

State of the Judiciary
Chief Justice Alma Wilson, Oklahoma Supreme Court
Message to the Oklahoma Legislature
February 7, 1995

INTRODUCTION

Lieutenant Governor Fallin, Speaker Johnson, President Pro Tempore Taylor, members of the 45th Oklahoma Legislature, members of the judiciary, ladies and gentlemen: Thank you for the opportunity to deliver this message on the State of the Judiciary. It is my hope and my request that communication from the judiciary will again be a regular item on your agenda upon the convening of each legislative session.

Communication between the legislature and the judiciary is an essential element of the offices of trust which we hold.

I.

I have just returned from a Chief-Justice Conference where all the Supreme Court Chiefs across the country share their problems, experience and judgment. One Chief Justice who had addressed the legislature on behalf of the judiciary advised that I not burden you with statistics -- tell a couple of jokes and quit.

It's my custom to write my speeches in advance, not so that I will remember what to say, but so that I can get the bad speeches written down to throw in the wastebasket. So, if you don't like this one you, would not have liked the ones I have thrown away any better.

Without exception our sister states' judiciaries are frugal in their demands, but most of their appropriated budgets exceeded one percent of the states' revenue - many were two percent and some almost three percent You can imagine how these figures warmed the cockles of my heart.

I thought about how additional funding in Oklahoma could meet the pressing needs of the Oklahoma Judiciary for automation, a few additional trial court judges, clerks, secretaries, law clerks and court reporters. I thought about the eight-year plan that the Supreme Court has prepared so that there be a long-range vision for the court system built upon a planned upgrading of facilities and resources for trial court and appellate judges.

I thought about how additional funding would allow a trial court judge, who is assigned to try a case 50 miles from his home, to make a mileage claim, but who presently chooses not to make that mileage claim because of acute shortage of travel funds.

I thought about how, since judges have only time and experience to sell, if a trial court judge had a secretary to answer the telephone, there would be more time to give to the supervision of a juvenile who, although a first offender, if he were given really total, tough. attention, might be spared a drive-by shooting charge two years from now. Everything well done takes time – most

of all judging.

I thought about a juvenile offender case I took by special assignment when I was a trial court judge. At the mother's request, I agreed to handle the case. The boy was 16 years old and out of control. I won't even try to recount the record of his misdeeds. But the one that stands out in my mind is that he was suspected of being responsible for the arson of his own widowed mother's business.

The attorney representing the juvenile knew my reputation as a sort of "hanging judge." I agreed to assume responsibility, to try to use my authority to do what had not been accomplished, to get the juvenile offender's attention. His mother agreed to leave the juvenile in jail under my sole supervision.

I would periodically have him brought down to the large trial court room to question him and speak to him from the bench. The jailer was a sensitive and devoted man. He was much experienced and talked to me about such things as, "I will let you know before he decides to burn his mattress." It was this jailer's insight, that to be the most effective with juveniles, one had to be perceptive and judge how long to detain a juvenile and when to let him out.

So I was exploring and trying to determine if I were reaching this wrong-headed child. I would not follow a pattern, but would let two or three days pass before bringing him back to the court room.

At first he was disdainful, and it was almost a battle of wills. But, as time passed, I thought I saw a small melt down in his insolence. He became less bold and I thought I saw the beginning of shame and remorse. I thought that I may have started to get through to him, that he would accept responsibility for any or all of his law violations.

One day when I sent for this juvenile I was surprised to learn his mother had made his bond. But nothing had changed. Over the next few months, when I returned from lunch, this mother and her juvenile son would be sitting in the hall to await another juvenile proceeding against him.

Less than a year later I opened the paper and was horrified. A police officer had shot and killed this 16-year-old inside a residence during a burglary attempt. How sad, I thought, that as a trial court judge I did not have the authority to keep him in jail until he was made to understand that lawlessness would not go unpunished and that every violation has an appropriate penalty. He never learned accountability; rather, he thought he could postpone punishment until he was 19.

