State of the Judiciary
Chief Justice B.K. Roberts, Florida Supreme Court
Message to the Annual Convention of the Florida Bar
June 17, 1971

Public confidence in courts must be restored. The time has come to make major changes. You cannot put a five-ton load on a one-ton truck, and not expect trouble, but by analogy, that is what has happened to our judicial system. Ours is groaning from the rigors of overload and stumbling to its knees as a result of the multitudinous diversity of its challenges. We are fast approaching a crisis situation, and unless there is a concerted, realistic and meaningful program of reform, justice can be delayed to the point of injustice. It was my privilege to be in Williamsburg on March 12 of this year and hear Chief Justice Burger in discussing Deferred Maintenance of the Judicial System say:

> Today the American system of criminal justice in every phase-the police function, the prosecution and defense, the courts and the corrections machinery is suffering from a severe case of deferred maintenance. By and large, this is true at the state, local and federal levels. The failure of our machinery is now a matter of common knowledge, fully documented by innumerable studies and surveys.
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> I have said nothing of civil justice that is the resolution of cases between private citizens or between citizens and government. This, unhappily, is becoming the stepchild of the law as criminal justice once was. Most people with civil claims, including those in the middle economic echelons, who cannot afford the heavy costs of litigations and who cannot qualify for public or government subsidized legal assistance, are forced to stand by in frustration, and often in want, while they watch the passage of time eat up the value of their case. The public has been quiet and patient, sensing on the one hand the need to improve the quality of criminal justice but also experiencing frustration at the inability to vindicate private claims and rights. We are rapidly approaching the point where this quiet and patient segment of Americans will totally lose patience with the cumbersome system that makes people wait two, three, four or more years to dispose of an ordinary civil claim while they witness flagrant defiance of law by a growing number of law-breakers who jeopardize cities and towns and life and property of law-abiding people, and monopolize the courts in the process.

The fact that lawyers, judges and laymen are showing mutual concern for judicial ailments is good indication that a measure of success is predestined. But good intentions are not enough. We have been laboring under an outmoded judicial system with few changes since the State Constitution was adopted in 1885. The time has come to make major changes, and make equal justice under law become more of a blessing and less of a burden.

As many of you here can recall, we did take a penetrating look at our courts in the early 1950s. We found that there was a caseload of 1,052 cases before the Florida State Supreme Court for the year 1952. And, in a spirit of cooperative determination, a positive corrective measure became a reality in 1957, when the district courts of appeal came into existence, thus becoming the only

major improvement in our state judicial system since 1885. These additional appeals courts hastened court action and speeded up the cause of justice, brought the courts closer to the people, and relieved the Supreme Court of a burdensome caseload, but unfortunately, this improvement has not alleviated the problem from the strains of this era. Consider the situation as it now exists.

Declining Confidence

Our courts all over the nation are suffering from a declining confidence of the public. Caseloads are skyrocketing at all levels. The threat to prompt and equal justice is more of a reality today than any time since its establishment in this democracy. We must keep these difficulties in mind as we consider reform of our judicial household. Specifically, we need to focus on four problem areas: (1) congestion in the courts due to a flood tide of litigation, (2) delay of justice at all levels, (3) the relaxing of professionalism by our lawyers, and (4) widespread shortage of administrative supervision.

The problem of congestion and overload in the court system is getting worse year by year. We have an insufficient number of judges to cope with ever-growing dockets, a constantly expanding scope of law and steadily increasing flow of new legislation almost all of which some citizen attacks on constitutional grounds or seeks more detailed interpretation.

15,000 Cases Behind

For example, the 76 county judges in Florida disposed of the staggering number of 234,894 cases last year. This includes a broad spectrum of cases-from traffic and criminal cases to emotionally charged work in juvenile cases and probate work. Was it possible to do it properly-was there time for proper meditation? The figure would be meaningful except for the fact that during this same period these judges were receiving a total of more than 250,000 new cases. Operating at amazing speed in disposing of litigation, the courts fell behind approximately 15,000 cases. The plight of the docket situation with Florida's 126 judges of the circuit courts (now approximately 140 as a result of new judgeships established late last year) is not much more encouraging in the overall picture.

