS. BEASLEY: I agree.

MR. SNOW: Any other question? Thank you so much, Ernest, we appreciate that. Okay, Bob James, City Attorney for Douglasville.

MR. JAMES: Douglasville, of course, is located in Douglas County, which has for the last four or five years been involved in the squirmishes in the Tallapoosa Circuit, and I think the Chairman is well aware of what's gone on there in our Superior Court, obtaining another Judge or separating the Circuit.

MR. SNOW: I enjoyed the observations, and we've had some problems from time to time. The speaker was rather upset with me a few times on some of those things.

MR. JAMES: I think Mr. Murphy would like to have his Douglas County split off, that's what he's told us and promised us, but our problem as I see it from a Municipal standpoint is from a city like Douglasville, it's a small town in an urban area, and any urban type problems come upon it can be best illustrated that if we're going to have to consolidate Court system. And there's no mechanism in there for proper physical facilities and personnel that the City's needs will not get served. In our City we have an animal control ordinance, and the county has a like ordinance. We enforce our animal control ordinance with simple citations to appear in Recorder's Court. Regrettably the County has to enforce those through injunctive actions in the Superior Court. By handling four counties in a circuit, even though we have a District Attorney with three assistants, and three Superior Court Judges, there's just not enough time to get down to those mundane things. But to the local official who is awakened in the early morning hours from an irate citizen because their

animal is loose or dog is loose, it's very important, and it's hard to explain to the citizen why you can't get them enforced. Basically in our county very little is enforced other than serious violations, and most of those go through the injunctive process. Now, a lot of that has to do with the fact that there's a total lack of facility. It's nice to have a Circuit with three Judges, but there's not a Courthouse in the Circuit that can handle three judges being present to handle the business. So if this system that is devised here is merely a consolidation and a continuation of that situation, there's no problem solved as far as the individual goes. Our Recorder's Court meets twice a month. You can be assured of rapid disposition of your cases. As a practicing attorney the best way to make sure a DUI is not prosecuted, is to bind it over from the Probate Court if it's a State case. Most likely it will never be prosecuted. This is a joke in the local community. And that's a bad attitude for the people to have, but I think maybe our Judicial system has brought upon itself those comments. So as far as the residents of the city of Douglasville in particular get its municipal ordinances enforced, this is not an adequate plan. An adequate plan will have to include, and it might have to be regrettably on a Constitutional level, that either the State provides the facilities or the Counties be required to, because irrespective of our Court structure, and the number of people you have, if you have no places for those people, you can't have it under the shade trees. So in that respect not even arguing where the money should go or anything, if the Cities cannot get their ordinances enforced except in the manner now that Counties are in areas like ours, then you really don't have much need to have the ordinances. We battle this in our area, and it's not because the Courts there do not want to, they would love to. Facilities, manpower, time, when you run trial terms in four counties that presently now consume 11 terms, which hopefully will soon go to 14 terms, there's just not enough time. Well, a Magistrate may help in some of these

cases, but if the Magistrate's office is not operative in a county like Douglas full-time, it's not going to help. Two days a month like Superior Court is operative will not help. If you're going to have a County Court system, which it appears to be more or less a merger of the Probate functions into what now we look at as the State Court, I think we should maintain a level we have now with the State Courts. If you're going to approach the concept of a Circuit Court with a County Court to handle all those things, such as juvenile matters, I think our juveniles are entitled to have someone who is qualified to be a Judge as far as the trials go. We need the non-lawyer level perhaps, but if we're thinking about revising our State system, we must be very cautious in where that non-lawyer level is, if we're to eliminate de novo appeals. And I think that the best way to eliminate that is at whatever level, entrance level a matter has, that the person there is qualified in broad based experience to handle both the technicalities of the various areas such as say probate law, plus the rules of evidence also in the other matters. Looking at this overall, I endorse the concept of making the judiciary as independent an arm of the Government as possible. However, if our Court arrangement, Court growth, the Judicial growth is going to be dictated or controlled by either the Supreme Court or, the Judicial Council, I think they should be more closely aligned to the people. If the Judicial Council is not elected by the people, and the Legislature gives up it's broad authority, then really the desires of any particular locality or area in this state would be hard pressed to be observed or listened to. If we're going to vest it in the Supreme Court, then maybe we should look at the idea of having Judicial Districts in this State, and the Supreme Court be elected from those Districts. As a practical matter, Judges on that level are basically unopposed. We got to non-partisan system of election, the primary, and determine who shall be in that office. So if we're going to eliminate those drawbacks, as I see the system, I endorse

the non-partisan election, but I think that maybe the Justices should be elected from how ever many Judicial Districts we need in this State to compose the Supreme Court. Now, if they are elected by that method, then their administrative control of the Court is an extension of the function of the people, and a Justice would weigh the ideas of the area of his district in his decisions. At this point really they're insulated, the people, although they are elected by the people, We wouldn't endorse an idea for our Legislature to be controlled by the Legislators being elected Statewide, or how many number we need. This assures the input of the various groups of people in this State for the functions of it's Court system, and it is the people's Court system. And if the Legislature wants to give up or feels like it's necessary to give up control, which it has to in order to separate these two arms of the Government, then the people must come into greater play. And I think from my association with citizens of our county that a proposal like this would not pass, because it would appear just to terminate their interest in the Court other than paying for it, the Court. So if we're going to -- it may not be the ideal system to have Justices elected from a District of Judicial Council members elected from a District, but I think it would help include the people who have to pay for it, and who subject themselves to the rules and decisions of that Court system. I think that such should be considered in any proposal, if the Legislature is going to divest itself of it's Legislative control because at this point that's the only way the people speak for the Court, is through its Legislators. If you're going to terminate that right, then it should be directly to the Court on the basis that makes the Court as we indicate here more accountable. Now, that's not the best way to have a Court political, no, but it's the best system so far. It would be nice if you do away with the election of Judges, but the other method hasn't proved so great either, and I think that if that were considered, the election process to help transfer to the Courts the

administrative decisions to the people that it might have a better chance. But now as far as the abolition of Municipal Court under the system as it is here, my experience would indicate that it's not going to be satisfactory; it would just create more problems. But I don't really have any solution to it, because this material is not being generally circulated in the community.

MR. SNOW: When you get some, would you let us know?

MS. BEASLEY: And we'll be back; won't we, Wayne?

MR. SNOW: Yes.

MR. JAMES: I think as far as the terms, you know, as far as the terms go I think that issue is a taken issue. I don't think at this time -- although I see a need for revision of the Judicial Article, items like that in there. I think are ---

MR. SNOW: They would take out on just that on part. Thank you, Bob, I appreciate it. Now I've got Mr. Long that needs to say something. Let him go ahead, and then we'll have you Betty.

MR. LONG: I'm Mickey Long, JP, one of three JP's here in Whitfield County, I just feel like the JP's ought to be heard. First of all, I oppose this system. Number one, I'm a little selfish, you're trying to get my job.

MR. SNOW: No, no. We are trying to change the name of it, I don't think it would have any -- I've told several folks and in your situation it probably would have no effect on your whatsoever, you can stay in the job, you just go by a different title, and have more jurisdiction.

MR. LONG: All right, I agree with you, sir, on the fact we have too many JP's. One in each district is entirely too many, and we have so many that are inactive. However, I feel like our mandatory training bill is going to eliminate that. I'm sure you're aware of our mandatory training bill.

MR. SNOW: Yes sir.

MR. LONG: I also feel like that the JP has a place in our county system, you know, when Papa beats Mama up, who's Mama going to talk to? Nobody --

MR. SNOW: There's no question about the importance.

MR. LONG: She gets a warrant. I just want to get in my 2¢ worth for the JP system, and I believe you'd be taking something away from the people.

MR. SNOW: We're going to have to make some changes in the Constitution as it's covered.

MR. LONG: I agree.

MR. SNOW: What we're talking in terms of is, the system would stay very much the same as it is, except there be one just or more Magistrates in each county, based on the need.

MR. LONG: Well, let's don't take away something from our little man, our little folks, they have to have somebody to talk with --

MR. SNOW: Let me assure you from my discussion with other members of the Commission and with those on the Judiciary committee, we're concerned and interested in this position, eliminating from the Constitution this jurisdictional amount of \$200 say as well as eliminating the number of one JP for every Militia District, these things have got to come out and to create at least one Magistrate per county, and by doing that we can have as many as might be a need for in any of the particular counties.

MS. BEASLEY: All that is the desire of the Committee is to provide Judicial services better and closer to an quicker and less expensive to the people in the State. So when it is perceived that some of these ideas are going to take it away, that's not what we're trying to do. Certainly, if that's what the result would be, and I think it is of some of the ideas that are here, I definitely am against some of them myself, because I've seen it that was the case. That's why we're wanting to hear the results of this, to see whether or not it's going to take it away from them or whether it's going to provide better services. So the overall objective is to provide the services -- judicial services to the people quicker and faster and more equitably. One of

the concepts that's been mentioned is to be more equitable to everyone in the State, or uniform rules and procedures is to be more equitable. Everybody should have the same ease in which to get into Court and try his case, and not have one jurisdiction make it more difficult because of more forms having to be filed and so forth. Uniform forms throughout the State, so that regardless of what Court you're in, you know what a summons looks like or a complaint or something of that nature.

MR. SNOW: There are a great many dangers in the fee system too.

MR. LONG: I'm the first to agree that JP's -- we've been our own worst enemy, and we are making a great effort. I think you are aware of this.

MR. SNOW: We are supporting that program.

MR. LONG: We appreciate it.

MR. SNOW: And we're supportive also of provisions in here which will provide for this type of immediate type service to the people.

MR. LONG: There are many, many JP's that do realize that we need to improve our system, and that's certainly what we're working for, and we need your help. Thank you very much.

MR. SNOW: Betty.

MS. BETTY ROGERS: I'd just like to go on record since we have three of the Clerks in your district here today, and we came because we're concerned about what these proposals are going to do to our office. Well, I have sat here this morning and I have listened to this, and some of it I think's good, and some of it I don't agree with, some of it I have. I still want to go home and be able to say, "Look what they're proposing is not going to take away from our office." I want to know exactly what it's going to do to the office of Clerk of Superior Court.

MR. SNOW: Betty, everything that has -- that you've got here, all three of these drafts are suggestions. Either from -- one from the Probate area, Draft

two, Draft B came about for a two-tier system of the trial Courts system. Draft A is the Commission's recommendation in principles that would be presented to our convocation that we had in Athens. Now Draft A has with a majority of the vote of the commission, but it passed over the objections of Judge Beasley, it passed over the objections of the representatives of the County Commission Association, it passed over the objections of your Member on the Commission; your representative, and over the objections of several others. Well, of course, the Commission's responsibility is to come up with something that they want to recommend to the General Assembly where we get it in the General Assembly, I'm still going to have all this to go through again with the Judiciary membership and Judiciary Committee. Then before the House with something, some proposal hopefully. We're going to come up with some article -- or Judicial Article that will certainly my hope is that it will reflect a need and changes that are needful for the improvement of the Judicial system in Georgia, now , as far as the Clerks are concerned, they're not presently a part of the Constitution of Georgia, they're not included as such in this Constitution. Your statutory office will not be affected one way or the other by the provisions in this Constitution, or in the present Constitution. But indirectly you're always affected anytime there's a change in the Courts. Now I'm not suggesting, but your office itself is not changed, your statutory office is not changed.

MS. ROGERS: We have done a good deal of discussion of this, you know.

MR. SNOW: I'm sure of that.

MS. ROGERS: And I can see where there's certainly some room for improvement in our County Court system. But I just wanted to know exactly --

MR. SNOW: Well, there are -- there's room for improvement in the court system overall and it's -- we are directed here in one article of the Constitution, of course, I'm directly involved in the revisions of each of those articles as

we try to revise them over a period of the next few years. As I started off by saying, we have successfully in this last general election revised two of the Articles. Article two and Article ten. And the people ratified those, and they're greatly improved. If we can -- our whole objective is not to make any drastic changes. It's a matter as you come to them, if you can make some substantive changes in them that will be helpful, then we ought to do so. The objective is to simplify what is a Constitution that contains far too much verbiage and which is archaic in the State of Georgia, it's got to be, or it wouldn't be the longest in the United States of America. It wouldn't have more amendments to it than any Constitution in the United States of America. So there's something wrong with it, and we're trying to fix it up in a way where it won't have as many faults in it as it has now. And it won't have to have as many amendments to it every two years, as the public is getting tired of going to polls and seeing on there amendments they do not understand. The fact is that there ought to be able to take care of it in the General Assembly we ought to be able to handle this, and if we don't have the confidence of the people enough to handle that, then we ain't got no business being there because they certainly cannot handle it by the amendments they've given, because there's not that much understanding, and we as Legislators when we see those amendments on the ballot don't know much more about it when we initially see them than what you do yourself. It takes time to think back and say, "Why did we do this?"

MS. ROGERS: In other words, we're just to adopt a waiting period and see --

MR. SNOW: Well, I hope so.

MS. BEASLEY: No, no, no, no, no, don't say wait and see. I was just going to say Betty, you started studying, there are two of you here, continue to do so, and please let us know what your suggestions are. You stated that there is some room for improvement. Let us know from your perspective what it is. And if you can't figure a solution to it, at least point out and identify the problems

that you see and that you perceive from your unique perspective. See? That would be a great help to us on the Committee. We're not trying to sell anything. We're trying to work together with the whole community to find out what is going to be better.

MR. SNOW: We haven't got anything to sell here. We haven't got anything anybody agrees on yet.

MR. COPPEDGE: May I ask a question?

MR. SNOW: Yes, sure, Warren.

MR. COPPEDGE: I'm sorry I missed Mr. James' name, but I had a question that probably relates to Clerks, and appears on the comments that Bob made, and that is that provision of facilities to conduct whatever this new Court is if it passes is a major problem. If you don't have the brick and mortar and the room and record keeping facilities to do it, we may have sort of a chaotic situation, and I wondered whether or not any provision or any authority has been put into this question, and that is, would there be addition job responsibilities and the money to pay for them on the Clerks of the Superior Court?

MR. SNOW: There very easily could be especially under Draft A, because this would probably entail the Clerk of the Superior Court in each County, or at least one clerk of Superior Court in each county with a number of deputies, which would be required, because Draft A would entail all records which I'm not -- I think that we need to come to this any way -- that all records of the Court records would be in the Clerk's office. It wouldn't be a separate record in the Probate Court office or anything else, but all records would be centrally located.

MR. COPPEDGE: Well, Mickey knows the problem I'm talking about.

MR. SNOW: So, that is a problem, and it does involve space, and it does -- but we have envisioned thus far, as far as that is concerned, from a cost standpoint that that would -- the State would only assume the costs of the supplies, equipment, and personnel in each of the Courts, but the Counties

would still be expected to maintain the buildings, but there is a possibility of a rental you see, or paying back for space.

MR. COPPEDGE: I don't know the Clerks' views on this, but I think they need some reassurance that whatever duties they will be given will be -- at will be given a whole with all the copies.

MR. SNOW: Certainly.

MR. COPPEDGE: But at the same time, I know Judge Long and the Justices of the Peace that we have in Whitfield County, he mentioned three, do an excellent job, but there needs to be systemized --

MR. SNOW: Let me go ahead and say further though, the Clerks were included as far as statutes as proposed, or as brought about, that they would be on the State -- that they would be on a salary from the State paid by the State to them.

MR. COPPEDGE: You know, we need some centralized record keeping system because we have had in the past a change over in Justices of the Peace, where the outgoing Justice of the Peace was not cooperative with the incoming Justice and he picked up his records, his cases and his books and gone with them. Now that's a real problem, and we need the room to put them in too.

MR. SNOW: I think Court records -- all Court records ought to be in a central place. How far we are from it, I don't know.

MR. COPPEDGE: That's the question.

MR. SNOW: All right, Judge Payne. He wants to be heard, he's Probate Judge from Chattooga County.

MR. PAYNE: My name is Jon Payne, that's J-o-n; that's short for Jonathan. I'm Probate Judge for Chattooga County. I wrote down a whole lot of stuff that I wanted to go over, but I've got to go back through it --

MR. SNOW: You're not going to go through all of it?

MR. PAYNE: No, we're not going to go all through it. I had one question for

Judge Beasley, if I may. You mentioned a while ago about Probate Courts having land records in your discussion with some of the Judges, and I was just wondering about that.

MS. BEASLEY: No, you're not having land records. You're having things that are tied in with the land records.

MR. PAYNE: Okay.

MS. BEASLEY: The idea being that it seems to me logically and in talking with out own Probate Judge that those things as well as the jurisdictional things should belong really with the Superior Court matters, and Superior Court Clerks if you're going to transfer it anyway somewhere, rather than with just the State Courts, as we have the State Court in Fulton County anyway. Because we have nothing to do with real property, and so forth, and those really belong to me, especially if you have a split jurisdiction subject matter-wise, and you can go so far and then you got to go to Superior Court. Well, it ought to be in one place, and if it means dealing with Superior Court Judges, fine, then you go up there.

MR. SNOW: You still handle processioning procedures, don't you?

MR. PAYNE: Do what, I'm sorry?

MR. SNOW: Processioning, processioning procedures?

MR. PAYNE: Yes, yes sir.

MR. SNOW: That's the land line where you mark it?

MR. PAYNE: Yeah.

MR. SNOW: You're near enough to Lookout Mountain that you handle a few of those?

MR. PAYNE: Yeah, I get those too. I picked out just one or two other things in the State, Supreme Court type control and mandating of certain things, I feel like should be left with the home rule type idea. And the lack of accountability concerns me because I'm not sure who we're supposed to be accountable to except for the people that put us in office, and I don't see where we should

be accountable to them except for ethical type things, things like this; procedural -- you know, everybody's pretty well the same on procedures anyway. But anyway I've got two books here that I've brought. I've heard everytime I've been to a discussion of this type things, I've heard about lawyers having trouble finding out what Court to go to, and in what County, and I'm all for Probate Judges as well as anybody else having more education. I've got two dandy little books here. This one cost me \$7.00. I buy one every year. It's from the Georgia Legal Directory by the Georgia Association of Legal Secretaries and the other one I got in the mail the other day from the AOC Judicial Council, it's a Georgia Courts Directory, and if any of these lawyers don't have one, I'd be glad for them to call me. My number's 404-857-1813, and I can find out where they need to go and these things, Thank you for your time. I appreciate ya'll coming round to hear it.

MR. SNOW: Anyone else like to make any statements? Bill?

MR. MCDANIEL: I'm Bill McDaniel, I'm Clerk of Superior Court of Walker County. Wayne, I think our people at home would be interested in knowing what this is going to mean to them in the way of voting for their people in offices. It's very important for them not to be able to know what's happening. They're losing touch with a lot of things that happen in Atlanta, I represent Walker County; you also do, and it's very important that they know these things. We'd like to know the cost of running the survey to be able to explain to the people there.

MR. SNOW: We should have some figures on cost right soon. The Institute of Law and Government are preparing those now, and they will be available.

MR. MCDANIEL: We're talking about what? How long have you already been working on this particular thing?

MR. SNOW: You mean the Judicial Article?

MR. MCDANIEL: This new section you have, how long have you been working on it?

MR. SNOW: I have been working on the Constitution Revision since 1964. The Sanders Administration started it back then.

MR. MCDANIEL: Yes, we understand.

MR. SNOW: We went through a special session that cost \$1,200,000 and the Courts overruled that at the time, we never did even finish that Constitutional Amendment, but this has been going on for two years.

MR. MCDANIEL: That means it's going to be a five year period; just to study what we need?

MR. SNOW: No, not what we're doing here. There will be other articles of the Constitution that we will be taking up, the Select Committee will, we've only passed on two thus far. This was taken up at the same time that the third one was taken up. There are still nine other articles that will have to be considered. They will be done over a period of years, because it just simply can't be done at one time, it's a very unique thing.

MR. MCDANIEL: The biggest thing that I see, and I think that you need to look at this very closely is Atlanta shouldn't control Walker County.

MR. SNOW: Atlanta's not going to control Walker County.

MR. MCDANIEL: Well, I know. The situation would be if some of these things fall into line which the clerks would be involved, a lot of people would be involved in it. And it's very important that you don't take it away from those people, please don't take it away.

MR. SNOW: Well, we're not taking anything hopefully.

MR. MCDANIEL: Well, we've already lost some and we don't want to lose any more.

MR. SNOW: What have you lost?

MR. MCDANIEL: Well, you say that we're not going to -- when your Judicial Council started, your Court Administrators, all this thing, it's cost a lot more money to the taxpayers, and we are the taxpayers.

MR. SNOW: There are additional costs that have been involved in many of these

matters, Bill, but they have also provided us with information that has saved the taxpayers some money. If we had created all of the Superior Courts that bills were introduced or could have been introduced, to create in the past six years since we've had a Judicial Council the cost which is about \$100,000 for every Judicial or new Judge that is created, the cost would be astronomical. But by taking solely the recommendations of the Judicial Council, we have saved money in this respect.

MR. MCDANIEL: Well, we don't know what their expense is though, see? To operate their office, that's part of the State.

MR. SNOW: Certainly it is.

MR. MCDANIEL: Yes, we got a lot of ways to look at this thing that we need to know the answers, the people do.

MR. SNOW: There are a lot of questions that need to be answered on it.

MR. MCDANIEL: And the expense of this money that's been sent into this thing to change a lot of these things. There's too much control. Don't do this please, for your people. That's who you represent.

MR. SNOW: Yes sir, I'm well aware of who I represent.

MR. MCDANIEL: I know, but I say please help them because we're having articles that are coming up we don't know about. The people over in Lafayette doesn't -- the people in Walker County doesn't know a whole lot about this at all.

MR. SNOW: Now that's a problem we've had with our news media for some time in our own local areas. Now we've been --

MR. MCDANIEL: Well, I don't know whether it's up to you to do this or not.

MR. SNOW: We're trying, we don't always get coverage on it.

MR. MCDANIEL: Well, you shouldn't put it out what's happening, what's going to happen, what you're going to come up with.

MR. SNOW: Well, that's why you got notice of this meeting today.

MR. MCDANIEL: I didn't get one.

MS. BEASLEY: That's one thing that we are asking all of you here, to help us with publicly, we know that we've got responsibilities as a Committee to educate the public, but by meetings such as this and in you becoming acquainted and you taking back to your people the information, maybe your Civitan's, and your Lions and your League of Women Voters and whatnot, and discuss these things, so although you have asked -- the first thing you said was please we want the people to know what is going to be done.

MR. MCDANIEL: Sure, they need to know very much.

MS. BEASLEY: We want them to know, but then the second part of it is, we want to know what you think about it. So that's one of the purposes of these public hearings, but unless we know what they want, and of course, it's important for us to know what it is that's proposed, we will get nowhere. So we need your help in taking this back to those of you who are knowledgeable or concerned about this, to study it and come back and tell us what the clerks say, and ask them to tell you about what changes or procedures there are going to be.

MR. MCDANIEL: Well, I'm just going to say what I could tell them wouldn't help it. I'm just not in favor of being pushed --

MS. BEASLEY: Well, maybe you can tell us who we should be directed to who could tell us.

MR. MCDANIEL: Well, I'd have to propose it, I'd have to decide what --

MR. SNOW: There's going to be many other recommendations to be made. There's going to be some final recommendation made, and then it's going to be up to those of us in the General Assembly to look at that recommendation.

MR. MCDANIEL: But Wayne, it will affect the Clerks in some way --

MR. SNOW: I didn't mean to be misunderstood on that, as far as the Constitution is concerned it will not affect the Clerks from that standpoint, but there is no question but what it will have an affect upon you if you change the Court structure in any way. Because there will be more responsibility, there will be

more records, it can be a joinder of all the records, and with more deputies being necessary, but there is a matter that addresses itself, and it does address itself to the efficiency of the Court, and to the manner in which you conduct your office. We expect them to be, and we expect for either the local Government or for the State Government to finance it, and to finance it sufficiently.

MR. MCDANIEL: I think the local Government does finance it, and I think it's run to the very tops I believe. I haven't heard anything, you may have, and you have a right to say something, but I'd like to check it because we do our very best.

MR. SNOW: Well, I know I didn't say you didn't, but I say we have the responsibility of doing it either on a local basis or on a State basis.

MR. MCDANIEL: But I say I think we take in enough to cover, you know, that part of it, with the revenue that we get.

MR. SNOW: Thank you.

MR. HANSIRD: I'm Herman Hansird, Judge of the Probate Court here in Whitfield County. The question that came up and mentioned of the fee system, the cost system of traffic, probate, of administration and what have you, we have a set cost on Probate, and anything pertaining in our Court for birth certificates, and I see no great thing here of not knowing the cost over the State. Now, if the State sets a fine, why you might as well have a cash-register operation, and because if you're going 70 miles an hour the State sets a fine at \$36, why you just go in and pay it, that's it. You don't have to listen to what the Defendant has to say; just pay the fine and go on. We listen to this. We have our jurisdiction to determine if he pays a fine of \$36 or \$20. There's different cases not alike, and so I see -- I don't see where the State can set and still have a man to collect them other than a case register man. And our cost is set, and we over the State should be getting the same thing for just a will

probate, \$43, plus so much for certified copies and things of that nature, and I just don't see where you're talking about setting these fees or fines.

MR. SNOW: Well, again, sir, that would be a matter of statutory law. It really would not come as a part of the Constitution, it's kind of an out and pouring --

MR. HANSIRD: If you're going 70 miles an hour on the Interstate in Ringgold, Georgia, Catoosa County or Gordon County or whatnot, it may be at a different time of day that would be more hazardous than at others. And I don't feel like the State should set a fine over the State at every place at a certain time.

MR. SNOW: I don't disagree with that. I think primarily the consideration on that has been that certain offenses -- traffic offenses -- that it ought to be set out in such a way to where you don't even have to bother about going into court at all, you just go ahead and pay it, you know what it is and its' not a matter of having to make an appearance.

MR. HANSIRD: There's an order in the Sheriff's office here now for cash bond that he takes for cash bond, and they can waiver a jury trial, sign that and forget about that, and it goes as a bond forfeiture. But if they come before me I can fine them and the circumstances, why I can lower the fine or I can make it greater. But they have the opportunity to putting up the cash bond and forgetting it. And the same way as probate and guardianship, no administration and things of that nature, and I don't know any attorneys in Whitfield County that has a great problem of knowing where to file such papers as has been brought up, and I don't know of any attorneys that's checking records in this State that when they go to Superior Court and check the records that they don't know to title check to go on to the Probate Judges office and see what was done there. And filing everything in Superior Court as Clerk of the Probate Judge I think you're going to have more files in the Superior Court and it's going to be harder to get the complete file as it would for what comes

into the Probate Judge's office as into the Clerk's office.

MR. SNOW: As far as title checks. Any questions? Thank you. Anybody else like to say something?

MR. JOHNSTON: I'd like to say one more thing. Seems like it's all in a cycle. Here years ago -- several years ago it was popular to do away with your County Courts and State Courts and make another Superior Court Judge and we going to handle all this job here now. And now you coming back around; you want to get these County Courts and there set up something else. It seems like to me you are just going in circles, because I know it happened in our County. We had a City Court, Floyd City Court for years and years. It started about 1850, and then they changed it to Floyd State Court. Then we going out and have two Superior Courts. So --

MR. SNOW: I think you're probably correct. I think this is where we get in a hodge-podge. You see things get to where there's a lot of business going on and there somebody says, let's just create this Court over here and then we can abolish this other Court and handle all the jurisdiction in one. Well, you sometimes create the other Court without doing away with anything else, or if you do away with it, there you come back and bring it back in, and you may not have an equalized case load in your upper Courts then, your so-called Superior Courts.

MR. JOHNSTON: Just off the record, you and I been in politics long enough to know exactly why those courts were established?

MR. SNOW: Yes, I know what they're established for, but that don't make it right.

MR. JOHNSTON: No, it not right, there's no doubt about that.

MR. SNOW: But you're right.

MR. JOHNSTON: But if you're going back now, you're coming back, they say we want this one. Formerly in the City Court they handled or State Courts handled

misdemeanors and small -- actually small claims. If went up to -- they didn't handle the big -- they filed big suits in the Superior Court, and then we come back a complete circle now, because that's what it is.

MR. SNOW: Well, I can't speak for all members of the Commission, but I can pretty well say this, that I think the two tier system is what is going to a recommendation, is going to come out. So it's certainly not going to abolish the trial courts from that standpoint. I can say that as a matter of observation; I can't say what they're going to do, but I can pretty well observe as to what their recommendations will be to the General Assembly.

MR. JOHNSTON: Thank you anyway.

MR. SNOW: Yes sir, there will be ample opportunity, and we are anxious to hear from any of you folks on anything, and any suggestions we -- this is not an easy task. And it's not a matter that anybody is real happy with. We have a task to do as far as the Judicial Article is concerned, as to how much subsequent changes we can make in it is dependent upon what the people -- what we think they want, or what you folks suggest on it. There is some improvement to be made in the Judicial Article that we have right now; that's what we're trying to do.

MR. JOHNSTON: One other thing I'd like to put in there, if this thing passes or goes before the Legislature, put in there that the Counties must furnish the Clerks sufficient deputies and supplies and room to do the job, otherwise you've got a battle on your hands.

MR. SNOW: Well, I say that's correct, but I really think the State ought to be handling that. I do believe the State ought to have that responsibility. Because I don't think you ought to be having to go to the County Commissioners to provide services for the Courts.

MR. JOHNSTON: Well, you know, you have to do that now.

MR. SNOW: I know you do, but I don't think you ought to have to do it.

MR. HANSIRD: I have one more comment. Speaking of the State furnishing all the books, forms, and so forth and so on, now and the help, just taking the department of vital records. They say they are six or eight months behind down there, in different categories of delayed birth certificates and things of that nature. The State, if they furnish, you going to be behind here if they're operating on a small balanced budget down there or over the budget, they can't hire, and we're -- Atlanta -- we are having more durn problems in Atlanta getting our documents back than anything I know of. So that, I feel, would be locally if the State is taking it over.

MR. SNOW: Well, let me comment on that from this standpoint. If the State took cost of it over, it would included in the Judicial budget, and would be line itemed in there as to what cost, and that would be recommended from the Administrative Office of the Courts and from you folks.

MR. MCDONALD: Could I say one more thing?

MR. SNOW: Ernest, we're always happy to hear from you.

MR. MCDONALD: What I wanted to call this Committee's attention is the fact that in Cordele, Georgia, the Probate Judge's has appointed a commission to draft a proposed article to tie in with your endeavors here that affect the second tier system of the trial court. To make their recommendations. The article, I believe, was adapted practically unanimous by the Probate Judges sitting up principles that generally I stated to you here. They favored, and a committee was appointed, Judge Hansird was on the committee and Judge Merritt of DeKalb County, and Judge Harry Johnston of Rome, the Judge in Clayton County, I believe, and possibly authority to add to it if they want to. This committee will be furnishing your committee a proposal, officially making a recommendation of the Probate Judges in that proposal. After this is drafted, they intend to have it approved by the Probate Judges statewide, and in so far as the second tier trial system is concerned, the Probate Judges will state

their views on that to the Committee.

MS. BEASLEY: That's what we need.

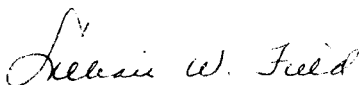
MR. SNOW: Thank you very much, Ernest. Any other comments? Well, if not, then folks we do appreciate your coming. We will appreciate your continued input, and we will adjourn until Macon, Georgia.

WHITFIELD SUPERIOR COURT

GEORGIA, WHITFIELD COUNTY

I, Lillian W. Field, Certified Court Reporter No. A-58, do hereby certify that the within and foregoing Transcript of Public Hearing is true and correct to the best of my skill and knowledge.

This 28th day of March, 1979.



Lillian W. Field
Certified Court Reporter A-58

(SEAL)

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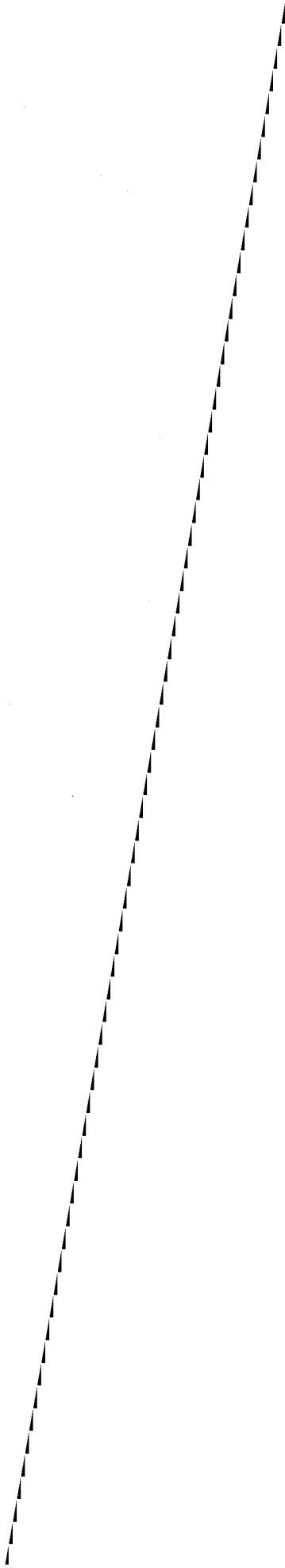
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SELECT COMMITTEE ON CONSTITUTIONAL REVISION
COMMITTEE TO REVISE THE JUDICIAL ARTICLE

PUBLIC HEARING

City Hall
Macon, Georgia

Friday, November 17, 1978

THE COMMITTEE:

Mr. Wayne Snow, Chairman

Ms. Carol Wilson

Mr. Joe Drolet

Mr. Berry Brock

Mr. John Cole

Mr. Adam Greene

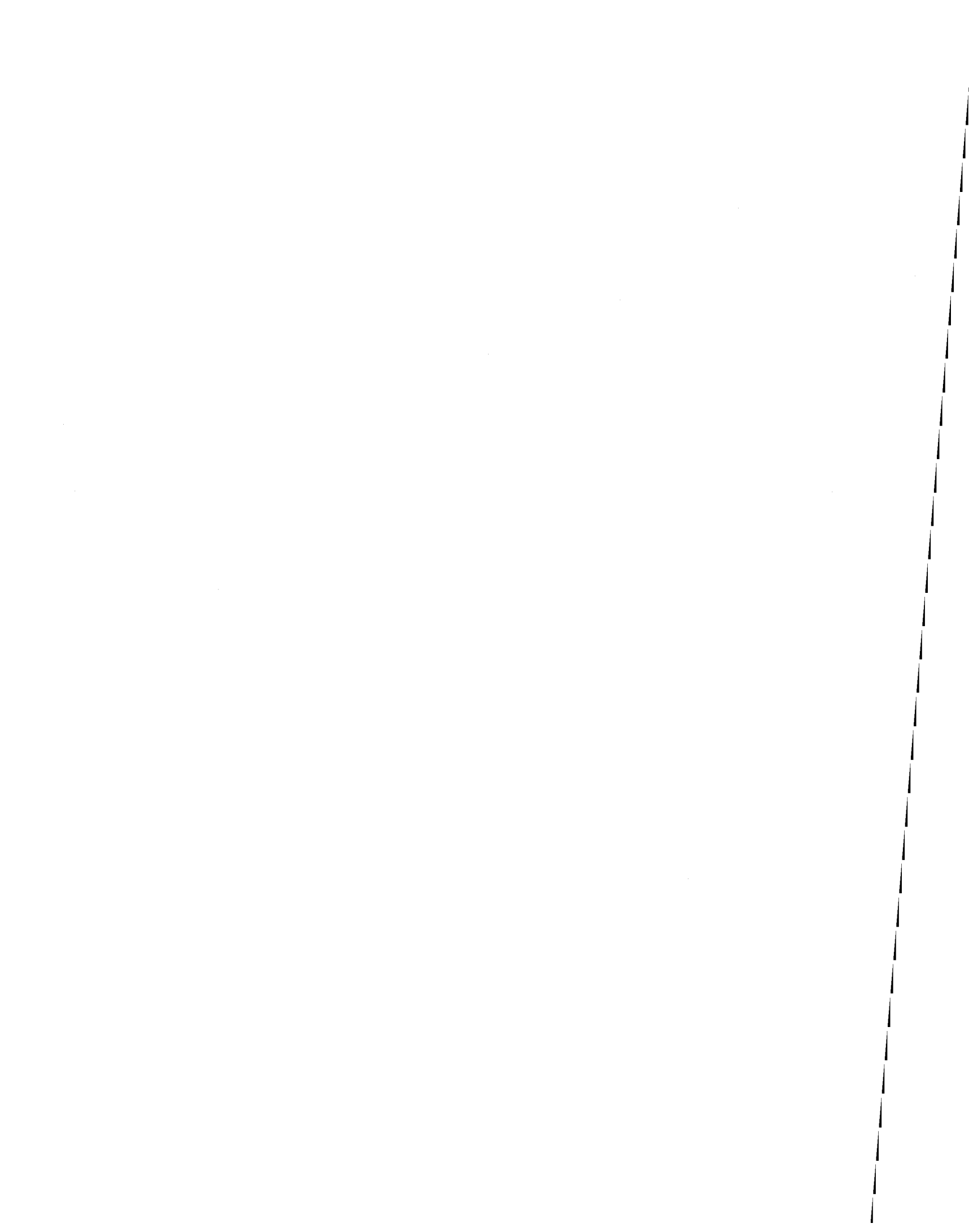
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DEPOSITIONS - ARBITRATIONS - CONVENTIONS - CONFERENCES



THOSE PARTICIPATING:

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P R O C E E D I N G S

1
2 THE CHAIRMAN:

3 Folks, I am Wayne Snow, Junior, Chairman of the
4 Commission on the Revision of the Judicial Article of our
5 constitution. To my immediate left is Joe Drolet, who
6 represents the D.A.'s association in the State of Georgia
7 on this Commission; and to his left is Berry Brock, who
8 represents the Justice of the Peace Association in our
9 state. Adam Greene, who represents the Clerks of the
10 Superior Court, is to my immediate right; and to his
11 right, of course, many of you know Dean Cole, who is
12 representing Mercer but is one of the three of our law-
13 school deans or associate deans who are assisting us with
14 the revision of the Judicial Article. Carol Wilson,
15 representing the League of Women Voters for the State of
16 Georgia; and Marty Hodgkins, to my far left, who is the
17 Executive Secretary to the Select Committee for Consti-
18 tutional Revision and is who is working with all of the
19 different commissions on the various articles.

20 As you know and by the approval of the voters
21 in 1976, we are revising the constitution on an article-
22 by-article basis; and I can assure you that I hope that
23 in the next session of the legislature we will have some
24 language that will clarify Article II and Article X enough
25 that the voters of this state will approve those the next

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1 time instead of rejecting them like they did this last
2 time.

3 Article VI, the one we're working on, is in my
4 opinion probably the most controversial of all the articles
5 that we will be working on as we seek to revise the
6 constitution; but the election -- or the elective-franchise
7 article which was submitted for the approval of the voters
8 as well as the article on loans and scholarships and
9 retirements, which was Article X.

10 Again, and I think I reflect the attitude of
11 most of the members of the Commission and the Select
12 Committee, the Governor and others, the were excellent
13 amendments; very poorly written and misunderstood; but
14 they would've done much to alleviate some of the problems
15 that we have with the constitution in our state, which
16 contains far too much of the statutory laws, too much
17 verbiage--far more than any other constitution of any
18 of states of the nation.

19 So we have been involved in this revision of
20 articles of the constitution more than two years and have
21 purposely kept this article from consideration, as far as
22 ratification is concerned, because of the problems that
23 we have dealt with and the obvious difficulties that we
24 do have in seeking to try to bring some degree of uni-
25 formity to our courts and something that we can all



1 understand and can appreciate and can live with. Now,
2 that is an objection.

3 You have presented here a questionnaire and
4 also some statements relative to the Judicial Article and
5 its revision. These do not necessarily -- these state-
6 ments do not necessarily reflect anything that is in all
7 these various drafts -- there are three drafts, also --
8 but are statements that have been made at one time or
9 another in some of our hearings as to how some people
10 feel that the courts or that the Judicial Article should
11 be revised. The three drafts that you have are a reflec-
12 tion of the attitudes of some members of the Commission.
13 They are also the attitudes of some subcommittees who
14 have worked diligently, very diligently, on the Judicial
15 Article; and the Draft A is a presentation in principle
16 of the majority viewpoint of the commission on its vote
17 at our last meeting of the full commission in Atlanta.
18 There were several minority reports that were made also
19 to the majority report.

20 So what I'm trying to suggest here is that we
21 are here primarily to familiarize your -- you with some
22 of the suggestions that have been made to get your ideas
23 as to those suggestions and how that you will take these
24 questionnaires and in writing submit back to us at a future
25 time your attitudes and feelings as may concern some of

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1 those suggestions that others have made. But we are
2 here primarily not to expound upon any particular faults
3 that may be within any particular courts but to hear from
4 you as to how you feel that we -- or what we might do to
5 improve the judiciary in the state. We know that there
6 are some problems. We know that we've got some part-time
7 courts that possibly could better serve the public if
8 they were full-time courts. We know that we've got some
9 areas where we could have some consolidation among some
10 of these part-time courts and part-time judges where they
11 could carry and take over some of the jurisdictions that
12 may be involved in the others. We have what has been
13 referred to by some as "cash-register justice" in this
14 state. Insofar as our municipal recorders' courts or
15 some of those courts concerned, it does vary from place
16 to place. And I was in my own home area last evening
17 talking to the mayor and council and referred to cash-
18 register justice in the areas where times get a little
19 bad occasionally and it's necessary to set up a few more
20 stop places so that you can arrest a few additional people
21 for speeding in the city when you need a little more cash
22 to run your police department. I wouldn't suggest that
23 that goes on in this area, but I suggested it to them last
24 night because they knew exactly what I was talking about
25 when I mentioned it. Now -- you know, I can do things like

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1 in my own home area. I wouldn't come in and accuse some-
2 body else of something that I think probably wouldn't go
3 on here.

4 Those are things to keep in mind. The fee
5 system in Georgia is still something that we have in a
6 large number of areas. I would hope that our judicial
7 article would reflect a desire upon the people of this
8 state that we would not have fees paid in any of the
9 areas, that no court would be based upon a fee system,
10 that it would all be a salaried system; and that we stop
11 what has become somewhat of a hodgepodge of court systems
12 that are being created in the general assembly with the
13 number of small-claims courts that we're creating, all
14 the different types of jurisdictions, conflicting in large
15 part with many of the J.P. courts. And we're hopeful
16 that we can come up with a court that would not neces-
17 sarily require an attorney but someone who is legally
18 trained, something similar to what we've set up for the
19 J.P.'s to have this justice-of-the-peace council, training
20 council, and we could call it magistrates. We could give
21 them different jurisdictional amounts and require that
22 there be at least one magistrate in each county of the
23 state of Georgia; and those counties that need more for
24 the issuance of warrants, for the handling of small claims,
25 such number as might be necessary or that the population

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1 might justify that there be that number of magistrates.
2 I'm just throwing out some of the things that we are
3 considering. The efforts that we are putting forth are
4 hopefully to improve the judiciary of this state. If you
5 don't think it's going to do that, we want to hear that,
6 too.

7 We've got several -- Again, let me suggest to
8 you that these suggestions, these various numbered state-
9 ments on this particular questionnaire, are things that
10 have been presented to the Commission; statements that
11 have been made by some who feel that these are areas that
12 there could be some improvement in. They all do not
13 necessarily, and I will assure of that, reflect the
14 consensus of the Commission; and that will be addressed
15 by the Commission after we have concluded all of these
16 public hearings and after we have sat down together and
17 we having different ones of the Commission that are
18 attending the various public hearings throughout the
19 state and, of course, have it all on record; and this
20 will be available to the Commission when it makes its
21 recommendations back to the Select Committee. Then the
22 Select Committee makes its recommendations to the General
23 Assembly, and that's when those of us in the General
24 Assembly get it; and as you well know, that is another
25 tremendous political process. It has to then be approved

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1 by both the House and the Senate of our state by a two-
2 thirds vote before it can be placed upon the ballot for
3 the ratification of the public.

4 With that I'm going to ask if there's any other
5 member of the Commission who would like to make any open-
6 ing statement; and then, if not, we will proceed with Mr.
7 J. E. Hulse -- Is that right?

8 MR. HULSE:

9 Hulse.

10 THE CHAIRMAN:

11 From the City of Brunswick.

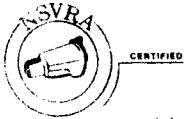
12 We usually like to keep these as informal as
13 possible. We'd like for you to be able to sit, if you'd
14 like to.

15 MR. HULSE:

16 This is fine. I probably speak better on my
17 feet, and I won't be here that long.

18 My name is J. E. Hulse, H-U-L-S-E, City Manager
19 of the City of Brunswick. I have been the City Manager
20 there for the past 12 and a half years. I would have
21 been at your Savannah hearing had we had the notice of
22 the hearing from the Georgia Municipal Association in time
23 to have a city commission meeting and prepared the neces-
24 sary position statement; however, that didn't happen. So
25 I'm with you today and would like to read to you for the

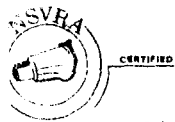
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1 record a resolution. I would like to give to each member
2 a copy of this resolution. [Presenting.] I will give
3 you the original as soon as I finish reading. It reads
4 a little easier sometimes than the copies.

5 The City of Brunswick is not like, Mr. Chairman,
6 the cash-register court system. As a matter of conver-
7 sation before I get into this official resolution, we have
8 a six-million-dollar budget; and the 100-thousand dollars
9 that we take in annually in fines is not going to be a
10 contributing factor to that overall budget. There is a
11 great concern on the part of our people; and when you
12 start moving courts around to try to effect a better
13 court system, consideration has got to be made for the
14 backlog that now exists in our superior court. And with
15 the increase of crimes and the types of crime that we're
16 involved in in the coastal areas, we have numerous people
17 who are awaiting trial that are on bond for five or six
18 offenses, and these are felony cases, primarily burglary
19 and armed robbery. And when you get to this backlog of
20 cases that cannot be tried, consolidation of the courts
21 does not allude to the expediency of handling these
22 cases. And since the state court in our county has
23 equally a heavy backlog, the city recently voted an
24 ordinance and got permission to go into the Uniform
25 Traffic Code whereby we could try some of the state

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1 violations in our recorder's court --

2 MR. CARLISLE:

3 Excuse me. Would you mind standing back a
4 little further. People back of you don't hear as well
5 as in the front.

6 MR. HULSE:

7 I'll be glad to.

8 We are now trying DUI cases in our court. Of
9 course, the judge of our court is a senior citizen of
10 our community, Judge Bill Ringle, who is retiring at
11 the end of December, who has been a lawyer of good repu-
12 tation for a good number of years and has held a court
13 free of political interference. I think that this is
14 certainly a factor. In looking at your judiciary Article
15 VI, I read where DeKalb County was being considered to
16 become -- the judge of that court was to become an
17 associate judge in the circuit court system. There was
18 no mention of the courts on the coast and no mention o
19 the activities of the coastal areas. And I'd like to
20 just state that we are certainly opposed to any change
21 in the recorder's court system; and this resolution that
22 I will read at this time, I think, will point that out.

23 [Reading] "WHEREAS, the City of Brunswick
24 received information regarding pending legislation as
25 presented under Article VI of the Judiciary Report

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1 regarding Court Reform; and

2 "WHEREAS, this information as projected is not
3 considered in the best interest of the City of Brunswick;
4 and

5 "WHEREAS, this consideration calls for the
6 abolishment of the City's Recorder's Court as now consti-
7 tuted by and under Georgia Laws of 1889, pages 1010, 1024;
8 and Georgia Laws of 1892, pages 218, 214, 216; and Georgia
9 Laws of 1920, pages 757, 774 and encompassed as a part
10 of the City Charter and established under the Georgia
11 Laws of 1920, pages 757, 760 and said Court is further
12 referenced under the Municipal Home Rule Act, Georgia
13 Laws titled 69, Chapter 10, entitled 'Home Rule' and

14 "WHEREAS, said proposed legislation would
15 adversely affect the provisions of the City Charter of
16 the City of Brunswick and could seriously impair the
17 rights of cities under the Home Rule Act, this proceeding
18 creates a lingering legal problem at best; and

19 "WHEREAS, it is the experience of the Recorder's
20 Court of Brunswick that there is no significant backlog
21 of cases and that those people that are to be tried for
22 various violations are guaranteed a speedy trial; and

23 "WHEREAS, under the Umbrella Act as heretofore
24 mentioned would create such an overload in the existing
25 courts in that the cases could not be tried with any degree

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1 of expediency and would hamper the existing judicial
2 system even more than it is already hampered; and

3 "WHEREAS, should such legislation be passed the
4 ensuing detriment to the work of the police officer would
5 be one of inactivity rather than activity pursuing the
6 violation of local ordinances and laws because of the
7 inability to have these cases tried; and

8 "WHEREAS, the individual citizen has a right to
9 a speedy and fair conclusion of any court proceedings,
10 thus these individuals' rights would be denied; and

11 "WHEREAS, in full review of the proposed Act
12 it would appear that there was no consideration given
13 to the individual citizen requiring services of the court
14 or for these services to be improved over and above the
15 current level of court activities; and

16 "WHEREAS, the efforts of the Legislative
17 Committee are to be commended for making such a study;
18 but their results appear to be shortsighted for in a time
19 when more courts are needed, it does not behoove the
20 citizenry of this state to suddenly have the threat of
21 less courts being presented by the Georgia General
22 Assembly;

23 NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED
24 by the City Commission of the City of Brunswick in lawful
25 meeting assembled that the City Commission strongly opposes

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1 any consideration of the abolishment of the Recorder's
2 Court system;

3 "AND BE IT FURTHER RESOLVED that this resolu-
4 tion be presented at the Public Hearing to be held in
5 Macon, Georgia, on November 17, 1978, for the purpose of
6 letting the Legislative Committee know the true feelings
7 of the City Commission.

8 "This resolution adopted November 15, 1978."

9 And it's attested by the Clerk of the City
10 Commission of the City of Brunswick, Mrs. Harriet S.
11 Jennings.

12 Mr. Snow, I'd just like to make one other
13 comment, that over the years in the city business that
14 I've been in -- now almost 23 -- I have witnessed police
15 departments in three states and four cities; and where
16 the police officer could get his case tried, he would
17 make a case if the case was there. But where he could
18 not get justice in the courts, the cases would not be
19 made. And I think that the difficulty today that we're
20 having with the rash of burglaries, armed robberies, and
21 other felony violations, police officers are doing their
22 best in all communities to get these people caught. But
23 by the time the police officer finishes his booking
24 procedure, he goes back to the streets. Many times that
25 same fellow is on the sidewalk waving at him because he's

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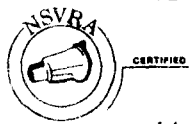
1 already made bond.

2 If the Judicial Reform Committee wishes to do
3 something to improve our system, then help us keep those
4 people off the streets so that once a man commits a
5 burglary and he's caught or commits a robbery and he's
6 caught or commits a more serious crime and he's caught,
7 we don't face him in 24 hours or less doing the same
8 thing over and over again and making bond on it. This is
9 one of the problems we have.

10 Last Thursday my house was burglarized. Earlier
11 this week in my same neighborhood a 93-year-old woman who
12 lives alone, there was an attempted rape. Yesterday six
13 blocks down the street there was another house burglarized
14 and a neighbor saw the subject leaving. My damage was
15 \$500. The damage to the 93-year-old lady cannot be
16 measured in value. The damage to the house yesterday, on
17 the morning news, was about \$900. This same subject we
18 believe has been sent up five times before; and as soon
19 as they can put a hand on him and put the proof, they'll
20 put him back. But how soon will they turn him loose next
21 time?

22 The judicial system in trying cases, yes, it
23 needs to be improved. But we've got to hang them some-
24 where to keep them off the streets of our state, or we're
25 going to have repeat cases over and over again of the same

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1 types of people committing the same types of crimes
2 against the decent citizens of our cities throughout the
3 state.

