State of the Judiciary
Chief Justice Norman M. Krivosha, Nebraska Supreme Court
Message to the Legislature
January 19, 1981

Mr. President, Mr. Speaker, Distinguished Senators, Fellow Nebraskans:

May I begin this first State of the Judiciary Message by expressing to each of you the Court's profound appreciation for your very kind invitation and for the opportunity of sharing with you the state of the Nebraska Judiciary.

This report which I present to you this morning is the report of the Supreme Court of Nebraska and not just the report of the Chief Justice. Just as a board of directors operates with its appointed members and a chairman of the board, so too does your Supreme Court operate. We are a collegial court in which all decisions, both those involving cases pending before us and those affecting the administrative process are reached as a result of a majority of the Court concurring in the action. And while there may not always be unanimity among the Court as to how each and every problem now facing the judicial system in Nebraska should be resolved, nevertheless, each and every member of the Court participates in the decision-making process.

This is the first opportunity that I have had to share with you the Court's thoughts as to what the relationship between the legislative branch of government and the judicial branch of government should be. You are aware, I am sure, that the Constitution imposes upon the Supreme Court two very separate and distinct functions. On the one hand, we are the highest court of this State and as such are assigned by Article V of our constitution the responsibility of reviewing each and every lawsuit which the parties may choose to bring to our Court by way of appeal. In that regard and in connection with that function, the work of this Court and all other courts of this State must of necessity be independent from all outside pressures. It is this very independence which Alexis DeTocqueville, writing more than 100 years ago in his now famous work "Democracy in America," saw as one of the system's most valuable attributes.

In making his observations, he wrote, and I quote: "I have thought it right to devote a separate chapter to the judicial authorities of the United States, lest their great political importance should be lessened in the reader's eyes by a merely incidental mention of them. Confederations have existed in other countries besides America; I have seen Republics elsewhere than upon the shores of the new world alone; the representative system of government has been adopted in several states of Europe; but I am not aware that any nation of the globe has heretofore organized a judicial power in the same manner as the Americans." We must not either ignore or forget this uniqueness of our system. Courts by design do not have constituencies. They are not created to represent the public at large. They have been created by you and the people to represent the law. We are indeed a country of laws and not of men. That distinction plays a significant role in protecting each of us from arbitrary and capricious action of government known to most of the rest of the world.

If the evidence introduced at trial is insufficient to sustain the government's burden to prove guilt beyond a reasonable doubt, courts have no choice but to acquit. If evidence is obtained in violation of an accused's constitutional rights, courts have no choice but to suppress the evidence. No public pressure can or should change that fact. That is the essence of our legal system.

All of us today are angry and upset by the violence and unlawfulness being experienced in our country. But neither the blame for its existence nor the failure to eliminate such crime and violence can be laid at the courthouse door. Courts do not enact constitutions and courts do not pass legislation. The ability of a felon once convicted to obtain his release from prison, at a time far in advance of the announced minimum sentence, is beyond the control of the courts. Statutory "good-time" enacted by Legislatures and decisions of parole boards created by Legislatures have much more to say about a prisoner's release than do courts. Statutes requiring that the minimum sentence imposed by a court may not be more than one-third of the maximum cannot be ignored by our courts. And it is boards created by statute and not courts who, after a convicted murderer has been sentenced to be imprisoned for his natural life, commute that life sentence to a term certain, thereby often making the individual eligible for release after 10 or 12 years. If minimum sentences are thought to be too lenient then legislation should be enacted to increase the minimum. I am not advocating such changes. Those decisions are for you. I merely point out that the control over minimum punishment is in your hands, subject only to the dictates of the Eighth Amendment prohibiting cruel and unusual punishment.

The fact of the matter is that the problem of crime and violence in America is a social problem which each of us working together must seek to solve. No one branch of government holds the exclusive key to the solution. Yet, we should not, in our anger and frustration, seek to destroy the very system which DeTocqueville observed and which time has proven is our fortress of freedom. The courts' independence in the decision-making process serves as a significant guardian of that fortress.