Had I had the authority, I could have hopefully saved this 16-year-old from himself and also saved his life. Fortunately, some of the former helplessness of the judiciary has now been remedied by the Juvenile Reform Act that will be effective July 1995. We in the judiciary are very hopeful that the Juvenile Reform Act will provide the lacking ingredients, the authority of a trial court judge, if given the time and resources, to assess and give personal attention to each juvenile and assess appropriate and, maybe, severe punishment to every first offender so that there will not be a second time.

There is no longer time to decide or even discuss who will be responsible to save children who have no supervision. It is the job of everyone, judges, legislators, civic-minded people in the community, who recognize that this must be done by individuals, one-on-one.

We must learn the lesson that getting your child off, or your neighbors' child off, on their very first offense without any consequences, could mean losing that child forever, or the child losing his life.

Juveniles are not young adults. They are growing children who are impressionable, whose judgment isn't formed with prudence, who lack the experience, knowledge and skills to take charge of their lives. They need moral guidance, discipline, boundaries of what is acceptable and unacceptable behavior. They must be taught and must learn the lesson of paying the price when it will do the most good.

Children need to be taught to feel ashamed for their misdeeds. By this I do not mean abject humiliation or the total loss of self-esteem, but something more than mere embarrassment. A child needs to know that it is not O.K. to be bad. But shame cannot be legislated. It must be learned from a moral sense that separates humans from mere animals.

Children need certainty and accountability in their lives. They need to know what we adults have to face daily. We are how we act. We are what we do. And we have to face the consequences of our actions, to accept responsibility for what we do and fail to do.

Our children need to know that we love them, but that we will not accept, or even excuse, even for the first time, criminal conduct.

II.

CRITICAL NEEDS OF THE JUDICIARY

Aside from the current crisis with juvenile delinquents, we in the judiciary have other problems. It is getting more and more difficult for the judiciary to do our duty because of inadequate funding. Presently, this judicial branch is allotted only one percent of Oklahoma's fiscal budget. Some have commented that this small amount makes us not the Third Branch, but a twig.

Let me first assure you that I do not ask that the judiciary receive preferential treatment. I do respectfully ask that you remember that we are the Third Branch when you hear the shocking statistics. And I ask that you respond to our needs in a fair and meaningful manner.

On behalf of the judiciary, I ask each member of the legislature, when you are funding for the essential needs of the people, to be mindful of the judicial service guaranteed to them in our Constitution, the right of every person to a forum for civilized resolution of wrongs and injuries.

I will have delivered to each of you the figures on case filings that will be published in the annual report of the Office of the Administrator of the Courts for 1994. Last year, 467,485 cases were filed in our district courts. The filings included more than 36,000 felonies; more than 50,000 misdemeanors; and more than 11,000 juvenile filings.

This means that very probably a million people were before the courts for redress of wrongs or protection of rights. The more people involved, the more difficult the resolutions, the more time-consuming.

Some trials take days and even weeks. Yet, the almost one-half million lawsuits filed last year in the trial courts are only one indicia of the workload of the judiciary.

Roughly, of all the civil lawsuits appealed, 70 percent will be finally resolved by the Court of Appeals; about 30 percent of those will be fully reviewed by the Supreme Court and about one percent of the total criminal cases will be fully reviewed at least once by the Court of Criminal Appeals.

Because we get only one percent of the budget, these one-half million cases are handled by 71 District Judges, 77 Associate District Judges and 63 Special Judges. Just think, we are asking 211 trial judges to handle almost one-half million lawsuits. This is three times the caseload of a federal trial judge.

Further, not a single state court trial judge has a law clerk or research assistant. More than one-third, or 55, do not have a secretary or bailiff. Many judges are required to answer their own telephones and to do their own typing. Thirty-eight judges do not have court reporters.

I say to you today that the people of Oklahoma deserve better service for their tax dollars. No one should be kept in limbo for years awaiting the outcome of a lawsuit, and every litigant deserves to have his case meaningfully considered.

But if due process and the opportunity to be heard mean what they say, it takes time for 211 judges to handle one-half million lawsuits. And lest you think Oklahomans are litigious, here is another shocker. Oklahoma ranks as the 33rd state where the most lawsuits are likely to occur. So, Oklahomans are less litigious than many Americans.

