

State of the Judiciary
Chief Justice Armis E. Hawkins
March 21, 1995
Presented to Mississippi Legislature

President Pro Tempore Graham, Speaker Ford, fellow Justices, and distinguished members of the Mississippi Legislature:

Two years ago you graciously invited me to speak to you on the State of the Judiciary, and now, once again, you have paid me the same high honor. Over the 50 odd years of my adulthood, I have occasionally spoken at public functions as you might well imagine. I have had the pleasure of speaking to a Kiwanis or Rotary Club or American Legion Post here or there. And, I have spoken to the Calhoun Association and the West Chickasaw Chitterling Supper, but I must say you have an added distinction. You are the first group ever to invite me back.

As a state Chief Justice I receive a copy of all addresses by chief justices to their Legislators. It is a source of immense pride to me today to tell you I am the only chief justice speaking to the Legislature this year who is not having to ask for more judges, staff, equipment or funds than what has already been authorized. You have removed any excuse for the Judicial Branch failing to process cases without undue delay or unnecessary clogging of dockets. In the four-year tenure of this Legislature you have wrought more changes, and done more to improve the administration of justice than any other time in the entire 175-year history of this State. There have been leaders among you, but in looking at this roster I realize how many of you I personally know who put your shoulders to the wheel. I simply do not have the time to individually thank each of you today. I wish I did. The people and especially the Judicial Branch owe you an eternal debt of gratitude.

Circulated to you today are statistics and a brief summary encompassing the activities of the Supreme Court, the Court of Appeals and the AOC. These statistics give you the performance of the Supreme Court beginning in 1991 through February 1995. Appeals have averaged just over 1,000 per year. As you will note on page 2, there were 552 cases decided on the merits in 1994, an average of 61 cases per Justice. In 1993 there were 497 cases decided, both years lower than 1991 and 1992. The Court found that quality was compromised in attempting to decide too many cases. On page 4 you can see that last year the Court also ruled on almost 3,000 motions.

We affirmed over 80% of the criminal cases and over 60% of the civil.

Page 3 gives the depressing information of the number of days from date of trial court judgment to decision in the Supreme Court, 2 and ½ to 3 years.

Most important to you is the prognosis of the number of cases which will be decided by the Supreme Court and the newly-created Court of Appeals, the reason for creation of the court. On January 1 there were 2,100 cases on appeal, and this year we expect around 1,200 new appeals being filed, making a total of 3,310. This increase in filing will come about from the trial courts having more judges, hearing more cases, and reducing their backlog, and hence more cases to appeal. This year we hope to dispose of 850 cases in the Supreme Court and Judge Frasier

expects their court to dispose of 500, making a total of 1,350. Subtracting 1,350 from 3,310 leaves 1960 cases pending January 1 of next year, still an unhealthy backlog. You must remember, however, that the court of appeals is just now getting started. In 1996 to 2 quarts should decide at least 1,750 cases, which would mean, if filings continue as expected, a further reduction in backlog to 1,400 cases at the end of 1996.

Now, I would like to tell you that the backlog of cases could be eliminated much sooner, but you must remember that it took many years for this backlog to accumulate, and it cannot be eliminated quickly without an inexcusable sacrifice in quality. I can tell you that hopefully the chief justice who stands here two years from today can inform you the reservoir of backlog will be substantially empty to 1997. I can also tell you that, in the absence of some totally unexpected series of events, each year will be much better than the previous year and eliminating the backlog. That, I submit, is what at the minimum you are entitled from us, the light at the end of the tunnel will be closer, clearer and brighter with each passing month.

I cannot speak to highly of the membership on the Court of Appeals; the people have chosen wisely. Judges Oliver Diaz, James Thomas, Mary Libby Payne, Billy Bridges, Leslie Southwick, Frank Barber, Leslie King, Roger McMillin, Tom Coleman and Chief Judge John Frasier each and all have the ability in character to join the ranks of our states' most distinguished tourists.

