State of the Judiciary
Chief Justice B.K. Roberts, Florida Supreme Court
Message to the Annual Convention of the Florida Bar
June 20, 1972

When I had the privilege of speaking to you a year ago, I said, "You cannot put a five-ton load on a one-ton truck and not expect trouble." I was referring, of course, to the growing load on our judicial system, but it is a privilege to tell you that we-of the bench, the bar, numerous public officials and the public generally-have done something about it.

First, I shall deal briefly with some court statistics and then other matters. Some of the leadership of the legislature requested that we put our case reporting on a fiscal year because other parts of the state government are so scheduled. The Judicial Council rearranged its reporting system to cover the fiscal year beginning on the first day of July of each year, and, therefore, the statistical figures hereafter mentioned begin with July 1, 1971.

In the last fiscal year which ended June 30 of last year, we found that the Supreme Court of Florida had disposed of 1,397 cases working against a backlog of 1,746 cases composed of 1,362 new filings and a carryover of 384 cases. This production was up about 12% from the prior year. During that same period, the district courts of appeal disposed of 4,432 cases working against a caseload of 6,987, which included 4,320 new filings and a carryover of 2,667 cases, or an increase in production of more than 10%. All courts of original jurisdiction above justices of the peace and metro levels, during the former period, had 763,353 cases filed and disposed of 744,895, or an average of more than 3,000 cases per judge in the courts of record and county courts and just less than an average of 1,000 cases per judge at circuit level. As we ended the reporting period on June 30, we had pending throughout the state in the circuit courts and courts of record a total of 187,445 cases, and in addition, a 12-month carryover of approximately 15,000 cases in the county courts, 9,500 in the juvenile courts, and an inventory of 55,000 in the small claims courts. Our circuit courts added 143,000 new cases and disposed of 142,500, representing a substantial increase in production over the preceding year.

The Judicial Council has now gathered statistics from July 1, 1971, through March 1972-a period of nine months-and has projected them by adding one quarter of the year in order to anticipate the load and production during the current fiscal year. Appellate data has actually been gathered through May 1972. We estimate for the 1971-72 year in the circuit courts new filings of 142,800 and dispositions of approximately the same number; and in the courts of record, new filings of 167,000 and dispositions of 172,000. There are now approximately 60,000 cases on the dockets of the courts of record of which 26,400 are criminal cases. The county courts will add approximately 264,000 new filings, not including municipal cases that may be transferred to them, and dispose of 239,500-also a substantial increase in production. Although the production of all our courts has been magnificent, it is obvious that change in the system was necessary. It is a pleasure to tell you that we have a well-balanced Supreme Court, all justices in good physical condition, and each with an independent philosophical view, which is as it should be with a court of last resort.

Rule "Successful"

On March 1, 1971, our court, under its rule-making power, adopted a rule speeding up trial time in criminal cases with its 60 and 90 days between arrest and trial. Our dockets were clogged, our jails were overloaded, and the public was becoming restive about delays. It was first thought that our speedy trial rule was too drastic and would result in a jail delivery. Well, it didn't, and I express my sincere appreciation to the judges of this state charged with the responsibility of trying criminal cases, for their cooperation over and beyond the call of duty. The rule has worked, the dockets have been sharply reduced, and I am ready to compare the currency of our criminal court docket with any in the nation. I think this is buttressed by a letter recently received from a circuit judge who was one of the most vocal in denouncing the rule when we adopted it. In his letter to us dated April 17, 1972, he says, "By no stretch of the imagination did I expect your speedy trial plan to be so successful. I even thought it to be impossible." But it has worked.

Then on September 1, 1971, the court adopted Administrative Rule 1.020 which for the first time gave the chief judges of our 20 judicial circuits authority to take charge of the administrative affairs within their circuits, including a method for handling charges of judicial neglect or lethargy. It has always been my view that everybody should be responsible to somebody, and by having all the lesser courts and junior judges in each circuit responsible to the chief judge, the entire administration throughout the state took a turn for the better and the entire management of our judicial system has been improved.

