State of the Judiciary
Chief Justice Frank W. Summers, Louisiana Supreme Court
Message to the Louisiana Legislature
May 16, 1979, in Baton Rouge, Louisiana

Mr. President, Mr. Speaker, Distinguished members of the House and Senate: Ladies and Gentlemen:

Thank you for the invitation and the privilege to address you in this your 5th regular session under the Constitution of 1974 on the state of the Judiciary in Louisiana.

I am happy to report that generally speaking our State Judicial System is in good condition. With your help Louisiana's Judiciary has been able to keep pace with the law explosion which has characterized America's society in our generation. Because of this development great stress has been placed upon the Administration of Justice and the development of the law. Both the Judiciary and the Legislature have played a prominent and valiant role in stemming the tide of this huge demand upon our Justice System. Happily the challenge has been met. Louisiana continues day by day to address the problems and confront the issues of our dynamic and changing society present. Working together in this atmosphere the Legislature and the Judiciary have served the cause of justice. These two branches of our government, in harmony with a knowledgeable and helpful Governor have fulfilled their responsibility to the citizens of this state. It may now be said that Louisiana stands among the foremost states in the Union in its ability to meet the challenges to the administration of justice.

The purpose of my remarks today will be to briefly outline the current state of our Judicial System, inform you of its problems, and propose solutions to these problems which concern the Legislature.

In your 1978 session, you implemented the recommendations of the then Chief Justice by adopting legislation to meet some of the then current problems: First, by fixing the time for filing pre-trial motions in criminal cases. That act is designed to avoid unnecessary delays in the trial of criminal cases. Second, a uniform code of Juvenile procedure was adopted, thereby clarifying an area of legal uncertainty badly in need of attention. Third, you established a systematic program for preserving historical court records and for centralized storage of inactive records. Further, you created twelve new and needed district court judgeships in various sections of the state. For this legislation in your last session, this body deserves the commendation of all Louisianians and especially those of us who are directly concerned with the administration of justice.

But the problem of adjusting our law to the additional burdens and problems confronting the Judiciary has been and will continue to be an ongoing one. It follows, therefore, that we shall meet those problems only with your help and support.

The organization and procedures of our courts of limited Jurisdiction are in need of attention. The problem of improvement and standardization of procedures in those courts has been studied by our Judicial Planning Committee. That Committee has been in a state of almost continuous

activity. It is a dedicated and broadly based committee well qualified in this field. Its studies and the data it receives has enabled the Committee, in keeping with its charge, to sponsor several significant bills during the current session.

One relates to a revision of Book VIII of The Code of Civil Procedure. Adoption of this Legislation will simplify the procedure of our city, parish and justice of the Peace Courts. A proposed money increase in the jurisdiction of these courts is indicated by a realistic consideration of the inflationary trend. City and parish courts handled a total of 570,000 cases in1978. The increase in their money jurisdiction will be relieved of a volume of cases characterized as minor litigation. District Courts will then be free to devote more time and study to more important and complex litigation, all of which should improve the quality of justice in those courts.

Our proposed legislation pertains to the parish court system authorized by the Constitution- Legislation designed to establish uniform jurisdiction, procedure and administration for parish courts already created and those to be created hereafter.

The state's District, Juvenile and Family Courts have, as a general rule, been able, on a statewide basis, to keep pace with the burgeoning civil and criminal case load which reached 400,000 cases in 1978. Tile ability of these courts to provide efficient judicial service to the people of this state has been in large measure due to the awareness of the problem of law explosion by a generous legislature which has furnished the additional judges needed to meet their needs.

The Judicial Council of the Supreme Court is constantly striving to develop ever more sound criteria for evaluating requests for additional judgeships. In the current session the Council is recommending four additional needed judgeships: 1 for the 32nd Judicial District Court for Terrebonne Parish; 1 for the13th Judicial District for Evangeline Parish; 1 for the Civil District Court for Orleans Parish; and 1 for the City Court of Baton Rouge. The Council is also recommending that the judges of the Shreveport City Court be made full-time Judges and be paid a salary commensurate with that status. Finally, the Council is recommending legislation that mileage reimbursement allowance for District Judges be fixed by rule of the Supreme Court within the confines of their individual state appropriations, and that a district judge be allowed to apply any unused travel allotment toward office expenses not met by that current allotment. The Louisiana District Judges Association supports this bill.

One device for relieving the need for creating new judgeships is a better use of retired judges. The Judicial Planning Committee has developed legislation for your consideration which will provide a more flexible method for attracting retired judges to temporary active service. I recommend this legislation to you.

