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Laying the Groundwork for Court Reform - A Report of the Mississippi Bar's Commission on Courts in the 21st Century - Discussion Draft

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LAYING THE GROUNDWORK FOR COURT REFORM

A REPORT OF THE MISSISSIPPI BAR'S COMMISSION ON COURTS IN THE 21ST CENTURY

[Note: the Report has been edited to conform with *Mississippi College Law Review* publication standards, ed.]

DISCUSSION DRAFT

JULY 1993

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I. MESSAGE FROM THE CHAIR

For decades – at least since the Brookings Institution Report of 1932 – study after study of Mississippi's court system has recommended that Mississippi significantly restructure its court administration to create uniform statewide procedures, increase fiscal and case management accountability, and ensure prompt delivery of judicial decisions in pending cases. No study, however, has ever influenced the legislature to take action. Thus, when the Commission on the Courts began its third year of service in the summer of 1992, the average Mississippian waited four to five years for his or her case to travel through the courts. It was the Commission's challenge to find a solution to the current crisis in the courts while bearing in mind that "just another study" would fail if our Legislature found the Commission's recommendations unpalatable.

How does the judiciary relate to the other branches of government? What functions are the courts intended to serve? The Mississippi Constitution of 1890 answers both of these questions. It provides:

Article 1, Section 1

> The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.

Article 3, Section 24

> All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of the law, and right and justice shall be administered without sale, denial, or delay.

Under our state constitution, then, the judiciary is one of three, apparently coequal, branches of state government, there to serve expeditiously and fairly every person with a justiciable grievance. It was with this constitutional mission in mind that the Commission began its work three years ago.

The questions foremost in the minds of Commission members were: (1) Are our citizens being afforded their state constitutional right to the speedy, just resolution of their legal disputes, whether civil or criminal?, and (2) Is the judiciary in fact being funded and administered at a level commensurate with its state constitutional status as the Third Branch of our government? The answer to both questions was a resounding "No." Moreover, absent major legislative action, the prospects for reducing docket backlogs, improving accountability, and upgrading judicial processes and personnel were dismal.

The very idea of "futures planning" is alien to many professions, but particularly so to the legal profession. As lawyers, we are taught to take only the facts we are given and apply the past – legal precedent – to reach a solution. Futures planner Clement Bezold notes that studies of the cognitive styles of judges reveal that they have an acquired preference for merely sensing the facts before them, as distinguished from intuiting probable or possible future possibilities. The result, however appropriate for a role on the bench, is often a lack of the imagination or

vision required to plan adequately for the future. The Commission struggled mightily to avoid such constrictive thinking.

I take what I hope is pardonable pride in the product created by the innovative, concerned, and enthusiastic people who make up the Commission. For the untold long hours of excruciating study and debate, for the many miles most members drove at least once a month to attend day-long meetings, for the additional time spent reviewing and evaluating proposals, I thank them. The immediate reward has been to witness actual results: pivotal court reform legislation was passed during the 1993 Legislative Session.

Even though our work is far from complete, many areas have received in-depth study and debate, and much has been accomplished as a direct result of the reports and recommendations the Commission made to the Board of Bar Commissioners in September of 1992. Thus, at this point, the end of its third year of existence, the Commission wanted to publish an interim Discussion Draft Report, to provide an account of its progress to date, in the hope that to do so will stimulate public debate on issues which continue to affect the administration of justice in Mississippi. Eventually, the Commission's work will culminate in a final, comprehensive report, a report which will undoubtedly be enriched by responses to the Discussion Draft.

Numerous important areas remain unaddressed. A brief look at Appendix 2 demonstrates the enormity of the work yet to be done. One of the most important areas the Commission will explore during the coming year concerns the public's views of the workings of the courts. This last year, at the unanimous request of its members, the Commission added non-lawyers to its ranks; these new lay members brought insight regarding perspectives which lawyers and judges, in their closeness to the system, lost long ago. During the next year, the Commission intends to seek intensive, broad-based public comment on the court system by conducting surveys and holding public hearings throughout the state. Throughout this process, we hope that this Discussion Draft will serve its purpose of fomenting discussion of key matters.

So many people have given more time than they had, more effort than we had a right to expect, and the best of their creative thoughts. Amy Whitten and Bob Oswald, the two Vice-Chairs of the Commission, patiently guided our work forward when it showed signs of slowing. Our reporters, Matt Steffey, Lynn Fitch Mitchell, and Carolyn Ellis-Staton, in the end eased much of the pain of actual production. The officers of the Mississippi Bar and its staff have willingly given unfailing support at every turn. It is my hope that this Discussion Draft will contribute to the expeditious provision of just legal decisions for and on behalf of Mississippi's citizens, and result in increased recognition of the judiciary as an indispensable, coequal Third Branch of our government.

S. Allan Alexander, Chair

II. EXECUTIVE SUMMARY: BACKGROUND, LEGISLATIVE ACTIVITY, AND STUDY RESULTS

A. The Commission's Charge

On July 2, 1990, then president of the Mississippi Bar Leonard A. Blackwell created the Commission on the Courts in the 21st Century as a special project of the Mississippi Bar. In Mr. Blackwell's words, the Commission was to be "a blue ribbon committee consisting of lawyers and judges who will act as a 'think tank' and produce recommendations for court reform that will carry us into the 21st Century." Throughout its existence, the Commission has thought that useful recommendations could only come as the product of a study process that sought both contributions from diverse perspectives and balance among competing views. As a consequence, members of the Commission have included not only lawyers and judges, but also non-lawyer community leaders, legislators, and university professors.

True to its charge, the Commission embarked on a three phase project. In the first phase, the Commission identified problems that must be remedied before Mississippi's judicial system can hope to meet the needs of the next century. In the second phase, specially appointed subcommittees studied in great depth proposed solutions to those problems. In the third phase, the Commission tried to reach consensus on proposed solutions, and now is publishing a report of its findings.

B. The 1993 Legislative Session

From its inception until the summer of 1992, the Commission made significant progress identifying problems with Mississippi's judiciary and, in certain areas, also made significant progress studying proposed solutions. In the summer of 1992, certain events redirected the Commission's course. The Mississippi Board of Bar Commissioners and the officers of the state Bar Association concluded that the 1993 session of the Mississippi legislature might provide a singular opportunity: given an unexpected budget surplus and a growing legislative consensus, court reform legislation might have a real chance. As a consequence, the Commission was enlisted to work on proposals for the 1993 legislative session. Specifically, the Commission was asked to:

1. identify the judiciary's most pressing needs;
2. formulate recommendations to address those needs; and
3. assist in drafting and securing the passage of legislation embodying those recommendations.

Acting on the Commission's recommendations, the Board of Bar Commissioners, with the unanimous support of the Mississippi Conference of Judges, endorsed a package of four proposed bills. The proposals targeted four key areas identified for fundamental reform: creating an adequate administrative infrastructure through the creation of an Administrative Office of the Courts; improving the appellate process through the creation of an intermediate Court of Appeals; increasing the efficiency of trial judges by providing better clerical and research

support; and stepping up efforts to attract and retain highly qualified judges by increasing judicial salaries.

The Mississippi legislature did, in fact, effect significant reform in these four areas. Legislation signed by the Governor on April 19, 1993, made striking improvement to the current state of judicial administration, the appellate process, support for trial judges, and judicial salaries.[1]

1. The Creation of an Administrative Office of the Courts

At the level of general jurisdiction trial courts, Mississippi's court system is organized in a way that mirrors the system in place one hundred years ago. Many of the twenty circuit and chancery districts and nineteen county court systems are staffed by numerous judges. Each court has operated independently of all others, enjoying near-feudal autonomy.

As a result, judicial administration in Mississippi has been decentralized, fragmented, and haphazard. There has been no systemic coordination for *any* identifiable dimension of court management. As a result, information has been unavailable, duplication of costs and services has been widespread, and there has been an alarming absence of public accountability. Caseload burdens fall unevenly from district to district, but there has been no way to collect and analyze data to identify needs. Duplication of costs and services has been epidemic. Time standards designed to hold judges accountable could not be put in place. Fiscal accountability could not be assured because financial accounting was virtually nonexistent. As forms and procedures vary widely, the public's access to the courts has suffered.

When the Commission studied these problems, Mississippi was *the only state in the country* without formal administrative mechanisms to coordinate its courts. Very early on, the members of the Commission reached a consensus that many of the most severe problems with Mississippi's judiciary could be traced, directly or indirectly, to the fragmented nature of judicial administration.

To address these problems the Commission recommended, and the legislature created, an Administrative Office of the Courts under the supervisory control of the Chief Justice of the Supreme Court. Among its basic duties, the Administrative Office will:

- collect and compile statistical data on the judicial and financial operations of all state courts;
- evaluate court dockets, practices, and procedures;
- implement uniform administrative and business methods for court clerks;
- coordinate the functions and duties of administrative personnel throughout the state, including court administrators and administrative aides;

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1. As is always the case, this legislation was the work of many. Efforts in support of the legislative package are sketched in a letter from Mississippi Bar President Grady F. Tollison, Jr., dated April 8, 1993, and attached as Appendix 2.

- prepare budget recommendations for the maintenance and operation of the judicial system; and
- report annually on the work of the judicial system.

To further assist with judicial planning the Commission recommended, and the Legislature established, the Mississippi Judicial Study Committee. As its name implies, the Study Committee will study issues and provide counsel to the courts and the Administrative Office on matters of judicial administrative policy. The Committee will draw its nineteen voting and two non-voting members from a wide range of groups.

2. The Creation of an Intermediate Appellate Court

For some time, the Mississippi Supreme Court, the only appellate court in Mississippi, has been unable to handle its caseload. In 1990, for example, the court disposed of only 76% of its cases. On average, it now takes nearly *three years* to move a case from civil judgment in the lower courts to final disposition by the supreme court. Unacceptable levels of delay were getting worse. From 1991 to 1992, delay in civil cases was up 32.7%, delay in criminal cases was up 55.9%, and delay overall increased 43.2%.

When the Commission studied these problems, it found that Mississippi had the most people and one of the highest caseloads of any state with only a single appellate court. Thus, there was early consensus among Commission members that Mississippi needed another appellate court.

Following the Commission's recommendation, the Legislature responded by creating the Court of Appeals of the State of Mississippi. This five-judge court will decide civil and criminal cases by assignment from the supreme court. Decisions of the court of appeals will be final, subject only to certiorari review by the supreme court. Because the main function of the court of appeals is to relieve the supreme court of its present duty to review ordinary cases for routine error, certiorari review should be rare, and thus the court of appeals will be the new court of last resort in many cases. One judge will be elected from each congressional district and begin serving January 1, 1995.

3. Secretarial and Research Assistance for Trial Judges

In recent years, the volume and complexity of litigation in Mississippi has increased dramatically. Trial court caseloads have risen as much as 250% in the past two decades. Criminal cases, especially drug cases, continue to rise at an alarming rate, and all demand quick attention under a law that requires trial within 270 days. Dioxin and asbestos cases involving a vast number of parties and claims further clog dockets.

Adjudicative duties alone now fully occupy Mississippi judges. Moreover, judging is the most efficient and cost effective way for judges to spend their time. Yet most Mississippi trial courts have long operated completely without secretarial staff and research assistance.

Strides were made toward the adequate provision of secretarial and legal research assistance for trial judges. Under a bill first proposed by the Commission, the Legislature allocated funds from which the Administrative Office may disburse up to $20,000 per judge per year that chancellors and circuit judges may use to employ (individually or together with other judges or chancellors) law clerks, legal research assistants, and secretaries.

4. Increased Judicial Salaries

For Mississippi to attract and retain competent and experienced lawyers to the bench, it must make public service a reasonable professional alternative. However, for some years, Mississippi's trial judges have earned, by far, the lowest salaries in the South. In 1992, a newly elected, inexperienced trial court judge in any other southern state was paid more than the most experienced Mississippi chancery or circuit judge—on average, 20% more. Mississippi's appellate judges have fared no better. In 1992, the nine lowest paid supreme court judges in the South were the nine members of the Mississippi Supreme Court. On average, a supreme court judge in the South earned 20% more.

Last session, again through a bill backed by the Commission, the Legislature increased judicial salaries substantially. Supreme court, circuit, and chancery judges will each receive a $15,000 pay raise, phased in over two years.[2]

C. Studies and Recommendations

In addition to its legislative efforts, the Commission has studied selected topics in four other areas: trial court funding, information technology, the criminal justice system, and the juvenile justice system. Specially appointed subcommittees researched and studied issues in great depth, and brought forward formal reports and recommendations, often the subject of vigorous debate by the full Commission.

1. Trial Court Funding

In Mississippi, local governments provide a huge amount—approximately 80%—of funding for trial courts. By contrast, last fiscal year the state allocated 9/16 of 1% (.0056) of its annual general fund to trial and appellate courts.

Axiomatically, the third branch of our government must be able to discharge its duties effectively and uniformly across the state. Throughout its existence, the Commission has held the view that the State of Mississippi must take greater responsibility for the operation and general funding of its courts. Court financing must be studied, toward the goal of developing specific legislative recommendations for meeting the essential needs of the court system.

Moreover, Commission members believed, without exception, that the state should administer all funds for the court system, whatever their source. A unified budget should set forth all financial operations of the entire court system and detail

2. The chief justice of the supreme court will receive a $16,400 raise.

and document all revenues and expenditures. A single budget process will facilitate analysis, planning, and accountability, and provide the administrative capacity to reduce waste, eliminate needless duplication, and establish uniformity.

2. Information Technology

Courts today are in the information business. Their effectiveness depends largely on their ability to process relevant data. Informed judges are better decision-makers, and information technology can give judges better access to crucial facts. Technology can produce high quality justice by reducing delay and inconvenience while, at the same time, bringing about full public access, media coverage, and public education.

Broadly speaking, the Commission concluded that Mississippi's courts must fully embrace new information technologies of all types. Having lagged far behind to date, our courts must aggressively seek to take maximum advantage of the benefits technology presents for improving the delivery of justice. Technology promises more effective collection, storage, and retrieval of data that, in turn, will allow our judges and their staffs to administer our courts more responsibly and responsively. Indeed, the Commission believes that automated information technology, together with the Administrative Office of the Courts, can be the catalyst for unifying the hodgepodge of semi-independent trial courts into a unified modern court *system*.

3. The Criminal Justice System

The Criminal Justice Subcommittee selected two pressing topics for study: sentencing and indigent representation.

Sentencing in Mississippi is "partially indeterminate." The judge has some discretion to vary the length of the sentences imposed on different offenders who commit the same crime. The judge has discretion to set the maximum period of incarceration, but not the minimum; a parole board determines the actual date of release.

One problem with indeterminate sentencing is that it embraces the now discredited notion that incarceration rehabilitates the offender. Moreover, the disparities inherent in partially indeterminate sentencing have created an enormous amount of disrespect among both the public and those involved in the criminal justice process. Consequently, the Commission recommends that a sentencing commission be established to study ways to move toward a sentencing method that results in more statewide parity.

Quality legal representation in criminal proceedings not only benefits the accused, but, perhaps as importantly, it benefits the public interest. The availability of quality legal representation should not depend on a person's ability to pay. Presently, Mississippi provides indigent representation through court-appointed counsel and various forms of full and part-time public defender offices. The quality of legal services has been erratic: there are no safeguards to ensure that highly skilled lawyers, or simply lawyers knowledgeable in the area of criminal law, are

selected. The Commission believes that the best way to remedy these problems is through the creation of a county-wide or district-wide public defender system. Concurrently, a Public Defender Commission should be created to provide training for public defenders and court-appointed counsel. This Commission would also oversee the program and delineate standards and criteria for appointments. Quality appellate representation similarly could be assured through the creation of a state appellate defender's office.