Under our new system, these chief judges will have' the constitutional power in addition to the rule, to supervise the system within their circuits. We fully realize that the confinement and rehabilitation of felons is primarily a matter for the executive branch of the government, but because of Section 17, Article 1, Florida Constitution, preventing cruel and unusual punishment, the court does have a secondary responsibility in this field. Accordingly, we provided in the rule that: " (v) The chief judge or his designee shall regularly examine the status of every inmate of the county jail and reports of the status shall be submitted to the chief judge." In view of the success of this rule, we requested the legislature to provide for a statewide court administrator to work directly under the chief justice and to assist the chief judges and their administrative assistants in overall judicial administration.

Court Administrator

The legislature responded and we recently have been able to obtain for this important position a lawyer of distinction and training, who is one of the first 100 graduates of the Denver School of Court Management established last year on recommendation of Chief Justice Burger. The court has appointed as court administrator effective July 1, 1972, James B. Ueberhorst, assistant general counsel of the Central Intelligence Agency and with many other distinctions which I will not take time here to repeat. He has promised that “no cloak and dagger” will be brought with him, and his purpose is to assist rather than direct.

This court, under its rule-making authority, after numerous conferences adopted a new code for traffic courts, which is one of the most sweeping revisions in the country and fully meets the minimum standards of the Federal Highway Safety Commission. I am told Florida was the first in the nation answering this requirement, placing our state in line for some bonus increases in public road funds. Involved in this set of rules is provision for a Traffic Court Review

Committee to assist the traffic courts in compliance with the new minimum standards and to hear complaints of any who fail to do so.

Statewide Rules

In the field of procedure, the court has adopted a policy to encourage statewide rather than local rules where feasible. Although we realize that some local areas have particular conditions calling for a local rule, we believe that the ends of justice would be best served by taking all the local rules and giving them statewide force, where practical to do so.

On July 11 of this year, the court will hear arguments on a sweeping revision in the Rules of Criminal Procedure in an effort to conform to the American Bar Association's Minimum Standards of Criminal Justice. We believe the present rules can be revised so as to further expedite the handling of criminal cases and also provide adequate protection for the person accused of a crime, and we are endeavoring to do so.

Last year I told you that in the field of workmen's compensation cases, our system was probably the least adequate. The problem was fully discussed then, was later reported in The Florida Bar Journal, and I will not elaborate on it here. It is a privilege now to tell you that our distinguished Governor Reubin Askew, who had tried over the years to assist with this problem, did something about it. By administrative directive, he appointed three members of the Florida Industrial Relations Commission, each possessing the legal qualifications of a circuit judge, and directed them to review cases handled by the judges of industrial relations in the same general manner as our district courts of appeal review circuit courts. Pursuant thereto, the commission established a Court of Workmen's Compensation Appeals, sitting en banc as often as necessary, proceeding generally under the rules of appellate procedure, and with the same formality and dignity as other appellate courts. They have heard arguments and have decided cases with written opinions. I have talked with many lawyers who specialize in that field of work, and they have had nothing but praise for the manner in which the cases are now being handled. The last session of the legislature gave statutory blessing to this method of reviewing the cases and placed the member judges on full-time basis with appropriate compensation. It has been a great step forward in expediting and properly disposing of the claims of the victims of industrial accidents.

Judicial Reform

On recommendation of the Supreme Court, provision has now been made for the nonpartisan election of judges. Justice should be blind as to political party labels, and the time has passed for the election of judges on any basis other than their qualifications to serve. Florida is now well identified as a two-party state, and I hope the Bar will take the leadership in reminding the lay public that the party label has no place in a judicial election.

While the foregoing statistics and changes dramatize the problems and some of the accomplishments of our judicial system, the far greater significance for the judiciary in 1972 emerged from approval by the Florida electorate of a drastically revised judicial article of the State Constitution. Governor Askew, a long-term champion of judicial reform as a legislator and then as Governor, was gracious enough to include this important item in his Extraordinary

Session of the Legislature convened in November of last year, and the new proposal was placed on the special election ballot March 14 of this year. The Governor appointed Honorable Chesterfield Smith, president-elect of the American Bar Association, as chairman of an educational committee to present the proposal to the people. Although The Florida Bar, members of the judiciary, members of the cabinet, various legislators, lay citizens, the League of Women Voters, and the Florida press gave their support, it was the strong leadership of the Governor which enabled us to have the revision of Article V as it exists today. In one sweeping move to modernization, uniformity and consolidation, overwhelming voter approval was given to a new court system which already has been heralded as one of the most modem in our nation.

