State of the Judiciary in Missouri
Chief Justice James A. Finch, Jr., Missouri Supreme Court
Message to the Missouri Bar
October 7, 1971, in Kansas City, Missouri

Following Chief Justice Burger's State of the Federal Judiciary address to the American Bar Association in St. Louis, numerous similar speeches on state judicial systems have been made by Chief Justices of State Courts. Some have been made to joint sessions of the state General Assembly and others have been to state bar associations. I believe that such reports serve a useful purpose and I welcome the opportunity to discuss the state of the Missouri judiciary with you this morning.

As you can see from your program, the schedule for this breakfast is quite full. In the time allotted to me for this report I can touch only briefly on certain phases of our operations and problems. Consequently, I will spend none of my time on preliminaries but will proceed directly to the subject at hand.

Presently, more than at any time in my memory, public attention is focused on the courts and on their operations. As an editorial in the May 1971 American Bar Association Journal said, "The administration of justice-particularly of criminal justice-has gone public." Some persons attack and would destroy our system, others are extremely critical, and the public generally at least wonders whether the courts are doing the job which should be done. It is appropriate that we take stock.

In preparing for these remarks, I wrote to every circuit court in the state to inquire as to the present state of their dockets, the time being required for criminal and civil cases to be reached for trial, and any suggestions they had for this report. I had a fine response and wish that time permitted me to detail the information which I received. It obviously does not, but I can generalize to say that in Missouri we do not have the periods of extreme delay before a case can be tried which is experienced in some parts of the country. In most circuits, even though the volume of cases has been increasing, a criminal case can be tried fairly promptly, particularly if the defendant desires a quick trial, and the time in civil cases is not excessive. In my judgment, most of our courts are doing a commendable job with the resources and facilities they have, but with careful planning and additional resources we can speed up the process and do a better job.

This morning I desire to focus attention on some of the problems which we have and the steps which are being taken or will be required.

In the first place, the volume of litigation, particularly criminal, is increasing and we must introduce more efficient, businesslike methods and procedures into the administrative side of the court system. Chief Justice Burger has stressed this need repeatedly, and to help achieve that goal he caused the establishment of the Institute for Court Management at Denver, the function of which is to train needed court administrators.

For years, our own Supreme Court sought the establishment of a State Court Administrator. In 1970 the General Assembly wisely took the first step in that direction and provided funds for that purpose. As a result, we employed Wayne Buckner, one of the first graduates of the new Institute at Denver. He started work last December and is now working with our court to plan and develop an efficient administrative system for the entire state court system.

The Supreme Court is charged by the Constitution with supervision of the entire judicial system of the state, but to date we have had neither the information nor the personnel required to do that job. We need to establish a system whereby we will know at all times the state of the docket of every court in the state. This would show us how much time it is taking to get to trial in the various courts, which ones are falling behind and need help, any courts which are not busy so that the judge or judges thereof are available for assignment elsewhere, whether non-jury cases are being held under submission too long, and similar information. We now assign judges to other courts when requested and the need is established, but we should have the detailed, immediately available data whereby the Supreme Court could act on its own initiative, and not wait for a request or for a complaint from lawyers or litigants that their cases are not being tried or decided promptly.

If we had had this administrative reporting system of which I speak, there would have been no need for me to write to the various courts to ascertain the size of their backlog or the time required to reach trial. That information would have been readily available in the reports which we would have had on hand.

Such a system would enable us to report to the General Assembly with confidence as to the volume of work in the various circuits and to recommend such additional personnel as is needed in order to do the job. It would permit knowledgeable recommendations as to possible redrawing of geographical lines of court districts in order to bring about a more equitable distribution of case load and a more efficient and more expeditious disposition of the judicial business of the state.

We have requested the LEAA to make a grant to us for the purpose of making a detailed study preparatory to the establishment of this proposed state administrative setup. We need to take a careful look at what other states have done and the administrative system employed in the federal courts, and then, in the light of our particular judicial structure, establish and man an administrative system which would do the job which the bar and the public have a right to expect. More personnel in the Administrator's office will be required. Incidentally, we already have underway, under supervision of the Institute for Court Management, a beginning study of court records looking to modernization of the creation and use of those records as well as their storage and retrieval.