Mental health commitment procedures are in need of improvement. Proposed legislation is before you which will place an affirmative duty on the Department of Health and Human Resources to assist in the preparation of petitions for judicial commitment in those parishes where a hospital or other institution of that department is situated. Also, adequate funds are needed to support the mental health judicial commitments, both to cover the deficit for the current year and to meet anticipated expenses in the coming year.

The greatest concern facing our court system in my judgement and in the judgement of many others is the proper organization of our Appellate Court structure and jurisdiction. This is a problem I feel I would be remiss in my duty and my responsibility as Chief Justice if I failed to forcibly call this matter to your attention and propose a sound and necessary solution. The vital issue at hand is the overwhelming case load of the Supreme Court in mandatory criminal appeals.

As you are aware, the Supreme Court of Louisiana is assigned Mandatory Appellate Jurisdiction in all serious criminal appeals. Appeals in those cases come directly to the Supreme Court from the Trial Courts, by-passing the Courts of Appeal. As presently drafted the Constitution assigns no criminal jurisdiction to the Courts of Appeal. Louisiana remains as one of the few remaining systems with such an Appellate structure. A constitutional amendment is needed to transfer mandatory Criminal Appellate Jurisdiction in serious cases, empowering the Supreme Court to review those appeals under its supervisory and writ authority. It is for this proposal that I seek to enlist your support and influence. This proposal has the support of the Supreme Court Committee on Appellate Case Loads (Stagg committee). The Board of Governors of the Louisiana State Bar Association, the Law Reform Committee of the Louisiana State Bar Association, the New Orleans Bar Association, and the Louisiana District Attorneys Association.

In the18 years since the last reorganization of our Appellate structure in1960, the work load of the Supreme Court has risen from 682 filings to 2,654 filings, an increase of over 350%, of course, the number of Justices of the court has remained at seven. Approximately 60% of those filings are criminal matters.

During the same period, filings in the Courts of Appeal rose from approximately 600 to nearly 3,100 but the number of Judges in those courts was Increased from 9 to 12.

In terms of averages per judge, a Supreme Court Justice and the average Court of Appeal Judge write the same number of opinions annually--about 60. However. on the Supreme Court each judge handles approximately 380 matters annually, whereas each Court of Appeal Judge handles only 100 cases. This means that the work load of a Supreme Court Justice is 380% greater than the work load of the average Court of Appeal Judge. And this comparison does not take into account an even greater disparity of work load due to the fact that all seven of our Justices must act on each matter, whereas the Court of Appeal Judges act in panels of three in the overwhelming majority of cases. Thus it may be said there are in reality ten Courts of Appeal to handle the work load now being processed by one court. This is so because in the Supreme Court all seven Justices must act on every case processed there. We do not sit in panels of three.

The problem was recognized fifteen years ago and has been under discussion since that time. All possible solutions have been explored thoroughly and completely.

In the Constitutional Convention of 1974 the question was raised but at that time was considered inappropriate for a solution. As I understand, it was the consensus of the delegates that further consideration of the question and a Constitutional Amendment within a few years following the convention would bring about the needed change.

Then, in 1976 the Supreme Court appointed a broadly-based committee to study Appellate case

loads and procedures. Its chairman is Mr. Ed Stagg, the prestigious Executive Director of A Council For A Better Louisiana. About a year and a half ago emergency recommendations of that Committee were implemented to improve case processing in the Courts of Appeal and the Supreme Court.

The Supreme Court enlarged Its central screening staff on August 15th of last year, increasing the number of attorneys from 2 to 7 and adding a second secretary. The call is out in the court's current budget for six additional attorneys, bringing the total to 31 attorneys or law clerks Involved In the court's decision-making process--A number too great to give the decision-making process the close and personal attention the Justices should be capable of devoting to that important function. I am informed that your House Appropriations Committee has declined to fund these additional law clerks. I agree with this action of your Committee. I cannot agree with my colleagues that more law clerks should be added. Furthermore. if the proposal to transfer the Mandatory Criminal Appellate Jurisdiction is approved by you, the Supreme Court will be in a position to reduce the size of the present screening stall.

As a result of utilizing a screening stall composed of young law clerks our court in1978 decided 285 criminal appeals by per curiam opinion, which means without a known author or reasons for the decision in most cases.

For the highest court of this state lo be required by force of its case load to utilize a summary docket procedure for the one and only appeal of his conviction afforded to a defendant leaves something to be desired in a court system which purports to be fair and just, and which should appear to the public and the defendant to be fair and just. Yet, this procedure is used in 50% of our criminal appeals.