Last year, these jurists disposed of 119,576 cases during a 12-month period. This figure includes 25,165 criminal actions in those counties where there are no separate criminal courts of record. And while these judges were disposing of the 119,576 cases, what was the situation with their incoming docket? During 1970, there were 133,145 cases filed, a falling behind by more than 13,000 cases. The 20 judges of our four district courts of appeal have a similarly unattractive situation with their caseload statistics. In 1970, these judges collectively disposed of 4,023 cases. This, it should be emphasized, is the work of a court with a brief 13-year history of operation. And, in line with the record of other courts, the appeals courts, too, were failing to keep pace with the incoming activities in their clerks' offices. The record indicates that during the year, there were 4,324 cases added to the backlog of 2,370, for a total 1970 caseload of 6,694. This is a startling average of more than 300 cases per judge of the district courts.

Supreme Court Crisis

Recall that in the "year of the crisis" in the Supreme Court in 1952, there were 1,052 cases and was set in motion to create the district courts to provide relief. In 1970, the justices of the Supreme Court disposed of the immense total of 1,237 cases, a record which I am certain places this court at the forefront in decision production throughout the state supreme courts of the nation.

If we project this year's caseload at its current ratio, the Supreme Court case level will reach a record of 1,500 in 1971, or 50% more than the crisis year. All of this transpired with the new tier of a district appeals court system taking thousands of appeals that prior to 1957 would have come to the Supreme Court. Compare this with Georgia's caseload of 693, New Jersey's caseload of 589, Michigan's caseload of 699, Massachusetts' caseload of 430, all comparable states, and Texas, nearly twice as large as Florida, with a caseload of only 830. The shortage of judges has also created a state of emergency in the criminal courts of record in this state. Our civil and criminal courts of record of 52 judges, including nine magistrates, disposed of 38,205 civil cases and 158,185 criminal and traffic court cases for a total of 196,390. But they received in new cases during the same period 169,282 felony, criminal and traffic court cases of which 28,503 were felonies and 46,416 new civil cases. One explanation is that the courts are boxed in by constitutional limitations which provide abnormal restrictions on the numerical manpower of the bench. In each criminal court of record jurisdiction there is a limit of one additional judge for each 250,000 persons. This is pure folly. There should be at least one such judge for each 125,000 persons.

Societal Rights Increase

In addition to the scarcity of judges, the congestion problem has been compounded by a number of recent trends, social changes and particularly innovations in the law by the Supreme Court of the United States with the emphasis on the Bill of Rights, and over-dramatization of personal rights versus societal rights. The nature of our Sunshine State also has implications and repercussions in the judicial system. The warm weather and easy living attract some of the finest people in the world as residents and visitors. But undesirable elements of society also enjoy their suntans and yearlong summers, and the crime oriented persons have added significantly to the crisis in our felony courts. We must also take into account the 20 million tourists who roam our highways each year, and the thousands of new citizens. They, too, significantly increase the burden.

Problems of Delay

Let us now consider the problem of delay between arrest and final adjudication of a case. By rule, the Florida Supreme Court has speeded up trial time with its 60 and 90-day requirement between arrest and trial. By rule, we have shortened the appeal time to 30 days (211 So. 2d 198, 1968) cutting down on another avenue of undue delay. But, the district courts of appeal are clogged with criminal cases which necessarily are comingled with all other litigation. The result is obvious-a slowing down of the process, sometimes stretching into a year's time to perfect an appeal. An innocent party deserves to be exonerated in less time than this system provides. Society deserves protection against the free roaming guilty for such a time and the guilty should have their punishment with promptness as well as fairness. Our criminal courts are still troubled

by an inadequate bail and preliminary hearing system. With the present attitude throughout the nation of almost instant bail in most offenses and the requirement that preliminary hearings be held with some degree of formality providing the accused with an opportunity to confront his accusers, it is no longer practical to hold one hearing for the fixing of bail and determination of probable cause. The Rules Committee of the Supreme Court is now making a study of this problem with the hope that we can be of assistance under our rule making authority in the near future.

Unprofessional Performance

A third area of concern is that the performance of lawyers, judges and law enforcement officers is sometimes less than professional. For example, appeal processes in many instances are becoming so much of a harbor for exploratory forays and avenues for technical hijinks that justice at times is throttled
to a near halt.