The Circuit Courts of the City of St. Louis, St. Louis County and Jackson County all have local court administrators. In fact, they had them before we obtained the State Administrator. These local offices definitely have helped to improve the operation of those courts. Let me illustrate by one example. During the past year, the St. Louis City Circuit Court acquired an assistant to their court administrator plus a full-time docket controller, whose duty it was to concentrate on the movement of cases, under the general supervision of the presiding judge. For the first time, the

presiding judge also had a secretary, and the court had a swing court reporter to partially relieve regular court reporters in the trial division. The reported figures show that the productivity of that court has been increased considerably and that the elapsed time in the handling of criminal cases from arraignment to trial has been shortened. As a by-product, the number of confined defendants awaiting trial was reduced.

The lesson taught by this experience is that judges can do their jobs more efficiently and promptly if they have adequate trained supporting personnel. Such a system permits the judges to perform the primary job of judging without being bogged down in administrative duties.

Speeding up the trial of cases will satisfy a dual obligation. Our Constitutions, both federal and state, guarantee fair and speedy trials to defendants, and they are entitled thereto. In addition the public is entitled to have such cases disposed of with dispatch because the English experience teaches us that a system of prompt and sure justice is more effective as a deterrent than one in which there is much delay. Prompt handling of criminal cases can be fair both to the defendant and to the public, but such speedy disposition is possible only with sufficient personnel to man the various positions involved in the preparation as well as the trial of such cases.

In some areas of the state the case load is such that more judges will be needed and, perhaps, districts will have to be redrawn. However, more judges and supporting court personnel alone will not do the job. Criminal cases cannot be tried promptly without sufficient personnel in the prosecutor's office. If there is not sufficient personnel available to promptly and properly prepare the cases for trial, delay is inevitable. Such persons must be knowledgeable and experienced because criminal law has become much more complex and the trial of criminal cases requires careful preparation. The Williamsburg Conference on the Judiciary recommended that prosecutors should be full-time officials. I believe that recommendation is sound.

I will not spend any time on the need for a public defender system. That subject has been discussed repeatedly and the need has been underscored by a recent decision of the Missouri Supreme Court. I hope that shortly an adequately staffed and funded system will be established. Prompt disposition of criminal cases requires sufficient defense counsel, just as it requires an adequate number of prosecutors.

I would hope also that when such a system is created, there will be provision for sufficient staff at sites where correctional institutions are located. Presently, the appellate and trial courts are plagued with petitions for relief of various kinds prepared by inmates of the institutions who are not lawyers. Considerable time is wasted in attempting to ascertain the relief sought and in handling and disposing of these petitions. If there were attorneys at the institutions to advise with the inmates and to cull out the complaints for which there is no basis, and to clearly state those which should be considered, much judicial time would be saved. Repetitive proceedings would be minimized or eliminated. In addition, such a system would permit the Supreme Court to consider the recently suggested possibility of providing for all post-conviction cases to be heard at the sites where the institutions are located instead of in the court where the original case was heard, as at present. Circuit judges report to us that the present system of transporting inmates from the institutions all over the state for these proceedings, either as interested parties or as witnesses, creates security problems which perhaps could be eliminated if sufficient personnel

were provided for prosecution, defense and judging of these proceedings at the sites of the institutions themselves. This would mean an increased case load at those locations, but a corresponding decrease in other courts.

There also is need for additional probation and parole personnel. One circuit judge wrote me recently, "Another area in which we need additional help is in the field of probation, supervision and pre-sentence investigation. My experience, I am sure, is not unique in that my probation officer just does not have enough time to complete pre-sentence investigations quickly enough. This oftentimes causes a delay of six to eight weeks from the time a plea of guilty is entered until a pre-sentence investigation report is submitted." Sufficient personnel would eliminate some of the delay in the disposition of criminal cases as well as permitting better work in the area of rehabilitation of persons convicted of crime. A primary goal in a system of criminal jurisprudence, particularly in the case of juveniles and first offenders, is rehabilitation in order to avoid repetitive offenses by such persons.

Judges also repeatedly tell me that in the juvenile area they need more and better options than they now have in the disposition of these cases involving juveniles. One judge wrote, "The most crying need and greatest problem area to me is in the field of juvenile work."