4. The Juvenile Justice System

Juvenile justice matters now fall under the jurisdiction of various courts, including chancery courts, county courts, family courts, and special masters. Fragmenting responsibility in this manner has caused a lack of statewide consistency in juvenile justice matters. Further, youth court judges are poorly trained, both in areas particular to youth courts and as to judicial matters more generally.

The Commission appointed a Youth Court Subcommittee to study the problems. After much discussion of the Subcommittee's recommendations, it became clear that more statistical information was needed before the Commission could reach a consensus on a recommended course of action. The Commission hopes that the Administrative Office of the Courts will remove the present information barriers so that workable solutions to the problems can be devised soon.

III. PREFACE TO THE REPORT—A SYNOPSIS OF THE STUDY PROCESS

A. The Study Process

From the beginning, agreement on two basic facts defined the Commission's work: Mississippi's judiciary could not meet current needs, and without change at the most basic levels, Mississippi would be even more poorly equipped to deliver justice to its citizens in the future.

A third fact also loomed large: demographic projections clearly suggest that an already burdened Mississippi judiciary may face unprecedented demands in years to come.[3] As the size and diversity of Mississippi's population continues to increase, and as Mississippi's diverse communities become more willing and able to voice their concerns, the volume and character of litigation will change. The undeniable "graying" of our population will likewise have important consequences for the judiciary. Our judicial system, more than ever before, must be accessible and responsive.

In the Commission's view, Mississippi should not undertake simply to enlarge its current court system; Mississippi's citizens deserve a better system, not simply a bigger one. Solutions targeted at the patchwork of existing problems also will not suffice; Mississippi would remain unprepared to meet the exigencies that the future will assuredly bring. Rather, only fundamental, structural change could solve

3. A more comprehensive discussion of the effects demographic changes will likely have on the Mississippi Judiciary is attached as Appendix 3.

the current crisis in the courts and enable Mississippi to respond to the demands of the next century.

With all this in mind, the Commission principally has sought to lay the *groundwork* for solutions to the short and long term problems that plague the courts. For the most part, the Commission has worked to propose and effect fundamental, structural reform, reform that will give Mississippi's judiciary the systemic capacity to address its many particular, discrete problems. The Commission focused its efforts in eight areas: Judicial Administration; The Appellate Process; Trial Court Efficiency; Judicial Compensation; Trial Court Funding; Information Technology; The Criminal Justice System; and The Juvenile Justice System.

Judicial administration, the appellate process, trial court efficiency, and judicial compensation were the subjects targeted for immediate legislative action. The Commission believed that these were predicate matters that had to be tackled before other needs could be addressed.

Trial court funding, information technology, the criminal justice system, and the juvenile justice system received detailed study by specially appointed subcommittees. The Commission felt that these areas already present particularly pressing and trying problems, problems whose spill-over effects stress the entire judicial system. Indeed, "the criminal justice system" is a topic so broad and one that encompasses so many issues that the Commission asked the Criminal Justice Subcommittee to pinpoint subjects most in need of immediate reform and examine in detail just those issues. To this end, the subcommittee isolated two discrete problems, sentencing and indigent representation, and devoted extensive study to those.

B. The Next Phase: Report and Public Comment

Given the dramatic impact of the new court reform legislation, the Commission thought it should pause to report to the public before it resumed its original task of studying comprehensively the judicial system. Moreover, prompted by the strongly held views of the non-lawyer members of the Commission, the Commission concluded that further study should await input, from all segments of Mississippi's citizenry, on the Commission's ideas, priorities, and recommendations. After all, the court system exists to provide justice for Mississippi's citizens. The Commission felt that it could not answer its charge of giving shape to a judiciary that will meet the needs of the twenty-first century until it has heard from the very people most affected by the problems that plague the courts.

The first step in this process is the release of this Discussion Draft. In addition, the Commission intends to undertake a concerted campaign to solicit public comment and disseminate information concerning the judicial system. The Commission's preliminary thoughts are that this campaign might proceed by commissioning and conducting a survey, and by conducting public meetings, all of which would be designed to provide information about the court system and to hear citizens' views about which of the judiciary's problems most affect their lives

and ways the judiciary can better respond to the needs of the people it exists to serve.[4]

The following sections of this Discussion Draft are organized by reference to these eight areas. In each area, the Commission's perception of the problems is discussed, as are the Commission's recommendations; in addition, for the first four areas the course of legislative action is detailed.

IV. AREA ONE: JUDICIAL ADMINISTRATION

A. The Problems: Information Barriers and Fragmented Administration

At the level of general jurisdiction trial courts, Mississippi's court system is organized in a way that mirrors the system in place one hundred years ago. Most of the twenty chancery court districts and twenty circuit court districts have non-congruent boundaries. Nineteen of eighty-two counties employ a county court system. Many circuit and chancery districts and county courts are staffed by numerous judges. Each court has operated independently of all others, usually completely unaware of the activities of other courts (except through second-hand anecdotes). Indeed, each circuit, chancery, and county court district has enjoyed near-feudal autonomy.[5]

As a result, judicial administration in Mississippi has been decentralized, fragmented, and haphazard. There has been no systemic coordination for *any* identifiable dimension of even the most basic elements of court management. Elementary administrative functions have been performed and controlled by individual judges and court personnel in each judicial district. The resulting problems have been real and fundamental: salient information has been unavailable, duplication of costs and services has been widespread, and there has been an alarming absence of public accountability. The absence of uniform administrative policy has resulted in different treatment of judges, attorneys, court staff, and juries from one courtroom to another. These differences in court operational procedures have likewise made it difficult to obtain reliable information regarding records, forms, and procedures.

The Commission discussed many administrative problems, including:

- Mississippi has lacked a uniform system for reporting caseload data as basic as filings, counts, and dispositions. Caseload burdens fall unevenly from district to district, but there has been no way to collect and analyze data to identify needs.
- Rational judicial planning has been simply *impossible*. Mississippi could not employ modern, efficient differential case management techniques (ways to

4. Invariably, Commission meetings and subcommittee work involved discussion of other matters that the Commission felt warrant further attention, either from the Administrative Office of the Courts, the Judicial Advisory Study Committee, the Commission, or some other group charged with responsibility for court reform. Appendix 4 sets out the Commission's working list of such matters.

5. A diagram of the structure of Mississippi's court system, taken from 1991 ANNUAL REPORT OF THE MISSISSIPPI SUPREME COURT (1991), is attached as Appendix 5.

make the forum fit the fuss) because the relevant information about the cases has been completely unavailable.

- Duplication of costs and services has been epidemic. Counties could not share resources even as basic as courtrooms. No central purchasing unit could be established.
- Time standards designed to hold judges accountable could not be put in place.
- Fiscal accountability could not be assured because financial accounting was virtually nonexistent.
- As forms and procedures vary widely, the public's access to the courts has suffered.
- When the Commission studied these problems, Mississippi was *the only state in the country* without formal administrative mechanisms to coordinate its courts.

In sum, reform efforts have been stymied by a paralyzing lack of information concerning our courts and an absence of an administrative mechanism to effect change.

B. The Solution: An Administrative Office of the Courts

1. The Commission's Recommendations

During the early phases of the study process, the members of the Commission reached a consensus that many of the most severe problems with Mississippi's judiciary could be traced, directly or indirectly, to the fragmented nature of judicial administration. The Commission felt that the absence of a central administrative authority, coupled with the inability of local courts to coordinate administrative matters among themselves, was the cause of substantial delay, duplication, and other waste, and was a serious barrier to public accountability. Thus, one of the Commission's first priorities was to devise a solution to the problem of administrative fragmentation.

A necessary component of this early discussion was consideration of eliminating the distinction between courts of law and equity. This politically volatile idea was rejected unanimously by the Commission, partly because of the sensitivity of the issue, but more fundamentally because the group concluded that abolishing the line between law and equity was unnecessary to resolve what were, at heart, purely administrative problems. In the Commission's view, there was no reason that circuit and chancery courts could not be brought under the same administrative umbrella, yet retain their separate adjudicatory functions.[6]

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6. The Commission also focused early on what it perceived as a second underlying barrier to smooth administrative operation of the trial court system: the fact that circuit and chancery districts are not coterminous. The members of the Commission unanimously agreed that coterminous circuit and chancery districts are not merely desirable; they are necessary if uniform, efficient operation of the trial court system is to be achieved. The problem can be resolved by redistricting, which is scheduled to take place during the 1994 legislative session. Indeed, in November 1992, a constitutional amendment was passed which allows the creation of more than the prior limit of twenty circuit and chancery districts, and thus the legislature will enjoy added flexibility in drawing districts.

Thus, the Commission came to focus on ways to bring the state judiciary under a single administrative umbrella without a wholesale upheaval of the existing court system. Consensus emerged that Mississippi needed a statewide administrative office of the courts that would operate under the auspices of the Mississippi Supreme Court. The domain of the office would extend from top (the supreme court) to bottom (all other courts in the state except municipal courts and boards of supervisors). Trial courts would continue to perform their existing adjudicatory duties, but their nonadjudicatory functions would be made uniform and interactive with all other courts of the state.

The Commission envisioned that the administrative office would:

- Develop, implement, and monitor all administrative policy, including long-range and short-range planning.
- Collect, analyze, and report statistical caseload and financial data.
- Prepare and administer standards and procedures for selection, compensation, promotion, and discipline of all nonjudicial personnel.
- Control completely the financial administration for the judicial system, including fiscal administration for all courts and court personnel, preparation of a statewide judicial budget, and purchasing, accounting, and auditing duties.
- Coordinate court operations and support services.
- Train judicial and nonjudicial personnel.
- Design, implement, and manage an automated information and record keeping system, including the development of forms and records, record retention schedules, and the maintenance of a uniform record keeping system, all designed to provide the case-flow time and caseload data necessary to monitor the judicial system.
- Gather necessary data and use it to develop operational standards and procedures for courts.

Given this background, it is unsurprising that, almost by acclamation, the Commission agreed that the first priority of the *legislative* program should be to create a statewide administrative office that could gather information and put solutions in place. In broad outline, the Commission envisioned that the administrative office would be led by an executive director who would preside over several divisions, each of which would deal with some core nonjudicial function of the court system. The task of bringing forward a specific blueprint for a permanent

administrative office was given to the Finance and Operations Subcommittee, Chaired by former Chancellor Robert H. Oswald.[7]

2. Legislative Action

The original legislation to create the Administrative Office of the Courts was introduced as Senate Bill 2620. The stated mission of the office was to assist in the administration of the nonjudicial business of the courts, under the authority of the chief justice of the supreme court (who already serves as the chief administrative officer of all state courts). Among other things, the Administrative Office would help ensure that the business of the courts is attended with proper dispatch; that court dockets are kept current; and that trials and appeals are heard promptly. To accomplish these goals and relieve some of the information barriers that have stood in the way of court reform, the office would work with all court clerks to compile and publish statistical caseload and other information.

Indeed, the bill set out an expansive list of specific duties. They include: the collection and compilation of statistical data on the judicial and financial operations of the courts; the evaluation of court dockets, practices, and procedures; the implementation of uniform administrative and business methods for court clerks; the preparation of budget recommendations for the maintenance and operation of the judicial system; the preparation of recommendations concerning adequate physical accommodations for the judicial system; the preparation of an annual report on the work of the judicial system; and the coordination of the functions and duties of administrative personnel throughout the state, including court administrators and administrative aides.

On the matter of personnel, the legislation provided that the Administrative Office would be led by an Administrative Director appointed by the supreme court.

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7. The National Center for State Courts was the main source for the information used by the Subcommittee to design an Administrative Office of the Courts for Mississippi. In addition, the National Judicial College, the American Bar Association, and the Administrative Office of the United States Courts all provided information concerning how to structure an administrative office and manage it effectively, and concerning fiscal issues. The Subcommittee also surveyed the administrative mechanisms in place in Alabama, Arkansas, Florida, Georgia, Iowa, Louisiana, Nebraska, North Carolina, South Carolina, Tennessee, and Texas, to learn from the experience of other states. The Subcommittee paid particular attention to the enabling legislation employed by these states, the duties and responsibilities of each administrative office, employee organizations and salaries, job descriptions, use of information technology and automation, and budgets. The Subcommittee went beyond paper descriptions of these offices and talked personally with court administrators to obtain their views on their current administrative operations and on the changes they would suggest if crafting an ideal office.

Some particulars of this research serve to illustrate the broad range of experiences presented for the Commission's consideration. State court administrators' salaries were found to range from $43,139 to $113,632, with a mean of $77,041 and a median of $75,962. The staff size of administrative offices was found to range from 900 in New Jersey and 475 in New York to eight in Wyoming and six in Indiana. In Alabama, to choose a local example, approximately 95 people work in the administrative office of a court system which employs approximately 1900. Alabama's office is structured with an administrative director, deputy directory, and several division heads. Divisions include judicial college, computer, case management, legal, municipal court, juvenile court, and accounting. The administrative office in the state of Washington employs an approach which treats the courts as clients, and provides judicial education programs, public information, classroom programs, limited research for judges, jury handbooks, videotapes for judges and jurors, court services, consulting work for courts, child support guidelines, information on ways to assure access to persons with disabilities, and various other services. Washington's statewide computer system is funded by assessments on traffic tickets.

The Director would possess the same qualifications, be subject to the same restrictions, and receive the same salary and benefits as a circuit judge. With the approval of the supreme court, the Director would be authorized to employ and set the compensation of assistants and other employees.[8]

To facilitate judicial planning further, Senate Bill 2620 also sought to create the Mississippi Judicial Advisory Board. As its name implies, the Judicial Advisory Board would provide objective study and analysis of the problems confronting the courts and provide counsel on matters of judicial administrative policy. Membership on the board would be broad-based.[9]

While, predictably, the legislative process prompted many changes to Senate Bill 2620, in the end the original version of Senate Bill 2620 passed essentially unaltered. The primary change was the substitution of a Mississippi Judicial Advisory Study Committee for the Mississippi Judicial Advisory Board. The Study Committee will consist of nineteen voting and two non-voting members.[10]

Finally, it is important to note that funding for the Administrative Office was provided. The legislature appropriated $1,363,000 from the state General Fund for the fiscal year beginning July 1, 1993, and ending June 30, 1994.

V. Area Two: The Appellate Process

A. The Problem: Delay in the Mississippi Supreme Court

If justice delayed is justice denied, many Mississippians have been denied justice in the Mississippi Supreme Court.

- On average, it now takes nearly *three years* to move a case from civil judgment in the lower courts to final disposition by the supreme court.
- The supreme court cannot handle its present workload. In 1990, for example, the court disposed of only 76% of its caseload.

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8. The Commission believed that the Administrative Office would best be led by a Director who had both substantial management training and experience and significant experience in the judicial environment. In a similar vein, the Commission believed that the Administrative Director would need experienced deputies, assistants, and staff trained in judicial management.

9. The board's 21 voting and four non-voting members would be selected by the chief justice of the supreme court, the Conference of Chancery Judges, the Conference of Circuit Judges, the Mississippi Conference of Judges, the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Lieutenant Governor, and the Mississippi Bar Association. The Administrative Office would support the board's research and other work, by providing research, clerical, and other assistance. The legislation creating the Board would stand repealed on June 30, 1994.

