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# Rotation of Superior Court Judges

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# THE ROTATION OF SUPERIOR COURT JUDGES†*

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In North Carolina, the Superior Court is our court of general jurisdiction. The Supreme Court, North Carolina's highest court, through its decisions and opinions, determines the law and in so doing charts the course for the guidance of all judges in subordinate judicial position. But the mass of litigation, criminal and civil, is finally determined in our Superior Courts; and in Superior Courts the law and the people meet in the hearing of controversies in the several counties of the State. Not to be overlooked is the broad discretionary power of the Superior Court Judge, both in criminal and in civil causes. The satisfactory functioning of our Superior Courts is indispensable to a sound judicial system in North Carolina.

The provision by the General Assembly (1947 Session Laws, Page 1685) for appointment of a Commission to study the improvement of the administration of justice in North Carolina invites a re-examination of our judicial system, particularly in relation to the rotation of Superior Court Judges. The rotation system, established by mandatory provision of the Constitution of 1868, has been challenged often through the years; but the people, lawyers and laymen alike, have resisted successfully all proposals for its elimination or substantial modification. In the main, the people of North Carolina have accepted our judicial system as satisfactory; and there has been a natural hesitancy to tamper with a system that has furnished North Carolina a judiciary of honor-

†For earlier discussions of this subject, see Reports N. C. Bar Ass'n, 1927, 100-116; *ibid.*, 1928, 145-179. The Constitutional Commission, in 1932, recommended: ". . . rotation of judges among the districts is made optional with the General Assembly, and the prohibition against a judge's holding court in a county (district) oftener than once in four years is eliminated." Art. IV, §6 of the proposed Constitution. Report of the Constitutional Commission, 11 N. C. L. REV. 5, 7, 26 (1932). The General Assembly restored the constitutional requirement of rotation. P. L. 1933, Ch. 383, Art. IV, §6, p. 561. The proposed Constitution was not voted on by the people and did not become effective. See Opinions of the Justices, 207 N. C., Appendix, 880 (1934).

*At least five other states have a system of rotation similar to that in practice in North Carolina. Iowa; IOWA CODE §604.14 *et seq.* (1946); South Carolina, S. C. CONST. Art. II, §14, and S. C. CODE ANN. §18 (1942); Vermont, VT. PUB. LAWS §1359 (1933); Delaware; and Connecticut by local practice. See also, ME. REV. STAT. c. 94, §2 (1944).

A number of states have a more limited system, as where no district judge may hold two consecutive terms in the same county in his district; North Dakota, N. D. REV. CODE §27-0518; Minnesota, MINN. STAT. §484.34 (1941); South Dakota, S. D. Code §32.0402 (1939) (as to one district).

Also, some states have justices of the highest appellate court rotate in the trial courts, *e.g.*, Massachusetts.

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able men who have served well in the Superior Courts of the State. Past and present criticism has centered largely upon alleged inefficiency, particularly in the determination of civil cases, and our failure or inability to adapt pre-trial and other improved procedures to our court system.

Having served as Superior Court Judge under the rotation system throughout the eleven districts of the Western Division of North Carolina, this background of experience, which I hold in common with my brethren of the Superior Court bench, is the only justification I can assign for responding to an invitation to analyze as best I can the advantages and disadvantages of the system under which we labor. Such advantages and disadvantages are to be appraised on the basis of the value of the judicial system in the administration of justice to the people of the State. The purpose is to draw into focus the issues upon which decision must depend, leaving the decision to those who have the power to make it.

## Our Present System

Our Constitution (Article IV, Section II) provides for three classes of Superior Court Judges: (1) regular; (2) special; and (3) emergency. Of these, only the regular Superior Court Judges are affected by the rotation system.

*Regular Superior Court Judges:*

There are now twenty-one judicial districts, ten in the Eastern Division and eleven in the Western Division; and for each district there is one resident Superior Court Judge. Such resident (regular) Superior Court Judge is an elected official. His term of office is eight years. Within the district of his residence, the candidate may become the nominee of a political party for the position of resident (regular) Superior Court Judge for that district; and thereafter he may be elected to that position on the basis of a statewide vote in the succeeding general election, his name being on the State ticket with others similarly situated as the nominees of the political party for the respective offices. Upon election, he is a State official, deriving his authority from the Constitution and Acts of the General Assembly and receiving his compensation from the State.