There is, however, a second side to the obligations and duties of the Supreme Court and it is this second side which I would like to now address. In 1970 the citizens of the State of Nebraska amended Article V, Section 1, of our State Constitution to provide that the general administrative authority over all courts in this State was to be vested in the Supreme Court and to be exercised by the Chief Justice. Moreover, the article provided that the Chief Justice was to be the executive head of the courts. In a real sense, the Supreme Court has become an Executive Branch of government with regard to the administration of the courts. In those few lines of the Constitution the people of the State of Nebraska placed upon the Supreme Court and its Chief Justice the responsibility for administering and supervising each and every court within the State of Nebraska and all of its personnel.

Yet, that function cannot be performed either alone or in a vacuum. The Constitution has likewise vested in this body, the Legislature, the general authority to adopt and pass laws; to approve budgets; and to set salaries. It should therefore be clear that just as the Executive Branch of government cannot perform its administrative functions without establishing lines of communication with the Legislature, so too the Judicial Branch of government cannot fulfill its administrative

functions over the courts without establishing adequate lines of communications with the Legislature. Not only does the clear logic of it compel that conclusion, but, likewise, Article V, Section 25, of our Constitution specifically provides that for the purpose of affecting the administration of justice, the Court may, and when requested by the Legislature, shall certify to the Legislature its conclusions as to desirable amendments or changes in the general laws governing the practice and proceedings in the courts.

What I simply mean to indicate to you is that the Supreme Court is obligated to do more than pass judgment on cases coming before it. It must administer the courts either by promulgating rules under its constitutional, statutory, or inherent authority or come to this body and seek legislative action. For that reason we desire to establish open lines of communication between our two branches of government insofar as the administration of the courts are concerned. We ask to be able to come to you and, as the Constitution suggests, indicate to you when we believe changes need to be made. To be sure, the decision as to whether those changes should be made must, in the final analysis, be yours. But if you are to adequately and effectively carry out your function and we are to adequately and effectively carry out our function, we must have the opportunity of discussing these matters with each other. And, likewise, you must be at liberty and comfortable to discuss with us problems concerning you and affecting the administration of justice so that we might provide you with the benefit of our knowledge and experience, if any, in the area.

To be sure, the Court must not pass upon the specific language of a proposal unless and until the matter, in fact, is brought before the Court in a proper action. But, it appears to us to make good sense and to be in the public's best interest if we can at least discuss with each other general concepts and attempt to arrive at mutual solutions to these problems.

To that end, I am authorized on behalf of the court to invite you to call upon us at your leisure whenever you believe that an appropriate matter needs discussion. As I have indicated, we cannot and should not pass upon the validity of specific language, but we are desirous of providing you with what information and background we may have. And likewise, we would ask you to consider extending to us a similar invitation so that, as the Constitution contemplates, we may, indeed, come to you when we believe that amendments or changes involving the administration of justice are desirable. Such action will not, in any manner, affect either branch of government.

No one for a moment has suggested that either the Executive Branch or the Legislative Branch of government in this State have ever sacrificed their independence by maintaining a relationship, one with the other. I would suggest to you that it will likewise be true that neither the Legislature nor the Judiciary will sacrifice any of its independence if a similar relationship is established between those two branches of government.

Having said that then, I would now like to share with you certain facts concerning the state of the Judiciary. Were I to attempt to provide you in detail at this time with all of the various activities of the Judiciary, I fear that I would have more than overstayed my welcome. I wish not to do so. For that reason, I shall attempt at this time to highlight for you the state of the Judiciary, its

activities and future goals, and invite you to obtain from the Court such other and additional information as you may desire with regard to these various matters.

As I start to think about the condition of the Judiciary within our State and the work yet waiting to be done, I am reminded of the very wonderful story concerning the former English Prime Minister, Winston Churchill. The story is told that a group of British subjects paid visit to Churchill, the purpose being to express their displeasure with his behavior. During the course of the discussion, one of the subjects turned to him and said, "Mr. Prime Minister, we are embarrassed by your behavior--your cigar smoking and your brandy drinking. It is reported, Mr. Prime Minister, that you have consumed enough brandy in your lifetime to fill this room to the windowsills." At which point Churchill, it is reported, looked about the room, turned to the subjects and said, "My God, so much yet to do, so little time to do it." Indeed, that is the situation with the Judiciary of this State.

