UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 8 | Number 4 Article 7

6-1-1930

Open Court

North Carolina Law Review

OPEN COURT

Does Our Supreme Court Need Relief?

In view of the pending amendment to the Constitution of North Carolina which is to be submitted to the voters at the next general election, increasing the number of Supreme Court justices from five to seven, some comparison of the number of judges and the number of opinions written by each, in this state and other states, is worthy of study.[1]

The following table gives the number of appellate judges, of supreme and intermediate courts in the several states.

State	Supreme Court Judges	Intermediate Appellate Judges	Total	Population (1927 estimate)
Alabama	7	3	10	2,549,000
Arizona	3		3	459,000
Arkansas	7		7	1,923,000
California	7	18	25	4,433,000
Colorado	7		7	1,074,000
Connecticut	5		5	1,636,000
Delaware	5		5	243,000
District of Columbia	3***		3	540,000
Florida	7		7	1,363,000
Georgia	6	6	12	3,171,000
Idaho	5		5	534,000
Illinois	7	21	28	7,296,000
Indiana	5	6	11	3,150,000
Iowa	9		9	2,425,000
Kansas	7		7	1,328,000
Kentucky	7		7	2,538,000
Louisiana	7	9	16	1,934,000
Maine	8*		8	793,000
Maryland	8		8	1,597,000
Massachusetts	7		7	4,242,000
Michigan	8		8	4,490,000
Minnesota	7**		7	2,686,000
Mississippi	6		6	1,790,000
Missouri	14**	13**	27	3,510,000
Montana	5***		5	714,000
Nebraska	7		7	1,396,000
Nevada	3		3	77,407
New Hampshire	5		5	455,000
New Jersey	16	9	25	3,749,000
New Mexico	3		3	392,000
New York	7	28***	35	11,423,000
North Carolina	5		5	2,897,000
North Dakota	5		5	641,000

[1] For a similar study of the trial courts see an article by A. B. Andrews, of Raleigh, N. C., in (1911-1912) 60 U. Pa. L. Rev. 643.

* Active retired justices may be assigned to sit from time to time.

** Total number of justices and commissioners.

*** Judges from other courts may be assigned to sit in addition to the regular justices.

Ohio	7	22	29	6,710,000
Oklahoma	21**		21	2,397,000
Oregon	7***		7	890,000
Pennsylvania	7	7	14	9,730,000
Rhode Island	5		5	704,000
South Carolina	5***		5	1,845,000
South Dakota	7**		7	696,000
Tennessee	5	9	14	2,485,000
Texas	14**	33	47	5,397,000
Utah	5***		5	522,000
Vermont	5		5	352,000
Virginia	7		7	2,546,000
Washington	9		9	1,562,000
West Virginia	5		5	1,696,000
Wisconsin	7		7	2,918,000
Wyoming	3		3	241,000

The next table gives (from a count from the volumes of the National Reporter System for the year 1929) the number of cases disposed of by the North Carolina Supreme Court and certain other supreme courts selected as being in states somewhat similar to North Carolina in population and otherwise, and the average number of cases and opinions per judge.

State	Number of Judges	Number of Opinions	Per Curiam Decisions	Average Opinions Per Judge
Georgia	6	454		75
Iowa	9	590	58	65
Maryland	8	154	1	19
North Carolina	5	429	44	86
South Carolina	5	259	4	52
Tennessee	5	181		36
Virginia	7	159	1	23
West Virginia	5	242		48

In 1889, the year after the change from three to five judges was made, the Supreme Court of North Carolina disposed of 290 cases with opinions, an average of 58 opinions per judge.

It will be noted that at present each judge, in addition to participating in cases where no opinion is written, writes an average of more than two opinions per week during the term.

Some possible remedies, or sources of partial relief are as follows:

1. The adoption of the amendment increasing the number of justices to seven.

** Total number of justices and commissioners.

*** Judges from other courts may be assigned to sit in addition to the regular justices.

2. The creation of an intermediate appellate court.[2]

3. Provision for supreme court commissioners under several possible plans, adopted in different states.

4. Provision for assignment of judges from other courts to sit, from time to time, as temporary members of the supreme court, as in Maine,* Montana, New York, Oregon, South Carolina, Utah, and other states.

5. The appointment of skilled young lawyers as law assistants, law clerks, or "referendars,"[3] for each of the members of the supreme court, to save the time of the justice by performing a part of the preliminary legal research preparatory to writing opinions. This practice obtains in Germany, supreme courts of the United States, California, Illinois, and a great many other tribunals in the United States.

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LEGAL EDUCATION—THE "JUNIOR BAR"

The Carnegie Foundation for the Advancement of Teaching has recently published its annual report on Legal Education in the United States and Canada for the year 1929. The following excerpts are taken from the discussion of the lack of genuine practical training to supplement the theoretical instruction provided by law schools:

Immediate Problems for Bar Admission Authorities rather than Law Schools

The missing element is not to be supplied at the cost either of reducing the amount of time that the prospective lawyer now spends in colleges and law schools, or of sacrificing what should be the primary aim of a professional law school—to instill into future practitioners a properly scientific knowledge of the law. No great reliance can be placed upon the supposedly "practical" tendencies of certain features of law school work. Valuable though courses in procedure and practice, moot courts, training in the use of judicial decisions, and attention to the law of the local jurisdiction may be on other grounds, they are all inadequate for the particular purpose in view. It is im-

[2] Objections to creation of intermediate appellate courts have been voiced by able men. Kocourek, *Relief for the Appellate Courts: the Referendary System* (1923), 7 J. AM. JUD. SOC. 122. See a criticism of Tennessee appellate courts by J. C. Wilson, of the Memphis bar in (1926) 4 TENN. L. REV. 72.

[3] See the outline and excellent discussion of the plan for aiding appellate justices by providing each with one or more "referendars," by Kocourek, *supra* note 2.

possible to reproduce, under the artificial conditions of a law school, the unsystematized and challenging responsibilities of genuine professional experience. For the same reason, limited, although real, benefits result from the systematic teaching of "legal ethics" in law schools.

The problem of restoring practical contacts to the preparation of lawyers during their early, habit-forming, years, is primarily one for the higher courts and other bar admission authorities, rather than for law schools. The present activities of colleges, in providing a broad cultural foundation for lawyers, and of law schools, in inculcating a scientific knowledge of the law, need not so much to be modified as to be supplemented by independent measures. These should be specially devised to contribute qualities that are no less essential to the profession, yet lie outside the province of institutions of learning.

A Probationary Period or "Junior Bar"

Recent attempts to supply this missing element have usually taken the form of requiring the student to work in a law office, or in a Legal Aid bureau, or to be in contact with a practising lawyer, or to undergo elaborate character tests—all, before he is admitted to practice. Something, but not much, can be accomplished by such means "so long as it is tacitly assumed that all efforts in either direction, other than disciplinary measures, cease the moment that the applicant has been admitted. Both the sense of mastery over his art that the practised craftsman possesses, and the sense of obligation to other than one's immediate interests that should pervade the ancient and honorable profession of the law, can be properly developed only after the young lawyer has incurred the responsibilities of genuine legal practice." Of various means suggested to make this experience fruitful, the most promising is found to be the project of a probationary period or "junior bar." This reform has already been endorsed by both lawyers and laymen. It has the special merit of not imposing any real additional burden upon those who seriously intend, and are temperamentally qualified, to take up the practice of law as a profession.