Whenever such resident Superior Court Judge is in his residence district, he is vested with jurisdiction to hear and to determine all matters not requiring a jury. (G. S. 7-65) This jurisdiction is exercised *in vacation,* a legal expression denoting that the judge is not then presiding at a formally constituted *term of court.*

His work as presiding or trial judge is at formally constituted terms of court provided and scheduled by the General Assembly. (G.

S. 7-65) These may be criminal terms, civil terms or mixed terms for both criminal and civil cases. By constitutional requirement, he presides "in the courts of the different districts successively" and "no judge shall hold the courts in the same district oftener than once in four years." (Article IV, Section II) The ten resident (regular) judges of the Eastern Division "rotate" within the judicial districts of that division while the eleven resident (regular) judges of the Western Division "rotate" within the judicial districts of that division. The shift is made on the first of January and of July of each year. From January 1st through June 30th, a resident (regular) Superior Court Judge becomes the presiding judge of a judicial district, holding all terms scheduled to commence during that period. His jurisdiction is such that, although presiding at the time over a term in one county of the district, he has concurrent jurisdiction with the resident (regular) judge of that district to hear and to determine all matters not requiring a jury from any of the other counties of that district.

The system is such that in the Western Division the resident (regular) Superior Court Judge presides over the courts of his residence district for six months and presides over the courts of other districts for five years during a period of five and one-half years.

*Special Superior Court Judges:*

The scheduled terms of court in several of the districts having become so numerous that the regular judge presiding in rotation could not hold them, it became necessary to increase the number of judges. For example, in Mecklenburg County, from January through June and from September through December, two separately constituted terms of Superior Court are in session most of the time, and it is often true that three separately constituted terms of Superior Court are in session at the same time in the Fourteenth Judicial District, two in Mecklenburg and one in Gaston. One of these terms is presided over by the regular presiding judge of the district holding under rotation and the other or others are held by assigned judges. This situation obtains in varying degree in the several districts. It should be borne in mind that while districts such as the 11th (Forsyth, Ashe and Alleghany), the 12th (Guilford and Davidson), the 14th (Mecklenburg and Gaston), and the 19th (Buncombe and Madison), include population centers, other districts include more counties, for example, the 20th, made up of Haywood, Jackson, Macon, Swain, Cherokee, Graham and Clay. Too, the courts scheduled for each resident (regular) judge are continuous or practically so in each of the several districts. In the event of the illness of the regular presiding judges, special or emergency judges may be assigned to preside over his court or courts.

The special judges are appointed by the Governor. Authorization

for their appointment was first given by the General Assembly in 1927. Each succeeding General Assembly has extended this authority for another biennium. Currently, the statutory law (G.S. 7-54 and 7-56) vests in the Governor the authority to appoint as many as eight special judges, without regard to the county or judicial district of residence except that an equal number of those appointed are to be from the Eastern and Western Divisions of the State. Under this authority, six special judges have been appointed and are serving. Their present terms expire June 30, 1949. It may be presumed that the General Assembly of 1949 will enact identical or similar legislation under which the Governor will appoint these special judges for the new biennium ending June 30, 1951.

These special judges have no fixed schedule of courts. They are assigned by the Governor to preside at specified terms of court. Under a commission to hold a specified term, they have the full jurisdiction of a regular judge with reference to matters pending in the county and at the term. Upon adjournment of the term, the authority derived from the commission ceases; and they have no authority comparable to the authority of regular judges and presiding judges of the district with reference to the hearing and determination of matters *in vacation.*

*Emergency Superior Court Judges:*

Upon the retirement of a Justice of the Supreme Court or of a regular or special judge of the Superior Court, he becomes available for assignment as an emergency superior court judge. He is not the resident judge of any judicial district and is not presiding judge of any judicial district. His authority derives from the commission issued to him by the Governor to hold a specified term of court. His authority is limited to the specified county and to the specified term of court. Upon adjournment of that term, his authority ceases.

