

January 23, 1996

**Discussion of Court of Appeals Composition and Caseload,  
Transcripts of Meetings of Georgia Select Committee on  
Constitutional Revision, 1977-1981**

Participants Included in this Report  
and their Titles at time of Constitutional Revision

Full Committee Members

Chief Justice Hiram K. Undercofler, Georgia Supreme Court  
(Chief Justice March to December 1980)  
Justice Horace E. Nichols, Georgia Supreme Court  
Chief Judge J. Kelley Quillian, Georgia Court of Appeals  
Wayne Snow, Jr., House Judiciary Committee, Chairman

Members of Committee to Revise Article VI

Wayne Snow, Jr., House Judiciary Committee, Chairman  
Robert S. Stubbs, State Law Dept., for Attorney General Michael J.  
Bowers  
Judge Braswell D. Deen, Jr., Georgia Court of Appeals  
Judge George T. Smith, Georgia Court of Appeals  
Judge Dorothy T. Beasley, State Court, Fulton County  
Dean Ralph Beard, University of Georgia School of Law  
Dean John Cole, Mercer University School of Law  
Dean L. Roy Patterson, Emory University School of Law

Other Participants at Article VI Meetings

Jim Miller for Judge Sidney Smith, Retired District Court Judge,  
present at 9/23/77 meeting.  
John Gettinger, Younger Lawyers Section State Bar, present at  
10/3/80 meeting.

Other Participants at Judicial Article Conference, 9/12/80

George Rodrique, District 5 Administrative Forum  
Judge Arthur J. Simpson, Jr., Acting Administrator, Director,  
State Courts of New Jersey  
Justice Cameron M. Betjer, Nevada Supreme Court, representing  
National Conference of Appellate Judges  
Judge Orm W. Ketchum, Director, National Center for State Courts

Georgia Const. Article VI Section V Paragraphs I-V

Paragraph I: Composition of Court of Appeals; Chief Judge.

Article VI Committee

**Subcommittee on the Judiciary, 9/23/77, pp. 7-71:** Dean Beard of UGA reported on a study conducted by a subcommittee comprising himself, Dean Patterson of Emory and Dean Cole of Mercer. Topic: Appellate court jurisdiction. Discussion: There are 3 types of appellate court systems: unitary (single appellate court), two-stage (appeals by right to first-tier court & on cert. to second-tier court; second-tier court also has very ltd. original jurisdiction), and parallel (Georgia's system: two appellate courts w/ jurisdiction over different types of cases.) Dean Beard recommended switching to a two-stage system to be incorporated into the constitution & severely limiting Supreme Court original jurisdiction.

\* p. 15: Dean Beard: "That would of necessity reduce the caseload; may of necessity require an increase in the Court of Appeals--Judges of the Court of Appeals."

\* pp. 16-17: Chairman Wayne Snow noted the need to consider reducing # of Supreme Ct. Justices & increasing # of Ct. of Appeals Judges.

\* pp. 19-20: Robert S. Stubbs expressed concern w/ the overwhelming # of appeals, but voiced reservation re: increasing # of Ct. of App. Judges.

\* pp. 24-25: Justice Nichols advocated making the S.Ct. a cert. court and noted the resulting need for "more bodies on the appellate court."

\* pp. 33-34: Judge George T. Smith expressed dissatisfaction with the "current" caseload in the Ct. of Appeals, noting that the Judges already had caseloads of more than 200 apiece. By decreasing the caseload of the S.Ct., "you've just thrown a tremendous load on the Ct. of Appeals which means you're going to have to increase your Ct. of Appeals by several judges."

\* pp. 36-37: Justice Nichols agreed that because of the heavy caseload in the S.Ct., Justices couldn't devote enough time to in-depth study & considered opinions. Recommendations: 1) Add a three-judge Criminal Court Division to the Court of Appeals. This would lend stability in criminal law & would free the other six Ct.

of Appeals Judges from dealing w/ criminal matters. "I know they are overworked just like we are." 2) Don't limit the language of the constitution to allow only nine judges on the Court of Appeals. With growing caseloads, there must be "a leeway where you can increase judges."

\* pp. 42-43: Dean Baird expressed that caseloads were great in both the S.Ct. and Ct. of Appeals. In 1976, there were 1,646 docketed cases in the Ct. of Appeals; each judge was assigned 177 cases. In 1977, there were 1,197 docketed cases for the first seven and a half months alone; cases per judge exceeded 200 before the year's end. These figures didn't include interlocutory appeals.

\* p. 46: Dean Cole distinguished between the consideration of adopting a two-tiered appeals system and that of reducing appellate caseload. He advocated adopting the two-tiered system despite that the caseload would continue to grow.

