

State of the Judiciary
Chief Justice Frank X. Gordon, Supreme Court of Arizona
Arizona Legislature, Phoenix, AZ
1989

In the spirit of cooperative government, three separate but equal branches, I deliver to you this state of the judiciary report. Last year, we went through a unique, emotionally charged experience that touched each of us in its own way. The impeachment process increased the visibility of the judicial, legislative and executive branches and inspired public interest and understanding. I came away from 1988 with a greater appreciation and respect for the legislative process and the problems facing each of you as legislators. Although 1988 brought us closer together as a government, too often, the three branches become isolated as we go about our daily functions. I hope this report provides you with insight into the problems and goals of the judicial branch. The Arizona judicial system faces the same problem as the executive and legislative branches - too much business. The courts must meet the constitutional obligation to provide and administer justice, despite the problems created by growth.

From 1987 to 1988, the state's population increased three percent, while the number of cases filed increased six percent. In 1988, litigants filed nearly two million cases in Arizona courts - almost one case for every adult in the state. This growth and activity create a time of opportunity. The 1990's will be a dynamic decade for the courts, with continued changes and improvements. The courts hope to:

- become more accessible to all citizens
- decrease the length of time it takes to process litigation, and
- improve the quality of justice.

This report outlines proposals for meeting these goals. I hope you will seriously consider the proposals and help the judicial system implement the suggested changes.

I. ACCESS TO JUSTICE

Both real and perceived barriers exist between the court system and the public. The courts are often complex, intimidating, and financially prohibitive to many people. When I became Chief Justice two years ago, one of my goals was to help make the courts more accessible. I want the courts to be open to any Arizonan who needs judicial services. Our activities include efforts to break down these barriers and build a framework that allows more people access to the courts.

Commission on the Courts

Last year, we created the Commission on the Courts to examine Arizona's entire court structure. The commission is a cross section of business people, attorneys, judges, legislators and citizens. Some of you are members of the commission or serve on one of its four task forces. The commission will make recommendations to the Supreme Court for improvements that will carry the courts through the year 2000 and beyond. Those recommendations which are adopted by the court may be accomplished by changes in court rules, or by legislative proposals with your

support. This 18-month project is well underway. You can look for the commission to complete its work this fall. Hopefully, by this time next year, the commission will have submitted its proposals with our Court's approval for any needed legislative implementation.

Victims' Rights

We appointed a committee to review the rules of criminal procedure and to investigate possibilities such as citizens advisory committees for court probation departments. We hope to provide you with a progress report early in this legislative session.

Rising Cost of Litigation

One of the most common complaints about our system of justice is the mounting cost of litigation. It concerns me that some lawyers feel that if a case is not worth at least \$50,000, it is not worth pursuing or defending. If only the rich can afford legal services, the court's basic philosophy of equal justice for all becomes meaningless. We are working to meet the legal needs of the poor, including those just above the poverty level who can't qualify for free legal assistance. A Commission on the Court's task force is looking at alternative forms of dispute resolution such as mediation, arbitration, and conciliation. With your help, the courts instituted mandatory arbitration in certain civil actions, required mediation in many domestic and civil cases, and increased the jurisdictional limits of small claims courts to \$1,000. With the assistance of the State Bar, we propose to encourage every lawyer to donate a minimum number of hours of free legal services to the poor.

Other Programs to Increase Access

RULE 28: Implemented in 1988, this rule allows anyone, individuals, or organizations, to petition the Supreme Court proposing changes in court rules. Your leadership has been routinely asked for comment and input for each of the many rule changes that have been requested.

TAX COURT: A tax court was established in 1988. The tax court handles all Arizona tax cases and is a special department of the Superior Court in Maricopa County. It handles matters involving imposition, assessment, or collection of taxes statewide.

FIFTH PANEL: Last year, the Legislature approved a fifth panel of judges for the Court of Appeals, Division One. The panel becomes effective July, 1989.

VOLUNTEER ADVOCACY: We continue to support our volunteer advocacy programs - the Foster Care Review Board and Court Appointed Special Advocacy programs. FCRB celebrates its tenth anniversary in 1989.

COJA: The Council on Judicial Administration, created in 1987, acts as the internal operating committee of the judiciary in Arizona. It consists of judicial representatives throughout the state serving as an advisory council to the Supreme Court.