While no attempt is made to cover all features of our North Carolina judicial system, these additional provisions should be mentioned: (1) Scheduled terms may be cancelled by the Governor; (2) Special terms may be called by the Governor; (3) Regular judges, as well as special and emergency judges, when not presiding at scheduled terms, may be assigned by the Governor; and, (4) Judges, by consent of the Governor, may exchange terms.

In the Western Division, disregarding exchanges and special assignments, ten-elevenths of the time spent by a regular Superior Court Judge in presiding over terms of Court is in counties other than those comprising the judicial district of which he is resident judge. In the Eastern Division, the proportion is nine-tenths.

### ADVANTAGES OF ROTATION SYSTEM

The reasons urged in support of this system include the following:

*An Independent and Impartial Judiciary*

Public confidence, essential to a sound judicial system, demands that the judge be disinterested and independent in the performance of judicial duty. In litigation between private citizens, between the State and a citizen, between a unit of local government and a citizen, in short, in all controversies presented for judicial determination, it is of primary importance that the judge shall be impartial as between the litigants, with no interest or motive except to do justice under the law, and that the litigants and the public should so regard him. If it be true, or if it be thought by the litigants or by the public, that the judge, whether through personal friendship with lawyer or with litigant, or through previous experience with lawyer or with litigant, or through political, business, social or other connections, will be swayed, consciously or unconsciously, by considerations other than the law and the evidence in the particular case, the prestige and usefulness of the judge is greatly impaired. It may be well to recall that in every controversary before the court each decision a judge makes is a decision *against* some person or persons.

Our rotation system has contributed substantially to the preservation of an independent and impartial judiciary. While our regular judges are selected through the political machinery of primary and general election,* so few contests develop that a large part of our people seem to think that they are appointed for life. Presiding in his residence district for six months in five and a half years, the ties that he has with the life of his home community, particularly the controversial phases of it, become less and less. His stay in his residence district as presiding judge is so brief that resentment, justified or unjustified, rarely develops to the extent that an active effort is made to contest his election upon expiration of his term of office. While the resident judge of the district, he becomes for the greater part of his time and labors one of eleven Superior Court Judges holding successively the courts of the forty-nine counties comprising the Western Division or one of ten Superior Court Judges holding successively the courts of the fifty-one counties comprising the Eastern Division.

It is suggested that a judge, presiding continuously in the courts of a single district, would tend to lose, either in fact or in public estimation,

* When a vacancy occurs by "death, resignation or otherwise" in the office of regular Superior judge, the Governor appoints his successor; but under this appointment the appointee holds office only until the next general election for members of the General Assembly. G.S. 7-48, N. C. CONST., Art. IV, §25. Numerous judges are originally selected in this manner.

that freedom from entanglements with the people and controversies of the community that he now enjoys to a considerable degree.

*A Statewide Judiciary*

The rotation system tends to unify our judicial system so that it is in fact a State system of courts as distinguished from an aggregation of local courts. This is evident in many ways.

The several regular judges preside successively in all the counties. Each stays long enough for the people of the county to observe his conduct of the court's business as a judicial officer of the State. The same law that governs our behavior in Mecklenburg governs our behavior in Clay. While of varying significance depending on the size and location and population of the county, frequently the presence and authority of the nonresident Superior Court Judge is a strong contact between a community and the State Government.

Litigation differs greatly from county to county. Lawyers of great ability are to be found in the small county seat as well as in the population center. It is suggested that the experience of the judge gained in the several counties, his experience in the handling of diverse litigation, his associations with all of the lawyers of the division in which he serves, tends to enlarge his perspective and understanding of the judicial problems with which he must deal. Conversely, it is suggested that the lawyers of a particular county may tend to benefit from the views and practices and experiences of the different judges who serve successively in their county. Methods and practices initiated in one locality soon become the common property in all our courts.

The judge learns to know the lawyers of every community and they learn to know him. Too, the judge learns to know something of each county and of its citizenship. The Charlotte lawyer, representing his Mecklenburg client, in litigation pending in Graham County, may find himself among strangers; but there will be one person there whom he knows and who knows him, namely, the judge.

