

State of the Judiciary
Chief Justice Howell T. Heflin, Supreme Court of Alabama
Meeting of the Alabama State Bar, Montgomery, AL
July 20, 1972

Before I assumed the duties of my office it was evident that the state of the judiciary could be improved by a progressive legislative program. Prior to my investiture after discussions with the governor-elect, legislative leaders and the leaders of this bar association I became elated by the attitude of all concerned and of the promised support for such a program. Then President Truman Hobbs of this association laid the groundwork for the achievement of this program by the appointment of several essential committees and by formulating a plan of action. President Robert Albritton provided brilliant generalship in achieving victory for the program. We will always be indebted to Reginald T. Hamner, Secretary of the Bar Association and Drayton Hamilton, Chairman of this bar association's Legislative Liaison Committee, for their day-to-day legislative attention. I wish also to thank the many leaders of the Legislature for their efforts because our legislative program has been correctly termed "the greatest break-through for judicial reform in the history of Alabama."

I do not intend to burden you with the details of each legislative enactment but I think I would be remiss if I did not mention at least the major ones.

First, a Department of Court Management was created. The Chief Justice was designated as the chief administrative officer of the trial courts of Alabama and was furnished with personnel, including a Court Administrator, and some funds to begin a program designed to improve the administration of justice in Alabama.

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Rule-making power was conferred on the Supreme Court in two separate acts. One pertained to civil trial practice, and the other to appellate rules.

Next, the Legislature eliminated barriers which had caused procedural delays within the internal operation of the state appellate court system. Now, cases are being heard rapidly without having to wait for specific calls of the divisions.

The Chief Justice was given additional authority pertaining to the assignment of judges, including the authority to assign circuit judges for temporary duty on the Supreme Court, the Court of Criminal Appeals, and the Court of Civil Appeals.

The Chief Justice was given additional authority concerning the ascertainment of statistics and factual information from all court officials, including judges, clerks, registers and court reporters.

Legislation was approved which increased the number of judges on the State Court of Criminal Appeals from three to five members. Legislation designed to improve the continuing judicial education of judges on a local and national basis was enacted.

A Permanent Study Commission on Alabama's Judicial System was created. This Commission was given broad power to study any matter directly or indirectly affecting the administration of justice, including prisons and criminal rehabilitation methods and procedures. It is anticipated that this Commission, ably directed by Professor Charles Cole of Cumberland School of Law, will be the forum by which continuing advancements pertaining to the improvement of the administration of justice can be achieved.

While these and other legislative enactments have done much to improve our judicial system, their greatest contribution will be recognized for the tools they provide for continuing improvements within the system.

On January 18, 1972, the people of Alabama gave their overwhelming support to this program when they adopted, by nearly a two to one vote, two constitutional amendments. One of these amendments created a Judicial Commission charged with the responsibilities concerning the discipline, removal, and retirement of judges. This Judicial Commission will serve as a clearing house of complaints against judges and a modern and effective method of disciplining judges. Previously, the only way to discipline a judge was through the cumbersome and ineffective method of impeachment.

The other constitutional amendment abolished the office of the Justice of the Peace. Measures were passed by the Legislature transferring cases from the Justice of the Peace courts to existing county and inferior courts, and providing for a single county replacement court should County Commissions determine that such was needed in their counties.

While the Department of Court Management has been in existence only a short time it has already compiled statistics concerning the disposition of cases, located problem areas and is in the process of beginning a study of each circuit court in the state with the consulting assistance of Harvey Solomon of the Institute for Court Management. This Department has developed action programs by the effective use of supernumerary circuit judges and judges from non-congested rural circuits. For example, in Montgomery this spring, five different judges were assigned at different times to assist the Circuit Court of that county with its workload, providing an extra judge for 12 weeks of court.

A vastly improved in-service training program has been launched to keep the judges of the state abreast of the many and different changes in our law and in court administration.

My first step as Chief Justice was to order an orientation program for all newly-elected circuit judges. Within a few days after taking office, a four-day training program for fourteen newly-elected circuit judges and eight circuit judges who had served less than two years was

undertaken. This orientation program, a first for a state court system in the United States, proved to be exceptionally beneficial for these 22 judges. This summer 19 out of the 86 circuit judges will attend courses at the National College of state trial judges in Nevada. We have been told that with the exception of New Yorkers and Californians, there will be more judges from Alabama attending this college than any other state.

The work of the advisory committees appointed by the Supreme Court to make recommendations concerning the exercise of its newly acquired rule-making power deserves comment. The Advisory Committee on New Alabama Rules of Civil Procedure, ably chaired by Oakley Melton, has now completed its initial task. I congratulate this committee on its diligence and for its excellent work product. Champ Lyons, Jr. is due a vote of thanks by the court and this association for his thorough and diligent work as its Reporter. The order of the Supreme Court that established this committee now calls for this committee to submit its recommendations to the Alabama Law Institute, the Board of Commissioners of the Alabama State Bar and the Alabama Association of Circuit Judges for their suggestions and comments. If the time table operates as expected, the Court should begin consideration of the recommendations of this committee in October.