\* pp. 52-53: Jim Miller, representing Judge Sidney Smith, expressed concern that enlarging the Ct. of Appeals beyond its present size would reduce its quality. "It's difficult enough now to find nine gentlemen of high quality as lawyers who are willing to serve on the State Ct. of Appeals."

\* p. 54: Justice Nichols advocated increasing compensation to attract quality judges.

\* pp. 55-56: Justice Nichols noted that the Ct. of Appeals has remained at its current # of nine for 20-25 years, while the number of attorneys in the state has increased during that period from 3,000 to about 10,000. Additionally, the population of Georgia increased from about three million in the 1950's to about five million in 1977.

\* pp. 58-59: Dean Cole reiterated that the consideration of adopting a two-tiered system was distinct from that of allocating caseload. The question is to which court to add justices/judges. Under the current system both courts would need to add members in the future.

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Full Committee Meeting 6/27/80, pp. 46-47: Chief Justice Undercofler noted that the proposals for the new constitution would "radically change the jurisdiction of the Ct. of Appeals and the S.Ct." He agreed with the changes, but noted the importance of increasing the # of judges on both courts as a result. Re: Ct. of Appeals caseload, "Those judges are handling 2,200 to 2,400 appeals

a year, seven of them. If you all of a sudden dump our jurisdiction on them, they're just out of business." He recommended "to at least double" the size of the Ct. of Appeals. In response, Judge Dorothy Beasley, "We know you can't just shift jurisdictions and expect the same number of people."

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Full Committee Meeting 8/8/80, pp. 140-45: Discussion whether constitution should read re: Ct. of Appeals composition, "shall consist of nine judges," or "shall consist of not less than nine judges."

\* p. 141: Chairman Snow recommended freezing # of S.Ct. Justices but leaving open the # of Ct. of Appeals Judges so new judges could be added as needed. He raised the issue of otherwise having to amend the constitution each time new judges were to be added. Judge Braswell D. Deen responded that the current judges on the Court of Appeals "would like to freeze" the #.

\* pp. 142-45: Dean Patterson advocated leaving the issue of # of Ct. of Appeals judges flexible to avoid future need to amend the constitution to change #. Another concern was to leave a minimum of nine as current caseload demanded. The committee voted seven to one to adopt the language, "not less than nine judges."

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Paragraph III: Jurisdiction of Court of Appeals: decisions binding.

#### Article VI Committee

Full Committee Meeting 8/22/80, pp. 48-61: Discussion of great caseloads in S.Ct. & Ct. of Appeals. Justice Undercofler recommended decreasing the # of appeals, noting that the Ct. of Appeals & S.Ct. were the "two busiest courts." He remarked, "They have the largest caseload in the United States." The Justice also noted that the right to appeal was unlimited and that the #s of both lawyers and appeals had increased threefold in ten years.

\* p. 51: Justice Undercofler raised concern re: adding more judges to the Ct. of Appeals. "[Adding two more judges] is questionable how much it helps because you have to deal with two more people there every time you try to write something and get a decision." "The court of appeals can not. . . handle any more cases and we're dumping some more cases on them." "There's only one answer to it

as I see it and that is to reduce the # of appeals."

\* p. 54: Judge Kelley Quillian: "[A]dditional judges are not the answer because. . . the more judges you get the more problems you have on executing your work efficiently. . . when you get nine people together you have a hard time getting agreement."

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Judicial Article Conference 9/12/80, pp. 84-85: George Rodrique explained that the cert requirement for the Ct. of Appeals was intended to reduce caseload. He noted, however, that Judge Arnold Schulman of the Ct. of Appeals said that requiring cert would not help in that manner because the court must consider very seriously any certs before it.

\* pp. 115-20: Issue: how to reduce appellate court caseload and still give litigants the right to appeal in at least one court. Suggestions: Judge Arthur J. Simpson of New Jersey -- Make S.Ct. and Ct. of Appeals cert courts. Give judges adequate support staff of law clerks & central staff. Allow appeals to Ct. of Appeal as matter of right, leaving only cert cases and a few restricted automatic appeals for S.Ct; develop streamlining procedures for disposing of cases that shouldn't have been appealed at all. Justice Cameron M. Betjer of Nevada -- Like Nevada, increase central staff & write many per curiam opinions (this will admittedly give staff much work formerly done by judges & justices). Or as in Oregon, take all cases as matter of right and either rule from bench or list cases "affirmed" by number & don't elaborate. Judge Orm W. Ketchum of NCSC -- Recommended adding more judges to Ct. of Appeals.

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Full Committee Meeting 10/3/80, pp. 84-89: General discussion, primarily among Chairman Wayne Snow, Judge Dorothy T. Beasley and John Gettinger, that making the Ct. of Appeals a cert court was an attempt to reduce the overload in the appellate courts without adding judges.

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