After having been a member of The Florida Bar for 42 years, it is my firm and sincere conviction that the vast majority of practicing attorneys are honest and conscientious in their approach to their professional responsibilities. However, trial records indicate that some lawyers are wasteful of the court's time in such things as the seating of jurors and the taking of frivolous appeals. Repetitious, inane questions can be eliminated if the lawyer does his homework properly. By studying the jury venire prior to the trial, a lawyer should have answers to 90 per cent of the questions which are asked to determine the suitability of the juror, before court opens.

Judges must share in the fault of inordinately drawn out court proceedings. Of course, the court is committed to giving all sides proper consideration under the law, but this can be done without permitting the abuses of time and subject matter by lawyers and other persons. Law enforcement officers, too, must join other arms of justice in establishing a new era of polished professionalism. Our state attorneys must remember that they have a responsibility to protect the innocent as well as to prosecute the guilty. They should refrain from prosecuting frivolous cases just to build up a record of statistics. Our public defenders have a responsibility to refrain from wasting time with frivolous questions, motions, objections and frivolous appeals.

Need Administrators

The fourth area of concern is the shortage of administrative supervision and the resulting deployment of judicial time in administrative matters. The federal courts have already recognized how judicial skills have been wasted on "housekeeping" chores. Training began early this year for executives to take over the nonjudicial work of the eleven federal court circuits. They will handle personnel, budgets, property control, maintenance and the like.

Just as being a renowned surgeon is not necessary for appointment as administrator of a huge, metropolitan hospital, likewise, being a top flight jurist is no guarantee of administrative adeptness. Judges need to judge, and administrators to administer- to distribute the workload so one judge will not have too much work and another too little. The creation of judicial administrators working under the presiding judges-and an expanded budget to pay for adequate

courtrooms, stenographers, equipment and manpower-are essential if we are to have an effective and efficient system. The time is also overdue for a reexamination of budget allotments. During the past several years, we have completely reorganized the executive branch of government, and completely reorganized the legislative branch, even though both programs represented substantial increases in costs.

One Percent of Budget

The people of Florida spend a relatively small amount of their tax dollars to see that justice operates, but the demands of the people for service are great. Last year, out of a total state budget of over $1 billion, only some $14 million was allotted to the judicial department, which represents approximately one percent of the total state budget. This one percent figure is insufficient to insure justice for the people of this state. In other words, justice presently costs each citizen about $2 a year-less than half the price of a carton of cigarettes-less than your driver's license. In these perilous times, that amount is simply not enough. These then are some of the festering sores of the judicial establishment. Congestion, delay, lack of high-level professionalism and a widespread shortage of administrative supervision make up the conglomerate problem. As a step in relieving some of these problems, the State Supreme Court has been moving under Section 3, Article V of our Constitution which provides: "The practice and procedure in all courts shall be governed by rules adopted by the supreme court."

One change included in this revision is designed to expedite criminal cases. It provides that each case must be tried within 60 days, if the accused makes such a request, and within six months regardless of whether such a request is made. A more substantial change directed at breaking the docket jam provides, under specified circumstances, for the assignment of circuit judges to the courts of record (both civil and criminal). At the January 1971 extraordinary session, the Florida Legislature authorized such use of circuit judges, in criminal cases, and this court by rule authorized such assignments to both civil and criminal courts of record. These are positive steps toward unclogging dockets. But, with work piling up in all levels of the court system, these rules can be considered a little more than stop-gap measures. They still leave an insufficient number of cooks stirring a constantly expanding kettle of rice. The Supreme Court of Florida also took a hard look at the hodgepodge system of rules-or lack of rules-of our traffic courts. We realized that 90 percent of our citizens get their only insight into the judicial system from the vantage point of misdemeanor courts. The importance of scrubbing a shine on the rules of procedure for this court system, then, appeared obvious. We tackled the problem and adopted a set of traffic court rules which establish a proper judicial atmosphere for the citizenry appearing before such courts and for the officers of the courts.

Judicial Article

Of paramount importance is the proposed revision of the Judiciary Article of our constitution which now is soon to be considered by the Florida Legislature and then the people. The adoption of this revised article should take place in the special election to be held this year. In 1972, every circuit judge and every county judge in Florida, as well as a number of district court and Supreme Court judges, will stand for re-election. To defer the revision of Article V until November 1972, will require a transition which would have to be spread over a period of years.

This can be avoided if the new revision proposal is adopted this year, so that all persons offering for election to a judicial position next year will do so with full notice of that revision.