On the positive side, I think that I can report to you without fear of contradiction that the Judiciary of Nebraska, by and large, stands equal or superior to any other courts of this land. While there are exceptions, and those exceptions must be addressed, by and large, the Judiciary of Nebraska is composed of men and women of high integrity, moral character, legal knowledge, and devotion to the principles of equality before the law. In this day and age, that is not something to be lightly considered or quickly overlooked. To be sure, there are problems which we must address, but I am confident that we have both the personnel and the desire to meet the challenges and overcome them. Our Supreme Court is a leader among state courts. Its decisions are well-received and oftentimes cited as authority elsewhere. The individual members of the Court, present company excepted, are recognized nationally for their legal acumen. We need not take a back seat to any other court. We are among the leaders. And, likewise, though faced with numerous obstacles, we have continued to maintain a State Judiciary at the other levels of court which likewise is equal to or better than most state court systems. One may take issue with a judge here or there for reasons real or otherwise, but in the main I am proud to serve as Chief Justice of this state system and I publicly thank each judge of Nebraska for his or her service on the bench. Let me now share with you some of the problems facing the Judiciary now and in the near future.

In both my annual address delivered to the House of Delegates of the Nebraska State Bar Association in October of 1979 and the mid-year address delivered in April of 1980, I shared with the members of the House of Delegates our concern about the condition of the Supreme Court docket. Specifically, in April of 1980 I said, and l quote, "While we have reported to you (members of the House of Delegates) that much progress has been made in improving the docket condition, I must, nevertheless, warn you that there are signs appearing which indicate to us that further consideration must be given and further devices considered if we are to succeed in maintaining a reasonably current docket."

I regret to advise you that those signs which we observed then continue to grow as do our concerns. On January 1, of this year, there was a total of 622 cases docketed in the Supreme Court as compared to 494 cases just one year ago. Likewise, there were 205 cases at issue, unsubmitted, as compared to but 150 just one year ago. And most alarming of all is the statistic which indicates that during the months of September, October, November and December, new

cases were filed with the Supreme Court at an average of 76 appeals per month as compared to some 52 per month for the same time a year ago. Should this trend continue, and there is no reason to believe that it will not, it should be apparent to everyone that in the not too distant future a severe and critical condition would exist. Should we continue to receive 75 appeals a month, we would have more than 900 cases per year on the Court docket. No appellate court can dispose of that number of cases and do an adequate job. We are, nevertheless, committed to the view that to the extent humanly possible, we will attempt to anticipate problems and design solutions to those problems before we are submerged into a crisis. We, nevertheless, believe that we must share those problems with you because it may very well be that ultimately we will need your aid and assistance in resolving those problems.

As is so often the case, identifying the problem is much easier than designing the solution. At this point in time we are relatively limited as to the solutions available. We are in part limited by our own judicial structure and in part limited by certain principles which we believe we should attempt to follow until there appears to be no other alternative. One of those principles is to the effect that the Court is intended to be a collegial court and, therefore, the decision-making process should be done by the entire Court whenever possible. Adding members to the Court and sitting in panels, sitting more frequently in division or sitting with only part of the Court each day but for more days per month does not fulfill that principle. The experience of the various federal circuit courts of appeal would seem to support the Court's view that the decision-making process should be by the entire Court for as long as possible and not by panels made up of various members of the Court.

Likewise, the Court adheres to the principle that the decision-making process should be performed by the Court itself and not by professional staff as is sometimes the case in other jurisdictions. Both the bar and the general public expect the decisions to be made by their judges and not by the judges, staff. While these are important principles, they do indeed narrow the possible alternatives.