4 I thank you for your time and I appreciate --

5 THE CHAIRMAN:

6 There may be some questions from some of the
7 members.

8 MR. COLE:

9 I have a question.

10 THE CHAIRMAN:

11 Dean.

12 MR. COLE:

13 Mr. Hulse, as I understand the resolution that
14 you read, your main thrust is that there would be under
15 any kind of a unified system less judicial personnel to
16 handle cases and that would slow it down and would tend
17 to disrupt your police department; is that correct?

18 MR. HULSE:

19 Yes, sir. As we understand the Article, we've
20 been trying for some time to have another judge assigned
21 to our territory in the Superior Court. We've been
22 trying to get the county government, in concert with the
23 D.A. and others, to provide additional courtroom space
24 so we could hold more than one trial at the time and
25 capture some of the backlog. And progress in these areas,

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1 as you know, is very slow; and it's a very difficult
2 thing to achieve.

3 MR. COLE:

4 I'd like to say as one member of the committee,
5 that problem concerns, I think, all of us, certainly me,
6 very much. And the arguments that we've heard on the
7 other side specifically address that, and my impression
8 is that a unified system would give us more flexibility
9 to meet backlogs and certainly not take away a judge,
10 a recorder's court type judge, but in fact add if neces-
11 sary. I'm not saying that will be a result, but it seems
12 to me from my vantage point that that is really what
we're trying to do. And maybe we're arguing about
14 whether we're going to get it done this way.

15 MR. HULSE:

16 I don't think we would argue the point to the
17 extreme, provided that the role of the city structure not
18 be interfered with by the hands of the courts.

19 You gentlemen are lawyers and representatives
20 of various courts. The court system as I construe it
21 today has gone well beyond its original intent. The
22 supreme courts of the various states and the Supreme Court
23 of this nation are legislating law rather than adjudicating
24 decisions. I think that federal judges have got way
25 beyond their means and their powers originally intended.

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1 When a federal judge can go into Jacksonville, as he did
2 recently, and tell the City of Jacksonville how many more
3 jailers they had to hire and set their budget for them
4 because of some of the concerns within the jail system
5 in Jacksonville, I question that authority. I question
6 the authority of any federal judge to legislate money
7 matters to a community or to a state. I question the
8 same authority of a superme court judge in this state to
9 legislate law rather than rule on conditions of the law.

10 MR. COLE:

11 You think there's not only the possibility of
12 less courts and more backlog but also less local control
of the courts?

14 MR. HULSE:

15 Yes. We've got to maintain local control. That
16 is a factor. This is what the city structure's all about.
17 People banded together wanting city governments to start
18 with, and the city structures are not wanting to be
19 weakened at the hands of the legislature because in 1920
20 these laws that we're now working under were passed, and
21 they weren't considered bad laws in 1920. And Brunswick
22 incorporated in 1856. We've had nothing over the history
23 of the cities in the several states that I've worked in
24 but good relations with the state general assemblies,
25 wherever they might be. But the federal system has

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1 created havoc with us on environmental controls and
2 several states have had to pick up that same relationship
3 because of the relationship between the state and the
4 federal government.

5 There's no way that cities can function today
6 with any freedom as we did ten to twelve years ago, and
7 every day we're fighting to stay where we were. We're
8 not able to fight to get ahead because of the continuance
9 of issues that are trying to cut us down rather than having
10 the continuance of issues that are trying to push us
11 ahead. We're trying to survive as a city structure
12 constantly. There's no time to push ahead because of
nibbling away at traditional authorities.

14 THE CHAIRMAN:

15 Berry.

16 MR. BROCK:

17 Yes, sir, I'd like to ask one question. Have
18 you seen a copy of this two-and-a-half tier system that
19 would make the city recorders a city magistrate system?

20 MR. HULSE:

21 No, sir. The only thing I have is your initial
22 report sent to me by the Georgia Municipal Association.

23 THE CHAIRMAN:

24 Well, they didn't send everything out. Do you
25 have the three different proposals here? Draft B is, I

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1 think, the one that Berry's referring to.

2 MR. BROCK:

3 I think if you read this, they're really not
4 doing away with the municipal courts but would change
5 them just to a magistrate system and would put them
6 under, if I understand it correctly, probably budgeted by
7 the state or paid by the state, rather than by the city.
8 If they did this, what would be your objection to this?

9 MR. HULSE:

10 I think here again you're telling the City of
11 Brunswick that the appointment -- if you're going to make
12 the appointment or pay the bills, the state has the right
13 to appoint the judge. That should be the correct procedure.
14 If you're going to control the money, then you're going
15 to control the appointments.

16 The City Commission in our community, they
17 appoint two people. They appoint the recorder's court
18 judge. They appoint the secretary to the City Commission,
19 and then they appoint the City Manager. The City Manager,
20 in turn, appoints all other personnel or hires all other
21 personnel. You take the power of appointment away from
22 the City Commission, here again you are voiding the
23 authority of the local government.

24 THE CHAIRMAN:

25 Carol.

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1 MS. WILSON:

2 Sir, I am familiar with your community and you
3 have a very unique situation where the City of Brunswick
4 is almost becoming secondary to the population of St.
5 Simon's, which is not a part of Brunswick.

6 MR. HULSE:

7 No, St. Simon's is not.

8 MS. WILSON:

9 That's right.

10 MR. HULSE:

11 They're trying to incorporate right now.

12 MS. WILSON:

13 You've got one city in one incorporated area,
14 and I cannot see why preserving the recorder's court
15 would help that community, in your situation in particular.

16 MR. HULSE:

17 Well, because if you'll look at the number of
18 cases that our city police department makes on an annual
19 basis that's tried in that recorder's court as opposed
20 to the number of cases that the state and the county
21 police departments combined make, I think you'll see that
22 our case load is well in excess of what they made, plus
23 the cases that we make that go to the state court and to
24 the superior court for violations over and above the
25 misdemeanor condition, or the cases that are bound over

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to the state court and to the superior court that don't
get tried within a year, sometimes two and three years.
These are the conditions. St. Simon's is a little commun-
ity on the island with 10,000 people, and today St. Simon's
is trying very hard to incorporate.

MS. WILSON:

But that still leaves Jekyll. It still leaves
Sea Island. It still leaves all that big area outside
Brunswick.

MR. HULSE:

The people in the city of Brunswick, if you
break the law and you live on St. Simon's and you break
it in the city, you will have justice in the city court.
If you live on Jekyll and break the law in the city --
you see, the City of Brunswick is not unique. The City
of Brunswick is an entity unto itself given powers by
the General Assembly of the State of Georgia. The county
is part of the statewide system. We don't argue with
that. Our only concern is that the municipal recorder's
court, and the state has done some crazy things in the
past and I'm sure they'll do some crazy things in the
future, and that is when you start legislating by popu-
lation brackets as we've done many times to protect
Atlanta -- there's only one city in the state with a
population in excess of 600,000. So you say, "Oh, thi\$



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1 affects all cities in excess of 600,000." You've done
2 this many times on various acts. You've done acts that
3 protect the cities above a hundred thousand. So you
4 count how many cities are in that bracket and you pick
5 those out. The State through its wisdom has shown
6 partiality by population size many, many times.

7 So we're saying, "Don't do anything else unless
8 you're going to do it uniformly and protect everybody
9 equally." When you start monkeying with the cities, then
10 you're not protecting everybody equally.

11 THE CHAIRMAN:

12 We're hopeful that that's the result of having
13 some uniformity. That is what we're seeking.

14 MR. HULSE:

15 See, gentlemen, it's difficult to look at one
16 side of the spectrum in the state General Assembly and
17 the way you deal with communities and look at the other
18 side and deal differently.

19 MR. DROLET:

20 Would you have any objection, though, to some-
21 thing saying that every recorder's court shall have
22 certain jurisdiction on somewhat a similar or uniform
23 basis if it didn't take recorder's court away?

24 MR. HULSE:

25 No, I wouldn't have any objection. We have a --

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1 Our ordinance calls for an attorney, you know, a member
2 of the Georgia Bar, residence shall be within Glenn County
3 We used to have -- the City of Brunswick and Glenn County
4 shares over a hundred attorneys practicing law in Glenn
5 County; and there aren't too many attorneys that now live
6 within the corporate limits because affluence has carried
7 them to St. Simon's, to Jekyll, and out to the north Glenn
8 County area where there's a little more elbow room and the
9 status of the house would be a little bit more expensive.

10 So we've now included in our charter -- and had
11 it it amended -- to allow the city recorder to live within
12 the county rather than specifically within the city so that
13 we can elect a judge or appoint a judge from within the
14 county. His place of residence is not as critical as it
15 once was.

16 MS. WILSON:

17 You just about made my point here: The recorder
18 doesn't even have to live within the city limits.

19 MR. HULSE:

20 But he's only going to practice city law and
21 city violations in his recorder's court and the laws of
22 the state that are broken by the people who our people
23 arrest. He's not going to practice laws from countywide
24 as a judge.

25 THE CHAIRMAN:

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1 Any other questions?

2 [No response.]

3 THE CHAIRMAN:

4 Thank you so much.

5 MR. HULSE:

6 Thank you for allowing me to speak freely.

7 THE CHAIRMAN:

8 We'd appreciate any additional remarks at any
9 time.

10 MR. HULSE:

11 I'm going to take one of your questionnaires.

12 THE CHAIRMAN:

13 Very good.

14 MR. HULSE:

15 Thank you so much.

16 THE CHAIRMAN:

17 All right. Mr. Foy Evans, City Manager of
18 Warner Robins.

19 MR. EVANS:

20 No, sir, I'm Mayor of Warner Robins.

21 Mr. Chairman, on behalf of the Mayor and Council
22 of the City of Warner Robins, I would like to express
23 opposition to any change in the state court system that
24 would do away with municipal courts. Our municipal court
25 serves, we think, a very good purpose. It gives something

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1 to the people that they can't get in other courts, and
2 that is speedy justice. We feel that the need for it is
3 great because our municipal court tries only cases invol-
4 ving violations of city ordinances. We don't try to try
5 cases that are violations of state law. We have quite a
6 few city ordinances that we feel are necessary; the people
7 of Warner Robins feel they're necessary.

8 Being the mayor and being and being an accessible
9 full-time mayor, I get phone calls everyday knowing that
10 the people want these ordinances enforced. If we had to
11 go into a state court with these cases and wait the in-
12 terminable length of time we have to wait for trial, I'm
13 sure that we wouldn't be able to handle these ordinances
14 the way they should be. I don't believe we could afford
15 the policemen it would take to go down to a state court
16 and sit around day after day waiting for the case to come
17 up for them to be witnesses.

18 We operate our municipal court one day a week.
19 We have a reputable lawyer in the City of Warner Robins
20 who is the judge of the court. We hold three sessions
21 each day. When a person -- somebody violates a city
22 ordinance today and is given a ticket, he or shee can go
23 to court next Wednesday and have the case settled, either
24 for or against. They know within an hour how long they're
25 going to be there: they don't have to waste a whole day

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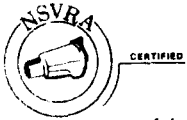


1 from work; they don't have to spend a lot of time sitting
2 around cooling their heels in an anteroom to a courthouse
3 as it is in most courts.

4 I've been familiar with the court system of
5 Georgia since 1946, when I was a student at Georgia and
6 was first admitted to the Bar. They were talking about at
7 that time doing something about the court system of Georgia,
8 and I agree that something is needed in the court system
9 to move the cases faster and to give justice.

10 I believe the municipal courts today, and cer-
11 tainly in the case of Warner Robins, the municipal court
12 answers the need to serve the people and be the servant
13 of the people instead of the people being at the mercy
14 and at the pleasure and the leisure of the courts because
15 it isn't unusual for us to go to Perry, for example, to
16 Superior Court and stay all day long and the case not
17 come up. So you get to spend another day down there away
18 from work. If our cases were tried in a state court, I
19 could see that it might be efficient and effective when
20 you set them up; but they would soon turn into the same
21 type of situation probably that they are now.

22 So the Mayor and Council of the City of Warner
23 Robins feel that the most efficient way for us to admin-
24 ister the ordinances of the City of Warner Robins is
25 through a municipal court.



1 Now, I might point out in regard to money, we,
2 too, have a six-million-dollar budget. A million 300
3 thousand of it goes to our police department, and our
4 court creates about a \$100,000 a year revenue. So it is
5 not a revenue-producing court, per se. The purpose of the
6 court is little things supposedly: somebody's dog is
7 running loose, and they want us to enforce the leash law.
8 Well, we give a ticket and get the person into court for
9 violation of the leash law. There are vacant lots grown
10 up and they won't cut them. So we have to issue a citation
11 for them to come to court to get them to cut the weeds.
12 If we stayed in a state court three or four or six months,
13 in view of the fact that my phone rings the day after court
14 every day almost until we get those things cut, I can see
15 what we'd be up against. It would be an impossible situ-
16 ation for the mayor and the council to be responsive to the
17 people of Warner Robins if we depended on outside courts
18 for these particular services.

19 THE CHAIRMAN:

20 I think somehow we're getting off base here by
21 some information that has been distributed. I don't think
22 the Commission has ever contemplated that we would ever be
23 in the posture of the state courts handling these type
24 ordinance situations or small claims as such that we have
25 in small claims courts and the J.P. courts. I think we

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1 have anticipated we will keep a system of magistrates in
2 each county at least and also as many as might be neces-
3 sary in any particular county to handle these problems,
4 which would also magistrates for the cities.

5 MR. EVANS:

6 We feel it would be better if we provided that
7 rather than, say, the state that continues the municipal
8 court. We really feel that it would be more effective.
9 You being an elected official understand --

10 THE CHAIRMAN:

11 I just wanted to interpose that.

12 MR. EVANS:

Yes, sir.

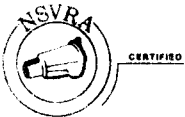
14 THE CHAIRMAN:

15 We were not trying to put all this into a state
16 court.

17 MR. EVANS:

18 You, being an elected official, recognize the
19 fact that when you're close to the people, you're responsive
20 to the people; and I feel that a municipal court that got
21 out of hand in Warner Robins, Georgia -- if we let it get
22 out of hand and it was not responsive to the people, we'd
23 have new elected officials at the next election.

24 I was in Washington last year, and I'll tell you
25 a story. I met a Congressman who had been mayor of a small



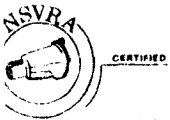
1 city in one of the mid-western states prior to the time
2 he became a Congressman, and he discussed with me the
3 fact that being a mayor was such a tough job because
4 people are looking down your throats, second-guessing you
5 ever minute, and expecting results as soon as they phone
6 up. And he said, "Once you get to the state level, why,
7 you have more freedom because you do have to answer to
8 the people, but most of the time you're out of their
9 sight; and when you become a Congressman such as I am,
10 you go home once every three or four weeks and tell them
11 what they want to hear and come back up here and do as
12 you damn please."

[Laughter.]

14 So I think that he spoke so well about the
15 responsiveness, and I sincerely believe and our council
16 does, that the municipal court should be as it is in our
17 city charter, which the city charter granted the City of
18 Warner Robins in 1943, states that we will have a municipi-
19 pal court and that the city will conduct it. And we feel
20 it should continue that way and I give my support whole-
21 heartedly to anything that will speed up the judicial
22 process and streamline the judicial process on the state
23 level where I recognize its need. Thank you very much.

24 THE CHAIRMAN:

25 I think we all agree with you, too, sir. There



1 is nothing more important for that particular individual
2 than that particular case that he's involved in regardless
3 how big the case might be.

4 MS. WILSON:

5 I think also if you look at Paragraph 4 in that
6 first draft you can see that magistrates would be elected.

7 MR. EVANS:

8 We have no objection to electing, but we hope
9 that it would not be -- we'd not have to pay the salary
10 of somebody for a full week when we only need them for
11 one day. At the present time we're able to get \$7000 a
12 year for somebody to be our judge. He does a good job.
13 And, incidentally, he either dismisses or suspends 25
14 percent of the cases that come before him. So he doesn't
15 railroad people through to help the City of Warner Robins.
16 He gives them a fair hearing.

17 But I would -- I think ours is a more economical
18 way of doing it as well the more efficient.

19 THE CHAIRMAN:

20 I think what probably disturbs us is not some
21 of the individual situations that we may have in the
22 state where we've got some good recorder's courts. I
23 think most of them probably are. It does concern us if
24 we're dealing with the Judicial Article that you, myself,
25 or anybody else might go into any part of Georgia and not

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1 have -- and not be assured that we would have the same
2 type of justice there that we would have in any other type
3 court similar to that in this state.

4 MR. EVANS:

5 I think I can share your concern there, yes, sir.

6 MR. DROLET:

7 Does your court actually produce any revenue
8 there?

9 MR. EVANS:

10 Yes. It produces about a \$100,000 a year.

11 THE CHAIRMAN:

12 Your overhead is much greater than that.

13 MR. EVANS:

14 Well, our overhead is \$7000 for the judge.

15 MR. DROLET:

16 Revenue would be a consideration also, then.

17 MR. EVANS:

18 Well, we would -- yes, we would miss the revenue,
19 especially since we are primarily a bedroom community and
20 don't have much source of revenue. We have a city of
21 44,000 population with only two million dollars in direct
22 ad valorem taxation. So we have a tough time making ends
23 meet, and even a \$100,000 would hurt us. But our purpose
24 in having the court and my defense of it is not money
25 because I'd rather give up the money than to give up the

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1 court, frankly, because we feel that it does. I know
2 there's a tool, as Mayor of the City of Warner Robins,
3 I can assure our citizens who call daily with complaints
4 or who receive tickets for traffic violations or what-
5 ever it might be, I can assure them that their case will
6 come up within seven days; a disposition will be made; and
7 then we will react according to the judge, whether it's
8 for or against them. At least they know they're going
9 to get what is called justice in short time. They don't
10 have to wait and wonder for months how they're going to
11 come out. And they also know when they go to court as a
12 witness that they go down there and stay an hour and
13 their case is taken care of and they can go where they
14 want to go. You know, with all due respect to the
15 superior court people who are here or the state court
16 people, you know that the courts give the impression,
17 whether it's true or not, that they're run primarily for
18 the Courts rather than for the witnesses or the potential
19 jurors or the people on either side of the case.

20 Yes, sir?

21 MR. BROCK:

22 But do you have any -- But you do not voice any
23 objection to a uniform court system of city magistrates
24 or city recorder's courts throughout the state?

25 MR. EVANS:

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1 I want to keep the municipal court as we have
2 it, but we'd certainly be glad for you to set the guide-
3 lines that we follow. You say what cases we can handle;
4 you can set the jurisdiction, the guidelines, whatever
5 you wanted. We just feel that administering it is a tool
6 that we need to be a good municipal government. But
7 certainly I think uniform guidelines of the type cases,
8 we have no objection to it whatsoever. As a matter of
9 fact now, all you'd have to do is limit us to local ordi-
10 nances and have us because that's all we handle. Every-
11 thing else is referred on to the state court.

12 THE CHAIRMAN:

Any other questions?

14 Marty.

15 MR. HODGKINS:

16 Mayor, do you hear traffic cases?

17 MR. EVANS:

18 Yes, sir, traffic cases if it's a violation of
19 the city traffic ordinance, the speed limit inside the
20 City of Warner Robins only.

21 MR. HODGKINS:

22 Do you know what percentage of your case load
23 that is proportionately?

24 MR. EVANS:

25 It's the biggest percentage. It's the largest

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1 percentage. I'd say it was a good 60 percent probably.
2 We have a STEP program, you know, now in Warner Robins
3 that financed by the state, a grant from the federal
4 government to the state; and it's been extremely effec-
5 tive, and the people in the community call upon us to put
6 these STEP cars into residential areas and catch people
7 speeding. The citizens expect us to go out and to stop
8 speeding where they aren't supposed to be, and we don't
9 try to entrap anybody, but these STEP cars certainly
10 serve a good purpose.

11 A VOICE:

12 What does STEP mean?

13 MR. EVANS:

14 Specialized Traffic Enforcement Program, It's
15 a federal program that comes through the state. Now, the
16 state paid for us to buy three cars that are -- they're
17 not unmarked, but they're not blue and white. We have
18 three Mercury Cougars with the name STEP and Warner
19 Robins Police Department on the side and on the trunk.
20 The salaries of the three officers who run these cars
21 also is paid by this program, and they keep the cars
22 themselves and they function strictly for specialized
23 traffic enforcement purposes. And I've seen them all
24 over the state. I believe some counties even have them
25 now. They're very effective.

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1 THE CHAIRMAN:

2 Any other questions?

3 [No response.]

4 Thank you very much, Mr. Mayor.

5 We next have Judge Taylor Phillips, who is the
6 Judge of the State Court of Bibb County.

7 I'd also like to recognize Representative Frank
8 Pinkston who has come in. He's the representative from
9 Bibb County. We're glad to have you with us.

10 Judge.

11 MR. PHILLIPS:

12 I want to stand where everybody can hear me.

13 Chairman Snow and Ms. Wilson and other members
14 of the Committee, ladies and gentlemen, I know probably
15 what I'm going to say is going to be highly inflammatory
16 but I --

17 THE CHAIRMAN:

18 We're used to it.

19 MR. PHILLIPS:

20 Yes, sir, I know. Having been in the Legisla-
21 ture, though, and gone through some of this, I know what
22 you're going through now.

23 I just simply cannot understand why you want to
24 fix something that's not broken; and it just seems to me
25 that the system that we have presently is not all that bad.

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1 There are a lot of things wrong in the system; no ques-
2 tion about that. Now, I'm not going to address myself
3 to any of these three proposals because I don't know
4 which one y'all are going to finally end up with.

5 THE CHAIRMAN:

6 We may not wind up with any of them.

7 MR. PHILLIPS:

8 Well, I hope you won't. I really do.

9 It seems to me, though, that what the Governor
10 had to say about any change that should be made should be
11 made on an incremental basis rather than a sweeping,
12 broad change that going to upset what we're generally
13 used to. And I would urge you to try to do that because
14 I think every court that's been created in this state was
15 created to answer a special need at a special time. Now,
16 if that need is finished, perhaps they should be changed
17 and perhaps it should be abolished, implemented, or done
18 whatever with it; but it just seems to me that the indi-
19 vidual county knows best what their individual needs are
20 and they can handle it.

21 In Bibb County I think we're blessed with having
22 an excellent court system; and I say that not because I'm
23 from Bibb County and a part of it, but I've been in other
24 counties and I know what they've got and I know what they
25 say when they come down here to practice. The Atlanta

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1 lawyers say they can come down here and try a civil case
2 in my court or a superior court that's a three-and-a-half-
3 day case in Atlanta, and they can try it in a day and a
4 half down here. We just move faster and we handle business
5 a little differently. But you're not going to legislate
6 competency any more than you're going to legislate moral-
7 ity. And in my view this proposal, all three of these
8 proposals, are attempting to legislate something that does
9 not need legislating right now.

10 Now, we keep talking about uniformity like it's
11 a god. Uniformity to me is not anything sacrosanct
12 because there are certain things that we can apply in the
13 courts in Bibb County that would not work in the courts
14 in Fulton County or the courts up in Dahlonega, Georgia.
15 There are different needs to be met at different places
16 at different times. Now, surely we need some basic rules
17 in every court, where we know what the rules are, the
18 ground rules; but it just seems to me that there's no
19 need for a sweeping, uniform thing. Everybody doesn't
20 kiss the same way, you know; and ladies say that's all
21 right. But all I'm saying is we don't need to do the
22 same the same way. For instance, one of the proposals
23 in here I noticed -- on the two-tier system, I believe,
24 or I'm not sure it's in the system -- but it provides
25 that clerks of the second courts, not the circuit courts

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1 but the state courts, will be elected. Well, to me, I
2 think that's a ridiculous thing. Now, when Warner Robins
3 created their state court I was in the legislature and
4 tried to talk them out of letting their clerk be an elec-
5 tive office, but they didn't see fit to do that and they
6 went ahead and made him elective. It wasn't any of my
7 business because it was Warner Robins, but they did it;
8 and the first thing that clerk did was to go in and tell
9 the judge he was going to do just exactly as he pleased
10 and there wasn't nothing the judge could do about it and
11 there wasn't.

12 Now, I realize superior court clerks have been
13 elected for years and years, and I think that's fine and
14 everybody knows that's how it operates. But the majority
15 of the state court clerks in the state of Georgia are
16 appointed and they serve at the pleasure of the judge and
17 it works as a very fine system in my opinion. Now, my
18 clerk's here and I'm going to leave here when I leave
19 because I've got a hearing I'm going to have to attend in
20 court; and if y'all say anything bad about me, she's
21 going to write it down.

22 [Laughter]

23 Now, I can think of a lot of things that need
24 changing and just to through out one or two for you right
25 now that I think would be very good. Number one, I think

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1 if you would make state courts circuit courts along with
2 circuit courts, give them circuit jurisdiction, it might
3 be a good thing because in the circuits, as I understand,
4 in the state where superior courts are so bogged down with
5 felonies and capital-type cases till they can never get to
6 the misdemeanors; and yet they're the only judge that
7 can handle them. So, therefore, the misdemeanors are
8 never handled. There are many counties that do not need
9 a full-time state court judge, but you could work out your
10 circuits whereby one judge could handle those things, and
11 it would increase the efficiency, in my opinion, of the
12 courts themselves.

13
14 A second thing that I like very much is the
15 Florida system of the appellate courts. I don't have
16 anything to do with the appellate courts, but it seems to
17 me a good idea to have appellate courts, the court of
18 appeals sit in segments and sit all over the state rather
19 than just in Atlanta, Georgia, because it's a convenience
20 to lawyers, a convenience to people and everything else;
21 and expensewise it seems to me to make a lot of sense that
22 in Macon, Georgia, if you've got a court of appeals, if
23 you have a three-judge court sitting here, it would elimi-
24 nate a lot of problems. Those are just two things that I
25 think might be worthwhile. There are many others, but I
don't want to take up the time of this Committee right now

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1 to talk about it.

2 I simply want to basically say that if you
3 amalgamate all your courts, amalgamate your judges, you're
4 going to be paying all the judges the same thing. Your
5 workloads are going to be different; and if a person has
6 a different workload and has a different jurisdiction, to
7 me I think the pay ought to be different. I don't believe
8 that I ought to make all the money that Judge Morgan makes,
9 for instance. He handles capital-felony cases. Judge
10 Culpepper, he handles capital-felony cases. But I think
11 your pay ought to be based somewhat on your responsibility
12 because I think that's true in the work force. Your pay
13 is based generally on what you perform and what you do.
14 And what this proposal -- any proposal you've got -- will
15 ultimately mean is that the people are going to be paid
16 the same for doing different typ#s of work that really
17 are not worth the same amount of money, in my opinion.

18 So those are the basic things that I would say
19 to you today. And basically, I'd say just simply don't
20 do anything sweeping and try to do this thing on an incre-
21 mental basis and let's correct the flaws that are presently
22 in the system because there are some in it.

23 Now, when I was in the legislature, Carol's
24 husband, Ed Wilson, was charged with one of the duties of
25 revising the insurance code of the state; and it was done

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1 on a terribly hard basis. But there were a lot of things
2 done and Ed'll be the first to say that we're dead wrong
3 in that thing because it was done in such a sweeping way
4 and it was to appease so many people; you just simply
5 couldn't accomplish the necessary end. But if it had been
6 done on an incremental basis as the Uniform Commercial
7 Code and so many other things, if you could take and do
8 them incrementally rather than sweepingly, I just think
9 you're going to make less mistakes.

10 I'll be glad to answer any question that anybody
11 may have.

12 MS. WILSON:

13 I'd like to comment on that. It's rather
14 difficult to --

15 MR. PHILLIPS:

16 Ma'am?

17 MS. WILSON:

18 It's rather difficult to write a new article to
19 the constitution one paragraph at a time, and that's the
20 real problem.

21 MR. PHILLIPS:

22 Well, how is it now?

23 MS. WILSON:

24 Are you suggesting leave the article exactly
25 like it is and just make legislative changes?



1 MR. PHILLIPS:

2 No, it's -- it's -- Yes. Let the Legislature
3 do it. I sometimes have confidence in the Legislature.
4 I don't know why, but I do.

5 THE CHAIRMAN:

6 I'm glad you you do. I appreciate the frankness
7 of that.

8 MR. PINKSTON:

9 I know why.

10 MR. PHILLIPS:

11 I have confidence in the Legislature. Another
12 thing, when you put something in the constitution, you're
13 pretty well tied up in it. You're pretty well bound by
14 it. But go around -- Everybody talks about reform. And
15 I think George T. Smith is right when he says that reform
16 is nothing in the world but getting the folks that are in
17 power out and getting your folks in, and probably that's
18 what it is. But I don't see any necessity for it. I
19 mean, we're doing great here. Now, I know they've got
20 some areas and places where they're not doing great. But
21 we can answer the need by promptly handling our present
22 courts by requiring judicial education of the judges that
23 are in there; by putting requirements perhaps that they
24 should be members of the Bar in order to handle certain
25 courts. But there are some areas, some small areas in

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1 small counties that have special needs that are going to
2 be hurt by this system in my view, and I'm speaking for
3 the small areas as well as I am areas such as Macon that
4 I don't think need this problem at all.

5 MS. WILSON:

6 What you're really saying is that you think the
7 judicial powers of this state should be vested in the
8 Supreme Court, Court of Appeals, circuit courts, and --

9 MR. PHILLIPS:

10 Superior courts is the way it is now.

11 MS. WILSON:

12 Well, superior courts, but any other--

13 MR. PHILLIPS:

14 Such other courts as may be designated.

15 MS. WILSON:

16 Okay. And that they should be unified under the
17 legislature?

18 MR. PHILLIPS:

19 Yes'm. And I think uniform rules ought to be
20 available. In the courts that have certain jurisdiction,
21 they ought to have uniform rules so that a person going
22 in there knows what they're going to be met with.

23 But, members of this committee, let me tell you
24 something. You're basically talking about the problem
25 we've got in the judiciary as being one of the way the

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1 structure of the courts is. And in my view that's not
2 necessarily the problem. One of the problems is the
3 judges that are administrating, and we need to educate
4 our judges and try to get better judges. If you want to
5 increase the quality of your prison, you have got to get
6 better prisoners, you know. But increase your judiciary
7 and make it more functional and better, you've got to
8 somehow train your judges. And I definitely favor pro-
9 grams like Mississippi and some other states have in the
10 South, and I know many of them up in the North, that
11 require regular judicial education. By educating the
12 judges and keeping them up to date with what they do,
13 everything will run better. We don't have the problems
14 that some of these other places have, and maybe that's
15 the reason I'm speaking like I am.

16 THE CHAIRMAN:

17 Joe?

18 MR. DROLET:

19 Judge, do you have any opinion on the juris-
20 diction between, say, the Supreme Court and the Court of
21 Appeals? Do you think there is a problem with that now?

22 MR. PHILLIPS:

23 No, sir, I really don't. I think if some of the
24 judges on the Supreme Court would spend more time judging
25 and less time trying to revise everything, they could

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1 probably keep up with what they've got.

2 THE CHAIRMAN:

3 Do you think they ought to continue to have
4 divorce cases and boundary line cases as part of their
5 jurisdiction?

6 MR. PHILLIPS:

7 I don't really know. I mean, I have no strong
8 feeling about that at all. It seems to me that divorce
9 cases are probably something that they really don't need
10 to handle, but I don't know that. That's just something
11 that I've just -- I've never fooled with divorce cases
12 since I quit practicing law and don't now, and I just
13 don't know what that problem is. And it may well be that
14 it would be quicker to throw those into the Court of
15 Appeals. I think you'd have to expand the Court of Appeals
16 if you do it because some of those members of the Court of
17 Appeals tell us they have to work now about three days a
18 week.

19 THE CHAIRMAN:

20 Three and a half days is what they told me.

21 A VOICE:

22 Judge, this might not be the comment I should
23 make to you, but I have observed as a clerk, we've got
24 some D.A.'s and judges that don't do their job. That's
25 why there's a backlog in some of these counties. That's



1 one of your big problems.

2 MR. PHILLIPS:

3 I agree with you.

4 A VOICE:

5 And I have never heard anybody mention that.

6 MR. PHILLIPS:

7 Well, that's what I just said, though, that if
8 the judges would start doing what they need to do --
9 because I've served as judge of other courts, for instance,
10 that work until one o'clock every day. And they don't
11 care whether they have a jury trial or not. They recess
12 at one till the next day. And I don't know any way in the
13 world you can get rid of any business that way. But, now,
14 you can't legislate that. That's going to have to be a
15 matter that addresses itself to the Judicial Commission
16 where they're going to have to say, "Well, this judge
17 isn't doing what he should," and they've got ways to do
18 that if they want to now.

19 THE CHAIRMAN:

20 But I think we've got the apparatus that we're
21 working on now.

22 MR. PHILLIPS:

23 The apparatus is there now; that's no problem.

24 THE CHAIRMAN:

25 It's come in in the last few years, again, a part

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1 of the package of judicial reform, but --

2 A VOICE:

3 I've never heard of that being done.

4 THE CHAIRMAN:

5 I think we're talking here about some things we
6 can handle statutorially, and we are really primarily
7 interested in what we're going to put into this Article
8 VI, just as little as we can get by with putting in there
9 so that we won't have to be coming back to the people on
10 any of these articles from time to time any more than is
11 absolutely necessary with all these constitutional amend-
12 ments which do nothing more than confuse people most of
13 the time. That's what our objective is, just to simplify
14 the article and make it understandable and to being
15 handled as much as we can by the statutes.

16 Mr. Cole has a question.

17 MR. COLE:

18 Mr. Phillips, did I understand you say one sug-
19 gestion or change which you would approve of would be to
20 make the state court judge, superior court judges, to
21 unify those two?

22 MR. PHILLIPS:

23 Circuit court judges. I say give the circuit
24 jurisdiction. No, I want the monetary and misdemeanor
25 jurisdiction left where it is, but I think they ought to



1 have circuit jurisdiction so that when the superior court
2 goes out in the circuit, they handle the felonies and they
3 handle the matters that address themselves to them; and
4 then the state court could go out and handle those mis-
5 demeanors and take that work off of them and thereby en-
6 able them to do their job better throughout the circuit.

7 THE CHAIRMAN:

8 Any questions?

9 No response]

10 Thank you, Judge.

11 MR. PHILLIPS:

12 Thank you very much, and I'm sorry I can't stay,
but I do have a hearing at 2:30 and I've got to go.

14 Thank you.

15 THE CHAIRMAN:

16 All right. Before we proceed with those who
17 are on the list, I would ask Judge Morgan if he would like
18 to say anything. You didn't sign up, and I didn't know
19 whether you knew we had a list. If you'd like to make a
20 statement, sir, we'd be pleased.

21 MR. MORGAN:

22 I'm very concerned about what you're putting
23 into the constitution. It's a very difficult thing to
24 get the constitution amended, as we found out very re-
25 cently.

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1 THE CHAIRMAN:

2 We certainly did.

3 MR. MORGAN:

4 It seems to me like much of what you are en-
5 deavoring to accomplish by what is proposed here can be
6 done now by the legislature. For example, if you want to
7 consolidate the lower courts-- I mean those courts inferior
8 to the superior courts, I think the legislature has the
9 power to do that any time it wants to. I don't see why
10 this sort of thing has to be put into the constitution
11 where it can't be changed without going through the pro-
12 cess we just experienced. This disturbs me. I recognize
13 that there are some things that must go in the constitu-
14 tion, but I feel like much of what is being proposed could
15 be accomplished by legislative enactment.

16 In looking over the list of the principles
17 which you have furnished to us, I found myself in agree-
18 ment with all those principles. There are eight of them,
19 I believe -- except two, which says that all judges should
20 be required to serve on a full-time basis. There was
21 a good bit of discussion about this at the judicial con-
22 vocation in Athens back in September. There are just some
23 areas where a full-time judge would not be justified
24 according to what they stated there.

25 Naturally, we're using our judges here full time,

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1 but there are some areas that we just don't need full-
2 time judges.

3 I do think -- I agree with Judge Phillips that
4 we need to put an emphasis on judicial qualifications,
5 judicial education; but there again, that's going to be
6 the legislature itself, if it chooses to do so, and not
7 any constitutional amendment.

8 I find myself reacting to these three proposals
9 this way: I'm very much opposed to the first one.

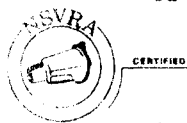
10 THE CHAIRMAN:

11 That's the one-tier system.

12 MR. MORGAN:

13 Yes, the one-tier system. I don't think that's
14 justified financially or otherwise. A two-tiered system
15 possibly would work if it can be justified by the cost;
16 but I would think that in a two-tiered system you would
17 need county courts rather than circuit courts to handle
18 misdemeanors or matters of probate, and these other things
19 that you're proposing to put into the local court handling
20 the other circuit court, divorce I'm thinking about now.
21 I think there's been some talk about committing that to a
22 lower court; juvenile cases. If you combine the various
23 functions such as the probate court judge, state court
24 judge, maybe some municipal judges, and make them into a
25 county court using however many judges you need, those

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1 judges will be closer to their people and they're dealing
2 with matters that are closer to the people. The man who's
3 got a traffic ticket, for example, you're going to have a
4 lot more of those to deal with than you are somebody who
5 commits a capital felony. The men who commit small mis-
6 demeanors, these things are close to the people; and the
7 men who handle them ought to be close to their own county.
8 Just taking my own circuit as an example, it would seem
9 to me like unreasonable to impose on Peach County a judge
10 who would handle all of these local matters but for whom
11 they would have little opportunity to have much to say
12 about who it would be because if they remained in this
13 circuit -- if it was done on a circuit basis, it would be
14 obvious that somebody from the metropolitan area would be
15 the man that would probably be elected, and yet he would
16 not know the people of Peach County; he would not be
17 acquainted with the local conditions there. I agree with
18 Judge Phillips. There is a need for the people who are
19 handling this kind of business to be familiar with the
20 local conditions. I don't think the need is as great
21 when you're handling matters that come to us, felonies,
22 land titles and so on. This is not the great press of
23 business. The great press of business is below the
24 superior courts in my estimation, not in superior court
25 itself. Although in those areas where they do not have the

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1 state court, where they don't have the juvenile courts, I
2 can well understand the superior court judges have more
3 than they can say grace over. We feel like we always have
4 more than we can say grace over here, but we are not
5 behind. We do not have a backlog in this circuit. We're
6 about as up to date as we can get. We do that by working
7 long hours and staying on the job.

8 Most of the problems that are addressed here, I
9 think can be addressed by the legislature without the
10 need of a constitutional amendment. It concerns me
11 greatly that you're talking about freezing it into the
12 constitution, and that's just exactly what happens when
13 you put it there. It's very difficult to change the way
14 our courts have interpreted constitutional law in this
15 state. It's very narrow, their interpretation. And
16 every time you want to change something you have to make
17 an amendment, and I know that's part of the problem --

18 THE CHAIRMAN:

19 That's what we're trying to avoid.

20 MR. MORGAN:

21 -- that you're trying to deal with. But I
22 think -- I'm not -- I don't want to be critical. I don't
23 think that what you propose here with get you out of that
24 bracket.

25 MR. COLE:

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1 As I understand the single-tier system, to get
2 kind of specific, in this circuit the chief judge -- I
3 suppose it would be you -- would be in charge of the
4 administration of the circuit; and the arguments for the
5 single-tier system that I've heard have been in terms of
6 not so much of freezing in a structure -- basically
7 anything you put in the constitution, let's assume, you
8 are freezing -- but freezing in a lack of structure, an
9 ability to respond to variations in different counties
10 by the ministration of one person, the chief justice or
11 the chief circuit judge, which would mean to me that if
12 you were administering the system and if there was a
13 backlog that developed -- first of all, I think the
14 committees would agree with me that the absolute require-
15 ment would be to keep the judges near the people. I don't
16 think there's any feeling from anybody to take it away.
17 That's absolutely required. And we may have some mistakes
18 in here that do that, and I think they should be changed.
19 But that problem aside, if a judge, if the chief judge in
20 a circuit is able to respond to the needs -- for example,
21 Judge Phillips would become one of the many associate
22 judges for awhile and maybe a circuit court judge -- who
23 could be appointed or directed to sit on a major felony
24 if there was a backlog. Peach County could be covered
25 with more judges if needed. In other words, my impression

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1 of a single tier is that it creates the kind of flexibility
2 which we don't have with many different kinds of courts
3 with very specific jurisdictions; the judges get behind
4 and there's no way to help them, just suffer through it.
5 The next judge is on vacation or fishing four days a week
6 and he's frozen in by the legislative act. I think --
7 my impression of the single tier would try to solve that,
8 not only to get uniformity, which it seems so far the
9 speakers have all spoken for--that is, the court has a set
10 of basic rules, but also a kind of a flexibility which is
11 lacking in a multi-jurisdictional overlapping court system.

12 How would you respond to that?

13
14
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25
MR. MORGAN:

14 I think the same thing should be done with your
15 two-tier system. I don't see why you couldn't still have
16 a judicial council composed of all of the judges in the
17 circuit who would do the same thing. This idea of admin-
18 istrative judges concerns me greatly because I just took
19 over the administrative responsibilities for this circuit
20 this year, and I've discovered just how much a problem
21 that can be and how time consuming it is. And I feel like
22 that it's a great waste of judicial resource and financial
23 resources to devote judges to administrative work. I
24 would like very much to see us go to trial court adminis-
25 trators, have a county administrator for the courts, as far

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1 that's concerned; and here again, it seems to me like
2 this is something that can be done without putting it into
3 the constitution. I agree with you that some kind of co-
4 ordination is needed, but I don't believe it requires any
5 one-tiered system in order to have it in the first place.
6 I think in the second place it can be accomplished without
7 using judicial resources. It could be done by trial court
8 administrators rather than by judges. It's of course true
9 that some functions have to be performed by some particu-
10 lar judicial officer under the various statutes. That's
11 primarily why we have a chief justice of those courts is
12 because something have to be done by one man, one out of
the circuit. But insofar as administering the circuit is
14 concerned, I'd like to see that done by trained court
15 administrators.

16 THE CHAIRMAN:

17 Any other questions?

18 [No response.]

19 Thank you so much, Judge.

20 We have a J.P. from Peach County, Gordon E.

21 Ellington.

22 MR. ELLINGTON:

23 I don't have much to say. I'm Gordon Ellington
24 from Peach County. I'm also President of the Georgia
25 Association of J.P.'s. There's just a few points here

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1 that look like the main thing they might be doing to us
2 is changing us to magistrates. Now, we would like to
3 see it done away with a lot of J.P.'s. We know we've got
4 too many J.P.'s. I think Mr. Snow said this when we
5 came to him in Atlanta. He admitted we had too many J.P.'s.
6 We have a lot of J.P.'s that's not trained. I think we're
7 one of the first organizations in Georgia to give manda-
8 tory training. We have to have mandatory training by
9 July the 1st of next year or we can't charge a fee for
10 anything. I want to be the first one to tell you I would
11 love to halt the fee system. If anybody in the State of
12 Georgia knows the exact fee that you're supposed to give
13 for everything, I'd like to know it. I mean, every J.P.
14 you see has got a different fee because the courts operate
15 different. The sheriff charges you a different fee.
16 You've got constables in different places. I'd love to
17 see a salary. I'd love to see one J.P. to a county or
18 plus any others that they might need according to popu-
19 lation.

20 We're having a seminar this weekend. It's not
21 costing the state anything or anything else. We're paying
22 our own expenses. And I think the J.P.'s need the training,
23 a lot of them. The ones that's getting trained are the
24 ones that come every time. They come to every seminar
25 you have; anything to learn, they come, around 200 or 250

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1 of them. The others never come. They're the ones that
2 really need the training; they never come. So we hope
3 after July the 1st that this will automatically cure
4 itself in one way.

5 THE CHAIRMAN:

6 What do you think the civil jurisdiction ought
7 to be of the magistrate courts?

8 MR. ELLINGTON:

9 If the magistrates are done away with, you're
10 going to go into --

11 THE CHAIRMAN:

12 We're talking about names here.

13 MR. ELLINGTON:

14 I think probably \$2000. Right now my jurisdic-
15 tion is 500, by special legislation. A lot of them is
16 200. Some's gone to 750; a lot of them to a thousand.
17 I believe I saw this time where some counties went to
18 2000.

19 THE CHAIRMAN:

20 Several raised it to at least 500. We tried to
21 in my county, but we had some problems up there.

22 MR. ELLINGTON:

23 We certainly do appreciate what the legislature
24 did getting our education bill through. This is something
25 that our organization has been fighting for -- how long,

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1 berry?

2 MR. BROCK:

3 About nine years that I know of.

4 MR. ELLINGTON:

5 So long. This is something we are proud of.

6 THE CHAIRMAN:

7 Well, I helped delay that myself a few years
8 there because you folks couldn't get together. I think
9 we're on the right track now. I think we're moving in
10 the right direction.

11 MR. ELLINGTON:

12 I'll say this, that in my county, Peach County,
13 anything that I need I can go to Judge Morgan or any of
14 those judges down there and they're happy to see me and
15 we get along fine. I think that's the way the lower court
16 judges should work; if they need any advice, they can go
17 to the judge of the superior court.

18 Thank you.

19 MR. BROCK:

20 Let me ask you a question. Wasn't it back in
21 1940 the last time -- somewhere in '40 -- they raised the
22 civil jurisdiction to \$200?

23 MR. ELLINGTON:

24 I think it went from a hundred dollars to two-
25 hundred dollars.

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1 MR. BROCK:

2 I think so, back in the early '40's. And
3 actually what they're doing now, Wayne, is trying to get
4 it up to \$2000 because of the inflation. That would be
5 about what it would be.

6 THE CHAIRMAN:

7 If we do something in this small claims area,
8 then, of course, that's what we're anticipating doing, is
9 having the magistrate acting as small-claims court, too.

10 MR. ELLINGTON:

11 Yes, sir. I do -- this is one thing that Peach
12 County hasn't had in years is anybody could collect a
13 small bill. We don't have a state court. All we got is
14 superior courts.

15 THE CHAIRMAN:

16 Now, are you presently elected or are you
17 appointed?

18 MR. ELLINGTON:

19 I held -- I'm serving out six months of a term
20 vacated by the president, and I should be elected this
21 Sunday as president.

22 MR. BROCK:

23 No, I think he's talking about a J.P.

24 MR. ELLINGTON:

25 Oh, yes, sir, elected. This is another thing; I

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1 don't like to be appointed. I'd much rather be elected
2 in my county because the people know me. This is another
3 thing I don't think any of your state court judges or
4 superior court judges have time for. They come and cry
5 on my shoulder because I'm a hometown man. They come in
6 there and I settle a lot of their differences right there
7 in my office just talking to them.

8 When Judge Morgan comes down there, he's got so
9 many cases staring at him on the calendar, he doesn't have
10 time to do this.

11 THE CHAIRMAN:

12 Well, this is probably where we'll have some
13 problem making a decision how to do it. We would provide
14 for one per county, at least one per county, have one
15 that would be elected. But then to be able to meet the
16 needs of the future, we don't need to have it built in in
17 such a way we can't meet those needs without possibly the
18 grand jury making its recommendation to the judge.

19 MR. ELLINGTON:

20 My idea on this would be to elect one in each
21 county and let the grand jury or the superior court judge,
22 somebody, appoint as many more as they need according to
23 population.

24 THE CHAIRMAN:

25 As may be authorized by law.

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1 MR. ELLINGTON:

2 Like in our county, Peach County, you would need
3 one elected; and I think that would be all you would
4 probably need.

5 MR. BROCK:

6 Well, you have a similar situation that Wayne
7 and I talked about in Fulton County, where you've got the
8 Civil Court of Fulton County sitting in the City of
9 Atlanta. You could probably take maybe two full-time
10 Justices of the Peace out of each end of the county and
11 then a number of part time because the biggest part of the
12 part time issue warrants for the police anyway.

13
14 THE CHAIRMAN:

15 In your larger places you're going to have
16 somebody on duty with you all the time.

17 MR. ELLINGTON:

18 That's true. This is something that happened --
19 I don't know whether most of you remember the time where
20 your J.P. couldn't write a warrant for about two months,
21 I believe it was.

22 THE CHAIRMAN:

23 And the judges of the superior court got upset
24 about it.

25 MR. ELLINGTON:

They woke Judge Culpepper up several times around

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two and three o'clock and he didn't like that at all.

So in these smaller counties where you don't have a state court judge and things like that, where you have to wake the superior court judge up at two o'clock in the morning, it doesn't look just right. He told them not to come out to his house any more at that time of night.

[Laughter.]

I don't like to get up at that time, either; but I do.

THE CHAIRMAN:

Okay. Thank you. I appreciate your coming.

MR. COLE:

Is it your position that the kind of legal training as opposed to a law degree for the magistrate level is enough?

MR. ELLINGTON:

I would think so. I tell you what I've heard, people say that -- some of these people, these small claims, you know, run a \$90 grocery bill over there and he don't want to pay it. He comes in and he says, "You talk my language. I can go up there and see that fellow. He's just way off from me." And I think that's true. I think we talk a layman's language, and I think the training we've been getting from some of these more qualified people

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1 in the state and some out of state.

2 THE CHAIRMAN:

3 Joe?

4 MR. DROLET:

5 Have you thought about any alternative to setting
6 a monetary jurisdictional limit--you know, like the \$2000
7 you were talking about, or 500. It seems like whatever
8 you set it at, it's out of date, you know, with inflation
9 it's too low; if there's a depression it's too high? Is
10 there any other method you can think of?

11 MR. ELLINGTON:

12 I would rather take the stand on this that if
13 they set it at whatever they decide, say, \$2000 or 2500,
14 whatever it is; and if you need to raise it, say, in
15 five to ten years, go to the legislature and let them
16 do it.

17 THE CHAIRMAN:

18 Thank you.

19 All right. Let's see. Clinton Watson, the
20 Probate Judge of Houston County, Perry, Georgia.

21 MR. WATSON:

22 Mr. Chairman, when I signed that roster, I
23 signed it just in order that you'd know I was here.

24 THE CHAIRMAN:

25 All right, sir.

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1 MR. WATSON:

2 I didn't have too much to say; however, I don't
3 want to miss the opportunity to say a word or two since
4 you have called on me.

5 THE CHAIRMAN:

6 All right, sir.

7 MR. WATSON:

8 I am Clinton K. Watson, Jr., Probate Judge from
9 Houston County, Perry, Georgia. And I've read Draft A,
10 B, C, D, and E, on down the line; and I'd like to say,
11 since I'm a little bit selfish, that I'm opposed to any
12 amendment to the constitution that would leave the pro-
13 bate judges out of the constitution. I'm not opposed to
14 some type of court revision. We have a committee now
15 that's working on something that the probate judges will
16 be able to live with as far as the county court's concerned.
17 I am not an attorney. I don't have a law degree. If you
18 pass legislation whereby a probate judge could be grand-
19 fathered in after having served as many years as I have in
20 office, of course, I wouldn't object to that. But I do
21 object to any amendment to the constitution that would
22 leave the probate judges out of it. I don't know what
23 our committee will come up with to submit to your committee
24 that we can live with. But we are working on it. Judge
25 Harry Johnson from Rome, Georgia, is on that committee; and

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1 they are trying to come up with something to submit to
2 you from all the probate judges of Georgia. I'm speaking
3 from a personal standpoing now. I'm not representing any
4 group. I just wanted to come and sit and listen; and
5 since you did call on me, I wanted to express my opinion.

6 THE CHAIRMAN:

7 We're pleased to hear from you, sir.

8 MR. WATSON:

9 Any other probate judges that are here, they
10 might have something to say.

11 THE CHAIRMAN:

12 All right. We'll now have the superior court
13 clerk of Houston County, Tommy Hunt.

14 MR. WATSON:

15 Tommy just walked out. I don't know where he
16 went.

17 THE CHAIRMAN:

18 All right. Judge Carlisle, Judge of the Civil
19 Court of Bibb County.

20 MR. CARLISLE:

21 Ours is a small claims court, I guess you'd
22 call it, but not technically. It was established by the
23 legislature in 1913 at the same time the Civil Court of
24 Fulton County was established, and they had similar juris-
25 diction. At that time Justice courts had jurisdiction up

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1 to \$100. Our court was given jurisdiction to \$500.
2 Twenty-five years ago they raised the jurisdiction.
3 This is civil business. We don't have any criminal
4 business, except peace warrants every Thursday. The
5 jurisdiction was raised 25 years ago to \$1500, and there's
6 been talk of making it 5000 or 3000 or something else
7 since then. I've stayed out of the argument and the
8 legislators have fought over it and I don't know what the
9 future holds. But at any rate we do have a tremendous
10 volume of business. Out of 18,000 filed, we don't try
11 most of them; they're in default. We handle virtually
12 all of the garnishments that are filed in Bibb County,
13 and there're a lot of them. And we handle the book of
14 the dispossessory warrants and -- well, we have civil
15 jurisdiction except what the superior court has exclusive
16 jurisdiction of within our monetary limits. Tort claims
17 and contract claims.