In anticipation that the court will adopt rules of practice and procedure akin to the federal rules of civil procedure, a pre-adoption educational program was formulated and has been held in a number of localities in the state.

The circuit judges and presidents of local bar associations have been asked to provide the leadership in this program. If your local bar association has not already conducted such a pre-adoption educational program, let me urge you to advocate to your local bar association and circuit judges that such be carried out between now and November 1st.

Plans are being formulated for a post-adoption educational program. A four-day seminar for the circuit judges will be held this fall in place of the normal 2 day meeting. Recommendations have been made to the deans of law schools concerning intensified programs for the bar during the so-called "slack period" around the first of the year. The Continuing Legal Education Program has been alerted for the need of their customary regional meetings. The Educational Television System of the State has agreed to provide programs by which lawyers, judges, court-affiliated personnel, as well as the public, can be informed of the changes in the rules through network-wide programs.

Let me urge every judge and lawyer of the state to take advantage of every opportunity to acquaint themselves with the new system of pleading and practice which will probably go into effect around March or April of 1973. I doubt if any state has ever made available to its judges and lawyers such a comprehensive educational program as planned for Alabama. I do not want any judge or lawyer to say that he has not had the opportunity to fully study the new rules before they go into effect.

The Advisory Committee on New Rules of Appellate Practice is engaged in a thorough study of modern appellate practice. The Act which gave the Supreme Court power in this aspect calls for a new system of appellate rules designed to simplify appellate practice and procedure and secure

the just, speedy and inexpensive determination of cases on their merits. The public, lawyers and litigants have suffered from a system of appellate practice which has produced many decisions on technicalities rather than on the merits of the cases. Hopefully, this Advisory Committee, ably chaired by Jacob Walker, Jr. and Aided by consultants Professor Paul Carrington of the Michigan Law School and Professor Douglas Rendleman of the University of Alabama Law School will make recommendations to remedy this problem.

I am pleased to announce that a consultant study of the appellate courts of Alabama will be conducted by the National Center for State Courts headed by its Director, Justice Winslow Christian. Outstanding authorities in the field of appellate practice, as well as eminent jurists from other jurisdictions, will study our appellate court system and make recommendations concerning improvements. As a result of the work of the Advisory Committee on New Appellate Rules and this consultant study conducted by the National Center for State Courts, it is my hope that marked improvement can be achieved in appellate practice which will bring an end to one-judge treatment of cases, transcript paper and other outmoded procedures and requirements. Hopefully, provisions will be made to allow for corrections of non-compliance with rules rather than the present harsh result of dismissal.

We have been told by representatives of national organizations dedicated to the task of improving the administration of justice that more has been accomplished in Alabama during the past year than in any other state. No one individual or group of individuals is entitled to the credit for these accomplishments, for this program could not have been achieved without a cooperative effort on the part of legislators, lawyers, judges and interested citizens. This cooperative effort must continue.

While giant strides have been made, much remains to be done. There are areas in the state where problems of congestion and delay are prevalent. With constantly increasing caseloads there is always the threat that clogged calendars will occur in the non-congested circuits unless preventative measures are constantly maintained. While many of you in areas where there is no congestion might shrug off preventive action, you should remember that what occurs in other areas indirectly affects your practice. There is no doubt that the idea of "no-fault" insurance was conceived because of the congested court calendars of other states. We must constantly fight the battle against delayed justice. Many put the blame on judges, but having only recently left the trial arena I know that lawyers are equally at fault. The filing of "nuisance" lawsuits has had an adverse effect on court calendars in many circuits and lawyers must stop filing these types of cases. Judges grant continuances because lawyers ask for them. Postponement of cases is the No. 1 enemy of undelayed justice. The effective administration of justice depends upon hard-working lawyers just as much as upon diligent judges.

There is a need for court management studies, such as the one that recently took place in Madison County, in other localities of the state. The Huntsville study, conceived and directed by Judge John D. Snodgrass, spotlighted long neglected needs of its court system. It is obvious that many useful benefits can be derived from such studies in selected localities.

