State of the Judiciary

Chief Justice Jim Hannah

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President Julian, President Elect Womack, Fellow Justices and Judges, Honorable Members of the Bar and Guests:

I am pleased and honored to have been issued the invitation again to present this second State of the Judiciary address to the combined gathering of the Arkansas Bar Association and the Arkansas Judicial Council. I continue to believe that such an address is important for two reasons.

First, it is a practical way to highlight important issues which are of particular interest to the bench and bar. I hope to accomplish that task over the next few minutes.

More importantly, a formal State of the Judiciary address helps to make the point, however slightly, that our constitution has established the judiciary as a co-equal and independent branch of government.

I do not say this to boost my own ego or that of other judges. I do not say this in response to the normal disputes and tensions which arise as a result of our constitutional system of checks and balances. Such disputes are to be expected in our system of government.

The natural result of checks and balances is that public officials in each branch of government dislike other officials getting involved in their business. Judges dislike it. Legislators dislike it. The Governor and agency directors dislike it. But that is exactly what our constitutional framers intended. It is when we are getting along too well that the public needs to worry.

No. My main concern is created by what I observe to be a more pervasive phenomenon which is best illustrated by the recent attacks on the Iowa Supreme Court.

As you may know, several members of the Iowa Supreme Court - a state which, by the way, appoints their judges - were targeted in their last judicial retention election in a campaign funded primarily by out of state partisan groups on the basis of the judges' vote in a particular case decided by that court. Incidentally, it was a unanimous opinion.

None of the 3 justices on the ballot were retained. This spring, resolutions were filed by legislators in the Iowa General Assembly to impeach the other four justices who voted in the case.

I do not mean to suggest to you that somehow judges should be or even could be above politics. Our state and national history are filled with examples of judges and judicial decisions being pulled into partisan politics - regardless of whether the judge was elected or appointed to office.

What I find to be new and troubling about the Iowa events is that it is not viewed as unique. There is growing evidence of a public perception that targeting judges on the basis of a particular judicial decision is "appropriate", "normal", "reasonable" and - even "mainstream." In this view, a judge is simply one more political policy maker; a politician who should be removed if he or she makes a decision with which we disagree.

The problem with this position is that it is the antithesis of an independent judiciary. How do we expect to employ a capable, ethical, neutral decision maker, bound to follow the rule of law, if we are unwilling for that person to be independent? It is akin to allowing the fans at a football game to vote to remove the referee during the game. It strikes at the heart of our tradition of what the judiciary should be, our commitment to fundamental human rights, and our support of equal justice under the law.

I do not presume that this public view can be changed as a result of a speech by the Chief Justice; but we must all take seriously our role as leaders in the administration of justice to

explain and support the importance and role of an independent judiciary in our society. It is a story which needs to be told in the public school classroom and in the corporate board room. The importance of the issue deserves the attention of every member of the bench and bar.

Because of the Court's concerns about the inherent problems involved in the judicial election process and the unseemly judicial elections occurring in other states, Justice Robert Brown and myself appeared before the Board of Governors of the Arkansas Bar Association and requested the Bar to appoint a task force to study the judicial election process and to make recommendations as to how we can improve our system of election of judges.

President Julian has appointed members to the judicial elections task force and the Arkansas Judicial Council has appointed its board members to serve on the task force. The judicial election task force is meeting and they plan to first present their recommendations to the Arkansas Judicial Council at its October meeting.

One of the most effective ways for us to inform and improve the public perception of the court system is to insure that our court structure, court processes, and court personnel are operating in an efficient and timely way and are providing quality service.

The last twelve months have been difficult ones for our state and for our country. The economic downturn has been catastrophic for many of our citizens, for businesses, and for many state and local governments. One result of that downturn is that our citizens rightly demand that the public institutions which they fund operate efficiently and effectively.

I believe that our state courts have provided great leadership over the past year to institute significant changes which both decrease costs and improve the efficiency and quality of our services. I would like to highlight a couple of those changes and then suggest two other areas where we may be able to work together to produce similar results.

A dozen years ago your current Bar Association president, then a much younger lawyer, was leading our state's effort to create a new judicial article for the Arkansas Constitution. As a result of his excellent leadership, the hard work by many of you in this room, and a favorable response by Arkansas voters, the adoption of Amendment 80 marked the beginning of the most significant period of reform in the history of our state judiciary.

