State of the Judiciary
Chief Justice Armis E. Hawkins, Mississippi Supreme Court
Message to the Legislature
March 24, 1993

Lieutenant Governor Briggs, Speaker Ford, Members of the House and Senate, Chief Justices Roy Noble Lee and Harry Walker, my fellow Justices, Ladies and Gentlemen:

On behalf of the Justices of the Mississippi Supreme Court, and all the Judges of this State, permit me to express our profound gratitude to the Lieutenant Governor, the Speaker and the members of the Legislature for this invitation to appear before you and address the concerns of the Judicial Branch. It also happens to be the greatest personal honor in my life for me, even though this is tempered with the recognition that I do not appear to on account of my own merit, but because at this moment in time I happen to be Chief Justice of the Court.

I assure you I will not long trespass on your valuable time. The Judiciary is, of course, one of the three great branches in our government tree. Alexander Hamilton wrote in the Federalist Papers, however, that the Judicial Branch is the "least dangerous" branch of government, intended to be the weakest of the three. The founding fathers undoubtedly wanted it that way. The founding fathers, all Biblical scholars, recalled there was a period in Old Testament history when Israel was ruled by judges. They also no doubt recalled the first sentence in the Book of Ruth: "When the judge ruled, there was famine in the land."

Let me assure you that your present chief justice, at least on this verse of scripture, believes in the literal translation.

Last year was the first time in our State history when the Chief Justice of the Supreme Court was invited to speak on behalf of the judiciary. We do not want to wear out our welcome.

Although I never had the honor of serving in the legislature, I have been close personal friends with dozens, scores of your members over the past half century.

I remember when Ken Toler used to cover you for the Commercial Appeal, and when that paper and the Jackson Daily News were the main purveyors of public opinion in this state. We go back a long ways.

I have noticed over the years that most of the non-members who have appeared before you were asking you to do something. In a sense, I guess that this is partially true today, but primarily the Court today wants to thank you.

We cannot yet thank you for passing it, because that remains to be seen, but not in my lifetime has there been such far reaching legislation affecting the Judicial Branch of Government as is now being seriously considered by this body. This Legislation, if enacted into law, will be of incalculable benefit to our people.

Along with other important features, House Bill 548 does two things which I want to emphasize today: it creates a court of appeals, in addition to the Supreme Court, for which there has been a critical need for the past 15 years.

It creates a single administrative oversight over all trial courts to ensure that the judicial machinery at the trial level is hitting on all cylinders. This will greatly reduce delays in getting cases disposed of at the trial level, another source of chronic frustration by our citizens. There are over 125,000 lawsuits filed each year in Mississippi.

Never before in our state history has there been such a major undertaking to improve the administration of justice as we are witnessing the session. Never.

What we are now witnessing in this Body did not just happen. We cannot substantially improve justice by hit or miss corrections. We need a vision, and then a commitment to make the vision of today the tradition of tomorrow. Legislation was authorized in 1989 to make a study for an appellate court, and members of the Supreme Court, outstanding lawyers, and members of the legislature met during the summer months that year on into the fall. There were you, Lieutenant, Governor Briggs, Senator Pud Graham, Senators Crook, Lambert, and Williams. From the House there were Representatives Cecil Simmons, who presided, Ed Perry, Percy Watson, Mike Mills. Luther Munford and Erskine Wells, eminent attorneys, and three members of our Court also labored with the committee. Amy Witten, then our Court Administrator, and Legislative Staff Attorney William Neely served as the committee staff.

The committee recognized the acute need for an appellate court, but recommended to the legislature a trial run of three magistrates. The magistrate system has been put in place and the three magistrates rendered a most valued and dedicated service. We are thankful for their service, but the magistrate system was never intended to be the final solution, and only to tide us over until the judiciary could recommend and you consider the kind of appellate court which should be created.

Our Court studied the appellate system in all states. In making studies, Justice Michael Sullivan drove to Little Rock and reviewed the Arkansas appellate system; Justice Fred Banks and I went to Des Moines and talked with justices, appeal judges, clerks, staff attorneys, the court administrator, and even the secretaries. We looked at divided appellate jurisdiction, district appeal courts, two-tiered appeals – the strengths and weaknesses of each – and finally concluded the appellate system in Iowa is best suited for Mississippi. Before reaching this decision Chief Justice Roy Noble Lee had lengthy discussions with fellow chief justices at their semi-annual meetings, which gave him invaluable insight, and he was convinced Iowa was the way to go. While the legislation before you has been called the "Iowa plan," it could just as aptly be called the "Roy Noble Lee plan." This is what he recommended to you before his retirement in December last year, and is essentially the legislation you now consider.

We do not say this proposal is perfect, nor that there may not be changes needed from time to time. We do submit, however, that it is the best system we have to recommend after serious study. Moreover, this is a legislatively-created court, and the legislature is perfectly free to make adjustments as needed.

