State of the Judiciary
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Your kind invitation affords me, as chief justice representing your courts, to report on the State of the Judiciary this year.

It was a decade ago that our legislature took the first steps toward improving the judicial system by providing: (1) limited rule-making power in the Supreme Court; (2) abolishment of the justice of the peace fee system; and (3) authorization to establish sound management and fiscal procedures in our courts. The remainder of the decade, to date, has seen introduction of further constitutional, statutory and administrative reforms with the goal of ensuring prompt, efficient, and fair resolutions of disputes in the courts of this state. Without the dedicated and conscientious support and effort of both the trial and appellate bench, clerks of court and our bar, and certainly the legislature and our citizens, we could not have progressed this far within 10 years. I personally am indebted to my co11eagues on the Supreme Court for their wisdom and guidance during my tenure in office.

Today our system is sound; it has survived the metamorphosis of change, and now views the future to respond to further challenges. There is one matter that I call to your attention. It has come about in the legislature slowly, but now has gained momentum and is of concern to me as your chief justice. That is the enactment of numerous local court cost bills. I believe 27 such bills were passed in the 1981 session. It increases the cost of access to the court system. One or two bills have recently been declared unconstitutional by a circuit court in Alabama. Not only does 1t increase the cost of access but it renders void any semblance of uniformity of court costs throughout Alabama. These bills have been passed at times for two purposes: one, in the criminal justice system with a view toward imp sing stiffer penalties on the convicted; and, secondly, using the Judicial system as a revenue measure for related lo al governmental services. The impact however is not upon the criminal. The impact is upon the ordinary citizen who pays said traffic fines. That's where the revenue is raised in the court system and. I would ask you, as members of the bar, when these issues come to your attention locally, please give it thorough consideration. Please ask your local leg1s1ators to consider very seriously whether it accomplishes the purpose that they intend it to.

While we have devoted most of our efforts to the modernization of our court system as it relates to the unification of trial courts, and the implementation of sound fiscal practices and the management of its processes dealing with jurors, and caseloads, we now need to consider further improvement of our appellate system.

At the appellate court level, as you know, we have been able to complete each term for the past several years without any backlog – that, members of the bar, is unprecedented among appellate courts. Staying current is becoming more and more difficult, and within the very near future, we simply must examine out present appellate structure and the procedures we use to meet the demands of the ever-increasing caseloads we are receiving at the appellate level.

Several proposals have been made to meet this problem, but I want to call your attention to one specific proposal which should be seriously considered. That proposal is to create the Supreme Court as a certiorari court only, with the possible exception of direct appeals to the Supreme Court in death cases. All the Supreme Court would be given to the Court of Civil Appeals, or to a single intermediate Court of Appeals, which would have jurisdiction over all civil and criminal cases. The number of Supreme court justices could be reduced by attribution from nine to seven members.

The proposal that the Supreme Court to be converted to a certiorari court is not a new proposal. It was first advanced in a report made after an in-depth study of the appellate courts in Alabama in 1973 by the National Center for State Courts. The same recommendation was also considered by our Judicial Planning Committee and the Appellate Courts Subcommittee. This recommendation was concurred in by your Bar Liaison Subcommittee.

If the proposal that the Supreme Court be converted to a certiorari court were adopted, the Supreme Court would then be a court solely concerned with policy, constitutional questions and the like, and could select for full consideration and decision only those cases which were truly significant. In short, it could exercise its supervisory power and give more attention to cases involving substantial policy question in civil and criminal cases.

The roots of appellate court delays are structure, organization, and procedures. We should look very seriously at some structural organizational and procedural changes which, it is believed, will become necessary if we are to continue our record of currency and if we are to continue or improve the quality of our decisions.

I hope that members of the bench and bar will stay abreast of the developments that seeks to improve the administration of justice in the appellate courts.

The challenges faced by the courts and the legal profession relate to some extent to the public's perceived role that our legal and court system should play in the protection of society generally, rather than the routine functioning of the justice system. This perception relates to: (1) the feeling of a majority of citizens today that it is society that is the underdog rather than the criminal defendant pleading for mercy; (2) a feeling in specific cases that the punishment imposed does not appear to the fit the crime and that the convicted return to society before they should; (3) that litigation costs too much, takes too long, and is never over; and (4) court decisions protecting constitutional rights is a game that defendants win and society loses. These perceptions arise because the country to-day faces a crime problem that is out-ranked only in importance by our economic conditions. And the public expects rightly or wrongly that the courts and the legal system have the public duty and obligation to solve the problem of crime within our criminal justice system. Government, as a whole, more sensitive to broad current public views, sometimes overreacts, imposing more burdens that benefits on our criminal justice system. Responding to criticisms, government enacts habitual offender laws, repeals statutes which reduce time of incarceration for good behavior, yet response is slow in allocating public resources to build and staff more prisons. The ultimate result is that federal courts mandate release of imprisoned offenders. During these times, our President is shot, the Pope narrowly escapes assassination and murder of Atlanta youths continues. Indeed, this past year brings home the painful lesson – crime

is threatening the basic framework of our society.

Whether we like it or not, society does point an accusing finger at our system and our profession. Often times the claim is simply that we are not doing our share to combat crime; other times it is claimed that the system contributes to the lawlessness around us. Efforts to place the blame here or there, like simplistic solutions, are counterproductive. Blame belongs with no particular group or person and yet each of us could do more to correct the situation. But what we must not do is to panic or withdraw in fear. Either recourse leads to inadequate remedies and the problem of crime is left to spread further.

The challenge of the eighties is for the legal profession to pool its talents, dedicate its energies, and work decisively to make our criminal justice system more effective. This may necessitate changes in the system as we know it today, but we cannot fear change, and above all, we must be willing to pay the cost of justifiable change. A renewal of our efforts requires that we take that extra step to get where we want to go. It is our decision, and no one is in a better position to make this step than our profession. It will not be easy, but we can start today.

What changes should be considered and acted upon? Are convicted criminal defendants being rehabilitated to re-enter society? Is the parson and parole system working beneficially? Should we have determinate sentences? Can we resolve the constitutional issues involving the imposition of a death sentence of will we continue to devote an inordinate amount of judicial time and effort in unraveling the sometimes confusing decisions of the highest court of this land with retrials and further state appellate review, only to complicate further the final settlement of these issues?

Shall we continue to live with a system which breeds lack of finality in the ordinary criminal case with endless post-conviction review by our brother and sister judges of the federal courts?

Of all these issues of intense interest and importance, the last one mentioned seems to me to be worthy of our immediate attention. State courts should fashion their procedure to mandate consideration, first at the trial level, of a determination of the issues federal courts usually deal with in their post-conviction review and unification of these issues in state appellate court review of criminal convictions. In large part, the proposed rules of criminal procedures now pending before the Alabama Supreme Court will do our part. State courts do consider federal constitutional issues; state courts are competent to deal and decide these issues; state judges come from the same rank and file legal professionals from which federal judges are selected; and the state courts are to be trusted. Congress and the federal court should respond by a recognition of these facts.

Our legal system, state and federal, must, within constitutional safeguards, devise some type of finality of appeal and end the seemingly never-ending routes through state and federal systems which circumvent justice being carried out effectively. This, my friends of the bench and bar, is the challenge of the decade of the eighties.