State of the Judiciary
Chief Justice John S. Palmore, Kentucky Supreme Court
Message to the Legislature
January 24, 1978

Introduction

I am here at your kind invitation to report on the state of the judiciary. It is a rare privilege, and I accept it with humility.

The Judicial Amendment of the Constitution, adopted just 26 months ago, precipitated the greatest political upheaval the Commonwealth has experienced in this century. The stress that was thrust upon the General Assembly was tremendous, and the manner in which you responded to it bears witness to the strength of our government and the responsibility of this body. Not all problems have been resolved, of course. They never are. But today, I am happy to say, the judiciary of this Commonwealth is in a far better state of health, vitality, and good order than it ever has been before, and certainly better than many predicted it would be.

In the trying hours, days, and months, during which my predecessor in office and I, our Administrative Director and his staff, and the other members of the Supreme Court have labored to accomplish an orderly transition from the old to the new court system, our spirit has been sustained by the constant cooperation and sympathetic consideration, given to us by Governor Carol and his staff, and buy the judiciary courts committees of these two legislative houses. In like manner the Crime Commission and the Department of Justice have been most liberal with their time, their efforts, and their expertise in helping us to get funding from available federal grants. We are grateful also, to the office of Policy and Management for its assistance and patience in the unenviable task of working out our budgetary problems.

It may come as something of a surprise for some to hear me say, and I say it with a feeling of real pleasure, that in spite of the annoyance and uneasiness felt by many county officials who had opposed the Judicial Amendment and were disappointed no less than they were surprised by its passage, by and large they have given us their wholehearted cooperation in accomplishing the transition. Ordinarily, a person is not elected to an important county or city office unless he has the recognized qualities of a good citizen. I have been confident all along that ultimately those qualities would prevail in this instance, and indeed they have.

The Judicial Amendment

The amendment established two new courts, the District Court and the Court of Appeals. It consolidated all of the courts into one unified Court of Justice. It provided a Retirement and Removal Commission, replacing the unworkable, never-used process of impeachment, for the enforcement of discipline and good behavior on the part of all members of the judiciary. It ended the trial of cases by judges, who were not qualified by training in the complicated and increasingly technical subject of law, and who therefore were not licensed to practice that profession. It forbade any judge to carry on a law practice. Most importantly of all, by providing for the election of all judges on a nonpartisan basis it took the judiciary out of party politics, insofar as that is possible in the world of human beings.

The Supreme Court

At the beginning of 1976 the Supreme Court, then called the Court of Appeals, consisted of seven judges, and four commissioners. During the calendar year 1975, these eleven members had handled 1150 cases, 857 of which were by opinions disposing of original actions and appealed cases on their merits, leaving at the end of that year a backlog of 770 pending appeals, ready for disposition. Advanced cases, notably, criminal and workman's compensation appeals, were being handled on a current basis, which meant that those of the 770 civil appeals that were classified as routine, or non-advanced, had been awaiting disposition for up to two years. Moreover, the quality of workmanship born of the haste of writing such a large volume of opinions was something less than desired. Oral arguments were then a rare luxury, simply because we could not indulge the time.

Today, oral arguments in the Supreme Court are the rule rather than the exception. During 1977 it made final dispositions of 726 cases, including 430 written opinions. Its work is current, and there is virtually no backlog of cases submitted and ready to be assigned for hearing. This has been made possible by the Court of Appeals.

One of the ways in which the Court of Appeals has alleviated the case-inventory of the Supreme Court is that we have been able to screen the backlog of cases on hand in the Supreme Court when the Court of Appeals became fully operative in late 1976 and transfer to that court the routine cases that otherwise would have require disposition by the Supreme Court. From the latter part of 1976 through December 1977 a total of 541 appeals were transferred. This division of work was, of course, a one-time procedure and should not recur.

The other way in which the Court of Appeals has relieved the burden of the Supreme Court was made possible by a provision of the Judicial Amendment (Section 110(2)(b) of the Constitution) that enables the Supreme Court to fix the scope of its own jurisdiction except for criminal cases involving the death penalty or imprisonment for 20 years or more, which the Constitution specifies may be appealed to the Supreme Court as a matter of right. By rule of Court, the acceptance of all other appeals is at the discretion of the Supreme Court. This discretion is exercised through two avenues. Upon a showing that a case is of great and immediate public importance an appeal may be granted directly from the Circuit Court to the Supreme Court, bypassing the Court of Appeals. Other appeals from the Circuit Court are heard by the Court of Appeals, and the second avenue by which the Supreme Court exercises its jurisdictional choice is through the granting of motions for discretionary review of decisions made by the Court of Appeals in these cases.