One may question whether a docket with 622 cases or 900 is so unmanageable that 7 judges and staff cannot quickly dispose of such matters. However, it should be apparent to anyone familiar with the law that making argument in support of a cause is much easier than making law in answer to those arguments. Experience throughout the country has disclosed that when courts of last resort are called upon to write more opinions than can carefully and thoughtfully be done, problems are quick to occur and only result in more litigation. The decision-making process at the Supreme Court level is indeed a clear example of where "haste makes waste." Decisions should be rendered only after thorough examination of the briefs and records, the cases cited, and, unfortunately, sometimes the cases not cited. The opinions should be drafted and redrafted with care and deliberation so that words are not gratuitously thrown into an opinion thereby creating future uncertainty. As we have already experienced, when we are not permitted that opportunity, confusion does arise. While every effort is made by the Court to minimize that happening at the present time, we recognize that even now such uncertainties occasionally occur and adding to the caseload will only compound those problems.

Should the docket reach 900, each member of the Court would be called upon to write an average of 11 opinions a month. All known methods would indicate that such a goal is not reasonably attainable.

Therefore, with the principles I have described to you in mind and with an understanding of the potential for problems, we began to examine possible alternatives. More than a year ago we began a settlement conference experiment in hopes that by bringing litigants and their lawyers together before argument in the Supreme Court some cases could be settled and removed from the docket. Strangely enough, the experiment has shown some positive signs. During the period beginning April 1, 1979, to and including December 31, 1980, 201 conferences were held before the Honorable Harry Spencer, a retired member of the Supreme Court. As a result of those conferences, 90 cases were settled and removed from the Court docket prior to argument. Strictly on a percentage basis, one would have to conclude that the experiment was successful. Unfortunately, however, because the procedure was voluntary the total number of conferences held were woefully few as compared to the size of the docket. A host more cases could have been disposed of in that fashion had they been brought to conference.

Because the response on a voluntary basis has not been as good as we had hoped it would be and because the results of the conference indicate some positive signs, the Court has now determined that some further experiment should be conducted on a mandatory basis in at least a limited number of cases so that we might determine what the results of such an experiment might be. Therefore, beginning February 1 of this year, we will institute what we now call a Prehearing Conference. All domestic relations cases and all tort cases will be required to go to this Prehearing Conference before any steps are taken in connection with the appeal other than filing the notice of appeal.

We have succeeded in securing the services of not only Justice Spencer but as well, Judge Herbert Ronin and Judge William Colwell, both of whom have distinguished themselves in the past while serving on the District Courts. The meetings will be held within 20 days after the filing of the notice of appeal and before either a transcript or Bill of Exceptions is prepared. The purposes of the meeting with the Prehearing Conference Officer will be several. In the first instance, the parties will meet for the purpose of attempting to narrow the issues. Too often appeals concern matters over which there is either no real dispute or at least should not be any real dispute. Likewise, the parties will attempt to agree on the Bill of Exceptions, the typewritten evidence taken during the course of the trial. Reducing the size of the Bill of Exceptions so that it contains only that evidence necessary for a determination of the appeal will serve several purposes. In the first instance, and not at all of little importance, is the fact that such an agreement may result in a substantial cost savings to the litigants. Bills of Exceptions are costly and whenever pages and volumes can be reduced or eliminated, the corresponding costs can be reduced or eliminated. Too often matters come to the Court with pages and pages of testimony involving the proof of matters over which there is no dispute.

It will not be easy to accomplish this goal. We recognize that. And in some instances there may not be any way to reduce the size of the Bill of Exceptions. Oftentimes it may be important to bring all of the evidence to the Court. Nevertheless, an honest effort will be made to try to minimize wherever possible. In addition, the parties will agree upon the preparation of an

appropriate· transcript containing the pleadings upon which the case was tried. Again, oftentimes the Court is confronted with a transcript containing far more documents than those that are necessary for the proper disposition of the case. Again, such efforts will serve the same two purposes: (1) reducing the cost of litigation, and (2) reducing the amount of paper which the Court must handle in an effort to try and decide the case.

Further by attempting to narrow the issues and limit, if possible, the matters which the Court must consider and decide, the workload of the Supreme Court may be reduced and, in any event, the size of the briefs will be reduced, thereby again resulting in a cost saving to the litigants.