It is suggested that a judge, presiding continuously in the courts of a single district, would tend to lose the broad perspective and understanding that accrues from service in many counties and sections, with the possible result that his courts would fall into the routine of a distinctly local tribunal.

### Disadvantages of the Rotation System

The reasons urged in opposition to the rotation system include the following:

*The Judge Has Limited Opportunity to Facilitate the Prompt Determination of Civil Litigation*

While a large proportion of the time of a Superior Court Judge is taken by his service as presiding judge at criminal terms, the effi-

ciency with which criminal cases are prepared and brought forward for trial depends in large measure upon the Solicitor. Too, when the giving of appearance bonds, the large numbers of witnesses subpoenaed, and other factors, are considered, the necessity for fixed terms is apparent.

The same reasons do not apply with equal force with reference to civil terms. Here the system of fixed statutory terms may be a decided hindrance to the satisfactory consideration of the civil dockets in the several counties of a district. One county may have a two-weeks civil term and few cases. Another county in the same district may have many cases with insufficient court time to try them.

The judge goes into the district on January first. He is unfamiliar with the dockets of the several counties until he reaches each particular county according to the statutory schedule. The matter of calendaring cases for trial is handled by the Clerk under the direction of the local bar or a calendar committee. Often, on account of some defect of service of process, some defect of parties, some defect in pleadings, some preliminary motion that must be determined before trial, the calendared cases, or one or more of them, cannot be tried. These causes for delay are discovered by the judge after he arrives on Monday morning for the purpose of trying the calendared cases. It is suggested that a resident judge, presiding continuously in the district, could and would keep up with the litigation in his district and discover and resolve such preliminary questions in advance of the convening of the court term.

The presiding judge, except in rare cases, has no knowledge of the cases for trial until he arrives on Monday morning for the court term. If he proceeds with the trials, he must study and learn very rapidly. The lawyers on both sides may have grown up with the case, having considered the evidence and the applicable law from the time the controversy arose; but the judge, who must make critical decisions even in the early stages of the trial, has had no advance preparation or even an opportunity to get oriented in the field of law with which the case deals. This may be overcome in part if the first day of the term is used wholly or in large part for the hearing of motions and in exploring the cases calendared for trial and by a study of the cases at nights during the progress of the term. It is suggested that a resident judge, presiding continuously in the district, could and would study the cases from the time they are calendared for trial and in consequence be better prepared to proceed with the trial without undue delay.

Under the rotation system no judge has any definite responsibility for the prompt determination of civil litigation on the court docket as distinguished from the trial calendar. Each judge in rotation does have a definite responsibility for the trial and determination of civil cases

calendared for trial in his courts. However, in some counties a mass of untried civil cases accumulate on the docket, which for one reason or another become dormant and are not brought forward by the lawyers for trial. It is suggested that some judicial or other qualified official should make periodic examination of the civil dockets in the several counties and bring forward such cases for trial or dismissal.

*Rotation Involves Loss of Time and Inadequate Facilities for Use of Time When Not Presiding Over a Term of Court*

In meeting his engagements, an itinerant judge spends a substantial part of his time in travel. The amount of time so spent varies in relation to the distance between his home and the county seat where he is currently presiding. The loss of time may be negligible. On the other hand, there are instances where a full day is required to make a trip from his residence to his court and another full day is required to make the return trip from the court to his home.

Except during the six months he presides in his own district, the itinerant judge is at home only on week-ends and on occasions where court sessions out of town do not require the full scheduled time. When he is at home, he is largely on his own. The State makes no provision for office, secretarial, library, or other facilities. Each resident judge overcomes these handicaps with more or less success depending upon conditions in the county of his residence. It may be suggested too that while presiding in other counties his office, library, secretarial, and other facilities, are at best of a makeshift sort. All this goes solely to the question of the ability of the judge to use to best advantage such marginal time as may be available.

*The Resident Judge Presides Only a Small Proportion of His Time in the District Where Nominated*

This fact is not listed as an advantage or as a disadvantage because different conclusions may be drawn.

It is true, whatever the significance, that a district nominates a judge, and this judge, upon election, serves most of his time in districts other than the district where nominated. While the election is statewide, for a considerable period no real contest has developed in the general election.