In the trial courts you have increased the circuit judges from 40 to 48, and chancellors from 39 to 45. As you can see from Martin Smith's report, every judge can have available the services of a law clerk, the benefit of WESTLAW research on a computer, the greatest tool in research since the printing press. You ladies and gentlemen of the legislature have provided the judiciary with all the tools they should need to decide cases with promptness, and I thank you for this. The AOC, under Director Smith and his staff, will provide statistical information on the performance of each and every judge in this state for evaluation and accountability by the legislature and any interested citizen.

You have indeed done your work in preparing the Mississippi courts for the 21st century.

I would like nothing better than to conclude my remarks now without giving you honorable members of the legislature any additional assignment. Regrettably, it is my duty to inform you of another grave threat to our judiciary, perhaps the greatest in its history. The good news is it will not cost you any extra money.

Let me give it to you.

The first factor is that box all of us having our homes, a television set. I need not tell you that television has changed the lives of Americans every bit as much as the automobile. It is so powerful that governors, senators, even the president are eager to appear on news and talk shows. Leading officials are mere supplicants to the Dan Rathers, Tom Brokaws and Larry Kings of the airwaves.

Spot television ads are also powerful. Indeed, they have become the one essential vehicle by which candidates for district and statewide officers get themselves elected. They are also

expensive, increasing the cost of a campaign at least tenfold. A race that could have been made for \$25-\$30,000 is escalated to \$300,000-\$400,000 as you well know.

And this brings us to the second factor. What has this done to judicial contests?

I want you to think a moment about what a judge is. A judge has no patronage. He will hire no employees or appoint heads of agencies as a governor. He will neither introduced nor passed laws as a legislator. The only product of a judge is justice, how he decides lawsuits. They should be of no special to benefit to either side, because a judge takes a solemn oath to treat all, rich and poor alike, impartially and fairly.

And, if the people of our state are to respect our courts, and without it respect our system of justice will surely fail, our judges must treat each side and every case evenly, fairly and impartially. Absolute impartiality is the keystone to justice. A judge who cannot be impartial is nothing.

Lawyers and citizens alike have a right, indeed to duty, to inquire into a candidate for judicial office's character, ability, philosophy of the law, judgment and temperament. No one, however, has a right to ask a judge to decide in his favor because of the personal relationship between him and the judge. When lawyers, doctors, insurance executives or anyone else with a special interest make individual contributions of several thousand dollars to the judge's campaign, it corrodes the only product the judge has, justice and fair play. Impartiality is destroyed. How would you like to be in a lawsuit knowing that someone on the other side had donated \$5000 to the judge's campaign?

Now let me take you on a trip to Texas, and see what has happened there.

Texas appellate judges are elected for six-year terms. And state elections, beginning in January 1987 through 1994, almost \$50 million has been contributed to these judges' races. These contributions do not include millions more spent by PACs to back individual slates of judicial candidates. Neither does it include millions more spent in trial court races in Texas.

Contributions by individuals and single firms in psalms of \$5, \$10, \$15, \$25,000 have not at all been unusual. Indeed, individual contributions have gone as high as \$50,000.

In the 1992 race for chief justice of the Texas Supreme Court, the winner spent over \$2 and ½ million and the loser just over \$1 million. Last year a candidate for one post spent over \$3 million.

Last year, 1994, there were five Supreme Court races. As of June 30, there were 54 law firms with cases awaiting decision by the Court, and as of that date these firms had contributed over \$560 thousand to these five Justices' campaigns, an average of a little over \$10 thousand per firm. What kind of justice could the litigants in these cases expect?

Now, human nature being what it is, I have no doubt that the caliber of the average man or woman who aspires to be a judge in Texas is every bit as decent and well-intentioned as the

average candidate for the judiciary in Mississippi. I have long observed that folks are pretty well the same everywhere, at least throughout the South. And it is the system, not the character of the individuals, which has corroded their impartiality.

What kind of super human being would it take to be absolutely fair and impartial in deciding a case when one side has paid \$5 or \$10,000 to his political campaign? I know I could not.

How much would you, or could you trust an umpire or referee in some professional game who has been paid \$5 or \$10,000 from one side?

In our prayers we ask that we be lead not into temptation, that's recognizing that each of us can be weak, each a sinner. This is a system in Texas that guarantees corruption of the judicial function.