SPEED OF JUSTICE

There is a serious backlog of cases in our court system and, even though the demand for judicial services exceeds our resources, the Constitution mandates that we serve all needs.

Drunk Driving

The volume of drunk driving cases creates major problems for our judicial system. Tougher drunk driving laws passed by the Legislature and expanded law enforcement resources contribute to safer highways, but also result in an increased burden of DUI cases. Enacting stricter laws without providing additional resources to help the courts handle the increase creates a backlog of cases. Subsequent DUI arrests often occur while an arrestee's initial DUI case is still pending. Worse yet, some arrestees cause alcohol-related accidents during that waiting period. To remedy this situation, I am organizing a committee of prosecutors, defenders, court administrators and members of my staff. The committee will first determine the extent of the backlog and identify where the bottlenecks exist. Then, the committee will look at alternatives for improvement, including the possibility of night courts, "mobile traveling courts" that could move on short notice to a locality with a particularly heavy criminal calendar, or other means to expedite case processing. We will need your help implementing the recommendations.

Driving Schools

Defensive driving schools experience such problems as: uncertified instructors, lack of uniformity and quality in curriculum, and, most notably, lack of consistency in the use and cost of the schools. These problems allow drivers to attend driving schools several times and avoid points, penalties and increased insurance rates. At a time when insurance rates for Arizona's citizens are already high, good drivers should not have to subsidize bad drivers. The courts propose legislation under which the Supreme Court and the Department of Motor Vehicles would coordinate defensive driving schools. I encourage your support of this legislation. It could remedy a statewide problem at no additional cost to taxpayers or the general fund because defensive driving school attendees would pay the cost.

II. QUALITY OF JUSTICE

To improve and maintain the quality of justice, Arizona requires mandatory training and education for all 4,500 court system personnel. In addition to improving the court system itself, we can also improve the lives of the people who pass through the system. For example, we are implementing programs to address drug abuse, illiteracy, probation alternatives, juvenile detention centers and child support. Additionally, I am submitting proposed legislation that will increase revenues to improve the quality of justice.

War on Drugs

When the powerful anti-drug legislation passed in 1987, the courts recognized the magnitude of the drug problem particularly as a result of the pretrial drug testing programs. The adult plan tests people arrested for felonies. Those who test positive are subject to drug monitoring during the pretrial period. They may be directed to intervention and treatment programs or returned to jail.

The results confirm what we suspected for some time: statistics show that 60 percent of adult arrestees use drugs. More startling is the prevalence of drug use among children. In a test of 500 juveniles arrested in Maricopa County, we found that by age 17-18, over 60 percent of them tested positive for drugs. In the courts' budget proposal, we requested \$1.5 million to implement drug and alcohol screening and evaluations for youngsters 13 years of age and older. Fortunately, we secured federal funding to begin testing juveniles in Maricopa and Pima Counties, so that we can lower our budget request for this expense. However, the funds available will only allow us to test juveniles detained in Maricopa and Pima Counties. We need additional funds to implement the testing plan throughout the state. I encourage you to look closely at this initiative.

Fight Against Illiteracy

Illiteracy and drugs are partners in creating a climate for crime. Often, illiterate youngsters turn to drugs and crime. Unfortunately, the only education they receive is how to survive in prison. Many become repeat offenders. We took steps to stop this "revolving door" syndrome by attacking the source of the problem. The Principles of Alphabet Literacy System (PALS) is a computerized reading system for illiterate teens and adults. Judges can order juveniles to attend this program as a condition of probation. PALS teaches basic reading and English skills on a computer keyboard. It gives the students visuals similar to a video game to help them learn.

Working in cooperation with the Department of Education, local schools, detention centers, community colleges, and local communities, we are establishing 26 lab sites throughout the state. The system produced phenomenal results. Participants are increasing their reading skills one to five years in just 20-week programs, significantly improving their writing skills, and learning word processing. We feel that with this program, we are increasing literacy and fighting crime.

Overcrowded Prisons and Probation Alternatives

The 12,000 plus adult prison beds in Arizona are inadequate to serve the needs of the increasing prison population. There are also approximately 25,000 adult felons on probation. Last year, you helped improve the probation programs when you passed the community punishment bill. The legislation will enable probation departments to place probationers in group homes, contract for detoxification treatment, and use electronic monitoring devices for house arrests.