And finally, the Prehearing Conference Officers will attempt to bring about a settlement between the parties. That aspect is, of course, of great importance in reducing our docket. And if such attempt is unsuccessful, they will recommend to our Court whether oral argument, either in a reduced form or any form should be granted the parties or whether the appeal can be disposed of without oral argument and whether a formal opinion should be written or simply a notice of decision.

Should this experiment prove successful, we will undoubtedly expand the program to cover all cases coming before the Court.

Such a program will require some additional funds, though far less than what would be required by the creation of either additional judges or an intermediate court of appeals. We had included in our budget request this year, funds sufficient to conduct this experiment. The Governor has removed these funds and we ask your favorable consideration in restoring them. The public deserves better. It is indeed a fact, justice delayed is justice denied. We must develop a system whereby such does not occur.

And yet, after all of that, I must nevertheless advise you that the growth of litigation may make it impossible for us to resolve the matters administratively and may, indeed, require us to follow the great number of other states which have been compelled to create an intermediate court of appeals. Before, however, we proceed to that step, we assure you that we will exhaust every reasonable administrative device. If and when we come to you with the suggestion that some form of intermediate court be created, you can rest assured that we will have exhausted everything we know how to implement and have no further alternatives available.

What I have said with regard to the Supreme Court is equally as true with regard to the lower courts. They, too, are experiencing continuing growth. As we have attempted to design programs to attack the docket problem at the Supreme Court level, we shall likewise begin to direct our attention to programs seeking to attack the docket problems at the lower court levels. The Judicial Conference which is made up of representatives of the various courts will be meeting next month and one of the items on the agenda will be that very matter. We shall continue to keep you advised of our progress on these matters.

Another problem which is of vital interest and concern to all today, including your Supreme Court, is the matter of court delay, real or imagined. The Court is of the opinion that the general public feels that oftentimes cases take too long to come to trial and too long to be decided. The

evidence presently available to the Court discloses that such is not generally the case in Nebraska, though, to be sure, isolated cases may be found. In fact, that matter of docket control is not yet a serious problem in our State. Nevertheless, the Court believes that some type of rules should be considered for all courts at all levels so that both the court, the lawyers, and the litigants may be advised in advance as to what is expected of them. The Court has therefore appointed Justice William Hastings of our Court to chair a committee to study that problem and to make recommendations to the Supreme Court. After determining the extent of the problem, if any, the committee will be asked to recommend to the Supreme Court what rules should be promulgated that will provide the time frames in which a suit must be brought to issue once it is filed, unless good cause is shown, and once at issue, must be tried, unless good cause is shown; and once tried, must be decided, unless good cause is shown.

In all of these areas it is contemplated that the Supreme Court, in its administrative role, would be acting in a supervisory capacity. We have no idea as to what these rules should look like but we believe that some consideration must now be given to such matter. If for no other reason, the public must be assured that there is some system in operation that does, indeed, assure to them that litigation does not take any longer than is reasonably necessary, though, to be sure, it sometimes seems too long. That committee has already met and is beginning to consider the problem and the Court anxiously awaits their report and recommendations.

Another matter of vital concern to the Court, as it is I know to you, is the matter of unpaid child support. We have become so concerned about this matter that we have now instituted an experimental program in both Douglas County and Lancaster County. Let me say at the outset, however, that this is not a simple problem and the numbers involved, both in dollars and in people, are staggering. It is, indeed, not only a legal problem but a social and moral problem as well. Persons who before divorce refused to recognize their obligation to support their family, do not by reason of divorce gain that insight. Nevertheless, we must make every reasonable effort to try to see that the orders of the court are carried out and that persons entitled to support receive that support. We must, nevertheless, be mindful of the fact that no program which you may design or we may design will be effective absent sufficient funds for adequate personnel to carry out that program. Merely decreeing that one must pay or go to jail without the personnel necessary to carry out that mandate will not work.

