

State of the Judiciary
Chief Justice Sue Bell Cobb, Supreme Court of Alabama
Alabama House Chambers, Montgomery, AL
January 26, 2010

Lieutenant Governor Folsom, Speaker Hammett, distinguished members of the House and Senate, my colleagues in the Judicial Branch, distinguished guests, and fellow citizens of the Great State of Alabama. It is my honor and privilege as Chief Justice of the Supreme Court and Chief Administrative Officer of the Unified Judicial System to address you this afternoon regarding the state of the Alabama Judiciary. Once again, I thank you for allowing me to enter your chambers so that I can deliver this, my third State of the Judiciary Address. Joining us today in the gallery are important members of the Court system.

As I recognize them, I ask them to stand and remain standing: From the Alabama Supreme Court: Justice Tom Parker, Justice Glenn Murdock, and Robert Esdale, Clerk of the Court. From the Alabama Court of Criminal Appeals: Presiding Judge Kelli Wise, Judge Samuel Welch, Judge Mary Windom, Judge Beth Kellum, and Lane Mann, Clerk of the Court. From the Alabama Court of Civil Appeals: Presiding Judge William Thompson, Judge Tommy Bryan, and Judge Terri Thomas. From the outstanding trial bench throughout our state are: Judge John Amari of Jefferson County, Judge Ben Fuller of Autauga County, Judge Sibley Reynolds of Chilton County, Judge Patricia Warner of Montgomery County, Judge Jody Bishop of Baldwin County, Judge Butch Binford of Houston County, and Judge Pete Johnson (Retired) of Jefferson County. Also in attendance is Doris Gorum, judicial assistant in Conecuh County. Also with us today are several of our circuit clerks: J. D. Snoddy of Winston County, Carla Woodall of Houston County, Charles Story of Chambers County, Mary Harris of Shelby County, Nancy Hearn of Colbert County, Bobby Cowart of Pickens County, Mary Moore of Perry County, Jane Smith of Madison County, Kathy Coulter of Russell County, Larry Dozier of Elmore County. I would also like to recognize the President of the Alabama State Bar, Tom Methvin.

This past week marked the midpoint in my tenure as Chief Justice - three years behind and three years ahead. I have told countless friends that this job is a lot more fun when there is money -- I know that you, the members of the Legislative branch can certainly share that sentiment. And today as I appear before you, I want to leave you with three basic but important messages. First, the crisis of funding the Courts and indeed of all state government. Second, our efforts to do more with less and the assistance we can give with the Department of Corrections and its budget. Third, as we look to the future - the fundamental changes we must make to our court system in order to be more efficient. With your help, we will make the state safer and conserve precious tax dollars.

We can all agree that these are challenging days, which is why I was surprised at the

Governor's State of the State speech. In that historic chamber, Governor Riley said the following:

"Tonight, let us pledge -- pledge to each other and to the people of Alabama - that during this final session before the election season, our focus will not be on trying to gain political advantage, but on doing things for the people's advantage. Let us tackle the big issues with bold ideas, so we can make Alabama the state to which the future belongs. Let's begin by discussing our budgets. I know you've read the same dire predictions and heard the same horror stories that I have. You've heard nothing awaits us in this session but doom and gloom. The lobbyists and the gambling interests have told you over and over that we must find new revenue, somewhere, or the sky's going to fall. Ladies and gentlemen, that's what we in Clay County would call bull. In the budget I'm sending you, General Fund agencies will receive the same amount of funding that they will be getting this year. No cuts. In fact, there is the potential for them to receive an increase of up to four percent. And in the education budget, that budget will increase funding for schools by over \$400 million. No cuts for state agencies, more funding for our schools, without raising anybody's taxes. Now that does not sound like we have a crisis. But it does sound like we have great opportunity." Unfortunately, the Governor neglected to mention that his "great opportunity" includes substantial cuts for everyone outside the Executive Branch - the Legislature, other Constitutional offices and of course - the Courts.

According to the budget proposed by Governor Riley, the Supreme Court will see an effective cut 15.5% and the Appellate Courts will be cut 16-17%. Where our justice system begins, the trial courts, the Governor has proposed a cut of 8% which translates to an effective cut of 12%. Indeed, my understanding from the Legislative Fiscal Office and others is that without a torrent of federal funds flowing into Alabama, proration still looms greatly for even this fiscal year.