Many of the early changes to our trial courts, such as the consolidation of law and equity, were very public and involved much discussion by and between the bench and bar. You may not be aware, however, that our implementation of Amendment 80 continues today in what I

consider to be the most significant single change to the structure and operation of our court system.

District Pilot Courts were made permanent by legislation adopted in the 2011 General Assembly. More people come into contact with limited jurisdiction courts than any other courts in our system. I guarantee you that if you stop John Q. Citizen on the street and ask him to name a judge he is most likely to name the county judge (county administrator) and then he is most likely able to name the local district judge. He probably would not name a circuit judge and I can assure you he would not be able to name the Arkansas Supreme Court Chief Justice or any of the Supreme Court Justices.

Recently I spoke to my granddaughter Gabby's class in Searcy, I asked for a show of hands of those who knew a name of one of the Arkansas Supreme Court justices. Two hands went up. My granddaughter's and the governor's granddaughter's hands went up. They knew that I serve on the Arkansas Supreme Court.

I then asked for a show of hands of those who knew any of their circuit judges. Again, two hands went up. My granddaughter knew her dad was a circuit judge and the governor's granddaughter knew that Gabby's dad was a circuit judge.

I then asked for a show of hands of those who knew who the district court judge was, the judge who heard the traffic offenses. Every student's hand went up. They all knew who the district court judge was. That was not an unusual or uncommon response.

For most Arkansans, what they know about our court system is based upon their appearance in or interaction with district court. Their perception about the whole court system may be based completely on how they were treated in district court. That is why I am often quoted as saying that our district courts are our most important courts.

For the last ten years the Supreme Court has been engaged in a quiet mission to remake our district courts as a true third-tier of our court system. In 2002 we laid out a vision of what the system should look like and recognized that it would require the full involvement and cooperation of the General Assembly. Slowly, dramatic progress has been made.

When Amendment 80 was adopted we had seven different limited jurisdiction courts, each with overlapping jurisdiction, and more than 300 part-time judges, some of whom were not required to be attorneys. With the adoption of Act 1219 of 2011, the structure is now in place for

the eventual implementation of what is now called a "state district court" in every Arkansas county.

The state district courts will have expanded jurisdiction, the ability to supplement work in circuit courts, and presided over by full-time judges. The elimination of part-time judges has a huge impact on the number of both real and perceived conflicts which exist.

In every location in which the courts have been created, the costs to cities and counties have gone down while the continued service to every community served by the court has been guaranteed. Not one cent of additional state general revenue has been required for the system. For citizens and taxpayers the changes are significant. We will have gone from over 300 full and part-time judges to an estimated 64 when implementation is complete. Their ability to assist our circuit courts will also decrease the need for additional circuit judgeships in the future. Their ability to handle, for example, domestic violence cases increases access for our citizens, especially in rural districts and multi-county circuits.

We have adopted a rule which will allow for the creation of an electronic record, which will allow our district courts to provide more assistance to our circuit courts. In a public atmosphere calling for "smaller and leaner" government, the Arkansas judicial system has taken the lead to bring about the most significant revisions in the structure and operation of our system since the Arkansas judiciary was created. By December 31 of this year our last city courts will no longer exist. By 2017, we will have state district courts in 43 of our counties, served by 53 full-time judges. We must still plan for the full implementation of the system in the following years and make changes and revisions where problems or needs are identified. I encourage the association to become directly involved in assisting with the final phase of the plan, including the possibility of making it a part of a joint legislative agenda in 2013.

Our efforts to make the system less costly and more efficient are also evident in our push to automate the case management process and all court records at every level of the system. I spoke to you last year about the appellate court's move to electronic publication of opinions. Arkansas was the first state in the nation to do this and saves the citizens about $300,000 each and every year. I also spoke to you about the webcasting of our oral arguments.

We have now begun the project of implementing the state case management system, called CONTEXTE, in the Supreme Court Clerk's office. At the trial and district court level, the

Arkansas Court Automation Project is now rolling out the system in multiple counties and judicial districts. They plan to have 80% of the state's caseload on the system by 2016.

The newest element of the system is electronic filing. A short pilot phase will begin in Pulaski County this summer. The Supreme Court has already published the rules which will govern e-filing. Because we have designed it as a state-wide system it will provide the maximum benefit to the practicing attorney.

Once you become a registered user, you will have the ability to e-file and have electronic access to the case file in any district, circuit or appellate court on the CONTEXTE system. It will create convenience, save time and money, increase access, improve efficiency, and improve the quality and accuracy of information. Our main difficulty at the moment is having sufficient personnel resources to meet the demand - we have more requests from counties and judicial districts to implement the system than we can currently accommodate. Nonetheless, the structure and process is in place to implement a system which will bring significant benefits to the quality and efficiency of our system to the bench, bar, and public.