We have, however, concluded that perhaps the most effective means of insuring child support collection is to take action before the delinquency gets out of hand. For that reason referees have now been appointed in both Douglas and Lancaster Counties who serve under the direction of the District Court and whose sole and only function is to meet with delinquent parents at the first moment they become delinquent in their payments. The purpose of those discussions with the individual is to try to point out that we are aware of their existence; that we insist that they meet their lawful obligation; and that we do not intend to ignore them. The programs have not been in place long enough to make any value judgment. Nevertheless, early indications are that these programs may prove to be the most effective means of attacking the matter of unpaid child support. We are hopeful that after some additional time and monitoring, we will be in a position to better advise you regarding the success of these programs. At the moment we need no further legislation to implement the programs. We may, however, discover as we proceed, that such additional legislation is necessary and in that case we will so advise you. I should further advise

you that because of existing available federal funding, little if any, state or local money has been required to institute these programs.

I should briefly like to report to you that likewise during the past year the Court has further developed and adopted guidelines to limit when courts may be closed to the public and press; has conducted and is now conducting a study to determine whether there are significant disparities in sentencing; has appointed a committee to review ways of reducing cost of litigation and has successfully developed and implemented a personnel code and job description for all of the employees of the Judicial Branch of government under the supervision and control of the Supreme Court. I would like to make particular mention of the Office of the Court Administrator, and to thank the Administrator and his hard-working and dedicated staff for all their efforts during the past year. They have more than adequately met the challenges we have placed upon them and have performed in a most commendable fashion for which the Court is extremely grateful.

Many jurisdictions are now encountering all manner of problems not yet experienced by Nebraska but which time and history discloses will be confronted in Nebraska. We are fortunate to be at a time and a place when we have the privileges of examining many of these matters in our leisure and making critical and careful judgment with regard to them rather than having to make determinations in haste and under crisis. Matters involving the administration of justice should never, if possible, be made in haste.

The Court, therefore, has concluded that it is appropriate to consider potential and future problems and solutions involving the entire judicial system. Appropriate because of the constitutional mandate that the administration of the judicial system is vested in the Supreme Court and appropriate because the Constitution calls upon the Supreme Court specifically to make recommendations to you with regard to proper and necessary changes which should be made in the operations and management of the judicial system. Everyone involved in the matter recognizes that the ultimate decision is vested in the Legislature. No one fails to recognize that fact. Nevertheless, there is a general recognition by the Supreme Court that to the extent possible and with the staff available, we should attempt to put our expertise to work in an effort to bring to you all of the available facts and information so that you may make the appropriate determination. In that regard, then, let me take just another moment to share with you some legislation which has either already been introduced or will be introduced during this session affecting the Judicial Branch of government and its administration.

Amendments to the county courts statutes have been introduced in the form of L.B. 189. Those amendments are the result of some very thoughtful and careful studies by members of both the Nebraska Bar Association and representatives of the County Judges' Association working with the Supreme Court. We believe that the changes that are suggested in that bill will bring about needed improvement within the county court system. The principal changes will be to eliminate the "non-lawyer county judge" and substitute a clerk magistrate. The functions of a clerk magistrate will be limited generally to the handling of non-contested matters and matters which are in the main ministerial and not judicial. In 1970 when the people of the State of Nebraska amended Article V of the Constitution so as to eliminate non-lawyer judges and to provide all Nebraskans with judges who were trained in the law, this one area was left undone. L.B. 189

now completes the promise which was made to the people of the State of Nebraska that the non-lawyer judge would be eliminated. We ask your careful deliberation on this matter.

Likewise, you have or soon will receive a bill proposing certain amendments to the procedures for taking appeals from county courts and municipal courts to the district courts. Again, this is a bill which comes about by reason of a study conducted by a special committee appointed by the Supreme Court and chaired by District Judge Dale Fahrnbruch. We believe that these proposed changes will enhance the procedures whereby appeals are taken from county court and municipal court to district court and, likewise, deserve your careful consideration.