18 I agree completely with what Judge Phillips said
19 and with what Judge Morgan said. I was shocked when I
20 got wind -- I was a little late hearing about it -- that
21 there was a plan afoot to amend the constitution of the
22 state. I've served in the legislature, too: three terms
23 in the house; two in the senate. You fellows are too
24 young to remember that. I was president pro tem of the
25 senate one year when Talmadge was governor and Marvin

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1 Griffin was lieutenant governor. I know something about
2 the legislature. But it seems to me that anything that
3 needs correcting about our judicial system could well
4 be corrected by legislation rather than a constitutional
5 amendment. I've tried to decide what is it that the
6 committee is designed to correct; what is it that's wrong.
7 Well, Judge Phillips said we're trying to fix something
8 that's not broke. He said it pretty well, I thought. I
9 know that there have been some criticism of the fact that
10 some people administer the laws that they don't know about.

11 Now, when our court was established -- well, at
12 any rate, the act was rewritten in 1955 to consolidate it
13 with the amendments, and at that time it was specified
14 that ours was a court of record. The Supreme Court of
15 Georgia has decided that, the Crosby case, that ours is
16 a court of record. Well, a court of record has to go by
17 the Civil Practice Act which came into effect in 1967.

18 It seems to me that -- or if the legislature would require
19 that the Civil Practice Act be followed in all the courts
20 of the state, that that's what you're driving at as far
21 as the civil practice is concerned; and then if the judges --
22 it seems there's something afoot now to improve the legal
23 learning of the judges in the course of time, according to
24 the time you think would be appropriate to let them ac-
25 quaint themselves with the Civil Practice Act for the civil

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1 procedure. We don't have any criminal procedure, not now.
2 But we invite you any Thursday to hear our peace warrants.
3 We're thinking of charging admission. By the way, we have
4 a jury next week and I have an appointment with a good
5 many lawyers who have cases on the calendar to meet at
6 three o'clock for the case setting; and if you'll excuse
7 me, I'll go to that.

8 THE CHAIRMAN:

9 Let me make one statement.

10 MR. CARLISLE:

11 Yes, sir.

12 THE CHAIRMAN:

13 You did pose a question as to what we're doing.

14 We are in the process as one commission studying one
15 article of the constitution just like the Select Committee
16 has other commissions working on each of the other articles,
17 trying to simplify the language in our constitution, which
18 is, as you well know, the most -- contains more verbiage
19 than any other constitution in American. That's why we
20 have to amend it so many times. We're trying to simplify
21 it somewhat. As to whether or not any substantive changes
22 occur in our article or any of the other articles is not of
23 necessary importance to the Select Committee; but if there
24 are any articles in which folks feel like there can be
25 improvements made and there can be recommendations made as

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1 to substantive changes as there have been recommendations
2 made to this commission and by this commission, then those
3 are the things that we're addressing as we go through to
4 try to amend each of these articles. We're not even
5 necessarily suggesting that there would be any great sub-
6 stantive changes in any of the articles. If we can sim-
7 plify the constitution, that's --

8 MR. CARLISLE:

9 Well, I hope you recommend that there not be
10 any.

11 THE CHAIRMAN:

12 Well, if we can simplify our own article to the
13 extent that we can handle more of it by legislation, then
14 that would be an accomplishment.

15 MR. CARLISLE:

16 Well, we can't object to that.

17 MR. BROCK:

18 Can I ask the Judge a question?

19 THE CHAIRMAN:

20 Yes, sir.

21 MR. CARLISLE:

22 Yes, sir.

23 MR. BROCK:

24 Who issues your criminal warrants?

25 MR. CARLISLE:

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1 By statute our clerk's office. We have a
2 clerk and seven deputy clerks and a sheriff and eleven
3 deputy sheriffs appointed by the judge to serve during
4 the pleasure of the judge. I'm elected. By the way, I
5 was elected January the 7th, and I wrote you, for four
6 years. The way this is worded, it looks like I'm being
7 assured of a job for two years; but I might have to run
8 again before my four years is out. I wish y'all would
9 correct these things.

10 THE CHAIRMAN:

11 We wouldn't even be ratifying this thing until
12 1980 the way it's written. So I don't think that would
have any effect on you.

14 MR. CARLISLE:

15 Now, what did you ask me? I got off a little --

16 MR. BROCK:

17 You answered me. I just wondered who issued the
18 warrants because I knew that Bibb County had no Justice of
19 the Peace, and I was wondering.

20 MR. CARLISLE:

21 Well, we follow a practice that existed when I
22 became judge ten years ago. The solicitor of Judge
23 Phillips' court, the state court, he or one of his
24 assistance approves the issuance of the warrant. Now,
25 there's no law for it, but that's the practice. A person

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1 wanting a warrant, a criminal warrant, will go there; and
2 they'll write an order to issue the warrant and our clerk
3 and deputy clerks have the authority to issue it. And by
4 the way, they don't get a dime for it, either. How do
5 other people collect for warrants?

6 THE CHAIRMAN:

7 You need to talk to your local representatives.

8 MR. CARLISLE:

9 We issued 14 to 16 thousand last year. Our
10 clerks have been complaining to me that that's one thing
11 they don't get any credit for.

12 MR. BROCK:

13 Make your clerks and deputy clerks Justices of
14 the Peace so they can charge four dollars for each one.

15 MR. CARLISLE:

16 They go down there in the dead of night to issue
17 them, you know. And I don't know why. We are not a
18 criminal court, but we do that. And we issue peace
19 warrants. They get 12 dollars for those unless the
20 pauper's oath is signed, and those are served by the
21 sheriff or a deputy sheriff of our court.

22 THE CHAIRMAN:

23 Thank you so much, Judge.

24 MR. CARLISLE:

25 Thank you.

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1 THE CHAIRMAN:

2 Our next presentation is from James Wood, who
3 is the Judge of the Municipal Court of the City of Macon.
4 Now, are you the one who handles the parking ticket for
5 me when my two hours expires?

6 MR. WOOD:

7 I'd be the one to see.

8 THE CHAIRMAN:

9 I see you didn't make any promises.

10 MR. WOOD:

11 I said I'd be the one to see.

12 I'd like to make something clear at the begin-
13 ning. I'm speaking strictly for myself. I am not stating
14 the policy of the City of Macon, who, I'm sure, will
15 follow the Municipal Association line.

16 First off, I'd like to endorse all of the basic
17 principles that are listed here for judicial revision. I
18 think somebody has done a lot of thinking about this. I
19 think if you apply those principles to the problem you
20 have, you're going to come out with a good revision. I
21 cannot understand these people who say we don't need any
22 revision, particularly on this Paragraph 7, referring to
23 the courts' having even jurisdiction. I have some experi-
24 ence in the line of municipal courts, and there is no
25 hodgepodge in this country that compares to our hodgepodge

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1 of municipal courts. Each little city's got its own
2 little municipal court just the way they want it, opera-
3 ting just the way they want it, and the mayor and the
4 council all feel like it's their court and they'll run it
5 like they want it and there's not any two in the whole
6 state just alike. We badly need some kind of a uniform
7 law for municipal courts in this state setting up a uni-
8 form practice and method of operation.

9 Then, too, I would like to say that I endorse
10 the principle of trying to establish some judicial inde-
11 pendence for the judges of the court. Now, if the cities
12 are going to have something that's going to enforce their
13 ordinances just the way they want it done, then let's
14 give them a department of fines or something like that,
15 fines or penalties; put an administrator in charge of it.
16 Don't make a kangaroo court saying "This is an independent
17 court" making decisions affecting the citizens of this
18 state. Don't dignify it with the name of court. Call it
19 a department and let the city run it like they want to.
20 If you're going to have judicial decisions, put a judge
21 in charge of it. And like the principles say, put the
22 judge in charge of the administration of the court; don't
23 put the city in charge of it, either the legislative branch
24 of the city or the executive branch. Whatever your princi-
25 ples are applied in the way of municipal courts, it should

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1 provide for an elected judiciary and provide for the
2 independence of that judiciary over any control by the
3 executive or the legislative branches of the city govern-
4 ment.

5 That's all I care to say.

6 THE CHAIRMAN:

7 Any questions?

8 Marty?

9 MR. HODGKINS:

10 Judge, do you normally hear traffic cases? Is
11 that the bulk of your case load?

12 MR. WOOD:

13 Yes, I would say that. See, like I say, every
14 little court has its own setup. Up here we handle com-
15 mitment hearings to bind people over for trial on misde-
16 meanors and felonies; then we handle traffic violations
17 that are really state laws but have been made part of
18 city ordinance; and then we have regular city-ordinance
19 violations. And I'm making a very rough guess, but I'd
20 say at least 60 percent of the business will fall in the
21 first two categories, not real city ordinances.

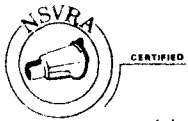
22 MR. HODGKINS:

23 May I ask another questions?

24 THE CHAIRMAN:

25 Yes, sir.

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1 MR. HODGKINS:

2 How much revenue does your court produce? Does
3 it play a major part in the budget?

4 MR. WOOD:

5 I haven't seen the latest projection, but I
6 believe it'll be in the neighborhood of close to a million
7 dollars maybe, or 900 thousand.

8 MR. HODGKINS:

9 Court-generated revenue?

10 MR. WOOD:

11 [Nods head affirmatively.]

12 MR. BAILEY:

13 The court revenues for 1978 were \$898,000. The
14 costs were \$214,000.

15 THE CHAIRMAN:

16 Thank you so much, Judge.

17 MS. WILSON:

18 Can I ask one question?

19 THE CHAIRMAN:

20 Yes.

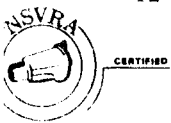
21 MS. WILSON:

22 Does any of that money go to, for instance, the
23 police-retirement fund or a small library or anything else?

24 MR. WOOD:

25 There is a state law, I think, that puts a

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1 certain charge on each case that goes through our court
2 that goes to the law-enforcement officers' retirement
3 fund; but the vast majority of it goes into the city
4 treasury for city uses.

5 THE CHAIRMAN:

6 Any additional questions? If not, we will go
7 now to the City Treasurer of Milledgeville, John --

8 MR. CULPEPPER:

9 Culpepper.

10 THE CHAIRMAN:

11 Y'all write about as bad as I do. I can't read
12 it sometime.

13 MR. CULPEPPER:

14 There's a rumor that if a leaf flew in my
15 window, I'd sign it.

16 [Laughter.]

17 Members of the Committee, I'm here on behalf of
18 the Mayor and Aldermen of the City of Milledgeville. They
19 have requested that I read a resolution to y'all that we
20 passed in our regular meeting last Tuesday night.

21 [Reading] "WHEREAS, the Mayor and Aldermen of
22 the City of Milledgeville have studied the proposed judi-
23 cial revision article and found some of the provisions of
24 the article not in the best interest of the City of Mil-
25 ledgeville, now therefore

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1 "BE IT RESOLVED that the Mayor and Aldermen of
 2 the City of Milledgeville request that the Committee
 3 provide further study and consideration to the provisions
 4 of the Judicial Article that would abolish the City's
 5 Recorder's Court and provide for an apportionment of
 6 court systems revenues, a revenue source that presently
 7 makes up ten percent of the city's general fund.

8 "Passed and adopted on November 14, 1978, by the
 9 Mayor and Aldermen of the City of Milledgeville," signed
 10 by the Mayor and attested by myself.

11 Basically, we're proud of our recorder's court
 12 in Milledgeville. Right now court is in session and
 13 usually runs from about 1:00 to about 3:30 on Friday
 14 afternoons. I'd say that 95 percent -- in excess of 95
 15 percent of the cases are solved every Friday. The Mayor
 16 and Aldermen and the citizens of Milledgeville are happy
 17 with this arrangement and I can certainly speak for it
 18 myself. It does produce approximately \$200,000 a year
 19 revenue for the city and it has consistently produced that
 20 to my knowledge in the last four or five years, even though
 21 the city is growing, expanding very fast.

22 We feel that before any major revision is car-
 23 ried out that the problems and the apportionment of the
 24 revenues from the systems that exist now must be solved,
 25 some sort of financial impact statement of what this

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1 really means. To us it means a lot. We do feel like
2 that we have a fair and consistent application of justice.
3 The judge of the recorder's court is a long-time practicing
4 attorney in Baldwin County. He would be here if court were
5 not in session right now.

6 That's about all I have to say.

7 THE CHAIRMAN:

8 Any questions?

9 MS. WILSON:

10 Yes. Your judge is not full time?

11 MR. CULPEPPER:

12 No, ma'am, he is not.

13 MS. WILSON:

14 Is he a lawyer?

15 MR. CULPEPPER:

16 Yes, ma'am.

17 MS. WILSON:

18 Do you think it's not confusing for some of the
19 citizens to see him practicing law one day and being judge
20 the next day?

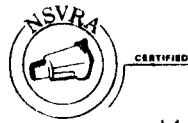
21 MR. CULPEPPER:

22 I must say that I don't find that confusing at
23 all.

24 THE CHAIRMAN:

25 Joe?

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1 MR. DROLET:

2 If the revenue situation were solved by an
3 alternative source or the revenues from another court
4 system going to the City of Milledgeville, is that the
5 main concern; or is there concern, I think like we heard
6 earlier, about the local autonomy?

7 MR. CULPEPPER:

8 The main concern of the mayor and aldermen of
9 my city is the revenue, right. I think it's fair to say
10 on their behalf that they endorse the efforts that y'all
11 are making along with the rest of the members of the
12 legislature. But it's our concern that there's a secondary
13 effect to this, and that is the revenues; and it will
14 certainly need to be checked into and it rumbles like
15 revenue sharing in reverse, and that is our main concern.

16 MR. BROCK:

17 Do you not feel that it's a conflict of interest
18 for the judge to practice law?

19 MR. CULPEPPER:

20 No, I do not.

21 MR. COLE:

22 What is the budget, the total budget of the city?

23 MR. CULPEPPER:

24 The total budget is four and a half million
25 dollars; of that our general fund is about two million

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dollars.

MR. COLE:

This is \$200,000 from the court?

MR. CULPEPPER:

Right.

THE CHAIRMAN:

Any additional questions?

MS. WILSON:

Same question. How much of the funds that you collect go to, like, policemen's retirement, boys camps, law libraries?

MR. CULPEPPER:

Well, to policemen's retirement, based I think on the applicable state law, each fine is portioned out and turned over -- I would say that amounts to approximately 20 to 25-thousand dollars a year.

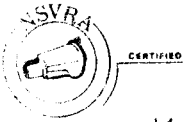
As far as the other items that you've mentioned, the remaining revenues go into the city's general fund, and they are spent out of there. In this year's budget and in next year's budget, we do not have any money appropriated for boys camps or any of the items that you've mentioned.

THE CHAIRMAN:

Other questions? Thank you, John. Hold it.

Marty?

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1 MR. HODGKINS:

2 Are most of the cases heard in court traffic
3 related?

4 MR. CULPEPPER:

5 Yes, sir. At least 70 percent are traffic
6 related.

7 Thank you.

8 THE CHAIRMAN:

9 All right. Aurelia Adams?

10 [No response.]

11 Okay. Robert Bailey, City of Macon.

12 MR. BAILEY:

13
14 Members of the Committee, Chairman Snow, over
15 recent years across the country various states have
16 merged municipal courts out of existence because cities
17 were willing to give up the control they exercised in
18 return for the state picking up the tab. The City of
19 Macon does not subscribe to this rationale. We feel
20 there are times when for operational and for moral reasons
21 the Mayor of Macon, who serves as head judge under our
22 system, must direct the entire criminal justice system
23 and not just the police department.

24 It's axiomatic that increased centralized
25 inhibits the ability to adjust to the change in times and
situations. Filing and record systems need to be modified



1 and improved; personnel programs adjusted; computer revised
2 to improve coordination with the police department; pay-
3 ment and partial payment of fines must be monitored by
4 internal auditors to control the volume of accounts
5 receiveable. This is notoriously not done in many courts.

6 The flexibility of court-clerk office hours to
7 expedite justice is much simpler to obtain in a mayor's
8 court. Court generated costs of police overtime is
9 handled by a court not under municipal jurisdiction are
10 not susceptible to suggestion for improvement.

11 The City of Macon does not believe the merging
12 of this municipal court into the circuit courts would
13 allow any of the above necessary fine-tuning of the ordi-
14 nance of the state law-enforcement system by the City of
15 Macon.

16 The speaker, a professional city manager who has
17 worked with local court systems in three other states and
18 who at one time represented the cities of the entire five
19 counties surrounding and including Los Angeles County,
20 California, and that area on the Council on Criminal
21 Justice, agrees personally, after his personal experience
22 in other areas, with the standards the City of Macon and
23 the Georgia Municipal Association that the municipal
24 courts should be retained.

25 It is further suggested that a statewide study

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1 commission might be created to make suggestions for a
2 generally uniform, state-adopted regulation of municipal
3 courts under general law, which would still allow the
4 necessary local inputs mentioned earlier.

5 Another alternative would be to allow the
6 merger into the circuit courts as a matter of local
7 option.

8 This statement is the City of Macon's objection
9 to be raised to the proposed draft of the new Judicial
10 Article intended to be the new Article VI, Section 3,
11 Paragraph One of the Georgia Constitution, which would
12 have the effect of abolishing all municipal courts,
13 recorder's courts, and mayor's courts in the state.

14 We agree with the sense of the remainder of the
15 draft article.

16 The Committee should be commended for its fine
17 work in identifying and studying the many problems that
18 overlap the jurisdiction and operation of the state court
19 system.

20 MS. WILSON:

21 You would agree with it being a matter of option?

22 MR. BAILEY:

23 I think that is an alternative, not the first
24 alternative but an alternative to the total abolition.

25 THE CHAIRMAN:

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1 Any additional questions?

2 MR. COLE:

3 Just one. Your comments were not primarily
4 concerned with revenue but with local control; is that
5 correct?

6 MR. BAILEY:

7 Revenue, if generated, is welcome always in a
8 city with limited sources of revenue. That's not pri-
9 marily why we feel -- what we would like is prompt justice,
10 promptly issued, less waiting time, more flexibility,
11 and generally more satisfaction to the citizens of the
12 city. Revenue cannot be discounted because as you know
13 we have substantial revenue generated from the court;
14 but that's not the prime motivation.

15 MR. BROCK:

16 One question. Do you think the municipal courts
17 would object to being called instead of a recorder's court
18 and municipal court and City of Atlanta Court, this type
19 thing -- do you think they would object to being called a
20 city magistrate's court as one system?

21 MR. BAILEY:

22 Personally, I think we wouldn't care by what
23 other name you call the rose. The main thing we want is
24 the ability to improve the system because a court system
25 separated from administrative changes and modification



1 becomes out of tune; and I've found this true in each
2 state I've been. And recently we have worked over the
3 administrative procedure of the court here. We found
4 many things we could improve and improve the morale.
5 We revised our accounting system. Traffic is, of course,
6 our heavy percentage; but we feel that a fine-tuning of
7 a local court must be periodically reviewed and considered
8 just as any other department. Things change. The federal
9 statutes change. The federal programs change. The grant
10 programs of state and federal change, but the courts tend
11 to be crystalized unless there's some local input on the
12 operational procedures.

13
14 But I have a general feeling that municipal
15 courts all across the state, by whatever name, have cer-
16 tain guidelines which would keep them -- where you get the
17 same kind of justice you get in Milledgeville as you get
18 in Macon or Savannah; but allow us the operational input
19 into that finding.

20 THE CHAIRMAN:

21 Any questions?

22 MR. BAILEY:

23 Thank you.

24 THE CHAIRMAN:

25 Mr. Trice, do you have something you'd like to
say?

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1 MR. TRICE:

2 Well, no, sir, not particular. I would like to
3 make one or two comments. I'd like to commend you folks
4 working as hard as you work on this committee; and I would
5 like to say that as a clerk I would hope that you would
6 keep us in the constitution to be elected. I disagree
7 with the judge that we should be appointed. I feel like
8 we should be elected by the people we serve. I also feel
9 like we should give one clerk in each county -- I don't
10 like this circuit court that you are proposing or some
11 have proposed -- I don't know whether this committee has
12 been considering that. I basically feel like that if a
13 person is going to be tried, they ought to be tried by
14 the folks in his county.

15 Thank you.

16 THE CHAIRMAN:

17 Thank you.

18 MR. GREENE:

19 I don't believe he's talking about superior court
20 clerks.

21 THE CHAIRMAN:

22 Of course, anything that we would come up with
23 anticipates several deputy clerks.

24 MR. GREENE:

25 Mr. Ellington, you're familiar with the draft here



1 that relates to the magistrate system generally, aren't
2 you? In general terms?

3 MR. ELLINGTON:

4 In general terms, number three I could go along
5 with. Number one says no judge could be a nonlawyer. I
6 don't go along with that.

7 MR. GREENE:

8 I'm talking about the magistrate system.

9 MR. ELLINGTON:

10 Oh, yeah, I'll go along with that.

11 MR. GREENE:

12 Generally speaking, your organization would go
13 along with that.

14 MR. ELLINGTON:

15 Our organization -- I mean, as long as we're
16 not completely wiped out or having to be lawyers, I think
17 our organization will go along with it.

18 THE CHAIRMAN:

19 Any other comments?

20 MR. BROCK:

21 Basically, the third part of this magistrate
22 system is what we have been working toward for nine years.

23 MR. GREENE:

24 You mean as set forth in here?

25 MR. BROCK:

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Proceedings of the Public Hearing of the Select Committee on Constitutional Revision, Subcommittee on Judiciary, held at Room 341 of the State Capitol, Atlanta, Georgia, commencing at 10:00 o'clock, a.m., on November 18, 1978, and chaired by Wayne Snow, Jr., Chairman.

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3715 COLONIAL TRAIL, DOUGLASVILLE, GEORGIA 30135

942-0482

DEPOSITIONS - ARBITRATIONS - CONVENTIONS - CONFERENCES

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REP. SNOW:

We appreciate y'all showing up this morning for one of a series of public hearings that we're holding throughout the State relative to Article VI and the proposed revision of this Article. The Committee itself has not yet formulated a finalized version of an Article. We have three drafts which are being presented to you as well as a questionnaire and a sheet of various statements that have been made at one time or another during the course of our two years of hearings as what some folks think should be done to improve the Judicial Article and a statement of certain principles. And we're interested in knowing your reactions to these things and any input that you would like to have relating to the revision of this Article.

First of all, let me also say that this comes as a result of the 1976 Consitution in which the people of this State authorized a procedure by which we would commence the revision of the Constitution on an Article by Article basis. And we recognize the need for this because of the frustrations that we have faced in the past as we have tried at one time to revise all the Constitution and all of the different conflicts and controversies that we have faced during these sessions.

So we're not actually trying to make a lot of substan-



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1 tive changes to any portions of the Constitution. But as
2 we go into the different Articles where there is a need for
3 some substantive change, where there is a desire for sub-
4 stantive changes, we are anticipating that we can make
5 them.

6 The members of this Committee and others were very
7 disappointed that amendments I and II to the Constitution
8 that were on the ballot this year were not passed. We
9 were disappointed because we felt like there had been some
10 failure on our part to properly present these in the
11 language that they were presented or try to overcome the
12 general negativism of this past election year.

13 Hopefully, they will be back on the ballot a year
14 from now and we will have more information on those two
15 Articles, both of which greatly reduce the amount of ver-
16 biage in the Constitution--the Elective Franchise Article
17 as well as the Article on Retirement, Scholarships and
18 Loans. There was a tremendous reduction of the statutory
19 law that had been written into the Constitution and those
20 Articles, as they were presented, reflected good revision
21 of the Constitution. We hope that that same will hold
22 true with Article VI when we finally formulate some type
23 of recommendations to be submitted to the Select Committee
24 on Constitutional Revision and then to the General Assembly
25 of Georgia for its approval and, ultimately, in 1980, hope-

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1 fully, to the people of this State for their ratification.

2 So that is primarily what the purpose is, is to get
3 your ideas and your feelings as to what you think may be
4 wrong with the Judiciary and also to hear from you if you
5 think everything is right with it. We do have proposals
6 that we're concerned about part-time judges in the State.
7 A lot of us think that all the judges ought to be full-time
8 judges. We think that the State ought to assume and have
9 the responsibility for the payment of the costs of the
10 courts and the supplies and other things provided for the
11 courts. Many of these things are statutory in nature and
12 would not require constitutional action.

13
14 But hopefully we will have enough revision of the
15 Judicial Article that we will not necessarily have to have
16 as many amendments to the Article in the future. We can
17 handle many of these things by statute in the future
18 rather than handling them through the Constitution. And I
19 think the folks in this State are really tired of all of
20 these constitutional amendments every two years. And I
21 think they demonstrated that quite ably in this past elec-
22 tion.

23 We are concerned about uniform jurisdiction throughout
24 the State. I think that that is something that addresses
25 itself to the Constitution. And with the training or the
type of training that different judges or magistrates



1 should have. That they all should not have to be attorneys
2 but that there should be some legal training for anyone
3 who purports to act in an official sense or fashion. So
4 these are the things that we're talking about and that we
5 are taking into consideration here and that we want to get
6 your opinions about.

7 I am Wayne Snow, Jr. I'm chairman of the commission,
8 having been selected by the Select Committee to chair this
9 commission and then given the responsibility of appointing
10 what I think is a very good cross-section of people
11 throughout the State representing lay groups as well as
12 the departments and the branches of government. I also
13 serve as Chairman of the Judiciary Committee for the House
14 of Representatives who will ultimately receive the recom-
15 mendations of this commission for actions as far as the
16 General Assembly is concerned.

17 To my immediate left is Judge Beasley who represents
18 on the commission the State Courts of the State of Georgia.
19 And to her left is a rather well-known Georgian of many
20 years. He was the House Speaker for many years and I en-
21 joyed serving with him there--George Smith, now a Judge of
22 the Court of Appeals.

23 To my right representing the district attorneys of
24 Georgia is Joe Drolet, Assistant District Attorney for
25 Fulton County. And to his right is Adam Greene who is

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representing the Clerks Association for the Superior Court Clerks of Georgia. And then we have Dean Cole representing Mercer University and also here representing the other deans of the law schools at this hearing today, all of whom are members of the commission.

Do any of the members of the commission have statements you would like to make prior to the time that we start the hearing? [No response.]

All right. Judge Hendon of the Superior Court of Stone Mountain Circuit.

JUDGE HENSON:

Chairman Snow and distinguished members of the commission, it is my opportunity to address the first--I'm sure the committee will get started off in the proper direction and on the right foot, but I do appreciate this opportunity to come before you and address you on this very important matter as it affects the fair and impartial administration of justice throughout this great State.

Let me say at the outset, gentlemen, that I disagree with you in principle. I have been unable to find any real support throughout the State, either numerically or in substance, of a necessity for the revision of this Judicial Article. The people who support change are small in number. Their attack on the Article is without substance. I have heard the Article attacked as being out-

1 moded, fragmented, a crazy quilt that is patched again
 2 each year. But these things are general in nature. They
 3 do not address with any specificity the defects, if there
 4 are any, in the Article. I think the uniqueness of our
 5 judicial system is that we have our great metropolitan
 6 areas; we have rural areas; we have smaller urban areas
 7 which require and receive different forms of courts to
 8 administer their judicial problems.

9 To say that we're going to reduce the number of
 10 courts in this State from some twenty-one or twenty-two
 11 hundred down to forty-two is misleading. There will not
 12 be a reduction in the number of judges. If anything, there
 13 will end up being an increase under the proposals that are
 14 before you at this time as I understand them. The changing
 15 of names does not improve the function of the system.

16 Now, the states that have adopted similar proposals
 17 have found certain things to be true. One of them is that
 18 the cost of the administration of the judicial system has
 19 increased by about five hundred percent. Secondly, that
 20 the amount of justice dispensed is indeterminable based on
 21 that the backlogs in the courts are decreased. But this
 22 is attributable by those who have studied the system to the
 23 fact that the judges in the various circuits of the court
 24 were assigned outside of the elective districts to dispose
 25 of the business. This has got to mean that there is a

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poorer quality of justice being dispensed in those circuits.

Those that have practiced law with any degree of diversity in the Federal system and in the State system can will you without any question that the poorest system of courts in this country is that administered by the Federal system. The reason for this is that the courts are not responsive to the needs of the people. The judges are not elected by the people; the district attorneys are not elected by the people. They are controlled from Washington and they do what Washington desires and what the bureaus want and not what the people need or expect. This is a poor way to dispense justice.

And that's what this, to my understanding, is all about, is where is the quality of justice to be improved. Now, what does become apparent to anyone who has studied these proposals is that there is a calling for and obtaining of a centralization or control of the courts in these proposals. Now, when you have that, you immediately realize or must realize that you have an destruction of the independence of the judiciary throughout the State. And when you have a destruction of this independence, you have a failure to respond to the needs of people and respond to some other person or authority, the quality of justice is thereby diminished.



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1 To say that the people in this State voted down the
2 first two proposed amendments of the Constitution on the
3 basis that they're tired of all these amendments being
4 thrust in their face is overstating or understating the
5 problem. I think it fails to recognize that the elector-
6 ate of this State has finally recognized what is happening
7 to them when a constitutional amendment is submitted to
8 them. Each time in the name of reform, expediting for
9 their benefit a change in the Constitution, that they are
10 surrendering some of their freedom to the government. I
11 think they have recognized that that's what happens to them
12 on these constitutional amendments. It's not for an im-
13 provement but a surrender of their liberty and freedom to
14 the State each time they approve one of these constitution-
15 al amendments.

16 If this proposal is carried through as it's spelled
17 out in these three alternatives herein, the people of
18 this State are going to suffer by a surrender of the good
19 quality of justice that they are now receiving in the system
20 of the courts in this State. And they're going to find
21 that they are going to receive a poorer quality of justice.
22 And, gentlemen, based on those brief observations, I recom-
23 mend that perhaps the committee at this time not propose a
24 revision to the Constitution. Thank you very much. I
25 appreciate this opportunity to come before you.

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1 REP. SNOW:

2 Would you stand there for a moment if there's any
3 questions. Let me fully clarify what I said about the
4 first two amendments. I wasn't--I was suggesting that
5 there were several statutory provisions in the two amend-
6 ments that we had on the Constitution this time that were
7 rejected, those two amendments did not change in any way
8 any of the substantive law or the constitutional rights of
9 anybody. And all of the things taken out of the amendments,
10 those first two--the electorate franchise Article as well
11 as the Article on loans and scholarships--simply duplicated
12 what was already the statutory law of Georgia and just
13 allowed the statutes to continue or made statutory law
14 where there had been constitutional rights.

15 JUDGE HENDON:

16 Well, I did not of course intend to get in a debate
17 on those particular matters but--

18 REP. SNOW:

19 Well, we are in substantive matters here.

20 JUDGE HENDON:

21 Yes, we are; we are. But I do think and I do not
22 retreat or retract my earlier statement that I think that
23 the people are recognizing that when they approve consti-
24 tutional amendments that they are surrendering some of
25 their liberties and freedoms. And I think that they have

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1 over a period of time recognized this to be true. Govern-
2 ment is becoming stronger, greater, more powerful and the
3 citizen is having fewer and fewer and less privileges and
4 rights and liberties.

5 JUDGE BEASLEY:

6 Judge Hendon, I absolutely agree with you that the
7 tenor in our country now--and I would agree with it per-
8 sonally--is fear of government having more control. And I
9 think that it would be foolish of us or any governmental
10 agency to try to sell a program of greater control, but
11 how does that relate to an effort that is being made here
12 to simplify the court system by, for example, making uni-
13 form courts, that is, courts having the same type of juris-
14 diction where you've got the same type of court and elimin-
15 ating overlapping jurisdiction which only causes confusion
16 to the people and allows for confusion within the court
17 system itself--duplication of effort, duplication of ex-
18 pense and the confusion as to what court to go to to handle
19 certain matters? How does that take away any liberties
20 when it seems to me it actually provides a better forum for
21 people--resolution of people's disputes?

22 JUDGE HENDON:

23 Well, to address that specific symptom, of course, is
24 not to address the proposal as a whole. But to address the
25 problem that you're speaking of, this is one of the bases

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1 that I have heard the hue and cry go up as the necessity--
2 being one of the necessities for a change in the Judicial
3 Article. And I say to you, ladies and gentlemen, Judge,
4 there shall always be confusion and a lack of total under-
5 standing in a system of laws. The changing of names of
6 courts is not going to remove this confusion. There is a
7 necessity for different amounts of jurisdiction, as I
8 pointed out earlier, in different areas in this state.

9 The confusion, if there be any, of course is in the
10 lay people. The lawyers, the people who have the problem
11 and responsibility of administering these courts find no
12 confusion. There isn't an overlapping of jurisdiction in
13 these courts. You have municipal courts that have the
14 authority to--they administer municipal ordinances. We
15 have county courts who administer the county ordinances.
16 You have state courts that have specified jurisdiction
17 pursuant to the legislative acts addressing the needs of
18 that particular community for which that particular state
19 court serves.

20 Then, when you get into your Superior Court levels,
21 of course you have the uniformity. When we talk about
22 uniformity and unification of courts, what we are talking
23 about in essence in these proposals is not that better a
24 controlled court in my view. Now, I don't believe I've
25 addressed with any intelligence the questions that you have

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1 propounded. This matter of perhaps doing something to
2 relieve an overlapping of jurisdiction and confusion in
3 some of the courts may have some limited merit to it but
4 it is a very brief part of the sweeping change of the
5 Judicial Article which is proposed here. The essence and
6 the spirit of this proposal is a centralization of control
7 and power over the courts in the Supreme Court of the State
8 to be specifically, and when you have this limitation and
9 centralization of control, then you have of necessity the
10 judges of this system being responsible to that head and
11 not responsible to the people for which he was elected to
12 serve and who really--that's what the system of justice is
13 about, is to serve and administer justice. When you have
14 to answer to someone other than the people, the quality of
15 justice has got to fail and it's got to suffer.

16 JUDGE BEASLEY:

17 Thank you.

18 DEAN COLE:

19 You mentioned in your comments that in other states
20 that have reformed the judicial system that--

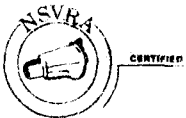
21 JUDGE HENDON:

22 Yes, sir. I was referring specifically to Kentucky
23 who is the only one that I really have--

24 DEAN COLE:

25 --costs have risen five hundred percent.

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1 JUDGE HENSON:

2 Yes. That information was presented to a convocation
3 of judges in Athens by the Court Administration of the
4 unified court system there. And he was the one--I'm sorry;
5 I don't have his name.

6 JUDGE SMITH:

7 Davis.

8 JUDGE BEASLEY:

9 Davis.

10 JUDGE HENDON:

11 He was the one that pointed out the cost to the state
12 there was 2.5 percent of the total budget, which is five
13 times what our cost in this state is of administering the
14 judicial system. Perhaps I was not quite accurate and I
15 appreciate your telling me. But, anyhow, if we adopted it,
16 --if the cost of administering the courts in this state
17 rose to 2.5 percent of the total budget, then we would be
18 increasing the budget of our court system by five hundred
19 percent approximately.

20 REP. SNOW:

21 Any additional questions?

22 JUDGE BEASLEY:

23 We're talking about some of the abuses of the courts.
24 Are there not presently safeguards as to these abuses that
25 are not used as to why the abuses continue? You hear a

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1 great deal about abuses but there are safeguards that are
2 not being used.

3 JUDGE HENDON:

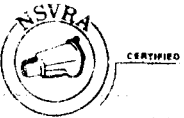
4 Well, I think that Judge George T. Smith addressed
5 that problem very specifically actually. He says, we are
6 not administering justice under the system that we pre-
7 sently have as well as we could. This is very true. Now,
8 to be able to answer your question, I'll have to know
9 specifically what abuse we're talking about. Certainly,
10 we have a good Judicial Article and, certainly, there are
11 defects in the administration of this Article. But those
12 matter do not address the question of the need for sweeping
and casting aside our good Judicial Article.

14 The terms of reform and improvement are not synonymous
15 terms. We address this thing with the good label of judi-
16 cial reform. That is not, in my opinion, the same thing
17 as we're now undertaking. It's a change, all right. I'm
18 sorry that--did that answer your question in any way? I
19 don't know.

20 JUDGE BEASLEY:

21 Yes, but could I ask another question? As the cost
22 goes--I think one of the things that I've been impressed
23 with with the change--or unimpressed with is the fact that
24 the cost will be borne by the State. And of course it's
25 commendable, but different areas have different problems.

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1 And where the problems are created in municipalities where
2 they are created, is where the cost should be borne. And
3 the Judge was addressing himself to the costs. It can only
4 hurt the people in rural Georgia and there are many, many
5 more rural areas than there are urban areas. And aren't
6 we trying to clean up our urban mess by forcing our prob-
7 lems on the entire rest of the state? We do have problems
8 there and I've heard ti before but we need to clean up our
9 own.

10 JUDGE HENDON:

11 Well, I think you have stated and somewhat answered
12 a problem. But I think you must understand, in my judg-
13 ment, what the underlying reason is for the State assuming
14 certain costs of the administration of justice in the
15 State. There again, is the centralization of power and
16 control with costs to be borne by the State and the judi-
17 cial system by taking over the payment of stationery, the
18 payment of secretaries and all the other little incidental
19 matters in the court system. And when this budget is to
20 be administered by the Supreme Court, then, it is again
21 the adage that, he who controls the purse strings controls
22 the person. And I don't think you can escape that. But
23 that's one of the underlying reasons that is part of this
24 overall package of reform that we're talking about.

25 To be real correct, I think those that have the prob-



1 lems ought to bear the major part of the expense. I don't
2 think it ought to be shifted to some other part of the
3 State that does not have those problems. There are many
4 other facets to the cost of administration of the courts,
5 though. One of the biggest costs is the furnishing of the
6 courthouse and the courtroom and a place to hold court. I
7 don't think there's any proposal here in these constitu-
8 tional revision packages for the State to take over the
9 courthouse and furnish the courthouses.

10 But there are many, many questions that are not
11 answered in these proposals.

12 REP. SNOW:

13 Are there any other questions? [No response.] Thank
14 you, Judge. I'd like to introduce you to Carol Wilson who
15 has just arrived. She represents on the Commission the
16 Georgia League of Women Voters.

17 Ma'am, would you like to identify yourself for the
18 record, please?

19 MS. SANDERS:

20 My name is Cherie Sanders. I'm a Justice of the
21 Peace in the Georgia Militia District 1615, College Park,
22 Georgia.

23 REP. SNOW:

24 All right. Mr. J. L. Edmondson, representing the
25 City of Snellville, Georgia.

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1 MR. EDMONDSEN:

2 Mr. Chairman and members of the committee, my name is
3 J. L. Edmondson. I'm with the firm of Wells, Fowler and
4 Tanner and I appear here today representing clients of our
5 firm, the City of Snellville. And I want to address the
6 concept of abolition of the municipal courts.

7 Before I begin to state my client's position on this
8 particular point, I want to say that basically I personally
9 approve of the proposed changes that have been discussed
10 in the State Judiciary. The abolition of municipal courts
11 is one in which my own personal views happen to be in
12 accord with my client, though, and I do want to address
these points.

13
14 It seems to me that whenever we talk about judicial
15 reform, that at least one goal should be to increase the
16 ease of access to the courts for the people. And to reduce
17 the time and trouble and expense which the people face
18 when they go to court. Now, because of that, it seems to
19 me that municipal recorder's courts are good and consistent
20 with the goal of making goods courts available at low cost
21 and quickly to the people who are involved and needing to
22 use those courts. For example, I think at least the great
23 majority of City Recorder Courts hold night sessions. I
24 know the City of Snellville Court meets at night. This is
25 a tremendous convenience for those people who appear before

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1 it. They don't have to get off from their job to come
2 down and be a defendant in the case.

3 Also the court is right there in town; the witnesses
4 are right there in town. We're talking about a two or
5 three-minute drive down to the City Courthouse to parti-
6 cipate rather than a half an hour drive or a twenty-
7 minute drive down to the county seat to participate.

8 Also, because the court is close by, our law officers who
9 make most of the cases don't have to leave the town in
10 order to present their case. This can be a very real
11 problem for small towns who have half a dozen or a dozen
12 police officers to find out that four of them are down at
13 the county seat, waiting to have their cases called to be
14 heard.

15 And of course in any kind of judicial system, there
16 is some kind of waiting involved. I would submit to you,
17 that the larger the judicial system is--as I say, a county-
18 wide court will more likely than not have more waiting than
19 a city court which has a smaller caseload by virtue of the
20 fact that it has a smaller jurisdiction.

21 So the basic idea of consolidating courts is probably
22 a good one. The basic idea of having uniform jurisdiction,
23 I think, is a good one. It seems to me that in the area
24 of municipal courts that the advantages to the public which
25 the convenience and the cost and speed that it offers to



1 average person in the City of Snellville, however, out-
2 weighs any potential advantages that might be gained by
3 centralization--I'm talking about very bedrock things--
4 time, money and trouble--involving going to court.

5 There's one other area that seems to me municipal
6 courts may have an advantage to the public in, and maybe
7 to the State as a whole. And that is that the multipli-
8 city of cities allows a certain amount of Federalization
9 in our State government. By that, I mean to say, when
10 we're in Civics in the ninth grade, we're taught that one
11 of the advantages of a Federal system of government is that
12 the various States are allowed to draft different kinds of
13 laws to fit their particular situation. And we're told
14 that it's good for the country as a whole because Arizona
15 can experiment with one kind of law and Oregon with an-
16 other and we can see how those systems work. And then the
17 other states can follow a course accordingly.

18 Well, the municipal systems of government have each
19 their own peculiar ordinances. Many of them are uniform
20 but virtually every city has some peculiar ordinances. I
21 do not believe that's bad. I think it's good for the
22 cities to have some peculiar ordinances of their own that
23 we can see how they work. Is it a good law? Is it a bad
24 law? Let's experiment with it some and see how it works.
25 Your local municipal court judge has more expertise in

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1 dealing with this particular municipal ordinance than I
2 think any centralized judge could have. In a county such
3 as Gwinnett, we have a large number of small towns. As
4 you know, in Gwinnett, we don't have a big central city;
5 we have about eight towns that are all the size. I find
6 it difficult to imagine how a centralized State court
7 would be able to deal in a really effective and knowing
8 way with the various intricacies of the eight different
9 municipal ordinances dealing with zoning and everything
10 else that these various ordinances deal with.

11 So again, going back to my basic proposition, when we
12 talk about streamlining the courts, yes, I'm for it. If
13 you talk about uniform jurisdiction in your courts, and
14 particularly your higher courts, yes, I personally am for
15 it. But when we talk about abolishing the municipal court
16 system which is a very low level people's court, I think
17 it serves good purposes; my client think it serves good
18 purposes and we'd like to ask you in formulating your
19 suggested that perhaps you allow those courts to remain,
20 notwithstanding whatever changes you may make in courts of
21 greater and greater jurisdiction.

22 REP. SNOW:

23 All right. Are there questions?

24 DEAN COLE:

25 I think that the things that you outlined as the good



1 about municipal courts, I would agree with and most of the
2 committee would agree with. But I'm wondering what are
3 the descriptive things about the municipal courts that
4 you see now in existence which is necessary to retain to
5 retain that access and local flavor. I think personally
6 the basic principles that we have here--I suppose you've
7 seen them--eight basic principles which covers in essence--
8 I think it is the basic principle, as far as I know, in
9 this committee that justice needs to be close to the
10 people and not remove it away from them.

11 But I'm wondering in terms of municipal courts which
12 are fee-generated with fees paid to the judges and the
13 so-called cash register justice and so forth, what are
14 those things about municipal courts now that you see
15 changed in some of these proposals?

16 MR. EDMONDSEN:

17 Well, I think, Dean Cole, you touched upon what I
18 regard as being the most critical, which is simply its
19 distance. It's not there where you can do gown to the
20 corner and go to court. You've got to go someplace and
21 do something which is a greater burden on the people that
22 have to participate, particularly non-party witnesses who
23 I have as a lawyer great sympathy for--the kind of person
24 who has to go and spend three days sitting in the court-
25 room, waiting to testify in somebody else's case. There's



1 great advantage in having it right there. Now, it may be
2 possible by the use of some creative drafting to have
3 magistrate's ride circuit or something like that. I'm
4 not going to rule out that possibility.

5 But it seems to me that we're still probably compli-
6 cating rather than simplifying when you start going into
7 something quite that creative. The local judge also is
8 there on the spot in many towns, small towns. If you need
9 something taken care of quickly, it's possible to get with
10 the consent of everybody involved, really quick informal-
11 type hearings. It's not impossible at all to do that.
12 I'm not sure that that could be duplicated by having some-
one who has a set schedule of riding circuit, as it were.

14 So, also you have the expertise problem which we
15 talked about just briefly and that is municipal courts
16 enforcing the local zoning ordinances. In my county,
17 you're talking about nine or ten zoning ordinances. That
18 could be a pretty complicated business. And I'm not sure
19 that it's reasonable to expect that one judicial officer
20 should be obligated to understand the intricacies of all
21 nine jurisdictions. That's a pretty heavy load for one
22 officer to bear.

23 If we want to talk frankly about the problem of muni-
24 cipal courts, it's a problem that many judges in municipal
25 courts are unqualified to sit. I think that's the problem.

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1 If this committee wants to upgrade the standards of muni-
2 cipal court judges, I think that might very well be a good
3 idea.

4 JUDGE SMITH:

5 You could do that without revising the Judicial
6 Article, couldn't you?

7 MR. EDMONDSON:

8 Yes, Your Honor, I think that that could be done that
9 way. If this group or the State government wishes to, in
10 some other way, control the procedures--some basic funda-
11 mental procedures of the municipal courts, I don't believe
12 we oppose that. And I haven't come here today to represent
13 to this committee that all the city courts in this state
14 are exemplary tribunals. I can't face you and tell you
15 that. You know better than that and I know better than
16 that too.

17 But many of them are very good tribunals. And those
18 that are not, I think, can be corrected by something less
19 sweeping than abolition of the entire level of Judiciary.
20 I think, for example, many of the problems can be cured by
21 simply saying, okay. All city court judges will be members
22 of the Bar and they'll be paid on a salary basis. Three
23 sentences, in my opinion, can correct nine-tenths of the
24 problems and still preserve what I think are great advan-
25 tages in terms of grass roots justice. Which, as I under-

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1 stand it, is one of the really crying needs--one of the
2 great complaints I'm always hearing is it costs too much
3 money and it's too much trouble to litigate--to process
4 something. And that's probably true.

5 DEAN COLE:

6 So you would agree with the principle that the fee
7 system as a means of compensating judges, in your opinion,
8 is not a good idea and that the judges should be attorneys?

9 MR. EDMONDSON:

10 Yes, sir, I certainly would agree with that person-
11 ally, Dean Cole, and I think that we have some non-attorney
12 judges in this State who are excellent and I would not
13 want to give the impression that there are not some who
14 are excellent. And I think that there are some tremend-
15 ously honest and ethical people who work on the fee sche-
16 dule who do not allow that to influence their decision.
17 And I think that has to be conceded. But, as a general
18 proposition, I would agree personally that people who have
19 judicial powers, up to and including incarceration probably
20 should be lawyers. And I would agree personally and gen-
21 erally speaking, that it would be best for the judge not
22 to have anything even vaguely resembling a personal stake
23 in whether or not a man pays a fine. So, as a general
24 proposition, I would agree with both those notions.

25 But, I think if those two problems were corrected,

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1 the city court system, generally speaking, would be a very
2 good little court for us to have. It would keep a lot of
3 minor stuff from clogging up bigger courts which have
4 their own problems and we need to correct those. And I
5 would suggest to you that filling them up with dumping-
6 trash-on-the-city-streets cases is not going to be a step
7 toward removing the judicial backlog and in streamlining
8 justice in our bigger, and quite frankly, more important
9 courts.

10 JUDGE BEASLEY:

11 You talked a lot about the desirability of maintain-
12 ing diversity so that you have experiment opportunity and
13 elasticity and flexibility which of course is a good
14 thing in the concept of Federalization. But would you
15 have any objection or what would the objection be because
16 it seems to me what you're really talking about is the
17 substance of what they're dealing with, that is, trying
18 out different kinds of ordinances and controls or whatnot.

19 What would be the objection, if any, to have--retain-
20 ing the municipal courts but by a State law or the Consti-
21 tution, maintaining a system of uniformity of their juris-
22 diction and uniformity of the selection of those who are
23 the judges there. That is, that municipal courts shall
24 have jurisdiction over such and such a thing--just city
25 ordinances or what not--and make it all uniform throughout

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1 the State. Do you see any problem there?

2 MR. EDMONDSON:

3 Well, we have to of course, at the outset, probably
4 define what the extent of that jurisdiction would be. But,
5 in principle, I have no difficulty with the State setting
6 the jurisdiction of these courts. We probably could argue
7 about what that jurisdiction should include. But if you
8 want to say, in the city court, you can't impose a fine
9 greater than five hundred ollars in any city court in the
10 State, that is not troublesome to me. I think that's
11 probably, as a practical matter, the situation right now.
12 Although it's probably determined by a city charter rather
13 than State law. I think there is a certain uniformity in
14 respect to jurisdictional amounts and imposition of pen-
15 alties already. And if you wanted to handle that by Uni-
16 form State Law, in principle, that would not be offensive
17 to me. This would still allow us to have in Snellville
18 a sign control ordinance which the people of Snellville
19 want which the people of Lilburn don't want. And still
20 would allow us to have our own peculiar laws with respect
21 to quality of life matters, city ordinances, which may be
22 critical in one city and not critical in another municipal-
23 ity.

24 JUDGE BEASLEY:

25 All right. Well, that's substantive law. But if we

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1 retain a system of independent grass roots courts that is
2 not made a division of Superior Court--a circuit court
3 type of thing, how about combining the jurisdiction of the
4 JP's with municipal courts.

5 MR. EDMONDSON:

6 To give the city courts greater powers to include
7 the JP powers?

8 JUDGE BEASLEY:

9 Well, not to give them greater powers but to consoli-
10 date into one court the smallest kind of jurisdiction.

11 MR. EDMONDSON:

12 Well, I hadn't considered that before I came here.
13 I suppose in principle I would support an extension of the
14 small claims nature of the municipal court and the municipi-
15 pal court being ablt to handle not less matter but more
16 matters. Again, for the idea that it's there; it's con-
17 venient; it's the corner court, like the corner drugstore
18 and I think there's an advantage to that for the people of
19 the State. so, in principle again, I think I would I
20 would advocate expanding the jurisdiction of municipal
21 courts to include other small matters.

22 MS. WILSON:

23 Is your Recorder's judge fulltime?

24 MR. EDMONDSON:

25 No, he is not. And this, I think, is an excellent

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1 question. Because we have a problem about remuneration
2 being an obstacle for full-time municipal judges, par-
3 ticularly in small towns. Let me talk about that, if I
4 might. I didn't mean to cut you off. Did you have any
5 more questions than that?

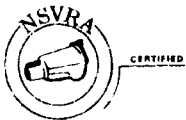
6 MS. WILSON:

7 Well, go ahead and say what you wanted to say.

8 MR. EDMONDSON:

9 Let me talk about that for a second. Again, the
10 basic notion of a full-time judiciary, I think, is very
11 important. Nothing is more frightening to most lawyers
12 than to have to appear before a judge one day and argue
13 against him the next. And I don't generally like that.
14 But I think in the municipal court setting we're talking
15 about matters that are small enough as a group when you
16 start weighing the advantages--you know, there are certain
17 disadvantages to every plan and certain advantages to
18 every plan--the municipal courts are courts of low enough
19 jurisdiction and handle matters that are sufficiently small
20 enough in their import that it does not particularly offend
21 me that some of our Recorder's Court judges would not be
22 full-time. It would be nice if they could be full-time.
23 But I don't believe that many of our small cities can
24 afford to do that. And, at the same time, for us to require
25 that the Recorder's Court judge be a lawyer--if you upgrade

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1 the standards, you have to upgrade the pay. And the cities
2 don't have the kind of money to do that, frequently. And
3 I would be, rather, for upgrading the standards but allow-
4 ing municipal court judges to be part-time and pay them,
5 as a result, a somewhat smaller salary.