10. The 19 voting members will be selected as follows: three by appointment of the chief justice of the supreme court; one by election from the Conference of Chancery Judges; one by election from the Conference of Circuit Judges; one by election from the Conference of County Court Judges; one by election from the Chancery Clerks' Association; one by election from the Circuit Clerks' Association; three by appointment of the Governor (none of whom may be a member of the Mississippi Bar); two by appointment of the Lieutenant Governor (neither of whom may be an attorney or a member of the legislature); two by appointment of the Speaker of the House (neither of whom may be an attorney or a member of the legislature); two members of the Mississippi Bar by appointment of the President of the Mississippi Bar Association; two members of the Mississippi Bar by appointment of the President of the Magnolia Bar Association. In addition, the Chair of the Senate Judiciary Committee and the Chair of the House Judiciary Committee shall serve as legislative liaisons and non-voting members. The legislation creating the Study Committee will stand repealed on June 30, 1996.

- When the Commission studied these problems, it found that Mississippi had the most people and cases of any state with only a single appellate court. It was the only such state in the South.

Simply put, Mississippi has lacked the case processing capacity to handle the appellate caseload in this state. Already staggering levels of delay were getting worse.

- In 1992, the *average* civil case spent 620 days between the date it became ready for disposition by the supreme court and the date of actual disposition.
- In 1992, the *average* criminal case spent 658 days in the supreme court after it was ready to be decided.
- Figures for 1992 were up significantly from 1991: delay in civil cases was up 32.7%; delay in criminal cases was up an astonishing 55.9%; and delay overall was up 43.2%.

In short, people were waiting too long for a decision from the Mississippi Supreme Court, and those whose lives are affected by the outcome of a case pending before the supreme court could spend too long under a cloud of uncertainty.

There was no relief in sight.

- Filings in circuit and chancery courts continue to increase – almost 40% over the last four years. Filings in the supreme court rose 122% from 1970 to 1990.

B. The Solution: An Intermediate Court of Appeals

1. The Commission's Recommendation

The Commission believed that the crux of the problem was clear: the Mississippi Supreme Court had to review too many cases for routine error. The early consensus of the Commission was that justice could not exist in Mississippi without marked revision to the structure of Mississippi's appellate system. As with other areas of Mississippi's judiciary targeted for reform, the Commission felt strongly that Mississippi could not solve the problem of appellate delay merely by enlarging its appellate judiciary as then structured. Rather, only systemic change could satisfactorily improve the efficiency and alacrity of the appellate process.

The Commission felt equally strongly that the need to reduce delay could not overshadow considerations other than case-processing speed. Appellate courts do more than correct the errors of lower courts. The Commission felt that it is critically important to remember the Mississippi Supreme Court's substantial policy-making and administrative duties. The supreme court is the only judicial body in Mississippi that develops binding rules of State substantive law. The supreme court is also the sole source for the extensive body of rules governing court processes. Consequently, the Commission sought to increase Mississippi's case processing capacity to a sufficient level while allowing the Mississippi Supreme Court more time to fulfill its role as the state's principal and final voice on matters of judicial policy.

With these goals in mind, there was early consensus among the members of the Commission that Mississippi needed another appellate court. Few state supreme

courts have as many members as the nine justice Mississippi Supreme Court, and none have more. Moreover, for some time, Mississippi has had the largest population and one of the largest appellate caseloads of any state operating with a single appellate court.[11] There is good reason for turning to an additional court when a state's caseload grows beyond the ability of a single, relatively small court to handle satisfactorily: once a state supreme court gets too large, it cannot function as an effective policy-making body. The Commission therefore never considered enlarging the Mississippi Supreme Court to be a viable option.

The Commission appointed an Appellate Court Subcommittee, chaired by Amy D. Whitten, to undertake a formal, detailed study of ways to improve the appellate process in Mississippi and enlarge the capacity of its appellate judiciary.[12] The subcommittee's study focused on evaluating various models for a second appellate court. The study process took two tracks. One track considered the addition of a separate court of last resort, coequal with the Mississippi Supreme Court, with exclusive jurisdiction over criminal cases. To this end, the subcommittee studied in great detail the appellate system in Oklahoma, the only state with a single separate appellate court with exclusive jurisdiction over all criminal cases. The other track considered the addition of an intermediate appellate court with jurisdiction over civil and criminal cases. To this end, the subcommittee studied in great detail the appellate systems in Arkansas, Nebraska, South Carolina, and Iowa. All four of these states have a single intermediate appellate court and a single supreme court, each of which have jurisdiction over criminal and civil cases.[13]

The Commission selected a model based on Iowa's system. Iowa provided an effective archetype in two key ways. First, it provided a model for an intermediate appellate court that would give Mississippi enough case-processing capacity to

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11. In 1990, 11 states and the District of Columbia operated with only a single appellate court. That year, the District of Columbia saw the most appeals filed, about 1650; Nebraska ranked second with 1270; Nevada third with 1089; and Mississippi fourth with 966. No other state without an intermediate appellate court received more than 642. *See* NATIONAL CENTER FOR STATE COURTS, STATE COURT CASELOAD STATISTICS: ANNUAL REPORT 1990, at 78, 79 (1992) [hereinafter NCSC CASELOAD STATISTICS 1990] (1990 is the last year for which an NCSC report is available). In the District of Columbia and in Nebraska, cases are counted when the notice of appeal is filed; in Mississippi and Nevada, when the trial record is filed (this is significant because many cases wash-out after the notice of appeal is filed but before the record is completed and filed).

According to the same source, in 1990 Mississippi had, by far, the largest population of any jurisdiction with only a single appellate court. The 1990 caseload statistics reported that Mississippi had approximately 2,573,000 citizens. West Virginia, the next most populous state without an intermediate appellate court, had approximately 1,793,000. *Id.* at 315.

12. The full text of this report is attached as Appendix 6.

13. Arkansas and Iowa were selected for study because those states served as models for what was 1990 House Bill 1251, an earlier legislative effort to establish an intermediate appellate court in Mississippi. In addition, Iowa's population closely approximates Mississippi's. (The latest figures from the National Center for State Courts list Mississippi's population at 2,573,000, Iowa's at 2,777,000. *See* NCSC CASELOAD STATISTICS 1990, *supra* note 11, at 315.) Nebraska was selected because at that time it was the latest state to create an intermediate appellate court, which it did in 1991. Moreover, in 1990, the last year in which Nebraska operated with only a supreme court, the number of cases filed in Nebraska compared closely with the number filed in Mississippi. South Carolina was selected because in 1990, it heard almost exactly the same number of cases as did the Mississippi Supreme Court, and because it has been used as a judicial analog for Mississippi in other contexts. (In 1990, the supreme and single intermediate court of appeals in South Carolina heard a combined total of 972 appeals of right and 61 discretionary appeals. NCSC CASELOAD STATISTICS 1990, *supra* note 11, at 76-77. As in Mississippi, in South Carolina a case is counted when the trial record is filed.).

handle Mississippi's current load and predicted growth: Iowa's courts have demonstrably succeeded in processing *twice* as many cases as the Mississippi Supreme Court with far less delay. An intermediate court of appeals based on Iowa's system should therefore be able to relieve the Mississippi Supreme Court of its crushing obligation to review all lower court proceedings for routine error. *Importantly, the court of appeals would not add another level of appellate review.* Except in the most extraordinary cases, decisions by the court of appeals would be final and not subject to further review by the Mississippi Supreme Court.

Second, Iowa provided a model for the use of more efficient case-processing procedures. The Commission felt strongly that reforming the appellate process in Mississippi should also encompass procedural mechanisms – in both a new intermediate appellate court and in the Mississippi Supreme Court – which would ensure disposition of appeals within nationally recognized time guidelines. The Commission became particularly interested in expedited processes under which a court decides less complex appeals without the full panoply of briefing and other procedures. In addition, the Commission thought that it would be prudent to consider ways to decide more cases without formal submission to the court; ways to reduce the number of judges that participate in the decision of routine cases; and ways to decide fewer cases by formal opinion.[14] Similarly, the Commission thought it might be useful to consider assigning blocks of similar cases to a given panel, to reduce the inefficiencies presented by constant shifts from subject to subject.

The Commission ultimately rejected the Oklahoma model of a single appellate court with exclusive jurisdiction over criminal cases for several reasons. First, it is antiquated and unusual. There are only two criminal courts of last resort in the United States, and both were created a very long time ago. Oklahoma's Court of Criminal Appeals was created in 1908 by Oklahoma's first Legislative Assembly. The only other such court, the Texas Court of Criminal Appeals, took essentially its present shape with the Texas Constitution of 1891.[15] Second, a criminal court of last resort is, at best, only a partial solution to the problem of insufficient judicial capacity. Presently, both Oklahoma and Texas also have intermediate appellate courts. In Texas, the intermediate appellate court hears both civil and criminal cases; in Oklahoma, civil cases only. Third, the Commission believed that taking steps to separate the task of reviewing cases for routine error from the task of articulating judicial policy would increase the quality of justice and the judicial system's efficiency. Instead of separating these tasks, the creation of a separate

14. For example, the Iowa Supreme Court decides 28% more cases than the Mississippi Supreme Court while writing 39% fewer opinions.

15. Alabama and Tennessee are the only other two states with specialized criminal appellate courts at any level. Both of these states employ an *intermediate* criminal court of appeals. Alabama created its court in 1969, Tennessee in 1967. Both jurisdictions also have an intermediate court of appeals with jurisdiction over civil cases, and both have a single supreme court with jurisdiction over both civil and criminal cases. By contrast, 39 states operate with permanent intermediate appellate courts with jurisdiction over both civil and criminal cases. Twenty-four of these courts have been created since 1957. NCSC CASELOAD STATISTICS 1990, *supra* note 11, at 47.

Mississippi Supreme Court for criminal cases would combine them in a second court *and* fail to relieve the Mississippi Supreme Court of its duty to review civil cases for routine error. Fourth, because some areas of the law, such as evidence, are common to both civil and criminal cases, the creation of a court coequal with the Mississippi Supreme Court would also require a mechanism for resolving conflicting decisions of the two courts. Fifth, and finally, some members of the Commission worried that a supreme court for criminal cases might be allowed to deteriorate, resulting in the provision of second class justice for those accused of criminal offenses.

The Commission passed over the other intermediate appellate court models for reasons that differed from state to state. For example, Nebraska's intermediate appellate court was simply too new to have a sufficient track record. South Carolina was the least efficient of the three remaining states. Iowa was the most efficient, had the most flexible procedures, and employed the most innovative case management techniques. Iowa's courts process twice as many cases as the Mississippi Supreme Court with very low levels of delay. Moreover, from a cost perspective, the nine member Mississippi Supreme Court employs too many judges to act *just* as a supervising, policy-making body.[16] The South Carolina Supreme Court has five members, the Arkansas Supreme Court seven, and the Iowa Supreme Court nine. Iowa was thus the only one of the four to provide a source for procedures tailored to make a nine member state supreme court an efficient tribunal for shouldering a large portion of a state's case-processing burden.

2. Legislative Action

House Bill 548 was the legislation introduced to create an intermediate appellate court, called the Court of Appeals of the State of Mississippi. As introduced, the jurisdiction of the court of appeals would be limited to cases assigned to it from the supreme court. Assignment of cases would be governed by Supreme Court Rules; these rules could provide for the selective assignment of individual cases, or the assignment of cases according to subject matter or other general criteria, or both. (The supreme court would, however, retain appeals in cases imposing the death penalty or cases involving utility rates, annexations, bond issues, election contests, or a statute held unconstitutional by the trial court.) Under House Bill 548, once the court of appeals rendered a decision, that decision would become final and not subject to review by the supreme court, unless a majority of the supreme court were to vote to grant certiorari review and hear the case.

The court of appeals would be empowered to sit in panels of three judges. Supreme Court Rules would govern when cases could be submitted to panels of the court and when they must be heard by the entire court. Insofar as practicable, judges would be assigned to panels in such a manner that each judge would sit with each other judge a substantially equal number of times.

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16. Unless a change is made to the Mississippi Constitution, the Mississippi Supreme Court also will continue to have nine members. MISS. CONST. art. 6, § 145B.

The supreme court would establish administrative policies and procedures, including docket control, for the court of appeals. To the extent possible, both courts would be subject to common administration. For instance, the Supreme Court Clerk would serve as clerk for the court of appeals and keep its records.

As introduced, House Bill 548 provided that, initially, the Governor would appoint ten judges to the court of appeals, two each from the state's five congressional districts, who would serve until December 31, 1994. Then, judges would be elected for eight year terms. The first terms of some elected judges initially would be for less than eight years to stagger vacancies. The chief justice of the supreme court would appoint one of the members of the court of appeals to serve as its chief judge, for a renewable term of four years.

Through the give and take of the legislative process, many changes to House Bill 548 came and went. Still, when all was done, the Commission's model for an intermediate appellate court emerged basically intact. As enacted, the primary change to House Bill 548 was to reduce the size of the court from ten to five judges, one each from the state's five congressional districts. Moreover, there will be no transitional period when appointed judges serve. Instead, five judges will be elected in November 1994 and begin service on the first Monday of January 1995.

Another important change sought to increase judicial accountability by the imposition of time standards for appellate decisions. The law now states that after January 1, 1996, the supreme court shall issue a decision in every case within its original jurisdiction within two hundred seventy days after the final brief has been filed. Likewise, the court of appeals shall issue its decisions within two hundred seventy days after the final brief has been filed with that court. In addition, the supreme court shall issue a decision in every case received on certiorari from the court of appeals within one hundred eighty days.

Because the judges of the court of appeals will not begin service until January 1, 1995, the legislature made no appropriation for the court. The 1994 legislature will therefore need to pass an appropriations bill to fund the court of appeals beginning fiscal year 1995.

VI. Area Three: Trial Court Productivity

A. The Problem: Insufficient Clerical, Research, and Administrative Support for Trial Judges

The dramatic increase in the amount and complexity of litigation in Mississippi has hampered the ability of trial judges to decide cases fairly and expeditiously.

- Caseloads have risen as much as 250% in the past two decades. In just the last three years, chancery court filings have increased 37% and circuit court filings have risen 28%.
- Criminal cases, especially drug cases, continue to rise at an alarming rate, and all demand quick attention under a law that requires trial within 270 days.
- Enormous dioxin and asbestos cases further clog dockets.

Adjudicative duties alone now fully occupy Mississippi judges; hearing and deciding cases can be more than a full-time job. Moreover, judging is the most efficient and cost effective way for judges to spend their time. Yet most Mississippi trial courts long have lacked basic clerical, administrative, and research help.

- *Most judges have operated completely without secretarial staff.* In such circumstances, judges must perform the most routine clerical and administrative functions themselves.
- As increasing caseloads demand that judges spend more time in the courtroom, judges have less time to perform the legal research necessary for quality adjudication.

These factors have placed great strain on trial judges, increasing delay and decreasing public confidence. Judges cannot simultaneously give adjudicative duties the attention they need, perform all administrative and secretarial duties, and decide cases efficiently and expeditiously.

B. Legislative Action: Funds for Secretarial and Research Assistance

House Bill 548 substantially increased support for trial judges. The bill authorized up to $20,000 per year that each circuit judge and chancellor (individually or together with other judges or chancellors) can use to employ law clerks, legal research assistants, or secretaries. The Administrative Office will manage the funds allocated for this purpose, and must approve all employment requests.[17]

C. The Commission's Further Recommendation: Enhanced Administrative Support

It bears repeating that judging is the most efficient and cost effective way for judges to spend their time. Modern case-management techniques can free judges of the need to handle matters that really do not require judicial attention.