On the one hand, it is urged that the district where the judge is nominated is not greatly interested in the choice made for the reason that the electors know that whoever is chosen will serve only six months in five years or in five and a half years, depending upon whether the district is located in the Eastern or Western Divisions of the State.

On the other hand, it is insisted that this situation does much to protect and relieve the judge selected from political or other pressures

in the district where nominated and elsewhere and so contributes greatly to his status as an independent and impartial official.

### Rotation in Relation to Criminal Terms

Since the principal criticisms of the rotation system have been directed to the civil rather than the criminal dockets, little has been said here with direct reference to criminal terms.

The Solicitor is a constitutional officer. He represents the State in criminal prosecutions and is the chief law enforcement officer of his district. The Superior Court Judge is not a prosecutor but sits in judgment as between the State on the one hand and the defendant on the other. While the judge may require that certain cases be called for trial, unless the Solicitor is ready this may result only in dismissal of the case upon trial or in the entry by the Solicitor of a *nolle prosequi.* Except in rare instance, such course makes no contribution to the proper administration of criminal justice. From the standpoint of efficiency in the dispatch of the business at criminal terms, it is suggested that there is little in the way of distinct advantage or disadvantage as between the rotation system and a system where the resident judges would preside continuously in their own districts.

It has been suggested as a disadvantage of rotation that the several judges differ greatly with reference to the severity of punishments imposed for various violations of the criminal law. The wide discretion vested in the judge in the matter of imposing punishments is the factor that accounts for such diversity in punishments as exists. If the same judges were to preside continuously in their respective districts, such diversity would continue; the variance would be from district to district rather than from court to court within a district. It is suggested that the rotation system tends to bring about a greater statewide uniformity of punishments for like offenses. Instances of gross disparity may be corrected through the office of the Commissioner of Paroles.

It has been suggested that a judge presiding continuously in his own district would become familiar with the criminal elements of the community and with the local problems in the enforcement of the criminal law. On the other hand, it is suggested that the tendency would be for a judge so situated to act on the basis of fixed ideas of his own or on the basis of local reports rather than on the basis of the evidence before him. It should be borne in mind that he is a judge, not a prosecutor; and that in the position of judge it is of far greater importance that he look to the evidence before him rather than to the general sentiment of the community.

### The Election Procedures in Relation to Political Parties

While our rotation system tends to free the judiciary from political

and other pressures as much as could be done under any system of election through political agencies, there is one fact that should be noted. All judges are chosen in the general election on a statewide vote as the nominees of a political party. No individual nominee for the office of judge would have the disposition, the means or the facilities for conducting a statewide campaign for election or re-election. In the absence of such statewide campaign in support of an individual nominee, such nominee usually would not be known to the great mass of the voters of the entire State; and the election or failure of election of the nominee for judge depends upon the success or failure of the statewide ticket of the political party which nominated him. Should the statewide ticket of an opposing political party prevail in the general election, then the incumbent judges or others nominated would fail of election wholly without reference to their qualifications for judicial office. This situation is emphasized by those who suggest the Missouri plan, hereinafter discussed, as a better plan for the selection of judges.

### THE FEDERAL SYSTEM

The federal district judge, who is the trial judge in the federal system, presides regularly over the courts of his judicial district. However, he is subject to assignment by the Senior Circuit Judge to preside in other districts when need arises; and conversely, when it is needful or appropriate, other district judges may be assigned to preside over court terms in his district. Two differences are noted: (1) Ordinarily he presides in his own district. When others preside in his district, or when he presides in another district, this is the exception rather than the rule. (2) The assignments for holding terms elsewhere than in one's own district are made by the Senior Circuit Judge, a judicial officer rather than an executive official; and such assignments are made on the basis of data made available through the Administrative Office of the Federal Courts.

In any comparison of the two systems the following differences should be kept in mind:

The federal district judge is nominated by the President of the United States, confirmed by the Senate, and his tenure is for life or during good behavior. Thus, his independence and impartiality are protected from any political or other pressures that might relate to an elected judge.