6 Now, the higher up you get in the judiciary, the more
7 rigid I would become about requiring the judges to be full-
8 time. When you start talking about State Court judges,
9 Superior Court judges and so forth, to me, it's plain that
10 they should be full-time jurors.

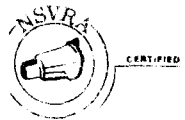
11 JUDGE BEASLEY:

12 Are you saying that on a local level, the matters
13 that would come before the municipal court judge are--not
14 insignificant, but of lesser significance and, consequent-
15 ly, the conflict would not occur to the extent that the
16 temptation would be there? In other words, the risks are
17 lower?

18 MR. EDMONDSON:

19 Yes. I think that the temptations and the risks are
20 much lower because of the nature of the matters handled.
21 That's my observation based upon experience. I just think
22 that they would be recognized as matters of lesser import.
23 I don't want to belittle their importance myself, but of
24 lesser import. And I think that the negative temptations,
25 if any, would be much less accordingly.

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1 JUDGE SMITH:

2 They have less impact on a man's freedom and his
3 security and his finances. They just have a limitation
4 there that you just can't affect a man as much as you do
5 in the other courts, financially and freedomwise.

6 MR. EDMONDSON:

7 Yes, I think so. And I'm not saying these aren't
8 important courts and I'm not saying that it's not terrible
9 to be found guilty when you're innocent because there's
10 a small amount. Sure it is. But, realism requires us to
11 note that these courts have a limited amount of power to
12 hurt you. I think we ought to face that and face the fact
13 that the advantages they offer of a grass roots court are
14 real; they outweigh any possible disadvantages and then
15 turn our thoughts to working with the courts that have
16 greater power. And the greater power they have, the more
17 we ought to work with them to make sure that those courts
18 are run properly.

19 REP. SNOW:

20 Any other questions?

21 JUDGE HENDON:

22 Larry, the question of the fee system, are you cogni-
23 zant of any courts where the fee system exists other than
24 the JP courts in the State? I'm not.

25 MR. EDMONDSON:



1 I'm not sure, Judge. Since the Recorder's Courts of
2 the various municipalities, as I understand it, are gen-
3 erally set by their city charters, I cannot speak intelli-
4 gently as to whether all of them are off the fee system or
5 not. I don't know the answer to that question. If you
6 think they are all off the fee system, you may well be
7 right. I just don't know the answer.

8 JUDGE HENDON:

9 That's my impression that the only courts that are
10 left that do any business on a fee system are the justices
11 of the peace. I may be wrong.

12 MR. EDMONDSON:

13 You may be absolutely correct too. I'm just not pre-
14 pared to speak to all the possible variations.

15 MS. WILSON:

16 Well, if that is true, don't you think it would be
17 a little easier on the taxpayers, rather than have eight
18 part-time judges, to have perhaps two that are full-time?

19 MR. EDMONDSON:

20 I don't know whether it would be, quite frankly, be-
21 cause it would depend on what these judges were making re-
22 latively. And while Cost--in the sense that you're des-
23 cribing it, cost is important, in all forms of government,
24 traditionally, in the judicial system and all of its forms
25 have taken up a very small amount of the overall budget of

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1 the government. And I don't personally regard the fact
2 that courts cost money as being a terrible concern. I
3 don't think that it would cost the average taxpayer
4 appreciably more over the course of a year to have a local
5 magistrate there in his hometown than having someone
6 riding circuit. I think it would probably reflect his
7 tax bill very little. The impact on the quality of his
8 life when he gets stopped running a "Stop" sign downtown
9 would affect him tremendously when he has to go down to
10 some other court in the middle of the county or has some
11 problem like that.

12 So, in terms of cost efficiency, number one, I'm not
13 sure that it would be cost efficient. And, number two,
14 even if we assume for the sake of argument, that the
15 circuit-riding magistrate would be more cost efficient,
16 I'm not sure that it would outweigh the advantages of
17 having a local judge who can come up to the courthouse on
18 five minutes notice if need be and, let's sit down here
19 and get it resolved right on the spot. There's just a
20 tremendous amount of convenience in those local courts and
21 I think it would be a great loss if it goes.

22 REP. SNOW:

23 Let me make one further statement relative to this
24 courts on the fee system. I think JP's, as such, as the
25 only general courts in this State that are still on fee.

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1 But we do still have some of our Probate Courts that are
2 in some counties on the fee system. The general law pro-
3 viding for minimum salaries for Probate Judges affects
4 only those courts where they're not on the fee. I mean,
5 there's an election provision there. And there are still
6 some that are one fees where all the county officials in
7 those counties or most of the county officials are still
8 on the fee system.

9 MR. GREENE:

10 Yesterday at the public hearing, there were some
11 rather strong points made in opposition to the proposal
12 and you have some familiarity with the draft?

13 MR. EDMONDSON:

14 I have some. I concentrated only on the municipal
15 court area because that's what my client retained me to
16 do and I have increasingly vague apprehension of what's
17 going on or comprehension of what's going on once we leave
18 that area.

19 MR. GREENE:

20 Well, my question relates to that area. The points
21 made yesterday were generally strongly in opposition to the
22 proposal in here that these magistrates or municipal
23 judges or whatever be appointed as opposed to being elected.
24 Do you have a view in that regard?

25 MR. EDMONDSON:

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Well, our Recorder's Court judge is appointed now by the City Council. And so he's not popularly elected official in the widest sense of the word.

JUDGE SMITH:

But he's locally elected in the strictest sense of the word.

MR. EDMONDSON:

Yes. In the sense that he's only one step removed and so forth. I would basically say that part and parcel of the local corner court is having the judge who's a local person and chosen with some sort of local participation. I think that's an important part of having this--the corner courthouse as I envision it as a useful part of a city.

JUDGE BEASLEY:

Does your court have jurisdiction over small claims as well as ordinance violations?

MR. EDMONDSON:

I don't believe it has any civil jurisdiction at all.

JUDGE BEASLEY:

But do you see that as feasible?

MR. EDMONDSON:

Well, I think it would be feasible if you wanted to make it feasible, yes. I don't see any reason why it could not be done that way and I'd just say I--

1 JUDGE BEASLEY:

2 If it were required to be a lawyer?

3 MR. EDMONDSON: Yes, right. Particularly if you had lawyers
4 presiding--small claims, civil matters. I think again the
5 idea of expanding this local court is a good thing for the
6 country. Again, we would not want to invest them with so
7 much power that he could start being hurtful as Judge
8 Smith just talked about, but if we had a very low level
9 monetary jurisdiction for civil matters, a lot of people
10 who are getting pushed around because people who are
11 doing the pushing know that it's too expensive to go to
12 court and fight about it might be able to say, well, I'll
13 see you next Thursday night down at Judge Jones' court and
14 we'll talk about this. And I think that would be a step
15 in the right direction for this country.

16 JUDGE BEASLEY:

17 One of the experiments now being tried in the City of
18 Atlanta and a couple of other places in the country is
19 the concept of a Neighborhood Justice Center where people
20 come with their small disputes and they are decided by
21 arbitration pretty much. And the parties enter into a
22 contract; it keeps it out of the court system entirely.
23 Couldn't these things be handled that way or do you think
24 that it would be more appropriate--I see the two really
25 quite in conflict with one another. The municipal court

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1 should be a court with a judge and possibly a lawyer as a
2 judge. Or a decisionmaking or resolution of problem dis-
3 putes by a Neighborhood Justice Center where the arbitra-
4 tor is a person just from the community who goes through
5 a six-week training program--retired folks and shopkeepers
6 and whatnot who just have no legal training whatsoever.
7 But that's reall street corner justice, you might say or
8 a local--it's not a court and yet it is a dispute resolver
9 and, in a way, perhaps better than a court system because
10 the decision as to the outcome is made by the parties
11 themselves rather than by a judge.

12 MR. EDMONDSON:

13 Well, let me talk about that for a second. I don't
14 claim to be expert on the system you just described but I
15 have heard about them. And they probably have some very
16 good effects. First of all, I'm not sure that they are
17 as directly in conflict--that is, your neighborhood arbi-
18 tration center and your local municipal court. I'm not
19 sure they are in as direct conflict in reality as it might
20 appear.

21 It seems to me that probably what would happen is the
22 municipal courts would have a fifty-dollar claim. Judge
23 Jones, the hypothetical judge, would come in and both
24 people tell their story to him and they talk about it back
25 and forth. It wouldn't be nearly as formal, probably, as

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1 you would get in the Superior Court and there probably
2 would be a little bit of arbitrating going on from the
3 bench. Can't you settle this? Can't you work this out?
4 All of us who are lawyers have seen that happen in the
5 Superior Court level at pretrial conference--the judge
6 acting as arbiter. So I'm not sure that even if we had
7 a municipal court as a small claims court that you'd be
8 doing away with the small claims aspect. I think that as
9 a matter of fact most courts to act as an arbiter at one
10 point.

11 Number two, what happens if the parties cannot agree?
12 You've still got the fifty-dollar dispute. You've ruined
13 my suit; I know it's only a fifty-dollar matter but it's
14 an important thing to me. We can't arbitrate it because
15 we can't agree about it. Am I to have no remedy at all?
16 Or can we not go down and have a judge decide who I think,
17 as a practical matter, would try to arbitrate it. And then
18 if he couldn't arbitrate it, would make the decision. He
19 would conclude the matter. So I don't see there being as
20 sharp as contrast, Judge Beasley, as perhaps you see it
21 being. I think all judges are arbiters at some point.

22 JUDGE BEASLEY:

23 Well, aren't you really saying that the municipal
24 court system works better because it has a finality to it
25 that the Neighborhood Justice Center does not?



1 MR. EDMONDSON:

2 Yes, I think it has all the advantages of the
3 Neighborhood Justice concept plus if they just couldn't
4 agree, somebody would decide.

5 REP. SNOW:

6 Are there additional questions? [No response.] I
7 thank you very much, sir.

8 All right. Ken Vanderslice, who is City Manager of
9 East Point, Georgia.

10 MR. VANDERSLICE:

11 Representative Snow, I appreciate the opportunity to
12 be here this morning. I am representing the City of East
13 Point, its mayor and council. I have a letter that I
14 would like to put on file with the committee which is
15 written by our city attorney and generally summarizes many
16 of the points you've heard this morning and especially
17 gives consideration to the interests and concerns of the
18 mayor and the city council of East Point.

19 Perhaps one of the words that Judge Hendon mentioned,
20 that the lay people are often confused by the court system,
21 is very applicable, I think, in local jurisdiction. And
22 perhaps I fall closer to that category of confusion being
23 --certainly anyone who's associated with the law. The
24 municipal court is very important to East Point from
25 several standpoints. One is cost, which has been men-

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tioned here before and I might give you some examples of this.

The City of East Point operates a budget of approximately twenty million dollars. Of this, it costs us approximately twenty thousand dollars for our Recorder's Court. We operate a court twice a week. This is done by an individual who has served in this position for many years. He also is very close to the community. He was born and raised there and can relate to the traditions and attitudes of the people who reside in East Point. We think this is an important factor in carrying out justice.

From a practical standpoint our judge does meet with many people in a very informal setting to work with them in resolving their problems. This is important to the people and they feel they do have a closeness and some control over their destiny through the appointment of the judge by the mayor and city council.

I might give you an example of some of the things that our judge deals with--the complaints that neighbors have with other neighbors if they are to maintain their premises, junk automobiles, trash in backyards and on streets. These kinds of things can be dealt with in an informal way and in a sense of fairplay to individuals that are involved on both sides of an issue. It's very easy for a judge to meet with people involved in these



1 kinds of problems; give them time to work the problems out
2 and not to actually fine them or place them in jail. And
3 this is important. People feel they have some control and
4 input into the justice system with a situation of this
5 nature.

6 Some mention was made that the Recorder's Court does
7 not have the power to hurt. Certainly, any time a person
8 is found guilty, it hurts; we recognize that. But I think
9 more importantly, at the municipal level or the Recorder's
10 Court level, a judge also has great opportunity to help
11 and we look upon our system as being just that. It's in a
12 position where it can speak to the community's attitudes
13 and traditions; sit down and work things out with people
14 in a less formal atmosphere and administer considerable
15 help and assistance to individuals.

16 The City of East Point requests that the Recorder's
17 Court be retained in its present form. There are many
18 things in your review and the principles set forth in your
19 review that we agree with. And we're not saying that we're
20 against all those things that you are considering. But we
21 do ask that you maintain the Recorder's Court as it is pre-
22 sently constituted. Thank you.

23 REP. SNOW:

24 Any questions of Mr. Vanderslice? [No response.]

25 Thank you very much, sir.

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1 JUDGE BEASLEY:

2 Let me just ask one. What is the jurisdiction of
3 your Recorder's Court?

4 MR. VANDERSLICE:

5 The Recorder's Court does not get into civil matters.
6 It deals basically with those local laws that are estab-
7 lished by the elected council and mayor.

8 REP. SNOW:

9 Thank you, sir.

10 All right. Mr. John Blandford, Chamblee Recorder's
11 Court.

12 MR. BLANDFORD:

13 I did want to come up here and address you all. I
14 practice law in Chamblee and I am the Recorder of the
15 Recorder's Court of the City of Chamblee and have held
16 that position for the last seven years. Many of the
17 things that I wanted to discuss with you have already been
18 brought forth by previous participants here so I won't delve
19 into that again. But one of the things I would like to
20 point out regarding the Recorder's Court--and I'm address-
21 ing myself simply to the idea of benefits and pertaining
22 to city courts or Recorder's Courts--as they now exist.

23 One of them is the closeness to the people. And most
24 Recorder's Court judges are appointed by council. There's
25 one city, I think, in Fulton County that has an elected



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1 Recorder. But the ones that I know of are appointed by
2 city councils. One of the practical things involved in
3 this--and I've experienced it over the last several years
4 --our council will come down--they will come to court
5 sessions. Scarcely a month will go by that I don't have
6 one or two councilmen that will come down and sit in on the
7 court session. This is the people that have been elected
8 and are responsive to the local people.

9 They will make comments on things that they know
10 about. If anything adverse has been heard by these people,
11 they'll discuss it with you; it's a real close system.
12 There is no fee system. This has been brought up. I'm
13 not aware of any fee system in any Recorder's Court. Most
14 of us are part-time judges holding court.

15 Let me talk about DeKalb County. We have eight
16 municipalities in DeKalb County. Each one of those muni-
17 cipalities has a Recorder's Court. Each Recorder's Court
18 is presided over by a member of the Bar. This is a--the
19 main livelihood being from practicing law and on an even-
20 ing--and all these courts, by the way, with the exception
21 of Decatur--I believe I'm correct--have their court
22 sessions at night. It's a tremendous convenience and I
23 hear the people that come before me indicate that they
24 would have had to post a bond and let it be forfeited
25 rather than appear in court because it would not have been

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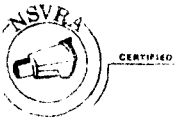


1 a night court. This is convenient to them so if they have
2 been cited with some offense that may involve a twenty-five
3 dollar bond, they would come up and post the bond and not
4 appear in court when they really have something to say.
5 So the night court system I think is very convenient for
6 the people that use it.

7 Uniformity--I have seen as a matter of fact in DeKalb
8 County--the judges of the municipal courts in DeKalb
9 County, we meet once a month. We discuss things such as
10 bonds, procedures, ideas that each of us may have that
11 might be an improvement over some other system that one
12 of us is operating under. We discuss things involving
13 recent cases. The last meeting we had we discussed the
14 case that evolved out of Gainesville that dealt with mari-
15 juana, a case being tried in a municipal court. These
16 are things we discuss.

17 I think that the Recorder's Courts, the system it
18 operates under is a very efficient system that exists now.
19 Chamblee--the City of Chamblee does not need a full-time
20 judge. There's no need to put somebody on a full-time
21 payroll to be the judge in Chamblee. The same exists is
22 Doraville, Clarkston. Doraville holds court three nights
23 a month. In Chamblee we hold court once a week--one
24 evening a week. Stone Mountain, Pine Lake, they hold
25 court one night a month; I believe I'm correct on that.

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1 Stone Mountain may be twice a month. But none of these
2 cities need a full-time judge. The demand is not there.
3 and for the city to be required to keep a judge on a
4 full-time basis, I think would be an expense that the city
5 does not need.

6 I heard mention--some discussion about possible con-
7 flicts with lawyers dealing with persons who are magis-
8 trates. And we do that. I run into lawyers--Lary Edmond-
9 son who was speaking to your earlier, he has represented
10 people in the city court of Chamblee and I don't think
11 he's ever felt intimidated by the fact that next week we
12 may be litigating--trying a case over in Gwinnett County.

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JUDGE SMITH:

I've appeared before your court.

MR. BLANDFORD:

Yes, Your Honor, I believe you have.

JUDGE SMITH:

You do a good job.

MR. BLANDFORD:

Thank you, sir. Those are my comments, Mr. Chairman,
and distinguished members of the committee. And I would
encourage the committee to consider retaining the Recor-
der's Courts. As to jurisdiction--this question's been
asked. The jurisdiction of our court--and I think this is
pretty standard. We administer ordinance violations only.

1 We have no of course civil jurisdiction. Ordinance viola-
2 tions also encompass traffic matters and most cities have
3 adopted the State Traffic Law into their ordinance system.
4 So* this is the jurisdiction that we have.

5 Thank you for allowing me to be here.

6 REP. SNOW:

7 Thank you, John. Are there any questions?

8 MS. WILSON:

9 Do you have any objections to it being optional as to
10 whether a city goes into a statewide system or retains its
11 own municipal court?

12 MR. BLANDFORD:

Optional with the city?

14 MS. WILSON:

15 Yes.

16 MR. BLANDFORD:

17 I didn't realize, you know, that the option was--
18 that that would be a--I don't know how that would work
19 if there were a state system that allowed for a city to
20 abolish its court and allowed another court to have that
21 jurisdiction. If that system existed, I think it would be
22 fine if a city wanted to elect that. I don't think the
23 present system would facilitate that however.

24 MS. WILSON:

25 No, it would not but some states have that.

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1 REP. SNOW:

2 Other questions?

3 JUDGE CARLISLE:

4 I'm Ralph Carlisle of the State Court of DeKalb
5 County. I just wonder if you know the average salary of
6 these judges? I know what it is in Avondale Estates; it's
7 a hundred dollars a month.

8 MR. BLANDFORD:

9 Yes, my salary in the City of Chamblee--and I hold
10 court there every Tuesday night--and my salary is four
11 hundred and twenty-five dollars a month. The salary for
12 the judge is Doraville--he's better paid than I am--he
13 holds court three nights a month and his salary is around
14 five hundred dollars a month. I think the salary over at
15 Stone Mountain was somewhere around two hundred and fifty
16 dollars a month. I don't know of any salaries of the
17 judges in DeKalb County. Well, I suppose Decatur would
18 have a much larger salary but I don't know what that would
19 be. Because now they do hold court in Decatur--I think
20 they have both an evening and a morning court and I think
21 they do that a couple of times a week; it's a larger city.
22 So I don't know what his salary base is.

23 But generally a court that operates only one night a
24 week, his salary range is going to be somewhere around four
25 or four hundred and fifty dollars a month. And those court

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1 sessions last from--I normally start my court of course at
2 seven o'clock. I usually get over there about six o'clock
3 for conferences--pretial conferences. And then of course
4 it's a policy of mine after court's over, I just--if any-
5 body has a case coming on the next week, I'll sit there and
6 chat with them. We don't have a solicitor; we don't have
7 a prosecutor in our court. So the case is just called by
8 the numbers and they appear in court.

9 MR. HODGKINS:

10 What is the majority of cases you hear? Are they
11 traffic-related or related to zoning?

12 MR. BLANDFORD:

13 We try cases ranging anywhere from animal control
14 matters to sign ordinances. I would say, however, that
15 probably--I would say that eighty-five percent of our
16 cases are traffic-related and that would range anywhere
17 from expired license plate to a DUI case.

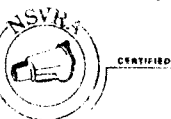
18 MR. HODGKINS:

19 How about revenue? Do you know how much revenue
20 comes out Recorder's Court and how significant that is to
21 the city?

22 MR. BLANDFORD:

23 I think with bond forfeitures and everything, over
24 the course of a year--and George Chenggis may be more up-
25 to-date on this; he's the city attorney sitting here--but

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1 I think the court--isn't it, George, a hundred thousand
2 dollars, roughly?

3 MR. CHENGGIS:

4 I don't have those figures, Jack.

5 MR. BLANDFORD:

6 The city budget is--I think it's significantly
7 higher than what we produce by way of any revenue or bond
8 foreiture or whatnot.

9 MR. CHENGGIS:

10 I can state that the cost of operating our courts
11 far exceeds any fines if that's what you're alluding to.

12 JUDGE BEASLEY:

13 What about the--how would you like to have small
14 claims jurisdiction up to three hundred dollars?

15 MR. BLANDFORD:

16 Well, I've heard that discussed up here and I was
17 listening with interest because I was thinking, well,
18 what other night of the week am I going to hold civil
19 court. Judge Beasley, I'm familiar of course with the JP
20 system and the limited civil jurisdiction that they have.
21 I know that the JP court that meets up in that area--as a
22 matter of fact, they use the city court's facilities there
23 in Chamblee. And from what I see, one morning a month
24 takes care of that civil business. But I don't know
25 whether that's representative of any other area. As I say,

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1 I do know they hold court one morning a month and it
2 seems to last for a couple of hours.

3 JUDGE BEASLEY:

4 You don't see the desirability of having one--one
5 level court, a grass roots court like yours, handling
6 those ordinances, small claims and other JP type matters?

7 MR. BLANDFORD:

8 I think it could be done. Of course you know in our
9 case, our jurisdiction would end at the Chamblee City
10 Limits and if you're in a position where you're still in
11 the location of the defendant or what have you, that's the
12 way the jurisdiction would be defined and it would be very
13 limited. And in a place like Pine Lake that's just got a
14 small geographic area, I don't know whether that would be
15 feasible when you're--for instance, if I were going to sue
16 a person, I would want to find out if they're residents
17 of the City of Chamblee or in the county and choose my
18 jurisdiction. I don't know if that would be confusing be-
19 cause we're probably talking about courts that a lay per-
20 son would use, that would be cheap and efficient as far as
21 his cost is outlaid and not having to require lawyers,
22 say, in small claims matters.

23 I'd just like to give more thought to that. I'm sorry
24 I don't have an opinion on that.

25 JUDGE BEASLEY:



1 Do give some thought to it.

2 MR. BLANDFORD:

3 Okay. Thank you.

4 REP. SNOW:

5 Any additional questions? [No response.] Thank you
6 very much.

7 All right. Chris Perrin with the Council of Juvenile
8 Court judges.

9 MR. PERRIN:

10 Mr. Snow and committee, I'd like to just make a few
11 limited remarks on behalf of the judges that compose the
12 Council of Juvenile Court Judges. At their October meet-
13 ing in Athens, they discussed very fully the three
14 drafts that had been before the committee. And the remarks
15 that I'd like to make are geared basically towards how
16 these proposals would affect the handling of juvenile
17 cases. This is the primary concern that they have and
18 they did take formal votes on a number of issues that I'd
19 like to put in the record for you.

20 The first formal vote that they took was--there was
21 one abstaining vote; other than that it was unanimous--
22 support in principle of the constitutional revision of
23 the Judicial Article based on provisions similar to that
24 proposed or presented to your committee by Judge Floyd
25 Probst.

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1 Secondly, they voted unanimously with one abstaining
2 vote to support the constitutional establishment of the
3 Judicial Council, membership of which should be selected
4 by members of the judiciary through an elective process.

5 Thirdly, they support the principle that there shall
6 be increased state funding of our state court system. And
7 that the method of selection used for Juvenile Court
8 Judges as well as other court judges, which is not pre-
9 sently the case, should be an elective process. And they
10 did not go on record as to whether that should be a parti-
11 san or non-partisan election.

12 And, fifthly, they asked that consideration be given
13 to not creating specialized courts but specialized judge-
14 ships and particularly as relates to juvenile cases. And
15 the reason for this is, on balance, the rotation of gener-
16 al judges through different divisions hearing all types of
17 cases--it's been their experience--and as you know most of
18 them are--most of the membership of the Council of Juven-
19 ile court judges are part-time judges. They feel that to
20 adequately give proper attention to the cases of children,
21 it requires full-time judgeships that can keep up with the
22 changing laws in the juvenile area. Laws in the juvenile
23 area are changing much more rapidly than they have before.

24 And, additionally, the problem that's somewhat unique
25 --the handling of juvenile cases of the--the immense amount

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1 of knowledge that's necessary about what services are
2 available and what services are necessary to treat the
3 problems of children. Because not only do they handle
4 deprived and neglected cases and runaways, but there are
5 many different types of services throughout the state that
6 a judge needs to be immediately aware of. And they feel,
7 and their concern now, because of the part-time judgeships
8 that there's not adequate time to learn where all the
9 resources are and to keep abreast of the changing law.
10 And I think their concern is, if there's not a specialized
11 judgeship--not that that judge could not be reassigned if
12 there was not an adequate amount of work to do to hear
13 only general cases in a circuit--but if there was not a
14 specialized judgeship that devoted most of the time of that
15 person to learning where the resources are and keeping
16 abreast of the law, that there might be a decreasing qual-
17 ity of the way children's cases are handled.

18 **REP. SNOW:**

19 Questions of Chris? [No response.] Thank you,
20 Chris.

21 All right. James Booker, Gate City Bar Association.

22 **MR. BOOKER:**

23 Mr. Chairman, committee persons, thank you for the
24 opportunity of being here this morning and allowing per-
25 sons from the community at large to speak in reference to

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1 the committee's work. Let me point out initially that I
2 did not come prepared to speak this morning; I came pre-
3 pared to listen. The president of our organization was
4 going to be here. Seeing that he is absent, however, I
5 think there are a couple of points that need to be address-
6 ed to the committee. I am probably wearing a couple of
7 hats this morning. I'm a member of the Gate City Bar
8 Association as well as a member of the standing Judicial
9 Committee of that association. I'm also on the Board of
10 Directors of the Neighborhood Justice Centers of Atlanta,
11 Inc. And I understand that we have had several comments
12 this morning concerning that organization and what that
13 organization can do in light of relieving the court system
14 of some of its cases. I'll be happy to entertain any
15 questions with respect to the Neighborhood Justice Center
16 after I address my preliminary point.

17 The preliminary point, then, is that I am concerned
18 greatly that this committee does not have a representative
19 of the Gate City Bar Association on it as a member of the
20 Gate City Bar Association. I must explain that. Judge
21 Beasley, who is a good professional friend of mine, is on
22 this committee. She is also a member of the Gate City Bar
23 Association. And, with all due respect to Judge Beasley,
24 I think that probably her interests--and I think rightly
25 so--should be tilted more respect to what the judges need

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1 in this state--the concerns of those judges. As a judge,
2 I believe she has their interests at heart. That is not
3 to say her interest would be inconsistent with the inter-
4 ests of the Gate City Bar Association members.

5 Another reason for my being so concerned is that the
6 Gate City Bar Association is the largest collection of
7 black legal minds in this state. And it appalls me that
8 we do not have a member on this committee. With respect
9 to the number that we represent, we're over two hundred.
10 And, hopefully, something can be done to rectify this
11 situation. In May or April, our subcommittee--the standing
12 Judicial Committee on judges' nominations wrote a letter
13 to this committee, I believe. And we receive what I would
14 term a less than lukewarm response from the committee
15 stating that, well, we're not looking for any additional
16 members to the committee today, basically because our com-
17 mittee is too large. I think the committee's number's
18 around twenty-three or somewhere in that neighborhood.
19 And I agree with the chairperson, Mr. Snow, that that is a
20 large committee and I'm sure that it gets unwieldy at
21 times, particularly since you have persons from around the
22 state who are serving on the committee.

23 I would dare to say, however, that when we are talking
24 about the type of persons who are on the committee as well
25 as the area and kinds of interests they represent--for

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1 example, carpet manufacturers in North Georgia--I dare
2 to say that the black legal position and bar association
3 here in the city of Atlanta would probably have a greater
4 concern and a inherent concern as to the passage of these
5 laws and the formation of those rules and regulations that
6 are going to govern the judicial system, as opposed, let's
7 say than a manufacturer or some of the business persons.

8 I realize that when I say that, what I'm probably
9 saying that we are suggesting a member of the Gate City
10 Bar Association and the exclusion of another person. Hope-
11 fully, that won't occur. I'm in favor of having as great
12 a representation of persons on the committee as possible
and still have it work on a practical basis.

14 REP. SNOW:

15 You are aware that we have no local bar association
16 represented on the committee as such?

17 MR. BOOKER:

18 I am aware of that, Representative, but I believe also
19 that that should not go to the exclusion of having a bar
20 association. I believe that there may be even a reason for
21 having a bar association representative on the committee.

22 REP. SNOW:

23 Well, we're trying to get as broad as possible includ-
24 ing the Younger Lawyer's Association of the State Bar as
25 well as a representative of the State Bar to be appointed

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1 by the president. So we actually didn't want an overabun-
2 dance of attorneys on the commission. We have several who
3 are not attorneys because we wanted to get as much of the
4 layperson's ideas as to how it affects them as we could
5 also. I'm not arguing with you about that but it's a
6 matter that I think the Judicial Article affects people
7 as well as lawyers and we really are trying to get their
8 input into it also.

9 MR. BOOKER:

10 I could not agree with you more. I think we should
11 have probably a majority of the persons to be non-legally
12 trained but I must reiterate that there is a large segment
13 of the Georgia population which is not represented on this
14 committee and I would certainly hope that in the future
15 we could try to do something to rectify that situation.

16 My second point, then, is concerning the Neighborhood
17 Justice Centers of Atlanta, Inc. And let me say that I'm
18 speaking probably in reference to what that type of or-
19 ganization can do versus that particular organization.
20 It's located in Atlanta; it's currently doing business in
21 Atlanta and we are trying to get into the DeKalb as well
22 as we are in the Fulton County court system. We're trying
23 to get into the DeKalb County court systems. This is an
24 example as to what that organization has been able to do
25 since January 15th. We opened the doors January 1. We

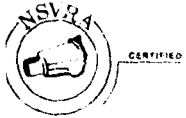
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1 had our first hearing on January 15 with a full service-
2 person load; we had the Executive Director, et cetera, on
3 board by the 15th. Since the 15th we have resolved eight
4 hundred and forty-nine cases as of our last monthly Board
5 of Directors meeting. That, ladies and gentlemen, has been
6 eight hundred and forty-nine cases which were not in the
7 court system. Many of those cases had gotten to the court
8 system and with the help of municipal court judges here in
9 the City of Atlanta as well as the State Court Judges,
10 those cases were referred out of court system into the
11 Neighborhood Justice Centers and, thus, the court did not
12 have to spend time as well as people's money to resolve
13 those cases.

14 Most of those cases are the kinds of cases that courts
15 cannot handle. For example, when a person takes an auto-
16 mobile to have it repaired at the local mechanic's shop
17 and pays a hundred and fifty dollars and the car is not
18 fixed, I would daresay that a court does not have jurisdic-
19 tion to then say, go and fix the gentleman's car. Because
20 a court is not going to have the authority to stand there
21 and make sure that it's fixed. Nor would it have the
22 ability to say when it's fixed and when it's not fixed pro-
23 perly. These are the kinds of things that a Neighborhood
24 Justice Center can do. They are on the spot. They can go
25 out and make sure that the persons are happy. The Justice

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1 Center is looking for funding after June of this coming
2 year. It may very well be that the State should take a
3 look at trying to fund a system such as this, which is
4 actually, and not in speculation, taking a burden off the
5 support systems. And I think someone spoke earlier and
6 said that when a court has small jurisdiction, a person is
7 not hurt badly, if hurt at all. I disagree with that.

8 I think when a small sum is involved, persons are
9 even more concerned about how they're hurt and the out-
10 come of the case. They're not looking for legal ramifi-
11 cations or legal answer; they're looking for justice. All
12 too often in a court, any kind of a court, Recorder's
13 Court, municipal court, the rules of evidence are at play.
14 And it doesnot make any difference to a person who has
15 been harmed on a hundred and fifty dollar matter or a five
16 hundred dollar matter that the documents that were signed
17 or written or spoken about is now not in the courthouse.
18 And the attorney raises the objection of the best evidence
19 rule and they can't get it in. Or everybody there knows
20 that somebody's brother-in-law couldn't--or sister or
21 whatever--the person says it's hearsay. They are concerned
22 with Justice, not just a legal answer. We all know that
23 what is legally right is not necessarily actually right.

24 For that reason, I would ask that this board--this
25 committee attempt to solicit some information from the

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1 Neighborhood Justice Center and see whether or not we can
2 see whether or not we can place the types of things that
3 that Center is doing under the jurisdiction or under the
4 auspices or panoply of the judicial system in this State.

5 JUDGE BEASLEY:

6 Jim, before you leave the subject of the "smallness"
7 that has been talked about, that was talked about only in
8 terms of whether or not there was a serious conflict if
9 you have part-time municipal judges and the concept of
10 having all judges be full-time so that they are removed
11 from the possibility of conflicts when sometimes they're
12 acting as attorneys for someone and sometimes they're
13 acting as a judge. That's the only context in which we
14 were talking when we said the significance of the matters
15 which they deal with--not at all that there should be less
16 justice or a short shrift or that the hearing would be
17 shortened.

18 REP. SNOW:

19 Yes. Because I think it doesn't make any difference
20 what the amount is. The amount is very unimportant to
21 these folks which may just see that particular court and
22 that may be the only court that they'll have any connection
23 with.

24 JUDGE BEASLEY:

25 No one on the committee thinks that the quality of

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1 justice should be less for a smaller matter--a matter
2 involving less money or less liberty. But the quality
3 should be the same. What we're talking about is whether
4 the quality is affected if we have a part-time judge.

5 MR. BOOKER:

6 Okay. I apologize to the committee if I misunder-
7 stood. I was under the impression that the gentleman who
8 spoke right before Mr. Blandford, I believe, was under the
9 impression that since the Recorder's Court only had a
10 limited amount of jurisdiction that even if the judge was
11 sometimes a non-legally trained person, were to make an
12 error, it would not have great ramifications. If I mis-
understood--

14 REP. SNOW:

15 I believe that had reference to the persons' attitude
16 toward each other as much as it would anything else. I
17 think that's what that was about.

18 MR. BOOKER:

19 Thank you. In summary, then, I would ask that the
20 committee reconsider its Constitution and add persons to
21 the committee which would represent--or a person who would
22 represent the black legal organization--the largest black
23 legal organization in the State, which is the Gate City
24 Bar Association, as well as address itself to any way--and
25 I would be happy to serve as Liaison between the Neighbor-

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1 hood Justice Centers should the committee decide to do
2 this--but address itself to any way in which a body
3 oriented such as a Neighborhood Justice Center can be of
4 help to the judicial system here in the State of Georgia.
5 Thank you.

6 REP. SNOW:

7 Any questions? [No response.]

8 Mr. Cooper--William H. Cooper, Recorder of the City
9 of Hapeville.

10 MR. COOPER:

11 Thank you, Mr. Chairman. I'm Bill Cooper, the
12 Recorder of the City of Hapeville. And I came not to make
13 a speech; I had intended to just listen. But several
14 things have arisen which has forced my appearance before
15 the committee.

16 First of all, referring back to the proposed amend-
17 ment itself and the appointment of or election of magis-
18 trates. It's mighty peculiar that the chairman would even
19 question why amendment number one and number two were
20 defeated in this last election. And I think I can answer
21 him very truthfully and say that it was somewhat like
22 Judge Hendon said. That the people perceived it as takin
23 away local government. And I have examined this proposal
24 that you have with respect to the appointment of magis-
25 trates to the City of Hapeville.

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1 Now, the City of Hapeville is a town of about nine
2 thousand people on the Central of Georgia Railroad right
3 outside the City of Atlanta right next to East Point, as
4 the Judge knows. The idea of the City of Hapeville having
5 to go to the Judge of the Superior or the Circuit Court
6 and say, we would like to have a magistrate come out at
7 such and such a time and sit in our court, now, that
8 magistrate would simply be a matter of a man being--
9 traveling around because the City of Hapeville does not
10 need a Recorder or a magistrate or you can call him what-
11 ever you want--Recording Judge, Magistrate because the
12 peculiar thing about it, I, as a Recorder, am a judge,
13 a recorder and a magistrate.

14 The other thing that brought me up here was the fact
15 that--a statement of Mr. Edmondson tends to just play down
16 the value of the Recorder's Court. There's no way in the
17 world that a man's liberty is ever unimportant. There's
18 no way in the world that a man's ability to move and to be
19 free is unimportant. And a mistake is just as important
20 to a man being put in jail as it is if he loses a lot of
21 money.

22 JUDGE SMITH:

23 What you're saying is, every man's case is the most
24 important case in the world to him.

25 MR. COOPER:

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1 That is correct, Judge. And not only that, it is the
2 most important--every case is the most important in the
3 State at that particular time because that's his case and
4 that's his justice.

5 The Recorder's Court in the City of Hapeville and the
6 Recorder's Court in practically every city that we have
7 not only tries traffic cases, municipal ordinances and
8 the State cases now which have been adopted in the city
9 to be tried in the State case, but he sits as a magis-
10 trate for the purpose of determining whether a case which
11 comes before him and is a misdemeanor or a felony and over
12 which he has not jurisdiction shall be bound over. And
13 that is really as important part of a Recorder's job as
14 determining zoning matters, traffic matters, dog matters--
15 whatever other things that come before him. And so the
16 appearance before a magistrate or a Recorder--call him
17 what he is--is something that needs to be present at all
18 times. We need to have someone that can do that and not
19 have someone who will be appointed by a Superior Court
20 Judge or a Circuit Court Judge to meet at a particular time
21 and have the city fathers have to go to the judge and say,
22 we want a magistrate to meet on Monday--every Monday in
23 our court. And the judge says, now, y'all show me why you
24 need this. And that's what this proposal says. You show
25 me why you need a magistrate. And then they say, well,

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1 judge, here's why we need it. And then he says, well, I
2 don't think you need it. Then the city has got to appeal.
3 There's a provision in your proposal for the appeal.

4 But that leaves the city people--these home people--
5 having to go ultimately to some State--to a superbeing to
6 determine whether they can get someone to appear in their
7 court to interpret, to try cases that are peculiar to the
8 City of Hapeville or to the City of Chamblée or to the
9 City of Atlanta or to whatever city.

10 Now, I'd also like to address the--if there be any
11 abuse in the traffic courts. And several questions have
12 been raised that if there has been some abuse in the muni-
13 cipal courts, then let those abuses be taken care of as by
14 law provided. And they're already being done. Whenever
15 it is shown that a municipal court is being operated purely
16 for revenue, the State--the Governor already has the
17 authority in which to--in other words, to act and to cor-
18 rect those things. Right below us is a little city called
19 Mountain View. And on several occasions or at least one
20 occasion, the Governor has stepped in and taken the juris-
21 diction away from the municipal court to try those cases.

22 So there is already a way in which--I mean a way to
23 cure any abuses there. I've been practicing since 1951 in
24 the City of Hapeville. They pay me three hundred dollars
25 a month. I am retired. If we are going to go to this

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1 other thing, you have a lot of cases where you many who
 2 feel that the city has been good to them. That they have
 3 --that they owe something to the city and, more or less,
 4 it's the fact that the Colonel Blandford--Judge Blandford
 5 a while ago said that he made four hundred and twenty-five
 6 dollars. Well, there's no way in the world that he can
 7 sit in the court for as long as he does and not earn more
 8 than four hundred and twenty-five. The city pays three
 9 hundred; I hold court three days a month--the first three
 10 Mondays. There's no way in the world that that's an ade-
 11 quate salary if you want to put it on the money basis.

12 But it serves the purpose of giving a lawyer an
 13 opportunity, if he wants to, to serve his city. I
 14 couldn't even tell you what our budget is because there
 15 is absolutely no question that--nevern any of my city
 16 fathers--the budget is never mentioned in our court or to
 17 me or to any circumstances. Whether I am fining people
 18 enough or whether I'm fining them too little or whether
 19 I'm whatever, there's no control over this judge. And I
 20 think that that's just about the way it is.

21 And, Judge Beasley, please, do not put a municipal
 22 court and give it civil jurisdiction. That is not the pur-
 23 pose of the municipal court. That's not the purpose of the
 24 Recorder's Court. It has a limited jurisdiction; it should
 25 keep that limited jurisdiction and should not be made

KNOX COUNTY CLERK'S OFFICE REPORTING



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1 another small claims court.

2 That's all.

3 REP. SNOW:

4 Any questions? [No response.] Thank you very much,
5 Mr. Cooper.

6 That concludes the list of those of you who said that
7 you would like to be heard. Are there comments now from
8 any one else in the hearing room? Yes, sir.

9 MAYOR EASTHAM:

10 I am Dana Eastham, Mayor of the City of Marietta.
11 That's just a little bit north of here. I thought earlier
12 today--and maybe this has happened--a group was coming, a
13 small group from the Cobb Municipal Association. Have they
14 come yet with letters from all of the cities of Cobb
15 County?

16 MR. REEVES:

17 Yes, sir, we're here. I was just waiting for an
18 opportunity to submit it to the committee.

19 MAYOR EASTHAM:

20 Well, when you started saying it was concluding, I
21 was kind of concerned. One of my councilmen was sitting
22 here just a few minutes. He had been here earlier and
23 said he had not heard anything yet. But there is a letter.
24 I think it's basically the same letter that was signed by
25 each of the six municipalities in Cobb County--the mayors

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1 and councilmen of all those municipalities.

2 We are really concerned that the city courts might
3 be abolished. We feel very strongly that the city courts
4 have nothing to do with State law with the one exception
5 of traffic cases. City courts are designed to handle
6 city ordinances and for those city residents, perhaps
7 outside people who are breaking city ordinances in various
8 cities. And by the nature of cities, some cities will
9 have certain ordinances, for instance, controlling dogs,
10 that will not be the same in other cities that perhaps
11 will not need a dog control ordinance.

12 There's no way in my opinion that the State should
13 try and control such city matters that the cities now
14 control through their city ordinances. And there's no
15 reason for these city courts to be absorbed into some kind
16 of a State system. The mayor, of course--and I think this
17 is statewide--is responsible for his court. But I don't
18 think any mayor has actually sat as a Recorder or judge
19 in those city courts. In Marietta, we do have an attorney,
20 now Judge Russell Ford, who has been off and on, the city
21 judge for, I think, over twenty years. I say, off and on,
22 because some mayors again, they don't want him and another
23 man--another lawyer is the Recorder of Marietta.

24 It has grown to be a big job. I think the City of
25 Marietta--and I should have doublechecked this before I

SPRINGFIELD COUNTY CLERK'S OFFICE



1 came down but I did not think I was going to speak. I
2 think they have at least three courts a week and it's
3 pretty much a full-time job. But these courts--and this
4 I want to emphasize--are based around the convenience--
5 that isn't going to sound right--not necessarily the con-
6 venience of the citizen who's being arrested but the police
7 officers who have to make the case. And the citizen knows
8 when he's given a ticket by that police officer when his
9 case will come up. It's instantaneous. That is, a citi-
10 zen when he's told he's gone through a "Stop" sign is
11 given on a citation the exact date of the court because
12 the police officer knows when he will be available at the
13 next--in his case, next monthly court.

14 And basically our police officers--and I think it's
15 every month--appear in the--Judge Ford's court every month.
16 So the police officer spends a minimum--and I want to
17 stress this--a very minimum amount of time in the city
18 court because this time is usually after his shift gets
19 over with if he's on the midnight to seven shift. Then
20 his court starts at seven once a month, that particular
21 police officer, and lasts for the three or four hours that
22 it might last that morning. Or if he's an officer that
23 works during the daytime and gets off at three-thirty or
24 four, he immediately goes to court, only once a month now,
25 and has all of his cases handled in the next two or three

BRANDENBURG COUNTY - SCIENTIFIC REPORTING



1 hours following that afternoon time. And I forget the
 2 shift I left out, but each shift, either the officer appears
 3 just before his shift is to begin or comes to the shift
 4 right after his shift is to begin and it's convenient.
 5 He spends a minimum amount of time prosecuting, if you
 6 like, the cases that he's made to citizens in the city.

7 If you had anything of this abolished, the city police
 8 throughout the State are going to have to go to another
 9 court at that court's convenience, not the police officer's
 10 convenience. He's going to spend many more hours waiting
 11 to be heard--having his case heard. And I don't know
 12 where the policeman's going to come from to replace his
 13 time in that State court.

14 Okay, money. We've touched on money. And in
 15 Marietta--and only because I looked at the budget did I
 16 know exactly what it was. In fact last Wednesday--I have
 17 a five-minute program every Wednesday and I talked about
 18 nine hundred thousand dollars. And I was wrong. It's
 19 only about six hundred thousand dollars in Marietta that
 20 we get per year in fines and forfeitures. In comparing
 21 this to the overall Police Department's budget, it was a
 22 million seven hundred and ninety thousand--call it a mil-
 23 lion eight. Six hundred thousand relates to a million
 24 eight as about a third. And I think one other mayor or
 25 one other city official at our Cobb Municipal Association

BOARD OF SUPERVISORS - SCIENTIFIC OFFICERS



1 meeting Tuesday indicated that he thought his fines and
2 forfeitures were about a third. You might doublecheck and
3 I imagine, statewide, that most cities would have this
4 rough ratio of fines and forfeitures, handling or taking
5 in revenue equal to about a third of the total amount.

6 And of course in Marietta, I'd be very concerned if
7 we did not get the six hundred thousand dollars--more than
8 half a million dollars in revenue--because we'd have to
9 increase our tax millage. Our tax mill in Marietta's
10 worth about two hundred and ten--two hundred and twenty
11 thousand dollars. And six hundred thousand dollars would
12 convert into something close to three mills. Right now
13 our total city tax is sixteen mills. This handles our
14 schools. We have an independent school system. It handles
15 our police and fire protection and all city services.

16 The reason we have such a low millage to handle all
17 these items is we do have a Board of Lights and Water that
18 does make extra monies which are transferred annually into
19 the City General Fund to supplement what the sixteen mills
20 bring in in taxes. The point I'm making, with the sixteen
21 mill tax now, you take away six hundred thousand dollars of
22 revenue, we'd have to raise at least two, probably three
23 mills to that sixteen mill tax. And I don't want to
24 raise taxes. What I would have to do is cut back some
25 services which I certainly don't want to do unless the

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1 State wants to supplement this money with other State
2 funds which I don't think the State would want to do. If
3 there is somebody from the Cobb Municipal Association, I
4 certainly hope he does come forward and you get the let-
5 ters that were signed by all the mayors. We're very con-
6 cerned that you are trying to do something with the city
7 court that, in my opinion, has no place in the State
8 court.

9 And there was last point that I've forgotten. I want
10 to make sure every one understands that anybody coming
11 before a city court on a State case, or a traffic case,
12 can immediately say they want a jury trial and they get it.
13 It is only city ordinances that are open, where a city
14 citizen must be heard by a city judge and even in those
15 cases, there's an automatic appeal. You can always
16 appeal city court cases, as I understand it, to the State
17 courts. There's no citizen who appears before our judge
18 where the decision is final and he cannot appeal. In the
19 case of traffic court cases, he can immediately say, no, I
20 don't want you to hear my speeding ticket, Judge Ford. I
21 want it heard in a State court and get a jury trial. The
22 citizen has the appeal to the State court and in the case
23 of traffic cases or where State laws are being broken, he
24 can immediately ask for a jury trial and not even be heard
25 by Judge Ford.

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And I think this is a good system and I do hope you keep the same system of the city courts. Thank you.

REP. SNOW:

Are there any questions?

DEAN COLE:

One question. What was that that million eight figure you mentioned?

MAYOR EASTHAM:

Our total budget for the Police Department is one million seven hundred and ninety thousand dollars, our budget for the fiscal year that we're in right now.

REP. SNOW:

Any other questions? [No response.] Thank you, Mister Mayor.

I think I forgot to introduce Marty over here. He's Executive Director of the Select Committee on Constitutional Revision. He works with all the different commissions on the various ordinances. I have a note here from the Mayor-Elect of Alpharetta, George E. Willis, Sr., who begins his term in January, that he too wants it in the record that he is strongly against the discontinuance of municipal and Recorder's court system. And that is for the record.

We have also these letters from Cobb County which reflect generally the attitude, I think, presented by the



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1 Mayor of Marietta, Mayor Eastham. And they are from the
2 City of Kennesaw, City of Smyrna, City of Acworth, City
3 of Power Springs, City of Austell and the City of
4 Marietta, which does present the mayor's viewpoints as
5 presented. So I think that, for the record, these letters
6 are presented and do reflect largely the Mayor of Mari-
7 etta's suggestions.

8 Now, do we have others who would like to be heard?

9 MS. SANDERS:

10 I'm Cherie Sanders. I'm a Justice of the Peace from
11 College Park, Georgia, Georgia Militia District 1615. I
12 also didnt intend to speak. We had a representative that
13 was coming who did not come.

14 REP. SNOW:

15 Y'all are having a meeting, I think, down in Warner
16 Robins.

17 MS. SANDERS:

18 Yes. But we did have counsel who was going to attend
19 tied up in a city court in Alpharetta. We addressed many
20 of the municipal court problems. The Justice Court is
21 greatly maligned in many people's minds because it is one
22 of the few courts that deal with the small problems. And
23 the people who do get involved with it are rather indignant
24 that they're brought into court for such a small thing as
25 bad checks under twenty-five dollars, bad debts under

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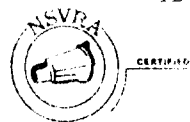
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1 twenty-five dollars. They do not think any one has a
2 right to take legal action on such small amounts. Gen-
3 erally in the city limits of Atlanta--and I was in busi-
4 ness for many years before I became involved in the Jus-
5 tice Courts--the businesses do not use the court system--
6 the State Court is there to be used and I think Judge
7 Beasley know that. It's there. But most people do not
8 use it' it's too much trouble. They have to take time
9 off--doctors, dentists, even attorneys--have to take time
10 off from their normal business to go to State Court and
11 it's just not worth it.

12 Instead, they add a markup to their service or their
13 product. In speaking to people in the business world, the
14 markup is anywhere from five to twenty percent for bad
15 debts and bad checks in small amounts. A family today
16 cannot afford to continue in this matter. The consumer has
17 started to use the Justice courts more and more because
18 where they used to be able to write things off, they're
19 no longer able to do this. They cannot afford it; the
20 economic times are too bad.

21 Where the business man used to say, I'll write it off
22 as a bad debt; I'll use it for a tax loss, and it was a good
23 tax loss because the Federal government allows you, based
24 on your actual losses, to accrue--to estimate losses and
25 deduct them from your taxes. So the more bad debts you

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had, the better of you were. Well, that's not true today. Because today, they need the business; they need the profits. They're not making the profits that they used to make because the economic times are too bad.

The Justice court--the fee system had abuses. I think many of the people on the committee are greatly aware of the abuses of the fee system. I don't understand how Justices or any other persons on the fee system at the local level abuse the system. Because I have to face the people--the prosecutors, the plaintiffs, the defendants everyday in the street in my community--in the grocery store, in the drugstore, anywhere I go.

Those people who have abused the system, who have violated people's rights find that they can't go to the store because if you abuse people's rights, you just can't hold your head up in a small town. So you have to give every party concerned a fair justice. Because you have to face these people every day. I never go to the store that I don't run into someone that has appeared in my court. I just couldn't go anywhere in my town if I didn't--if I was railroading people.