Improvement Must Continue

A pointed reminder should be made, however, that while Florida has marched in one giant step toward new goals of excellence in its judicial system, more improvements, additional changes and continued modernization are prerequisites for maintaining and, indeed, surpassing our new plateau of eminence.

To determine the areas of change which still must be considered, we need to recognize the salient features of the new judicial article of the constitution which becomes operative January 1, 1973. That effective date means that the 1973 Legislature will have but a scant three months of a judicial track record under the new system to examine for evidence of workability and general success. I feel certain that even in that short period, some of the flaws which need further legislative surgery will be indicated. Under terms of the new constitution, all judicial power is vested in a supreme court, our district courts of appeal, circuit courts and county courts. The significant change here is that the document specifically prohibits establishments of satellite courts of any type by any political subdivision of the state. Thus, the revision wiped from existence 14 varying types of trial courts which had sprung up through the years and put in their place a uniform, two-tier trial system of circuit and county courts. Also, it enlarged the jurisdiction and power of the Judicial Qualifications Commission.

The new article gives to the circuit courts limited appeals jurisdiction and all original jurisdiction not vested in the county courts. And, it is important to note that to inhibit the blossoming of a hodge-podge system of differing courts, the constitution specifically demands uniform jurisdiction throughout the state. It is this guarantee of continued sameness, which will make the judicial system a more understandable process for lay citizens and a more workable tool for justice. Of substantial meaning, too, is the constitution's granting of authority to the judiciary and the legislature to create specialized divisions of any court except the Supreme Court. The legislature, in tum, has said that such divisions may be established by the local rule of each circuit and subsequently approved by the Supreme Court. It is my fervent hope that the chief circuit judges will act expeditiously in this area jointly to provide the necessary division recommendations to the Supreme Court. I consider it vital that these plans and proposals represent a united and unified approach which can be implemented on a statewide basis, if possible. Any deviation from this direction would negate severely the mandate of the new Article V for uniformity in our judicial system. If necessary expedite the disposition of communal appeals, a division within any district court of appeal could be established and manned for that purpose.

Specifically, it is my hope that when the chief judges of the circuits sit to spell out particulars of their recommendations on diversions, they will follow closely, those proposals which were outlined previously by the Supreme Court in our report to the 1972 Legislature on the needs of the Florida judiciary. We suggested then, and I reaffirm that posture today, that a logical and systematic division for circuit courts would include (1) probate, competency and guardianship, (2) family matters, including juvenile cases, (3) felonies, and (4) general circuit court jurisdiction, including civil cases involving more than $2,500. At the county court level, we would look with favor on a system encompassing divisions for (1) misdemeanors, bail, preliminary hearings and coroners' inquests, (2) small claims, (3) general jurisdiction, including in particular those civil matters from $2,500 down to the dollar ceiling of the small claims divisions, and (4) nonjudicial and administrative matters. This does not mean that there must be a single judge assigned to each division, because in the smaller circuits and counties particularly, it will be necessary that a judge serve in two or more or perhaps all divisions, but it would appear advantageous if separate dockets and records could be kept on the divisions. The chief judge will have authority to make such assignments of the judicial manpower under his control as the exigencies of the situation may require or permit.

Additional Judges Needed

The constitution required the Supreme Court to certify to the legislature the need for additional circuit and county judges which would be required under our revised operational system of the state's judiciary and we complied with that edict though there was but a week's time to formulate our recommendations. However, being optimistic about the adoption, we started in early January of this year gathering statistical data. I take this opportunity to express appreciation to the chief judges, The Florida Bar, the Judicial Council – its director, A. D. Core – and our Executive Assistant Fred Baggett for their assistance.

Acting on our report, the legislature approved our final request for a total of 261 circuit judges. Unfortunately, legislators failed to heed our recommendation for county judges, making a substantial reduction in what we told them were minimal needs. Already, we are being told that the number provided by the legislature will be insufficient for proper and speedy administration of those courts. By the time of the meeting of the 1973 Legislature, we will have a three- month operating record to provide actual statistics to bolster our previous forecasts on needs. These will be presented to the legislature again for approval. As you know, the Supreme Court of the United States decreed that unanimous jury verdicts are not required as a constitutional right. Consequently, I have asked that The Florida Bar give serious study to this matter and make recommendation to the Florida Supreme Court concerning a change in the unanimous jury verdict rule.

