

State of the Judiciary
Chief Justice James R. Hannah, Supreme Court of Arkansas
Arkansas Bar Association Meeting
June 14, 2013

President Harwell, President-Elect Simpson, fellow justices and judges, honorable members of the Bar and guests: This is the fourth year I've been honored by your invitation to share remarks on the State of the Judiciary at our joint meeting. I greatly appreciate the opportunity to highlight issues of importance to the bench and bar, and to help mark the transfer of the leadership of the Arkansas Bar Association.

As you know, we are only a few weeks removed from having completed a long and somewhat contentious session of the General Assembly. I would be remiss if I did not begin my remarks by noting my admiration and appreciation for the tireless efforts and outstanding leadership of the Bar Association on many issues of importance to the judiciary and to the practice of law.

It was a difficult political environment, with differences of opinion about policy choices, both within and outside the profession. You provided a voice for the importance of the principal of an independent judiciary; and for that we are profoundly grateful.

Despite some significant disagreements, the General Assembly was very supportive and responsive to several of our requests. During my remarks at this conference last year I highlighted the difficulties we had with funding the circuit judges' trial court assistants. During the session, legislators were not only helpful, but provided leadership for the revision of our laws on court costs and filing fees, and the priority of funding to support circuit-court employees.

Raising and restructuring some of the court costs and fees should help ease some of the shortfall, but collections continue to be low. The good news is that our court employees are not in danger of being forced to take furlough days, or worse, lose their jobs. They will be paid first from the Administration of Justice Fund. Any cuts due to shortfalls will be made to non-employee beneficiaries of the fund.

The General Assembly also approved our request to completely revise the substantive law relating to the provision of court interpreters for those who are deaf or lack the ability to speak or understand English. The legislature approved additional funding to pay our court interpreters, who received more than seven thousand five hundred requests last year alone.

These actions will help our state remain compliant with federal requirements, as well as with our own goal of insuring that all persons are provided access to our court system. I appreciate the willingness of the General Assembly to hear and consider these requests and to respond to them within the context of a difficult fiscal environment.

I also spoke to you last year about the historic absence of any increase in judicial compensation for over three years. While the legislature failed to fund our requests to

adjust salary levels, they did provide judges the same cost-of- living adjustment as were provided to other state employees. Not only has this become a fairness issue, it has become a critical issue. If we are going to be able to attract a good pool of qualified people, willing to serve in the judiciary and to be able to retain good judges, we are going to have to address the issue of adjusting judicial salaries to provide adequate compensation for the judiciary. I am hopeful about the opportunity to re-visit the issue again in the near future.

Let me reemphasize how grateful I am for the cooperation and support the judicial branch *did* receive this spring. Now, I turn to what the most important issue that we are facing.

During the legislative session the experiences which were, without doubt, the most frustrating and disturbing for me were conversations with people who expressed no understanding or appreciation of the separate and distinct roles of our executive, legislative and judicial branches of government. I want to focus the remainder of my remarks on this single issue which, without being overly dramatic when I say that I believe this issue is so vital that if left unaddressed, it will threaten the future of our judicial system.

I am not referring to disagreements about specific policy disputes or differences of opinions about where we draw the lines on issues of inter-branch relations. That kind of conflict has always existed and, in fact, is healthy for our democracy. The constitutional framers *intended* for there to be an inherent tension among the branches of government. What I am talking about is much more basic than that.

It appears to be a move toward a failure to recognize the value of or for the need of independent branches of government generally (checks and balances), and the role of an independent court system more specifically. This apparent misunderstanding is not limited to our legislature or the state of Arkansas. In 2009 a national survey was commissioned as a part of a summit sponsored by the American Bar Association and the National Center for State Courts. The Summit was titled "Justice is the Business of Government: The Critical Role of Fair and Impartial State Courts."

Unfortunately, the findings were not surprising. Americans have a very low level of knowledge about their government. In this survey, respondents were asked specifically about their knowledge of state government. They used six basic questions which would have been necessary to pass a secondary school civics exam. I should note that Arkansas only teaches nine weeks of civics these days.

Only a third of the adult respondents could answer at least four of the six questions correctly. Only 21% could name the three branches of government. Only 44% could name a single branch of government. 53% knew their state had its own constitution, but only 41% were aware that one of the state supreme court's responsibilities is to interpret the constitution. Considering the other results, I'm impressed that the number was that high.

The survey also found that the public's attitudes about state courts were somewhat contradictory. People expressed concerns that court decisions are affected by politics, but fewer than half said they value a state supreme court that is independent. There was at least one piece of good news in the survey results. The better informed the citizen, the more likely they were to have confidence in their state courts; to see judges' decisions as fair; and

to place a higher value on an independent judiciary.

Interestingly, support for an independent judiciary did not vary by party affiliation. Similar numbers of Republicans, Democrats and Independents felt it was important for courts to be independent. When party identification and knowledge of state government were analyzed together, those in the high knowledge group — regardless of party — gave majority support for judicial independence while a majority of all political parties who were least knowledgeable did not.