During 1977 the number of original actions and appeals as a matter of right filed in the Supreme Court was 126. 24 motions for transfer were filed and five for granted. 164 motions for discretionary review were filed and 34 for granted. The spread between these numbers and the total of 430 opinions issued in 1977 reflects the final cleanup of our backlog. With that behind us, we expect to be able to accept more transfers, grant more discretionary reviews, and write better opinions.

The Court of Appeals

From late 1976, when it became organized and housed and was able to move into high gear, until the end of 1977 the Court of Appeals had received 2,787 cases, including those that had been transferred to it out of the Supreme Court's backlog, and had disposed of 1,578 of those cases, leaving an inventory of 1,209 cases pending at the beginning of this year. Of these 1,209 cases, 1,015 were in process of being briefed and 194 were under submission and ready to be heard. At the present time the Court of Appeals is deciding between 100 and 135 cases per month, which means that it is very nearly current in the handling of its work.

Whatever words of praise I might choose in describing the performance of the Court of Appeals would be inadequate. Its membership of 14 judges includes the very highest caliber of lawyers and is under the direction of an able chief judge. Its practice of hearing the argument of its cases in the local communities throughout the state has been a great convenience to the litigants and their lawyers and has added to the popularity it has justly gained through the quality of its work. The people of Kentucky have every reason to be proud of the new Court of Appeals.

The Circuit Court

The Circuit Court consists of 87 judges and is divided into 56 circuits. The average annual caseload per judge in these 56 circuits ranges from about 500 and some to more than 1400 in others. However, the Judicial Amendment (Section 110(5)(b)) provides flexibility and adjusting these disparities by authorizing the Chief Justice to assign any justice or judge, active or retired, to sit temporarily in any court other than the Supreme Court. During 1977 there were 473 of these special assignments, 105 of which were filled by retired judges.

The extent to which temporary assignments can be successfully used in balancing caseloads is now being tested through the operation of two pilot administrative regions, each consisting of several circuits under the supervision of one circuit judge elected by the other circuit judges in the region as the administrative judge of that region. The administrative judge will endeavor to equalize the workload of the various circuit judges in his region by assigning those with lighter caseloads to assist temporarily in circuits with caseloads in excess of what the judges for those circuits are able to handle without unreasonable delay. For this purpose the Chief Justice has authorized the Administrative Judges to make such assignments. The pilot regions are receiving staff support from the Administrative Offices of the Courts.

A suggestion by the Judicial Council that certain of the judicial circuits be redistricted resulted in serious opposition in the affected localities. As usual in such instances, alternative proposals for the addition of new judges surfaced. Under the Judicial Amendment (Section 112(2) and (3)) any change in districts or in the number of judges must first be certified by the Supreme Court as necessary, and at the present moment we are not able to say that 87 judges are not enough to handle the total caseload of the Circuit Court. We do not know, for example, what impact the District Court will have on the volume of work in the Circuit Court. When the general assembly convenes in 1980 we will have that information, and we will have also the benefit of having observed the experimental operation of the pilot regions. At this time, therefore, the Supreme Court does not plan to recommend any changes in the territorial arrangement of the judicial circuits or in the number of circuit judges.

The District Court

The real moment of truth for the new judicial system arrived just three weeks ago, with the physical launching of the District Court. Fortunately, as in the instance of the Court of Appeals, the men and women elected as the first judges of this court proved to be competent lawyers, several with extensive experience. Fortunately also, both today and the personnel of the circuit clerks have availed themselves of the assistance and training programs arranged for them by the Administrative Office of the Courts. And so it came to pass that instead of chaos we saw a surprisingly uneventful changing of the guard. There were, of course, some exceptions. One of the judges elected in November decided at the end of December that he did not want the job after all. But the system had been soundly designed to meet such exigencies, and the District Court in that judicial district was opened and held by the circuit judge until someone qualified and willing to accept the office could be found. On last Wednesday the Judicial Nominating Commission for that district met and made its recommendations to the Governor, the Governor promptly made his appointment, and the new district judge assumed his duties. Our complement of 113 district judges is now filled.

Until we have had more time in which to observe the operation of the District Courts we cannot determine whether 113 is a sufficient number of judges or whether the use of trial commissioners for the 56 counties in which no district judge resides will prove satisfactory, nor will we be able to determine accurately the number of trial commissioners actually needed for those counties in which a district judge does reside. At the present time we have 56 trial commissioners for counties in which there is no resident district judge, and 8 others in counties that do have resident district judges but have caseloads or geographic problems that justify the appointment of trial commissioners.