Indeed let me give you an example. An attorney in San Antonio contributed thousands of dollars to the political campaigns of two appellate Court judges, in fact furnished one-fifth of the entire cost of one candidate's campaign. Thereafter, a motion was made to disqualify these judges from considering this attorney's case on appeal. The court rejected the motion. The court reasoned that because the judges would not receive any benefit from the decision, there was no ethical reason for either to disqualify himself. This of course is absurd reasoning. By the same token a referee could argue that he would gain nothing from his ruling in a professional game. This is absurd. Of course he would not I when he had already been paid. In this state we have a statute making it a penitentiary offense for any person to offer, or for a candidate for public service commissioner to accept any campaign contribution from any person representing a public utility, telephone company or a common carrier. Now, of course, I know that no commissioner is going to violate this law, but suppose one did and made the argument the judges made in Texas? How far do you suppose he would get?

As might be expected, a bidding war has developed in Texas. The successful races have almost altogether been waged by the side that spent the most.

Another unfortunate practice in Texas is for trial judges to build up "war chests," to ward off potential opponents, but which in fact are a source of funds for other purposes. For example, one trial judge raised over \$200,000 from October 1990 through July 1991, even though he had no opponent in the November 1990 election. What's more, he threw another party in October 1991 raising another \$135 thousand.

One judge spent over \$4 thousand in season tickets to a professional ball team for friends and supporters. Money raised in this manner has been used by Texas judges to pay for personal automobiles, put family members on a payroll, vacations, and make whopping contributions to other political contests. Simply put, these "war chests" have been another source of personal income.

How would you like to hear that your circuit judge or chancellor was engaging in practices of this sort?

Why, of all people, should a judge be soliciting money when there is no political race going on? Why should a judge be soliciting money at all?

We need not go to Texas for these horror stories. In Alabama, just to the east of us, they had a bloodbath as you know last year in races for the Alabama Supreme Court. In two of those races, the candidate spent over three-quarters of \$1 million, each. Contributions by individuals went as high as \$30 thousand to a candidate. And as I speak the outcome of the election for chief justice of the Alabama Supreme Court is undecided, and it's pending in a federal court [illegible]. How would you like to have a federal court having to decide who was going to serve as Chief Justice of the Mississippi Supreme Court?

As might be expected, the races in Texas and Alabama have also become bitter and nasty, a toxic dump of name calling. I am absolutely certain that every member of this august body to the last man or woman would consider what has happened in Texas a nightmare of the worst kind.

We do have two safeguards in Mississippi. Our appellate judges at least do not have to run statewide, but in multi county districts, and last year you wisely made judicial contests non-partisan.

Yet I must tell you that our election laws, and our judicial code, is no more strict than that of Alabama and Texas. And we are on the same track, just like a steam locomotive. We are headed the same way. We, too, can't expect the same kinds of experience unless you address the problem.

Fair play in our courts is a God given right, and I ask you to keep the money changers out of our temples of justice.

In closing now permit me a word of special thanks to my home legislators, Senator Armstrong and Representatives Blue and Bowles, each of whom I am proud to call my friend. I have never had to earwig or go to either of them and ask him to support our court. I deeply appreciate the confidence each has shown that if we did not need something we would not be asking for it.

As you campaign this summer, one of the major questions on the people's mind will be, "What is the future for Mississippi?" What will you answer?

Permit me to tell you what "The Economist," a leading publication on business, finance and industry, had to say. This is published in London, and studied by leaders in industry and banking throughout the world. In what region do you think a recent article in this magazine gave as the best economic opportunity in the United States? The wealthy Northeast? The mighty Midwest? What about the fabulous West Coast? No, it was the South.

And, where in the South do you think it gave as the state with the greatest promise? You got it: Mississippi. The authors gave as one of the major reasons for this development The Educational Reform Act of 1982, which so many of you are responsible for. So you see, Mr. pro tem and Mr. speaker what you do in this body is important.

The next time you hear someone saying how many things we do wrong in Mississippi, you might remember there are also some pretty smart people who think we are doing some things right, mighty right. Our State has a future with unlimited possibilities. This is your opportunity, this is your challenge. Tell the people this.

On behalf of our Court, again I thank you for giving us your time today.