State of the Kansas Judiciary
Chief Justice Harold R. Fatzer, Kansas Supreme Court
Message to the Legislature
February 21, 1972

The courts exist to serve the citizens of this state, and the confidence of the people in our judicial system can be preserved only if justice is speedily, fairly, efficiently and competently administered. This constantly is the objective of all who labor in the vineyard of our judicial system.

The Kansas Supreme Court always has appreciated the mutual respect and trust with which each branch of the government has treated the other. While each branch must espouse and preserve its own independence, it is imperative there be cooperation and communication between the departments so that democracy as we know it can efficiently and effectively function. It is in the interest of co- operation that this report on the judiciary is presented.

I. The District Courts

Presently there are 29 judicial districts in the state with 61 district judges working therein. It has been said by many who are in a position to know about such matters, the district judges of Kansas are among the best trained, most qualified trial judges in the United States. The Court heartily concurs in this appraisal. The administration of justice never can be better than those charged with administering it, and our district judges are fulfilling competently this duty.

In addition to providing for restructuring of the state's judicial districts, which occurred in 1968, the Judicial Department Reform Act of 1965 provides the key to unlock the pressing twin problems of dis- proportionate caseloads and case disposition delay in the district courts. This Act directs, the Court to divide the state into no more than six judicial departments with each department presided over by a Supreme Court justice. Each justice is given the power to assign district judges on a temporary basis from one district to another, and to call in for assistance any retired district judge who is willing to serve. Under this statute an annual judicial conference of Supreme Court justices and district court judges is required for the purpose of considering problems relating to the administration of justice. The net result has been that since 1965 the Supreme Court has:

(1) Established the office of judicial administrator to assist the Court in the management of the court system;

(2) Promoted a number of conferences and training seminars for district judges;

(3) Authorized the attendance of several judges each year at the National College of the Judiciary;

(4) Entered upon a statistical program whereby all cases at the district court level have been computerized so that we can ascertain the state of the docket of any district court in the state at any given time;

(5) Appointed administrative judges in all multiple-judge districts with general control over the dockets therein; and

(6) Made literally hundreds of assignments of the district judges to lend assistance in courts where the caseload is great.

These advances, coupled with modem procedural codes adopted by the Legislature, have helped bring about an excellent judicial system at the general trial level. District judges no longer are considered judicial islands unto themselves, but are a dedicated part of the state's judicial team concerned with the operation of the whole system. Dockets over the state have been made current, backlogs virtually have been eliminated in most districts, nearly 70 per cent of all civil cases. filed are terminated within six months, and almost 82 per cent of all criminal cases. filed are terminated within six months. Only seven per cent of the civil docket is over two years old-a substantial improvement over the past. five years. However, this does not mean that we are without problems today. For the past two and one-half years there has been a steady increase in the number of district court cases. filed. The number currently is running in excess of 36,000 cases, whereas three years ago it was 30,000. This includes an increase of over 20 per cent in criminal cases, and more importantly, an increase of 68 per cent in contested court and jury criminal trials-a factor adding greatly to the workload of trial judges. Generally the district judges, with yeoman effort, have been able to keep pace with this substantial increase in workload; but it appears that in certain districts, a need for adjustment in judicial manpower is arising.

The legislature has granted to the Supreme Court authority to increase or decrease the number of divisions in the four largest districts—Sedgwick, Johnson, Wyandotte and Shawnee counties. Last year an additional judgeship created by the Supreme Court became effective in Sedgwick County, which has the heaviest docket in the State. That county still has a caseload of almost 1,000 cases per judge. Commensurate with the power to alter divisions in a district is the authority to phase out judgeships under the judicial redistricting plan previously adopted by the legislature. The procedure of eliminating judgeships in areas where the caseloads are light, and authorizing the Supreme Court to create a new judgeship in the urban areas where the case- loads are heavy, permits adjustments in judicial manpower and indicates a practical approach to the persistent problem of providing the right number of judges in the right places at the right times.