One district judge, as you all know, opened court in a tent. Now, however, he is in the county courthouse. Whether he occupied the tent by preference or by necessity I am not certain, but from the standpoint of the media it surely must have added a little life to the party. In any event, it is in this matter of court facilities that our most pressing need remains unsatisfied.

Many of our district judges are holding court in county courthouses as a matter of sufferance. That is, they are there temporarily, and without protection of any contractual arrangement. Others are housed in private facilities, for which rent is being paid. In some instances, we have been prevented from occupying buildings because they do not comply with the requirements of the state fire marshal. At best this is a dismal picture.

Legislative Needs

Prior to the statutory amendments that were occasioned by the Judicial Amendment, the various county and city governments bore the cost of housing the courts. In return, they received the net revenues from the fines and forfeitures collected in their local courts. Presumably, House Bill 16 (KRS 24A.190 et seq.), the "net court revenue" act, was intended substantially to replace these revenues. At the same time, House Bill 23 (KRS 26A.100) required cities and counties to provide space for the circuit and district courts insofar as it was "reasonably available" without disrupting their local governmental operations. From all reports, however, it appears that the revenue has been received by the local communities pursuant to the calculation of "net "revenues under the 1976 legislation has not come up to local expectations. The resulting dissatisfaction in turn has given rise to an understandable reluctance on the part of many local governmental bodies to provide, at what they consider to be a loss to the local taxpayers, facilities that are

adequate and necessary to an efficient functioning of the courts. To remedy that vital problem, the Supreme Court, and through it the Judicial Council, have recommended to the Joint Subcommittees of the House and Senate on Appropriations and Revenue and Judiciary-Courts, and to the Governor, that legislation be enacted at this session providing for the payment of a fair rental to each local government unit, based upon the costs incurred by that governmental unit in providing and maintaining the facilities used by the courts. I am pleased that the Governor in his recommended budget has made allowances for such a plan. It may be that financial information that is now being compiled will necessitate an adjustment of the amount required for that purpose. In any event, it is a matter that calls for your careful attention.

The Supreme Court now occupies the second floor of the State Capitol. Its administrative office and the Court of Appeals are housed in the Bush Building, across the river in downtown Frankfort. Obviously they should all be located together, and this need has been recognized by the General Assembly through the appropriation of funds for that purpose at a previous session. Plans are now being made by the executive branch for the construction of a suitable building in Frankfort for these two courts.

The subject of legislative needs embraces other problems of the District Court. At the present time, although section 46 of House Bill 23 (KRS 30A.300) authorize their employment, there is no budgetary support for secretaries for the district judges except that the circuit clerks, who serve at also as clerks for the district court, are required to furnish such clerical aid as necessary. While the circuit clerks and their personnel thus far have been most cooperative and helpful, it needs no feet of the imagination to demonstrate that such a duality of control and supervision is ambiguous at best and conducive to conflict and disharmony at worst. We do not need a secretary for each and every district judge, but in each judicial district at least one secretary should be under the exclusive control of the district court and should be so budgeted. The offices of the circuit clerks, which formerly were independent, are now within the judicial personnel system and represent about 40% of our total budget. Needless to say, we respect and appreciate these fine public servants and are proud to have them in our judicial family. For that reason alone we strongly prefer to avoid any prospective source of internal friction.

Another concern expressed by many of the district judges is the disparity between their salary and that of the circuit judges. Perhaps I ought not mention this, but it is the truth and we may as well face it. The salary spread between the Circuit Court and the Court of Appeals, and between that court and the supreme court is $2000.00. Between the District Court and the Circuit Court it is $7500.00. All of us would like to see this difference reduced to something more than nearly like that which separates the other levels of the judiciary. In their defense, let me add that the district judges are fully alert to the inevitable reaction that they knew what the salary was when they ran for the office and are not in much of a position to complain about it so soon. They would respond, however, that most of them aspire to the office with a judicial career in view and with the intention of doing what they could to upgrade the office of district judge to the level they believe it should enjoy. To put it another way, that they knew the boat leaked before they got aboard is no reason why they should not try to have the leaks repaired.

Administration

No semblance of order in the transition from the old system to the new could have been possible without the assistance of the Administrative Office of the Courts. The office has the duty of ensuring uniform operations and procedures in our courts.

Operational manuals have been developed to standardize procedures throughout the state. New recordkeeping procedures to improve efficiency in the courts, the reduction of the number of forms being used by all courts from 500 to 100, and the elimination of order and judgment books, are examples of efforts to reduce costs and improve efficiency.

A new accounting system has been installed. The state auditor's office, the state treasurer, and the secretary for finance and administration have aided in the development of this system.

A personal system for the Court of Justice similar to the state personnel system has been implemented. All personnel actions in the judicial department are covered by these rules.