As with almost every issue, however, information barriers have been a roadblock to progress. Data regarding the current operations of trial courts is an essential requisite to sensible reform. When the Administrative Office of the Courts has gathered adequate information, administrative support could make the system more efficient in many ways, including:

- Local court administrators could manage trial court dockets by scheduling pre-trial and other conferences, scheduling hearings and trials, coordinating scheduling orders for all cases, and anticipating trials.
- Court administrators could administer the probate docket, examine files for annual and other accounts, notify the court of delinquencies, schedule hearings, and otherwise attend to the ministerial requirements of probate cases.

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17. Indeed, the Administrative Office will actually disburse *all* salaries for judges, court reporters, court administrators, and the like. Salary costs borne by counties (for court reporters, for instance) will be paid in monthly increments by the counties to the Administrative Office for disbursement.

Seven hundred and fifty thousand dollars in pilot funding was effected for fiscal year 1994. At $20,000 for each of Mississippi's 79 eligible judges, full funding would require an allocation of $1,580,000.

- The Administrative Office, working with local trial judges and court administrators, could coordinate local administrators throughout the state and build a uniform trial court administrative system.
- Trial court liaison personnel could furnish direct assistance to local judges and court administrators regarding evolving administrative procedures and new technology. Liaison personnel could also coordinate the regional supply of secretarial and law clerk assistance.

VII. AREA FOUR: JUDICIAL COMPENSATION

A. The Problem: Inadequate Judicial Salaries

More than any other feature of the court system, Mississippi citizens depend on their judges to deliver justice. For Mississippi to attract and retain competent and experienced lawyers to the bench, it must make public service a reasonable professional alternative. Mississippi must encourage its best citizens to serve the public as judicial officers.

- For some years, Mississippi's trial judges have earned, by far, the lowest salaries in the South. In 1992, a newly elected, inexperienced trial court judge in any other southern state was paid more than the most experienced Mississippi chancery or circuit judge – on average, 20% more.
- Mississippi's appellate judges have fared no better. In 1992, the nine lowest paid supreme court judges in the South were the nine members of the Mississippi Supreme Court. On average, a supreme court judge in the South earned 20% more.

B. Legislative Action: Increased Judicial Salaries

As enacted, House Bill 548 provided for a substantial, two-step increase in judicial salaries. The following chart compares judicial salaries in the South, as of January 1, 1993, for other states, and before and after the effective dates of the judicial pay increases in Mississippi. Of course, judicial salaries in other states could change during the period that the pay raises take effect in Mississippi.

	Supreme Court (Associate Justice)	Trial Court
Alabama	107,125	72,500 to 105,125
Arkansas	81,772	76,201
Florida	100,443	90,399
Louisiana	94,000	84,000
Tennessee	93,540	85,344
Texas	91,035	81,932
average minimum	94,653	81,729
Mississippi as of January 1, 1993	75,800	66,200
Mississippi as of July 1, 1993	85,800	76,200
Mississippi as of July 1, 1994	90,800	81,200

In full, House Bill 548 provides that from July 1, 1993, through July 1, 1994, salaries shall increase to: chief justice of the supreme court, $88,400; presiding justices of the supreme court, $86,400; associate justices of the supreme court, $85,800; chancery and circuit judges, $76,200. As of July 1, 1994, salaries shall be: chief justice of the supreme court, $93,400; presiding justices of the supreme court, $91,400; associate justices of the supreme court, $90,800; chief judge of the court of appeals, $86,800; associate judges of the court of appeals, $84,000; chancery and circuit judges, $81,200. In addition, the annual salary of court reporters was increased from $30,000 to $33,000.[18]

VIII. Area Five: Trial Court Funding

A. The Problem: An Outdated System for Funding Trial Courts

Throughout the United States, state court funding has evolved in a predictable pattern in which state and local governments share expenses. Historically, local governments have paid all capital outlays associated with local courts (courthouses, jails, office space, furniture, equipment) and most, if not all, local personnel expenses, except judges' salaries. States have paid judicial salaries and all expenses, including capital expenditures, for appellate courts and judges. Comparatively, local governments have borne most of the costs.

The recent national trend, however, has been for state governments to absorb more and more trial court costs. Mississippi has lagged behind this trend and continues to follow the original cost distribution pattern. In Mississippi, local governments still provide a disproportionate amount of funding for trial courts. While the long-time lack of a statewide administrative office makes precise figures unavailable, local governments provide approximately 80% of the operational costs of trial courts. The legislature has been appropriating funds to finance only the operations of the supreme court and salaries of circuit and chancery judges. Although circuit and chancery judges received a $4000 annual allowance for office expenses, until the 1993 legislative session the state funded no other staffing or administrative needs of its trial courts. County courts, which have been created to relieve the heavy trial burdens of many circuit courts, have received no funding whatever from the state.

The average county currently allocates 12.3% of its annual general fund to essential court operating costs. In addition, the average county also contributes an amount slightly greater than its general fund allocation through the collection of fines, fees, forfeitures, and through other sources independent of the state treasury.[19] By comparison, last fiscal year the state allocated 9/16 of 1% (.0056) of its annual general fund to trial and appellate courts. In short, counties mostly financed the state court system.

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18. The legislature also passed another law, House Bill 54, an omnibus salary bill which governs the salaries of elected officials, including judges. This bill likewise provides the same judicial salary increases, one effective July 1, 1993, and the other July 1, 1994.

19. A county by county breakdown is attached as Appendix 7 to this Discussion Draft.

A further fact exacerbates this burden on local government. Throughout the country, it is increasingly common for the costs of government programs to be passed down from federal to state government, and then to local government. Federal and state law has compelled this lowest tier to absorb a large portion of many fiscal burdens. As a consequence, local government in Mississippi, as with local government elsewhere, labors under an increased financial strain. Unlike elsewhere, though, new demands are coupled with the unusual responsibility of paying the costs of the state judicial system.

B. The Commission's Solution: The "Third Branch" Approach

Basic notions of civics, and the Mississippi Constitution, contemplate that the judiciary is the means by which the laws passed by the legislature are enforced. The third branch of our government must be able to discharge its duties effectively and uniformly across the state.

Throughout its existence, the Commission has held the view that the State of Mississippi must take greater responsibility for the operation and general funding of its courts. Without exception, Commission members believed that the State should administer all funds for the court system. The Commission recognizes that each of the fifty states presently supports its state court system with funds derived from both local and state governments. While the source of funds is an important factor, of paramount importance is the ability of the state to aggregate for statewide administration all operating funds into a single budget; funds generated at the local level should be transmitted to the state for inclusion into a single statewide budget. A single budget process will facilitate analysis, planning, and accountability and provide the administrative capacity to reduce waste, eliminate needless duplication, and establish uniformity.

Moreover, court financing must be studied, toward the goal of developing specific legislative recommendations for meeting the essential needs of the court system. The new allocation for secretarial, law clerk, and legal research assistance is a step in the right direction. Still, much needs to be done. Funding must include: adequate salaries for judges, their support staff, and nonjudicial personnel; adequate administrative support; and adequate funds for operational costs, supplies, and equipment. A unified budget should set forth all financial operations of the entire court system and detail and document all revenues and expenditures.

IX. AREA SIX: INFORMATION TECHNOLOGY

A. The Commission's Recommendation: Full Use of Modern Technology

As with most organizations today, public or private, courts are in the information business. Their effectiveness depends largely on their ability to process relevant data. With this in mind, the Commission appointed a Court Technology

Committee, chaired by John B. Clark, to study use of information technology in Mississippi's courts.[20]

Informed judges are better decision-makers. Information technology can give judges better access to crucial facts. Moreover, careful application of emerging technologies can increase productivity and heighten responsiveness to the public's requests for service, without a loss of traditional values that form the foundation of a court's search for a just resolution of disputes. Technology can produce high quality justice by reducing delay and inconvenience while improving accessibility. Technology can bring about full public access, media coverage, and public education.

Broadly speaking, the Commission concluded that to improve their delivery of services, Mississippi's courts must fully embrace new information technologies of all types. Having lagged far behind to date, our courts must aggressively seek to maximize the benefits technology presents for improving the delivery of justice. Technology promises more effective collection, storage, and retrieval of data that, in turn, will allow our judges and their staffs to administer our courts more responsibly and responsively. Automated information technology, together with the Administrative Office of the Courts, can be a catalyst for unifying the hodgepodge of semi-independent trial courts into a unified modern court *system*.

The Commission recommends that Mississippi move toward network use of personal computers and the development of software based on an open systems approach and compatible with popular, off-the-shelf software applications, such as WordPerfect, Lotus 1-2-3, and the like. As a beginning, the new system should serve these ends:

Records Management

- All court records should be automated, and the bar and the public able to retrieve all non-confidential records.
- Courts should provide electronic filing and transfer of court documents.
- Automation should support remote "dial up" access to both court records and document transfer.
- Courts should store recorded data electronically to diminish the growing storage problems in many county courthouses and state buildings.

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20. The full text of the Subcommittee's report is attached as Appendix 8.

Automated Case Management

- Courts should employ modern automated case management systems designed to promote the just and expeditious movement of cases through the court system.[21]

Statistical Reporting

- The court system, through the Administrative Office of the Courts, should establish standardized methods of collection and reporting of statistics on the production of all courts. Where possible, reporting should be electronic.

Beyond Record-keeping

- Courts should employ all technological applications that render the courts more accessible to persons covered by the Americans with Disabilities Act.
- Courts should be encouraged to apply video technology to those functions that might be enhanced by its use. Examples might include videotaped arraignments and prisoner hearings, and videotaped trial proceedings.
- Trial courts should apply modern court-reporting techniques capable of producing immediate transcripts, supporting computer use in the courtroom, and so forth.
- Trial judges should be given immediate access to training in the fundamentals of computer research, so that judges can make maximum use of the Mississippi Case Base (which has been supplied to each trial court district) and legal research services such as Westlaw and Lexis.

X. Area Seven: The Criminal Justice System

A. The Problems Selected for Study: Disparity in Sentencing and Indigent Representation

Early in its study process, the Commission formed a Criminal Justice Subcommittee, chaired by Edwin A. Snyder, to study problems with the criminal justice system. However, "the criminal justice system" is a topic so broad and one that encompasses so many issues that the Commission asked the Subcommittee first to survey the entire field and then to pinpoint subjects most in need of immediate reform. In this vein, the Subcommittee studied in detail two discrete problems: sentencing and indigent representation.[22]

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21. The software system purchased or developed for case-processing and management must be able to provide all basic case information, party information (including identification of attorneys), docketing information, scheduling information, and disposition information. Specifically, the software must enable:
(a) automated case tracking of all cases from initiation through final disposition;
(b) electronic transfer of case information to appellate courts;
(c) indexing by the name of any party, including the capability to retrieve by full or partial name, or by phonetic name where the exact spelling is not known;
(d) full docketing of all case events, including filings and court actions;
(e) scheduling capabilities to maintain court calendars;
(f) capability to generate notices automatically for any scheduled event (i.e., docket call and hearing dates);
(g) full range of management and statistical reports;
(h) capability to archive selected records as files are purged and to retrieve files from archive; and
(i) capability to facilitate remote "read only" access by state and local agencies and attorneys.

22. The full text of the Subcommittee's report on these two issues is attached as Appendix 9.

1. Disparity in Sentencing

Presently, in Mississippi sentencing is "partially indeterminate." The judge has restricted discretion to vary the length of the sentences imposed on different offenders who commit the same crime. In Mississippi, the judge has the discretion to set the maximum period of incarceration, but not the minimum. A parole board determines the actual date of release. The disparities inherent in partially indeterminate sentencing have created an enormous amount of disrespect among both the public and those involved in the criminal justice process.

2. Indigent Representation

Quality legal representation in criminal proceedings not only benefits the accused; perhaps as importantly, it benefits the public interest. There should be no distinction in the availability of quality legal representation based upon a person's ability to pay. Presently, Mississippi's indigent defender system (if one can call ad hoc mechanisms a system) is based on court-appointed counsel and various forms of full and part-time public defender offices.[23] The quality of legal services has been erratic. The current approach is flawed in that there are no safeguards to insure that highly skilled lawyers, or simply lawyers knowledgeable in the area of criminal law, are selected.

B. Commission Recommendation: The Creation of a Sentencing Commission

At various times in our national history of criminal incarceration, sentencing has been based on one of the following theories: deterrence, rehabilitation, incapacitation, and retribution. For much of this century, the prevailing sentencing principle was the rehabilitation of the criminal. Despite decades of sentencing based on rehabilitation, the evidence seems conclusive that little rehabilitation takes place in prison. Imprisonment will incapacitate prisoners and prevent them, during their term of incarceration, from committing crimes outside the prison. However, most studies agree that sentencing deters few persons other than the incarcerated individual.

Currently, there are two kinds of sentencing plans: determinate and indeterminate. A central characteristic that distinguishes determinate from indeterminate sentencing is that in the latter, the parole board determines the actual length of incarceration and the release date. The purpose of determinate sentencing is to ensure consistency and equality in sentencing. A prime consideration in sentencing under the retribution theory is that similar offenses should carry equal sentences.

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23. At present, the cost of court-appointed counsel is borne by each individual county. By statute, compensation for court-appointed counsel is capped at $1,000, plus actual expenses. However, in Wilson v. State, 574 So. 2d 1338 (Miss. 1990), the Mississippi Supreme Court interpreted expenses to include a lawyer's office overhead, and created a rebuttable presumption that overhead equals $25 per hour of the lawyer's time. This expense can be substantial. In *Wilson*, for example, the lawyers worked 1,341.2 hours; at $25 per hour, overhead expenses would total $33,530. In addition, counties bear the cost of other expenses, such as hiring investigators, consulting expert witnesses, interviewing witnesses, and so forth.

Indeterminate sentencing, on the other hand, is based on rehabilitation: rehabilitation will take different lengths of incarceration for different individuals convicted of the same crime. Thus, if a sentencing policy is based on the rehabilitation theory, indeterminate sentences will be employed. The release of the prisoner will depend on whether a parole board believes that the prisoner has been rehabilitated.

The Commission feels that it is time to move away from sentencing based upon the outdated notion that rehabilitation is the goal of sentencing. Mississippi must move toward a method of sentencing which reduces the problem of disparate sentences for similar offenses and offenders.

Apparently, there has never been a systematic study of sentencing in Mississippi courts. A sentencing commission should be established to look at moving to some form of sentencing which results in statewide parity. Mississippi needs to ensure that sentences have a sufficient measure of equality. Parity in sentencing is extremely important for just punishment and societal respect for, and public confidence in, the criminal justice system. Still, a system with a modicum amount of flexibility would probably best serve the public's need for certainty in punishment as well as the sentencing judge's need for discretion.[24]

A sentencing commission could operate in three phases:

- Phase I would be the study phase. The sentencing commission would gather sentencing information, process this information, and make an appropriate analysis.
- Phase II would be the development of a new sentencing system, based on the analysis of the data in Phase I.
- Phase III would be pilot implementation. During Phase III, the Mississippi Judicial College could conduct training programs for judges on the proper use of the new sentencing system.

One further note is in order. In the end, sentencing reform cannot succeed without reform of the criminal code. A study of sentencing alternatives, therefore, implicates a comprehensive, complete study and revision of Mississippi's criminal statutes.

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24. To achieve parity in sentencing, many jurisdictions, including the federal government, have established mandatory sentencing guidelines. Although there are variations on the theme, these guidelines generally involve a point system which gives the judge little or no flexibility.