Considerable attention is being devoted to this subject and hopefully the end result will be to provide a better system in which the desired result of returning the juveniles to society as useful citizens, rather than training them to continue in crime, will be achieved.

On the appellate level, the volume of cases also has been increasing steadily, particularly in the criminal field. As a result, the Supreme Court, while keeping. relatively current with criminal cases by giving them preferential settings, has been falling behind with civil cases. As of the first of October, after setting our dockets for the January, 1972, Session, the Supreme Court had 65 criminal and 157 civil cases which were ready for hearing but which have not been docketed. This situation will continue until the Amendment of Article V of the Constitution, adopted in August 1970, becomes effective on January 1, 1972. Beginning on that date, some of the cases which now come to the Supreme Court will go to one of the geographical divisions of the Court of Appeals. As a result, we gradually will work off our backlog of cases and become current again, but this will take some time.

However, the load of the Court of Appeals will be increased and it will need help in the form of additional personnel. As our Commissioners on the Supreme Court retire, the Court of Appeals will receive new judges in their place. For example, Judge Barrett is retiring January 1, 1972, and a new judgeship on the Court of Appeals at St. Louis is created as a result of that retirement. However, these additional judgeships will not be enough to enable the Court of Appeals to handle the increased load which they will have.

The only increase in the number of appellate judicial personnel in Missouri since 1927 has been the addition of two Commissioners on the St. Louis Court of Appeals. During that time, the number of circuit judges in the state has increased from 67 to 100. This has resulted in substantially increased judicial business on the trial level and necessarily more appeals. Additional appellate judges will be required.

Another need of the appellate courts is for law clerks. The General Assembly in 1970 heeded our request and started such a system by providing money for four law clerks for the Supreme Court. In that same year we obtained LEAA funds for three additional clerks, so that last year each Supreme Court judge had a law clerk. For the current year the Legislature again provided money for four law clerks and again we have LEAA funds for the other three. However, this LEAA financing necessarily is temporary and we will need appropriated funds for all our law clerks.

In addition. each Court of Appeals judge should have a law clerk. Every other state, except perhaps three or four at the most, have law clerks, and in many states the judges have two or three each. In the Federal Circuit Courts of Appeals, for example, each appellate judge has two law clerks. These clerks are of great assistance and enable the judge to handle more cases and to do a better job. I consider them to be essential for the efficient operation of our appellate courts.

In an attempt to expedite our appellate process, I have just inaugurated a new study of time involved in the disposition of appeals in all of our appellate courts. It will tell us the time required for each step of every case decided by one of our appellate courts and should show where any unnecessary delay occurs, enabling us to determine why and to take steps to remedy the situation.

In that connection, we know that one major cause for delay in the appellate process is the time required to obtain the typewritten transcript on appeal. Our rules presently provide that the transcript is to be filed within ninety days after the appeal is taken. In most cases that should be sufficient time. However, the circuit judge frequently is asked to grant an additional ninety days, and I am shocked by the large number of applications our court receives asking still further extensions on the basis that the reporter has been too busy to complete the transcript. Sometimes the periods required run nine months, a year or even a year and a half. During that time, the case is at a complete standstill. Nothing can be done about briefing. arguing or deciding the case. This kind of delay is intolerable and we must do something about it.

Recently, I had the Court Administrator send out a questionnaire to be completed by all reporters so as to show their system of reporting, whether they do all of their transcribing or hire transcribers, how many transcripts they had on order, when they had been ordered and when they would be completed. Some reporters had several transcripts on order, many ordered months before. One reporter had fifteen, the four earliest of which were ordered in January and March, 1971. Except for one of those transcripts, no estimated times of delivery were given.

One solution, of course, would be to have additional swing reporters who could substitute for regular reporters when they are quite busy. An additional solution would be to require that every reporter hire transcribers in sufficient number for the transcripts to be prepared promptly. Presently, many reporters do all of their own transcribing. These solutions, of course, involve additional personnel and additional expense, but the amount involved would not be great. In my judgment, these suggested changes are essential if we continue with the present system. One difficulty we will encounter is that there is a shortage of reporters nationally and it is not easy to find additional competent reporters. There are other possibilities. Some states use multichannel electronic reporting. Alaska uses that system exclusively. Tapes are sent into Anchorage to a

specialized transcribing section which then sends the completed transcript to the local court. I heard the Chief Justice of Alaska speak on the subject at the Conference of Chief Justices this summer, and he indicated that the system· works well and that they obtain transcripts in forty to fifty days. There are other developments such as an attachment for the stenotype machine which produces a magnetic tape which can be run through a computer without any manual transcribing whatever. Such a system could provide almost instant copy.