The Legislature was wise in providing that the elimination of judgeships shall be accomplished through retirement of the incumbent judges. To eliminate a judgeship during the middle of an incumbent's career not only would be unfair to him, but would deprive the judiciary and public of the benefit of such judge's judicial experience.

II. The Supreme Court

The principal work of the Supreme Court involves appellate review of cases that are placed on the Court docket. It should come as no surprise the Supreme Court docket is the heaviest in modem history, and there is every indication that it will continue to be heavy. There were 412 cases pending in, the Supreme Court as of February 1, 1972, and an additional 388 appeals were being processed for docketing. This increase in the number of appeals reflects the substantial in-crease in the litigation being conducted throughout the state.

There is increasing concern by the Bench and Bar, and also by the litigants, with the length of time it takes to get a review of cases on appeal to the Supreme Court. A civil appeal presently takes, on an average, 20 months from date the notice of appeal is filed to date of decision by the Supreme Court. Some of this delay has been caused by the preference that must be given to

disposition of criminal cases. While I submit this is not an unreasonable length of time in comparison with some of the larger states of the union, neither is it a real fulfillment of the judiciary's obligation to the people of our state. The indication is that this condition will worsen if it does not receive serious attention. The Supreme Court is aware of this condition, and has taken measures to help alleviate the problem. Recently the Court amended its rules relating to calendaring of cases, and created new procedures for the internal handling of cases up for review. A summary calendar has been established for cases in which oral arguments will be limited. Along with this, the Court has decided that it should no longer attempt to prepare a full opinion in every case that is re- viewed. In some cases involving issues which previously have been settled by decisions of the Court, a memorandum opinion setting forth the judgment without a full narration of all facts, issues and law will have to suffice. The adoption of similar procedures by the federal appellate courts has tended to reduce the case backlog in those jurisdictions, and we are hopeful our procedures will be equally effective. The Court has asked the cooperation of the Legislature in this under- taking by the amendment of KAN. STAT. ANN. § 20-204 (1923) relating to the preparation of the Court's opinions; the amendment of KAN. STAT. ANN. § 20-2616 (Supp. 1971) relating to the use of retired justices and judges for work in an advisory capacity at the Supreme Court level, and at the district court level; and the amendment of KAN. STAT. ANN. § 20-148 (Supp. 1971) to allow two additional research attorneys for the Supreme Court staff.

A. Court of Appeals

The innovations and proposals set out above offer more than adequate remedies to some of the problems of the Court. A more permanent solution, however, should be provided to ease the growing workload of the Supreme Court. It is the general approach to this problem in other states to establish a new court at an intermediate level between the district court and the Supreme Court. I strongly urge that serious consideration be given to the creation of such a court in this state. This proposal does not contemplate one more burdensome forum through which litigation must proceed, or one more body established for the purpose of transferring and saddling that court with the present backlog of cases that exist in the Supreme Court. Rather, the proposal envisions a tribunal sitting in panels of three qualified judges—administratively responsible to the Supreme Court—that will hear and review cases on appeal within four to six months after trial level judgment. The review of cases at this intermediate level would be on the original record with typewritten briefs, thus providing a less expensive review to the public. There would be a right to appeal to the Supreme Court in limited types of cases, and in other cases by certiorari in which the Supreme Court deems it necessary to establish legal precedents and to settle the law of this state.

III. Amending the Judicial Article of the State Constitution

Perhaps this is the appropriate place to comment on the proposed amendment to, the Judicial Articles of the State Constitution which is pending before the Legislature. For the past decade there have been proposals to change the Judicial Article, almost all of which have advocated the creation of a unified court system and a plan for the selection, tenure and discipline of judges. The present proposal before the Legislature has been recommended by the Citizens Committee on Constitutional Revision. The proposed article also has been reviewed by the members of the Supreme Court and district judges, and has the general support of the justices and judges. As Chief Justice, I strongly recommend that serious consideration be given to placing this proposed

amendment before the people of this state for their consideration. The reforms set out in the proposal are reasonable, they are not radical. They permit the Legislature and the courts to make such changes as the need arises.