Other states have voluntary guidelines. Still others have declined to develop guidelines, but have instead chosen to develop a set of factors for the judge to use as a "blueprint" in sentencing.

A sentencing commission could study whether to choose a set of sentencing factors as a guide, or choose voluntary sentencing guidelines, or adopt some other similar approach. But whatever path is ultimately taken, the Commission considers that *mandatory sentencing guidelines do not present a satisfactory alternative*. There was wide agreement among members of the Commission that the federal experience with mandatory sentencing guidelines has shown this approach to be deficient. The system leaves judges with too little discretion. Moreover, this loss of discretion has not been the palatable cost of a more efficient system. The federal sentencing guidelines have been expensive and are overly complicated. Probation staff and expenses have multiplied enormously. The guidelines are so complex that lawyers have difficulty working with the system, which diminishes their ability to settle cases by agreement and generates more appeals.

C. Commission Recommendation: A Public Defender System

A method that provides for the systematic delivery of indigent representation will result in better legal services for the defendant than a system based solely on court-appointed defenders. A review of other jurisdictions indicates that there are two basic approaches. Twenty states have a state-administered public defender system. Nineteen states have some form of locally administered public defender system.

Currently, Virginia uses a court-appointment method similar to Mississippi's. However, Virginia is moving toward abandoning this method. In 1989, the Commission on the Future of Virginia's Judicial System recommended moving to a system of public defender offices. That commission's recommendation eloquently states the case:

> There is a disagreement . . . as to whether criminal defendants are better represented by court-appointed counsel or by public defenders. The Commission believes that both systems are needed and that each needs improvement to better meet the goal of equal access in criminal proceedings. The primary channel for such representation, however, is through appropriately staffed and funded public defender offices covering the entire state. Court-appointed counsel should continue to handle those cases in which the public defender has a conflict of interest or when workload precludes the public defender from accepting the assignment.

Using Virginia's experience as a guide, the Commission recommends that Mississippi create a county-wide or district-wide public defender system. Larger counties could be required to establish a public defender office; smaller contiguous counties could join to form a regional defender's office. Multi-county offices should attempt to parallel the district attorney's jurisdiction as closely as possible. Concurrently, a Public Defender Commission should be created to provide training for public defenders and court-appointed counsel. This Commission would also oversee the program, and delineate standards and criteria for appointments.

One approach to appellate representation would be to create a state Appellate Defender's Office that would correspond to the criminal appellate arm of the state Attorney General's Office. Besides providing indigent representation in criminal appeals, the Appellate Defender's Office could assume the duties of the Capitol Resource Committee, which oversees representation in death penalty cases and which is largely financed by the state bar. Depending on cost, the Appellate Defender's Office might be staffed entirely by public defenders or by a combination of public appellate lawyers and assigned private lawyers.

XI. Area Eight: The Juvenile Justice System

A. The Problems

Juvenile justice matters now fall under the jurisdiction of various courts, including chancery courts, county courts, family courts, and special masters. Fragmenting responsibility in this manner has caused several severe problems.

- Youth courts effectively are denied their own identity.
- There are no uniform rules or procedures.[25]
- There is generally a lack of statewide consistency. Fragmentation is not the only source of problems.
- Youth court judges receive too little initial training and too little continuing training. Training is insufficient both in areas particular to youth courts and as to judicial matters more generally.
- There is no centralized youth court administration, and thus the collection of essential statistical data is impossible.
- There is no uniformity in the compensation of judges who handle youth court matters.

B. Study Results to Date

The Commission appointed a Youth Court Subcommittee, chaired by C.E. Morgan, III, to study the problems and bring forward solutions. The Subcommittee presented its report to the Commission at its March 12, 1993, meeting. After much discussion, it became clear that more statistical information was needed before the Commission could reach consensus on a recommended course of action; therefore, the Commission decided to take no action on the Subcommittee's report. However, the Commission also believed that the Subcommittee's report should be attached to this Discussion Draft, as further debate on issues of juvenile justice should benefit from the Subcommittee's work. Consequently, Appendix 10 sets out the full text of the Subcommittee's report.

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25. The Commission has been advised that the Council of Youth Court Judges is presently studying rules to submit to the supreme court.

APPENDIX 1

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APPENDIX 2

Tollison Letter

April 8, 1993
Mississippi Supreme Court
Mississippi Trial Judges
Mississippi Board of Bar Commissioners
Members of the Commission on the Courts of the 21st Century
Mississippi District Attorneys
Mississippi Bar Foundation Trustees and Officers
Judiciary A -House of Representatives
Judiciary Senate Committee
Members of the Mississippi Chapter of the American Board of Trial Advocates
Officers of the Mississippi Trial Lawyers Association
Officers of the Magnolia Bar Association
Officers of the Mississippi Defense Lawyers Association
Mississippi Bar Legislative Committee

Honorable Tim Ford
Honorable Michael Mills
Senator Hainon Miller
Representative Ken Stribling
Mr. Len Blackwell, Esq.
Mr. Alex Alston, Esq.
Ms. Amy Whitten, Esq.
Ms. Allan Alexander, Esq.
Mr. Bob Oswald, Esq.
Mr. Martin Smith, Esq.
Judge James Thomas
Judge James Sumner
Judge Elzy Smith
Ms. Karen Quilter, Esq.
Mr. Chris Webster, Esq.
Mr. Clifford Thompson, Esq.
Honorable Evelyn Gandy
Honorable Brad Dye
Honorable Marshall Bennett
Mr. Robert Khayat, Esq.
Chief Justice Roy Noble Lee, Retired
Ms. Peggy Martin
Ms. Pamela Thornton
Professor Carolyn Ellis-Staton, Esq.
Mr. Matt Steffey, Esq.
Dr. John Winkle, III

Ms. Lynn Fitch-Mitchell, Esq.
Mr. Danny Cupit, Esq.
Mr. Robert Prather, Esq.
Mr. Crymes Pittman, Esq.

Ladies and Gentlemen:

An unprecedented event has occurred in the recent passage of HB 548 and SB 2620. It is important to memorialize the efforts of so many for what has been achieved in terms of the improvement of the administration of justice in the 1993 legislative session. Each person who receives this letter figures prominently in the passage of this landmark legislation. For your leadership and your effort, the Mississippi Bar is deeply grateful. In extending the gratitude and appreciation due so many, it is inevitable that certain individuals will be omitted. I solicit your assistance in providing me with the names of persons who are omitted from this letter who played a role in the passage of this monumental legislation.

The passage of HB 548 and SB 2620 is a result of faith and hard work of those who came before us. The issue is how far back to go. Len Blackwell, as president of the Mississippi Bar in 1990-91, had the vision and foresight to create the Commission on the Courts in the 21st Century, the volunteer group which ultimately became the Bar's spearhead to push this legislation. Alex Alston, as President during 1991-92, devoted the Mid-Winter Convention to the Crisis in the Courts in Mississippi. The convention was attended by a substantial number of trial judges and supreme court justices. Also present were such persons as former Lieutenant Governors Evelyn Gandy and Brad Dye, former Governors, William Winter and Bill Allain and many members of the state legislature and other elected officials, such as Marshall Bennett.

As early as 1985, the Mississippi Bar's judicial liaison committee, chaired by Scott Welch, called for a redress of the problem of appellate delay. Justice Harry Walker served on the committee which made a presentation to the Mississippi Bar at its convention. At its meeting at the Bar Convention in 1989, the American Board of Trial Advocates adopted a resolution to support legislation that would create an appellate court. In 1992, the Mississippi Trial Lawyers Association adopted a resolution supporting the creation of an appellate court whose judgments would be final. The Magnolia Bar endorsed the concept of an appellate court with the understanding that it would comply with all the voting rights laws as well as be a court of final jurisdiction. Representative Ken Stribling of Jackson, in a conversation in Oxford in the summer of 1992, suggested that the appellate court could comply with the voting rights requirements by providing for selection of judges, whether elected or appointed, from congressional districts. This astute suggestion ultimately prevented a bitter fight about where district lines would be drawn.

When Alex Alston made the decision to continue the Commission on the Courts in the 21st Century for a second year, the groundwork established by Len Blackwell took a step forward. Allan Alexander became Chair of the Commission

during its third year, the summer of 1992. Assisted by Vice-Chairs Amy Whitten and Robert Oswald, the Commission performed tirelessly in the year prior to the introduction of this legislation. Legislators, including Representatives Mike Mills, Mark Garriga, and Leslie King, as well as Senator Kay Cobb and then Senator Pat Welch, served as members of the Commission ensuring that it would be a broad based study from the outset. Professor Matt Steffey of Mississippi College School of Law, Professor Carolyn Ellis-Staton of the University of Mississippi Law School, Professor John Winkle, III of the University of Mississippi and Lynn Fitch-Mitchell provided strong research and writing skills as reporters for the Commission.

In addition, over twenty members of the Mississippi Bar and non-lawyers from the community gave of their time and talents as members of the Commission. In an unprecedented step, non-lawyers were appointed to several of the Bar Committees in the Bar year 1992-93. This action on the Commission on the Courts in the 21st Century later proved to be important when the court reform package was introduced. It was not only a bill from lawyers, but it had a broad base of support throughout the community.

The Legislative Committee of the Bar, chaired by Gerald Blessey, gave guidance on how best to present the legislation. So many members of the Bar contacted their legislators by phone, letter, or personal contacts, it would be impossible to name them all. This effort was coordinated and led by the Bar's Executive Director Larry Houchins.

The Mississippi Bar Foundation Trustees awarded an IOLTA grant to the Commission on Courts which used the funds to hire reporters and for other projects that produced the package.

The judiciary of Mississippi played a key role in the ultimate success of this legislation. As early as 1984, then Chief Justice Neville Patterson called on the legislature to create an intermediate court of appeals. In early 1992, then Chief Justice Roy Noble Lee made a historic address to the legislature calling for an administrative office of the courts and an intermediate appellate court modeled on the State of Iowa. This address contained the outline of what was ultimately passed as HB 548 and SB 2620. In December of 1992, Chief Justice Lee presented a plan to the legislature which outlined the basic concepts of HB 548 and SB 2620.

In an important meeting in the summer of 1992, then presiding Justice Hawkins, Justice Prather, and Presiding Justice Dan Lee met with Judge Elzy Smith, Robert Oswald, John Clark, Amy Whitten, and Grady F. "Gray" Tollison III, Justice Hawkins' law clerk. Justices Hawkins, Lee, and Prather pledged their support for administrative help and other support for trial judges and an appellate court.

Chief Justice Armis Hawkins, an early supporter of the appellate court, upon the retirement of Chief Justice Lee, continued the momentum that had been built. He led a study group to Iowa. Justices Michael Sullivan and Fred Banks engaged in studies of Iowa and Arkansas. Others led serious discussions of the appellate systems of Texas and Oklahoma. Every member of the Mississippi Supreme Court

studied the idea of an appellate court and contributed their ideas of what would be best for Mississippi. Every member of the supreme court appeared at hearings throughout the legislative process, providing a united front of support for the legislation that was passed.

The Conference of Mississippi Judges, consisting of the state's chancery, circuit, and county judges, unanimously endorsed a legislative plan to: (1) create an appellate court, (2) provide administrative help for trial judges, (3) create an administrative office of the courts to be an advocate for the judicial system, and (4) to secure a substantial raise for judges. Numerous trial judges served above and beyond what is expected to ensure the passage of legislation. Judge James Thomas, as Chairman of the Judges' Liaison Committee and a member of the Commission on the Courts, spent untold hours at the Capitol providing testimony and information to members of the House and Senate. Similar services were provided by Judge James Sumner, Chairman of the Conference of Circuit Judges. Many trial judges wrote letters to their legislators, providing information that was supportive of HB 548 and SB 2620.

Legislation drafted in part by Allan Alexander, Amy Whitten, Robert Oswald, and others was introduced in the House and Senate prior to the 1993 session. House Speaker Tim Ford reaffirmed his commitment, made in the summer of 1992, to support the package. Mike Mills, Chairman of the Judiciary Committee in the House, personally sponsored and introduced the legislation. Senator Hainon Miller, Chairman of the Senate Judiciary Committee, pledged his support for the administrative office of the courts and committed to give full hearings to all other aspects of the court reform. He stated that if he was convinced of their merit, he would support the other parts of the package. He became convinced and was a staunch supporter.

Chris Webster, an attorney with the Governor's office, attended hearings. He proved to be a valuable liaison with the Governor's office and gave constant assurances of support.

During the 1993 legislative session, numerous substantive hearings were held at the House and Senate. Representatives John Reeves, Mark Garriga, Kent Stribling, and Hershal Grady gave untold hours to study and support the bill. Chairman Mills attended at least part of every hearing that was held. In the Senate, the study was led by Senator Grey Ferris. Senators Hainon Miller, Kay Cobb, Hobb Bryan, Ronnie Musgrove, Roger Wicker, and Bennie Turner provided outstanding leadership in seeing the bill from subcommittee to committee to the senate floor.

At the senate hearing, Presiding Justice Dan M. Lee, Justice Fred Banks, President of the Mississippi Trial Lawyers James Brantley, Court Administrator Tom Coleman, and Amy Whitten provided meaningful testimony. Justice Banks' testimony and response to inquiries by the committee were particularly well received. There were many obstacles that remained before final passage occurred. Difficult questions of funding were only resolved through the direct support of Speaker Tim Ford. Allan Alexander, Amy Whitten, and Judge James Thomas spent many hours

on the telephone fielding legislative inquiries for information. Passage of different versions of the bill in the House and Senate resulted in Amy Whitten and Allan Alexander taking each bill line by line and sending a summary to the conferees from the Senate and the House.

A crisis in the waning days of the session brought much needed assistance from Robert Prather, Crymes Pittman, Danny Cupit, and stalwart Judge James Sumner.

In January of 1993, Melanie Henry of the Mississippi Bar helped package together a series of advertisements for television. This money was contributed by Chief Justice Roy Noble Lee and the Mississippi Bar Foundation through a grant to the Commission on the Courts and the Mississippi Board of Bar Commissioners. Robert Khayat, former Vice-Chancellor and Assistant Dean of the University of Mississippi and presently a professor at the UM law school, donated his time to appear in these advertisements which appeared on stations throughout the state and helped give impetus to the campaign.

Clifford Thompson, and his associate Pamela Thornton, as the lobbyist for the Bar, kept everyone informed of the progress of the legislation. Whether committee hearings, floor debates, or hallway rumors, the Bar was always kept informed through the good work of Clifford and Pamela.

Martin Smith spent countless hours on the phone and with his former colleagues in the senate. Karen Quilter, counsel to the Senate Judiciary Committee, and Jimbo Richardson, counsel to the House Judiciary A Committee, patiently answered all inquiries concerning the work for these committees and the progress of the legislation. Equally cooperative were Peggy Martin in the House Judiciary Committee and Evelyn McPhail in the Senate Committee.

Almost a decade of hard work by many people has resulted in what has been described as the most significant improvement in the administration of justice in Mississippi in this century. I want to thank each you for the role you played in this enormous effort. I urge you to extend your thanks to others whose efforts brought success. We can be proud that we now have a judiciary comparable to those in surrounding states. We have judges who have law clerks and secretaries available. We join the rest of the states in our country in having an administrative office of the courts which, when fully operational, will be the vehicle for the continued improvement of the administration of justice in our state. The citizens of Mississippi have a court of appeals which will try to make a reality of prompt disposition of causes in our courts. We should all be proud of what was contributed to the process.

I encourage each recipient of this letter to write me about persons who have been omitted. It is important that we have a record of this accomplishment and the many people who caused it to happen. Please send me a brief sketch of others so that there will be one complete record.