For the highest court of this state to be required by force of its case load to refuse to grant writs in 85% of the applications in civil cases presented to it leaves important areas of our civil jurisprudence without adequate treatment, our courts and bar without proper guidance and direction which this court was originally designed to afford, and perhaps leaves the applicants in some of those cases without justice. Strenuous measures devised to stay even may, like any strong medicine. produce side effects as serious as the disease they seek to cure.

Symptoms of the decline of the quality of justice at the Appellate Court level are recognized by all who have given attention to the matter. Recently the American Bar Association Task Force on Appellate Procedure listed some:

(1) A pattern of denial of oral argument without waiver by counsel;

(2) A pattern of undue abbreviation of the length of oral arguments or of scheduling numerous arguments for the same time;

(3) Use of internal operating procedures which make inadequate provision for conference and deliberation by the deciding judges;

(4) Reliance on Central Staff Attorneys in numbers greater than the judges of the court;

(5) Regular use of more than two personal law clerks per judge;

(6) Routine, substantial delay in making dispositions;

(7) Failure of the Appellate System to provide even minimal explanation for its decisions.

To some degree all of these symptoms appear in the system of our court and in the Courts of Appeal. One word opinions, abbreviated opinions by Courts of Appeal which provide no basis for review on application for certiorari, and the disproportionate number of law clerks in the Supreme Court of seven Justices are only examples of these symptoms.

What case load changes have taken place In the Supreme Court and Courts of Appeal since the internal changes implemented more than a year ago? Filings in the Supreme Court have increased by 9% (from 2,435 filings to 2,654 filings) and filings in the Courts of Appeal have decreased by 7% (from 3,338 filings to 3,098 filings). Despite all of the improved techniques adopted by the Supreme Court and the Courts of Appeal in recent years, the disparity of work load between the Supreme Court and Courts of Appeal continues to widen.

No one at the time of the Appellate reorganization in 1960 foresaw the tremendous crime explosion which would take place and continues to grow to the present day. A recent survey report of the National Center for State Courts shows that our Supreme Court has much broader mandatory jurisdiction in criminal cases than any other State Supreme Court.

For today's problem of an inordinate and burgeoning criminal appeal docket In the Supreme Court, some may recommend a special Court of Criminal Appeals, some may recommend use of Commissioners on the Supreme Court, some may recommend transferring only non-appealable misdemeanors from the Supreme Court, some may recommend adding Justices to the Supreme Court or sitting in divisions. All such partial solutions have been rejected by the overwhelming number of states.

Specialized appellate courts are unusual in the United States, and the overwhelming weight of informed judgement is against such courts. Criminal courts of appeal, although the most frequent specialized appellate courts, are particular objects of criticism. In fact. as far as can he determined. almost no recognized authority has advocated criminal appellate courts. In addition, exhaustive studies of the federal appellate system and the appellate systems of several states have considered the possibility of creating specialized criminal appellate courts.

All recommended against them. In the three or four states which presently have such courts, most of the judges and lawyers of those states are dissatisfied with them. Studies show that greater backlog and delay tends to build up in these special courts; contrariwise, appellate courts which handle both civil and criminal cases tend to dispose of criminal cases more quickly.

At its meeting on December 1, the full study committee agreed overwhelmingly that there is a critical need to transfer criminal appellate jurisdiction from the supreme court. The committee also created a subcommittee, of which I am chairman, to develop alternate proposals to accomplish this result.

The subcommittee circulated a proposal for a special intermediate court of criminal appeals. The overwhelming response from various individuals and groups was to reject the proposal as being the least desirable alternative. Though reluctant to accept the jurisdiction themselves, a majority

of the court of appeal judges are nevertheless opposed to a special court of criminal appeals. The principal arguments against such a court are: 1) Overspecialization is not good for the judges or the litigants; 2) The quality of the appellate process would be diminished by dividing the jurisdiction.

A substantial majority of the respondents to the proposed special court urged that the proper long-range solution would be a transfer of criminal appellate Jurisdiction to the Courts of Appeal, accompanied by tile creation of additional Judges and Staff needed by those courts to handle the expanded jurisdiction. The concern of some is that conflicting decisions will result from the four circuits. Many answer this contention by stating that uniformity within circuits can easily be achieved by internal rules and through the supervisory jurisdiction of the Supreme Court. They also point out that the Federal System with its many circuits has proven to be quite workable.

The subcommittee developed case load data and staffing needs for the following three proposals: 1) Transferring jurisdiction to the present four circuits;

2) Setting up a single criminal panel onto which would rotate the Court of Appeal Judges of the four circuits for fixed periods;

3) Realigning the present circuits into two or more circuits as may be needed.