I understand that's the criticism in the system and in many of the municipal courts. In Florida--I lived in Florida for many years and we did have revenue-bearing courts. They were greatly criticized. The State came in

1 and took over an entire city as they did in Mountain View.
 2 The remedies are there. We need to clean up our system
 3 but not to do away with the systems that serve the people
 4 at the lower level. Many people criticize the fee system.
 5 I think we would be better off on a salary. I'm a full-
 6 time Justice of the Peace. I spend many long hours, many
 7 more than I ever did in private practice--in private in-
 8 dustry for much less consideration. It gives you a good
 9 satisfaction, though.

10 And I think all the judges in all the courts that are
 11 on salaries find that they spend many, many hours more
 12 than their remuneration dictates. Still, there's a great
 13 satisfaction in dealing with people and trying to solve
 14 people's problems. And outside the court, when you're
 15 active in the community, you have people coming to you
 16 with papers--they get something in the mail from the
 17 Social Security they don't understand. You don't under-
 18 stand either but you can channel them to the right place.

19 And many of the Justice courts can do that. If some-
 20 thing is in the wrong place, you can send it to the proper
 21 place because you have to be familiar with all the work-
 22 ings of all the different courts and all the different
 23 bureaus and bureaucracies. And they are quite cumbersome.

24 REP. SNOW:

25 Are there questions? Let me make just a statement



U.S. HOUSE OF REPRESENTATIVES
 OFFICE OF THE CLERK

1 here relative to this. We are really finding some prob-
2 lems with the Justice of the Peace court system as we have
3 it in the present Constitution. There is a large, what
4 I would say, probably the majority of the commission in
5 some provision in the Constitution that would provide that
6 there be at least one magistrate's court in each of the
7 counties with some jurisdiction as far as the--probably
8 the same jurisdiction we now have in the issuing of war-
9 rants and misdemeanor situations, but also to increase the
10 amount of the jurisdiction in some civil matters up to
11 at least fifteen hundred dollars or some amount of that
12 sort, leaving it open in the Constitution as to the number
13 so that the number could be increased in accordance with
14 the need. But at least each county in the State have at
15 least one magistrate.

16 MS. SANDERS:

17 In your studies, I'm sure--have you studied other
18 states that have a good Justice system where the Justices
19 are active; they are well-trained and the people use the
20 courts as in Texas? Texas, I understand, has an excellent
21 system. I have understood it from people that have been
22 there but I also understand it from people that live in
23 Texas. The Justices are greatly respected there. We
24 don't have the respect in Georgia, perhaps because we're
25 on such a grass roots level it's easy--

1 REP. SNOW:

2 Well, you can't have that respect when there's so many
3 of you and so many vacancies available too.

4 MS. SANDERS:

5 Well, you can't have the same respect you have for a
6 judge that you're never going to see again and you don't
7 have to worry. The justice is completely impartial in
8 those higher courts because the judge is never going to see
9 any one again. But by the same token, the judge has no
10 idea of the problems that may be in the community that may
11 lead up to the problem. And it could have been solved a
12 long time ago at a lower level.

13 We recently had a case that wound up in the Superior
14 Court--an aggravated assault. It's unfortunate that it
15 was not brought to the Justice court prior to this. We
16 don't normally have that kind of problem in College Park
17 because it gets in the lower courts and it stops--a dom-
18 estic problem--before someone kills someone, before a
19 child is beaten to death.

20 We have neighbors--you know your neighbors; you know
21 children are being beaten and you take those steps. If
22 the Justice--if you take the oath as a Justice and you're
23 active, you see so much in your community, you have to go
24 to the various agencies--the juvenile agencies. This
25 child is stealing from the people downstairs; he's ten

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years old; he doesn't have enough to eat. And we're the only ones that see that.

JUDGE BEASLEY:

Well, what I am hearing you saying is that the JP operates sort of as an ombudsman--

MS. SANDERS:

That's true.

JUDGE BEASLEY:

--and provides a clearinghouse for people's problems that may not belong in any court system, that may belong in the Social Security Administration, the VA or whatever it happens to be. I see some merit to that because one of the biggest--well, in my opinion, almost the biggest problems we have nowadays in government is communication. There is so much available and so many people doing so many things that there's a tremendous amount of overlap and a lack of knowledge as to where to go to get what.

Now, if you provide that function in your community-- I know we've talked and there's been talk of having an ombudsman as a local official. But if that's what you're doing--

MS. SANDERS:

I've done it since the day I took office.

JUDGE BEASLEY:

--that's not being a judge.

BRANDENBURG HASSEY IDENTIFIC REPORTING



1 MS. SANDERS:

2 No, it's not being a judge and it's not part of my
3 duties. And it's not part of any Justice of the Peace
4 function. It's just necessary and someone had to do it.
5 And we're the only ones there. They go to the Police De-
6 partment. Many, especially in domestic cases, they get a
7 standard answer from a police officer, get a warrant.
8 Well, you have a problem; that person doesn't have grounds
9 for a warrant on many occasions. Well, then, you have to
10 send them to where they need to go. Or the police officer
11 may think it's a domestic matter and it really needs fur-
12 ther investigation. You send them back to the Police De-
13 partment. But when they've been to the Justice of the
14 Peace and then they go back to the Police Department, then
15 the Police Department takes notice. They have an awful
16 lot of work to do and very little manpower.

17 Family and Children's Service--you wouldn't believe
18 the caseload these poor people have. When a Justice of
19 the Peace calls up and they say, we're having this prob-
20 lem. We have this child in this condition and something
21 has to be done, they know that the problem is serious.
22 It may have already been reported to them but it's not
23 reported with the same force by a neighbor. A neighbor
24 says, well, I think my neighbors are beating their child.
25 When I call them and say, well, this child is running

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1 around in the streets at twelve o'clock at night--an
2 eight year old child--in a nightgown and no one is doing
3 anything about it. They do something about it.

4 REP. SNOW:

5 Any additional questions? [No response.] Thank you
6 very much, Cherie.

7 Any one else that would like to be heard?

8 MR. REEVES:

9 Yes, sir, I'm C. V. Reeves from Smyrna, Georgia.
10 I'd like to add to the rest of those municipalities that
11 do not agree with the abolishment of the Recorder's Court
12 for the City of Douglasville.

13 REP. SNOW:

14 Okay, sir. Anything else? Any comments from any of
15 the committee members?

16 I want to express our appreciation to you for coming.
17 We've had a lot of good input here today and I appreciate
18 it. And I think that much of that will be effected in
19 the final recommendations of this commission and we're
20 grateful to you.

21 I'd like to mention for the record that, to my knowl-
22 edge, there are no representatives of the media here
23 today as there have been at other hearings and we regret
24 that this hearing has not received that coverage.

25 [Whereupon, the above-entitled proceedings were adjourned

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at 12:15 o'clock, p.m.]

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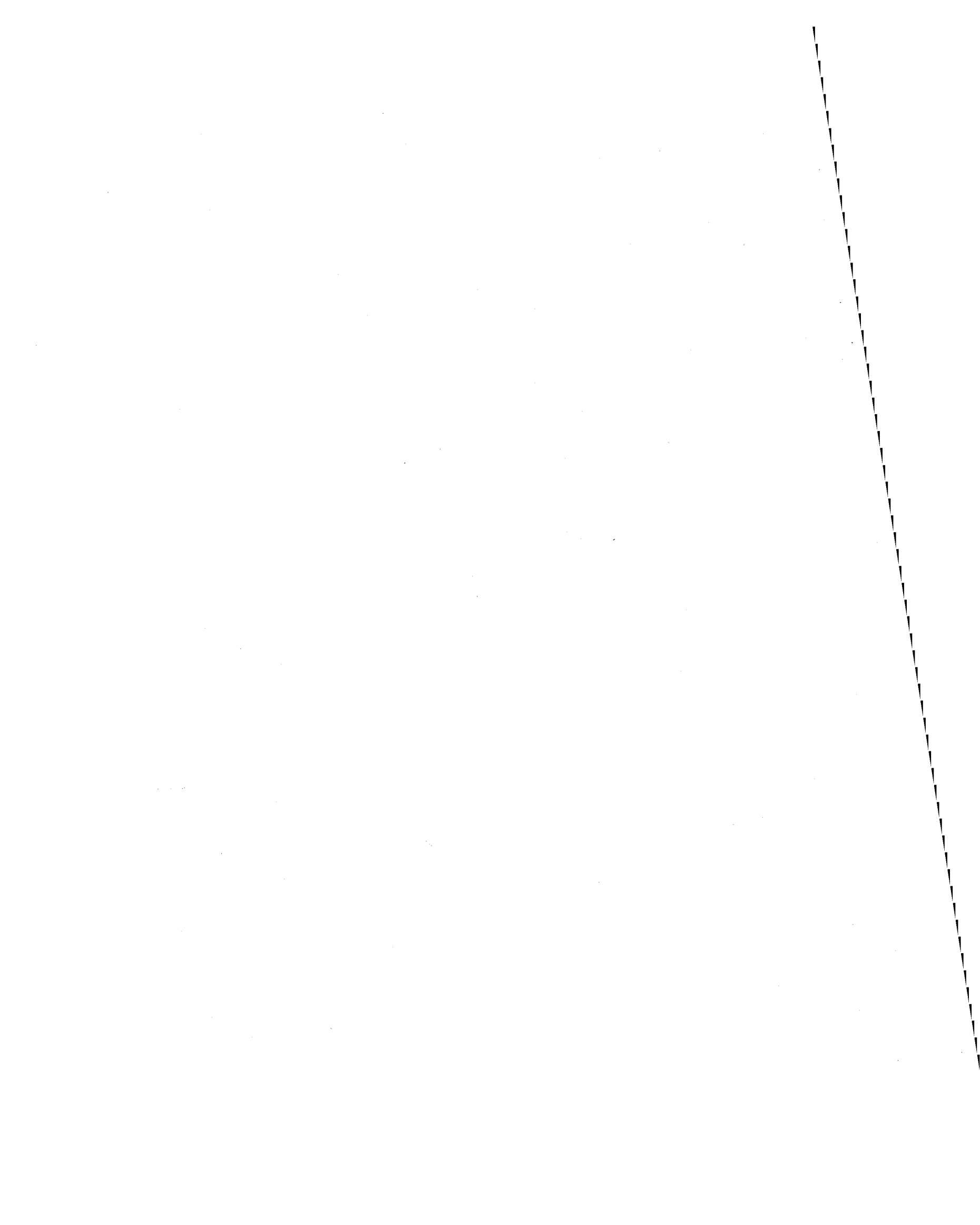
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Committee to Revise Article VI
Public Hearing Held on Nov. 18, 1978



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SELECT COMMITTEE ON CONSTITUTIONAL REVISION
COMMITTEE TO REVISE THE JUDICIAL ARTICLE

PUBLIC HEARING

ALBANY, GEORGIA

THE HONORABLE ALBERT THOMPSON, Presiding Chairman

Superior Courtroom
Dougherty Government Center
Albany, Georgia

Thursday, November 30, 1978



1 THE COMMITTEE:

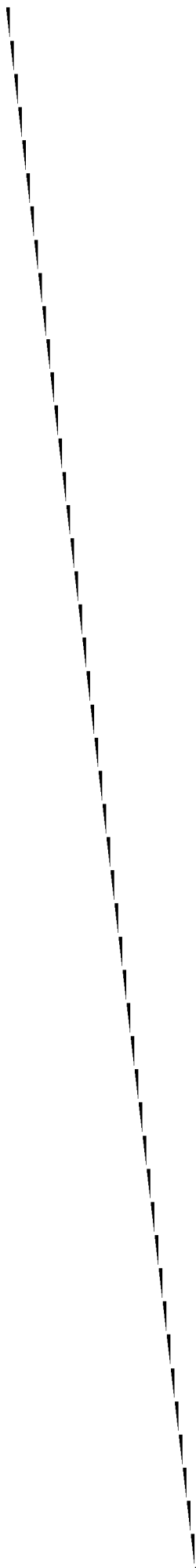
2 The Honorable Albert Thompson, Presiding

3 Mr. Adam Greene

4 Mr. Marty Hodgkins

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P R O C E E D I N G S

THE CHAIRMAN:

Gentlemen, my name is Albert Thompson; I'm a member of the Georgia General Assembly; I'm Chairman of the Special Judiciary Committee; and though I'm not chairman of this particular body, the Chairman, Mr. Wayne Snow, asked that I preside over this public hearing. So I want to make a few -- I want to apologize for being late; but as I came into Albany -- and I really mean this sincerely -- I got confused out there in the traffic; and I had to stop a couple of times and ask my way to this fine facility that you have here. So that's what made me late.

Our purpose in being here today really is to listen to you and to get your input into what we are attempting to do. Now, as you know, we are attempting to revise the Judicial Article of the constitution. In the Assembly we have tried to rewrite the constitution ever since I've been there. I think we've tried four or five times. We've never been successfully. So we developed another means of attempting this same thing.

Two years ago we adopted a new constitution for the State of Georgia. It made no substantive changes whatsoever. The only thing it did was to



realign the sections of the constitution so that they were better organized. And then we decided that what we would try to do would be revise the constitution article by article. This particular section that we're working on is the Judicial Article.

I think that our court system is the most crucial part of our government and this is, I believe, the most important part of the revision that we are attempting.

Now, I'm going to talk just a little bit, after which I'm going to sit down and I want all the input we can get because we aren't trying to rewrite this without input from the people of Georgia. This isn't our constitution -- when I say "our," I mean those of us in the General Assembly. This constitution belongs to the people of the State of Georgia, and you should have some input. You should have some say-so in this. And our purpose here today is only to listen to you and give you an opportunity for input.

I'm going to read this because I want to be accurate. We've been wrestling with a concise statement as to why we want to revise the Judicial Article. I think this is very well written, and I'd like to read it to you.

[Reading] "A number of recent studies of state court systems have identified Georgia's judicial system

as the most complex structure in the nation. In part this complexity reflects the sheer size of the system, and it is estimated that the state possesses approximately 2500 separate courts.

"Another measure of the system's complexity is the nature of the jurisdiction granted the courts. By virtue of constitutional and legislative mandate, the jurisdiction of the various courts is fragmented and overlapping. As a result, such unfortunate practices as judge shopping and trials de novo are allowed to occur. Also the jurisdiction granted to the same courts of the same class is not uniform throughout the state.

"Additionally, the incomplete nature of the system causes problems. The system is incomplete as certain courts exist on a less than statewide basis. As a result citizens across the state do not have equal access to the same judicial forums.

"Another set of problems associated with the judiciary relates to the qualification of judicial personnel. It has been accurately stated that many judges are not even required to be literate. With few exceptions judges of the different classes of courts are not required to complete any form of initial or continued training during their term or terms of



office. This lack of judicial qualifications is compounded by the fact that many judges serve on a part-time basis, and a large number of judges receive compensation from fees rather than a salary.

"Revision of the Judicial Article also is necessary to remove many outmoded provisions and to eliminate such statutory measures as venue, appellate jurisdiction, et cetera. There is also a need to provide a degree of uniformity across the state in such areas as rules of practice and procedure, judicial administration and record keeping.

"Although not of a constitutional nature, the process of judicial revision may well create the necessary climate to achieve such goals.

"Perhaps the most important principle associated with judicial revision is the need to establish a judicial department in this state that is relatively independent. Independence includes the ability to administer itself and control its constituent courts and to provide justice without undue local political influence. Independence also means that the local courts should no longer be viewed as a source of local revenue but as a source of local justice."

There are only two committee members here at this time, Mr. Adam Greene of Macon, who is the Superior Court



1 Clerk, and me; and I'm a member of the General Assembly.
2 Mr. Marty Hodgkins is the Executive Director of this
3 group and does actually most of the work. I asked him
4 to compile for me a list of the people who have been
5 working with this committee. I think that this is impor-
6 tant to you so that you can see the broadness that we have
7 drawn in in an attempt to get representation from many
8 segments of the public.

9
10 First, Representative Wayne Snow is the chairman
11 of this body. He's a practicing attorney; he was recently
12 elected to his eighth term as a member of the House of
13 Representatives; and he is Chairman of the House Judiciary
14 Committee.

15
16 Ralph Beard, Dean of the University of Georgia
17 School of Law.

18
19 Dorothy T. Beasley, who was appointed by Governor
20 Busbee as Judge of the State Court of Fulton County and
21 who has recently been elected to a six-year term.

22
23 George T. Smith -- I think most of you would
24 know him. He's former Lieutenant Governor of the State
25 of Georgia; and at this time he's Chief Judge of the
26 Court of Appeals.

27
28 Harry Baxley, an attorney, Business Manager of
29 Local 613, IBEW.

30
31 Lanny Bridges is a practicing attorney and



represents the younger lawyers section of the State Bar of Georgia.

Berry Brock is a federal employee, former judge of the Municipal Court of Fairburn, and is currently serving as ex officio justice of the peace in South Fulton County.

Marcus B. Calhoun is Chief Judge of the Southern Judicial circuit.

John Cole is Associate Dean of the Walter F. George School of Law at Mercer University.

H. W. Crane is a practicing attorney and part-time judge of the juvenile court of Bartow County.

Joseph Drolet is assistant attorney general to -- assistant district attorney in Fulton County.

Adam Greene, Clerk of Superior Court of Bibb County.

Robin Harris is an attorney and formerly chairman of the House Judiciary Committee and at the present time, I believe, is president of Decatur Federal Savings and Loan association.

Randolph Metlock -- and we expect him to come in any minute -- is Mayor of the City of Stone Mountain. He is former judge of the Stone Mountain Recorder's Court.

James Miller is a practicing attorney, representing the State Bar of Georgia.

1 H. E. Nichols, Chief Justice of the Supreme
2 Court of Georgia.

3 Howard Overby, practicing attorney, and chairman
4 of the Senate Judiciary Committee.

5 L. Ray Patterson is the Dean of Emory University
6 School of Law.

7 William K. Stanley, Judge of Probate Court of
8 Bibb County.

9 Robert Stubbs, former professor at Emory Uni-
10 versity School of Law, and he's the executive assistant
11 attorney general.

12 Mrs. Lucy Williams, and I hope she'll come in,
13 is the former president of the Fulton County Grand Jurors
14 Association; and Mrs. Carol Wilson is a member of the
15 Georgia League of Women Voters.

16 This is really broad representation. Most of
17 these people have actually worked with us and had quite a
18 bit of input into what we are doing. We started our work
19 about two and a half or three years ago. It's most dif-
20 ficult to try and devise a judicial system in the manner
21 that we are attempting to do this. We've had input from
22 a lot of people. You'll find that -- maybe I shouldn't
23 comment like this, but I think this is true. Our job is
24 doubly complicated by the fact that all those people who
25 have a vested interest in the judicial system usually are



pretty resistant to any change. That's understandable. I'm not being critical at this point, but that is one of the things that has caused our problems to be doubled, I would think.

We want to listen to everyone. We normally go right down the list that we have here, and the members of the Commission, of course, ask questions trying to clarify the positions that are stated; and I would assume that we are going to follow that same procedure unless someone wishes to do something different. I'd like to think that we are flexible enough to accomodate anything that you wish to do today; and I hope that we'll benefit by what you tell us; and I hope that you'll have more understanding of our problems when we finish this.

Are there any questions about the procedure that we're going to follow or anything that I've said you'd like to ask me about? If not, we'll go right on into the list. We're not going to try and prolong this.

The first person on the list is an old friend of mine. He was in the Georgia General Assembly when I got there. He left us some years ago and decided to go back into the private practice of law, and that's J. Willis Conger. He's the -- He says he's the city attorney down at Bainbridge now. We called him "King Farouk" and he was really one of the best legislators we've ever had, and



I'm delighted to have him come and have some input.

MR. CONGER:

Mr. Chairman, I thank you for your very flaterring remarks. I am up here representing the City of Bainbridge as City Attorney. I was sent by the mayor and I was in a recent automobile accident and I can't drive, and he sends the Chief of Police to drive me. So at least he thought it was quite important.

THE CHAIRMAN:

I thought he sent him to keep you straight.

MR. CONGER:

That might have been a hidden reason.

In Bainbridge we have the Mayor's Court and we handled approximately 250 to 300 cases a month. It is our opinion that courts are not created for the convenience of those who preside, but they're created for the convenience of the people who either willingly or unwillingly have to use those courts. Now, of the 250 to 300 people we try in our Mayor's Court, I would say at least half of them put up a bond of a stated amount and that winds it up; they never come back. The others come back for trial. If they want to they can go to a state court and be tried or they can be tried in the Mayor's Court; but it would be a great inconvenience to those people to have to go to a magistrate, a man who has to be a lawyer, full time; and



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you might think about the expense involved there. In fact, if we create as many magistrates in Decatur County as this bill provides for, we'll have to import our lawyers because nearly all the lawyers there will be a magistrate of some type of other.

Now, this bill -- I started to say is not artfully or skillfully drawn, what they said to me -- to such an extent, being a former member of the General Assembly, I wondered if it were deliberate, deliberately vague in so many places like venue. You mentioned venue specifically. Does this mean that if the courts in Dougherty County have a slack period that they'll be able to bring a bunch of defendants up from Grady County and Decatur County and try them up here? If the word venue is mentioned in the bill, I couldn't find it. And the bill is confusing to me, and I'm pretty easily confused; I'll admit that. But the first copy I read had a page out of place and it made just as much sense with the page out of place as it did with the page in place. I really don't know if that is deliberate. Now, I'm not accusing this committee of it. The men I know on this committee are men of honor and integrity. But it's got a sort of silk-stocking flavor to it, this bill has. In the explanation the Chairman read to us, he said, "do away with local influence." Well, now, just what does that mean? Does that mean we're going to

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have somebody appoint the judges? If you're going to do away with local influence, does that mean that they're going to play "fruit chairs turnover" and send the Bainbridge cases to Albany and the Albany cases to Bainbridge? I don't know exactly what it means exactly.

As the bill is now drawn -- and now I'm speaking as the City Attorney of Bainbridge and a practitioner of the law in Bainbridge -- I would have to vigorously oppose it. I am Vice-chairman of the Georgia Bar Association Committee on Legislation. If this is a bill they're expecting me to help them get passed, I'll have to resign.

I am delighted, my dear friend Albert, that I heard the Speaker quoted last night as saying that he doubted that this bill would come up this next session.



THE CHAIRMAN:

We have problems with that.

MR. CONGER:

Hopefully, as Tom suggested on TV last night, there's been more input from the practicing attorneys. I have practiced law for over 40 years now, and I never have found anything wrong with a 12-man jury; and it really hurts me because of the presiding officer just to state flatly that the bill as now drawn, as best as I can interpret, I would have to oppose.

THE CHAIRMAN:

May I ask you a question? You addressed your remarks specifically to recorder's court, mayor's court, et cetera. What about the other portions of the bill, which I really consider the major portions, attempting to set up a one-tier system? Do you find that objectionable?

MR. CONGER:

Well, now, we have a court of ordinary, probate court; the lady is on a fee system; I represent her. I happen to know that she's making a very gracious living. I also know that you couldn't employ any attorney in Bainbridge, Georgia, on a full-time basis at what she makes to handle that job. And she stays fairly busy. If you were to try to take her and, say, combine the state court, one person in my opinion couldn't handle that much. Then if you threw in the recorder's court, I know they couldn't handle it. So you would have to appoint several magistrates. And I understand the general assembly has a budget of a considerable sum, which the Governor's trying to decrease. You have a substantial surplus, but you start appointing that many lawyers on a full-time basis to jobs of that type, and you're going to need that surplus.

THE CHAIRMAN:

Did you find anything in the bill that you thought was good?

MR. CONGER:

Frankly, no.

THE CHAIRMAN:

Let me ask this question, Mr. Conger. I think that what I have said about local influence does not mean that the courts would be removed away from the local area and that the appointing body would not have local contact. But one of the superior court judges in my circuit has recently said that the recorder's court, instead of giving justice, is a revenue-producing court and is related a little too closely to the police department to really be a people's court. You know, this is one of the possibilities that always occurs. Would you have any objection to changing that so that we'd be talking about a court that serves people rather than a police department because there is a difference there.

MR. CONGER:

I think that all courts should serve people. I also think that the police departments are people. And I believe that if you have recorder's court or if you have a mayor's court or if you have a superior court, that you're not going to find true justice in that everybody is treated just exactly alike if the facts are just the same. In the first place, the facts won't always be the same. In the second place, now, our mayor, he has a little chart, a little schedule; and people are treated nearly alike because



he gives fines -- I believe 17.50 for the first speeding ticket, 35 for the next one, and things of that type. And he goes by that chart. So whether you're Tom, Dick, or Harry if he finds you guilty, you get the same fine anybody else gets.

I don't think you've going to find the perfect man to preside in any court; and if you have imperfection, you're going to find differences and you're going to find certain things influencing some people and other people being influenced by other things.

THE CHAIRMAN:

Thank you.

Mr. Greene, do you have anything?

MR. GREENE:

Mr. Conger, you made some reference awhile ago to less than a 12-man jury. I'm in complete agreement with you; but I'm sure you are undoubtedly aware there are quite a number of people in this state, a good number of which are judges, who do not agree with either you or I on that subject.

MR. CONGER:

Yes, sir, and everytime one of them disagrees with me, I don't agree with him either, you know.

MR. GREENE:

I understand that, but the point I'm making is

this. It bothers me a little bit in some of these meetings I've been to as I have around the state -- it bothers me that more of the 20 members are not here, and I'm sure that Mr. Thompson is, too. It bothers me that we're somewhat in the position of being adversaries. In other words, we're on one side of the fence and all you people out there are on the other side of the fence; and I would like very much if it is possible to lay that to rest. I'm only speaking for myself. I can't speak for Mr. Thompson, but I have reason to believe his views are somewhat similar in that regard, and that is we're -- in other words I certainly am not here pushing this bill you're talking about. Quite frankly -- real briefly and I'll stop because I don't want to make a speech on the subject -- but my background real briefly is this. I've worked with the district attorney almost 20 years and I've been Clerk of the Superior Court for almost 12 years; so that gives me over 30 years in the system. I've seen a lot of things come and go and a lot of people, and I personally am reconciled to this one thing: The winds of change are blowing. This element that I'm talking about that would like very much in some types of cases to have less than a 12-man jury is just one aspect of it. There's quite an element in this state that's pushing for substantial change in this judicial system. One of these days there

are going to be some changes, in my opinion. I don't know whether I can have any influence over those changes or contribute to it in any manner or not; but if I crawled in a hole and pulled the roof in on top of me and just shut myself out, I don't think I'd have the right to say one word about what changes were made. But if I can contribute anything and have any influence on the directions that those changes head, I want to do it. So that's the only reason I know of I'm here, and it is by no means for the purpose of selling you or these people out here on what you read in that bill.

So that 12-man jury is one aspect of it. The other aspect you made reference to was the matter of venue. Now, at least one member of this committee, to my knowledge -- and I can assure you that on several occasions I have found myself very much in the minority as far as the thinking of the committee as a whole is concerned on the matter of venue; at least one I know of feels real strongly that because of the number of counties in this state, which as you know Dougherty is not one of them. Dougherty's one of the more affluent counties. There are a number, as a matter of fact, that -- when I was in the district attorney's office in the circuit I was in, I worked in one of them where I personally saw them, the chairman and county commissioners go to the bank

and borrow money to pay the jurors. The don't have but two terms of court a year; and I have actually seen them go to the bank and get a loan and put it in the county's account so they could pay the jurors. When taxes started coming in, why, they'd pay the debts and somehow they made out. The point is, this one meber's contention is on that matter of venue is that ought to -- in other words, that ought not to be locked into the constitution. It ought to be left flexibility -- this is his thinking I'm talking about, to answer your question on that line, that the General Assembly ought to be left with a lot of flexibility regarding venue so that it would be possible in these smaller counties that are struggling -- say if they've only got one case, maybe, of the nature that you need a lot of jurors brought into trial, that they could very quickly and very easily just move it to another county and try it; whereas, you know now that's not possible.

I'm not saying I agree with that. I'm saying, though, that that's just an aspect of the changes that are being proposed.

THE CHAIRMAN:

Mr. Conger, we certainly want to thank you. Is there anything else that you want to --

MR. CONGER:

I want to thank you gentlemen for being so

patient. I didn't mean to take nearly as much time, and I want to apologize to those who are going to speak after I do. I have been in an automobile wreck and the chief is driving me. And I was informed by the chief and by the mayor to get home as soon as I could because the chief had better things to do than be driving me around. And I apologize to those of you that will speak later. I know I would gather much if I could stay here, but I can't.

Thank you again, Mr. Chairman. It's always nice seeing you, sir.

THE CHAIRMAN:

It's nice seeing you.

The next person on the list is Mr. Joe Palmer, the City Manager of Camilla.

Mr. Palmer.

MR. PALMER:

Mr. Chairman, ladies and gentlemen, I'm Joe Palmer and I'm the City Manager of Camilla. There are a lot of familiar faces here. I have been asked to represent the Mayor and Council of the City of Camilla here today and read into the record a statement for them on their behalf concerning the provisions of the change dealing with the abolishing of the municipal court.

Mr. Chairman, I'd like to assure you and the other gentlemen involved here that these remarks are not

directed toward you but are directed toward the proposed provisions.

The letter's addressed to Representative Wayne Snow, Chairman of the Committee to Review the Judicial Article and reads as follows:

"Dear Sir:

"On behalf of the City Council of Camilla, Georgia, the following comments are submitted pertaining to the proposed revisions to Article VI, the Judiciary Article:

"1. A recorder or municipal court judge, as a member of the community, is closer to the people and is more familiar with local law than any nonresiden is ever likely to be. Under these circumstances, it is far more likely that justice will truly be done in any case which might arise.

"Second, the present system of local courts is not a finance burden for the state. Should a state-wide, bureaucratic judicial system be formed as suggested, personnel costs alone would soar to the point that taxpayers would be shackled with a new tax burden. All assurances to the contrary have been proved by history to be incorrect.

"Though local courts are not operated for the purpose of generating revenue, they are as a minimum



self-supporting; and in some cases contribute funds to the general treasury. The cost of operating these courts at the present time is minimal.

"Camilla operated its municipal court very successfully for many years as a Mayor's Court; however, due to high court -- higher court decisions of recent years which have tended to expand the rights and privileges of the accused while increasing the potential liability incurred by the city, Camilla appointed several months ago a practicing attorney to serve as recorder of its municipal court. I would like to re-emphasize that this change resulted not from abuses of the Mayor's Court system but rather from a desire to reduce the potential liability to which the city could be exposed.

"The reasons for wanting to abolish the municipal courts are not apparent to us. If it stems from localized abuses of the system, then we should address these specific abuses. The proposed changes represent overkill of a ridiculous sort.

"Responsibility for local affairs should remain at the local level unless and until problems of such magnitude develop that State assistance is required, at which time it will be requested. The municipal court system is not in the past and does not now need

state direction.

"Lastly, at a time when confidence in centralized government is very low, this move to centralize the administration of local law is simply ludicrous.

"In summary, the City of Camilla is unalterably opposed to any revision of Arcile VI which would change the right of local governments to operate their own courts and enforce their own ordinances. Such changes would serve neither the best interest of justice nor the best interest of the people."

It's signed Lewis B. Campbell, Mayor, City of Camilla.

I appreciate this opportunity to read these remarks. I would like to submit this to you as a part of the written record. We'll be happy to address any questions which you may have pertaining to municipal court; however, I'm not an attorney and would prefer to avoid discussing some of the other more involved issues.

THE CHAIRMAN:

May I ask a question, Mr. Palmer?

MR. PALMER:

Certainly.

THE CHAIRMAN:

I'd like for you to just comment on the dilemma that we have as a commission in trying to revise this



article. Now, you have a municipal court with which you are very satisfied because it's performing a function; but the county next to you does not have a similar court. I imagine that your court is unique because it was created by legislative statute and it was designed for one county alone. But we've got a 159 counties that we're attempting to get some type of uniformity throughout the state. Don't you think that there is some benefit that would accrue to the people by having the law and the jurisdiction of the courts the same throughout the state as opposed to Camilla having a court with one jurisdiction and everyplace else having something different?

MR. PALMER:

I don't have any fault with standardization, per se; however, I think control should still be vested in the local people because I consider it a local matter. The enforcement of local ordinances is a local matter to me no matter how you slice it.

THE CHAIRMAN:

I have not really -- and I'm not trying to be argumentative -- interpreted this revision as meaning that we're going to take control completely away from local people. That's not my interpretation of what we're attempting to do. Maybe you're right and maybe we'd better look at it to be sure that some local control is retained.

1 But some of the benefits that would come from the
2 proposed judicial article is that the state would
3 bear more of the burden of supporting the courts
4 and it should result in more uniform qualifications
5 for people who are operating those courts than what
6 we have now. And I think that that may be of some
7 benefit.

8 MR. PALMER:

9 Mr. Chairman, as a state taxpayer, I don't
10 think that I want the state to assume any greater
11 burden in this regard, just as a private citizen.
12 I don't see that requirement nor necessity for this.
13 I can understand the desire for uniformity. I can
14 agree with a certain part of this. I can agree with
15 the fact that all judges -- and this is a personal
16 assessment -- that all judges should be qualified
17 attorneys. I think this sort of thing would be
18 logical. But I think that the decision as to who
19 shall appoint or select those local judges should be
20 a matter for local action and should be under local
21 control.

22 MR. HODGKINS:

23 May I ask a question?

24 THE CHAIRMAN:

25 Yes, sir.

MR. HODGKINS:

Mr. Palmer, what is the general nature of the court cases brought before

MR. PALMER:

We have adopted uniform rules of the road. So we enforce traffic cases; we enforce violations of local ordinances, nuisances, things of this sort that the recorder handles.

THE CHAIRMAN:

Do you have any small claims jurisdiction?

MR. PALMER:

No, we do not.

THE CHAIRMAN:

No civil jurisdiction at all?

MR. PALMER:

No.

MR. HODGKINS:

What is the preponderance of the cases tried?

MR. PALMER:

Traffic cases, by far the preponderance of cases is traffic cases.

MR. GREENE:

Do you know how your people would react if they were given some additional jurisdiction like some

small claims jurisdiction?

MR. PALMER:

Well, the Recorder, the judge of the recorder court is with me. If you'd like to address him, he'd be happy to answer these questions.

MR. GREENE:

I would.

MR. PALMER:

Tom, would you please come up and see if you can address this question.

This is Mr. Tom Ledford, who serves as Recorder of the recorder's court of the City of Camilla.

MR. LEDFORD:

I think your question was how would I react if I were given small claims court jurisdiction.

MR. GREENE:

Well, you know, what ya'll's feelings, what you think ya'll's feelings would be in your area.

MR. LEDFORD:

My personal feeling would be that I would not want such jurisdiction. I'm not interested in that type of jurisdiction as recorder. You're talking about the small claims court, civil matters, collection on suits; and quite frankly, as recorder, I'm not

interested in taking that jurisdiction at all.

MR. PALMER:

Let me ask a question, if I may. Do you see any advantage to be gained by doing this other than to perhaps -- would this be in lieu of a small claims court that we have now?

MR. GREENE:

Possibly. That's just an aspect of it that has been discussed quite a bit at one time, I know, that possibility.

MR. LEDFORD:

Well, your small claims court in Mitchell County handles cases from Camilla and Pelham; and as the Recorder for the City of Camilla, I would not be interested in handling civil cases of this nature for the entire county.

THE CHAIRMAN:

Gentlemen, thank you very much. We certainly appreciate your appearing.

MR. PALMER:

Thank you for the opportunity.

THE CHAIRMAN:

Is this Mr. James Finkelstein?

MR. FINKELSTEIN:

Yes.

1 THE CHAIRMAN:

2 All right, sir. Would you come forward,
3 please.

4 MR. FINKELSTEIN:

5 I guess this must be the spot.

6 THE CHAIRMAN:

7 Well, I think everyone can see you better
8 if you stand there.


9 MR. FINKELSTEIN:

10 I had prepared some remarks that I wanted
11 to submit to this committee, but I quite frankly
12 didn't appreciate the extent of the revisions that
13 were going to be made; and after hearing some of the
14 comments, I thought I might make a couple of comments
15 about the system of justice in general.

16 First of all, I think it's kind of amusing
17 to me that the biggest controversy is over the
18 recorder's courts, which in a system of justice
19 receives about the -- probably the least amount of
20 consideration. And I think the sole reason for the
21 consideration of the municipalities in the recorder's
22 courts is financial. I don't think that there's any
23 question that the system of justice in the recorder's
24 courts -- generally now; I'm not speaking about
25 Mitchell County and I'm not speaking about Dourgherty



County -- but generally it's a very summary kind of proceeding that dispenses little in the way of justice. And I say this from having a considerable number of people come up and talk to me about the recorder's courts in various areas; and their general complaint was they never even had a hearing or any kind of a trial. I don't think there's any question that the recorder's courts are revenue producing courts and that is the primary reason why the biggest amount of fuss has been created, probably will be created concerning recorder's courts.



Also, as a native of the State of Pennsylvania who's lived in Georgia for about two and a half years, my general assessment of the system of justice in Georgia from the supreme court on down is that it's come about this far from trial by fire. I think that there's no question that anytime you mention word "justice" in Georgia you should put big quotation marks around it because I think the courts here, with a few exceptions, probably mostly in Atlanta where you have more competent personnel serving in the judiciary, the courts are fairly Neanderthal. By that I mean justice is rendered depending on who is before the court and not necessarily on the strength of the arguments. In

1 support of that I think you'll find that very rarely
2 will you ever find a judge rendering a decision and
3 then going ahead and explaining his reasons for it.
4 The use of written opinions in the appellate courts
5 is designed to promote the rule of law. Reasonable
6 explanations are given for the decisions that are
7 rendered so that persons can know why the decision
8 was rendered and follow the law accordingly. I think
9 if judges in the lower courts were required to do that
10 and actually give their real reason, they'd probably
11 be thrown out or voted out of office in short order.

12 So with that extemporaneous introduction,
13 I'd like to read these remarks into the record before
14 I present them. I have five points that I had for
15 suggestions for reforms in the system of justice.

16 The first point was judicial terms. All
17 judges in all levels of the judicial branch should be
18 restricted to a maximum of five years of service.
19 This provision would reduce complaints from lawyers
20 that they sacrifice too much financially by serving
21 as judges since the period of sacrifice would be
22 reduced. It would also tend to reduce aggrandizement
23 of power by judges who are routinely re-elected with-
24 out opposition. No matter how humble the man, years
25 of unchecked power wreak their changes and all persons



involved in the system of justice suffer accordingly. And when a committee comes through here for revision of the executive and the legislative, I think I'll probably make the same suggestion, that all elected public officials should have a limit on their terms of office.

Point two, equality of justice. The one pervasive influence in the whole system is money. The rich usually go free and the poor go to jail. The system, including both civil and criminal cases, should be entirely financed by the state government. There should be no fees for transcripts, for arrest warrants, or for filing pleadings or other documents. The state has a monopoly on justice. It ill behooves the state to charge for the privilege.

Let me make one comment here about fees for arrest warrants. This is something I had never of before I came to Georgia, that for paying I believe it's ten dollars you could have somebody thrown in jail. To me that seems somewhat incomprehensible. I had always assumed that police were paid to investigate crimes and that it shouldn't be just how much money you could get up at any particular occasion that should determine whether somebody should go to jail or not.

Point three, merit selection of judges.

Panels of lawyers and ordinary citizens should nominate or endorse candidates for any level of the judiciary. Incompetent candidates should be clearly labeled so that voters can make intelligent choices. I guess you could call this a consumer protection law for voters.

Point four, written opinions. When any question in the civil or criminal courts has been briefed--that means a written argument has been submitted to the judge--by one or more parties to the case, a judge should be required to file a written opinion explaining his ruling and the reasons for it. This will encourage the rule of reason and discourage arbitrary rulings. Law clerks should be made available to all judges of courts of record to facilitate the rule of law.

Point five, promoting respect for the courts. The use of judicial robes and archaic methods of addressing judges should be abolished. Judges are only human. They should earn any respect due them by the wisdom of their decisions and the quality of their character. I'll be happy to answer any questions.

THE CHAIRMAN:

May I make a comment, Mr. Finkelstein. I'm

1 intrigued by the things that you're saying. I find
2 it very interesting, but the idea of the judicial
3 article is to keep it clean and to keep it simple
4 and remove from it all matters that could be legi-
5 slated so that we don't have to amend this article
6 every two years. You know, many of the things that
7 you're talking about are the type of things that have
8 us in trouble now, where we come back and we've got
9 a ballot with 50 amendments on it because it's things
10 that maybe should be legislated rather than be included
11 in the Judicial Article. So that was our thrust, to
12 keep this article simple--the actual general framework
13 of the court and not the specifics.

14 So I certainly appreciate what you have to
15 say. I find it quite interesting.

16 Are there any questions?

17 [No response.]

18 Thank you very much.

19 MR. FINKELSTEIN:

20 Thank you.

21 THE CHAIRMAN:

22 Mr. Sam Sheppard Peyton.

23 MR. PEYTON:

24 I'll dispense with any complimentary remarks
25 because there's very little time. I feel that this



1 article is long overdue in the State of Georgia.
2 It started in the courts of England; therefore it's
3 based on revenge and for no other reason. It's long
4 overdue. We have people working that cannot afford
5 justice. A dollar bill determines your justice. If
6 you can afford a thousand-dollar lawyer, and you have
7 a grievance or a claim or any criminal acts that are
8 being done by any individual that you know of, then
9 you can prosecute.

10 These towns that do not have the small claims
11 courts do not allow the working man that's just making
12 minimum wage an opportunity to regain any loss that
13 he's had and I do not feel that there should be a
14 different court or a different type of court in every
15 county in the State of Georgia. And I feel that there
16 are mental patients who are tried in the probate court
17 right now who never even knew that they had an oppor-
18 tunity to have a lawyer and sent to a mental institu-
19 tion and remained there for a minimum of five days,
20 the law states, without even an opportunity to get a
21 lawyer, and a child can be put in an institution and
22 once committed to an institution of this nature, they
23 are marked for the rest of their lives and this goes
24 for adults as well. People just because they're a
25 little different or just think a little different from



1 someone else can be sent to an institution. And it's
2 done repeatedly all the time. There are records on
3 the books where individuals are not even allowed to
4 attend court hearings and are deprived of property.
5 This as I understand is against the Constitution of
6 the United States and not allowed to have a trial by
7 jury unless you have the money to get one.

8
9
10 In the recorder's court as we have here in
11 the State of Georgia, we have a policeman there like
12 over here in local towns around us, and the policeman
13 will sit up there and he will try you for a traffic
14 violation and he will dictate to you what you're going
15 to pay; and if you don't have the money or you're not
16 related to someone who has money, then you'll pay for
17 it. If you have money or your friends have money,
18 then you'll be taken care of. And I don't feel that
19 our present system is worth it and I support this and
20 I would appreciate the fact that other people who
21 realize that things like this are done will speak up.
22 This is the first time I have even made an effort to
23 do so and I think it's long overdue and we do not even
24 know when hearings are held in our town until maybe a
25 day before and we see a little article on the back
part of the page or something. And the jurors should
be paid double what they do now because like it is now



1 we're penalizing a man because he serves on the jury,
2 and if he works for a living he cannot afford to take
3 off a week just to serve on the jury.

4 I appreciate the opportunity to say what I
5 said and I hope that I haven't taken too much time.

6 THE CHAIRMAN:

7 We certainly appreciate the fact that you
8 took the time to come down and give us your opinion.
9 We have noted it.

10 Because of the time, I think I had better
11 sort of stick with the list.

12 A VOICE:

13 It doesn't make any difference about a list.
14 These people are talking and I'd like to know who
15 they are and what their occupation is. I don't know
16 anything about this fellow's background.

17 MR. GREENE:

18 I was just thinking the same thing.

19 THE CHAIRMAN:

20 I don't know whether that's strictly material
21 or not. He has the right to express his opinion; and
22 who he is, that's not too material. If he wishes to
23 say what his position is, that's fine. I don't think
24 that ought to be a requirement.

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1 MR. GREENE:

2 I would be interested, if you don't mind.

3 I was just about to ask him that question. In other
4 words, are you just speaking as a private citizen or
5 a lawyer? Personal?

6 MR. PEYTON:

7 I don't have a fancy office or anything of
8 that nature. I don't even have an office. The thing
9 is, I believe I expressed the opinion of more than
10 one person in this State of Georgia.

11 THE CHAIRMAN:

12 Mr. Peyton, we certainly appreciate your
13 coming and giving us your opinion. Thank you very
14 much.

15 We'll hear from Mr. S. A. Roos, who is the
16 City Manager of the City of Albany.

17 MR. ROOS:

18 Mr. Chairman, I suppose it fell my place to
19 undertake to represent the City. I would also express
20 that I had a phone call today from Mr. Jack May, who
21 is the District Vice-president of the Georgia Municipal
22 Association, expressing his regrets for not being able
23 to come up from Valdosta; and he would say for the
24 record his opposition regarding the population of
25 municipal courts.




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The Committee should have upon its return to Atlanta a letter from the Mayor of the City of Albany expressing the City's opposition from the viewpoint of the committee of the whole, and tonight the City Commission will examine the resolution also opposing the abolition of municipal courts; and if it's passed it will be forwarded for inclusion in the record. The points of concern regarding the potential abolition of municipal courts are outlined in the letter.

THE CHAIRMAN:

Thank you very much.



Mr. William F. Pierce. Mr. Pierce is City Manager of Douglas, Georgia.

MR. PIERCE:

Thank you, Mr. Chairman. I am City Manager of the City of Douglas, and I am appearing on behalf of the Mayor and Commission to talk about the proposed judicial article primarily in regard to the municipal courts. And I'd like to say that we are not necessarily concerned about the financial aspect of it. It doesn't mean that much to us financially. But the municipal courts have always been historically a people's court. For the benefit of the people we schedule court hearings in the evenings and early

mornings to prevent people from missing work, that type thing; and I think we should consider retention of that.

I do believe that the Legislature is sufficient authority to legislate any set of standards that they desire for municipal courts in order to standardize them statewide, and frankly we have no objections to that whatsoever, any standardization that our legislature would see fit for the municipal courts; but we'd like to see them retained.

I agree with the elimination of the fee offices. I never have agreed with that. I don't think justice should ever be based on a monetary basis, and that's why I say we're certainly not concerned as far as the finances.

I would just like to say that I do hope the Committee will consider retaining the municipal courts even if they see fit to set standards. I have no objection to that whatsoever.

THE CHAIRMAN:

Thank you, Mr. Pierce; we appreciate that.

Mr. Lee, would you like to speak now? For those of you who don't know Mr. Lee, he's our district attorney in this county; and he's a former member of the Georgia General Assembly; and we really miss him,

1 as a matter of fact.

2 MR. LEE:

3 Thank you, Mr. Chairman. I don't have any-
4 thing really to add to what's been said except as a
5 citizen of Georgia I want to express my appreciation
6 to this committee for the time it's given to try to
7 accomplish a very needed service to the people of
8 this state. There's absolutely no question in my
9 mind but what the Judicial Article of the Constitution
10 of Georgia very badly needs revising; and I hope that
11 you can get something done.

12
13 I don't have any words of wisdom to offer
14 to you as to how to do it, nor do I have any really
15 set concepts of what it should be. I think that if
16 I had to answer that question I would basically say
17 that ideally the concept of the one-tier court
18 structure offers the most. When I say that, though,
19 I realize that it's impossible to do that in this
20 state. We have a 159 counties, which is approximately
21 a hundred counties to start with. We have so many
22 municipalities that range in size from two or three
23 hundred people up to the size of Atlanta. What's
24 good for Dougherty County with about a hundred thou-
25 sand people and about a 120 lawyers would not work in
26 the adjoining county of Baker of about 4000 people and



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one lawyer. The problem becomes manifest when you try to put together the diverse geographical makeup of this particular state; but I would say that as close as you can come to a one-tier concept with the units that would reach down and serve the smaller communities adequately would be ideally what we should try to achieve in this state.

Now as far as the municipality courts -- we call it recorder's court here -- I think that my position on that would be that it should be separated from the overall concept that we are involved in. I say that because the recorder's court enforces municipal ordinances or makes decisions on municipal ordinances. All of the other courts that we are concerned with have to deal with laws of the state of Georgia. So they are two different entities in that respect. I believe that we should -- I believe it would be better really to treat them as separate entities rather than becoming a part of one unified concept in substance.

I might say that as district attorney -- I'm one of two district attorneys in the State of Georgia that also serves as solicitor of the state court for this county. That means I'm the prosecutor of misdemeanors in the state court as well as the felonies

1 in the superior court. The only other district
2 attorney that has that obligation is the district
3 attorney at Chatham County. I think that's the way
4 that should be generally be. I think the district
5 attorney ought to prosecute the felonies. So in your
6 considerations of how the courts should be set up,
7 that should be the level that the district attorney
8 should operate in. I say that because it sort of puts
9 one man in a position of sort of seeing the overall
10 criminal picture in his community. It also saves the
11 county money.

12 We're glad to see you in Albany; we appreciate
13 the job you're trying to do.

14 THE CHAIRMAN:

15 Thank you, Mr. Lee. Are there any questions?

16 [No response.]

17 Next is Abram Clark, Mayor of Cairo.

18 MR. CLARK:

19 I'm Abram Clark, Mayor of Cairo. I see
20 that Camilla got their city manager up here. I
21 couldn't even get the city manager to come up. So
22 I've come to speak against revision of this mayor's
23 court, and also I want to go along with what Mr.
24 Conger said awhile ago. I think he pretty well outlined
25 it all. You will have in a few days a letter



from the council opposing this. And I know you have a tough job on hand and I know that by the time y'all get through making all these hearings around you're confused; but we're confused, too.

We appreciate your giving us the opportunity to come up. We do oppose revision of this.

THE CHAIRMAN:

All right. Thank you. Marty, did you have a question?

MR. HODGKINS:

Mayor, would you support the idea of the concept we're talking about of having a uniform municipal court system statewide rather than having the different jurisdictions and having uniform standards for the people who serve as either the recorder or magistrate or whatever, and that being an attorney required to have a degree of training at some point?

MR. CLARK:

I would have to speak for myself, but you know when the voters go out to vote you may not always have an attorney running; and I'm not saying anything against the attorney, but I don't know that the attorney is always right. I think justice sometimes is done more with some common practical sense and



1 some advice than it is by staying by the letter of
2 the law.

3 THE CHAIRMAN:

4 Mr. Clark, thank you very much; thanks
5 for coming up.

6 Mr. Daniel Bell?

7 MR. BELL:

8 Your Honor, I don't have anything to add
9 to what Mr. Joe Palmer had to say, and the City of
10 Dawson feels the same way that the city of Camilla
11 feels and you'll have a letter by the time you get
12 back from the City of Dawson.

13 THE CHAIRMAN:

14 Mr. Bell, we appreciate that.

15 We have one more name on the list, and
16 that's Judge of the Municipal Court of Thomasville,
17 Mr. Andrews. Come up, Judge, won't you, please.

18 MR. ANDREWS:

19 Mr. Chairman, members of the Committee,
20 Ladies and Gentlemen, the Judge of Municipal Court --
21 and the municipal court that I refer to there is the
22 recorder's court. It's official name, I think, is
23 police court; but we have voted to change that and
24 we also didn't want to call it recorder's court. So
25 it's called a municipal court because we feel that a



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court belongs to the people. And I'm here both as the judge of the court because as an attorney I was sent here by the commission. And I would like to read the letter which the commission has addressed to the Committee through it's chairman, Representative Wayne Snow, Junior, and also answer any questions or be of any help that I can to the Committee in seeing what they are trying to do.

[Reading] "Dear Sirs:

"It has been called to our attention that several proposals have been made to change Article VI in the Constitution of the State of Georgia which would either abolish the municipal or recorder's courts as they now exist or drastically change their operations.

"We, the duly elected commissioners of the City of Thomasville, Georgia, are opposed to most of these proposals or recommendations.

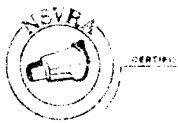
"We are unalterably opposed to drafts furnished our attorney and designated as Draft A and Draft C. If problems exist in some of the municipal courts in the State of Georgia, they can be changed or corrected without the abolition of the courts. Such a procedure does not seem to take into consideration either the municipalities or the citizens of our

1 to whom the present municipal court system is
2 immediately available for the trial of traffic
3 offenses and violations of city ordinances.

