

State of the Judiciary

Chief Justice James Woodrow Lewis, South Carolina Supreme Court

Message to the South Carolina Bar Association

June 2, 1979

Ladies and gentlemen: I appreciate the privilege which this session affords for a continuation of the annual discussions with the Bar of the current status of our judicial system. The format agreed-upon with Mr. Todd is that I would just speak to you in general terms and then try to answer any specific questions you might have.

We have recognized for some time the need for an in-depth annual report of the operation of the judicial system in this state, but lacked until now reliable information upon which to be such a report. For the first time, we feel that our information system has developed to the point where our statistical data can be confidently used to measure our current operations. Our plans are to submit our first annual report of the Judicial Department to the General Assembly during the fall, showing the operation of the judicial system for the fiscal year 1978-79. The continued development of our information system and filing of annual reports will provide much needed data not only for the proper administration of the courts and planning for future development of the system but, equally important, the means whereby the public may be informed of how the system of justice in this state is operating.

In past years I have spoken on judicial reform and the implementation of the unified court system under Article V of our Constitution. Although there remain several areas of concern which must be dealt with, great progress has been made in the establishment of the basic structure of our system. In addition, during the present session of the General Assembly proposals are being considered, which promise further improvements to better adjust our judicial system to meet the needs of the people. Legislation is pending for the establishment of an intermediate court of appeals to relieve the current burden on the Supreme Court.

With disposition of the cases now scheduled for the June term, we will leave pending 210 cases ready for consideration, with the definite prospect of a caseload of 288 ready for consideration when the court reconvenes in September. The cases to be heard during the June term will carry us through cases docketed October 23, 1978.

In addition, the pending legislation considers additional circuit judges which are necessary to absorb the work of the county courts and provide the additional judges needed to handle the present work of the circuit courts. Attention is also being given to the system of masters, as well as to an increase in filing fees for clerks of court and magistrates. A uniform system for the selection of juries in magistrate's courts is being enacted.

### **Actions Contributing to the Efficient Operation of the Judicial System**

During the past year, several actions have been taken which will help stabilize and make more efficient the operation of the judicial system:

- The public defender program has been expanded, both in funding and in the establishment of public defender corporations. We now have only 11 counties where the public defender program is not supervised by a public defender corporation. Our aim is to bring the public defender program in all counties under the supervision of a public defender corporation. (Provides local control and supervision so necessary to assure that program is confined to those for whom it was intended.)
- The S.C. Commission of Appellate Defense has been established and is now operational. This should alleviate in part the burden on attorneys representing indigent clients and should reduce the need for expansion of the public defender system at the trial level.
- The Supreme Court has adopted a uniform juror summons which will bring about much needed reform in the procedures for summoning jurors and provide information to the court and two attorneys on prospective jurors. This system is already in use in some counties but will become mandatory on July 1, 1979.
- A uniform juror pamphlet has been prepared and distributed statewide. It is designed to aid jurors in understanding the operation of the court and their duties.
- The new Supreme Court Rules governing the filing and processing of appeals have been adopted and constitute, in our opinion, a major step in the improvement of the administration of the appellate process.
- While much still needs to be done, the efforts begun several years ago to improve our court reporter system have continued and we are gradually approaching the standard set in this area.
- All magistrates have now undergone mandatory training during the last year, and we believe the quality of the magisterial system has greatly improved. Despite temporary setbacks and opposition from some quarters, we are moving forward with our efforts to assure the competent and efficient operation of the magisterial system. When we consider that approximately 80 percent of the caseload of our judicial system is handled by the magistrates, it seems incredible that responsible people could oppose efforts to make the system adequately and properly serve the needs of the people of this state.

### **Statewide Survey of the Judicial System**

While I shall not attempt to further list the activities of the Judicial Department during the past months, there is one project that should be mentioned because of its great importance. This concerns a statewide inventory or survey of our judicial system which is now about complete. We hope that its results will soon be available for use in future planning. It is sufficiently complete, however, to indicate that we are far from completion of the task of updating our judicial system. We are realizing the roadblocks created by lack of court-centered, supportive personnel, divided responsibility for financing the operation of the judicial system, and lack of physical facilities in which to operate an adequate court system.