On a further matter, I would like to suggest to you as I have publicly in the past, that consideration should be given at the earliest possible time to merge the municipal courts which exist in Omaha and Lincoln into their respective county courts. The existence of the municipal court is a historical fact whose time, in my view, has come and gone. However, consolidation cannot come about quickly. There are, indeed, a number of problems which must be resolved, not the least of which is the amalgamation of the various staffs. In that regard, I would suggest to you that a study committee be appointed consisting of representatives of this body, of the Judiciary, of the Bar, and of the public at large to the end that a carefully designed, thoughtful program of consolidation can be developed. Consolidation cannot be brought about in this session, but I would be hopeful that a study committee could be appointed that would begin looking at this very necessary problem so that some positive action might be taken in the not-too-distant future.

In another area, the people of the State of Nebraska, in my opinion, wisely amended the Constitution to expand the authority of the Judicial Qualifications Commission. I believe that this expanded authority will afford to the Commission all of the tools necessary to ensure that the quality of the bench will be maintained at the highest level humanly possible. It is a delicate balance which must be maintained. On the one hand, judges must, as I have already indicated, be free and independent so that they can render fair and impartial judgment. On the other hand, courts and judges are created, not for the benefit of lawyers, but rather are created to fulfill the needs of the general public. The public is entitled not only to receive the best services that can be provided, but to believe that the system is so designed and so monitored that, in fact, they are receiving the best services possible.

The Judicial Qualifications Commission can fulfill an important role in maintaining and keeping, on the one hand, the independence of the Judiciary while assuring to the public that such independence is not abused. In that regard, it is necessary for this body, at the earliest possible time, to amend the existing statutes applicable to the Judicial Qualifications Commission so as to repeal those which now exist and adopt new statutes to conform with the constitutional changes. I am anxiously looking forward to the implementation of those statutes and believe that as we proceed with them, the public will be satisfied that their having amended the Constitution was, indeed, in the public's best interest.

Before departing I must make comment about one further matter. Admittedly, I am somewhat reluctant to do so for fear that I may thereby have overstayed my welcome and incur your wrath. I would hope such would not be the case and I apologize in advance. Nevertheless, if I am to

provide you with the state of the Judiciary, then I must provide you with information concerning all aspects of the Judiciary. One of the areas which I must mention to you concerns the matter of compensation of judges. It is a matter which lies solely and wholly within your power, but, nevertheless, affects the Judicial Branch of government and its ability to carry out its necessary function.

There are three aspects which make up judicial compensation. One is the relationship of the salaries paid to the judge of the various courts. The second is the actual dollar amount paid. And the third is the future benefits or retirement provided for a judge.

With regard to the matter of the relationship between the judges, a bill has now been introduced which, if approved by you, would establish a system of setting salaries for all judges by setting the salary of the Supreme Court. The District Court and the Separate Juvenile Court would then be paid an amount equal to 92 l/2% of that which is paid to the Supreme Court and all other judges would be paid an amount equal to 85% of that which is paid to the Supreme Court. We believe that system, in and of itself, will be of great aid in furthering the needs of the Judiciary.

The bill as introduced to you is the result of many long hours of debate and discussion and compromise by and between the various judges of the various courts. With the exception of the Workmen's Compensation Court, all of the other judges of Nebraska have agreed that the bill as drafted is indeed an appropriate device to establish the relationship between the various courts and would properly establish their compensation. The numbers were not arrived at by accident, but rather after careful and deliberate consideration of what is now being paid to the various judges and how, if at all, it should be adjusted. Moreover, the adoption of this bill would put an end once and for all to the fighting among the Judiciary as to a share of the available funds and would establish their salaries in an appropriate and dignified manner. We ask your careful and deliberate consideration of this bill and your support of its adoption. I believe it will be significant and helpful in attempting to induce those not now on the bench to join us and to further keep those who are now with us.

The relationship, of course, is not alone sufficient. As I have indicated to you, there are two other aspects of judicial compensation. The second, of course, is the actual dollar amount which is paid. My concern about judicial salaries is not simply because I wish to obtain a raise for myself or for the other members of the Judiciary, though to be sure that is one of the goals. My concern, however, is much greater than that. It is because I wish to maintain the high quality of the Judiciary in this State. As anyone who has had experience with the law can tell you, no lawsuit and no lawyer is better than the judge before whom the case is tried. The best of the lawyers must be those who are willing to come to the bench--else all else is for naught.