My recent interactions with members of the General Assembly and in visits with citizens around our state, lead me to believe that the levels of knowledge and beliefs of Arkansans are similar to those expressed in the national survey.

I am well aware that, even within leadership positions in our state, there is a lack of understanding of such basic concepts as separation of powers, federalism, the supremacy clause, judicial review or the binding nature of precedent. This lack of knowledge produces real consequences. It can lead to bad public policy, but, just as importantly, it can produce a decline in the public's trust and confidence in the judicial system.

So, what are our options? We can complain about the failure of other institutions or the events which led us to the current state of affairs or we can take responsibility for addressing the problem. I believe we should choose the latter course.

Today I am announcing a major initiative on behalf of the judicial branch to engage in an intensive and comprehensive public outreach campaign to inform and engage our communities in a conversation about the foundations of our democracy.

We are already doing some work toward educating students and adults. We stream our oral arguments. More than 600 students and adults have visited the Justice Building since January. We plan to acquire interactive displays and activities for visitors to learn more about the courts. We travel twice a year for our Appeals on Wheels program, which has proved to be a very popular and successful outreach program.

There is so much more to do. I would like to invite the members of the bar to join us in this effort. I want to acknowledge the work the Bar Association is also already doing in civics education. You have outstanding programs and resources we plan to take advantage of and hopefully build upon.

As for our own efforts, we hope they will include the following:

- We will develop a multi-media presentation and set of materials designed for adults which emphasizes the foundation principals of our democracy; the roles of each of the branches of government; and the importance of an independent judiciary to a free and fair society.
- We will recruit and organize a speaker's bureau of judges and lawyers with a goal of scheduling and providing a program for every Rotary Club, Lions Club, Kiwanis Club and

- any other sort of organized gathering in each of our 75 counties.
- We will organize and encourage the scheduling of moderated discussions in as many counties as possible involving judges, lawyers, and local legislators to discuss issues of concern in the relationship between the legislative and judicial branches and engage in dialog about ways to improve that relationship.
 - We will organize a forum to include members of the bench and bar and each of the announced candidates for Governor to raise awareness about and share matters of particular importance to judges, practicing attorneys and the bar.
 - We will reorganize and reenergize a program which has been used by the Supreme Court in the past to inform and educate members of the media about the structure of the court system, the judicial process, and the roles of judges and attorneys. We invite the bar to participate with us in this annual "Law School for Journalists." We will invite members of the print and broadcast media from every area of the state.
 - We will organize and encourage a program which is already used by some of our trial judges known as "A View from the Bench," which involves inviting every member of the House and Senate to join a member of the judiciary for a judicial ride-along. Legislators will be invited to spend a day with a judge in chambers and in the courtroom to get a first-hand view of courts and the court process.
 - We will support and assist in whatever way we can with your association's "Law School for Teachers." This is an excellent education and outreach program for social studies teachers, who are also able to satisfy their continuing education requirements by attending.
 - In my role as a member of the Board of the National Center for State Courts, I have access to a wealth of information and materials which have been developed to assist in promoting civics education and law-related education for children and youth. I am hopeful that we can join you in the outstanding work which you are already doing.
 - We will organize and host a Business Leaders Forum involving members of the bench, bar and invited representatives of corporate and small-business leaders from across the state.

Last year at an event hosted by the ABA, the Administrative Office of the Courts and the Clinton School, the keynote speaker was Former Texas Chief Justice Tom Phillips. In his speech he said the following:

"We have had judicial independence for so long that we take it for granted. That is not true in the rest of the world. The greatest movement for freedom around the world during the last sixty years has been to build court systems and judges as independent institutions to provide stability for the law, for the enforcement of private agreements, and the protection of individual rights. Multinational companies will choose not to locate in countries where there is no assurance of the rule of law or the enforcement of contracts. America's biggest competitive advantage in the 21st century is the rule of law and the existence of an independent judicial branch to enforce it."

This is a message we need to share. Likewise, where there are concerns about the court system and our procedures, we need to hear those concerns and respond when doing so is appropriate and fair to all parties. This is *your* system. As officers of the courts, we have an obligation to protect the judiciary and make it work according to the highest standards.

I hope that my comments today will generate your suggestions about how some of these ideas could be improved, as well as generate many more ideas about other activities which we should include. I know there are very innovative and successful programs being implemented throughout the state. Let us put our ideas together and become a unified force for civics education in Arkansas. Your ideas and your participation are needed and are welcomed.

On September 6th at the Justice Building in Little Rock, I will be convening our first Judicial Branch Leadership Council. It will include officers from each of the state's judicial organizations, court and court-related employee organizations and bar-related organizations. This will be the kick off for our activities and we will be joined by the president of the National Center for State Courts. You will be hearing more about the event in the weeks and months to come.

The state of our judiciary is sound; but the continuation of a strong and vibrant democracy, guided by the principals of the Constitution, requires an informed citizenry. We have a crucial role to play in that process. I invite both the bench and bar to join our collective resources and energies in this important effort over the next eighteen months.

I thank you for your kind attention and for your dedication to the rule of law and the reality of a fair and impartial system of justice for all Arkansans.