While we have a long way to go, I believe that much has been accomplished since August 6, 1975, when retiring Chief Justice Moss and I issued the revised schedule of court assignments for the month of September 1975, which began the accelerated schedule of terms of court. When this accelerated schedule was begun, 520 weeks of court were scheduled under the statutory procedure. Under Article V of the Constitution, the Chief Justice is empowered to schedule terms of court and assign judges. As of this date, 1,044 weeks of court are scheduled in the state of

South Carolina for the calendar year of 1979. If my math is correct, we have since August 1975 doubled the scheduled terms of court in this state. We have not only scheduled the court but have adopted rules and requirements designed to see that the terms are held as scheduled. Our goal is to make the judges available to the Bar and litigants, as scheduled, for the handling of both jury and non-jury cases.

The mere fact of doubling the amount of court does not, however, indicate the true significance of what judicial reform was about. Judicial reform had as one of its main objectives the providing of judicial services to the people of South Carolina in an expeditious manner. As a measure of the progress made in achieving this goal, our information indicated in 1975 they are only 47 percent of all civil cases pending in the circuit court system were less than one year old. Our records now show that as of May 11, 1979, 80 percent of all circuit civil cases, jury and non-jury, were less than one year old. Fifty-three percent of these are less than six months old. For the year 1978, we succeeded in stopping the increase in the number of cases falling in what we term the backlog status.

We have also made progress in reducing the number of pending criminal indictments since 1977 but, as in the disposition of civil cases, much still needs to be done.

At the end of 1977 there were over 8,700 criminal indictments pending, while as of April 30, 1979, there were just over 7,600.

The courts bear the responsibility of providing the means for swift disposition of cases. If we consider six months as the average time to be allowed for disposition of an indictment, our figures show that of all pending indictments (active and inactive), only 42 percent are less than six months old. There are 4,835 indictments classified as active on April 30, 1979, with 61 percent pending less than six months and 17 percent pending over twelve months.

The significance of the statistics lies in the effect of delay upon the disposition of criminal cases. Our reports show that less than 1 out of 14 indictments will have a successful disposition after being docketed over 12 months. The chance of a successful disposition drops to less than 4 out of 100 when docketed for more than 18 months. We expect to bring the criminal dockets in this state under control if we have to adjourn civil courts until we do it. The Attorney General has assured me of his full cooperation to that end.

As we move toward the expansion of our facilities to provide a forum adequate to expeditiously handle the total demands upon our judicial system, we have left unsolved another important problem which I would like to discuss with you for a moment. For the settlement of disputes make certain that the forum provided is available to all of our citizens. We require persons to settle their differences through the judicial process and, I submit, that a duty follows to see that they be given a meaningful opportunity to be heard.

### **Representation for Indigents**

I recognize that the area of representation for indigents in civil cases is one that we have skirted in the past. However, I do not believe that we can put it aside much longer. I call it to your

attention today because of this belief and the fact that you, and members of the Bar, are granted a monopoly of the right to appear as counsel in court. This monopoly carries with it the duty to see to it, as it might lie in power, that all citizens are assured effective access to the judicial system. This duty may also rest upon the court in the performance of its duty to afford a fair trial.

The need for legal counsel for the indigent in civil cases has been forcibly brought to our attention in family court matters. In domestic cases, the unique nature of the state's interest in the union of marriage, as well as the rights and relationships between the person involved, make it particularly important that litigants in these situations be given a meaningful opportunity to be heard. The state has provided a family court system adequate to meet the needs, but there still exists a great need to provide representation necessary for indigents to avail themselves of the services of the courts.

The lack of representation for indigents in domestic matters is the chief problem remaining in the statewide family court system. It is my hope that the Bar will see fit to name a special committee to work with Court Administration to bring about some workable solution to the problem.

The Bar has a vital interest in resolving the problem of representation of indigents. I recognize that the method of dealing with this problem 20 or 50 years ago is no longer adequate.

#### IN SUMMARY

Our goal since August 1975 has been to make the judicial system in this state the best in the nation. We have made progress, I think, toward this goal. It has been a cooperative effort and, if we are to continue to move forward, it must continue so. Credit for whatever success may have been accomplished must go to the judges, the bar, those concerned with the administration and operation of the judicial system, and the support of the public for the efforts being made. For all of these, I wish to express my appreciation.

The source of much of the strength of this country comes from the public respect for the law. Our efforts toward improving the judicial system must be designed to maintain that respect. It is to that end we have dedicated our efforts and solicit your continued support.