I fear that there are signs now appearing on the horizon that indicate that the disparity between what the practitioner, either private or public, receives when compared with the judge is so great that it will be difficult to continue attracting the quality judges which this State needs and deserves. As vacancies occur, fewer and fewer lawyers make application. In Lancaster County with more than 775 lawyers, 8 applied for the vacancy created by the retirement of Judge Herbert Ronin. And of those 8, 6 were already in the public sector. Similar experiences have been noted by us with regard to vacancies in the 6th District and the 11th District. Senior members of law

firms do not as a rule apply for appointment to the bench. Experienced trial lawyers as a rule do not apply for appointment to the bench. When one compares the salary of the Judiciary with other public sector lawyers, let alone private sector lawyers, one discovers that there is even here a wide disparity. It is difficult to understand why lawyers in the public sector, paid by tax dollars, should be paid considerably more than judges in the public sector, also paid by tax dollars.

When considering the matter of judicial salaries, you must keep in mind that the cannons of judicial ethics preclude a judge from having any other employment, save and except that of a judge; and, likewise, preclude him from serving on any other corporation or board. Likewise, because of the potential for conflict, a member of the Judiciary is extremely limited, if not totally prevented, from having outside investments. A judge must live on his judicial salary by and large. And while, to be sure, it is not a pittance, and I make no claim to that; when one considers what these same individuals might today earn in the public or private sector as a lawyer, one must immediately conclude that a difficult problem exists. Nebraskans deserve the best and not just what can be obtained.

The entire judicial budget represents less than 2% of the total general fund commitment of this State and less than 1% of total appropriations. It would not require a great deal more in terms of the overall budget to ensure that the high quality of the Nebraska Judiciary be maintained for the benefit of the public who must seek justice before that body.

And finally, with regard to the third element of the equation, the matter of retirement, there will be submitted to you a proposal to amend the judges' retirement to conform to what has generally been recommended by your retirement committee. The amendments will simply provide that all judges, regardless of when they came to the court, be under the same type of retirement, rather than the varying types with their inequities which now exist. Again, I would ask your careful consideration of these matters. Your support of these bills will do much to say to those now on the bench and those interested in considering the bench as a career that the people of the State of Nebraska desire the best in their judges and are willing to encourage them to come and stay. It is indeed as true on the bench as. it is in the private sector that it is a foolish waste of public funds to spend sums of money training judges until they become most productive and then have them leave the court for other, more lucrative positions.

If, indeed, there are judges who are not performing as you believe they should, the appropriate method to get at that is through the Judicial Qualifications Commission and not through the withholding of salary. If any of you had employees or hired hands, most of whom worked hard, but one or two of whom did not, I assume that you would direct your wrath against those who were not working hard and not against those who were. By withholding adequate salaries for all judges, you punish those who work hard and who deserve better and leave untouched those who do not.

It was in 1829 that Henry Clay said, and I quote, "Government is a trust and the officers of the government are trustees and both the trust and the trustees are created for the benefit of the people." That description has not lost its appeal by passage of time. Indeed, government is a trust and each of us who serve are co-trustees. And as co-trustees of a trust, we must be ever mindful of the beneficiaries and their needs. We must never let our own anger or our own personal

experiences stand in the way of providing for our beneficiaries and fulfilling the mandates of the trust. The Judiciary of the State of Nebraska stands ready to join with you to the extent it is charged by the Constitution to do so in carrying out that mandate.

As I began, so may I now close by again thanking you for your very kind invitation and your patience in listening. I apologize for having overstayed my time, but I believe it was important for us to share these thoughts on this our first occasion together. I am hopeful that you will find this experience of sufficient benefit in the work that you must do that you will again extend to us a similar invitation. In any event, we renew our invitation to work with you in furthering the administration of justice and the fulfilling of our administrative duties. I thank you.