A judicial college was conducted by the Administrative Office for the first time in the history of the state. The college included over 35 hours of class time. 68 circuit judges attended the first judicial college in Kentucky.

110 district judges attended a week-long orientation session. This program aided them in preparing to take the bench on the first Monday of January.

The Administrative Office also has prepared a bench manual for ready reference of the judges and a circuit clerk’s manual for the assistance of the circuit clerks.

The pretrial release agency administered by the Administrative Office of the Courts has been designated as one of the 10 most successful new programs in the United States. The agency maintained a failure-to-appear rate of 3.5% throughout the year.

Kentucky remains the only state with such a program. Its success has established a precedent for other jurisdictions to follow.

The Judicial Budget

The judicial phase of the executive budget submitted to this body last week projects for the next biennium expenditures of some $77 million against anticipated revenues of about $67 million. The revenues, of course, are less predictable than the expenditures, and of necessity the revenue estimates have been derived largely from figures reported by several hundred quarterly, police, and magisterial courts throughout the Commonwealth. Some of these figures are more reliable than others. From the amount of fines already collected by some of the district courts in less than three weeks there is good reason to believe that court revenues during the next biennium will be substantially in excess of the conservative estimate presented in the budget. It should be recognized, of course, that it really is not the function of the courts to make money. They're revenue-producing capacity is strictly incidental to the administration of justice. Be that as it may, the projected difference of some $10 million between revenues and expenditures for the next biennium compares favorably with the past appropriations of about $13 million per biennium for the judicial branch of government. Though much has been said of the expense of our new system, what the proposed budget really brings into focus is that this $10 million net

outlay for the courts and their support amounts to a mere 14 cents out of every $100 contained in the total budget of more than $7 billion.

Relationship With The General Assembly

Before leaving you, I am moved to discuss one further subject. That is the state of relations between your branch of government and ours. A spirit of friendship, respect, and common purpose must prevail among us if we are ever to realize the public confidence in government that is in such short supply today. It is a tragic fact that the average citizen has come to fear and distrust his own government. If he had his choice about it, I suspect he would prefer that we all stay home. If we who are a part of his government, do not understand each other, he is not likely to understand I believe in any of us.

It seems to me that over the 18 years in which I have been a member of your highest court there has never been a sufficient congeniality between us. Probably there has been a lack of communication, which is the usual source of misunderstanding. The historic role of judges, appellate judges in particular, is to be uncommunicative. At least one author has characterized them as a "priestly cast," like Indian medicine men uttering mysterious incantations the ordinary citizen finds hard to understand. But if there is such a barrier between us, the time has come to break it down.

That our function in the scheme of government saddles us with the duty from time to time of passing on the constitutional validity of your work is one of those unavoidable facts of life that is bound to generate a degree of annoyance now and then. I think you should rest assured that it never gives us any pleasure or satisfaction to declare an act unconstitutional. Whether or not it shows or is made apparent, the court always "leans over backward" to uphold the validity of a statute. Sometimes we receive equal criticism whichever way it goes. We have held the no-fault insurance law and were criticized by the lawyers. We struck down the medical malpractice insurance law, and were criticized by the doctors. But of one thing you may be certain: in all the time I have been a member of the court, those some of the other 16 judges with whom I have served were more politically oriented than others, never has a decision been made for the purpose of influencing the outcome of an election of any kind, and that includes our first opinion in the home-rule case.

Most of the men with whom I have had the privilege of serving have been men of courage. The proudest moment of my judicial career was the day they stood as one man on the 100% assessment case. They knew their political careers were on the block. Other judges before them had ducked, evaded, and slipped around the question, but the time had come to meet it, and they did what was right, bitter as it was. The broad-form deed cases have been just as bitter. It gave us no pleasure to decide them against the small landowner, and certainly it was not the popular thing to do. But the law had been settled before we came along, and we had no more right to shift property rights without due process of law than you do. I cite these examples to suggest that many things that are unspoken and unseen go into the decisions we are required to make in cases of great public interest, and to impress upon you that those hard decisions do not reflect our own personal preferences.

In all of this, what I seek of you today is a better understanding of us, an understanding that we can and will reciprocate. Both of us are bound in the service of the same master, the citizens and

taxpayers of this great state. It is just as much to our interest as it is to yours that every dollar of their money be spent where it will do the most public good. So in leaving you today I extend to you, the General Assembly, the hand of friendship, indeed of brotherhood, as it is so appropriately symbolized on the seal of our Commonwealth. From this day on, let us plow forward and break ground as a team, neither pulling against each other, but as partners, for the greater good of our people.