Mr. Speaker, you and Judiciary Chairman Blackmon and Mills have been gracious to meet with me on this most important matter, as have you, Governor Briggs and Senator Huggins. I have also had meetings with Chairman Mills and members of his committee, Representatives John Reeves, Mark Garriga, and Ken Stribling, and also with Senator Hob Bryan. At these meetings I gathered a consensus of feeling among the members of this Body that now is the time to put a court of appeals in place. Permit me today to express to you, my personal gratitude for the service you have rendered to the Judiciary and the state in your concern for this Court.

Far beyond any meeting or conversations I have had, however, is that every member of the Supreme Court, I know, has talked with individual members of this Body, and appeared before your committees, and have expressed to you our deep appreciation.

Bar President Grady Tollison and his associate Allan Alexander, and incoming bar president David Smith have literally put in hundreds of hours attending legislative meetings and other public functions throughout the state to assist in alerting the public of the need for this court reform. On behalf of the court, I thank them today.

I believe any explanation should be as plain and simple as the subject matter will permit, and I am going to talk mainly now, for a few moments to the members of this body, who are not lawyers, because I do not want you thinking for one moment this is some "lawyers or judges" bill. This is the bill for <u>your</u> people, to relieve the suffering and misery of men, women, and children, you serve.

I hold here in my hand a court record and briefs filed by the attorneys. It is an average record, not a big one, _____ volumes, _____ odd pages. I asked our clerk, Linda Stone, to simply hand me one on my way over here today.

This record, as every record, involved people like you and me. It could be a divorce; a bitter child custody dispute; a man or woman disfigured or maimed through another's negligence; a man injured on the job; a man on the way to the penitentiary, as well as his victim – some other man, woman, or a little child. It could be a property line dispute, a will contest between brothers and sisters. It could be from any area of human activity: industry, commerce, government, education, domestic, or criminal, but it always involves people, and human conduct from cradle to the grave.

And the people involved in this record were in misery as long as this case was pending.

No one I know wants to have to go to court to obtain justice, but would much prefer an agreed settlement out of court. No one I know wants to be sued. Put yourself in the place of the people in one of these records. How would you like it to arrive home this weekend and have the Sheriff's deliver you a summons inviting you to be a guest at the next court term?

A lawsuit is the last resort, when nothing else works.

As most of you are already aware, people involved in lawsuits have had their normal lives yanked out of kilter. They live in an unknown, uncertain, anxious, worrying set of circumstances, just as a serious accident or illness disrupts a life pattern. And both sides desperately want that lawsuit over and done with, to end the uncertainty and worrying, and to get on with their lives.

It is cruel to unnecessarily delay concluding a lawsuit.

Moreover, there is a right to a trial without delay, steeped in centuries of history. The English Magna Carta written in 1215 provides “to no one will we delay right or justice." Section 24 of our constitution commands that “right and justice shall be administered without sale, denial, or delay."

Even more vitals and a speedy trial is a fair and impartial trial, with both sides being treated fairly, honorably, and decently, and when it is all over, reaching a fair and just result.

The Judicial Branch of our Government has no relevance unless it protects and improves justice in our state. We have courts only because people have problems. The judicial branch justifies its existence only when it solves problems. Justice alone is the only product of our courts, our only goal. There is no such thing as half-way “justice”. It is either one hundred percent fair and just, or not “justice” at all.

The record I have shown you is an ordinary-sized record, some are much longer, anywhere from eight to twenty or more volumes in length. If that critically important fair and just result is to be reached, it is necessary that the Justice to whom the record is assigned know precisely what the case is all about, and the people involved. This requires time, time first to read the record, study the attorney's briefs, go to the law books and statutes, time to reflect, study, and examine his thoughts. And often times to pray.

The question you need answered is how many of these cases can a Supreme Court judge be assigned a year and still have enough time to reach a just result in not just some but all.

I have found from twelve years as a member of the court that about 40 cases a year on average is my efficiency limit. Now there are judges smarter and quicker than I who possibly can average 45 a year, and some especially brilliant who might even take on as high as 50, but I assure you that approaches the absolute maximum. Beyond that somebody else is doing work the Justice was elected to be doing himself.

I could handle more than 40 cases a year if that were all required of me. One day a week must be spent by each justice in a conference with all justices; another day must be spent in a panel conference with the two other justices on his panel; at least another half day is spent on motions and administrative matters. Not only this, but every Justice as a check judge should check on the work of another, be his backup. A decision on appeal is not supposed to be the decision of just one Justice, but at least three. Also, every justice must review the opinions of every other Justice, and frequently there are over 100 pages of quite difficult subject matter to read and study each week. Beyond the cases you can see the number of motions we are required to rule upon each year. Many are simple, some enormously complex, but all require time. As you can see, we must rule upon over 1,000 motions a year. Even by working weekends, as most Justices do, either by taking records home or working at the office, this leaves about one and a half to two days a week at most to think about one's own record. This is why we have scheduled breaks, to try and keep abreast.