4 "The present system has worked very well as
5 far as the operation of our court is concerned. There
6 are no delays and no burdensome case loads, and there
7 are no prisoners in jail awaiting a speedy and fair
8 trial.

9 "Each city or town is able to hold court as
10 many or as few times as deemed necessary and to set
11 the time of such court sessions to fit the citizens
12 of the community and the enforcement officials.
13 Municipal courts can meet formally or informally and
14 further the goals of justice in a minimum time.

15 "The problems of state courts and those of
16 the municipal courts are not necessarily the same.
17 The municipal courts and their judges offer a valuable
18 service to the community through their accessibility,
19 their avialability, and their knowledge of local
20 situations and local ordinances. We feel as the
21 elected representatives of our citizens that we can
22 best provide them with such services and provide for
23 the operation of the courts and the expenses of the
24 courts. We have experienced too often the travail of
25 sending monies to a higher government entity wit the



expectation that we would get it back without a large percentage of loss due to administrative costs.

"Draft B as furnished by your committee overcomes some of the objections set forth above but is incomplete and vague in many instances. We realize, of course, that it is a draft and therefore subject to modification and revision. However, if such a plan as is proposed in Draft B is recommended by your committee, we feel that municipal courts should exist as such and not as operated by a municipal magistrate under the supervision of the Supreme Court or Judicial Council. We believe that the municipal courts should be operated exclusively by and for the citizens of the municipality. Too many of the references to municipal magistrates say 'as provided by law' or 'as provided by the General Assembly.'

"In short, it is our belief and desire that the municipal courts not be made part of a State Judicial system or system of courts and except as necessary to restrict their operation to the trial of traffic cases and violations of municipal ordinances, or as necessary to achieve uniformity in some of their administrative and accounting procedures that these courts should be left as they are. Regardless of which plan or plans may be recommended by your



1 committee, the operations of the court and the selec-
2 tion and appointment of judges should be the responsi-
3 bility of the governing body of the municipality
4 who are obligated to fulfill such responsibility.

5 "Respectfully submitted, J. A. Bracey, Mayor,
6 Acting for and in behalf of the Commissioners of the
7 City of Thomasville, Georgia."

8 THE CHAIRMAN:

9 Thank you very much, Mr. Andrews.

10 MR. ANDREWS:

11 I did have a comment or two that I wanted
12 *Venue* to make with regard to the question of venue. I can
13 envision the problems if you had a county magistrate.
14 We have seven municipalities in Thomas County, and I
15 can envision problems if we had a county magistrate
16 or a circuit magistrate. The same judge would have
17 to go to all the seven municipalities and have seven
18 sets of ordinances that he's got to know backwards
19 and forwards and many of these ordinances are -- and
20 this is one area wherein the Committee might think
21 when they're working with the local courts. Many of
22 these ordinances are not codified or arranged in
23 such a manner that the judge can even find them. So
24 if he goes down there he won't know what he's enforcing,
25 if he goes down there to try these cases involving



1 these local ordinances.

2 THE CHAIRMAN:

3 Would you agree, sir, that if they can't
4 find a written ordinance that it ought not be
5 enforced?

6 MR. ANDREWS:

7 Well, that's what he might have to wind up
8 doing.

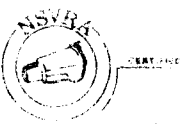
9 Well, I thank you for the opportunity of
10 speaking here today.

11 THE CHAIRMAN:

12 Ladies and gentlemen, that's the last name
13 we have on this list. If somebody else wanted to
14 speak, this would be a good time for it.

15 MR. McMICHAEL:

16 I'm W. S. McMichael, Chairman of the City
17 Commission of Whitman; and I have with us two commis-
18 sioners and our city manager. And I think that our
19 neighbors from Bainbridge and Camilla have pretty
20 well expressed ourselves, and I couldn't quite hear
21 our friend from Thomasville; but what he was saying,
22 I think we're in line with. We are all for the
23 municipal court. We're very much opposed to this
24 revision.
25



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1 THE CHAIRMAN:

2 Thank you very much. Is there anyone else
3 who would like to make a comment?

4 [No response.]

5 Ladies and gentlemen, we certainly appreciate
6 our coming. We needed to hear from you and have your
7 input. And I want you to keep one thing in mind:
8 regardless of what we do, our final product will have
9 to be voted on by the people because it will be a
10 constitutional amendment. So you should have input
11 in it. I hope that whatever we do eventually will be
12 what the people of the State of Georgia want and
13 desire.

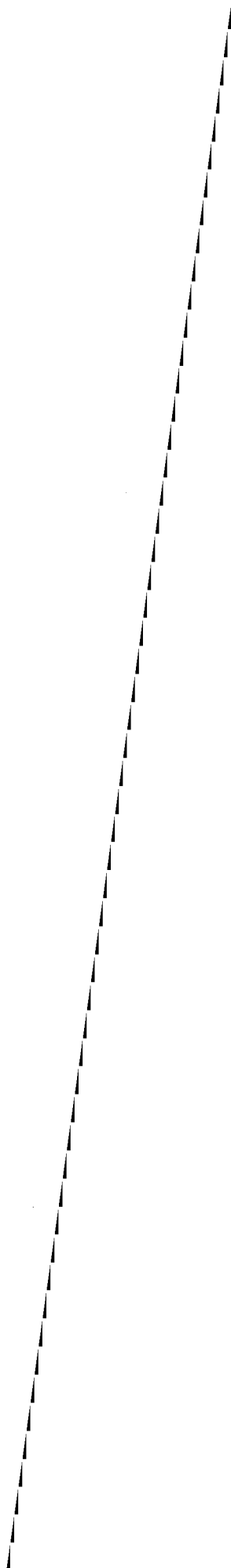
14 Thank you very much for coming.

15 [Whereupon, the above-entitled matter was
16 concluded.]

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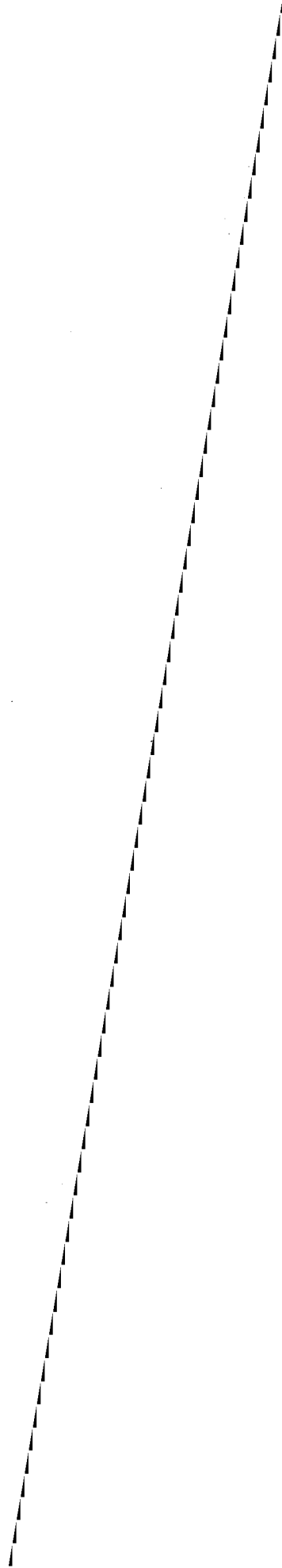
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SELECT COMMITTEE ON CONSTITUTIONAL REVISION
COMMITTEE TO REVISE THE JUDICIAL ARTICLE

PUBLIC HEARING
COLUMBUS, GEORGIA

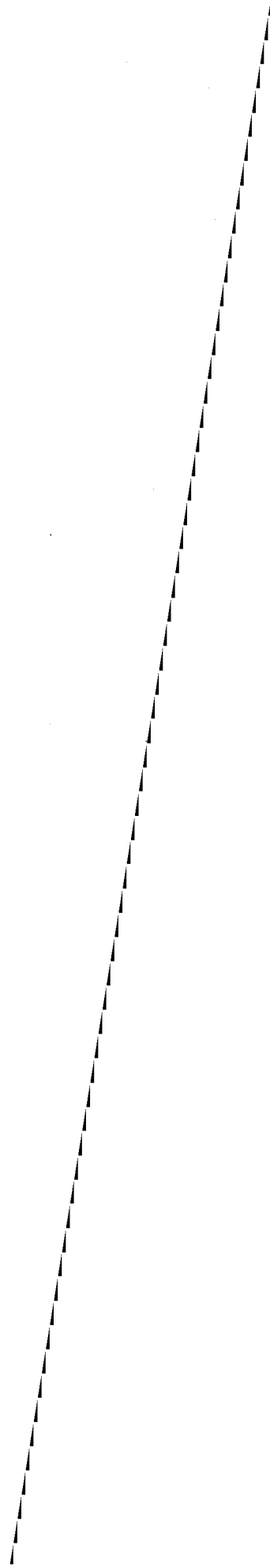
City Council Chambers
The Government Center
Columbus, Georgia

Friday, December 1, 1978

THE HONORABLE ALBERT THOMPSON, Presiding Chairman

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THE COMMITTEE:

ALBERT THOMPSON, Presiding

DOROTHY BEASLEY

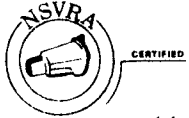
ADAM GREENE

MARTY HODGKINS

Official Reporter:

RAYMOND E. CAMPBELL, C.C.R.

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P R O C E E D I N G S

CHAIRMAN THOMPSON:

There's only one name appearing on our list, and that's not going to be much of a public hearing if we continue in that vein. I would like to encourage you, either now or after you've heard a few comments that I'm going to make, to come up and participate in our forum.

One of the questions that I'm asked more than anything else going around the state working with this group, is why we're interested in changing the Judicial Article. But before I get into that let me introduce to you the other members of the Committee who are present.

Seated to my extreme left and to your right is Mr. Adam Greene, who is Clerk of the Court over in Bibb County, Georgia.

Immediately to my left is Judge Dorothy Beasley with the State Court of Fulton County. She was appointed by Governor Busby, and I believe she's run for election and won a full term since that time.

To my right is Marty Hodgkins, who is our director and does most of the work for us--gets out all the publications and other things; and he is most responsible for the continuity of these hearings.

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1 While I'm going into that, just so you don't think
2 that this is Albert Thompson's committee and that I
3 am the sole proponent of this article, I'm going to
4 read to you the names of the people who have parti-
5 cipated in our deliberations and are responsible for
6 the paper work that you have before you. Now, you
7 have several different forms of different proposals.
8 All of those are not ours. We're getting them from
9 various sources and we are putting it all together
10 trying to get some idea as to what will be acceptable
11 in the state. So don't blame us for all of it. We're
12 responsible for a portion of it, not all.

13
14 I am substituting this morning for Repre-
15 sentative Wayne Snow, Junior -- many of you know him --
16 who is the chairman of this body. Ralph Beard, Dean
17 of the University of Georgia School of Law; Judge
18 Beasley, whom I've already introduced; George T.
19 Smith, who is Chief Justice of the Georgia Court of
20 Appeals, form lieutenant governor of the State of
21 Georgia; Harry Bexley, an attorney and business
22 manager for Local 613, IBEW; Lanny Bridges, who is
23 a practicing attorney and represents the young lawyers'
24 section of the State Bar of Georgia; Berry Brock,
25 federal employee, former judge of the Municipal Court
of Fairburn; Marcus D. Calhoun, who is a superior



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1 court judge. Most of know much about him because his
2 son practices in this circuit. John Cole, Associate
3 Dean, Walter F. George School of Law; H. W. Crane,
4 practicing attorney and a part-time judge of the
5 juvenile court of Bartow County; Joseph J. Drolet,
6 who is the Assistant District Attorney, Atlanta
7 Judicial Circuit; you've met Adam Greene; Robin
8 Harris, attorney, former chairman of the House
9 Judiciary Committee, who is now president of Decatur
10 Federal Savings and Loan Association; Randolph Metlock,
11 Mayor, City of Stone Mountain, form judge of the
12 Stone Mountain Recorder's Court; James D. Miller,
13 practicing attorney representing the State Bar of
14 Georgia; H. E. Nichols, Chief Justice of the Supreme
15 Court of Georgia; Howard Overby who is an attorney
16 and is chairman of the Senate Judiciary Committee;
17 L. Ray Patterson, Dean of Emory University School
18 of Law; William K. Stanley, Judge of Probate Court
19 of Bibb County; Robert S. Stubbs, former professor
20 at Emory University School of Law and who is now the
21 executive assistant attorney general; Mrs. Lucy
22 Williams, former president of the Fulton County
23 Grand Jurors Association; and Mrs. Carol Wilson, who
24 is a member of the Georgia League of Women Voters. I
25

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1 think the list is incomplete, the President of the
2 Justice of the Peace Association --

3 MR. HODGKINS:

4 Berry Brock.

5 THE CHAIRMAN:

6 Berry Brock, he's had input.

7 I read this list off so you'd be aware of
8 the calibre of the person who has been working on
9 this document and who has participated at some level
10 or another in the preparation of the paperwork that
11 we have so far.

12 I have a written statement here which has
13 some statements in it with which perhaps you'll
14 disagree as to what we're doing and why we feel
15 that it's necessary to go into a revision of the
16 judicial article. I'm going to read this so that
17 I'll be sure as to what I said and so that I can
18 repeat it again if I have to.

19 [Reading] "A number of recent studies of State
20 Court systems have identified Georgia's judicial
21 system as the most complex structure in the nation,
22 and part of this complexity reflects the sheer size
23 of the system as it is estimated that the state
24 possesses approximately 2500 separate courts. Another
25 measure of the system's complexity is the nature of



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1 jurisdiction granted to the courts. By virtue of
2 constitutional and legislative mandates, the juris-
3 diction of the various courts is fragmented and over-
4 lapping. As a result such unfortunate practices as
5 judge shopping and trials de novo are allowed to
6 occur. Also, the jurisdiction granted to the courts
7 of the same class is not uniform throughout the state.
8 Additionally, the incomplete nature of the system
9 causes problems. The system is incomplete as certain
10 courts exist on a less than statewide basis. As a
11 result citizens across the state do not have equal
12 access to the same judicial forums.

13
14 "Another set of problems associated with the
15 judiciary relates to the qualifications of judicial
16 personnel. It has been accurately stated that many
17 judges are not even required to be literate. With
18 few exceptions judges of the different classes of
19 courts are not required to complete any form of initial
20 or continued training during their term or terms of
21 office. This lack of judicial qualifications is com-
22 pounded by the fact that many judges serve on a part-
23 time basis; and a large number of judges receive com-
24 pensation from fees rather than a salary.

"Revision of the Judicial Article also is
necessary to remove many outmoded provisions and to



1 eliminate such statutory measures as venue, appellate
2 jurisdiction, et cetera. There's also a need to pro-
3 vide a degree of uniformity across the state in such
4 areas as rules of practice and procedure, judicial
5 administration, and record keeping. Although not of
6 a constitutional nature, the process of judicial
7 revision may well create the necessary climate to
8 create -- to achieve such goals.

9 "Perhaps the most important principle
10 associated with judicial revision is the need to
11 establish a judicial department in this state that is
12 relatively independent. Independence includes the
13 ability to administer itself and control its constituent
14 court and to provide justice without undue local
15 political influence. Independence also means that
16 the local courts should no longer be viewed as a
17 source of local revenue but as a source of local
18 justice."

19 Now, this basically sums up what we as a
20 committee have come up with as being the reason for
21 doing this judicial revision.

22 Now I'd like for Marty Hodgkins, if he would,
23 to just tell you procedurally where we are at this time
24 and the procedure that we're going to follow this
25 morning.

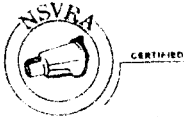


1 He says he has nothing special.

2 You all have the handouts that we've pre-
3 pared. I think it carries with it three different
4 and separate proposals. Basically -- and I want to
5 speak to this for a moment because our experience in
6 the public hearings has indicated that most of the
7 people who come up to speak are representatives of
8 some level of court or has something to do with the
9 judicial system. And many times they are basically
10 interested in that court or that level of the judicial
11 system in which they're interested. We encourage you
12 not to limit your remarks to just that but talk about
13 the broad, overall picture. Number one, we want a
14 clean document. I think that's the consensus of the
15 Committee. We don't want a constitutional article
16 which goes into specific detail as to the operation
17 of specific courts. We want it to enable us to set
18 up a court system which can be expanded by legisla-
19 tion to do the things which are necessary.

20 Now, we have proposed in one of the proposals
21 a one-tier court. That's leaving out the consideration
22 of the appellate courts. Of course we'll have the
23 appellate courts, the supreme court, and the court of
24 appeals. The suggestion has been that we not put in
25 what their jurisdiction would be. That would be

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1 created by legislation at a later time, but we would
2 have those two appellate courts. And then the one-
3 tier system requires one trial court in the state of
4 Georgia, which would be the superior court; and that
5 superior court would have divisions covering the
6 jurisdiction of the various separate courts that we
7 have now. And it would have either -- well, associate
8 judges of the superior court; and then our commital
9 courts would have magistrates. Now, that does not
10 say what the specific jurisdiction of these courts
11 is going to be. That's going to have to be worked
12 out over a period of time. But that's the one-tier
13 court system with only one trial court, and that
14 would be the superior court.

15 The two-tier court system, which has been
16 recommended by some people, would have two trial
17 courts. One would be the superior court and the
18 other would be a district court. As I can see from
19 the two-tier system, the district court would have
20 roughly the same jurisdiction as represented now
21 by state courts, with the exception that it would be
22 a district court. Now, in Muscogee County that
23 doesn't affect us that much because if we had a
24 district court, most likely the judge would come from
25 Muscogee County and that district court would travel

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1 the circuit just like a superior court judge does; but
2 he would have a lesser jurisdiction which encompass
3 basically what the state courts do today.

4 We're going to run into trouble with that
5 because everybody wants the judge to be in the county
6 that he is sitting in and it makes it extremely dif-
7 ficult. Some counties just are not large enough to
8 accommodate a judge, a courthouse, and a district
9 attorney and other things that go along with it; and
10 it makes it more difficult for us to operate in that
11 area.

12 We only have, I believe, one name on our
13 list up here.

14 MS. BEASLEY:

15 I'd like to make a comment.

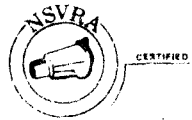
16 THE CHAIRMAN:

17 Judge Beasley would like to make a comment,
18 and I'd like very much for you to hear her.

19 Judge.

20 MS. BEASLEY:

21 Thank you. I think that the thing that would
22 be most helpful to us as committee members who are
23 evolving the plan -- keep in mind that there is nothing
24 concrete yet and that the purpose of the public hearing
25 is to get the ideas of the folks out in the state as to --



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1 from their experience and from their knowledge of the
2 way the court system operates now -- what would be the
3 best court system for the next 50, 75, a 100 years.
4 So we want a structure because the current one doesn't,
5 we think, best serve the needs of the people of the
6 state with regard to the provision of judicial services,
7 and, of course, that's the only reason for the system
8 of the courts.

9 So what we are interested in hearing from
10 you is your comments on the principles that are
11 involved, not the specific details as to how many
12 judges there are or that kind of thing. So if you
13 will look at the basic principles for judicial re-
14 vision in addition to whatever comments you already
15 had in your mind that you would want to make, we would
16 like to hear about those things. And, for example,
17 one I know that's not listed on there, but the concept
18 of exclusive jurisdictions. There are now many, many,
19 many courts in Georgia, over 2100 -- Isn't that right,
20 Marty? Over 2100 courts in Georgia, and many of them
21 have overlapping jurisdiction. I'm sure they do here
22 in Muscogee County. My own has overlapping jurisdic-
23 tion with the Superior Court. For example, all civil
24 cases can be brought either in my court or in the
25 superior court. Well, that isn't necessary for the

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1 determination of where cases are to be tried to be
2 left up to the whim, you might say, or the discretion
3 of whoever's filing the case. The court system itself
4 should control the allocation of cases and so forth
5 and where they're to be tried. So that willy-nilly
6 kind of thing is unnecessary and overlapping juris-
7 diction is one of the principles which we would like
8 to hear from you as to whether that is something we
9 should aim for or not.

10 Thank you.

11 THE CHAIRMAN:

12 The only name on that list, I believe, is
13 Mr. McCauley's name. Doesn't anyone else wish to
14 speak?

15 MR. McCAULEY:

16 Maybe if I start it --

17 THE CHAIRMAN:

18 Come on up, Vince.

19 MR. McCAULEY:

20 I think most of the people here may be a
21 little bit bashful. If I've ever been accused of
22 anything, it's not being bashful.

23 THE CHAIRMAN:

24 Looking over this counter, I don't see any-
25 body out there who I think is bashful.



PROFESSIONAL ENGINEER - REGISTERED

1 MR. McCAULEY:

2 I'm at that stage where I can always use
3 some support when I stand up in court.

4 The comment, Judge, that you made about the
5 overlapping of jurisdiction in various courts, it
6 would appear that your thinking was if jurisdiction
7 is in the superior court for civil cases of a particu-
8 lar description, perhaps the amount in controversy
9 and so forth, they should always go to the superior
10 court. You mentioned about your court having over-
11 lapping jurisdiction with superior courts and you
12 feel that it should not be left up to the choice of
13 the, let's say, attorney who would select one court
14 rather than the other.

15 MS. BEASLEY:

16 Yes, simply for administrative control of
17 how many judges you needed at any one place and any
18 one time; plus if the idea is that you're going to
19 have a state court which treats cases of less signi-
20 ficance, you might say -- not for litigants; of course,
21 every case is significant -- but a list of some
22 nature moneywise or jurisdictionwise or whatnot, crime.
23 For example, we only handle misdemeanors, no felonies.
24 So if you want to get it closer down to the people's
25 everyday problems, then, for example, give us a limited

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1 monetary amount civilly and anything above that would
2 go to the superior court; and it would be a better
3 division of labor, it would seem to me. We would
4 like to have your comments on this.

5 MR. McCAULEY:

6 Well, it seems to me -- as you can see I've
7 been practicing law for a number of years -- and I
8 would personally not like to see the choice of forum
9 limited to a litigant or to counsel for a litigant.
10 With that in mind it would be my thinking -- and I
11 would think the attitude of perhaps most of the
12 senior attorneys -- that the state courts should have
13 the same jurisdiction that they have now. I don't
14 see any real reason -- you mentioned the fact that
15 you would have to have, perhaps, more judges. Well,
16 of course -- and, too, I'm speaking solely unfortunately
17 from the attitude of one who has practices primarily
18 in Muscogee County, where we have only one state court
19 judge. We now have four superior court judges for
20 this particular county. Now, in your county it might
21 well be that in your state court you would have to
22 have more judges because of this enlarged or existing
23 jurisdiction. I would think that that particular
24 need would be limited to Fulton County, perhaps Bibb
25 County, Chatham County--areas of considerable population.

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1 But speaking generally it would be my feeling that
2 when we restrict the right of a litigant to come to
3 a court, we are in effect taking away some right or
4 privilege that such individual might have.

5 I'm reminded of the fact -- and perhaps a
6 lot of the lawyers in this court are not aware of it
7 that there is a move on now in the Congress of the
8 United States to remove diversity jurisdiction from
9 the U. S. Courts. Now, this is a right that liti-
10 gants have had for the past 200 years. And it's my
11 feeling that it would be wrong to take it away. If
12 we restrict -- anytime that you remove jurisdiction
13 from a particular court, you close the door of that
14 courtroom to the individual. And I don't think as
15 attorneys that that's something we would welcome.

16 So much, Judge, for your feeling about the
17 overlapping of jurisdiction. I think that the juris-
18 dictional status of the courts at this point should
19 remain as it is.

20 The other -- I had a suggestion. In looking
21 over this list of suggestions, you might say, it's --
22 some of these are overlapping. I have the feeling
23 that perhaps if the director were asked to structure
24 what you might call a table of operations of some
25 type of -- I'm sure you're familiar with what I'm

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1 talking about, something that the lawyers and the
2 other parties interested could look at and get a
3 bird's eye view, as it were, of what the proposals
4 are as far as the various courts are concerned.
5 For example, as Albert said, the appellate courts
6 would remain the same; so they're out of the picture.
7 What we're talking about essentially is trial courts
8 below the appellate level. So in that regard you
9 would have the superior court in one box, let's say,
10 and then you'd have under that the jurisdiction
11 proposed for that superior court. You would have
12 your state court, and then you would have -- whether
13 it's what you might call a county court or a -- your
14 administrative procedure -- As I see the picture, and
15 hurriedly looking at this list, what the Committee and
16 the people behind it are interested in perhaps would
17 be your superior court, your state court, a court of
18 domestic relations and then -- no, as you were. Your
19 county court would come after your state court and
20 then your municipal court of domestic relations or
21 your county court of domestic relations. And then
22 of course, you would have your administrative processes.
23 It's suggested here that you have minor traffic
24 violations disposed of administrative processes; and
25 ~~if your director would in effect reduce all this~~

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1 writing to a table of operations so you could put it
2 out among the attorneys and the other people and they
3 could get a bird's eye view, it would be in effect
4 reconciled, everything that's set out on all these
5 sheets. I think it would be very helpful.

6 I notice one thing in here, you have this
7 domestic relations suggestion, provision, whatever it
8 is -- if you'll pardon a personal reference, going
9 back a few years in Philadelphia, they had what they
10 called a municipal court of domestic relations which
11 had its own building, its own judges, its own staff,
12 all domestic cases in that city other than divorce
13 were handled by that court of domestic relations. And
14 if we had something like this in the more populous
15 counties, then our superior court judges would be
16 relieved of the necessity of having 26 hearings in
17 one day, let's say, on alimony, custody, and things
18 of that nature.

19 Now, there's one other thing on here that
20 I noticed looking over it very hurriedly, and that is
21 the one pertaining to divorce, alimony, and custody --
22 I can't put my -- here it is. "There should be a
23 family court with jurisdiction over divorce, custody,
24 separation," et cetera, et cetera. Well, I think you
25 would run into a lot of trouble if you try to put



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1 divorce -- and then there's a supplement to that which
2 says that the divorce would be handled as a nonjury
3 case. Does somebody have the -- let's see where that
4 is.

5 THE CHAIRMAN:

6 Vince, let me stop you just a minute. What
7 you're looking at is a preferential questionnaire
8 that we've prepared and we hope you'll answer accord-
9 ing to what your preferences are. Those are alterna-
10 tives. We aren't attempting to accomplish all of
11 those.

12 MR. McCAULEY:

13 No, I was merely trying to give you some
14 input.

15 THE CHAIRMAN:

16 Okay. Fine.

17 MR. McCAULEY:

18 On this divorce, for example, without a
19 jury -- here it is, 16, "Juries should not be available
20 in divorce, separation, and child-custody cases."
21 You're going to run into trouble there if you try
22 to take divorce cases away from juries. And there
23 are anumber of other things --

24 THE CHAIRMAN:

25 But that -- that-- there's hardly any

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necessity for a jury trial when we have no-fault divorces.

MR. McCAULEY:

Oh, oh, I see.

THE CHAIRMAN:

At the same time that this is going on, there is a bill being prepared by the judiciary committee -- Wayne Snow is also the chairman of that -- which is basically going to do away with all grounds for divorce except no-fault. I mean, there isn't much justification for having fault divorces; and if we do away with fault divorces and vote no-fault all the way -- of course, there's nothing for a jury to decide when it comes to a divorce case.

MR. McCAULEY:

Wait a minute, what about alimony?

THE CHAIRMAN:

Well, that's not divorce. That's alimony.

MR. McCAULEY:

Oh, in other words, you visualize alimony as something separate and apart from divorce.

THE CHAIRMAN:

Well, alimony, custody and things of that kind. Really what we're doing now is deciding those set for juries. I think there are very few hearings



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1 up there that determine the divorce as such.

2 MR. McCAULEY:

3 Well, my problem -- I'm not very familiar
4 with divorce cases because I've never tried one in
5 all the time that I've been practicing law. But I'm
6 sure some of the gentlemen here are wondering about
7 contested divorces. You would think there were be a
8 jury in contested cases. They would not be decided
9 by a judge alone, would they?

10 THE CHAIRMAN:

11 Well, I agree you in matters of alimony,
12 property division, we should not deny anyone having
13 a jury in those areas, surely. I thought you had just
14 pulled out divorce alone.

15 MR. McCAULEY:

16 Well, normally, you wouldn't have a jury in
17 a no-fault divorce case anyhow. So I mean what I had
18 thought this particular article referred to was con-
19 tested divorces because in no-fault divorces you don't
20 have the jury anyhow; and certainly I thing that a
21 jury would be necessary in those types of cases.

22 THE CHAIRMAN:

23 I agree with you. If we must have contested
24 divorces, we ought to have a jury trial; and, of
25 course, I won't agree to an article that doesn't have

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1 that in it.

2 MR. McCAULEY:

3 Well, as I say, if we could get some type
4 of a schematic that the director might work out and
5 give us a bird's eye view because it's rather
6 voluminous here; and to be perfectly frank, I wonder
7 how many lawyers are going to sit down and go through
8 the whole thing and come up with some suggestions.

9 THE CHAIRMAN:

10 I notice that Marty's taking down notes on
11 what you said there and I would hope that he would
12 prepare something that --

13 MR. McCAULEY:

14 Incidentally, that one article that is in
15 here about the county court, or whatever court you
16 call it, handling all types of cases aside from your
17 minor traffic violations, you know. You had the idea
18 here that they would be disposed of administratively,
19 that other one about, let's say a county judge or
20 something of that nature, I think would be highly
21 acceptable because in that frame you would, I think,
22 have a judicial officer who would be subject to
23 election. Would that be the thinking? In other words,
24 the public would have an opportunity to express their
25 preference.

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1 THE CHAIRMAN:

2 Well, we aren't locked in really. There's
3 one problem we have with the county judges and that's
4 the disparity in population of the various counties.

5 MR. McCAULEY:

6 That's the point you mentioned, about having
7 difficulty trying to get a district judge or somebody
8 that would be acceptable in each county. I agree;
9 that is going to be a problem. Probably what you're
10 going to have to do is just to set up a circuit like
11 we have in the superior courts within those particular
12 counties just to handle the county court or the
district court.

13 THE CHAIRMAN:

14 With one trial court, if that's all we have,
15 the divisions could do that. Yesterday we got a lot
16 of comments from Camilla, Georgia, Cairo and Albany,
17 from all over that section of the state; and what they
18 were telling us was that they did not want us taking
19 their local courts away from them.
20

21 MR. McCAULEY:

22 You're going to run into that all the state.
23 If mean, that's why we have a 162 [sic] counties.

24 THE CHAIRMAN:

25 Under certain circumstances it might do



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1 justice quite well to remove some of those small
2 courts. I didn't say that down there; I wanted to
3 be able to go back into the section.

4 MR. McCAULEY:

5 Yes, I can imagine you would like to return.
6 My point was simply this, that whatever judicial
7 officers we have, I would think all of us would like
8 to have them responsible to the citizens for appoint-
9 ment, election, and so forth because after all they
10 administer justice to the people, and if the people
11 can't stand it -- that's the situation we're in in
12 the country today. We have a number of judges who are
13 acting with the knowledge that they're never ever
14 going to have to run for office. That's not very
15 good.

16 THE CHAIRMAN:

17 Thank you, Vince.

18 Is there anyone else's name on the list now?

19 [No response]

20 Perhaps I can stimulate your thinking on
21 another level. We are favored by having this morning
22 two of our Recorders present. And yesterday in Albany
23 we had quite a bit of conversation about whether or
24 not those courts that were going to enforce local
25 ordinances ought to come under the constitution or



1 judicial setup.

2 Judge, do you think that we could develop
3 an article which permit a municipality to have its
4 own ordinance enforcement court separate and apart
5 from the other judicial setup?

6 MR. FLOURNOY:

7 I don't know. That would be --

8 THE CHAIRMAN:

9 For the record this is Judge Flournoy.

10 MR. FLOURNOY:

11 That would be on the basis of what other
12 part of this is adopted. You may get yourself in
13 a position where you have such strong conflicts
14 that you would have to more or less follow under
15 these proposals if they are adopted. If otherwise,
16 you mean let it come under local appointments and
17 so forth or elections?

18 THE CHAIRMAN:

19 Local appointments or elections, whatever.
20 We wouldn't have anything whatsoever to do with it.
21 They would be eliminated completely from this article
22 and left up to the local people.

23 MR. FLOURNOY:

24 Well, I don't know what the general attitude
25 would be. Of course, I think it would be favorable

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1 by all of the present Recorders that may later be
2 elected or appointed under such basis as that.

3 Coming up here I thought to myself I'd
4 better keep quiet because I felt like I was a pall-
5 bearer going to my own funeral. So I don't know what
6 the results might be. What was the attitude briefly
7 of the discussion in the Albany meeting?

8 THE CHAIRMAN:

9 They don't want any part of us or this
10 article.

11 [Laughter]

12 MR. FLOURNOY:

13 What was it Vincessa said, that he was not
14 bashful. Maybe I'm too fashful because you just put
15 my thoughts into words then. That's my thinking on
16 it.

17 THE CHAIRMAN:

18 The problem that we're really having with
19 this is that we're only getting input, perhaps, at
20 that level. Bill Lee, who is the district attorney
21 down in Albany, yesterday said that he was in favor
22 of what it is we're attempting to do, which was to
23 create a uniform system of justice throughout the
24 state. We've got some real problems. We heard a lot
25 about municipal courts yesterday. Those who are

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1 familiar with the special statutes creating municipal
2 courts or state courts know that there is no such
3 thing in the State of Georgia. When you say "Municipal
4 Court," you mean one thing in Albany and something
5 else in Columbus and you mean something else in
6 Savannah. There is no such thing as a "municipal
7 court." The same thing is true of state courts.
8 There are state courts in this state that have very
9 limited civil jurisdiction and some of them try mis-
10 demeanors and some of them try local ordinances. They
11 do a little bit of everything. We aren't talking
12 about the same thing. It always confuses me when I
13 hear someone get up and start talking about recorder's
14 court. Our recorder's court setup is different from
15 that of any other system in the state. In all
16 honesty, if the entire state of Georgia had as fine
17 a judicial setup as we have in Muscogee County, I
18 think that it would be a good setup because I'm
19 satisfied with what we're doing locally. But this is
20 a far cry from what is going on in the State of
21 Georgia. This was designed to suit our particular
22 population needs. This perhaps would not suit another
23 jurisdiction.

24 So in trying to get a uniform system
25 throughout the state, we're not getting any input.

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1 We're not getting any thinking from the State of
2 Georgia as to what the overall system should be.
3 We're getting only input on a specific court, how it
4 ought to be setup, what's its jurisdiction should be;
5 and it's really crippling us because we're going to
6 have to work in a vacuum.

7
8 When we get back up to Atlanta and start
9 sitting down trying to draw this up, we're possibly
10 going to come up with something that's going to make
11 everyone unhappy. We have created the public hearings
12 so that everyone can have some input, and we're really
13 not getting the type of input which would be helpful.

14 Would you agree with that, Judge?

15 MS. BEASLEY:

16 Well, we're getting some, but I agree with
17 you to a great extent. But let me just pose this one
18 thing. One of the proposals that has gained a lot of
19 support from those who have been working on it thus
20 far, excluding me -- and I don't know how you all
21 feel about it -- is to do away with all trial courts
22 of all types or descriptions and make one trial court;
23 and everybody that has anything that they want to file
24 in court comes and files it with that one clerk and
25 then it goes into the proper division, whether it be
traffic division or whether it be ordinance division

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1 or whether it be domestic relations or juvenile or
2 whatnot. That's one of the overriding proposals, and
3 we'd to -- Does anybody have an idea about that?

4 MR. McCAULEY:

5 Judge, I think you'd be creating an awfully
6 complicated situation. I mean, going back -- to me
7 I think when our judicial people, those interested
8 in, for example, this courthouse, this building, if
9 we'd had more consultation, you might say, with what
10 they're doing in other states, how are they handling --
11 how did they handle this here and so forth, we might
12 get some ideas. I happened to be studying law in a
13 jurisdiction where they had pretty much of what you're
14 talking about, and it created a lot of problems that
15 would not exist where you had a separate identification
16 of courts. I mean, you would have-- for example, if
17 we had one court in this town with all these divisions,
18 you would have one clerk with a multitudinous staff,
19 and obviously where you've got one man at the top and
20 16 people down below you're going to have things lost
21 and you're going to have confusion multiplied and
22 that sort of thing. I think that would be the primary
23 objection to this situation, rather, the suggestion
24 that Judge Beasley made.

25 MS. BEASLEY:

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1 That's not my suggestion, by the way. It's
2 something I wanted to hear about.

3 MR. McCAULEY:

4 I could readily see, based on that experience
5 many years ago, what might eventuate in that situation.
6 It would seem to me to be highly impractical.

7 One thing you mentioned, Albert, it would
8 be and in support of your effort I would think highly
9 advisable for this effort to be made that your com-
10 mittee is making because you remember when our court
11 here was called the City Court of Columbus and it was
12 actually a state court. It was so confusing to all
13 the people in the community. And I think if you would
14 once get that schematic thing and you would pass it
15 out to all the attorneys in Georgia, I think you might
16 get more input. And as far as this meeting this
17 morning, this is the first time that I've seen this,
18 and I'm sure all the rest of us; and that's perhaps
19 why you're not getting more input than you are. But
20 if you get this thing up and then you have this, too,
21 in front of us, then you might get more response.
22 I would think that the attorneys here and the other
23 people interested would not want the members of this
24 committee to feel that your efforts are not appreciated
25 because it is high time that the judicial system in



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1 Georgia was made more uniform and a lot of these
2 courts eliminated.

3 MS. BEASLEY:

4 One of the results of having a single-
5 tiered trial court would be that we would not neces-
6 sarily have specialized judges; that is, the chief
7 judge of that particular circuit would assign judges
8 and it would be up to him pretty much to decide whether
9 everybody would do everything on a rotating basis
10 or whether he plug in somebody who now is or wanted
11 to be a juvenile judge and let them stay there. So
12 it would be very -- well, the discretion would be
13 in the part of the chief judge for that particular
14 circuit. But as I say, it will lead away from special-
15 ization of judges. And one of the questions I would
16 have of the people of the state is "Do you want
17 specialized judges, that is those who spend all
18 their time on traffic court, domestic relations court,
19 criminal?" let's say, even going that far, which we
20 haven't done yet. Of do you perceive that you are
21 better served if every judge can do everything and
22 can handle felonies and misdemeanors and civil and
23 marital problems and traffic and juvenile and every-
24 thing else?

25 MR. McCAULEY:

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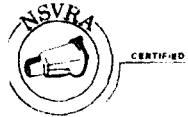
1 I hate to keep getting up but -- That's
2 going to lead to another thing, too, that I saw many
3 years ago. You've going to have the lawyers trying
4 to hold off with their cases until a certain judge is
5 sitting in that particular session, let's say. So, I
6 mean, you solve one problem and you run into another
7 it looks like.

8 MR. COLLINS:

9 I'm Joel Collins and I was a small claims
10 court judge up in Troup County for two years. So I
11 have a little experience in an other area besides the
12 Columbus area. One thing that I see in the particular
13 legislation as proposed is a problem as far as mone-
14 tary expenses are concerned. I remember from Troup
15 County the expenses of the State Court Judge up there,
16 the salary was \$16,000 a year. He had a secretary
17 and some equipment there. He had to share the clerk,
18 as they do here, with the Superior Court Clerk, and
19 shared expenses there. I don't think the expenses
20 for the overall operation of the court would run more
21 than \$50,000 a year. Yet the court itself took in
22 anywhere from \$250,000 to \$300,000 in fines. Every-
23 thing over and above the expenses of the court were
24 turned over to the county as county revenue.

25 The little part that I gleaned glancing

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1 through this, I determined that what the State is
2 hoping to do is to take the expenses of the court and
3 pay for them and then also prorate the fees and other
4 expenses that come in through the court to the state,
5 to the counties, and to the municipalities. I see
6 this as a very big problem because I don't know of
7 many small counties that are going to want to take
8 two to three hundred thousand dollars away from their
9 county coffers and have to up their millage rate and
10 have the money go into the state. I know the small
11 claims court there used to be on the fee system. They
12 had, I think, ten Justices of the Peace throughout
13 Troup County. They had one or two that were making
14 anywhere from 50 to 60 thousand dollars a year on
15 fees, but they did away with that. They put the
16 judge on salary at \$12,000 a year, and then they had
17 a budget set up that had to be approved by the county
18 commissioners on a basis; and I think the budget each
19 year ran somewhere around 40 thousand dollars. Now,
20 the court up there is not but around six years old
21 now; but after the first two years, they took all the
22 money that they had coming in fees -- they did not
23 have the power to fine -- but all the money that they
24 took in in fees paid for all the equipment they bought
25 and paid for all the salaries and everything. And

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1 after two years of operation they started turning
2 over a profit to the county of roughly 20 to 30
3 thousand dollars a year just with that small a court.

4 Now, in a small county system, which is not
5 the problem here because in Columbus, I agree with
6 Mr. Thompson, that Columbus has got one of the best
7 setups as far as the judicial system that I've seen.
8 But you're not going to have that in a small county
9 because you cannot afford to have a full-time juvenile
10 court. You're not going to have the money to have a
11 full-time small claims court or a full-time state
12 court judge. But I see the monetary problem as being
13 one problem.

14 Also, if you're going to put everybody on
15 the associate judge level or judge district court or
16 a circuit court or whatever level, what are you going
17 to pay them to make them leave a practice that they
18 are able to do on a part-time basis now. I don't
19 think could be able to afford to pay a judge on a
20 full-time basis to keep him from practicing law. If
21 you do, you're going to get somebody that has barely
22 been practicing seven years; and I don't think that's
23 what you need in the form of judges. I think you need
24 judges that have experience; that have expertise in
25 certain areas, or in all areas of the law; and if you

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1 start paying for this expertise on a full-time
2 juvenile court judge or recorder's court judge or
3 whatever, you're just not going to be able to afford
4 it. In Troup County the state court judge there, as
5 I said, makes \$16,000 a year and he's prohibited from
6 practicing in Troup County. But he can practice in
7 other counties. I think this is going to pose a
8 problem in trying to find qualified -- not just
9 qualified, I mean; I mean experience and good judges
10 because I don't think you're going to be able to
11 afford it.

12 Now, Alabama has taken the lead in unifying
13 their court system over there. The courts were set
14 up to fund themselves. They were supposed to pay
15 for everything themselves. I believe this was Chief
16 Justice Heflin's idea, and this past year it ran
17 into an awful lot of problems. I think most of our
18 courts on the local level are self-sufficient and
19 also turn money back over to the county--I mean over
20 to the counties themselves. This is just the monetary
21 aspects of it.

22 The other aspect that I see is that we do
23 need some sort of unified court system throughout the
24 state of Georgia because in -- well, in my home town
25 I know that they have a justice of the peace that also

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1 serves as a small claims court judge and he also gets
2 fees for both of them. He gets paid on a fee basis.
3
4 And I know from personal experience that the man is
5 not an attorney; that he has gone out and said, "Look,
6 folks, you give me your bills and I'll collect them
7 for you." He's also gone out to people that come into
8 his court and say, "Well, this such and such a person
9 has a claim against you. Do you want to pay it now,
10 or do you want to come before me?" I think this is the
11 type justice that you have in some of the counties
12 that have justices of the peace and the small claims
13 courts that are paid on a fee basis. I think justices
14 of the peace have lost their purpose. I think the
15 best thing they can do is help run elections in the
16 general militia districts that they have been serving
17 in. But as far as dispensing justice up to \$200,
18 issuing warrants, having commital hearings, I think
19 they've outlived their usefulness. I think that you
20 can go into any county now without any trouble and
21 obtain that justice downtown from an attorney judge,
22 or a judge that was an attorney. I think that's very
23 much needed. I think you're going to have to have a
24 unified system of procedure, which you do not have
25 now.

A proposal might be to set up a statewide

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1 system of small claims courts on a circuit-type basis
2 for the smaller counties and keep your municipal
3 courts in the larger counties. I think that's about
4 the only way you're going to be able to come up with
5 something that's going to benefit everybody because
6 I don't think the small counties are going to be able
7 to afford the type justice that this particular article
8 is intended to cover.

9 Thank you.

10 THE CHAIRMAN:

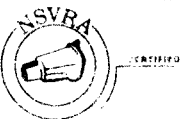
11 Thank you, Mr. Collins.

12 Mr. Layfield. This is Martelle Layfield,
13 Junior, isn't it?

14 MR. LAYFIELD:

15 Mr. Thompson, I just wanted to say that
16 your conducting this hearing in Columbus is appre-
17 ciated. All too often we are forgotten and we don't
18 have an opportunity to have input. And I also want
19 to say to you that, like most of the people in this
20 room, I only today saw the draft proposal. So it's
21 difficult to talk about specifics. But it seems to
22 me that your committee needs to have the support of
23 those of us who believe that there is need for judi-
24 cial reform. If we are to expect the citizens to
25 continue to respect the judicial system, then it must

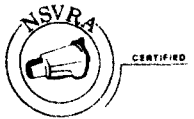
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1 be updated to correspond to the present needs and
2 they are not necessarily the same needs today as they
3 were when our various court systems were created over
4 the last hundred years.

5 I very strongly support having a unified
6 system of rules and procedures so that we all know
7 what they are, regardless of where the court's
8 located. I think that has been one of the things
9 that has made the public question our judicial system,
10 because in one court the ruling is one way and in
11 another court the ruling is another way; and that's
12 got to stop.

13
14 The other thing that I wanted to say is that
15 I feel very strongly, if you look at our court system,
16 we have benefited from people who have been willing
17 to make that their careers; and I am not certain that
18 we can expect that to continue unless we fairly com-
19 pensate the people who are involved in the judicial
20 system. That's not just judges; that's other people
21 who are involved in the system. I think we have been
22 sadly lacking in recognizing that we want the best to
23 be involved in our judicial system. And were it not
24 for people who were willing to work part time and
25 continue a private practice of law or people who are
willing to work part time and continues some other way

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1 to make additional monies for themselves, I don't
2 think we'll find the quality people we have in our
3 judicial system. Those of us in Muscogee County, I
4 think, have been unusually fortunate at the people
5 who have been willing to be involved in it. I don't
6 think that's necessarily true on a statewide basis.
7 We've lost several appellate court justices or judges
8 in recent months, and they were very explicit in
9 saying that the reason was the income and the pay.

10 So I think those two things go together. If
11 we want the people to respect the judicial system,
12 we have to be willing to change. If we also want the
13 people to support the judicial system, they have to
14 understand that they've got to be willing to pay for
15 quality talent to dedicate itself to participate in
16 the judicial system. It's a two-way street. If
17 we're going to have a continued, responsive third
18 branch of our government, it ought to be independent,
19 which is one of the eight principles that your com-
20 mittee has been operating under.

21 And I'll wind up my disjointed comments so
22 that you'll know we really do appreciate your being
23 here by saying I'll answer your questionnaire; I'll
24 send it to you; I'll read the articles; and I support
25 the eight principles that your committee is working

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under.

THE CHAIRMAN:

Thank you, Marty.

Is there anyone else who would like to comment or ask a question? Is there anything else anyone would like to say?

MR. PARTIN:

Mr. Thompson, I've looked over these proposals --

THE CHAIRMAN:

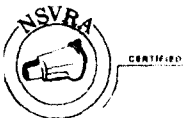
This is John Partin, P-a-r-t-i-n.

MR. PARTIN:

Excuse me. I have a question about why it is that we're leaving so much discretion to somebody other than the legislature in the definition of the duties of a magistrate. Why do we leave that in the hands of the council, the judicial council, or in the hands of the supreme court as opposed to the legislature saying the magistrate is to be appointed with certain qualifications, his job is to be such and such?

THE CHAIRMAN:

John, I think our big problem is we've got two things to look at. One is separation of powers. We've got people, particularly at the supreme court



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1 level and the court of appeals level, who are now
2 saying the separation of power ought to really mean
3 that; and if we're to have a separate judiciary, it
4 ought to be run by members of the judiciary rather
5 than the general assembly. Of course, the general
6 assembly contests that because we think we ought to
7 have control everything in the state and we want to
8 pass laws setting up who does what. And I think that
9 for purposes of the judicial article we ought to put
10 the bare bones in here and keep as much of the actual
11 legislating of specifics out of the constitution.
12 That's what leads to the very poor amendment procedure
13 that we have in the State of Georgia because we've
14 got too much in the constitution, too much in the
15 various articles; and every time you want to change
16 something, you've got to put it on the ballot, and
17 people are complaining about this. We're trying to
18 really simplify the document.

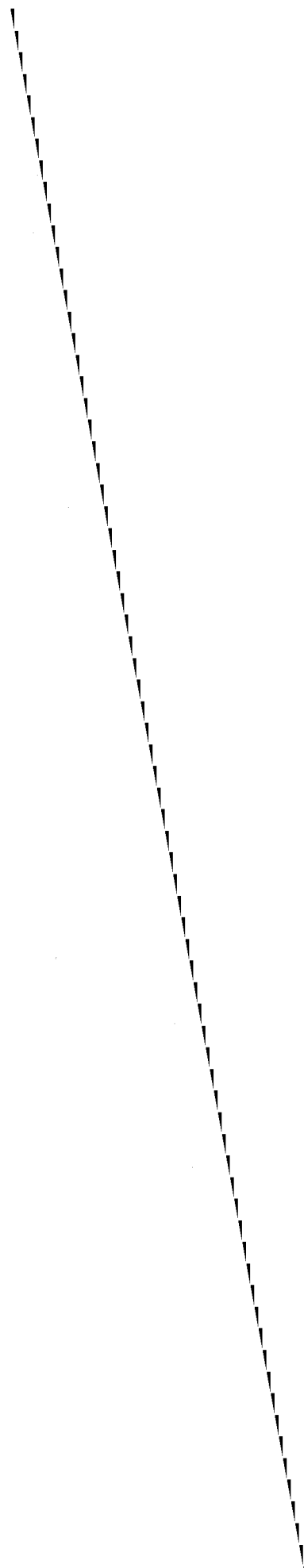
19 MR. PARTIN:

20 But is the plan to have the Judicial Council
21 then tell the legislature what the duties of a magis-
22 trate or a county judge, the associate justices are
23 supposed to be so that the legislature then passes the
24 law so that the people of this state have a chance to
25 say, "That's no good" every two years as opposed to

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1 waiting six or eight years and realistically, I don't
2 see anybody ousting a judge because he says something
3 different on a judicial council.

4 THE CHAIRMAN:

5 Well, the judiciary keeps insisting that
6 they're not separate; that the legislature has too
7 much control over them. And really, I'd sort of like
8 for the legislature to be able --

9 MR. PARTIN:

10 Well, I don't want to go to Atlanta every
11 time we want to do something. That's not the point.
12 But it just seems to me it's more responsive if it's
13 something that is considered every legislative term.

14 The other thing is you said that we didn't
15 have any input in the statewide system. If the
16 people of Columbus feel that this system works well
17 here, cannot it be adapted as one of these proposals
18 as opposed to one of the three drafts that are set
19 forth here?

20 THE CHAIRMAN:

21 It wouldn't work on a statewide level.
22 That's the problem. You've got counties with such
23 small populations that they couldn't afford any one
24 of the courts that we have here. The more practical
25 solution to it would be doing away with the 159

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1 counties and getting them down to about 60 counties;
2 and then each one of them could afford the type of
3 setup that we have in Muscogee; but there's no chance
4 of reducing the number of counties.

5 MR. PARTIN:

6 Okay, but if we're talking about that kind
7 of system, we at least know that in Columbus you've
8 got to have and maintain a trial court for very small
9 claims and you should have a full-time judge staffing
10 that; and if it's got to be run on a circuit basis,
11 then it ought to be run on a circuit basis. But you
12 shouldn't cut out access to these people who can file
13 a suit for four dollars and come in and handle it
14 themselves and be done with it.