One of the more important changes embodied in the proposed judicial article will give the electors in each judicial district the option of determining whether their district judges should continue to be elected by political ballot, or by a method of nonpartisan selection similar to the Supreme Court plan. The local option approach to selecting judges appears to be a practical solution to this controversial problem. It is a much better approach than to continue to have all district judges elected by political methods. It generally is accepted today that politics and judges do not mix, and if judges are to be selected politically, we cannot expect them to function entirely free from partisan political pressures. Preservation of the right of the people to retain or reject judges appointed under the nonpartisan plan, coupled with mandatory retirement and procedures for discipline or removal of judges for cause, will stave off any argument that courts are becoming irresponsible or unresponsive to the needs of the people.

IV. Aid to Indigent Defendants

In 1969 the Legislature enacted the Aid to Indigent Defendants Act, and established a state fond to be administered by the judicial administrator according to standards set by the board of supervisors appointed by the Supreme Court. Under this new law, the cost of providing court-appointed counsel and other services to indigents charged with felony crimes is borne by the State, rather than the county. Pursuant to the provisions of the Act, standards, rules and procedures have been adopted, and the program has been administered fairly by the judicial administrator and the board of supervisors. The Bar has fulfilled its professional responsibility in this area and has cooperated with the program despite the continuous problem of inadequate funds.

The allowances to attorneys for their services is "less than a fee but is more than an honorarium." It has been our observation that, in many cases, attorneys who are asked to serve the poor in court have not received an adequate and fair fee commensurate with other professions serving this segment of society. Because of limited appropriations, all claims for attorney fees are being prorated at 67 per cent of the approved claim as authorized by the Legislature last session.

A viable alternative to the present assigned counsel system may be the Public Defender program which the Legislature authorized last year at the request of the Kansas Bar Association. Several pilot projects, principally funded by federal money, have been established by the district court of Shawnee County and the District Court in the Eighth Judicial District. The reports and comments on the work of these two offices appear to be favorable. Continued interest in this program, as well as the assigned counsel program, is warranted.

V. The Judicial Council

The Judicial Council was created by the Legislature in 1927. Since that time it ably has served the administration of justice in this state. Operating in the shadows of both the judiciary and Legislature, the good that it does frequently is overlooked. The Council, under the capable leadership of Justice Alfred G. Schroeder, currently is studying, inter alia, such matters as pattern criminal jury instructions and a new code for municipal courts. We can thank this group for its

work on such projects as the Code of Civil Procedure, the Criminal Code, the Crimes Act, and the plan for judicial redistricting.

VI. New Members

1971 has brought changes in the personnel of the Supreme Court. Chief Justice Robert T. Price retired on September 1, 1971, following a distinguished career. Justice Earl E. O'Connor resigned effective November 10, 1971, to assume the position of U. S. District Court Judge by Presidential appointment. Both of these able jurists contributed much to the jurisprudence of this state, and will be missed by the state's judicial family. The Supreme Court Nominating Commission is to be commended for its choice of nominees to succeed Justices Price and O'Connor. Governor Docking's appointment of Perry L. Owsley and David Prager to the Supreme Court bench is well received by the Bench and Bar of this state.

In conclusion, I wish to express appreciation to the Legislature for its support of the judiciary. Without the willingness on its part to provide adequate financing, proper reforms and needed changes, the courts will be hard pressed to meet the demands that are placed on the judiciary at all levels. The courts merit the Legislature's continued support. In addition, the courts merit the support of the people whom they serve. Notwithstanding the heavy burdens placed on our courts by the stresses of a modern complex society, the cause of justice is being served daily in the courts of this great state and, in most places and in most cases, without serious delay. It is our goal to continue this noble pursuit, ever seeking to improve the quality of justice, holding steadfast to the principle that the rule of law is the basis of a stable society, and ever mindful of the trust that is ours as a full partner in a government that serves a free people.