Moreover, his district is much larger in area. There are only three federal judicial districts in North Carolina as compared with twenty-one state judicial districts.

Too, while of equal importance, the federal district courts have a limited sphere of jurisdiction; and the general jurisdiction of the state

Superior Courts deals intimately with all the day by day problems of the people of a community.

### Can the Independent Status of the Trial Judge Be Preserved Without Rotation?

Would we achieve greater efficiency in the handling of civil litigation by having the regular judge preside continuously over the courts of his residence district? If so, how could this result be achieved without impairment of the independence and disinterested status of the judge?

Waiving for the time the other advantages of rotation, it would seem that the independent status of the judge, both actually and in public estimation, might be preserved in either of the following two ways:

First, by making his tenure for life or during good behavior, subject to removal for cause by some nonpartisan judicial council rather than through the cumbersome procedure of impeachment and trial in the General Assembly.

Second, by adoption of a nonpartisan procedure for the selection of judges along the line of the so-called Missouri plan. In short, this plan provides that a new judge be appointed by the Governor, he being limited to a selection of one of three persons recommended by a nonpartisan judicial commission. The appointee serves until the next general election. Then there is no contest as between candidates, but the people vote "Yes" or "No" on a separate, nonpartisan ballot, answering the question, "Shall Judge ——— be continued in office?" At the end of each term, the people vote similarly with reference to his continuance in office. Under this plan, the people do not select but retain the power of veto; and, while the Governor appoints, his power of selection is limited to the three persons recommended as qualified by a nonpartisan judicial commission.

### Various Proposals for Modification of Our Judicial System That Have Been Submitted for Consideration

The purpose of this article is not to advocate, but rather to submit for discussion and consideration, various proposals that have been submitted as improvements of our judicial system. The hope is that the public will have a clear understanding of our present system, its advantages and its disadvantages; and that proposals for modification will receive adequate consideration by laymen and lawyers, whatever the final decision may be. Usually, by proposal, criticism, counterproposal, all examined closely in free and frank thought and discussion, the judgment reached often is more satisfactory than any proposal in its original form. Ideas expressed by those who have considered the subject vary from the view that our present system should be retained intact,

without modification of any kind, to the view that the entire article of our North Carolina Constitution relating to the judiciary (Article IV) should be re-written from beginning to end.

The proposals for modification more often urged include the following:

1. The selection of judges in substantial accord with the procedures of the Missouri plan. When a vacancy occurs, a resident (regular) judge would be selected in the first instance by the Governor from a panel of three recommended as qualified by a nonpartisan judicial commission of the district. Thereafter, when the question of his continuance in office is presented, the vote is by separate, nonpartisan ballot, those voting being the electors within the particular judicial district.

2. The resident (regular) judge of each judicial district to preside regularly over the courts of his district, assisted as need requires by the assignment under commissions or special or emergency judges to preside over specified terms; provided that the resident (regular) judge may be assigned to hold terms elsewhere than in his residence district. This proposal would abolish the rotation system.

3. The Chief Justice of the Supreme Court to be Chief Justice of North Carolina and as such the administrative head of the entire judicial system. This contemplates that he would be given full and exclusive authority (1) to assign Superior Court Judges, regular, special and emergency, and (2) to fix and to modify from time to time the terms of court to be held in each of the several counties as the need therefor may require.

4. To create an Administrative Office of the State Courts. The Director of this office would keep full and current data on the dockets of each district. He would keep in close touch with the resident (regular) judge of each district. His function would be to keep the Chief Justice advised of all matters necessary for the performance by the Chief Justice of his executive responsibilities.

5. While retaining the rotation system as it relates to resident (regular) judges of presently constituted judicial districts, grant to the General Assembly the constitutional power, in respect of counties containing population centers, to create such county as a separate civil judicial district, with a resident (regular) judge nominated and elected within such district. Such county would continue as a part of the general judicial district of which it is now a part. The resident (regular) judge of such separate civil judicial district would ordinarily preside over civil terms in such county and would not rotate according to statutory schedule but would be subject to assignment to hold other specified terms.