15 THE CHAIRMAN:

16 I agree with you, John, and --

17 MR. PARTIN:

18 And it's not going to work with superior
19 court.

20 THE CHAIRMAN:

21 I agree with a hundred percent, but, you
22 know, you've got counties where they might have one
23 or two lawyers in the county; and if you had to have
24 a setup where one of them was going to be the judge
25 and one was going to be a solicitor, you'd be out of

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1 business. Chattahoochee County wouldn't even be able
2 to man anything at all. Part of our problem is
3 there are people on this committee who think that
4 every person who has judicial duties ought to be
5 attorneys and ought to be paid. We've got folks
6 all over the State of Georgia making judicial decisions
7 right now who have no legal training whatsoever.
8 There are justices of the peace -- and I understand
9 that some of them are actually not literate. They
10 can't read, let alone make a judicial decision. And
11 those people are fighting us. They want to maintain
12 exactly what they have. We have a member of the
13 committee -- he's not present today and perhaps I
14 shouldn't say it because he is absent -- but I think
15 the reason he is attentive to what we're doing now is
16 because he is a justice of the peace and he wants to
17 maintain the status of the J.P.'s, and our committee
18 itself is just divided on this.

19 If we ever do a realistic approach to this,
20 I think the cutting down of the number of counties in
21 the State of Georgia would be the number one method
22 of real judicial reform. But I just don't see any
23 way in the world we're going to accomplish that.

24 MS. BEASLEY:

25 One of the concepts which seems to be

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1 evolving, at least in my mind as I listen to folks
2 all over the state as we talk and discuss this in
3 committee is that perhaps we'll have to devise the
4 overall uniform system having two types of setups:
5 one for the urban areas and one for the smaller areas,
6 just like we do with lots of laws in Georgia, so that
7 when the population reaches a certain number, then you
8 go into Plan A and otherwise you'd have Plan B. And
9 that way I think you could accomodate the two different
10 types of localities that we currently have in Georgia
11 and that have developed in our history over the years.
12 But I think that we are, no matter what we do, running
13 into insurmountable obstacles on trying to make every
14 county have the same type of system because every
15 county has just too diverse a demography in terms of
16 the needed judicial services than the next county
17 does, but it does shuffle out into two general types,
18 urban and nonurban. So I think that we are beginning
19 to think along those terms, too.

20 MR. PARTIN:

21 One thing that I did want to say that would
22 have some statewide application is that except in
23 cases of some small civil cases -- whatever that --
24 I think some figure is arbitrary, \$2500 or \$5000, then
25 I personally have no objection to six-man juries. I

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1 can't say that I've had any bad experience with a six-
2 man jury giving full justice. I think in all other
3 matters a twelve-man jury -- a twelve-person jury
4 should be retained. And I think in Draft B there's a
5 proposal that possibly family and domestic relations
6 matters would be included within the county courts
7 which would have the small civil jurisdiction and the
8 misdemeanor jurisdiction.

9 From my experience with clients, a divorce-
10 family matter is a very, very serious matter. It is
11 not small civil matter. It should not be relegated to
12 a small civil court or a small claims court in any
13 way. I find that my clients involved in divorce are
14 more personally involved in that than some of the
15 burglary cases where the man's facing a 20-year
16 sentence. So don't relegate those cases to a small
17 claims court; don't relegate it to a nonjury docket.
18 It should be tried by the members of the community so
19 they can have some say on what happens to the people.

20 MR. GREENE:

21 Can I comment?

22 THE CHAIRMAN:

23 Yes, sir.

24 MR. GREENE:

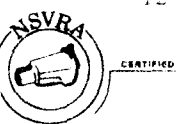
25 Mr. Partin, back to your earlier -- I'd like

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1 to comment on your earlier observation about the
2 Judicial Council and to what extent they might control
3 things. I hasten to say that please don't get the
4 idea that I'm a proponent of this at all necessarily.
5 But principally I believe Chief Justice Nichols would
6 very readily acquiesce in what I'm saying if he were
7 here. Quite a number of judges present and past have
8 felt that the judiciary was completely cowed and domi-
9 nated by the other two branches of government and they
10 were not at all really the third branch of government.
11 And embracing that thinking is one of the proposals
12 that you see here now -- in other words, let the
13 judiciary run the judiciary--in other words, recog-
14 nizing, of course, that the legislature still has
15 legislative powers; they still handle the purse strings,
16 but to give the judiciary the authority to run the
17 judiciary. In my involvement with this committee, I
18 have never seen any -- never heard any discussion
19 about the idea that the Judicial Council or the
20 Chief Justice, if he's the head of the system, which
21 I would personally favor that within, you know,
22 certain restricted areas. I've never seen anything
23 to indicate that they had the idea that the Chief
24 Justice would come down to Columbus or to Macon or
25 anywhere else and cram a judge down your throat which

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1 you didn't want even down at the magistrate level.
2 I haven't seen that at all. I personally wouldn't
3 have any part of it unless there was some ample
4 restrictions written into it which would keep the
5 essential control where it belongs, and that's at
6 the local level. In other words, only recognizing
7 that there is need for some -- in that area as well
8 as a number of others -- for some uniformity over the
9 state. But whoever would emerge as the top policy-
10 making authority, it would only be that in the sense
11 of guidelines for the state for some uniformity and
12 not in any manner to try to dip down into the local
13 level and run it as far as the nuts and bolts are
14 concerned.

15 MR. PARTIN:

16 Well, I didn't think that they were planning
17 to appoint these. In Draft A, I think, it just says
18 "Magistrates of the circuit courts shall have such
19 duties as may be prescribed by the supreme court."
20 That's what I'm talking about, is their power without
21 the legislative action to determine what the duties
22 are.

23 MS. BEASLEY:

24 Yes, you're absolutely right about that,
25 ~~that there would be a lot of what is regarded as~~

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1 administrative control by the judicial branch itself
2 as opposed to the legislative branch, for example,
3 adding judges. If that's necessary, it would have
4 to be only on certificate from either the supreme
5 court, if that's going to be the head of the court
6 system, or the Judicial Council, if that's going to
7 be the head of the court system. But the idea is
8 that there be some head of the judicial system in
9 Georgia, which we do not have since we do not have
10 a unified system, which is where all judges and all
11 courts and all judicial officials are answerable to
12 one overall head. We don't have that. Nobody answers
13 to anybody -- people don't answer to an administrative
14 head but rather just to whoever just happens to be
15 appointing them or electing them. The judicial branch
16 should be able to take care of its own business, and
17 taking care of its own business includes making the
18 rules as to how you proceed in the judicial branch,
19 you know, 20 to 30 days to file an answer and how
20 summary judgments are controlled and all that.

21 MR. GREENE:

22 MAY I make one further comment?

23 THE CHAIRMAN:

24 Yes.

25 MR. GREENE:

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1 It has disturbed me somewhat at one or two
2 of these other meetings, the other regional meetings
3 that I've intended, that not intentionally, but it
4 turned out that way seemingly that the audience finds
5 themselves -- they look at themselves as being on one
6 side of the fence and us on the other side; in other
7 words, we are the adversary. And I wish for my part
8 I could lay that to rest by telling you that I don't
9 feel that way at all. In fact, I've found myself on
10 a number of occasions, and particularly at the meeting
11 in the Atlanta where if that were true, then I'd
12 probably get up from here and move out there with you
13 all. So just, my part of it -- just rest assured
14 that whatever little contribution I can make, which
15 is probably very small, that there are a number of
16 things in all this that you see here, as far as I'm
17 concerned, they're proposals; they're thoughts that
18 have been put into words and are being worked on and
19 are not by any means necessarily, I hope, what this
20 committee is going to come out with and recommend to
21 the legislative committee that it be passed. But this
22 developed yesterday in Albany. I felt to a great
23 extent Mr. Thompson made reference to apparently the
24 Municipal Association has very adequately circularized
25 their members to the effect that "You'd better get down

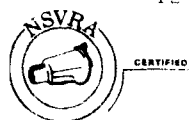
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1 to that meeting because they're fixing to wipe you
2 out." And I just don't look upon in that manner at
3 all, as far as I'm concerned; and I regret very much,
4 as far as I'm concerned -- I'm not speaking for the
5 other members of the Committee on this myself -- but
6 I regret very much that that idea seems to have gotten
7 spread around because because, again, as far as I'm
8 concerned nothing could be further from the truth.

9 I will hasten to say this, that my years
10 in the system, which have been quite a number, I am
11 convinced that the winds of change are blowing. There's
12 not question at all about that. The gentleman over
13 here, I thought, made some very good comments along
14 that line; and it behooves all of us and you people
15 more so than me because I'm going to hang it up one
16 of these days, and it's not going to be too long off,
17 but it behooves all of us if you're interested in it--
18 in other words, if we all sit down and do nothing, then
19 we might all be wiped out. So we need to -- if you
20 are interested in it and concerned about it and you
21 want to see -- you want to be sure the changes are
22 constructive, well, then, keep your eyes and ears
23 open.

24 MS. BEASLEY:
25

You know, this is important also to the



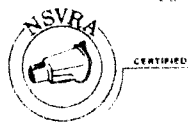
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1 history of service to the people of Georgia by the
2 state system because of what's happening in the
3 federal system. Those of you who are practicing in
4 the federal courts and are aware of federal decisions
5 and dealing with the Supreme Court, there's a move in
6 the federal system to send things more back to the
7 state system. For example, the possibility of getting
8 away from diverse jurisdiction. They're doing a lot
9 with habeas corpus where the judges, as well as the
10 Supreme Court itself, are saying "Leave it to states;
11 go to the states; the state system can handle it."
12 And that means that we've got to be ready to accept
13 it. We're not only ready, but in my opinion very
14 willing and anxious because the movement for so many
15 years has been to the federal courts. I had a fellow
16 in court the other day who said, "Well, I just can't
17 get relief here. I'm going to file the case in
18 federal court."

19 And so I said, "Have you tried to get
20 relief here?" It wasn't referring to what I was
21 doing that day. It had to do with something else.
22 I said, "Have you tried to get relief from the state
23 court?"

24 "Well, no, I haven't; but I know I won't
25 be able to."

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1 Well, now, that's a terrible situation; and
2 I will venture to say that the federal court, if he
3 did file the suit which he proposed to do, the federal
4 court will send him back to the state system because
5 there's a perfectly adequate remedy and procedure in
6 the state court which this person simply had not
7 utilized. I think we should be ready for that and
8 consequently give even more attention to this matter
9 of coming up with a good system for our state so that
10 people don't say, "Well, I'm going to have to go to
11 federal court because the state system isn't structured
12 to give me the remedy that I need."

13
14 I'd like to ask whether anyone has a comment
15 on this first principle that all judges should be
16 licensed attorneys or at least that they must have
17 successfully completed some mandatory training on a
18 periodic basis. Do you perceive of that as something
19 we should aim for, or do you perceive that in our
20 history and our current position and with regard to
21 future it is necessary for judges to be attorneys?

22 THE CHAIRMAN:

23 This might really be the wrong place to ask
24 that particular question. We don't have anyone in
25 this county, particularly in this county -- I don't
see here from outside of the county -- who is not a



1 trained attorney.

2 MS. BEASLEY:

3 Okay.

4 THE CHAIRMAN:

5 We don't have that problem.

6 MS. BEASLEY:

7 All right.

8 MR. ANDREWS:

9 I'd like to ask you a question. In the
10 hearings that you've had, where have you found that
11 the citizens and the attorneys have been dissatisfied
12 with the court system that they have? You said in
13 Albany they were very much pleased with the system
14 that they have in Albany; and you said, I think,
15 that you are pleased with the system that we have in
16 Muscogee.

17 THE CHAIRMAN:

18 We're not getting any grumbles at all by
19 people who are dissatisfied with the court system.
20 Of course, we're not hearing from the general public.
21 We're hearing from judges; we're hearing from solici-
22 tors; we're hearing from clerks; we're hearing from
23 justices of the peace. These people are all part of
24 the system, and they want to retain what they have.
25 Joe Blow, the average person on the street, is not

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1 coming forward. I don't think that we are really
2 getting to the people who are most affected by the
3 product of the system.

4 MR. ANDREWS:

5 Well, that may be true. I understand the
6 need for uniform rules of procedure and practice
7 statewide, but I question whether or not you can
8 devise a uniform court system, even if it's two
9 tiered as was suggested--a rural communities and
10 urban communities--is really going to be more respon-
11 sive to the needs of the people than the system that
12 is devised by the communities thems virtually as has
13 been done in Columbus and certainly in Albany. There
14 is so great a diversity between the different com-
15 munities and municipalities inthe State of Gergia,
16 even if you have two alternates, I can't see figuring
17 out two systems of uniform courts that's going to be
18 as responsive or meet the needs of the vastly diff-
19 ferent communities as well as the systems that these
20 communities could work out for themselves on the
21 local level. And to me, you cannot devise even two
22 systems that would probably fit many of the communities
23 in the state of Georgia; and I think you would have a
24 vast change in the court system of Muscogee, a system
25

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1 which admittedly most people are happy with and also
2 in Albany. And the uniformity of court systems,
3 there's a question in my mind whether the whole thing
4 is practical and whether you're not really getting
5 away from local control and centralizing control in
6 one other area away from where the effects of the
7 system are really felt. And I wonder where the thrust
8 for judicial reform is coming from. Is it in the
9 communities all over the state who are going to feel
10 the effect of this reform; or is the thrust from
11 Atlanta where the power is going to be when the court
12 system is reformed and unified?

13
14 MR. GREENE:

Can I --

15 THE CHAIRMAN:

16 Mr. Greene.

17 MR. GREENE:

18 I think the Chairman has something to say,
19 but let me tell you something real briefly. Yesterday,
20 and it scares me to death personally, we had a young
21 lawyer in Albany who told us he thought all legal
22 services ought to be free. He thought no public
23 official ought to be allowed to serve more than one
24 term, period. Am I right, Mr. Thompson? The thing
25 that -- the whole point that I want to make is that if

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1 you think he's the only fellow in the State of Georgia
2 that's thinking along those lines, you'd better get
3 out and stir around a little bit because they are
4 here today, you know. I don't know if there are any
5 in Columbus, but I do know that there are quite a
6 number of them in other areas of the state. And I
7 don't think I've seen any that went quite that far.
8 But there are a number of other things he said that I
9 can't remember at the moment. Mr. Thompson?

10 THE CHAIRMAN:

11 He was quite radical in his beliefs.

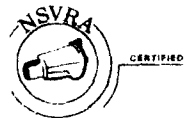
12 MR. GREENE:

13 But the point I'm making is that there are
14 quite a number over the state who think along those
15 general lines, and they are making their thoughts
16 felt, believe you me.

17 THE CHAIRMAN:

18 In trying further to answer your question
19 there is no groundswell of the people to change the
20 judicial set up. There are legal scholars and other
21 people who feel that this setup can be improved; and
22 I think basically the thrust is coming from that area.
23 Philosophically, I can't really complain about this
24 because if we waited until there was a groundswell or
25 demand from the people, I don't know if we would ever

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1 really get any improvement.

2 I think sometimes working in this area it's
3 just demanded because some of us realize that justice
4 can be gotten in a better fasion by making some
5 changes, and I think we certainly ought to look at
6 it. I'm not locked in to the extent that I'm going
7 to vote for this judicial article we're working on,
8 but I'm not satisfied with what we have. I think
9 that no one on the committee is a hundred percent
10 satisfied with what we've been able to do even though
11 we do feel that there is some need for reform. There
12 are other things that are keeping me from getting
13 locked into the position that we've got to do this.
14 I've already expressed my concern about the diversity
15 in the state which keeps us from having uniformity
16 in certain areas. I think this is eventually going
17 to be the controlling thing because we're talking
18 about law and up near Chattanooga as being the same
19 as down close to Brunswick. It's not, as it seems
20 now; and if we can't achieve that, then we're wasting
21 our time. I just don't see any sense in changing a
22 setup that's not going the uniformity where you,
23 practicing law here in Columbus, can go up in north
24 Georgia and still practice law and know what's going
25 on. You can't do it now.

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1 MR. ANDREWS:

2 Well, I don't question we need uniform
3 rules for procedure and practice, but I do wonder
4 whether or not centralizing and uniforming the court
5 system is the answer to that question. I do see the
6 need for reform and improvement; but I just question
7 whether a locked-in uniform system for a state as
8 large and diverse as the State of Georgia is really
9 going to be an improvement.

10 MS. BEASLEY:

11 Let me give you a "for instance" at what
12 we're getting at here. We've talked about small
13 claims. When you look at it from the public's point
14 of view, the people of the State of Georgia, why
15 should it not be that anybody in the State of Georgia,
16 no matter where he lives, should be able to go into
17 any court on his own without an attorney and file
18 his own suit and appear on his own with the much more
19 informal proceedings that are given in small claims
20 for under a particular amount, whether it's a \$1000
21 or \$2000 or whatever it is. Why shouldn't that be?
22 It does not exist now. There isn't a small claims
23 court available to everyone; and secondly, the maxi-
24 mum amount varies tremendously over the state. So
25 some people in Georgia have that right; some of them

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1 have a qualified right to do that; some of them have
2 the right to do it before a full-time judge; and some
3 of them don't have that right. And the question is
4 whether all people should have the same right in
5 Georgia to do that kind of thing. But that's what
6 we're getting at when we say uniformity and providing
7 the same degree of judicial services to everyone in
8 the state. I think that's one of the things we're
9 trying to do.

10 THE CHAIRMAN:

11 Let me ask Marty, Marty, has the Bar Associ-
12 ation made any recommendation in this area?

13 MR. HODGKINS:

14 Not to my knowledge. They've been working
15 on it.

16 THE CHAIRMAN:

17 Mr. Collins?

18 MR. COLLINS:

19 I would say that from personal experience
20 that anybody who's been in a surrounding county that
21 has a justice of the peace and attempted to obtain
22 justice from the justice of the peace using legal
23 principles that the justice of the peace has no knowl-
24 edge of, that in and of itself involves a duty upon
25 us as attorneys to push forward some type of quali-

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1 fications of judges. I know from personal experience
2 that justices of the peace have -- you can show them
3 an area of the law and they'll say, "Well, you know,
4 that doesn't apply because I rule a different way" or
5 "I go by my own feelings" or whatever. So there is
6 a need to have trained people as judges.

7 Now, I think about three or four years ago,
8 I'm not exactly sure -- it might not have been that
9 long; it might have been just two or three years ago --
10 but I remember that there was a proposal that was
11 presented to the legislature and passed, I believe,
12 to do away -- well, to put any county that does not
13 have a small claims court in existence at this parti-
14 cular time, to allow the probate judge in that
15 particular county to have jurisdiction for small
16 claims court matters. Now, I don't know whether this
17 was ever passed or not, but it was proposed. And I
18 talked with the Legislative Committee about it and
19 asked them why are they doing this. They said, "Well,
20 we cannot just go out and abolish the justices of the
21 peace statewide because they have too much political
22 clout." Now they're trying to do it on a piecemeal
23 basis and I admire the Legislature for taking a stand
24 for going forward and unifying the court system
25 throughout the state; but I know they're going to run

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1 into political problems. They're going to have
2 counties that have had cronyism for many, many years,
3 and the system perpetuates itself. But I would say
4 that I am behind the Legislature in proposing a uni-
5 fied system. I would have to qualify that based on
6 what they come up with, but I think a unified system
7 is needed. And I think it's going to take a lot of
8 strenth on the part of the legislators to vote for
9 something that's a good proposal, irregardless of
10 what certain people back home say they should vote.
11 And I think it's something that any attorney in a
12 small county can see, that it's a change that needs
to be brought about.

14 THE CHAIRMAN:

15 Thank you. If there are no more comments,
16 we've been going almost an hour and a half and I
17 think everybody's had an opportunity to say what he
18 wanted to say. That's the purpose of these hearings.

19 MS. BEASLEY:

20 I'd like to ask one other question of those
21 who are remaining. Do you think that the Committee
22 should give greater dissemination of these proposals
23 and the principles and the concepts involved in the
24 community and have further public hearings, let's say
25 in the spring after the General Assembly; and if you

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1 think that we should, how can we reach the community
2 on a better basis than we've done with this one?

3 THE CHAIRMAN:

4 Let me comment on that. We had a public
5 hearing in Atlanta -- not this year, the year before;
6 we also had one this year -- and after that we
7 decided we needed to disseminate the information
8 and we spent a lot of time talking about how we could.
9 Marty has a tremendous job and he's just one man, and
10 he has made an effort to notify the people throughout
11 the state of public hearings; he's made an effort to
12 disseminate the materials that we have. We haven't
13 yet reached a means that's satisfactory to ourselves
14 to disseminate this information. I'm sure the news-
15 papers cooperate to some extent, but I can't see them
16 giving us but so much space in the newspapers. I'm
17 not even sure that by putting it in the newspapers
18 that people will read it. It's been suggested that
19 we hold these sessions at night; that we hold them
20 on Saturdays and various and sundry things. I'm not
21 sure that would do it. I've had experience with
22 trying to do things at night. People still don't
23 come out. The general public doesn't. I know almost
24 everyone who's been here this morning and there are
25 very few lay people who are here, most are attorneys

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1 or people who are going to be affected in some way or
2 another by the revision of the judicial article. We
3 are not reaching people. We are not getting the
4 input that we would like to have. That's what Judge
5 Beasley is referring to, and we're going to keep our-
6 selves open to suggestions of that kind, how to reach
7 people better in the future.

8 I appreciate personally all of you coming
9 in this morning. The turn out from the lawyers in
10 this area has been quite good.

11 [Whereupon, the above-entitled public hearing
12 was adjourned.]

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Proceedings of the Select Committee on Constitutional Revision, State of Georgia, Committee on Judiciary, held on December 8, 1978, at 10:00 o'clock a.m., in Room 133, State Capitol, Atlanta, Georgia, and chaired by Representative Wayne Snow.

Wayne Snow: Are we about ready?

Marty Hodgkins: I guess that's it.

Wayne Snow: I think it is ready for us to, I mean our court reporter is not - what's the matter with her?

Marty Hodgkins: She didn't come.

Wayne Snow: She's not here, so we are going to tape the proceedings of this meeting. We have a quorum left of what is left of this commission, and we have been through several public hearings and have continued to move about the State. And have found fairly well about the same reaction I think everywhere we have been that we had at the first meeting we attended. What our procedure will be this morning is to go around the table and to get the reaction of our members and your ideas now as to what type of recommendations we should make to the Select Committee. The Select Committee on Constitutional Revision is meeting next Friday, and I would like to be able to make some recommendations to them from this body. Now let me suggest, I don't have anything personally in mind at this time as to,.....because I want to get your ideas before we formulate any recommendations. I do want to say that I regret that there have been some statements made in the press between the Chief Justice and the Speaker of the House. I think both of them are probably speaking out of school to some extent, in that the Chief Justice has not attended any of our hearings and the Speaker is going on questions that have been presented to him, rather than having the benefit of any statements that we might have been able to make relative to the different type of proposals that have been made by the press. This is always unfortunate and what happens is that the press, of course, exaggerates and they do their utmost to try to get people in confrontations. That is precisely what has happened in this instance, and I am just sorry that the Speaker and Chief Justice have become engaged in this kind of retort in the press, and I don't think they have done that purposely. I think it is a matter of the press has played upon the sensationalism, rather than upon the actual facts and the

factors that we are trying to approach here. There is no one on this Commission that is not sincerely interested in a judiciary in this State which is in the best interest of the people of this State. I don't think there is a person on this Commission who is as widely concerned as those of you who are representing different associations or courts, those of you who are judges in many of the courts, that you are vitally concerned as to how this is going to affect your association with your court. And I recognize the fact that you are like all of us are, any time there is any type of change or any proposed change that you don't mind it for anyone else, but that you don't like it for yourself. Primarily because you are comfortable in the position that you are in and you don't know what position you will be in if changes are made. And that's just a matter of human nature, and that's just the honest approach and the best way to approach it, so that we can be candid with one another in that respect. But I do think that all of us are interested in the improvement of the judiciary of this State. I think we are all as members of this Commission, and those of us who are on the Select Committee, are extremely disappointed at the turnout and the vote as to the first two articles, and as to what occurred or happened to them when they were defeated, that was Amendment 1 and Amendment 2. I can't help but believe that again was caused by, and I made this statement at a couple of the public hearings, was caused primarily by the large number of amendments that were on the ballot and there was a negative attitude generally. And, of course, we in the General Assembly have to take some responsibility probably for the defeat of those amendments in that we did had Amendment 4 on the ballot. Amendment Number 4 was kind of again one of these personal selfish things, I think I would probably vote again to have it on there like I did the last time. I don't think I will vote to have it on there two years from now, because I think it probably will receive a fate not just similar but even more devastating and would probably take many other amendments with it. There were several good amendments that were defeated in this past election. My suggestion with the amendments is that we do proceed on an article-

by-article basis, and there have been some suggestions by some that just because of the fact that there was a reaction that we ought to go with the whole constitution. I think Robin, and discussed it with him since the vote, would agree though. I think all of the members of this Commission would agree at this time, seeing how factuous we have been on certain areas of this judicial article, that if you place all the articles on the amendment or on the ballot at the same time in one vote, that it would be nitpicked to death, and would stand very little chance. It might stand a chance, but it might be as bad as that get up we had in 1964 when Speaker George T. Smith was presiding and we spent over a million five hundred thousand dollars of the tax payers money, that was the Sanders Constitution. We went into special session, supposed to be there for two or three weeks and get a new constitution out and we stayed there for two and a half months in 1964. But, I don't think any of us took a great deal of pride in the end result, and the only reason that is because everybody was able to compromise their particular positions, and their wants, and their likes, and their dislikes, and by the time we got through with it, so you didn't come out with much of anything better than what we had started off with. So I haven't changed my feelings at all about the manner in which we are proceeding and I think if we are going to be successful at all with cutting out some verbiage in the Consitution, that we have got to do it on an article-by-article basis. And I certainly think that Amendment 1 and Amendment 2 did just exactly what the primary purpose of the Select Committee was when it was established, and that is to improve the verbiage in the Constitution. Now we have taken it upon ourselves, and I think that all the folks who will be dealing with any specific article, that we must look at it from the standpoint of having it before us any substantive changes that can be made that we can agree upon, that we think can be practical, that we can present that we ought to do so. And that we ought to make those changes, and offer them at least to the General Assembly for whatever action they want to take on them. But I find it extremely disappointing that people, and especially judges in

this State who are supposed to know better, will take for granted that which has not even been acted upon. And will act as if that has become the rule of thumb at the time and will be what will be presented to the General Assembly. There has been nothing presented to the General Assembly, there have been several recommendations that have been made, the purpose of having hearings has been solely to receive as much input as we could. Somebody, somebody has failed to get the message to the people who have been at some of these hearings, because they have not been informed, they have taken information that has been sent out on the basis of the numbers we have sent out to them and felt like those were the things that were in the article itself. These were clerks and these were judges and these were all the courts we're involved in. There have been recommendations from this Commission in only one area, and the Commission recommended in principle a draft to be presented at the Convocation in Athens. Subsequent to that time, a Draft B was also presented, and I asked Marty and others to get up a Draft B for the sole purpose of changing some of this business about the Supreme Court. I knew we had problems at that time in the appellate area because of the power being given in the Supreme Court. This would have provided for some powers to go through a judicial council. Alright, you've always got the power of the General Assembly to act that things can be done as provided by law. I think we are going to see more and more of that as we go along as we try to go into this change. But I just really, I wanted to express I am somewhat disappointed from the Convocation - this is the first time we have had a meeting of this Commission. I am disappointed in the attitude of some of the judges, and all who have appeared from the standpoint of thinking that these people are the ones who have to act in a judicial fashion in this State. And of going to hearings where they are supposed to have input, and thinking that something is already a matter of fact when we have only asked them to tell us what they think about it, and to offer any suggestions that they might have. Those are the first ones who come and complain when something is done that they didn't have any input in, so I don't know the answer to it,

other than the fact that there is a lot of nitpicking that goes on and it will always be. But I don't mind expressing myself on it, and I do think that if we haven't done anything else, we are now getting some attention. You know we have been meeting now for about two years and we haven't been getting any attention, so if the Chief Justice and the Speaker have done anything for us, maybe they are calling attention to the fact that there is something going on. I thought we would go around the table and get the reactions of the members of the Commission, your reactions from the Convocation, your reactions from the public hearings, your feelings relative to the Article, how you think we should proceed at this time and what recommendations we should make. And then I anticipate possibly taking a vote as to a majority report, probably there will be minority reports also as has happened in the past that will be presented to the Select Committee. Let me suggest that we have two years before anything has to be submitted to the general public for their ratification or their rejection, and there is nothing that compels us to necessarily act upon anything in the House of Representatives this year. I think it is imperative that we introduce some skeleton bill or some skeleton resolution upon which we can work and continue the efforts of this Commission in an advisory capacity, and from time to time as we try to work with the General Assembly and the House of Senate. I do propose that any work that is done during this next year by the House Judiciary on this article that it be in conjunction with the Senate Judiciary Committee as well as the Special Judiciary of the House, so that the Senate will be advised and knowledgeable of everything that we are doing. So, that in 1980, hopefully, in the first week of the session, and I am just throwing this out as a possibility, that we can pass something, pass a resolution in the House and that the Senate will have been at it the rest of the session and that something can be available for ratification in November. It might be, and there may be some here who feel that we should concentrate more on the other articles of the constitution, and possibly postpone the judicial article and maybe the Home Rule Article of the Constitution. That, of course,

will address itself to the Select Committee, but your thoughts on that will be welcome here also. So that maybe the less controversial articles of the constitution can be submitted and be out of the way before we tackle this article and the home rule sections of the Constitution. I think that will probably be the next area where we will have the most difficulty. But the home rule is vital to the Constitution, and is vital that we delegate some authority to the local governments if we are to get rid of some of these vast numbers of amendments that we continually have every two years. Now I think that is what a lot of folks were rejecting when they rejected so many amendments in November of this year. We would appreciate your thoughts on that. I have said more than I probably should have and I am going to proceed to let Robin have his say and I certainly will be anxious to have any criticism that you have in the manner in which we have conducted this Commission. Because I think that it is important that we conduct it in a fashion, and a for,.....that we try to communicate with the people in this State, and somehow or another we failed to do so. Robin.

Robin Harris: Yes. First, Mr. Chairman, who were the respondents on this questionnaire?

Wayne Snow: Those....Marty?

Marty Hodgkins: That was just people who either requested it or people who appeared at the hearings.

Wayne Snow: They were passed out at all of the hearings?

Marty Hodgkins: Yes sir.

Robin Harris: So it's not reflective of a poll with any scientific accuracy?

Marty Hodgkins: No, it was just really more for information.

Carol Wilson: Marty, how many of there were not connected with the court in any way?

Marty Hodgkins: I don't know, we just had to put together real hurriedly, we are still getting responses, I can find out.

Robin Harris: Mr. Chairman, it seems to me that personally I would rather do nothing

than propose something that does not reflect a sincere effort to make the judicial system in this State a separate, a really separate, branch of the government, and capable of giving the citizens of the State a better administration of justice. Even though what is determined upon may not be considered politically feasible, I would still rather submit such a proposal than try to make the determination here what is politically feasible.

Wayne Snow: I think that has been the idea of the Commission all along that we were trying to come up with an Article that, in the opinion of the majority of the members of the Commission, would be in the best interest of the judiciary, and the idea has not been that it would necessarily be politically expedient. It has had some political reaction.

Robin Harris: I recognize that. I am prepared to vote on whatever amendment ...

Wayne Snow: Alright, do you have any other comments that you want to make at this time.

Robin Harris: No, sir.

Joseph Drolet: I think the same question has come up over and over again, and that is who are we revising the Judiciary Article for. I see there are two constituencies, one is those in the system, all of us in the court system in one form or another. The other is the public it serves by the system, that second constituency doesn't really know that at this point there is really anything wrong with the system. We haven't seen them at the public hearings, and they haven't been out clamoring for change. And unless there is a great deal of publicity such as good fights and controversies between the Chief Justice and the Speaker or something which is going to draw publicity to this whole effort, to the status of our court system, that second constituency, the public is really not going to be involved.

Wayne Snow: Now that is not getting the facts involved through to that second constituency.

Joseph Drolet: Right, sir.

Wayne Snow: Most of that is very misleading.

Joseph Drolet: But in the absence of anything else its, at this point it's the only publicity there has really been, unfortunately it's not good publicity. But, in the absence of something like that we are still talking to a public which is basically unaware of a need for change. They don't really feel that the system is hurting in some way, we haven't heard any crisis or terrible things that have happened because of our court system, so that constituency really is silent and has been since the two years we have been working on it. The other constituency, of course, is those within the system. Obviously from our public hearings and everything that has happened in all our previous meetings, everyone feels threatened by virtually everything, no matter who you are, you stand to lose something. So, we have a great deal of opposition from everyone affected within the system and right now they are the only players in the game. That second constituency not being involved.

Wayne Snow: Almost as misinformed and uninformed as the second constituency.

Joseph Drolet: Yes.

Wayne Snow: I don't mean to imply Judge Smith that you haven't advised all members of the Court of Appeals on this throughly.

Joseph Drolet: I think the absence of press coverage, even on a meeting like this one toady, is indicative of how much of a closed issue this is, or isn't. Given all that, that sort of leads me to the conclusion that we might have soemthing nice here, that it's probably premature to go with a complete change of our system. I would think we could come up with two or three things on which there is clear consensus of members on this Committee, something everyone agrees on and there isn't going to be a great deal of opposition from those within the system, we could even do that. I have become pessimistic enough to think that that would be wonderful in and of itself. That is all I have to say about it.

Wayne Snow: Alright, Carol.

Carol Wilson: I would like to start by disagreeing with Joe on one thing. I think that a little reform is a dangerous thing. We seem to get one or two things done and it seems to be so much better that then the public is misled into believing that everything is o.k. now. I have worked with the second constituency on this totally, and I realize how many people there are that never, never in their lives have seen the inside of a courtroom, and yet their taxes support those courts. I keep trying to think about turning the whole thing around. Suppose we were trying to sell to the general public the Georgia court system as it exists today. I think it would be more overwhelmingly defeated than the four year term was. I think that the absence of people that came to the public hearings was not really due to a disinterest, but more that they don't understand the present system enough to understand what we are trying to change. And if we don't come up with something that is a simple, understandable court system, I don't think the second group is ever going to be particularly interested. We have got to keep in mind, although the input from judges and attorneys and those that are connected with the system is very important, that, it is, after all not the tax-supported playground that is existing just for the judges and the lawyers. If we cannot come up with something that is a simplified version that the public can understand and do it by comparison of the present Article to whatever we think would be a better system, then I think we might as well forget it.

Wayne Snow: Judge Stanley.

Judge Stanley: Mr. Chairman, I certainly agree with what you said that everyone on this Committee certainly is dedicated to improving the judicial system in our State, our aims to try and determine what way that might be done, from a practical point of view as well as an idealistic point of view. I want to say that the years of my practice and the years that I have been on the bench in probate court I guess have colored my thinking largely in the area in which I am so day to day involved in, and that is the probate area. And recognizing the deficiencies in our probate system along in Georgia. I have been associated with the College of Probate Judges

for a number of years, and attend their annual conference and talk to judges all over the United States in this area and see the ways in which fiduciary law is handled by the probate courts operating in those states. And Georgia is just so off key in this area and it gives me great concern. I have given a great deal of thought to this area, and then this passout that I have this morning is sort of indicative of the feeling of those of us that are lawyers, all of us with legal training that are sitting on the probate bench, of what we feel is necessary in order for us to do the job that we ought to do. It's awfully difficult to have a fragmented jurisdiction, and to do a partial job when you see the needs day by day of being able to fully administer the estate of a deceased person or minors or mental incompetents. And I am saying I speak for all the probate judges there are in Georgia that....to say that we need the jurisdiction that is pretty well outlined in that constitutional amendment in order to do the job and have concurrent jurisdiction with the Superior Courts in that area. I don't know what is going to happen in the next few years any more than any one else does. I'm cognizant of the resistance that we have encountered, I think that is true of anything when you talk of any change whether it be in the complete change of the judicial system or any particular area. But I feel like this is a specific need that ought to be addressed and ought to be addressed now. It may be if we can't get complete revision of the Article at this time maybe we could do something along this line that would be acceptable to the General Assembly and to the public. I think a very good case would be made for giving the Probate Court his area of jurisdiction. As far as where you put the Probate Court in the judicial system where a complete revision is concerned, I always thought that a one-tier would be better, but if you want to put it in a two-tier, I would not object to that. I am just concerned about jurisdiction and the powers, the equitable powers we need to carry out our responsibilities. I just can't believe that anyone would object to giving these powers to those who have had the legal training. I can understand the resistance that might come had you given it to lay judges that have not

had the legal training, but I think if you were able to adopt something of this nature, maybe as a first step of judicial reform in Georgia, that it would lead to improvements in other areas. I don't want the Committee or the Chairman to think that I am pushing this or suggesting it for getting away from uniformity, that's not my idea at all. But if you can't get the whole piece of pie at one time let us try for something. I would hope that this Committee would see fit to make this a part of that recommendation along with whatever other recommendations that they want to make to the Select Committee, and to the General Assembly. So that is my plea this morning is to ask of them to give serious consideration to this proposal and to support it if you think well of the idea.

Wayne Snow: Thank you Judge. You will be moving or the adoption of this when we get into the voting, is that correct?

Judge Stanley: Yes.

Wayne Snow: Alright, sir. Alright, Dean, Dean Cole.

Dean Cole: Well, I think we are engaged in a difficult and fascinating process. I agree with some of the previous statements that we need reform in this State, and that this Committee should not go into the politics of that reform, but suggest a kind of ideal system and let the political fighting be elsewhere. I have been concerned, as the Chairman indicated, with the extent of the self-interest in a lot of the comments we have had in the hearings and elsewhere. I am a little surprised that we don't have more people who would set that aside, especially when we are talking about eight years down the road, and possibly not being elected to a position in which there is no inherent right to hold. On the other hand I think mixed in with that I think is excessive self-interest, I think there are some very interesting and valid points expressing what I would call a conservative viewpoint. That is a fear of removing justice from the people and a fear of putting it in Atlanta with a bureaucracy, fear of efficiency, that it gives the people who are being efficient more power than they ought to have. Those fears I think valid to some extent, and

interesting, and need to be taken into account. It leads me to feel that I don't think I am personally ready to consider any draft we have as separating out in an ideal fashion the self-interest from the valid concerns that the people are expressing and that is a very difficult job, and whether we can ever do it, I am not sure. I do feel that the strategic question for this Committee, is it better, and this is a question I would defer to people who know more about this State than I do, is it better to propose a system now, realizing it may not perfectly sort out these problems that we are talking about and get the process going through a proposal to the legislature and get the publicity and quit the fighting? So that two years from now we might come up with the reform needed? Or is it better instead of making a proposal at this time to let this matter percolate further, and talk and discuss and wait until next year, and make a proposal hoping that we can get the various facets of the problem in even better order? I don't know about that, I generally tend in general terms would tend to think it is better to begin a process, as anything like this is going to take time. I think it is a matter of proposing and getting it rejected maybe once before the forces start building for the next time. I have always thought that politicians start their careers by losing and getting their names identified and then....

Wayne Snow: You can't lose too many times.

Dean Cole: A lot of people have done that anyway and this seems to me where in a situation maybe where if we do propose, then maybe this is just my sense that it probably would not be successful quickly, but it might be better to go ahead and propose. On the other hand I can see great sense in saying look, at this time let's get into discussion, get to the constituency more and outside, as Joe said, the people in the system and let it settle down until next year we make our proposal. I guess my basic position is I am a little bit on the fence still about sorting out this. Some of the justifiable fears I have heard expressed about the one-tier sys-

em, and I don't think that our drafts have been considered fully enough to take into account all of the ramifications. We might do a better job.

Wayne Snow: Alright, Dean Beaird.

Dean Beaird: Mr. Chairman, I think that those principles that this Committee agreed upon at our very first meeting about two years ago are still as valid as they were then and may bear repeating. They are on page 45 of the Convocation report

(Rest of comments by Dean Beaird were not recorded.)

Wayne Snow: I think probably the biggest problem, of course, all of you who are judges and all of you who are representing different groups, you run into the same thing I have. So many people you talk to have already closed-their minds are closed to the whole thing they don't even want to hear any proposals of any sort. And it is a very difficult thing to communicate with them. Alright, Dorothy. I thought I would say that before Dorothy started, since she does represent the State Courts judges.

Dorothy Beasley: So should I declare a recess for everyone else but me and the tape recorder.

Wayne Snow: Would you keep your comments brief, please?

Judge Dorothy Beasley: I will try to outline my thoughts. First of all I think it is premature for us to propose something to the General Assembly. We now have three plans, really four with the State Trial Judges and Solicitors submitting theirs.

And if you want to call Judge Stanley's another suggestion that would be five. We would have to agree probably at this meeting which one we want to propose and I don't think we are ready to do that. I do think, however, that we could at this meeting plan for the future as to how we are going to achieve the end result of a proposed judicial Article that will be accepted by, because it is wanted by, the voters in this State and the General Assembly and those within the court system. I think we should spend our time at this meeting proposing such a plan to get to these groups. I have to strongly disagree with those who feel that the public is not interested. The

public hasn't answered to a great degree or been to the public hearings because they haven't known about it to a great extent. I have been to a great number of the public hearings, and it has been primarily those within the court system because, in my opinion, the public has not been given much notice about it. And even if they were given notice of the public hearings as such, they didn't know what was involved, they didn't have the proposals, they didn't have the questionnaires, so forth in hand to study before the public hearings. I speak also about that from a point of view that I have had the opportunity to speak to a number of public groups - lay groups on this subject. Any time I have had a chance to speak and they are very interested. They come up afterwards, I don't hand these things out to everyone there, I say if you are interested and you want a copy come and get one afterwards, and they do. And they are I think some of the people who are sending in these questionnaires. So I would propose that we spend time at this meeting going over the letter that Mr. Hodgkins wrote to Representative Snow on November 21st, drafting a plan of action for us to follow, to reach, go out to these constituencies, judges have already been covered by the Judicial Convocation. We should address ourselves to the general public and do things like tell them whether or not to have something in the newspaper, a speakers bureau, a citizen's committee in each county, which would help the promotion and publicity of the speakers and input, and then later after the public. Which I believe we have two purposes, Number 1: to reach the public with what the options are and to get their feedback, then we will be able to work up our final proposal and then take it back to the public on an educational basis that is what is proposed and this is why. We have done too much of coming up with answers but we didn't know what the questions were, and I think that is one of the reasons, in other words, we have solutions without problems in many instances here. Consequently, I think we should plan a small term plan whatever....Another suggestion that I have is that you appoint us in separate subcommittees, substantively, that is two or three people being responsible for paying greatest attention to the appellate

question, two or three who pay greatest attention to whether we want a family court, two or three who pay attention from now on with regard to present qualifications of judges, instead of all of us trying to deal with everything at every meeting.

Wayne Snow: Thank you Dorothy. Lanny Bridgers is the designee of theare you the President this year of the Younger Lawyers...the designee of the Younger Lawyers president and this is your first meeting with us, isn't it?

Lanny Bridgers: I have been....., the second actually. My comments will be limited, as I have not had the advantage of the work that has gone on for two years...

Wayne Snow: I think a lot of us would be better off if we were coming to the first one.

Lanny Bridgers: For no other persoanl reasons than the public hearings on that. I did do this: in anticipation of the hearings, I did try to contact the younger lawyers around the State, particularly in the towns involved. And I was somewhat surprised, as I had always been interested in this subject, at the lack of concern expressed. It may have been the youth, it may have been the fact that they were busy, but I suspect that there were very few practicing lawyers that showed up at the hearings.

Wayne Snow: That is correct.

Lanny Bridgers: I think that is...I really don't believe that reflects the concensus of lawyers, that the system is working properly and something should not be done. I think it is the amount of education along with everything else. What bothers me about that though are the people that are involved in the system to the extent that we are, reflect, that sort of disinterest, and with that other constuency that we are dealing with, I think we have a real job educating everyone as to the problems that exist. I have been interested in this for a long time and my own personal view is, and not based so much on the- what I have heard here, but general study in areas of the properly administered one-tier system, clearly defined and rational appellate system, and to the extent possible confining that system to one appeal is a good

system. In terms of what we do, if I understand properly at the moment, this Commission, it would be my view that we submit an entire article and certainly not try to piecemeal it at this point. Something that can be refined, amended, over the course of time in the next couple of years.

Wayne Snow: Oh, my goodness. Judge, why don't you go like every other person.

(Laughter)

Judge Smith: I tell you the compliments that my chairman has of me is really overwhelming. First of all I think that we have got to stop talking of a reform in the Constitution, and start talking of improving the system. The word reform frightens the thunder out of people that are not familiar with what we are talking about, and we have got to quit using reform. Number two, the public doesn't understand the judicial system of the State and they are not particularly interested in learning it. The only time they are interested in it is when they get stuck with it, and then they don't understand it and that is the only time they get mad about it is when they get stuck with it or get hit with it. They depend on their leaders and they depend upon their leaders politically to tell them about it. And the leader in the courthouse that they go to is the one on their educational level. If he is a lawyer he goes to the lawyer of the courthouse. If he is uneducated he depends on the justice of the peace or the probate judge to tell him what it is all about and that is who he follows. And until we recognize this problem, we got a problem. But we also got to recognize that today the populist form of government is very popular in this country and the people don't trust the leadership anymore. Use to they would do whatever the legislator said to do, or whatever the courthouse crowd said to do, and believe them. They don't do that now, and we have got to face up to that fact, that we have a populist form of government and not a leadership form of government. Now I think we have got to go to....now this is my idea. I think the only way we are ever going to get this thing through, we certainly have learned by the process of elimination, the way we are doing it now is not going to work. I think we have got to go

to the Select Committee and tell them that we think that a broad and flexible, and this is a word that Dean Beaird used and it expresses my feelings, that we got to have a broad and flexible Article VI that will avoid a tremendous amount of amendments. And in order to get that broad and flexible constitutional amendment passed, we have got to have implementing legislation that is going along with it at the same time we offer the broad and flexible constitutional amendment. Because the people it is affecting is going to want to know what it is going to do to us and if we have the implementing legislation at the same time to offer, then they will know what it is going to do to them. And how are we going to accomplish that? I think that we should recommend to the Select Committee that the Governor appoint a maximum of five preferably three, a three man committee to get together and draw up a broad and flexible Article VI, and then that three man committee can sit down with the probate judges and see what they want as compared to what the broad and flexible form of the constitution that we would like to see accomplished meets with their approval. Sit down and see if we can't work it out to the point that would work under this broad and flexible constitution, including any implementing legislation. Sit down with the Justices of the Peace and do the same thing, Small Claims Court do the same thing, State Court the same thing and appellate courts. Now why did I say one committee? Because if you have one committee dealing with every segment of the court system, then you have got to get all those committees together, and all their likes and dislikes and ideas. Have one small committee, dealing with each segment of the courts to tie it all together because they understand what this one ordered and what this one didn't like and they can work it out together. Use that, and when they all work it out together, it is going to take a lot of hard work, but it can be done. Because if you come up with that broad and flexible constitution with implementing legislation to show how it is going to operate and have it where you can operate with legislation in the future and talk about improving the system rather than reforming the system, I think it can be done, and I personally don't think it can be

done any other way. I have talked with a lot of people as you perhaps know, and the various segments and categories of the judicial system, and they all expressed to me a desire to do something to improve the system, and they use the word improve every time. But they think that radical surgery is not the answer to it, and they want to know when the judicial article is passed what it is going to do to them, they want to know what the dangers are, and until we have the implementing legislation staring them in the eye when we do it, it is not going to be accomplished. And we have got to not only get that three man committee appointed. When it is appointed the Governor, the leadership of the House, and the leadership of the Senate have got to say that whatever they come up with we are going along with. And whenever we come up with a broad and flexible constitution we go to the house leadership and senate leadership and say now you'll agree with this before we go out into the field and start trying to sell it and I think it will work, but, of course, that is only my idea, Mr. Chairman.

Wayne Snow: Thank you, Judge. Berry.

Berry Brock: Mr. Chairman there isn't much that I can say that hasn't already been said on this thing, but I would like to state that the resolution that was passed by our association was passed both after Marty and Judge Smith here had given their views on the judicial Article, or the proposals. The concensus of our association was, and this happened to be our annual meeting and we had a large crowd, was that they are not in favor of any of the proposals that the Committee has now set forth and that they will fight. However, there was a feeling that the Justice of the Peace Courts throughout the State definitely need improvement, and that they would support certain legislation, and one of the things that was mentioned was to take them off the fee system. The other was to retain the mandatory training which was passed on the last session. They seem to feel that a piecemeal type of thing might work better as far as getting it through, starting with say the justice courts, small claims courts, then take on the probate courts, and go from there up. It seems

that this might have a better chance of passing than it would doing a complete reform at one time. One of the things that I would like to reiterate is what Judge Smith said here about the people coming to a lay judge. I think he is entirely right. I don't know how many of you have gotten up in the morning at five o'clock to get ready for work and gotten a telephone call from someone who wanted legal advice. I doubt there are very few attorneys get that without the justice of the peace refers him to an attorney. And I think these are some of the things that maybe you people as lawyers and deans of law schools, I think you miss this a lot of times, we have a lot of people out there who are not as well educated as some of us. And you know I am not completely lost by not having a law degree. I have a couple of years of law, but even if I didn't have that there are two or three gentlemen sitting in this room right here that I have called on numerous occasions for what little legal advice I needed for my court and gotten it real quick. Judge Weltner back here has been very helpful to me. Hinson McAuliffe back here I think a very good friend of the inferior courts. The point I am trying to make it that I don't think we should go out here on a Magistrate Court and over-educate the magistrate. Certainly I think he should know his job and I think he should be trained to it, but I will tell you the people in South Fulton County are not going to pay two hundred thousand dollars for a magistrate system. They are not going to do it. I for one am all in favor of the revision, I think it is good. I think we need improvement. I think Judge Beasley has a good idea, I think Judge Smith here has a good idea. I think we do need to sit down and understand what the courts are, I doubt very seriously that everyone in this room understands what the justice court does. I certainly do not understand all that the probate court does. I think we have to have an understanding of what these courts are, what purpose serving, and I think we have to work toward improving that system. Thank you, Mr. Chairman.

Wayne Snow: Well, let me just comment on that further, I think that we have had

somewhat of a concensus here that relative to the Justice of the Peace Court, and here we have an opportunity to have some full-time justices or magistrates, whatever we call them. But to have at least one per county or set up some criteria on it.....put them on a salary basis, let them do warrants, give them additional jurisdiction from the standpoint of letting them be non-lawyers. There are differences of opinion but most everybody agrees that this would just be some legal training, but to give them enough civil jurisdiction so that we could eliminate what has occurred and what is occurring with our small claims courts, which are really giving us as much problem in the General Assembly as anything else. Because they are all being created separately, they are all being created with different jurisdictions as to the amount and as to what they can handle in civil cases as well as criminal cases. So I think here there is some concensus. Now, again I get back to either Draft A or Draft B as to what rulemaking authority may be in the courts doesn't bother me as much as having some source other than just the legislature for political purposes setting up new courts. I think there is great danger there and I think there needs to be something within the judiciary, whatever it might be I could care less, as long as there is something there to suggest to us or give a certificate of need for a court or if we pass one, to pass upon and have some, maybe a veto power, over the creation of that court if there is no need for it. I am just throwing that out. Thank you, Berry. Cindy would you like to....we would like to hear from you too. Mayor.

Mayor Medlock: I agree very strongly with some of the things that Judge Beasley said and also Judge Smith. I think what we need to do and I find this hard to understand in any of the Committee meetings we talk about the problems these courts are having. (Tape distorted.)

Judge Calhoun: One of the things that is wrong with the system, Mr. Mayor, you asked. This is Friday, on Wednesday of this past week I spend four hours in a motion to suppress on whether or not a justice of the peace had properly considered

the facts from the probable cause to issue a search warrant. Now this justice of the peace has no training and I question - don't think he is interested in any training. But, he can get elected and fowl up and does fowl up the judicial system. I think I agree wholeheartedly with Dean Beaird that we ought to have broad framework and we ought to submit something. I think we ought to submit something this time and I don't think it will be passed by the General Assembly but we got to get working on it sometime. I think if we do what Judge Beasley and Judge Smith says that we will come back in two years and someone will say let's get another committee and let's go over this again, and I think we just ought to get something started now. I think another thing we need at this phase or moving in that direction and some of the superior court judges will probably run me out of the association... we need some accountability of judges. Justices of the Peace need to be accountable to somebody, and Superior Court judges need to be accountable to somebody. A famous quote by one Superior Court judge said Superior Court judges in Georgia don't have many perrogatives but one of them is he can do any damn thing he wants to. And it is just about true. I mean you can hold court or not hold court.