Our more populated counties and judicial districts must have additional judges and support staff. Last year over 83,000 lawsuits were filed in Oklahoma County alone. Today, in Oklahoma County, several judges are carrying double loads. Judges assigned to conduct preliminary hearings for misdemeanors, felonies, and probate cases, are also hearing requests for victim-protection orders. The child-support enforcement and legislative-mandated, periodic review of juvenile cases are often conducted by judges on temporary appointments.

Double assignments for judges directly impact the workload of the judges' secretary-bailiffs and court reporters. Simply put, the need for additional judges and support staff in Oklahoma County is severe. The same situation is true of Tulsa County.

Additional judges and support staff necessarily require more space, furniture, equipment and supplies. We also have judges in our less-populated counties working without the benefit of any modern equipment. Several of those judges are required to type their letters and orders on antiquated electric typewriters. The judiciary needs funds to bring data-processing equipment to

all our counties.

The need for additional funding of the courts can be highlighted with just one statistic from the Gale State Ratings Reporter. Currently, Oklahoma is ranked 48th for its per capita expenditure for the courts.

The need for law clerks or interns for our trial court district judges is just as critical as the need for law clerks or interns for our public prosecutors. The salary needs of our appellate judges and support-staff assistants are just as critical as the salary needs of our public prosecutors.

If we are to preserve our strong and independent judiciary so that the promise of the law is certain, our courts must have adequate staff and equipment. I want to reiterate, the judiciary has struggled with an overwhelming caseload for almost 20 years. It is no longer possible to stretch the judiciary with present resources. We have never padded our budget. Therefore, we must have more funds to meet unfunded mandates for needed services, such as the first step to stop the crime rate at its source - juvenile offenders.

In his State of the State address, the governor recognized that the juvenile justice system cannot tolerate budget cuts. In proposing a two and one-half percent cut in governmental expenditure, the governor exempted the areas of law enforcement, the attorney general, and juvenile justice.

Beefing up law enforcement and the staff of the attorney general will directly increase the caseloads of our courts. And, this is in addition to the increased judicial duties under the new Juvenile Reform Act.

The direct and indirect mandates placed on the judiciary must be funded.

III.

Improvement in our judicial system, for the most (and we have improved) is due to the dedication, pride and work ethic of our district court judges, the judges of the Court of Appeals, the judges of the Court of Criminal Appeals, and the justices of the Supreme Court, and our staff. Because of the overwhelming caseload and limited resources, we've tried to rethink the way we operate.

I want to summarize briefly some of the changes we've made to become more efficient.

- (1) In 1993, the Supreme Court revised its procedures for appeals from summary judgments and dismissal orders. Similar to the statutory procedure for appeals from drivers' license revocation or suspension, the records and briefs are filed in the initial stage of the appeal.
- (2) During 1994, most appeals from summary judgments and dismissals were processed from beginning to end within a five-month time period.
- (3) Our settlement-conference program has also proven beneficial in reducing our backlog and in cutting costs of appeals. Settlement conference is offered at the first stage

of the appeal, before briefing. Upon settlement, the litigants have been spared the costly expense of preparing the appellate briefs and the Court has been saved the expense of further managing and deciding the appeal. Our retired judges are conducting the settlement conferences in a cost-efficient manner. In 1994, we expended less than \$10,000.00 in payment to the participating retired judges. Seventy-one cases were settled. That amounts to about \$135.00 per settlement.

(4) In another area, not directly related to our caseload, we have furthered our efforts to provide training and education for our district court judges. In December, before assuming their duties on the bench, our newly elected judges participated in a two-day education program through the Nigh Institute at the University of Central Oklahoma. Working with the university, there will be grants available for funding the costs of the education. This program, of course, is in addition to our education seminars provided at the annual judicial conferences.

(5) And, as I noted earlier, our trial court judges do not have law clerks. To mitigate this huge need for clerks, we are in the embryo stage of planning a program that would give our trial judges computer access to a complete and well-maintained law library, such as the library at the University of Oklahoma. This subject is not ready for discussion. I mention it to assure you that the judicial branch will continue to look toward other governmental resources available for future progress.

Let me now turn to the area of criminal appeals and briefly highlight some of the progress.

