



ARKANSAS JUDICIARY

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## State of the Judiciary



Thank you, Jim, for your introduction. [Jim Simpson, outgoing

Arkansas Bar Association President] I want to begin by offering my congratulations to the Arkansas Bar Association for an outstanding year of service and accomplishment under your leadership.

I am grateful to live and work in a state in which the bench and the bar have a close working relationship. It strengthens our judicial system and enriches our lives as lawyers and judges.

When I thought about what I wanted to say to you today, I found myself going back to the same issues we seem to face every year. Law school graduates who cannot find jobs. A population - including some elected officials - who don't understand the very basics of how our government works. Not enough money for civil legal aid. We discuss the same problems every year.

There are several topics which I want to discuss with you today, but they all share this common theme: the public's understanding of and support for the role of the judiciary in our constitutional democracy is at risk.

That statement may seem drastic, but I believe that the events of recent months demonstrate the need for serious concern and our active participation in response. How can we successfully defend and communicate the importance and value of fair and impartial courts?

I shared with you last year my concern about the very low levels of knowledge of civics not only among children, but also adults. Survey after survey, year after year, have shown that a large proportion of our population lack even basic civics knowledge. My concern has not decreased.

[See video at <http://youtu.be/Za4ZZN0SekE>]

I am confident that the same results would be replicated in any of our communities in Arkansas, and that even far more basic questions about our state government would produce similar responses. You might think the phrase "life, liberty, and pursuit of happiness" from the Declaration of Independence is a familiar one, but 80% of Americans cannot name even two of those rights.

A recent survey showed that a vast majority of Americans cannot explain the rule of law or even what the judicial branch does. Too many Americans do not know that courts interpret laws and uphold the State and Federal Constitutions, and that if there is conflict, the Federal Constitution prevails.

While we can find humor in our situation, it can also produce catastrophic results. The recent call for the impeachment of a circuit judge for deciding a case that was appropriately filed and tried in the circuit court is a prime example of the problem.

Members of the public are entirely justified and our democracy is strengthened when they speak out on issues about which they are passionate. But some of the recent comments and calls for impeachment also indicate a profound lack of understanding about the basic role of judges and courts.

***“Too many Americans do not interpret laws and uphold the Constitutions, and that if there is Constitution prev***

I want to express my thanks publicly to several lawyer-legislators in leadership positions ? House Speaker Davy Carter, Senate President Pro Tempore Michael Lamoureux Senate Judiciary Chair Jeremy Hutchinson ? each of whom issued public statements, not in support of any decision, but in support of the judicial process and the appropriate role of the judiciary in deciding such issues.

We know that when citizens understand the role courts perform, the trust and confidence in courts is high, and citizens value a fair and impartial court. We also know that when citizens lack basic civics knowledge, they tend to support measures that make our courts more political and accountable to special interests instead of to the Constitution and the rule of law.

Last year on this occasion I announced the formation of the Arkansas Court and Community Initiative. Its programs are designed to directly address this lack of public understanding.

One of the first activities was the production of an outstanding presentation about our state court system and the rule of law. It is designed to be given in civic clubs and other local organizations. Many lawyers and judges have volunteered to make the presentation and I am pleased to report that it has now been shared at least once in 40 of our 75 counties.

This is a good start ? but the outreach must be expanded. This is important work. I challenge every lawyer and judge in this room to obtain a copy of the presentation and commit to presenting it to at least one group in your community before the end of the year.



The second major program currently underway from ACCI is a View From the Bench. Legislators are invited to spend a day with a circuit or district judge, observing court proceedings. It is a simple, but incredibly effective program based on successful efforts in other states.

If you know a legislator, help your judges by inviting the legislator to spend a day observing the court, meeting the court's staff, and seeing first-hand the responsibilities of the courts.

By opening up channels of communication between judges and legislators, we will do much to enable our government to run smoothly and effectively. On your tables you will find contact information for the Director, Sam Kauffman, who can coordinate all of these programs.

A second area of concern I want to mention is the recent judicial elections. I believe that our system was greatly improved in 2000 with the approval of Amendment 80 and the move to non-partisan judicial elections. Politics has nothing to do with what we do as judges. Recent events, however, have caused many of us to express concerns.

There are perceptions of bias created by the contributions of large sums of money to a judicial campaign. The lack of transparency in reporting requirements allows contributions from undisclosed sources. And decisions of the U.S. Supreme Court have removed many of the traditional restrictions on a judicial candidate's campaign activities and political speeches. All of these activities have eroded the public's confidence in the judiciary and in our electoral system.

I should insert here that in spite of these problems, I personally remain a proponent of non-partisan judicial elections. While I understand that the problems we have experienced might lead one to consider other forms of selection, evidence from around the country suggests other methods of judicial selection are experiencing the same problems.

States that utilize a hybrid system with an initial appointment and a subsequent retention

election have had some of the biggest problems. Large amounts of out-of-state money have passed into the state to defeat judges who appear on the retention ballot based upon an unpopular decision.

This happened in Iowa where all three justices facing retention election after holding their same sex marriage ban as unconstitutional were defeated. Chief Justice Marsha Ternus, who was defeated, stated that the biggest problem was that the citizens didn't know what courts do. And judges who are the subject of retention are often at much greater risk than they would be if they were facing a known opponent.

I also do not believe that anyone who has experienced or observed the process used in systems where judges are appointed to office would argue that the system is any less political. Nor is it likely that Arkansas voters would even approve an appointment system for state court judges.