That may not seem like a financial crisis to the Governor - but tell that to the 500-600 Court employees who would be laid off if the Legislature allows the Governor's proposed budget to stand. The Governor's proposal reminds me of former Republican Senator for Texas, Phil Graham. "Balancing the budget is like going to heaven. Everybody wants to do it, but nobody wants to make the trip." Especially right now. An Alabama economist said that there are five recession proof areas in Alabama: 1. Tobacco; 2. Beer; 3. Barbecue; 4. Bingo; and 5. Football. But the rest of our economy is not so lucky. Governor Mitchell Daniels of Indiana stated in the Wall Street Journal:

"It's likely that we are facing a near permanent reduction in state tax revenues that will require us to reduce the size and scope of state government. The time to prepare for this new reality is already at hand This is a test of our adulthood as a democracy. Washington, as long as the Chinese lenders enable it, can practice denial for a while longer, but for the states

the real world is about to arrive."

Governor Daniels' statements could be likened to the description of President Truman: when admonished to "Give 'em hell, Harry," his response was "I just tell the truth and they think it is hell." Now is the time for TRUTH TELLING!

Although the courts are the only branch of government for which our State Constitution has required "adequate and reasonable" funding, we know that we are not immune from the economic reality, for our Constitution also mandates a balanced budget. As my friend Paul De Muniz, Chief Justice of Oregon, stated:

"As a responsible partner in government, we accept our obligation to share in the reductions that must be made to balance the budget. However, [our] courts are the legal equivalent of the emergency room. We do not control what comes through our doors.

We rely on highly skilled professionals and modern technology to do our work, and we need safe and adequate facilities to do our work. People come to us in distress or have urgent problems that need to be resolved quickly and fairly, so time is of the essence. If courts do not or cannot do their jobs, then many costs are transferred to others. When the economy goes down, the need for court goes up."

I agree with Chief Justice De Muniz: "Although the judicial branch values its independence, we also recognize our inter-dependence. We recognize that children depend on us for timely placements, and that the public depends on us to impose sentences and sanctions on criminal offenders. We know businesses and consumers depend on us to enforce financial obligations and the rules of our economic system. And we know that dozens of state agencies and local governments depend on us for local funding, and thousands of individual victims of crime depend on us to collect financial obligations owed to them."

As Chief Justice De Muniz likened our court system to the emergency room, with the Governor's proposed budget we will be no more than a judicial triage center, trying merely to stabilize those on the verge of death and leaving others to languish in pain and suffering, until much-delayed treatment can be found. This situation brings to mind the often quoted phrase: Justice delayed is justice denied.

The truth is, we would not have been able to adhere to our Constitutional mandates to protect citizens and the Rule of Law, but for the myriad of efficiencies that our court system has already put into place. Because of these efficiencies, our courts have been able to dispose of the following cases:

Trial Courts:

- 1,303,147 filings during 2008-2009 Court Term
- 99.8% throughout

Supreme Court

- 1,817 Total filings with 100.89% throughout

Criminal Appeals

- 2,037 Total filings with no% throughout

Civil Appeals

- 1,180 Total Filings with 105.33% throughout

The truth is because Alabama has been on the cutting edge of technology, we have been able to "manage" in spite of the tough economic times. A few examples are:

1. Ala file: In 2009, 1.3 million e-orders by trial judges saved \$559,000 postage, not including paper, toner, staples, gem clips, and staff time, etc.
2. Ala Vault - 1.8 million documents now scanned monthly rather than maintaining paper files.
3. Ala Pay 30,000 transactions online per month collecting \$3.5 million monthly.
4. This month every clerks' office now will be using real-time scanning.

In addition to the many technological advances that have saved an abundance of state dollars, I formally requested the Governor to refrain from immediately exercising his authority to appoint judges where there is a vacancy. Delaying the filling of these vacancies, thereby allowing out-of-county judges to fill in, will save substantial tax dollars as well as jobs in the court system. The truth is that Judges are the Gatekeepers of every expensive service that the state funds.

Because of leadership of Juvenile Judges and the courage and understanding of you, the members of the Legislature, the passage of the Juvenile Justice Act of 2008, has resulted in a 30% reduction in commitments of youth sent to DYS. This result is a safer Alabama with significant savings for the people of Alabama.

The truth is that the Courts have facilitated savings with innovation and hard work. The best example is the replication of Model Drug Courts. In 2009, 5,350 non-violent offenders attended our 53 drug courts, 88% graduated, thereby reducing the cost of incarceration for 4,700 offenders. This in and of itself was a major savings for our state. The truth is that we must have a drug court in every county with more prison-bound, non-violent drug addicted offenders referred.

Imagine how many tax dollars we have saved and will continue to save as we encourage our district attorneys to amend their referral policies. We must find ways to increase quality drug treatment and community punishment. I ask you to support passage of Drug Court Minimum

Standards bill sponsored by Rep. Rod Scott.

During my previous addresses to you, the members of the Alabama Legislature, one of the common themes has been the deplorable situation in our prison system. As I said, it is time for truth telling: Alabama is first in the nation in overcrowded prisons, and we are dead last in funding per inmate. A recent study showed that Alabama's prisons were 195% of capacity, California were 185% of capacity, and Massachusetts were 145% of capacity.