Reduce Juries

The jury system is yet another area in need of great reform. It is likely the United States Supreme Court may soon direct jury trials for many types of misdemeanor cases which previously were adjudicated without jurors. I concur wholeheartedly with Mr. Chief Justice Burger's contention that there is no magic in the numerical series used for juries in our courts today. My own research into this matter fails to bring to light any strong basis for our 12-man juries or our six-man juries. Mr. Chief Justice Burger has, in fact, recommended that the size of federal juries be slashed in half. It is my recommendation that we in Florida should provide there be but three jurors where punishment is less than six months in jail or less than a $2,000 fine. This, admittedly would be a giant step which would generate trauma in many circles and could not be accomplished tomorrow, next week or even next month. It does deserve serious study and I am asking The Florida Bar to create a special committee for this purpose. A constitutional amendment is required.

Court Administrators

Another change which claims our attention is the need for more efficient, more uniform, more widespread court administration through professional, nonjudicial administrators. You recall in the earlier discussion of this need, that federal courts have already responded through appointment of federal court administrators. University-level training is now available, as well, to provide specialized skills for those interested in this field. Conditions are therefore good for the adoption of such a plan here. In my dual capacity as chief justice of the State Supreme Court and chairman of the Judicial Council of Florida, I see the need for trained administrators within the judicial system as essential to the orderly processing of judicial functions. It is my recommendation to The Florida Bar, the Judicial Council, and the Florida Legislature that immediate study be given for the consideration and establishment of a state judicial administrative system to operate in cooperation with the presiding judges of various courts. I hope that The Florida Bar will join me in pushing for early implementation of such a system to modernize the administration of Florida courts. A start has been made this year by the Florida Legislature when it enacted a law making each presiding judge of a circuit the administrator of all courts within such circuit. Also, the 1971 Legislature has provided for the nonpartisan election of judges, which is a giant step forward. Justice knows no party labels.

Industrial Claims Court

In the field of workmen's compensation law, our system is probably the least adequate. The issues are now tried by a judge of industrial claims, then reviewed administratively by the members of the Industrial Relations Commission who are not required to have any legal training or qualifications and who generally change with the ebb and flow of each gubernatorial administration. The cases now receive their first, last and only judicial review in the State Supreme Court. Our overcrowded docket here simply does not permit the assigning of appropriate time to this important class of cases affecting the rights of so many injured workers.

For five years, the Supreme Court has requested legislation to change and improve the system for reviewing such cases. This year appropriate legislation was passed by the House and Senate but in slightly different versions. A conference committee compromised the differences, and the revised bill was unanimously passed by the Senate but the House adjourned a matter of minutes before reaching a vote. We are hopeful that Governor Askew will permit the extra session to consider and conclude the matter.

The proposed legislation provides for the appointment of four judges, one from each appellate district, possessing the qualifications of district courts of appeal judges, and after the initial appointments, to be elected by the voters within their respective districts. During 1971, the executive department and the legislature have worked very closely with the Supreme Court in recognizing the problems herein referred to and in trying to work out a solution. Likewise, the leadership of The Florida Bar has been of tremendous assistance. During my four decades of residence in the State Capital, I have not seen more cordial relations between the three branches of government, and The Florida Bar, concerning our problems. Because of this splendid cooperation, we know we can and will solve our problems.

State-Federal Judiciary

In still another area of concern, Mr. Chief Justice Burger has indicated by word and deed that he and President Nixon are desirous of bettering relationships between the state and federal judiciary. To that end, Florida, through our State Supreme Court, has assumed a posture of national leadership, becoming one of the first states in the nation to establish by court order a committee made up of federal and state judges whose purpose it is to improve the working relationship of these two judicial systems. I am pleased to report that the Florida State-Federal Judicial Council, with your state chief justice designated as chairman, has held an initial meeting with encouraging results. The increase in dialogue is certain to produce better understanding of each system by the other. Such a partnership undoubtedly promises greater advances in judicial cooperation and administration. These, then, are some positive responses we are making to the great problems of our current judicial system.

We must have more professionalism in the courts and in law enforcement. We must reduce the present long delays in adjudication of cases. We must unclog the crowded dockets. And we must have a more efficient system of judicial administration. To delay rectification of our shortcomings will further erode the public's faith in the courts.