To those of you who have given so much of your time and many talents, on behalf of the Mississippi Bar, thank you.
Cordially,

Grady F. Tollison, Jr.
GFT/tgc
cc: Dean Richard Hurt
Dean David Shipley
Mr. David Smith, Esq.
Mr. Scott Welch, Esq.
Mr Larry Houchins, Executive Director, Mississippi Bar
Mr. David Gates, Executive Director, MTLA

APPENDIX 3

DEMOGRAPHIC CHANGES AND THE MISSISSIPPI JUDICIARY

[Report Editor's Note: This portion of the report was contributed by Professor John W. Winkle, III, of the University of Mississippi Department of Political Science.]

As with the nation and the world, Mississippi is changing. The dynamic demographic, economic, and political forces of today will profoundly influence, if not transform, the society of tomorrow. Our courts will not escape the impact of these confluent pressures. While the demands on the Mississippi judicial system have remained largely static throughout the current century, this trend will not continue.

Demographic patterns and projections suggest expanded workloads for the Mississippi judiciary. The state will likely experience steady population growth in the years ahead. The 1990 census registered 2,573,216 residents in Mississippi, only a modest two percent gain since 1980.[26] Demographers, however, expect more rapid growth during the current decade. Despite a projected net loss of some 53,000 persons to migration,[27] estimates suggest that the statewide population will exceed 2.7 million by the year 2000—a five percent increase.[28] The zones of greatest growth will likely occur along the Gulf Coast, around metropolitan Jackson, and in the northern counties of DeSoto and Lee. The relationship between population and court caseload is unmistakable: more people mean more lawsuits.[29] Importantly, however, the volume of litigation grows at a faster pace than population. From 1980 to 1990, for example, filings in Mississippi courts increased approximately forty percent,[30] a pattern that continues into the current decade.

The analysis of demographic impact should not stop with simple population estimates. Aging, the growth in identifiable minorities, and the redistribution of the work force will affect both the volume and character of litigation. Mississippians over the age of eighty are the fastest growing element of the population, increasing at a rate of almost forty percent since 1980 (54,127 in 1980 and 75,746 in 1990).[31] Those between the ages of sixty and eighty are close behind. This "graying" of our

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26. U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, CP-1-26, 1990 CENSUS OF POPULATION: GENERAL POPULATION CHARACTERISTICS/MISSISSIPPI (Washington, D.C.) (U.S. Gov't Printing Office ed., 1992). The 1990 census showed 2,520,638 residents.

27. U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, SERIES P-25, NO. 1053, PROJECTIONS OF THE POPULATION OF STATES BY AGE, SEX, AND RACE: 1989-2010 (Washington, D.C.) (U.S. Gov't Printing Office ed., 1990).

28. CENTER FOR POLICY RESEARCH AND PLANNING, MISSISSIPPI INSTITUTIONS OF HIGHER LEARNING, MISSISSIPPI POPULATION PROJECTIONS FOR 1995 AND 2000 (Apr. 1991).

29. NCSC CASELOAD STATISTICS 1990, *supra* note 11 (National Center for State Courts in cooperation with the Conference of State Court Administrators, 1992).

30. 1991 ANNUAL REPORT OF THE MISSISSIPPI SUPREME COURT (1992).

31. U.S. BUREAU OF THE CENSUS, GENERAL POPULATION CHARACTERISTICS, tbl. 18 (Miss. 1990); U.S. BUREAU OF THE CENSUS, GENERAL POPULATION CHARACTERISTICS, tbl. 19 (Miss. 1980).

population has important consequences for the judicial system because it will mean both increased and specialized litigation, involving new and complex matters such as: age discrimination, elder abuse, health, life-sustaining technologies, the right to die, organ transplants, retirement disputes, intergenerational conflicts over control of family assets, and even crimes committed by the elderly.

With the increasing claims of illegal discrimination raised by traditionally disadvantaged minorities, the demographics of gender and race become important considerations. In 1990, females represented approximately fifty-two percent of the population, a percentage that had remained rather stable over the preceding ten years. While demographers project only a modest fluctuation in the gender ratio by the year 2000,[32] the racial and ethnic composition of the state will change more dramatically. During the 1980s, resident racial minorities, principally African Americans, increased only slightly from thirty-five to thirty-six percent.

Expecting noticeable growth in the Hispanic component, demographers project the white/non-white population ratio at 61/39 by the year 2000. Based on these estimates, it is reasonable to expect, among others, more affirmative action, civil rights, and property suits. These changes may also require the legal system to provide interpretive services and court personnel trained in cross-cultural communication.

Leaving behind an agricultural tradition for more skilled manufacturing and service industries means alterations in the Mississippi work force.[33] The number of minority employees will increase as will the overall age of the working population. These changes in turn project more job discrimination, personal injury, and workers' compensation litigation.

Regardless of other forces that may surface in the coming years, the demographic projections alone suggest that an already burdened Mississippi judiciary may face unprecedented demands. The reality of social change requires an urgent and systematic reassessment of the state court system.

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32. CENTER FOR POLICY RESEARCH AND PLANNING, MISSISSIPPI INSTITUTIONS OF HIGHER LEARNING, MISSISSIPPI POPULATION PROJECTIONS FOR 1995 AND 2000 (Apr. 1991).

33. U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, CPH-5-26, 1990 CENSUS OF POPULATION: SUMMARY SOCIAL, ECONOMIC, AND HOUSING CHARACTERISTICS/MISSISSIPPI (Washington, D.C.) (U.S. Gov't Printing Office ed., 1992).

APPENDIX 4

TOPICS FOR FUTURE STUDY

Commission meetings and subcommittee work invariably involved discussion of other subjects in need of study. The Commission wished to capture these insights, and hence this appendix sets out a list of other areas which, in the consensus opinion of Commission members, warrant further work, either by the Administrative Office of the Courts, the Judicial Advisory Board, the Commission, or some other group charged with responsibility for court reform.

Enhancing Access to the Courts

[1] Establish statewide standards for court facilities, toward the goal of providing convenient physical access to the judicial system.
[2] Simplify court forms and procedures, toward the goal of easing access to judicial processes.
[3] Establish practical time standards, toward the goal of providing timely and expeditious justice.
[4] Continue efforts to develop alternative methods of dispute resolution.
[5] Establish minimum standards for court security.
[6] Study whether, and to what extent, court proceedings should be televised.
[7] Establish a procedure for quick review when a criminal defendant challenges only the length of the sentence.

Ensuring Fair and Equal Process for All Citizens

[8] Consider the reduction or elimination of occupational exemptions from jury duty.
[9] Provide continuing anti-bias training to *all* who work within the judicial system.
[10] Study whether and to what extent cases involving children can be removed from the adversarial process.

Increasing Accountability

[11] Provide continuing judicial training on ethical issues.
[12] Enhance and broaden judicial evaluations programs.
[13] Study whether court clerks should be appointed, rather than elected, and given only court-related duties.
[14] Establish citizen participation groups so that the public can become more involved in the judicial system.
[15] Require the judicial branch to evaluate the impact of legislation which might affect the court system.
[16] Establish uniform accounting procedures and standards for money deposited into the registry of a court.
[17] Study whether a statewide body should manage all court related fiduciary funds, including probate, interpleader, and cash bonds.

[18] Establish uniform standards for determining when the state shall defend a judge sued for an official act.

Reforming Outdated or Ineffective Aspects of Judicial Administration

[19] Study ways to ensure effective coordination of the prosecutorial function, including better ways to screen felony criminal cases before a person is charged with a crime.

[20] Study ways to expedite the process of charging someone with a felony.

[21] Study the civil commitment process.

[22] Enact a comprehensive, uniform law of minority.

[23] Enact a comprehensive, uniform minority settlement procedure which includes review of attorneys' fees.

[24] Establish a uniform procedure for appeals to circuit and chancery courts.

[25] Study whether Mississippi should move toward parallel criminal and civil courts.

[26] Study whether the judicial branch ought to manage the Mississippi Judicial College.

Increasing the Efficiency of the Courts

[27] Establish statewide case and docket management procedures.

[28] Provide computer training for judges.

[29] Create pools of secretaries and law clerks for trial judges.

[30] Increase the statewide use of modern technology.

[31] Establish uniform procedures for the management of court files.

[32] Study ways to manage and fund the trial of massive tort litigation.

APPENDIX 5

DIAGRAM OF MISSISSIPPI'S COURT SYSTEM

Mississippi State Courts
Court Jurisdiction Chart

I. COURT OF LAST RESORT

Supreme Court
9 justices

- Appellate jurisdiction over all matters

II. COURTS OF GENERAL JURISDICTION

A. Circuit Court
20 districts, 40 judges

- Civil actions over $200
- Bastardy, Felonies
- Misdemeanors
- Appeal de novo or on record
- Jury trials

B. Chancery Court
20 districts, 39 chancellors

- Equity, Divorce, Alimony, Probate
- Guardianship, Mental Commitments
- Hears Juvenile if no County Court
- Appeals on Record
- Jury trials (very limited)

III. COURTS OF LIMITED JURISDICTION

A. County Court
19 counties, 23 judges

- Civil actions under $25,000
- Misdemeanors
- Felony Preliminaries
- Juvenile
- Appeals de novo
- Jury trials

B. Family Court
1 court, 1 judge

- Delinquency and Neglect
- Adult crimes against juveniles

C. Justice Court

92 courts, 191 judges

- Civil actions under $1,000
- Misdemeanors
- Felony Preliminaries
- Jury Trials

D. Municipal Court

168 courts, 102 judges, 165 mayors

- Municipal ordinance violations
- Limited criminal jurisdiction

APPENDIX 6

A Model For Reducing Appellate Delay In Mississippi

A Report to the Commission on Courts in the 21st Century
Appellate Court Subcommittee

tentative draft no. 3

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24 September 1992

The Appellate Court Subcommittee, chaired by Amy D. Whitten, presented this report to the Commission at its December 4, 1992, meeting. The report was approved by unanimous vote.

I. INTRODUCTION

People who must await a decision of the Mississippi Supreme Court can wait for a very long time. Those whose lives may be affected by the outcome of a case pending before the court can therefore spend a great deal of time under a cloud of uncertainty. If, as the axiom states, justice delayed is justice denied, many Mississippians are denied justice. And the problem is getting worse, not better.

Simply put, Mississippi lacks the case-processing capacity to handle the appellate caseload in this state. A chief cause of this problem appears to be that Mississippi processes an unusually large number of appeals for a state with a single appellate court.[34] Hence the main feature of the solution proposed in this report is the addition of another court of appeals. In the long run, however, Mississippi cannot solve the problem of appellate delay merely by enlarging its appellate judiciary. Rather, Mississippi must look for ways to improve the efficiency and alacrity with which it processes appeals.

That said, in the press to solve the problem of delay, considerations other than case-processing speed should not be overlooked. Appellate courts do more than correct the errors of lower courts. Most critically, it is important to bear in mind the substantial policy-making and administrative duties borne by a state supreme court. A court like the Mississippi Supreme Court develops important rules of substantive law and promulgates extensive rules governing court processes. The recommendations in this report strive to increase Mississippi's case-processing capacity to a sufficient level while allowing the Mississippi Supreme Court more time to fulfill its role as the state's principal and final voice on matters of judicial policy.

The model for reforming Mississippi's appellate judiciary recommended in this report is based on Iowa's system. Iowa, like most states, has a single intermediate appellate court, called the Iowa Court of Appeals, and a single court of last resort, called the Iowa Supreme Court. Part III describes in detail Iowa's appellate court system.

Before turning to the proposed solution, though, this report seeks to gain a more comprehensive understanding of the problem by examining in detail the time it

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34. In 1990, 11 states and the District of Columbia operated with only a single court of last resort. That year, the District of Columbia saw the most appeals filed, about 1650; Nebraska ranked second with 1270; Nevada third with 1089; and Mississippi fourth with 966. No other state without an intermediate appellate court received more than 642. *See* NCSC CASELOAD STATISTICS 1990, *supra* note 11, at 78, 79. In the District of Columbia and in Nebraska, cases are counted when the notice of appeal is filed; in Mississippi and Nevada, when the trial record is filed (presumably some cases wash-out after the notice of appeal is filed but before the record is complete and filed). In terms of population, Mississippi is, by far, the largest jurisdiction with only a single appellate court. NCSC CASELOAD STATISTICS 1990 reported that Mississippi had approximately 2,573,000 citizens. West Virginia, the next most populous state without an intermediate appellate court, had approximately 1,793,000. Iowa, the state the subcommittee has selected as its model for recommended reforms, had a population of 2,777,000. *Id.* at 315.

takes cases to move through the Mississippi Supreme Court. This is the purpose of Part II of the report.

Part IV outlines how a model based on Iowa's system might work in Mississippi, with particular emphasis on how it would impact the problem of delay and how it would affect the Mississippi Supreme Court's ability to carry out its policy-making functions. Part V offers some concluding remarks.

II. Appellate Delay in Mississippi

From strictly a case-processing standpoint, changes to Mississippi's appellate judiciary should be aimed at two goals. Principally, Mississippi's appellate courts should be given the capacity to process appeals satisfactorily into the foreseeable future. As a secondary matter, changes should serve to remedy the backlog of cases now pending before the Mississippi Supreme Court. These issues require some understanding of the Mississippi Supreme Court's backlog and present case-processing capacity.

A. Filings, Dispositions, and Opinions in Mississippi

Table 1 sets out several measures of the Mississippi Supreme Court's workload over the last three years. Specifically, from left to right the table contains yearly totals for cases filed, published opinions, unpublished opinions, per curiam opinions, cases dismissed, and total dispositions.[35] Table 2 measures dispositions per judge for the same categories, except filings.

Table 1

	filed	pub. op.	unpub. op.	PCA	dism.	TOT. disp.
1991	992	312	119	333	234	998
1990	1035	375	167	237	224	1003
1989	824	290	130	235	185	840
AVG.	950	326	139	268	214	947

35. All numbers for tables 1 and 2 were taken from the annual reports of the Mississippi Supreme Court. The National Center for State Courts count 38 law-trained personnel who assist the court. Presumably, this includes the three magistrates who began work in October 1990. *See* NCSC Caseload Statistics 1990, *supra* note 11.

Table 2

	pub. op	unpub. op.	PCA	dism.	TOT. disp.
1991	34.7	37	26	13.3	110.9
1990	41.7	18.6	26.3	24.9	111.5
1989	32.2	14.4	26.1	20.6	93.3
AVG.	36.2	23.3	26.2	19.6	106.6

B. Indicia of Delay in Mississippi

The eight tables which follow set out delay statistics for cases decided in 1991 and through November 2, 1992. All figures were compiled from internal reports generated by the Mississippi Supreme Court.

1. 1992 Dispositions through November 2

Table 3 presents information on civil cases decided on the merits by the court through November 2, 1992, without oral argument. Cases dismissed are *excluded* from these figures. For each category of case, several categories of information are provided. The first column, labeled "ready-sub.," measures the time between the date on which a case is ready to be decided by the court and the date on which the case is submitted to the court for disposition. A case is ready when all briefs are filed. The second column, labeled "sub.-disp.," tracks the time between the date on which the case was submitted to the court and the date on which the court disposed of the case. A case can be disposed of by published opinion, unpublished opinion, and per curiam affirmance. In each of these first two columns, three figures are provided: the range, in days; the mean number, in days; and the median number, in days. The third column provides a single figure, the average total days between readiness and disposition. The fourth column indicates the percentage of cases for which a published opinion was prepared.