Wayne Snow: You have more leeway than you ought to have.

Judge Calhoun: That's right.

Wayne Snow: A whole lot more.

Judge Calhoun: I agree. And the only way you can do anything about that is by a system of unification. We ought to have a - some system of unification, I personally feel that the best system is a - the one-tier system. Because in my county we've got six or eight courts, all of them have different clerks, where with the state court and superior court have different clerks you go one place to file this kind of suit, another place to file another kind of suit. It ought to be one clerk's office, any kind of legal business in the county ought to come to one place and then it ought to be put in the proper court, the magistrate, the probate, or whatever.

Wayne Snow: Dean Patterson.

Dean Patterson: Mr. Chairman, I apologize for coming in late, but(tape distorted.)

Judge Smith: Mr. Chairman there was one bit I left out, may I? Dealing with the rulemaking power, there is not a whole lot of objection to the Supreme Court being the sole boss at the top. I would suggest, and this suggestion is made after I talked with Superior Court judges and appellate court judges, about some wild idea I got and bounced it off some of the other folks.

Wayne Snow: We would never think of you having any wild ideas.

Judge Smith: I suggest a judicial council be set up composed of the following: now before you close your mind to it listen to me and hear me out. A judicial council set up, composed of a member of the Court of Appeals, the President, immediate past president, and outgoing president of the Superior Courts Association of Georgia or whatever you call it, that is the fourth member; the President of State Court Judges, fifth member; President of the Probate Court Judges, sixth member; President of the JP Courts, seventh member; President of the Georgia Bar, eighth member; and President of the Juvenile Court Judges. Let the Chairman of the Judiciary Committee of the House and Chairman of the Judiciary of the Senate be the ex officio members of that Committee. And let that Judicial Council be the rulemaking body for the decisions and recommend to the Supreme Court certain rules be established and then let the Supreme Court be the veto, have veto power but no initiating power. In other words if the Supreme Court didn't like the rule proposed by this group they could veto it, and it wouldn't take but if they did like it well and good. Now why did I leave them off? I leave them off because they are going to be the veto power or the initiating power, now I didn't talk to the Chief Justice about this but I did talk with someone almost as high in his court. And he thinks this is a good way of going about it.

Wayne Snow: Well, how many justices over there did you talk to?

Judge Smith: Over where?

Wayne Snow: The Supreme Court.

Judge Smith: I talked to the next highest one on the court. I figured anything below that would agree with him anyhow.

Wayne Snow: You know I think probably that the cause of some lack of candor that we may have had from the very beginning, you know that the Court of Appeals was joltedsomething and its really a serious and unfortunate thing in this State which is the difference between the Court of Appeals and the Supreme Court. I don't know that it exists in other states, but maybe it does. But there has been a historical jealousy between the two courts. But I think too you have a real problem as to the attitude of the Bar as well as a lot of the public because what occurred in the past relative to the Supreme Court. It carries over into the present court from what we call the so-called "Duckworth Court", when people were frequently treated very rudely in the courts, that is my understanding, I didn't know Chief Justice Duckworth, but I had heard enough about him to indicate to me he has left an lasting impression upon some members of the General Assembly....some of the old-time members where there is a historical distrust to as to the Supreme Court, and it reflects now unfortunately upon some of the present members of that court. Do you disagree with that Judge?

Judge Smith: (distorted).

Wayne Snow: Well, I don't know I was just asking your agreement if it was as bad as everyone say it was.

Judge Smith: I don't know if it is as bad as they say, but it is bad enough.

Wayne Snow: But it has had a lasting affect, I've seen it in my earlier days of legislature...it came up and it was strongly enough expressed to me that I can't forget it myself, and sometimes things come up rather....

Judge Smith: It may just occur in the future, that's just born in them and they can't help it.

Wayne Snow: It was a very distressing time in the history of the State. Let me, Joe (Mundy) would you like,is Adam....did you have anything you wanted to say

with your association or Adam. I would, before we go into anything else, is there anyone here or anyone else here who would like to make any comments who is not a member of the Commission we would be glad to hear from you too briefly if you....

Hinson McAuliffe: Mr. Chairman, I am Hinson McAuliffe and I am currently president of State Trial Judges and Solicitors' Association of Georgia, and we last week brought what we had submitted as our proposal to the proposal of this Committee, to the State Trial Judges and Solicitors Assembled here for the midwinter Bar. The first thing we decided is that if we are going to have any substantial input in this situation, is that we have got to have our own house in order. And we recognize that the time has come in Georgia for full-time judges throughout the system and circuitwide courts if we are going to maintain such level of courts. And so the judges and solicitors assembled there voted for full-time judges and circuitwide courts even though they fully realize that it would have the effect of putting many of them out of a job that they currently have. We also recognize the fact that in Proposals A and B that there might be problems with the situation as far as Probate Court judges are concerned and we are cognizant of the fact that there needed to be something done as far as the Probate judges are concerned, and I think we have stressed this problem in the proposal that we have submitted. I think that we certainly have no pride of authorship in the judicial article that we have submitted for consideration by this group, because most of it is, of course, based on the concept of the Articles that were originally drafted as Proposals A and B. We also I think addressed the situation where at the magistrate level, assuming that magistrates will take the place of the Justice of the Peace. For example, we propose in our article here that magistrates would be appointed in the first place by Superior Court judges and that they would work under the jurisdiction of the State Court judges, so there would be no fiefdom of any kind created there. I know, I have discussed this with Berry Brock and I think that Berry is one of the prime examples of a Justice of the Peace who is really doing a tremendous job and is a credit to the judicial sys-

tem. I am also aware of the fact though, as Berry Brock is, that there are Justices of the Peace who are elected by the people now that are anything but a credit to the judicial system. And it has been said, and I think it is very true, that in Fulton County for example, we have one Justice of the Peace that makes more money than the Chief Justice of the Supreme Court of the State of Georgia.

Wayne Snow: Don't let him know about that.

Hinson McAuliffe: I think, Berry is sitting right here, and I think Berry would back me up in that. So I think where we can, for example, in what we are proposing here, a person like Berry Brock would be absolutely, teetotally, completely assured of continuing as a part of this judicial system. But I think under the system that we have proposed here the other man that I am talking about would definitely be out. I think we need some controls over it because in this day and time it is, particularly in urban communities, many people vote for judges or justices of the peace that really don't know anything at all who they are voting for. And many times there is only one candidate they have, the people have no choice. So I think that our proposal would cure that situation, we have relied very heavily in our proposal in creating uniformity throughout the State of Georgia, and I think above everything else that this is what we need in the judicial system of Georgia. Judge Calhoun pointed out that there is just no such thing as uniformity in the courts in the State of Georgia. So the only thing that I would do is ask you if you would look at this proposal and look at it very carefully. And I will go along with Judge Smith then in saying that really one of the things that I think really needs to be done is to go to a committee of three, representing the Superior Courts of Georgia, a committee of three representing the State Courts, and a committee of three representing the JPs, the juvenile court judges, the probate court judges, and have some Bar input, that as far as I can see has not been as much as it should have been at this point. And then come up with an Article that everybody can go along with, and I believe that a good judicial article would result.

Wayne Snow: Thank you Hinson. Any other comments from anyone?

Judge Weltner: Mr. Chairman, my name is Weltner, and I am secretary and treasurer of the Judicial Council and I'm speaking in that connection.

Wayne Snow: We are well aware of that.

Judge Weltner: I simply want to urge the Committee to vote, it's been two years I believe, and we need to have some product to talk about, and nothing comes out of this Committee this year. And I think the folks are going to wonder whether it is capable of producing anything. And it may be a.....So I just urge you to vote and give a product that can be the basis of further discussion.

Wayne Snow: I really think that gets to the point of George T., Robin, and myself, we have been involved in this thing since 19...you probably before that time, 1964 is my first experience with it.

Judge Smith: I was in it before then, Robin was too. Never did do anything, we just talked about it.

Wayne Snow: Well, we spent a lot of money. We done that.

Judge Smith: But we never have sit down with the JPs, the probate judges, the State Court and said this is what we want, now what do you want, and let's get together. The leadership in those areas of the judicial system, once they sit down and have confidence in what is going to happen with them, and they are sold on the idea that's what is going to happen to them, whatever we come up with they will sell it to the people back home. That's the only way you are going to do it. The courthouse crowd as they are called in this State are either going to pass or defeat it this judicial article, I don't care how much advertising we do they, are going to either pass it or defeat it. And they just got too many opposed to it.

Wayne Snow: Alright.

Judge Smith: Do you want a motion, Mr. Chairman?

Wayne Snow: Not yet. I am fixing to get into the area here of what are motions can may be.

Judge Weltner: If you will just tell me what motion you want made, I will make it, we'll just get going.

Wayne Snow: You have never been that cooperative.

Judge Smith: I might vote against it.

Wayne Snow: I think this is where we are standing right now. I am trying to avoid a whole lot of substitute motions now, but what I am fixing to say this is what we it could be moved, of course, that the commission recommend to the Select Committee Draft A, or Draft B, or Draft C. If that be the case, and that is what we more or less are bound to when we go to the Commission, I mean to the Select Committee. We could suggest, and I would like to make this statement, I feel rather strongly that we ought to have some mechanism introduced the first week that represents a resolution that has to do with the judicial Article, but possibly does not get into any of these particular areas here. It would be a skeleton-type resolution, on which we could work in the future. Now I think that is about all we need to go with as far as the legislature is concerned right now. So first of all before we get into any basic details possibly is there any objection to that being done.

Judge Smith: What is it going to look like?

Wayne Snow: It ain't going to look like much of anything. It is not basically going to change anything that we have got.

Judge Smith: It ain't going to hurt anybody, and it ain't going to help anybody is that right?

Wayne Snow: It will leave most everything up to the General Assembly, they would be in a position of providing things by law under this, it would just be a skeleton type situation, everything stays fairly well like it is.

Judge Smith: I think if we put an article up Mr. Chairman, of any kind, it is defeated in the legislature or no action taken on, that is going to have a much more devastating affect against any kind of improvement in the future, or we had in the past. People would say you were defeated one time, what are you trying to pass it again?

Judge Stanley: Mr. Chairman, I want to make this statement in relation to that, you take New York for example, they spent 10 years in this area. Now we may not get anything done at first, even in 1980, but I do think you have got to present something and have something for the General Assembly to consider pro and con. I am sure there will be a lot of problems for anything you present, but I agree with Judge Weltner and others that we ought to go ahead and do something. Even if it is just presenting broad principles that I think this committee can generally agree on or the majority can.

Wayne Snow: Well, what I had in mind as far as this skeleton was concerned, you know we have run into problems as far as relative to the jurisdiction of the court of appeals, jurisdiction of the Supreme Court. This would simply say that there shall be a Supreme Court and a Court of Appeals and the jurisdiction shall be as provided by law. And would include all the other courts also and it would also provide for this, it's just a skeleton. It is nothing other than would get a number in and at least say that we have got something there would probably be several substitutes would be added to it from time to time.

Judge Smith: There is going to be a lot of Justices of the Peace, probate court judges, state court judges, spending a lot of time in the legislature.

Wayne Snow: I would just like to have something to work on.

Judge Beasley: If we did this what would you perceive would happen, I mean if you have this skeleton in there saying there will be a Supreme Court and a Court of Appeals then what is the next step?

Wayne Snow: The next step is having hearings on it in the judiciary committee and during the recess this year for one thing, and at least see where we stand in relation there to different sections of it, in accordance with the proposals that have been made Drafts A, B, and C, and the other proposals that have come up. See what their reaction would be.

Judge Beasley: Look at these various...

Wayne Snow: They are going to look at it anyway, they are going to look at anything we recommend.

Judge Beasley: Without any cohesive agreed upon proposal by the Committee...

Wayne Snow: No I would....

Judge Beasley: What we would be doing is turning the whole thing over to the legislature.

Wayne Snow: Well, maybe I am getting the cart before the horse, let me just back off of that and just see what direction the Committee is going to go in its motions. I was just trying to see whether or not we should introduce something or not this session without any, alright, Dean first.

Dean Beaird: Mr. Chairman, I move that this Committee present to the Constitutional Revision Commission Draft A as contained in this report. It would be the best of the proposals, stimulating discussion. It presents, in my judgement, the basic principles which most people here agree. It presents a unified system. It presents the kind of appellate system that most people will agree with, at least we voted three or four times with this group, as well as this Committee with other members on it. It presents for consideration the one-tier trial system. It provides a mechanism for transition. It provides for state financing, which I think is a basic principle of a uniform court system. I think we would be derelict really in our responsibility if we didn't present to them a package that was comprehensive even though there may be disagreement to various aspects of it. I would hate to see us, unless we had well thought out a skeleton constitutional proposal, in fact abdicate our responsibilities. Then I would favor voting up or down, and I know that there are people here who have differences with respect to certain aspects of this. In moving along, we should present a vehicle, a comprehensive vehicle.

Wayne Snow: Motion has been made by Dean Beaird. Is there a second to that motion?

Judge Calhoun: I second that motion.

Wayne Snow: Motion made and seconded.

Wayne Snow: Alright, we will then, any discussion on the motion?

Judge Stanley: I am not opposed to the concept in general, but I am opposed to some of the provisions in the transitional schedule. Which is putting certain judges in the position of having their positions eliminated, it is just a dead end road, and I don't think it will get any support from any areas where that occurs. I think if that transitional schedule were so drawn that a person would be eligible to run for election, say during his lifetime, and met the qualifications otherwise, I think it would stand a much better chance. But that has been my principle objection I think from the very beginning, and I think it is inherently wrong. I think if you are going to have this type of thing you are going to have to have a grandfathering system into it that is fair and equitable and this one is not.

Wayne Snow: O.K. let's see, now Joe is next.

Joseph Drolet: I would agree with Dean Beaird as far as this being probably the closest thing we have to being something on which there is concensus, but I think this thing has zero chance of really doing anything. I don't think we worked out all the differences the exist even within this Committee on this proposal. There is something in here that everybody can be against and everybody is going to find objection to it. This is the one that everybody has been shooting at, and I think if we go ahead at this point and say o.k., let's turn it over to the judiciary committee in the House....

Wayne Snow: Well, we are going to the Select Committee next.

Joseph Drolet: Well, either way we turn it over to the General Assembly and in effect say this is as close as we could come, we have, I think abdicated our responsibility to come up with something that solves all the problems. And I do not see....

Wayne Snow: Let me clarify maybe one thing, this is not the end of this Commission, this Commission will be called back and forth as the Committee also works on this. For consultation and any additional work on some sections of it too. Just let me throw that out.

Joseph Drolet: But I still see if we are throwing it up to them and they are going to be making the changes, I don't think they are in any better position than we are. I don't think they in any way have more expertise than the group assembled in this room to solve these problems and come up with an answer. I really think it would be out of our hands into their hands, and I don't see where that solves anything at this point or provides us with anything other than something that is going to be shot at from every corner and won't go anywhere.

Wayne Snow: Carol.

Carol Wilson: All I want to know was the schedule for this motion, do we propose Draft A plus the schedule?

Dean Beard: Yes, and the reason if I may say, as I understand it from the Chairman, this is a report that is going to relieve the Commission of the work of this Committee will not be over but is given the vehicle with which to work. And that Commission, plus this Committee, can more clearly define the differences, propose the substitutes and so forth. That is the way I envision it....

Wayne Snow: The Select Committee will not go into a great deal of detail on it.

Dean Beard: I think this presents for continued debate, it moves along and keeps us from reinventing the wheel. I think this represents, and after all one thing I believe we are overlooking, is that this follows to a large extent the drafts, etc., of the Sydney Smith Committee, most of what is here or a substantial part of it is taken just from that. So it represents more than a consensus or a majority vote here. It represents a consensus among other groups.

Wayne Snow: Alright. Judge and then Robin.

Judge Smith: Mr. Chairman, there are two things I would like to comment on. Judge Stanley put his finger on something that I have talked over and over about. We don't have the answer as to what is going to happen to these people if we pass this one here, and that is where the fears are, that is where the main opposition is coming from. We can't give them an answer. They don't know what is going to happen to

them. Judge Stanley is sitting right here and he doesn't know what is going to happen to Probate Court judges on this Schedule A, he just knows something is going to happen to them, but he is just not quite sure. You got municipalities sitting on the left here, and they don't any more know what is going to happen to them except they are going to be out in the cold, but they don't understand what is going to happen to them. And when we go to the Select Committee and make the recommendation if we pass, whatever one we are talking about this morning, A....they are going to ask you what you think based upon the public hearings whether or not this is the one that can be passed in this State. And when you go before your Committee next year, they are going to shoot you full of holes like a Christmas turkey about wanting to know why you are bringing something like this up when you couldn't get the support of the people out in the State. And all those people at home are going to give our legislators fits. The courthouse crowd, and they are going to wonder why you have such a thing as that up there when the people back home are opposed to it. You have to face some practicalities in this thing. It is not going to stop the world if we don't recommend something to the Select Committee in the form of a constitutional article next week. We got to...I think the sensible thing to do is recommend something we think will work...and this ain't going to work. All you are going to do is have this Capitol running over with JPs, probate judges, state court judges, and hell hacking your legislator back home to get with them. That is all you are going to have.

Wayne Snow: I can handle them better than I can Court of Appeals Judges, Supreme Court Justices.....

Judge Smith: You ain't seen nothing yet 'til you get them on you, because they are the ones who are going to vote for you back home, not me.

Wayne Snow: Robin.

Robin Harris: I need to ask a question. The addendum that is on Draft B with regard to the Clerks of Circuit Courts. It says inadvertantly omitted in Draft B, and

I see nothing in Draft A on the subject.

Wayne Snow: That is correct.

Robin Harris: Is that on purpose?

Marty Hodgkins: Yes, that Draft does not specifically, did not include them.

Dean Beaird: Mr. Chairman, I want to say one other thing. This Committee did propose A for the purpose of having something to discuss at the Convocation. But this Committee as a group never sit down and worked out this transitional schedule. That was just drafted overnight and added to it, as a means of having something to produce to the Convocation over there.

Wayne Snow: Dorothy.

Judge Beasley: I think in so far as our posture is concerned in presenting the Commissioners, you Mr. Chairman, hit the nail on the head when you said the Commission is not going to be able to work out these details. So, if we give just some kind of an idea for discussion, they are not the ones...we are the ones who are supposed to be doing that, and we should come up with what is the best plan and I think that all of these three are premature. Now if we want to vote on anything to take to the Commission, let's vote on the principles and say that the Committee is in agreement on the following principles and we request that we continue our work in the manner combining with what Judge Smith says.....

Wayne Snow: Are you making a substitute motion?

Judge Beasley: Well, right now I am just discussing the motion as to whether we should adopt A, and I say no, we should not. Because I don't think there is a necessity to do that. And although I can see there are a lot of principles that are involved we should simply present those to the Commission, and say these are what we agree on. We still do not agree on what or how they are to be worked out, in the structure of the court system. Because we are really talking about principles, and what we are talking about in the drafts is the structure of various things. And I think if we hear from each group and work out those problems, one by one. And that

is why I suggested that some one person or maybe two give their attention to one substitutive area with each group and come up with what is best based on that group, and anyone else that is interested in that area, whether it be the public, lawyers, now we've broken down in specialized groups of the Bar, and those who practice probate and those who practice with the State Bar might be heard from. And someone could zero in on a method of selection from these groups and then combine those things.

Wayne Snow: Further discussion from Dean Beaird.

Dean Beaird: I agree with Judge Beasley. The first year of this Committee's operation it considered the best recommendations to the State Bar Committee, I believe it was headed by Judge Sidney Smith. And those recommendations to a large extent embodied in here, some changes basically, if I recall correctly, they recommend a judicial council to head the system rather than the Supreme Court. In terms of one-tier, in terms of state financing, in terms of the unified system so forth and so on, so we have in fact heard from those people. And I think the subcommittee that developed the transitional document studied at length these various impacts of the proposals. They weighed the document against the basic principles that the Committee is trying to implement and espouse in the document is concerned. While I am very well agreed the legally trained probate judges ought to automatically become Superior Court Judges, as a matter of fact I think I am coming to that view. I think there is still time to do that, and at the same time we have got to present, by this mechanism and principles, to the Constitutional Revision Commission.

Judge Stanley: Dean I am not suggesting that at all. What I am concerned about is the fact that as I understand this transitional schedule, is that every probate judge, regardless, would come to a dead end at the period of time, whether it is three or five years. I can't remember the amount of time. He would be obligated to oppose a Superior Court Judge if he intends to stay in office, stay on the bench. And I just, I don't think that is what was intended by the principle we were talking

about in this Committee as a whole. I think there is enough workload involved in the probate courts, the superior courts, the state courts, and all of the other courts, somebody is going to have to do that work. And I just think if you eliminate that aspect of the transitional schedule I wouldn't object and would vote for it.

Dean Beard: I think as far as Judge Calhoun is concerned, he can express this better than I can, what is attempted in the transitional document is to give the non-legally trained probate judges ten years, consistent with the principle of legally trained judges, leaving room for adoption of other legislation, maybe retaining non-legally trained judges as registrars, as would be proposed under the uniform probate code or some other system or to handle the aspect of their duties not requiring judicial decisions. Whereas the legally trained probate judges would handle a larger legal jurisdiction allocating at that over a ten year period.

Judge Stanley: If you read, if I understand, I haven't read this thing is some time. But as I recall whether you were a legally trained probate judge or not, at the end of that period, was it 1983, you have got to run against a superior or state court judge or you are no longer on the bench.

Wayne Snow: What was the date Marty?

Marty Hodgkins: 1988 or 89 really.

Wayne Snow: Alright, Carol.

Carol Wilson: I don't quite know why we need to sit here and say we need to hear from probate judges and JPs and the others. We have been listening, and all that we are hearing from them is that they are not ever going to be able to quite agree among themselves. Except that they would all like to have some State money and other than that please don't bother me or whatever, I have set up on my own little territory. Now I don't think that anyone else is going to get any further with it than we have. And we might as well make up our minds what we think is the best system and go with it.

Wayne Snow: Marcus.

Judge Calhoun: Well, the question is what is going to happen to the people in their present offices and now we are down to, of course, what we said we didn't want to be, and that is talking about people in the system. Not about the system itself, and not how to improve the system. But how to protect the people who are in the system. There answer is nothing is going to happen to them during any period of time for which they have been elected for which they have been elected for which they have a vested interest. Certainly the courts, if this is adopted, the courts are going to be abolished. They are going to be abolished if you are going to have a unified court system to reduce the number of courts, you are going to have to abolish some of them. But it is not going to happen to them for any period of time for which they have been elected, or in which they have a vested interest. There is a long transitional period in here. I don't see how there is any way you can avoid that if you are going to improve the system, and keep it from being fragmented.

Wayne Snow: Dean.

Judge Smith: Well, don't say abolish the courts to improve the system. You improve the system, he says what is that going to do? Well, maybe some day you will have to abolish a court. You start out by improving the system, because they don't hear improvement after you say abolish the court.

Wayne Snow: Dean Cole.

Dean Cole: I have a question about the motion. Is it that Draft A become our recommendation for Article VI of the Constitution, is that the intent? I am confused about that because Article VI, Draft A, I think was drafted for the Convocation it doesn't have any of the other things in it that we talked about, the District Attorney, and so forth that we find in Draft B. And if it's going to be a total tentatively recommended Article VI, then we are really saying that we will want all of those things in, and I thought we had decided that it was sort of a combination of A and B that we talked about.

Wayne Snow: B is a two-tier system, Draft B is.

Judge Crane: Is paragraph 19 of the transitional article even constitutional any longer in view of what happened in the general election on the amendments that were rejected? Were you able to delete language in the Constitution?

Wayne Snow: No, we'd have to change that section. It's a good question. Just make it by the General Assembly or by law.

Judge Calhoun:no I did not.

Dean Cole: Just a point of clarification, this then is not the total Article VI but the product of the trial of the court subcommittee, we will be voting on it that way?

Wayne Snow: That is right.

Dean Cole: We are not by this vote closing the District Attorney, whatever....

Wayne Snow: Now wait a minute I think we would have to include the District Attorney in any Article that we pass out of here largely because we have already voted upon to do that.

Dean Cole: But it is not in Draft A.

Wayne Snow: Well, Draft A would have to have that incorporated in it.

Dean Beaird: My motion was to incorporate essentially the work of the subcommittee

Wayne Snow: And then the amendments that we have added on to it from meeting to meeting. Alright, those of you who favor the motion of Dean Beaird moving that Draft A, as amended by this Committee, be presented to the Select Committee next Friday as the recommendation of the majority of this Commission. Alright, those of you who favor that motion, I think we will just go through. Robin?

Robin Harris: Yes.

Wayne Snow: Dean.

Dean Patterson: Yes.

Wayne Snow: Joe.

Joseph Drolet: No.

Wayne Snow: Carol.

Carol Wilson: Yes.

Wayne Snow: Judge Stanley.

Judge Stanley: No. Because of the transitional schedule.

Wayne Snow: Dean.

Dean Cole: No.

Dean Beard: Yes.

Wayne Snow: Judge.

Judge Beasley: No.

Wayne Snow: Lanny.

Lanny Bridgers: Yes.

Wayne Snow: Judge.

Judge Smith: No.

Wayne Snow: Berry.

Berry Brock: No.

Wayne Snow: Mayor Medlock.

Mayor Medlock: No.

Wayne Snow: Mrs. Williams:

Lucy Williams: No.

Wayne Snow: Judge Crane.

Judge Crane: Yes.

Wayne Snow: Judge.

Judge Calhoun: No.

Wayne Snow: Six for and nine against. Is that what you get?

Marty Hodgkins: Nine.

Wayne Snow: Alright, motion is lost. Six for and nine against. Need another motion.

Judge Smith: I want to make a motion with your permission, Mr. Chairman. I want to move that we recommend to the Select Committee on next Friday, that in view of the fact that we have arrived at the conclusion that we need a broad and flexible Article

VI to the constitutional amendment, and due to the fact that we have not yet arrived, and not as a committee been able to arrive at that, based upon the opposition that we have had at our public hearings throughout the State, that the Select Committee keep this Commission here intact. And authorize this Committee to appoint a three man committee, or not more than a five man committee to sit down and come up with a broad and flexible Article VI which it will present back to them for approval. And then this same committee contact the leadership and the various court segments or whatever you want to call them of our judicial system and come up with whatever compromise we can between what we want and they will agree to. And see if we can't come up with a recommended Article, to be passed in the 1980 General Assembly.

Wayne Snow: Who did you say would appoint the five man committee?

Judge Smith: This Committee will appoint them, not less than three, no more than five.

Wayne Snow: To report back to this Committee or report back to the Select Committee?

Judge Smith: Report back to them, let's get them to approve it, we never could agree to it, let's get them to agree to it first. A broad and flexible constitution, and when we have a broad and flexible constitution we can put it up the implementing legislation and get it passed.

Wayne Snow: Dorothy.

Judge Beasley: I will second that motion, and I would like to add another amendment too.

Judge Smith: I might accept it.

Judge Beasley: That the committee which is appointed will go to the various interested constituencies so as to be more than just courts.

Judge Smith: I will agree with that.

Judge Beasley: Plus, that we present to them our concensus on the basic principles that we have set out. I think there are eight of them. That will at least be something substantive.

Judge Calhoun: Now what you are saying Judge, is that we say that these are the basic principles that we have arrived at, not necessarily the unanimous approval but as a majority of the basic principles arrived at as part of our report next Friday.

Judge Smith: I will agree to that amendment.

Wayne Snow: Alright, Robin.

Robin Harris: Mr. Chairman, I would like to make a substitutive motion.

Wayne Snow: I wish to hell we had that court reporter here.

Robin Harris: That this Committee report to the Select Committee that after two years it has been unable to produce a substantive draft of a new Article VI, and that this Committee stand abolished. And let the Select Committee appoint a new Committee, to undertake the task of producing a revision of present Article VI of the Constitution.

Judge Smith: If Dorothy will allow me to withdraw my motion, I will, and second that one.

Judge Beasley: No, we will not, that is going back to ground zero.

Wayne Snow: Then you substituted a motion, is there a second to the substitutive motion?

Dean Beaird: I will second the motion.

Wayne Snow: O. K. motion made and seconded, of the substitutive motion. Any discussion on the substitutive motion.

Judge Calhoun: I just want to say I agree with Dorothy.

Judge Beasley: All of the experience that has come through to this point, all of the areas of knowledge of where we disagree, what has been done, will go down the drain with another group of people starting all over again. I absolutely think that would be a terrific waste, just because we cannot now at this point in time agree on a judicial Article does not mean that we are not making progress. What we are talking about takes time, and if it does take one more year then we have originally hoped for two years more than we originally hoped, and it will. And this means not only

starting from zero, but indicating inaccurately that this Committee has failed. I don't think it has failed - I think it is making great progress. There are many principles which I agree upon already.

Wayne Snow: Alright, Dean.

Dean Beaird: There are plenty of reasons why I seconded that motion. I think a lot of good work has been done in the past two years that won't go away, documents that have been prepared and considered will still be here. I have become convinced that it is going to be important for a constitutional revision commission to have a broadly based committee doing the job. One that represents broader constituencies, primarily the public, in order to get a concensus on principles. I think a new committee would be in a better position to objectively look at the principles in regard to its impact and vested interestes. For that reason I vote to taking advantage of the work that has been done. And let them do a good job in probably a shorter period of time.

Wayne Snow: Alright, Joe.

Joseph Drolet: I feel like we have all the primary actors already in the room, and so like a jury we should keep them locked up until they can come out with a verdict.

Wayne Snow: If I had enough room, I would invite all of you up to the farm and put guards on you.

Joseph Drolet: I don't think any group is going to do a better job than this group in coming up with the answers. And in the next group are we really going to exclude the Supreme Court, Court of Appeals, Superior Court Jusges, and all the people we have assembled here and who else are you going to get to do it?

Wayne Snow: Robin just said he has been on five of them and he doesn't want to be on another one. How many Robin?

Robin Harris: Four or five.

Joseph Drolet: I share Robin's frustration, but I feel like Judge Beasley does, we have come a long way, we got the people here, let's not stop now.

Wayne Snow: Alright, Carol.

Carol Wilson: I just don't see any point of repeating the whole system again. Sure we got some material that the next people that come along, they are going to want to hear the same people that we have heard, they are going to hear the same people that we have already heard. I don't think they will be able to do anything better.

Wayne Snow: Berry.

Berry Brock: Mr. Chairman, let me say one thing, I hope that the people don't take this from a selfish standpoint but, I think for one time in our life we have the majority of the JPs thinking of improvement. I think if you walk away from this thing now, you are going to go back and have almost 1,600 courts out there, and if you will pardon my expression fighting the hell out of judicial reform. That is my personal feeling.

Wayne Snow: Dorothy.

Judge Beasley: Arriving at the best system takes education and educational process, we are going through that educational process, and just because we have not yet come up with the final answer, does not mean that we should stop the education process and let another group begin that educational process all over again.

Wayne Snow: I agree with that. And I tried to bear on that earlier when I made some remarks. I hope I didn't indicate to anybody that I was critical of anyone here for not communicating with your people because I found that difficulty trying to express or communicate initially, but the more exposure we have to it I think there is a little more understanding. There may not be any favorable....there is more understanding. We finally got to where in Athens we were beginning to have some understanding among the probate judges, that it was not just a matter of trying to do something to them but we were looking at the overall judicial article. That they were a part of it. By virtue of being in it now....Joe.

Joseph Drolet: Would it be proper for me to make a substitute to the substitute?

Wayne Snow: No, let's get rid of one at a time. I think it would be proper but I

would lose sight of where we are.

Joseph Drolet: Then I call the question.

Wayne Snow: O. K., we will vote on the substitute motion first. The substitute motion is to report to the Select Committee that the Commission has been unable to come up with any concensus as to a judicial article and that we request that we be discharged and that a new Commission be appointed. That basically is the motion, the motion was taken down by some of our shorthand experts. Well, I got all my darn training from you, and that is why I mess up on so damn many of these things.

Judge Smith: Robin wasn't here last time you sure you got it all from him, I wish you would make up your mind who trained you.

Wayne Snow: Well, when both of you are here I really have it rough. Now you ready to vote?

Robin Harris: I was ready to vote when I made the motion.

Wayne Snow: Those in favor, well no, all those in favor raise your right hand. Those opposed. Two to thirteen. Two for and thirteen against the motion, we go back to the original motion.

Joseph Drolet: I have a new substitute.

Wayne Snow: Oh, o.k.

Joseph Drolet: My substitute motion would be simply that we report back that we are making progress, although we have not been able to arrive at a draft proposal at this time, and that this Committee will have to continue its work. I don't think it is necessary to put all the details in there, but I raise the motion.

Judge Calhoun: Well, I move we amend the motion as substituted by this, I think we ought to delete the request to the Select Committee for instructions, because what you say can we do this? Can we divide up? Robin can, I mean Wayne can already do that. And I think we ought to, in George's motion, we ought to say that this Committee, Dorothy suggested this too, has agreed, at least the majority has agreed that this is what we want to accomplish and set forth the principles we set out

there. And request the Chairman, as Chairman of the Judiciary Committee ask the legislature to adopt some resolution that this is desirable, this is what we want in our court system. Can't you have a resolution like that, its not binding? But let them say something. They can adopt a resolution in the legislature endorsing Mother's Day and other things.

Judge Smith: You can get that passed but you won't the one you are talking about.

Judge Calhoun: Well, we may not get it passed, but at least let them know we have done something. And we agreed that there is a need for improvement.

Wayne Snow: I think a lot of folks would find that suspect. Again I get back to the lack of knowledge that most people have of it that you would be confusing them and they would be thinking we were indirectly doing something do it. Because everybody out there, so many of them are thinking that we are trying to put it to them right now. Really I have never felt as distrusted in my life as I have the last few months. Hell, I ain't trying to do anything to any of them.

Joseph Drolet: Mr. Chairman, that is why I wanted to keep it very simple, just let us continue our work and we will try harder.

Wayne Snow: We tried to get rid of you and your outfit.

Joseph Drolet: Just keep confident.

Wayne Snow: Alright, Dean you next, then Dorothy.

Dean Cole: I think that the principle of Joe's motion, except I think we ought to flesh it out more instead of just saying that we are making progress, maybe establish some of the progress. I feel that voting against the previous motion of a new Committee because I feel we have made some substantial progress and if I could read quickly the thing I have jotted down and I don't mean it as a motion right now, but it can be turned into one. Some kind of report to the Committee along these lines: the Judicial System of Georgia, this would be something that we all agree with, or adopt, needs improvement and the Judicial Article of the Constitution is the proper place to begin the improving the system. The principles to follow when rewriting

the Article are as follows: 1). the Article should contain broad and flexible language written with clarity and brevity to ensure the impartial and efficient administration of justice and to avoid the need for constant amendment; 2). the Article should outline the basic principles of a fair judicial system in Georgia as follows: and we will put in there the eight principles listed on this sheet. I don't happen to agree with principle number two, but I don't think we will quibble about that now. Those principles are: 1) that all judges are to be licensed attorneys, or they must successfully complete mandatory training; 2). all judges are to be required to serve on a full-time basis and should not engage in private practice of law; 3). financing of the court systems is the responsibility of the State; 4). all judges are to be popularly elected on a non-partisan basis; 5). the fee system as a means of compensating judges is to be prohibited; 6). courts of the same class are to have the same jurisdiction; 7). the creation of additional courts shall be prohibited, and 8). the judicial branch of government shall be separate and equal.

Wayne Snow: Let me ask this question of the members of the Commission before we go any further. Is there anyone among us that disagrees with those principles, I think we voted on them once before?

Judge Smith: It is not a matter of disagreement Mr. Chairman, I think if there is anyone here that would disagree with them it would be me. But I would be willing to let this go before that Committee and thrash out the little details. I am like the Dean maybe one or two I don't agree with, but basically I would agree to all eight of them that go before as a recommendation from this Committee as a whole. With the idea that we can thrash it out later.

Wayne Snow: Would there be any objection to those principles going before the Select Committee? For whatever motion we have now passed.

Judge Smith: You see I have only made the motion embodying them, and she is agreed to add the eight to that.

Judge Beasley: The reason I like Judge Smith's motion is that it not only tells them exactly where we are right now, what we agree with, but it also tells them what we plan to do. Shows them what direction we are going in, and if they don't like that then they can bisband us. But it tells them something concrete about what we agree upon and what course of action we are going to take in a very broad way. But at least it shows them we have got a plan and I think that is...

Wayne Snow: Alright, Dean.

Dean Cole: Well, I had one other thing that I wanted to mention. The reason I am against Judge Smith's motion because it seems to me to imply that this subcommittee will go around and get agreement with various groups and hammer out an agreement. I don't think that is going to be possible if we put forward what I think we want to put forward which is a...

Judge Smith: Tell you what that one thing is, Dean, it's one thing we ain't tired. You don't know until you try and get with them.

Dean: That's true, but at any rate just to continue, I would opt for putting in number three and I am not sure this would be a majority vote, not unanimous, but the Article should outline the skeleton structure of the court system in Georgia as follows: a). judicial power in this State should be vested in a Surpreme Court, as is pretty much Paragraph I, except not the circuit court as unified necessarily, and b). for the purpose of administration all the courts should be a part of one unit under the supervision of the Supreme Court. I wonder if we could get agreement on those basic principles. At least as a majority to report to the Committee that we are that far, and then follow Judge Smith's or Joe's suggestion that we need more time to get some agreement.

Wayne Snow: We have already irritated Judge Smith, I will tell you. Well, I am not really sure of where we are at right now,

Judge Beasley: There was no second to Joe's motion.

Wayne Snow: Joe's substitute was to report back the progress that is being made

and not yet able to reach any conclusion, but that we are continuing to work.

Joseph Drolet: I still don't see the need to go beyond that and start trying to submit a draft. If they are not going to do anything with a draft at this point, then why are we talking about all of the details in it.

Wayne Snow: Alright, was our second to Joe's substitute motion?

Judge Calhoun: Wait a minute, I didn't understand that when Judge Smith made his motion that he included what Dean Cole had said.

Judge Smith: I didn't, I included what Dorothy said and she included the eight points or principles.

Wayne Snow: Dorothy's amendment that he approved was that the Committee go to various interested constituencies, plus that we present to them our concern on the basic, or that we favor our consensus on the basic principles that we have set forth.

Judge Smith: That is the eight principles.

Wayne Snow: Alright, the substitute is, the motion was made by Judge Smith and seconded by Judge Beasley. Alright, another substitute, the amendment was agreed to.

Judge Smith: Yes, I seconded the amendment.

Wayne Snow: Alright, then the Substitute, this substitute was made by Joe that we report back that we are making progress, and that we are not yet able to reach any conclusion. We will continue our, or ask them, to let us continue our work. We will vote on the substitute first. Those who favor the substitute will indicate by raising your right hand.

Judge Smith: It didn't get a second.

Wayne Snow: Oh, I thought that it did, I am sorry.

Carol Wilson: I second it.

Wayne Snow: O. K., motion made and seconded. Those who are in favor of the motion will raise your right hand. Those opposed. Three for, ten against.

Judge Calhoun: Well, I will offer an amendment to Judge Smith's if you will accept it, and that is that we delete the details of what we are going to do and let the Chairman explain to the Committee. I think it is sort of ridiculous for a committee of law professors and judges to go back to the main Committee and say can we do this, when we already got the power to do it.

Judge Smith: Alright, Judge, let me answer that I am not outlining the details for the benefits of the law professors, I am outlining the details for the Justice of the Peace down in podunk county, the probate judge down there. They know that this Committee has an interest in them and that we are going to take time to talk to them as individual units and we outline that in the future, then they aren't sitting down there wondering what are we going to be hit with next.

Judge Calhoun: O.K., I will agree with that but, what you're saying is that we are going to ask the Governor's Committee if we can do this. Let's just say that we have agreed on each principle, we are trying to work it out and let Wayne explain to them, he will be there.

Judge Beasley: I didn't understand the motion being that anyway. The idea is to tell what our plan is and....

Wayne Snow: Now let me try to repeat what the motion is, as best I can. And I am not sure, have you got it down verbatim, Marty? I can't read my own writing sometimes. Let me try, do we have that motion down verbatim anywhere. This is what Judge Smith has moved that we recommend to the Select Committee that we have arrived at the conclusion that we need a broad and flexible judicial article. That the Select Committee keep this Commission intact. That not more than a five man committee will be appointed by this Commission to report back to the Select Committee.

Judge Smith: To report back to us, I used the wrong word when I said Select..

Wayne Snow: You specifically said the Select Committee.

Judge Smith: Well, I mean, we got these names all....report back to us.

Wayne Snow: O.K., and report back to our Commission, o.k. to our Committee.

Judge Smith: When we have reached, our five man committee has agreed upon a broad and flexible based constitution. When they have agreed upon a broad based one, we have got to get this Committee to agree to what a broad and flexible Constitution is, before we go out and start telling people that this is what we have agreed on. See this is a point we have never done before, we have never agreed on anything, but we went out and told these other people we are showing you three things here that we want to know how you feel about it. And they always say we don't know what to say if you all don't know what to say, so how do we know what to say.

Judge Stanley: Well, George, are you saying that a five man committee is going to the various segments of the judiciary then?

Judge Smith: After this Committee has agreed upon a broad and flexible Constitution, then the five man committee goes out and contacts the leadership of the justices of the peace, the leadership in the probate judges, and see what they want and then bring that back to this Committee. And then this Committee sit down and take what you want and what this Committee has recommended and draw up the implementing legislation to see if we can't make it comply. That is what I am talking about.

Dean Cole: Well, I am clear the subcommittee would be to look into enabling legislation this Committee would go ahead and write up ..

Judge Smith: A broad and flexible constitution, and they would go out to get the implementing legislation to try and make what they want to fit into a broad and flexible Constitution.

Judge Beasley: And this would be from the interested constituents?

Judge Smith: That is right.

Wayne Snow: Well, that is what the amendment was that was accepted that the....

Well, you have accepted the amendment of Judge Beasley and so we are voting on the primary motion now of Judge Smith as amended by Judge Beasley.

Judge Calhoun: Does it now include the eight principles?

Wayne Snow: It includes the eight principles, yes.

Dean Cole: The problem I had with the motion was that I thought we were trying to come up with a broad and flexible and short Article VI, that is the whole point. And what you are saying is we will go ahead with that task, but once we have got that done then this committee should be formed, is that it?

Judge Smith: No, the five man committee, I want a five man committee to get a broad and flexible constitution because we can't agree on it. Let five people get down with it and come to us and say this is what we think is a broad and flexible, now we want you to....

Dean Cole: A two stage process?

Judge Smith: A two stage process within the Committee before we go out to the other people....

Wayne Snow: Well, I kind of like the idea of my little skeleton that I was going to introduce, whereby we just say that there shall be a judiciary in the State of Georgia with such judges and such jurisdiction as may be provided by law. Period.

Judge Smith: You are the Chairman of the Committee and you can put anything in there you want.

Wayne Snow: Alright, let's vote on this thing then. Alright, we are voting on

Judge Smith's, you want me to repeat it again, don't make....Alright, in essence... have you got it down Marty?

Marty Hodgkins: I have about what you had.

Wayne Snow: I think this generally, we can take the motion from this exactly what... Judge Smith has moved that we recommend to the Select Committee that we have arrived at the conclusion that we need a broad and flexible judiciary article, that the Select Committee keep this Commission intact, that not more than five, that a five man committee be appointed we propose...

Judge Beasley: We propose to appoint, not that we want them to appoint them.

Wayne Snow: To appoint a five man committee, to be appointed by this Committee and then to report back to this Committee after it has visited with and gone to - this

is including the amendment.

Judge Smith: No, this five man committee is going to come up with a broad and flexible, propose a broad and flexible Article VI, and bring back to the full committee for its approval. After the full committee has approved it, then this five man committee will go out to the various constituents.

Wayne Snow: O.K, then that will be reported back to the...

Judge Smith: And then the full committee will report back to the

Wayne Snow: And then the amendment is that the Committee go to the various interested constituencies and then the amendment also provides that we agree to the basic principles as set forth by the Committee.

Judge Smith: And based upon the report of that five man committee, and the various constituencies we get up and propose implementing legislation to go along with the proposed broad and flexible constitution to show the people what it is going to do to them. So that in that way we can educate them and get it passed, that's all.

Judge Stanley: Mr. Chairman, may I suggest just as a matter of order, that you state that we have agreed on the principles first of all.

Judge Smith: But that is what we said.

Wayne Snow: Yes, that is what would be done, this is just the way the motion is being presented.

Judge Stanley: No, I meant put it first rather than tailend.

Judge Beasley: Should be broad and flexible, we agree on these principles, and this is what we plan to do.

Judge Smith: Let's dress it up after we get it through here, we got to get...

Wayne Snow: We can dress it up and send a copy of it to each one of you, if there is any objection to the language you can advise us on that. Alright, Joe.

Joseph Drolet: As a point of order it seems to me that what we are saying, correct me if I am wrong, is that we are going to pick five people, I am real curious as to who the five are going to be, and they are going to do what we have been doing and

come up with a new draft, and bring it back. And then we are right back where we started, and we are going to fight over it again. I am curious as to whether that gets us anywhere.

Mayor Medlock: Sure, you can get five to agree on something a lot easier than you can seventeen.

Joseph Drolet: Then they will bring it back and...

Judge Calhoun: You got to get the seventeen to agree....

Judge Smith: If this fails we won't be any worse off than we are.

Mr. Harris: Mr. Chairman, are you sure you wouldn't want me to make my substitute motion?

Wayne Snow: Alright, a question is being called. Those of you who favor the motion, as amended, will indicate by a show of hands. Those in favor raise your right hand. Those against. Nine to four. Alright, that will be the report of the Commission to the Select Committee next Friday. Alright, Judge Stanley.

Judge Stanley: In lieu of that resolution and the fact, as I see it, that really nothing is going to be introduced at this next session of the General Assembly I would like to move my motion, as outlined in the letter, be also recommended to the Select Committee as something that might be done as a partial improvement in our judicial system. I hope the Committee will see fit to go along with that.

Judge Smith: Mr. Chairman, I think that would be in direct contradiction to what we have just done....

Wayne Snow: I would like, that would be a Constitutional amendment. As I stated when we started here that, maybe I gave that to the radio station this morning, I hope that we will be able to avoid other than these judicial articles, in fact, I am, If I can get them assigned to the Judiciary Committee I know we can avoid it, we are just not going to have any constitutional amendments on the ballot next year other than those which affect this judiciary. Not this judiciary, but the articles of the Constitution. I am personally just going to try to oppose them all as they

Wayne Snow: come up.

Judge Stanley: Mr. Chairman, does this Committee really think that something shouldn't be done in the probate area to improve the jurisdiction of that court?

Wayne Snow: I think we have got problems if we start going on a separate parts of an article.

Robin Harris: Mr. Chairman, I think it would be inappropriate to make any kind of recommendations other than a new Article VI. I believe that is the charge that was given to us. There is nothing inappropriate about the proposal that Judge Stanley has ask be introduced to the General Assembly, and that would be the proper forum for it, but I don't think that this Committee should either say a good or not good because there certainly are some very meritorius things in it.

Wayne Snow: I really think it would be out of order, Judge Stanley, as far as our recommendation to the Select Committee is concerned, it is not out of order as to the recommendation to this Commission and its five men that are going to be appointed or the five persons that are going to be appointed. We will be working on it, it would be some inovation that would be able to consider, should they consider it. But again, I have got to reiterate what I said a moment ago relative to constitutional amendments, I hope that we can avoid, as near as possible, any amendments being on the ballot next time and I probably will have to eat those words many times, but I hope not. Because folks are turned off by them....

Judge Stanley: Well, I would like to answer that the five man committee certainly take each matter into consideration when they think about it.

Wayne Snow: Alright, sir. I would suggest, too, and Marty will, of course, the five persons on this Committee let's see if, that would be from the people on the Committee now, wouldn't it? Those five members. Where did George go?

Berry Brock: He said if you needed him he would be back in just a minute.

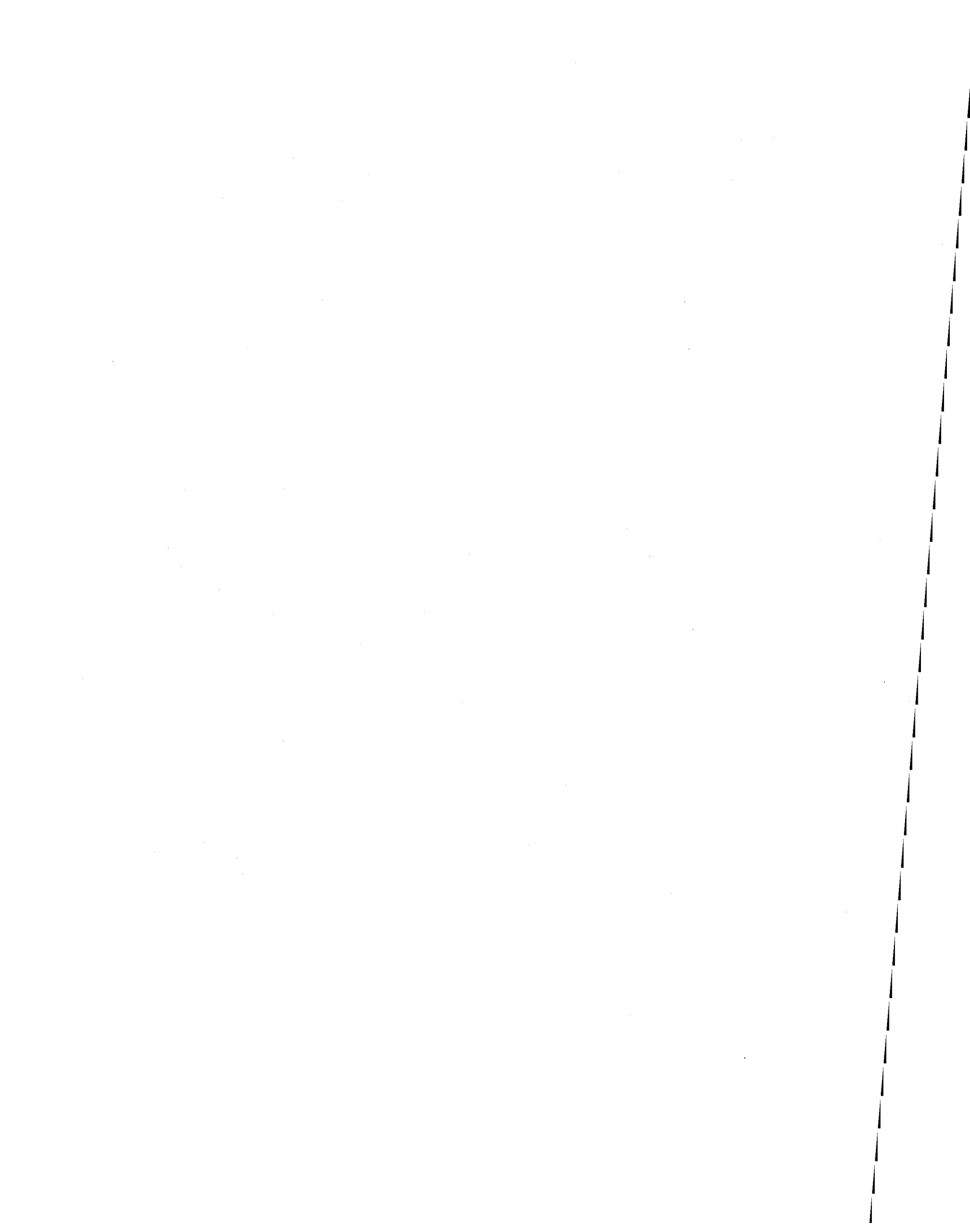
Wayne Snow: Alright, are there any other comments, for discussion, or suggestions that we, what I was going to do was to suggest that Marty have prepared all these

various suggestions that have been made including Judge Stanley's and others that will be available to that Committee when they start their deliberations. Is there anything further? If not we stand adjourned.

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Committee to Revise Article VI

Full Committee Meeting Held on Dec. 8, 1978



FULL COMMITTEE MEETING, 12-8-78

(Procedural)

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