If I am forced to take on more cases than I have time to handle, that in turn forces me to renege on one or more of these vital obligations that I have as a justice.

Every case I am required to take beyond my capacity is fraught with the danger that I will miss something important. And when I do miss something important, it means that some Mississippi citizen may very well suffer, suffer irreparable, irremediable, and permanent harm and injustice. On many nights I awaken with these troubling thoughts.

I do not want this, and you certainly do not want it, either.

I have given you this background in order that every member of this Body can comprehend the full meaning of the simple, but melancholy statistics I have passed out for you today. As you can see, even going back several years before I joined the court in 1981, the Justices were already dangerously overloaded.

You will see that in 1981 each justice averaged 68 cases. The court may very well have been woefully derelict and not sounding the alarm to the public years ago. Justices are traditionally conservative and consistently optimistic, however, and we hoped the situation would improve. Deplorably, a chronically bad situation has deteriorated, now having around 100 a year! This is begging for catastrophe.

Going through the agony of a trial is bad enough, but it is not over then. Look at the time parties to lawsuits must await in misery a decision of their case on appeal. As you can see from page 2 of the handout, for the years 1989 to 1992 it took on average two years to conclude a case on appeal. Suppose you were the one waiting to get on with your life? There is justifiable anger and resentment by people who cannot get their cases over and done with.

The magistrates from the year 1990 through 1992 kept our judicial boat from absolute swamping.

I must tell you that we have caught some grievous mistakes, caused altogether from taking on more cases than we can competently and efficiently handle. Even more deplorable are those many errors we may not have caught.

I have reached the conclusion that, in choosing between the misery caused by delay in concluding a case, and the risk of disaster to one of the parties caused by lack of knowledge about the case, it is better that the Court guard against the latter. We must reduce the number of cases we have attempted to decide, and concentrate on deciding those we do decide correctly. We cannot do both.

Knowing that he may have blundered and irreparably harmed a litigant caused solely by the lack of time spent in studying the case is too much a load to place on any Justice's conscience.

I hope this background helps all of you to clearly see why the citizens of the state desperately need an additional court of appeals. It also will perhaps enable the members of this Honorable Body who have labored so valiantly in the vineyard of creating a court of appeals to understand the depth of the appreciation each and every member of the Supreme Court feels towards you.

An additional court of appeals is not simply needed now; it has been critically needed for years.

As to the portion of H. B. 548, which addresses reducing time and expense in getting a case to trial in the circuit and chancery courts, this, to – as I have already stated – will be most helpful. I would only add that beyond simply gathering all the information needed in order to decide what steps need to be taken to reduce trial court backlogs, you also provide the teeth to take the proper remedial steps to correct these delays.

Finally, I briefly mentioned our request for appropriations. Our total 1994 fiscal year budget is $4,515,878. $455,387 of this sum, however, will come from the court fees, grants, and other private funds, not the state treasury. We are requesting that you appropriate $4,060,491. Now, $4,060,491 is a lot of money, but it is a modest sum to appropriate to operate the Supreme Court of Mississippi, with its 75 employees and enormous law library used by attorneys throughout the state. As you know, it is not even a fourth of one-percent of the total $2 billion state budget.

These funds are the lifeblood of our Court, and we need every dollar. We will spend it wisely and prudently, I assure you. The people you and I serve will most assuredly suffer if we are unable to finance critically-needed services. Because the total appropriation needed is a modest sum, denial of any of these funds carries with it a far greater potential for harm.

Believe me, I am not being facetious when I say that the Mississippi Supreme Court does not simply need $4,060,490 appropriated from this body. We need $4,060,491, and if you should only appropriate $4,060,490, you will be knocking off a dollar the people of the state need.

While the judiciary is a separate branch of government, and there must upon occasion be some tension and disagreement between our Branches, we are also partners with you in the enterprise of providing good government. All members of our Court personally pledge to work in harmony and tandem with the Honorable Members of this Body in a grand partnership to provide the people of Mississippi honest, decent, and efficient government.

In conclusion, permit a 72-year-old small town lawyer and transient member of this court to make a personal observation.

It could be just a little beyond my time, but I am convinced this state has a great future, one which we should approach with pride and confidence. I base this upon two factors: our location and the character of our people. One of the best kept secrets today is that Mississippi is one of the best places in the United States to live. There are no better people anywhere, and the harmony among our people will grow with the years.

If we educate our young, there is no reason why Mississippi will not at long last take her proper place economically among the states of this Nation, instead of lagging at or near the bottom.

I have great hopes for our future; I am proud to be a Mississippian.

Thank you.