6. While retaining the rotation system, and without constitutional change, modify it so as to increase the number of judicial districts from twenty-one to twenty-four, establish six divisions instead of two and provide that the four regular judges in each division shall rotate within each division so as to be presiding judge of each district for a period of one full year rather than six months. Similar proposals involve establishment of more than two divisions, rotation of judges within such smaller divisions and provide for a longer stay of presiding judge within a district in the course of rotation. The present constitutional limitation is that a judge shall not hold the courts of the same district oftener than once in four years. There is no restriction as to how long he shall stay within a district as presiding judge. The six months period now in effect is statutory.

7. While retaining the rotation system as it relates to resident (regular) judges of presently constituted judicial districts, grant to the General Assembly the constitutional power, if the business of the Superior Courts of the counties of a district becomes so great as to require continuously the services of two or more presiding judges, to provide for the election of one or more additional resident (regular) judges for such district. It is suggested that in such district, *assuming two resident (regular) judges,* there would be two schedules of court. Schedule A would include all the criminal terms and such civil terms as the schedule would permit. Schedule B would consist of civil terms exclusively. A judge, reaching such district in rotation, would preside for six months over the schedule A terms; and then the same judge would continue for another six months in the district presiding over the schedule B terms. While it is considered that the provision for the present number of special judges should be continued, this change would enable the General Assembly from time to time as need for additional judges arises to increase the number of resident (regular) judges without disturbing present judicial district lines.

8. Without change of our judicial system as now constituted, provide that the first day (Monday) of each civil term shall be set aside for the hearing of non-jury matters, including the examination of cases calendared for trial and the pre-trial consideration of such matters as may facilitate satisfactory trials.

9. Without change of our judicial system as now constituted, provide in the court schedule of each district for certain weeks specially designated for the hearing of non-jury matters pending in the counties of the district and the pre-trial consideration of such matters as may facilitate satisfactory trials. Since the trial terms now scheduled take up all or practically all the time of the presiding judge, it is suggested that

the adoption of this proposal would necessitate an immediate increase in the number of judges.

Generally, the more vigorous criticisms of our judicial system relate to delay in respect of civil litigation, particularly in counties having large population and industrial activity, where the heaviest civil dockets are to be found. It is urged that a Superior Court Judge should be at all times available in such counties, whether court be in formal session or not, to hear and to determine the legal questions that develop from day to day in such counties. In recognition of this, the proposal set down in paragraph 5 above has been brought forward.

Another criticism often urged is the inadequate provision for the hearings of non-jury matters. Often such matters are of great importance. In the absence of special provision, the jury trials, which often involve relatively small amounts, are given precedence; and the non-jury matters are treated as marginal matters to be heard or not depending upon whether time is available after trial of jury cases. In recognition of this criticism, the proposals set down in paragraphs 8 and 9 above have been brought forward.

While no proposal has been brought forward that bears upon the subject, the system contemplates that the judge shall be continuously engaged in the hearing of causes; and no provision is made in recognition of the need of the judge for opportunity for study and research both generally and in relation to particular causes under advisement or shortly to be tried. Experience alone brings conviction that the most valuable work of the judge is done when the court is not in session. When one considers the mass of new legal questions, arising from the widest variety of human relationships and problems, constantly confronting the trial judge, it becomes easier to appreciate this necessity for continuous study. No person has an adequate reservoir of knowledge and understanding for the task. The announcement of the decision takes but a moment. Arriving at the decision, upon consideration of all factors, may require hours or even days. It is suggested (apart from any consideration of personal burden on the judge) that no judge can do his best work unless there is afforded a break from time to time in the tension and continuity of hearing and determining causes.

## Conclusion

Having written the foregoing as objectively as my experience and present position would permit, I now must add a word or two of a personal sort. First, I would express my appreciation and highest regard for all my brethren of the Superior Court Bench. They have rendered and are rendering, week after week, a great service to the

people of the State. Without exception, they serve in this position of continuing tension and responsibility, as well as of honor, at substantial financial sacrifice. Too, I would say with deep sincerity that, whatever may be the merits or demerits of the rotation system, one of the great compensations accruing from my own service as a Superior Court Judge consists in friendships formed and in associations and experiences enjoyed in the course of my itinerancy in every county in the Western Division of North Carolina.