Our efforts to address these issues should be in two areas.

First, legislation is needed to require quicker and more detailed disclosure of contributions and expenditures in judicial campaigns and ballot measures affecting the courts. Greater transparency should be required for the candidates themselves and for the individuals and groups expending funds to influence judicial elections.

I urge the bar to consider the formation of a workgroup or utilize the Committee formed over two years ago that was chaired by Justice Brown, to study the issue and make a recommendation for possible action.

We must also find a way to recruit talented and dedicated candidates for judicial office. We need to encourage experienced members of the bar to offer themselves for public service. I am aware that one of the impediments is the level of judicial compensation.

*“Politics has nothing to do with what we do as judges. Recent events, however, have caused many of us to express concerns.”*

It is not possible, nor is it appropriate, that public service salaries be commensurate with private practice attorneys of similar age and experience. But the salaries should be sufficient to attract and retain qualified judicial candidates and should at least be comparable to other state-funded positions and there needs to be some expression by the other branches to acknowledge and respond to the need.

At some point in the past both the Arkansas Bar Association and the Judicial Council expressed support for the creation of a Judicial Salary Commission which would set salaries rather than the General Assembly. In fact, a similar commission is found in one of the ballot proposals recommended by the General Assembly for the November election. Perhaps the time for such action has come.

Irrespective of the salaries, we need each of you to look around your communities and find those experienced and talented attorneys who have good judgment and the right temperament and encourage and support them to consider seeking judicial office.

You will likely recall that as we gathered in this room one year ago we had just completed a legislative session during which concerns expressed by some in the business community led to consideration of proposals that would have drastically altered the ability of the judicial branch to govern itself. In response, the Supreme Court appointed a special taskforce comprised of outstanding attorneys representing all sides of civil litigation, chaired by John

Watkins.

The taskforce members engaged in several months of intense deliberations and have provided their final recommendations to the Supreme Court. We published their recommendations and requested input from the bar. We appreciate the many members of the bar who provided their thorough and thoughtful reviews.

We then referred the taskforce report and the subsequent comments to our Committee on Civil Practice. We received the report of the Committee in May and the issues are now before the Court. I applaud the members of the bar for their support of the process and their engagement in these important issues. I suspect that whatever the final result, concerns will remain.

I hope to announce in the near future information about a justice, business and economic development summit. Our discussions will not be about tort reform but rather about steps that have been taken by courts in other states to allow the judicial system and judicial process to be more responsive to the types of disputes that can arise within the business community and which can improve the state's overall economic development efforts.

For example, in some states, special dockets, or even a special business court, have been created to provide both expertise and quicker decisions when disputes arise, such as within a major construction project or major acquisition, which require quick action and have an impact upon community development.

Our desire as a court system is to be responsive to those who rely upon the system for a resolution of their disputes and to do so fairly, efficiently, and impartially.

I want to end by mentioning a couple of issues of importance to the bar, one of which is of particular importance to our younger members.

I suspect that you anticipated that I would have some comment about attorney license fees. You are already aware of the issues and of the cases that were handed down by the Supreme Court. Revisions in the rules are needed and President Simpson has appointed a special committee of bar leaders who are reviewing the issues and will make a recommendation to the court. I expect that those revisions, as well as an improved system for notification, payment, and reporting of license fee information will be in place prior to January 1.

As to younger attorneys, I am particularly concerned about the levels of student loan debt that our law students have acquired by the time of their graduation and with their increasing difficulties in finding work within the practicing bar.

I understand that about 70% of the law school graduates who pass the bar exam have to open a solo practice because they can't find jobs. I know that the bar association and our two law schools are also interested in the issue. I am intrigued by programs offered in other states in response to the problem.

# *“Our desire as a court system is those who rely upon the system for disputes and to do so fairly, efficient*

In South Dakota the legislature established a program of student loan forgiveness for lawyers who agree to practice in underserved areas of the state. Like South Dakota, many of our rural communities and counties find it difficult to recruit new attorneys and the average age of the current rural community attorney is increasing rapidly. This program of loan forgiveness provides financial incentive for new attorneys to establish a practice in these rural and underserved areas.

In North Dakota, a program was funded in response to the same problem of underserved areas, but it seeks to place law students in summer clerkships the summer before their final year of law school. The clerkships are with judges, lawyers, public defenders or legal services programs in rural counties. Students are exposed to both legal practice and life in a rural community, with the goal of making that a more likely choice after the student's graduation.

The bar association in North Dakota has also established an excellent mentoring program which pairs younger and older lawyers to provide guidance and advice on all aspects of the establishment of a law practice. Georgia has implemented a mandatory mentoring program for new attorneys. The mentors are experienced lawyers who are approved by the Georgia Supreme Court. Delaware has also implemented a mentoring program.

The Arkansas Bar has a mentor program which has great potential in helping new attorneys, but I understand that fewer than 30 out of more than 5,000 Bar members have volunteered to mentor new attorneys. We must do better than that. I encourage our bar to look at these programs as a way to aid our students and younger attorneys as they face the difficulties of the current economy.

There is much work to be done. Our judiciary is only as good as we are. Every single day we have an opportunity to try to get it right. Today, let us choose to engage with the public and with our legislators. Let us choose to make our courts serve Arkansas the way our founders intended. With transparency, with integrity, and with impartiality.

I thank you again for the invitation to address our joint conference, for your kind attention, and for our shared commitment to foster and protect a system which is dedicated to providing fair and impartial justice for all Arkansans.