At its meeting on March 19th, the full committee recommended a constitutional amendment authorizing the transfer of criminal appellate jurisdiction from the Supreme Court to the Courts of Appeal or to a court composed of the judges of the Courts of Appeal.

Senator Duval, a member of the Study Subcommittee, has introduced, on behalf of the full committee chaired By Mr. Stagg, a joint resolution designated as Senate Bill 49, for a Constitutional amendment to transfer Criminal Appellate Jurisdiction from the Supreme Court. Under terms of this bill, if you adopt it and it.is subsequently ratified by the people you will have the discretion by a 2/3 vote to determine whether to transfer all or any portion of the criminal jurisdiction, and if so, to determine where it shall be placed, or not to transfer any jurisdiction at all. It would be your 1980 session at the earliest before you might make these determinations.

The proposed constitutional amendment is only a first step but it is an important and a long overdue one. If the constitutional amendment is adopted by you and the people, you and the Judiciary will thereafter have the better part of a year to plan for and to prepare for change, and in the1980 session you may even then decide against any change until 1981 or thereafter or never. In short, the constitutional amendment will give you complete discretion in this matter to meet the needs of the people and the courts as you see fit. The Legislature is presently vested with complete authority to restructure the Courts of Appeal, the sole impediment to a solution of the Supreme Court's problem is the lack of legislative authority to transfer criminal appellate Jurisdiction.

Some have even suggested that the Supreme Court reduce its frenzied pace, thus causing a backlog and docket breakdown, and thereby calling attention to the problem. Other Supreme Courts similarly burdened with excessive case loads have taken this course of action. In my view, this course of action is drastic and a last resort. The only responsible solution is a

constitutional amendment now to resolve the already critical problem.

This need for reform has been under formal study for three years and has been discussed off and on for the past 15 years. It is difficult for me to understand why any member of the Judiciary can be reluctant to take this first step of a constitutional amendment giving the Legislature the discretion to determine when the transfer of Criminal Jurisdiction will take place. After all, it is the responsibility of the Legislature and not that of judges to determine what kind of court structure best serves the people of this state. Our common goal is what is best for all Louisianians. Certainly after ratification of the constitutional amendment, if that comes to pass, you will, I am sure, at the proper time, invite members of the Judiciary, even those who may be opposed to this first step, to participate in your studies and hearings for specific legislation on the proper reallocation of criminal appellate jurisdiction and the manpower and resources to handle that jurisdiction.

The almost universal national pattern is an appellate court structure that has an intermediate appellate level handling both civil and criminal appeals, with the Supreme Court having writ jurisdiction in most cases and direct appeal jurisdiction in only a limited number of Important classes of cases.

I am well aware that any changeover to such an appellate court structure in our state may require some modification in our Courts of Appeal. The extent of such modification should however be moderate. But I remain strongly convinced that such a structure needs to be adopted in our state. This view accords with the American Bar Association standards for appellate courts, and with the recommendations of all national Judicial organizations and the various National Advisory Commissions on Criminal Justice.

The work load of the Justices of our court was recently acknowledged to be the highest of any Supreme Court In the nation. In a letter of condolence to us, the Georgia Supreme Court happily relinquished that onerous distinction. Our Supreme Court, which is expected to provide jurisprudential guidance in civil and criminal matters for all of the courts and the entire Bar of our state, cannot continue to perform that function with quality and confidence, nor can It continue to render quality justice in each case which comes before it, nor can it administer the courts of this state and improve their administration, unless the problem of Its tremendous work load is permanently solved…

The machinery of justice is a sensitive engine. To operate it properly men of high alms and standards of excellence are required. Our state is fortunate in that the Judiciary is manned by dedicated and responsible men. It is their collective determination to give to the state of Louisiana the quality of justice it so justly deserves. To do so it is imperative that Louisiana's high court not be compelled to resort to a system of mechanical process in order to avoid being overwhelmed by Its case load. Justice and equality under the law cannot flourish in such an atmosphere. Such a condition can only discourage Louisiana's ablest men from aspiring to our high court.

The facts of the problem are before you. President Wilson said, "A society is as good as its courts--no better no worse." I would add: The courts are only as good as society's highest court. You too have the stake in common with the Judiciary in bringing about needed changes to

improve the administration of justice, and the quality of life in our beloved state.

The Judiciary of Louisiana are deeply appreciative of the understanding, cooperation and assistance extended to us by Governor Edwards and the Legislature in recent years.