Unanimous Verdicts

The time is past, in the opinion of many, when one person should be able to preclude the rendering of a jury decision in a noncapital case. Justice is not served when an overwhelming number of jurors cast a vote in one direction and this lopsided majority can have its opinion vetoed by the whim or caprice or even honest difference of thought of a single individual. Not

only is justice often thwarted by the unanimous jury rule, but the costs of new trials are undue burdens on the taxpayers. England, where the idea started, receded in 1967 and our states of Oregon, Louisiana, Oklahoma and Montana have followed. And, new trials, of course, serve only to further the overload factor in our already crowded dockets. I have no numerical ratio to recommend at this time for jury decisions, but I am hopeful that The Florida Bar and other interested parties will post recommendations to the Supreme Court which provide for some ratio other than the existing unanimous verdict. Any change made can be done by rule of court.

For a number of years, I have sought consideration of receding from the rule and law that there must be a minimum of six persons on every jury. The reduction in the number of jurors would require a change in the Florida Constitution, but the need for overhauling the jury provision of the constitution is of such moment that we should not hesitate to seek the revision. The constitution presently states that "the qualifications and the number of jurors, not fewer than six, shall be fixed by law." It is my recommendation that this restrictive phrase be amended to delete a specific number and that the legislature be given the authority to fix the number of jurors required for various juries. There is more than one compelling reason reducing jury numbers. It should be emphasized at the outset that there will be no foreseeable damage to justice by such a reduction as there simply is no magic in 12 or any other number.

Demands Heavy

As our county courts, under the new judicial article, assume the trial duties of the numerous municipal courts with their burdensome misdemeanor dockets, there will be an immediate, automatic skyrocketing demand for jury venires. From a logistical standpoint, it will be absolutely impossible for many courtrooms to physically crowd the number of prospective jurors needed into available space. Even with our existing court system the number of prospective jurors being called frequently taxes space facilities beyond capacity, and are expensive. Demands for jury trials will be heavy under this new system. Not only will that cause the physical problem of seating, but it will result in soaring jury operation costs in all counties. It must be remembered, too, that we will be calling with more and more frequency upon our busy citizens to spend more and more of their time in the courts. This is neither fair nor warranted. It is illogical to take the time of six citizens to sit on a jury to determine whether or not a man was drunk or whether or not another man stole a chicken.

While I feel the legislature should have the authority to determine the number of jurors, for most misdemeanor cases, I would think that a jury of three would suffice, with six called for felony trials. I make no comment concerning the existing requirement for 12 jurors hearing capital cases.

Time does not permit my discussing the many other advantages of our revised article but copies are available for those who are interested in a detailed description and can be obtained through The Florida Bar. During my 44 years as a resident of the Capital City of Florida, I do not recall a program where the executive, legislative, and judicial branches of Florida's government so completely joined in a move to improve our state government.

As you perhaps know, Florida was the first in the nation last year to establish a State-Federal

Council in compliance with the request of Chief Justice Burger. We have held meetings and, with a sense of satisfaction, I tell you that relations between the federal and state judiciaries in this state are pleasant and harmonious.

Just eight days ago, the Supreme Court of the United States in the case of Argersinger v. Hamlin extended the doctrine of Gideon v. Wainwright to misdemeanors, thereby placing on local government the responsibility of providing counsel for any offense where a sentence of confinement is involved. Our present public defender system has been limited to felonies, and it will be necessary that The Florida Bar take an active part in assisting with this new problem until our legislature concerns again and can make appropriate provision for compliance with the decision.

Justice and liberty are two of the most dramatic words in the English language. Through the pages of history, mankind has sought a more perfect judicial system, but down that long road and his unquenchable thirst for liberty and justice, he has learned that a written code is not enough. We have all learned from experience that it must be activated and made to work by a capable and independent judiciary, buttressed by a well-informed and reliable Bar. It is often said that the longest journey starts with a single step, and we have all now made that step. The people have adopted our proposal and the legislature has funded the system-it has given us the tools, and now the solemn responsibility rests upon the bench and Bar to finish the job and to complete an orderly transition from the old to the new. So, let us all rededicate ourselves to the proposition of equal justice under law and that equal justice is the keystone in the arch of freedom.