We are seeking from LEAA a grant with which to establish a pilot project in which we could test some of these new systems to determine, based on actual experience, whether they would be satisfactory. We have no intention of rushing in to adopt some untried, unproven system, but we would be remiss if we did not investigate and carefully study the various options available and do all within our power to eliminate this cause of delay.

I recognize that providing the additional personnel and equipment to permit disposition of criminal cases in the trial court and on appeal in a relatively short period of time, as Chief Justice Burger keeps urging, will cost money. In my judgment, however, substantial savings will result from such a system. For example, prompt trial of cases will result in much shorter periods of incarceration awaiting trial, thereby resulting in substantial savings. Furthermore, if such system is more effective as a deter rent, it would result in a reduction of the loss of life and property caused by crime, and such saving probably would far exceed the additional costs involved in operating such a judicial system.

In the May 1971 American Bar Association Journal an editorial states that "The reforms will come only if the public wills them and pays for them." If my premise is right that you and the public desire and will support needed judicial reform and are willing to pay therefor, then you should say so and should make those sentiments known to members of the General Assembly. To be fair, we must recognize the problems of the General Assembly when they have been presented in the past with requests for funds for some of the things of which I speak. It was confronted with demands for more and more services during a period of spiraling costs and there were not sufficient funds to provide all of the services requested. The General Assembly exercised its judgment in apportioning the funds available. On the other hand, I am convinced that the General Assembly desires to do that which their constituents desire, and if the public does want the kind of a judicial system of which I speak and is willing to pay therefor, I have no doubt that the General Assembly will take steps to secure necessary funds and make the needed appropriations.

Actually, the amount appropriated by the state for the judicial department is only a small percentage of the total general revenue of the state. I am informed that for the fiscal year 1971-72 the appropriations amounted to .99 of 1% of general revenue. Providing additional funds for the things of which I speak would not result in a disproportionate allocation of state funds to the operation of its judicial system.

I regret that time does not permit me to discuss other subjects and programs which affect the judiciary and its operations. These include the ongoing revision of our rules of practice and procedure, a plan to develop a trial desk book for use of all trial judges, studies of the possibility of simplified indictments and informations and standardized criminal instructions, the formation

of the State-Federal Council which seeks to resolve some of the problems of the two court systems, particularly in the post-conviction field, work on a new code of judicial ethics and rules for its enforcement, proposals to restructure our court system so as to eliminate the wasteful system of de novo trials on appeal and to have appeals from administrative agencies go direct to the appellate courts rather than first to the circuit court and then to the appellate court, as at present, to mention only a few.

I also have been urged to discuss at some length the subject of judicial compensation, a subject which understandably is of concern to all members of the judiciary. I haven't the time this morning to do that and, in addition, it is just as embarrassing for me to raise the subject with you as it is to go to the Legislature and urge them to do something about our salaries. I think I shall say no more than to suggest to you that this is a problem area which merits attention.

The needs and problems of which I have spoken are not just the courts' problems. They are your problems and the public's as well. They merit the attention of everyone. The circuit committees which President Oliver has proposed could be of great assistance in identifying and solving problems of each circuit, some of which are of statewide scope, and I hope that all circuits will form such a committee if they have not already done so.

We will have to be innovative and receptive to improvement in our methods and procedures, making sure, of course, that what we substitute is sound and will result in speeding up the disposition of the business of the courts. However, in the age of instant coffee, instant breakfast and instant communication, we must be mindful that we cannot have instant justice because the administration of justice involves reasoning and it, like gestation, takes time. Instant justice is for totalitarian states.

I believe I speak for the entire judiciary of Missouri when I say that we are anxious to make our court system second to none in the quality of justice administered and in the time which it requires. We stand ready to cooperate in seeking to do those things necessary to that end. I solicit your ideas, your suggestions and your active support. Together, let's get on with the job at hand.