Table 3: 1992 Civil Dispositions Without Argument
(through November 2)

	ready-sub.	sub.-disp.	avg. total	% pub. op
domestic relations [63 cases]	*range* 68-304 *average* 155 *median* 152	1-652 65 22	220	32%
custody [10 cases]	36-182 129 131	21-204 74 47	203	40%
contract [34 cases]	352-1111 781 801	7-351 77 39	858	59%
personal injury [27 cases]	207-1057 704 746	7-329 129 120	833	56%
property damage [3 cases]	882-1076 1003 n/a	42-169 105 n/a	1108	100%
wrongful death [3 cases]	701-923 837 n/a	36-419 180 n/a	1017	67%
med. malpractice [14 cases]	109-1090 633 724	6-462 125 81	758	64%
other torts [14 cases]	118-992 721 810	7-323 85 43	806	67%
insurance [7 cases]	289-911 524 377	64-399 186 148	710	86%
wills etc. [6 cases]	58-503 291 267	21-363 202 220	493	67%

Table 3: 1992 Civil Dispositions Without Argument
(through November 2)

continued

real property [31 cases]	85-1014 614 726	2-428 122 104	736	81%
workers comp. [10 cases]	81-573 252 196	22-357 247 242	499	80%
other state boards [13 cases]	146-981 482 386	16-498 177 133	659	77%
judicial performance [1 case]	140 n/a n/a	85 n/a n/a	225	100%
bar matters [6 cases]	106-230 156 161	21-421 197 161	353	100%
eminent domain [1 case]	550 n/a n/a	65 n/a n/a	615	100%
legal malpractice [1 case]	506 n/a n/a	10 n/a n/a	516	0%
other [30 cases]	6-925 447 330	1-365 120 75	567	58%
CIVIL TOTAL [274 cases]	*avg.* 474	*avg.* 112	*avg.* 586	

These measures of delay were selected because they focus on delay which can be most clearly attributed to the court. The amount of time that a ready case sits idle can be a gauge of a court's backlog. The amount of time that it takes the court to dispose of a submitted case can reflect on the efficiency of court procedures. Previous studies of appellate courts have suggested that it takes more time for a court to write a published opinion than it takes to write an unpublished opinion or affirm a case per curiam, thus cases which more often require published opinions are more likely to be cases which consume more of the court's time.[36]

Table 4 continues the information provided in Table 3, but for criminal cases. Tables 5 and 6 provide information on delay in cases argued before the Supreme Court. The first column of figures contains data on delay between readiness and argument; the second column indicates delay between argument and disposition; the third contains an average total. A published opinion is written for nearly all cases argued. Because many categories contain few cases, median figures are often omitted. Table 5 concerns civil cases; Table 6 concerns criminal cases.

Generally, cases are submitted to the court or are argued roughly in the order that they become ready. The court does, however, expedite domestic and child custody cases.[37] In addition, the court may select for decision all or many ready cases within a subject matter category. For instance, in 1991 the court attempted to clear its docket of post-conviction cases.

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36. A recent study by the National Center for State Courts found:

> The time on appeal varies along several basic dimensions. Criminal appeals take longer than civil appeals, but the difference occurs largely in briefing, particularly in the time required for filing the appellant's opening brief. . . . [Moreover], in criminal appeals, the most serious offense at conviction emerges as a strong and consistent predictor of appeal time. In civil appeals, the underlying trial court proceeding [e.g., whether the appeal is from a jury verdict, a bench verdict, a summary judgment, etc.] is consistently related to time on appeal. Whether an appeal is argued does not consistently affect appeal time, but publication of the court's decision does.

NATIONAL CENTER FOR STATE COURTS, INTERMEDIATE APPELLATE COURTS: IMPROVING CASE PROCESSING 26 (1990).

37. The results of this commitment to expedite domestic matters are evident. In 1991, domestic relations and custody cases had the lowest mean and median times between readiness and submission.

Table 4: 1992 Criminal Dispositions Without Argument
(through November 2)

	ready-sub.	sub.-disp.	avg. total	% pub. op.
felony [159 cases]	*range* 76-1043 *average* 602 *median* 678	7-406 79 51	681	48%
misdemeanor [6 cases]	187-992 627 715	14-204 75 44	702	67%
post-conviction [21 cases]	85-1027 360 237	7-447 93 35	453	37%
post-conv. (death) [3 cases]	94-1151 612 n/a	6-265 137 n/a	749	100%
CRIMINAL TOTAL [189 cases]	*avg.* 516	*avg.* 100	*avg.* 616	

Table 5: 1992 Civil Cases Argued
(through November 2)

	ready-argued	argued-disp.	avg. total
domestic relations [no cases]			
custody [1 case]	*range* 148 *average* n/a *median* n/a	238 n/a n/a	386
contract [7 cases]	414-1125 692 659	5-295 99 113	791
personal injury [5 cases]	539-1022 742 623	64-171 115 106	857
property damage [1 case]	608 n/a n/a	78 n/a n/a	686
wrongful death [2 cases]	694-712 653 n/a	134-309 222 n/a	875
med. malpractice [2 cases]	784-855 820 n/a	42-70 56 n/a	876
other torts [9 cases]	173-1015 740 848	7-288 102 65	842
insurance [4 cases]	832-1049 921 901	2-272 167 197	1088
wills etc. [1 case]	247 n/a n/a	377 n/a n/a	624

Table 5: 1992 Civil Cases Argued
(through November 2)

continued

real property [5 cases]	184-839 580 570	85-570 373 496	953
workers comp. [3 cases]	517-617 570 n/a	126-267 185 n/a	755
other state boards [12 cases]	127-921 459 335	35-316 173 171	632
judicial performance [1 case]	977 n/a n/a	288 n/a n/a	1265
bar matters [1 case]	96 n/a n/a	358 n/a n/a	454
eminent domain [1 case]	99 n/a n/a	349 n/a n/a	448
legal malpractice [no cases]			
other [5 cases]	10-840 307 222	44-386 250 253	557
CIVIL TOTAL [60 cases]	*avg.* 596	*avg.* 181	*avg.* 777

Table 6: 1992 Criminal Cases Argued
(through November 2)

	ready-argued	argued-disp.	avg. total
felony [9 cases]	*range* 69-901 *average* 921 *median* 901	2-272 167 197	1088
misdemeanor [no cases]			
post-conviction [no cases]			
death penalty direct appeals [6 cases]	119-196 160 162	76-393 171 108	648[38]
CRIMINAL TOTAL [15 cases]	*avg.* 426	*avg.* 186	*avg.* 675

2. 1991 Dispositions

Tables 7 through 10 then replicate the information provided in Tables 3 through 6 for the year 1991.

38. Only total figures were available for two cases.

Table 7: 1991 Civil Dispositions Without Argument

	ready-sub.	sub.-disp.	avg. total	% pub. op
domestic relations [61 cases]	*range* 31-200 *mean* 123 *median* 122	1-252 49 15	172	40%
custody [16 cases]	85-480 152 134	6-99 39 15	191	47%
contract [29 cases]	91-1007 212 185	1-427 14 8	226	37%
personal injury [18 cases]	95-720 263 236	1-196 64 65	327	47%
property damage [1 case]	793	125	918	0%
wrongful death [2 cases]	234-828 530 n/a	7-85 46 n/a	576	50%
med. malpractice [4 cases]	145-817 530 579	1-140 79 87	609	75%
other torts [22 cases]	105-815 313 222	6-139 42 15	355	47%
insurance [10 cases]	231-924 690 763	6-279 78 70	768	67%

Table 7: 1991 Civil Dispositions Without Argument

continued

wills etc. [20 cases]	85-910 421 299	1-363 73 42	494	63%
real property [23 cases]	110-1013 461 355	1-595 78 35	539	64%
workers comp. [39 cases]	34-796 344 328	1-148 41 8	389	39%
other state boards [37 cases]	32-938 338 288	1-308 57 35	395	53%
judicial performance [2 cases]	72-113 93 n/a	104-105 105 n/a	198	100%
bar matters [13 cases]	72-174 110 103	20-279 109 76	221[39]	31%
eminent domain [3 cases]	565-805 656 598	6-335 116 8	772	33%
legal malpractice [1 case]	286	58	344	100%
other [40 cases]	92-971 330 204	6-243 40 13	370	35%
CIVIL TOTAL [341 cases]	*avg.* 412	*avg.* 52	*avg.* 464	

39. There was a significant disparity in this category between the number of cases for which a "total" figure was available and the number of cases for which a more detailed breakdown was available. If all cases for which just a total figure is available are considered, the longest total delay was 329 days, the average total delay was 121 days, and the median total delay was 132 days.

Table 8: 1991 Criminal Dispositions Without Argument

	ready-sub.	sub.-disp.	avg. total	% pub. op
felony [251 cases]	*range* 1-977 *average* 350 *median* 247	1-651 54 35	404	33%
misdemeanor [4 cases]	65-193 159 188	7-176 93 95	252	50%
post-conviction [138 cases]	34-1008 304 272	2-155 26 8	465	17%
CRIMINAL TOTAL [393 cases]	*avg.* 332	*avg.* 92	*avg.* 424	

Table 9: 1991 Civil Cases Argued

	ready-argued	argued-disp.	avg. total
domestic relations [3 cases]	*range* 175-354 *mean* 294 *median* n/a	8-8 8 n/a	302
custody [no cases]			
contract [2 cases]	85-525 305 n/a	76-272 174 n/a	479
personal injury [1 case]	763 n/a n/a	6 n/a n/a	769
property damage [no cases]			
wrongful death [no cases]			
med. malpractice [no cases]			
other torts [2 cases]	136-582 359 n/a	118-272 195 n/a	554
insurance [1 case]	720 n/a n/a	92 n/a n/a	812
wills etc. [4 cases]	169-826 396 294	6-266 118 101	514
real property [no cases]			
workers comp. [5 cases]	173-733 444 351	7-99 57 70	501

Table 9: 1991 Civil Cases Argued

continued

other state boards [11 cases]	153-888 458 359	1-918 150 195	608
judicial performance [1 case]	107 n/a n/a	78 n/a n/a	185
bar matters [1 case]	189 n/a n/a	27 n/a n/a	216
eminent domain [2 cases]	223-769 501 n/a	1-223 112 n/a	613
legal malpractice [no cases]			
other [10 cases]	27-820 262 162	7-209 93 64	355
CIVIL TOTAL [43 cases]	*avg.* 383	*avg.* 105	*avg.* 488

Table 10: 1991 Criminal Cases Argued

	ready-argued	argued-disp.	avg. total
felony [5 cases]	*range* 122-928 *average* 317 *median* 161	20-55 31 22	348
misdemeanor [no cases]			
post-conviction [no cases]			
death penalty direct appeals [2 cases]	114-134 124 n/a	78-111 95 n/a	219
CRIMINAL TOTAL [7 cases]	*avg.* 262	*avg.* 49	*avg.* 311

3. Aggregate Measures

Tables 11 and 12 measure delay in several broad categories, and provide across-the-board averages. From left to right, the tables collect data for the period between readiness and submission or argument, for the period from submission or argument to disposition, and for the total period between readiness and disposition. Table 11 collects the 1992 statistics; Table 12 covers 1991.

These two tables illustrate a startling point: delay in 1992 far exceeds delay in 1991. Consider three aggregate measures. Delay in civil cases is up 32.7%; delay in criminal cases is up an astonishing 55.9%; and delay overall is up 43.2%. The reason for this rise is unclear. Perhaps the three magistrates who began work in October 1990 helped rid the docket of most or all routine cases which had accumulated. This effort would likely result in increased volume and decreased delay in 1991. However, once the court disposed of those cases, productivity might be expected to drop and delay might be expected to increase. Some statistics support this hypothesis. At its current pace, the court will dispose of 645 cases on the merits this year, down significantly from 1991, suggesting that the Court's productivity has decreased. Further, the average time between submission and disposition has increased greatly: while this measure of delay is actually down a marginal 2.2% in criminal cases, it is up a whopping 113.8% in civil cases and up 48% overall. Further still, in 1992 a published opinion is prepared for a higher percentage of cases. Published opinion rates are up in thirteen of the seventeen categories of civil cases decided without argument, and in all of the categories of criminal cases decided without argument. These statistics suggest that the court has been struggling with more difficult cases.

Table 11: Aggregate Measures for 1992

	ready-sub. or arg.	sub. or arg.-disp.	total
civil submitted [274 cases]	*average* 474	*average* 112	*average* 584
criminal submitted [189 cases]	576	81	657
total submitted [463 cases]	516	100	616
civil argued [60 cases]	596	181	777
criminal argued [15 cases]	426	186	675
total argued [75 cases]	562	182	757
civil total [334 cases]	496	124	620
criminal total [204 cases]	565	89	658
TOTAL [538 cases]	522	111	636

Table 12: Aggregate Measures for 1991

	ready-sub. or arg.	sub. or arg.-disp.	total
civil submitted [341 cases]	*average* 412	*average* 52	*average* 464
criminal submitted [393 cases]	332	92	424
total submitted [734 cases]	369	73	442
civil argued [43 cases]	383	105	488
criminal argued [7 cases]	262	49	311
total argued [50 cases]	366	97	463
civil total [384 cases]	409	58	467
criminal total [400 cases]	331	91	422
TOTAL [784 cases]	369	75	444 *range* 41-1381

III. THE IOWA SYSTEM

A. Basic Structure of the Iowa Appellate Courts

The Iowa Constitution vests the judicial power:

> in a supreme court, district courts, and such other courts, inferior to the supreme court, as the general assembly may, from time to time, establish.[40]

The nine members of the supreme court serve eight year terms.[41] The six member court of appeals is established by statute; its judges serve staggered six year terms.[42] Judges for both courts are appointed by the governor from a list of nominees submitted by a state-wide judicial nominating commission. Thereafter, judges stand for retention elections.[43]

B. Jurisdictional Allocations and Notable Case-Processing Procedures

All cases are filed with the supreme court. A staff attorney then prepares a case statement for a three-judge screening panel. The panel decides to which of four decision-making tracks the case should be assigned. Accordingly, the case is then either: transferred to the court of appeals; heard by a three-judge fast track panel of the supreme court; heard by a five-judge panel of the supreme court; or heard by the supreme court en banc.[44]

The court's rules provide that "cases which involve questions of applying existing legal principles shall be transferred"[45] to the court of appeals and that the "Supreme Court shall ordinarily retain" cases involving:

(1) substantial constitutional challenges to the validity of a statute, ordinance, or rule;

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40. IOWA CONST. art. V, § 1.

41. The state constitution provides that the general assembly may increase the number of supreme court judges, which the constitution sets at three. IOWA CONST. art. V, §§ 2, 10; IOWA CODE ANN. § 602.4101 (West 1988) (setting the number at nine). The general assembly has not exercised its authority to increase the terms of supreme court judges. Iowa Code Ann. § 46.16 (West 1988).

42. IOWA CODE. ANN. §§ 602.5101, 602.5102 (West 1988) (establishing the court of appeals); § 46.16 (staggered six year terms).

43. IOWA CONST. art. V, §§ 16, 17; IOWA CODE. ANN. § 602.4101 (2), § 46.16 (West 1988). Membership on the commission is set by statute, but the constitution states that members shall serve for staggered six year terms, are ineligible for second terms, "shall hold no office of profit of the United States or of the state during their terms, [and] shall be chosen without reference to political affiliation." IOWA CONST. art. V, § 16. The governor must make appointments from a list of nominees within a specified time or the chief justice of the supreme court appoints from the list. IOWA CODE ANN. § 46.16 (West 1988).