Community punishment:

- is tougher than regular probation because it allows for smaller caseloads and stricter monitoring of probationers,
- allows personalized treatment for those who have the potential to merge successfully into the community, and
- gives judges sentencing alternatives other than prison time.

In our budget request this year, we ask for funding necessary to operate the community punishment program. I ask your help in securing a safer Arizona for our citizens.

Inadequate Juvenile Detention Centers

Police arrested and referred almost 45,000 children to juvenile courts in 1988. Authorities detained over 15,000 children in local juvenile detention centers. Too many of the juvenile detention centers we use today are old, inadequate, and dangerous. I convened a special committee to examine rural detention centers. You will receive a full report early in the legislative session. I will enlist your help to implement the committee's recommendations. Unfortunately, the solutions will cost money. However, we anticipated this need and set aside a portion of the Criminal Justice Enhancement Fund surcharge money courts receive.

Child Support

Whatever differences our political system may create, we can always agree on the need to invest in our children. In 1987, Arizona ranked last among states in the collection of child support payments. The courts became "sick and tired of being sick and tired" of Arizona's dismal record and requested sweeping changes in the system. The legislature responded with progressive legislation for child support enforcement, including automatic wage assignment. We developed uniform child support guidelines for Arizona courts and continue to work on solving visitation problems. Many of the clerks' offices use manual systems or out-of-date computers that are unable to handle the large volume of cases. Cooperation with the Department of Economic Security will allow statewide automation of Title IV-D, child support cases. However, this project will only automate the IV-D cases, leaving other cases on the old system. We hope to find a solution to this problem so that in a few years, instead of ranking last, Arizona may be in the top 10.

Funding - Superior Court

Our state courts lack uniformity. Although the Constitution mandated an integrated court system in 1960, presently, our system is integrated only in theory. Integration and uniformity are not possible without adequate financing. In some counties the Superior Court has become an economic burden. Under these conditions it is possible that some cases, even criminal cases, may be dismissed because of lack of court funding. Last year the Senate government and judiciary committees passed Senate Bill 1117 which provided for state funding of the Superior Court. However, the bill never reached the floor. I recognize that other matters occupied your time last session and because of this year's severe financial crunch, I do not suggest re-introduction of the bill. However, I ask you to recognize this issue when you address the tax code problems and consider state funding of the Superior Court a priority for next year. State funding will help achieve and maintain a uniformly high quality of justice throughout the state.

Saving Money. Collecting Revenues

The courts should not be viewed as a revenue producer or evaluated on the basis of "income versus expenses." Last year, however, the court system revenues exceeded \$70 million. Hundreds of thousands of dollars pass through the courts each day. Like any business, some "clients" default on payments. At present, we only collect about half of the fines and fees assessed. Our collection practices are archaic. We do not collect like other business - we go after the person, not the money. In our system, if a fine is not paid, we issue warrants and arrest people. This places unnecessary demands on law enforcement officers and adds to already overcrowded jails. We

need an automated system to collect more of the money owed to the courts, thereby lessening the tax burden on Arizona taxpayers.

The legislation we proposed will raise the current \$70 million in revenues to at least \$100 million by 1993. Money to implement the new system could come from three areas:

- a \$12 time payment fee,
- a five-dollar fee on everyone who participates in a court authorized diversion program - mainly traffic school, and
- a surcharge of forty percent on all filing fees.

Those sources would produce between \$4 and \$5 million per year to fund the new collection system as well as to solve some of the other problems I've mentioned. Most importantly, this proposal would increase the certainty of justice by ensuring that fines assessed are indeed collected.

III. CONCLUSION

Approaching the Capitol Complex from the east, you will notice construction beginning on the new courts building. The building will house the Supreme Court, Division One of the Court of Appeals, the Commission on Judicial Conduct, the Administrative Office of the Courts, and the State Law Library. Construction is scheduled for completion in 1990. This building will allow a coordination of the efforts of my Court to better provide quality judicial services to the people of Arizona. I express my sincere gratitude and appreciation for the legislature's support in making this a reality.

I wish you all the best in your deliberations during the 1989 legislative session.