(6) Through your creative problem solving, and with the cooperation of the district court judges, the criminal court emergency panels are now in the fifth cycle. This means that the emergency panels have resolved 272 criminal appeals that are non-murder cases.

(7) The three trial judges on each emergency panel perform the work in addition to their regular trial court work. The basic cost of the program is the postage expended by the appellate court clerk to send and retrieve the files to and from the district court judges.

(8) The fast-track docket continues to aid in reducing the backlog and provide swifter appellate procedures. During 1994, approximately 150 criminal appeals were disposed of through the fast-track procedure. These appeals from the less complicated criminal cases are now being processed from beginning to end in less than a 12-month time period.

(9) The death-penalty cases remain a priority in the Court of Criminal Appeals. All death-penalty cases that are at issue have been docketed for oral argument through the week of July 11th, with one being set for argument in September. As of today, each week the Court of Criminal Appeals will hear oral argument in a death-penalty case.

(10) The Office of the Court Administrator has worked diligently to automate our district court filing and docketing systems. It secured a greater capacity mainframe for the Office of State Finance, and when it upgraded its system, the upgrade allowed the

local court clerks' dockets to be automated.

IV.

Finally, I want to tell you a bit about the Supreme Court's eight-year plan. In the past, we have struggled together from year to year to make ends meet. Now, the Court and the next three Chief Justices are committed to a plan to help you to help us meet our needs and our goals.

Some of it costs absolutely nothing, for example, parking for our staff. Other parts are "do-able" deals right now, for example, placing computers and Westlaw on every judge's desk in this state. Some parts are visionary, for example, a court's building in the Oklahoma Historical Society building with the Oklahoma Historical Society given proper facilities to protect, exhibit and store its priceless collection.

The high points of the eight-year plan include more technology, plans for better case management, more human resources and better facilities. We need a court's building. Essentially, we have had the same space since 1917. Our caseload has more than doubled in the last 20 years. We need room to do our job.

Judicial clerks, with whom we need to consult on a moment's notice, are in some instances two flights down. Others are ensconced in every available space, even in the vault. They are safe from tornado and fall-out but the space is comparable to a prison cell.

In asking for your help, we must couple our vision with the practical. We must move each year for the next eight years toward the goals which are vital to secure for the people of this state not only an independent judiciary, but a judiciary which engages in fair and efficient administration of justice.

With your help, this can be accomplished.

CONCLUSION

Judith Kaye, Chief Judge of the New York Appellate Court, comparable to our Chief Justice, said she relied on her husband to remind her each day that things are not as bad as they seem and life would go on. We have so much to be grateful for in Oklahoma.

There is a contagious optimism and feeling that life will be better for all Oklahomans and that we have a dedicated governor, legislature and judiciary. We are blessed with the great wisdom and foresight of our founding fathers to have provided us with a budget-balancing amendment so that we are current in our funding.

Each day when the sun comes up we know we have not spent money we don't have. This alone is a powerful weapon for Oklahomans and I have pledged to myself that I will never preside over its demise nor other equally important constitutional provisions.

How lucky we are to be Oklahomans and, that by the greatest blessing of all, we are the fortunate

ones to be part of the greatest democracy and government in the world, to live in a nation of laws.

We are even fortunate that we admit that we can do better and that change is not only needed but that we know its direction.

The Capitol building may be an ordinary place to us, a place we come to every day. But to the people of this state, it is a place to go for help, for change. It has been a symbol of strength and justice and answers.

Oklahomans are today looking to us, the people in this room, with hope in their eyes. After hurts and disappointments, fears and hard times, they are once again placing faith in our ability to "fix" things. How long will Oklahomans continue to trust us if we let them down? What an opportunity and responsibility you have to fund the people's right to full judicial strength, that will make them safer and more secure in their homes and work place.

In the meantime, we are going to save the children. They are our crown jewels. We, in the judiciary, believe that out there, there are boys and girls, whom it is our destiny to save. With proper care and guidance, just one of them may flourish with greatness and follow a vision - rise above the rest of us. He or she will inspire us, and move us, and lead us. He or she will be our gift and our treasure. He or she will be our legacy and living proof that we cared.

I ask that this be a joint venture, that you, the second branch, join us. The lions atop the capitol will indeed roar.