The truth is that all three branches of government must join together to remedy this situation and work to make the people of Alabama safer and simultaneously save tax dollars. Pew Charitable Trust, VERA Institute for Justice, and Crime Justice Institute, all have a presence in Alabama. They are working with the Alabama Sentencing Commission in an effort entitled "The Community Cooperative Alternative Sentencing Project." With assistance being provided by these out-of-state experts and local and state partners, we are developing model-mentor community punishment systems in four counties which will have a complete continuum of appropriate sentencing alternatives for non-violent offenders, addressing the underlying causes of criminal behavior.

Pew has been approached by numerous states trying to deal with their budget deficits by tackling their department of corrections' burgeoning prison populations which are gobbling up precious tax dollars. With Community Corrections now in 45 counties - we have not only stopped the exponential growth in our prison population, but, more importantly, we are making the citizens of Alabama safer.

Mark Twain said, "Loyalty to a petrified opinion, never yet broke a chain or freed a human soul." Last week at our annual judges conference, I asked every judge who sentenced felons to raise his/her hand. I challenged them to step back and assess their sentencing practices.

Is the imposition of the non-probatable, three or five year split sentence appropriate when a nonviolent offender commits a technical violation of probation, such as failing to report to his/her Probation Officer or flunking a drug test? Today, according to DOC records, there are 1,600 inmates serving a minimum three or five years or more for technical violations. I asked our judges and I ask you to help us enact sentencing reform for defenders who have not committed a new crime but fail to adhere to probationary conditions. The savings should be directed toward areas in which we are dead-last, such as substance abuse treatment and local punishment options.

One philosopher said, "I cannot say whether things will get better if we change; what I can say is they must change if they are to get better." If you, the Alabama legislature, and the Governor will join the Courts, we pledge ourselves to the change necessary to "Stop the Revolving Door." I see a day when someone breaks the law - that he will go before a judge

committed to fixing people rather than filling prisons, a judge empowered by this legislature to do just that.

Now for my final point: Making our courts more efficient by making fundamental change. It was W.E.B. DuBois who told us to "be ready at any moment to give up what you are for what you might become." The modest increases in the budget of the Courts from year to year have been consumed by increases in benefits, which we cannot control. But there is one increase we can control, with your help, the demand for additional judgeships. The National Center for State Courts has selected four states to provide technical assistance to enhance the efficiency of Court operations. Alabama is fortunate to be one of those four. Court systems around the country are facing a future of significant budget constraints and cannot count on a return to business as usual. Short term cost reduction steps, though necessary, will not suffice. Courts must undertake fundamental change such as restructuring delivery systems, redesigning business processes, expanding the use of technology, and even reorganization. Specifically, NCSC experts will provide support to the Alabama UJS Committee on Efficient Use of Judicial Resources by providing information on how the other few states with elected judges have set circuit boundaries, unified trial benches, adjusted venue requirements, and utilized videoconferencing technology, and -- to the extent information is available -- what the impact of these changes have been.

I would like to thank Judge Jim Reid of Baldwin County for chairing the Judicial Manpower Resource Realignment Committee. We must be willing to deal with the unbelievable and unacceptable DISPARITY in caseloads. The people of Alabama deserve to go before a judge with a reasonable caseload, affording them a reasonable opportunity to be heard.

When the courageous and visionary former Chief Justice and United States Senator Howell Heflin sought to reform the judiciary, we became one of the first states in the nation to unify our courts and discard the inferior practice of utilizing non-lawyer judges. Chief Justice Heflin understood that "what is required for effective change is continuity of sincere effort and to release the inefficient thought patterns of the past." Saying "good-bye" to Justices of the Peace was a monumental and difficult task for many communities in our state, but it was the proper and right thing to do. Similarly, the two-tiered system of trial courts has served us well, but it might be time that one tier will serve us better. The National Center for State Courts, a diverse committee of judges, and the Judicial Study Commission, will re-examine our structure, and the disparity in caseloads from circuit to circuit -- we will come next year with a sound, far-reaching proposal to correct this problem and to stem the ever-increasing demand for new judges.

In closing, I want you to know how much I want each of our judges to be the kind of judge who yearns to do justice, who loves people, whose patience and wisdom is known far and wide. I want each judge to have what they need to do their important work. I want to thank

Callie Dietz, our Administrative Director of Courts, for joining me in this important work. I thank her for her amazing dedication to this court system and to each of you. Remember the commercial that asked the question, "Got Milk?" My question is, "Got Concerns?" If you have concerns, I urge you to call me or call Callie. Be assured that your concerns are our concerns. We want the same thing: A judicial system that affords justice and provides safety for you, your families, and your communities.

May God bless you and your family in 2010 and beyond.