Now I would like to move to two areas in which I believe we need to focus our attention to further improve our system.

The last thirty years of our nation's history have demonstrated dramatic changes in the ways and the speed with which we live and conduct our lives. Personal computers, fast food, internet shopping, online banking, smart phones, electronic books - we are now conditioned to having access to and getting what we need from any location and within a split second. The system through which our courts process and decide cases, however, has changed very little over the last hundred years.

According to a report recently released by the National Center for State Courts, "surveys of public opinion concerning the courts consistently find the chief complaint to be the slowness of case resolution. A study in New Mexico showed that litigants desire to have their civil and family cases decided within one or two months of filing. Thus, there is a substantial disconnect between public expectations for timeliness of court decisions based on the current pace of business, and the current pace of the American judicial system."

Fast decisions do not necessarily produce good decisions and our attention to issues of sufficient notice to all interested parties and the opportunity to be heard work against speedy resolutions. But at a minimum, we should at least have a set of standards or general goals which

will both provide members of the public with some reasonable expectation of the time involved to resolve their dispute and also provide a basis by which we can measure our performance.

More than three-fourths of the state court systems in the U.S. have adopted some form of case disposition measures. While your Arkansas Supreme Court requires both trial and appellate judges to report certain matters which have been pending a final decision, we have never adopted general case standards or guidelines to suggest a reasonable time in which particular types of cases should be completed, from the initial filing to the final disposition.

The State Justice Institute, whose board I currently chair, has funded a study and examination of proposed model time standards for state courts. This document, while currently in the form of a discussion draft, provides an excellent framework around which our bench and bar can engage in an examination of our system and the amount of time we take to resolve matters in our district, circuit and appellate courts.

I will be asking the leadership of the Judicial Council and the Bar Association to consider the appointment of a joint taskforce to review and consider this issue with an acknowledgment of the tried but true statement that "justice delayed is justice denied".

Another area which deserves our attention is the extent to which we fail to enforce court orders, specifically, our lack of enforcement of court ordered financial sanctions. When a judge orders a party to pay some sum, the party fails to pay, and no attention is paid to the lack of compliance, two things occur.

First, there is a practical result - the lack of collection has a detrimental effect on the revenues available to fund the court and other public agencies. While courts are not and should not be perceived as collection agencies, it is inescapable that the fines, court costs, fees, assessments and restitution which judges assess assure that crime victims are compensated and helps to support prosecutors and defenders, treatment services, law libraries, law enforcement, and a whole host of court and non-court related programs.

Much more importantly, however, is the way this issue affects the credibility of our state courts, the integrity of court orders, and the public's respect for the rule of law. The ability of our courts to function effectively is directly related to the level of trust and confidence our citizens have in the institution. If the public perceives that court orders can be ignored and nothing occurs, support and respect for the institution suffers. Reasonable and responsible efforts

to enforce court ordered sanctions results in both increased revenues and increased respect for the court.

It is a fact that many of the parties who are ordered by the court to pay financial sanctions have no ability to pay. That will always be the case and our law rightly provides protections for those whose indigency causes their non-compliance with the court's order.

But it is also true that millions of dollars in unpaid fines, costs and other assessments are ignored each year. Often times the effort required to pursue the issue is deemed to outweigh any potential benefit. More often, no individual or office is given or assumes the leadership or takes responsibility for the task. We need to demonstrate to the public that those who ignore court orders will be held accountable and that the court system is doing its part to maximize the financial interests of state and local programs which are impacted by improved court collections.

I will be directing the Administrative Office of the Courts to create a Collections Advisory Committee made up of appropriate representatives of state and local government and of each branch of government, with a goal of developing a statewide strategy for increasing compliance with court orders and improving the collection of court ordered financial sanctions. I welcome the active participation of the bar in these efforts.

I want to close by again thanking the Bar Association for providing the forum for this event. My regular contact with courts from other states through my association with the Conference of Chief Justices and my awareness of the tremendous problems which many states are currently facing makes me so thankful that I am an Arkansan.

My service as Chief Justice is made much easier as a result of the talent and dedication which exists within our bench and bar and as a result of the willing cooperation to confront and address our problems and issues. I thank each of you for your kind attention this morning and for your efforts to provide your clients and our citizens with a judicial system with which we can all take great pride.