All courts in the state can benefit from a cooperative effort to improve the dignity of proceedings. Let me urge each local bar association of the state to work on this project and, if

feasible, to recommend to its judges the wearing of robes. Circuit judges in Birmingham, Mobile, Huntsville, Tuscaloosa and Florence have donned judicial robes and are impressed with the resulting benefits. There is a problem today concerning the failure to adequately provide for the needs of the court systems financially and otherwise. Many public officials seem to have forgotten that court-houses obtained their name because that building's primary function was to house the courts. Unfortunately, in recent years some of the court systems of the state are suffering because of the failure of appropriating bodies to adequately provide for the administration of justice. Jury terms in some counties have been cancelled because county commissions claimed they were unable to pay the cost of such a term. While the legislature passed a remarkable package of bills to help modernize our court system it, nevertheless, reduced appropriation requests of the appellate courts without proper consideration in a hurried special session. For some unknown reason, a proviso was added to the current appropriation bill prohibiting any money designated for circuit judges' expenses to be used in the purchase of books. Such proviso simply doesn't make sense. How can a court system properly function when judges are prohibited from acquiring the essential tools of their trade? This proviso makes about as much sense as prohibiting a carpenter from purchasing a saw. Please do not misunderstand me, I am not critical of this legislature for its support of judicial programs was magnificent. But I do feel I should mention these matters for silence might produce reoccurrences. I urge local bar associations and this association to develop programs and procedures to help judges with these matters for the independence of the judiciary cannot be maintained if judges are constantly put in "money-begging" positions.

Alabama has the poorest paid judiciary in the South and one of the lowest in the nation. I estimate that between 65% and 70% of the attorneys in this state are making more money than judges. Most lawyers simply can't afford to become a judge. If financial gain is the incentive for a lawyer to seek a judicial position under our present economy and judicial salaries, we had better start worrying about the future competency of the judiciary. We have strong and competent judges in Alabama both on the state and local level in most instances, but unless judicial compensation is substantially increased it is inevitable that the quality of judicial manpower will suffer. This bar association must take an active leadership role pertaining to improving judicial salaries if a substantial break-through is to occur. Let me urge you to make this your primary goal and objective in 1973.

In a speech to this association on July 18, 1970, before I assumed office, I pointed out that there was an acute housing problem in the Judicial Building in Montgomery. This problem has now become compounded. The addition of two new members of the Court of Criminal Appeals with the necessity of finding office space for their law clerks and secretaries as well as themselves and the creation of the Department of Court Management, has caused a situation in which court-affiliated personnel are now being housed in three different buildings in Montgomery, one of which is nearly three blocks away from the Judicial Building. There is a room in the building that has been designated as "the tomb" in which six law clerks are now housed. However, they are not mummies for when one talks the remainder are aroused from their concentration. Many of the records of the Supreme Court had to be moved to the Department of Archives and History to provide office space for our working supernumerary justice and judge. Hopefully, the 1973 legislative program of this association will give high priority to a new Judicial building.

Study should be undertaken regarding the selection and tenure of judges. While I am utterly opposed to the lifetime appointive system and am a thorough believer that the democratic process should be exercised pertaining to the selection and tenure of judges, it is apparent that the present system of selecting and retaining judges in this state leaves much to be desired. The possibility of political influence and considerations upon the judiciary must be completely eradicated from our system. This bar association should give thorough study toward improving the present system of selecting and electing judges. If the present system is to be retained, perhaps, the Texas Plan, by which the state bar association publishes the results of a state-wide poll of the lawyers pertaining to judicial candidates before an election, should be considered.

The problem of the defense of the indigent continues to be infested with unhealthy difficulties. The recent decision of the Supreme Court of the United States in *Argersinger v. Hamlin*, 92 S. Ct. 2006 compounds this problem. It is extremely doubtful that an assigned counsel plan will work in municipal and misdemeanor courts with any degree of effectiveness. A thorough study of the implications of this decision should be undertaken and an implementing plan activated.

The Alabama Constitutional Revision Commission, headed by the hard-working Judge Conrad M. Fowler, has been at work for many months drafting a new Constitution for the State. Dean M. Leigh Harrison has served as Reporter for this commission with his customary thoroughness. Reports indicate that members of that commission are dedicated toward providing a new judicial article structured toward the further modernization of our judicial system.

Statistics now being assembled by the Department of Court Management, while still incomplete, already reveal that the number of cases pending in the circuit courts have been substantially reduced during the past 6 months.

The members of the Court of Civil Appeals are to be congratulated; for all practical purposes that court has no backlog. The increased number of judges on the Court of Criminal Appeals, the diligent efforts of two supernumerary circuit judges, and the availability of agreeable circuit judges to assist that court should provide the judicial manpower sufficient to make that court current within a year.

During the last few weeks within the Supreme Court a realignment of workloads, reassignment of cases, and the assignment of some cases to circuit judges have taken place. If this readjustment program functions as planned and as anticipated then when the new term year starts on October 1, of this year, there should not be a pending case under submission.

It is my observation that in most instances we have good judges in Alabama - in fact, far better than in many states. Most of the circuit judges and the appellate judges of this state are genuinely interested in and endeavoring to improve the operations of their court systems. With improved methods and tools I am sure that substantial improvement will occur.

The state of the judiciary in Alabama is good - not perfect but improving.

It has been stated "Laws and institutions are constantly tending to gravitate. Like clocks they must be cleansed, wound up and set to true time." The judicial system of Alabama still needs some rewinding but hopefully it can be set at true time in the near future.