By statute, an equal number of commission members are appointed by the governor and are elected by the bar. Moreover, "no more than a simple majority of" appointed members may be of the same gender. Likewise, in alternating elections, only men or women are eligible for election in any given district. IOWA CODE ANN. §§ 46.1, 46.2 (West 1988).

44. *See* IOWA CODE ANN. §§ 602.4102, 602.4104 (West 1988); IOWA SUP. CT. R. 1, 3.2, 4.

45. IOWA R. APP. P. 401 (c). The supreme court has the authority to transfer individual cases by order or transfer groups of cases by subject matter. IOWA CODE ANN. § 602.4102 (3) (West 1988). Ultimately, jurisdictional divisions rest on statutory authority. IOWA CONST. art. V, § 4. By statute, these and most other important court rules are subject to legislative supremacy and oversight. *See* IOWA CODE ANN. §§ 602.4201, 602.4202 (West 1988). This legislative authority rests on an explicit constitutional foundation. *See* IOWA CONST. art. V, § 14.

(2) claimed conflicts with prior appellate decisions;
(3) issues of first impression;
(4) issues of sufficiently significant public importance;
(5) issues of lawyer discipline;
(6) issues appropriate for summary disposition.[46]

In the supreme court, most cases are heard by a panel of five justices. A three-justice fast-track panel decides many other cases by a short, per curiam order and without oral argument. Few cases are heard en banc: in 1991 only 5.7% of opinions were for the court en banc; in 1990, 7.1%; and in 1989, 6.1%. Like in the Mississippi Supreme Court, drafts of all opinions are circulated to the entire court. Any two justices may take a case en banc at any time before final approval of the opinion.[47] Unlike the Mississippi Supreme Court, however, not every judge votes on every case.

In the court of appeals, the chief judge of the court of appeals decides initially whether a case is submitted to a division of three judges or to the court en banc; any two judges can also require that the case be submitted to the entire court. In practice, almost all cases in the court of appeals are submitted to a three-judge panel. Nevertheless, all opinions are circulated to the entire court and the entire court participates in the final conference on the case after a draft opinion is circulated.[48] Consistent with its duty to decide only "cases which involve questions of applying existing legal principles,"[49] short memorandum opinions are to be used by the court of appeals to dispose of most of its cases.[50]

Rehearing is discretionary in both courts, and a petition for rehearing in the court of appeals is not a prerequisite for seeking discretionary review in the supreme court. All petitions for rehearing in the supreme court are considered en banc.[51]

Discretionary review by the supreme court of a decision of the court of appeals may be sought on essentially any grounds. Once the petition is received, a supreme court staff attorney prepares a memorandum and makes a recommendation. A panel of three justices then reviews the petition and makes a recommendation to the entire court. A vote of five justices is necessary to grant an

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46. IOWA R. APP. P. 401 (b). Iowa's constitution and statutes likely contain scatter-shot provisions which require the supreme court to retain jurisdiction over certain cases.

47. Report supplied by the Iowa Supreme Court.

48. IOWA CODE ANN. § 602.5102 (West 1988); IOWA SUP. CT. R. 3, 3.3, 3.4.

49. IOWA R. APP. P. 401 (c).

50. A memorandum opinion should contain: (a) the case name and number; (b) "appellant's contentions where appropriate;" (c) a brief statement of the reason for the court's result; and (d) the disposition. IOWA SUP. CT. R. 9.

51. *See* IOWA SUP. CT. R. 3.5 (b) (court of appeals); IOWA R. APP. P. 27 (supreme court); IOWA SUP. CT. R. 8.2 (supreme court to hear petitions en banc).

application for further review.[52] Only a small fraction of cases decided by the court of appeals are reviewed by the supreme court.[53]

C. Iowa Case-Processing Data

1. Filings, Dispositions, and Opinions

Table 13 attempts to give a comprehensive picture of case disposition in Iowa from 1988 to 1991. From left to right, figures are given for: filings, total dispositions, denial of discretionary review, dismissals, signed opinions, and per curiam opinions. The figures for cases filed with the supreme court exclude cases transferred to the court of appeals. "Review denied" indicates that a request for discretionary review was denied; the court of appeals has no discretionary jurisdiction. Dismissals include voluntary and involuntary dismissal by order, including involuntary dismissal of frivolous criminal appeals.[54]

Table 14 provides the same information on a per judge basis. As Table 14 illustrates, the Iowa Supreme Court's workload has been steady, by reference either to dispositions per judge or opinions per judge.[55]

Table 13

	filed	disposed	rev. den.	dismissed	/s/ op.	PCA
S.Ct. 1991	1,455	1,430	320	601	247	267
Ct. App. 1991	654	682	n/a	n/a	588	84
S.Ct. 1990	1,211	1,258	233	614	249	262
Ct. App. 1990	743	662	n/a	n/a	551	94
S.Ct. 1989	1,303	1,273	303	530	257	183
Ct. App. 1989	678	799	n/a	n/a	655	129
S.Ct. 1988	1.172	1,190	291	540	264	95
Ct. App. 1988	728	669	n/a	n/a	418	236

52. IOWA R. APP. P. 402 (grounds include "error" in the court of appeals); IOWA SUP. CT. R. 12.

53. From 1988 through 1991, further review was granted in 237 cases, or about 8.5% of the 1803 cases transferred to the court of appeals during the same period. In 1991, the gross number was 72; in 1990, 58; in 1989, 54; and in 1988, 53. In 1991, that represented 20.1% of petitions filed; in 1990, 17.0%; in 1989, 14.8%; and in 1988, 16.9%. Statistics provided by the Iowa Supreme Court.

54. Statistics were supplied by the Iowa Supreme Court and taken from the following sources: NCSC CASELOAD STATISTICS 1990, *supra* note 11, at 72-73, 83-84, 103 (the 223 cases where discretionary review was denied in 1990 include some original proceedings); NATIONAL CENTER FOR STATE COURTS, STATE COURT CASELOAD STATISTICS: ANNUAL REPORT 1989, at 64-65, 68-69, 74-75, 95; NATIONAL CENTER FOR STATE COURTS, STATE COURT CASELOAD STATISTICS: ANNUAL REPORT 1988, at 76-77, 108.

55. Throughout this three-year period, the supreme court employed 16 law trained persons, the court of appeals six. *E.g.*, NCSC CASELOAD STATISTICS 1990, *supra* note 11, at 103.

Table 14

	disposed	/s/ opinions	PCA
S.Ct. 1991	159	27	29
Ct. App. 1991	114	98	14
S.Ct. 1990	140	28	18
Ct. App. 1990	124	92	16
S.Ct. 1989	141	29	20
Ct. App. 1989	113	109	22
S.Ct. 1988	132	29	11
Ct. App. 1988	121	70	39

2. Indicia of Delay

Over the last three years, the Iowa Supreme Court has kept up with its workload. The court of appeals, however, has fallen somewhat behind. At the end of 1989, 281 cases in the supreme court were at some stage between ready for submission and decided. By the end of 1990, that number increased to 338, but by the end of 1991 it was back down to 285. In the court of appeals at the end of 1989, 152 cases were pending; at the end of 1990, 238; and at the end of 1991, 214.[56]

Table 15 contains the average delay, in months, from the time a case is ready for submission to opinion. Information was obtained from a report provided by the Iowa Supreme Court.

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56. *Id.*

Table 15

year	S.Ct.	Ct. App.
1991	5.8	6.4
1990	4.8	5.9
1989	4.6	6.1
1988	6.6	5.8
1987	5.8	5.8
1986	4.5	5.0
1985	5.6	5.2
1984	5.4	4.8
1983	5.5	5.7
1982	5.9	6.2
1981	5.2	5.5
1980	5.0	4.8
1979	5.0	4.9
1978	6.5	5.8
1977	12.2	12.5
1976	9.0	N/A

Nineteen hundred seventy-six was the last year that Iowa operated without its court of appeals. Since 1976, the average delay in priority civil and criminal cases has remained largely unchanged, fluctuating in the range between three and four months. By contrast, in 1976, the average civil case was delayed 20.2 months; in 1991, 7.4 months.

3. Docket Composition

Civil cases dominate most statistical categories. All figures in this section were taken from information provided by the Iowa Supreme Court.

Filings. From 1989-1991 civil filings represented about 72% of all filings.

Cases to wash-out. In 1991, 70.4% of cases which were terminated by means other than formal submission to the court were civil cases. Because the court of appeals obtains jurisdiction of a case by transfer from the supreme court, almost all cases that wash-out do so before they reach the court of appeals.

Transfers to the court of appeals. The bulk of cases transferred to the court of appeals were also civil cases. In 1991, 79.8% of transferred cases were civil matters; in 1990, 81.3%; in 1989, 76.5%; and in 1988, 76.2%.

Written opinions. In both courts, most written opinions are produced in civil cases. In 1991, overall 74.6% of opinions were in civil cases; in 1990, 70.1%; in 1989, 73%. Moreover, civil cases represented a relatively higher portion of the opinions produced in the court of appeals. In 1991, 69.9% of supreme court opinions were in civil cases while 79.2% of court of appeal opinions terminated civil cases. In 1990, the numbers were 67.1% in the supreme court, 78.6% in the court of appeals; in 1989, 68% in the supreme court, 77.6% in the court of appeals.

Table 16 indicates the number of opinions written by the supreme court and the court of appeals, by case category, for the years 1990 and 1991 (this is essentially a measure of dispositions excluding dismissals). The most significant disparities were in the contract and domestic cases, where the court of appeals did the great share of the work.

Table 16

	S.Ct. 91	Ct.App. 91	S.Ct. 90	Ct.App. 90
admin.	44	32	36	42
contracts	56	86	47	92
custody	11	123	10	108
domestic	49	124	18	89
post-conv.	41	45	29	35
property	7	22	13	20
tax	7	6	3	6
tort	67	59	49	66
wills	13	13	10	20
other civil	46	22	48	29
atty. disc.	15	--	13	--
CRIMINAL	153	140	135	138

IV. Application of the Iowa Model in Mississippi

A. Production in Mississippi and Iowa Compared

To compare production of appellate courts can be a tricky and complicated task. The following summary effort to compare Iowa's appellate courts with the Mississippi Supreme Court glosses over important potential differences between the courts, such as the composition of the docket (which might mean that a given court hears a greater proportion of difficult and time consuming cases), differences in substantive and procedural laws including appellate procedures and practices (which might make appellate review more or less efficient), and differences in the gross number of filings (which might strain a court so that production generally is hampered).

Table 17 compares the average three-year production by the Mississippi Supreme Court with the combined production of the two appellate courts in Iowa, then separately with the Iowa Supreme Court and the Iowa Court of Appeals. Comparisons are made by court and by judge. Recall that both the Mississippi and Iowa supreme courts have nine members and the Iowa Court of Appeals has six members.

Table 17

	disposed	per judge	by opinion	per judge
Mississippi	947	105	733	81
Iowa total	2035	136	1154	77
Iowa S.Ct.	1323	147	450	50
Iowa Ct. App.	714	119	702	117

B. Delay in Mississippi and Iowa Compared

Tables 18 through 20 compare average delay for three broad categories of cases in the Mississippi Supreme Court, the Iowa Supreme Court, and the Iowa Court of Appeals for the year 1991. In addition, the Tables list delay figures for cases decided by the Mississippi Supreme Court in 1992 through November 2. Table 18 compares total average delay, in days, from the date a case is ready for submission to the court, to the date of disposition. Table 19 compares delay between readiness and submission; Table 20, the total time between submission and disposition.

Table 18: Readiness to Disposition

	civil	priority civil	criminal
Miss. 1991	467	181	422
Miss. 1992	620	220	658
Iowa S.Ct. 1991	222	120	102
Iowa Ct. App. 1991	238	137	152

Table 19: Readiness to Submission

	civil	priority civil	criminal
Miss. 1991	409	135	331
Miss. 1992	496	151	565
Iowa S.Ct. 1991	168[57]	78	72
Iowa Ct. App. 1991	170	90	94

Table 20: Submission to Disposition

	civil	priority civil	criminal
Miss. 1991	58	45	91
Miss. 1992	124	69	89
Iowa S.Ct. 1991	54	42	30
Iowa Ct. App. 1991	66	47	58

57. Cases scheduled for submission in January 1992, had an average delay of about nine months.

It is clear that there is far less delay in Iowa. It is also quite plain that the bulk of the difference is in the time it takes a ready case to be submitted. However, there is also a significant difference in the time between submission and disposition in criminal cases in both 1991 and 1992, and in civil cases in 1992.

C. Docket Composition in Mississippi and Iowa Compared

Tables 21 and 22 attempt to compare the types of cases which make up the appellate dockets in Mississippi and Iowa for the years 1991 and 1990 respectively. The figures listed represent the number of formal dispositions after submission to the court. The striking disparity which emerges is between the number of civil cases decided. Criminal dispositions are roughly equal.

Table 21: Formal Dispositions by Case Type for 1991

	Iowa	Mississippi
admin. law[58]	76	92
contracts	142	28
domestic	173	62
child custody	134	15
property	29	20
tax	13	n/a
tort [59]	126	49
wills, etc.	26	23
atty. disc.	15	18
other civil [60]	68	68
CIVIL TOTAL	802	375
felony & misd.	245	260
post-conv. [61]	134	129
CRIMINAL TOTAL	379	389
TOTAL	1181[62]	764

58. The Mississippi figure includes cases classified under the heading "state boards and agencies" and "workers' compensation."

59. The Mississippi figure includes cases classified under the headings "personal injury," "other torts," "property damage," "medical malpractice," "wrongful death," and "legal malpractice."

60. The Mississippi figure includes cases listed as "insurance," "eminent domain," and "judicial performance."

61. The Iowa figure includes cases classified as "guilty plea only," "sentencing only," and "guilty plea and sentencing."

62. Fifty-nine cases were counted twice because the decision of the court of appeals was further reviewed by the supreme court.

Table 22: Formal Dispositions by Case Type for 1990

	Iowa	Mississippi
admin. law[63]	78	51
contracts	139	46
domestic	118	107
child custody	107	12
property	33	39
tax	9	n/a
tort[64]	115	79
wills, etc.	30	24
atty. disc.	13	8
other civil[65]	77	96
CIVIL TOTAL	719	462
felony & misd.	221	271
post-conv.[66]	116	46
CRIMINAL TOTAL	337	317
TOTAL	1056[67]	779

63. The Mississippi figure includes cases classified under the heading "state boards and agencies" and "workers' compensation."

64. The Mississippi figure includes cases classified under the headings "personal injury," "other torts," "property damage," "medical malpractice," "wrongful death," and "legal malpractice."

65. The Mississippi figure includes cases listed as "insurance," "eminent domain," and "judicial performance."

66. The Iowa figure includes cases classified as "guilty plea only," "sentencing only," and "guilty plea and sentencing."

67. Fifty-seven cases were counted twice because the decision of the court of appeals was further reviewed by the supreme court.

V. CONCLUDING REMARKS

Based on Iowa's experience, there is very strong reason to believe that the creation of a six-member intermediate appellate court could cure the present backlog of cases in the Mississippi Supreme Court and provide sufficient case-processing capacity to accommodate significant growth. Iowa's courts have demonstrably succeeded in processing *twice* as many cases as the Mississippi Supreme Court with far less delay. Such capacity should serve Mississippi well for some time to come.

Further, in an important way, Iowa provides a useful model. Iowa's Supreme Court consists of nine justices. Unless a change is made to the Mississippi Constitution, the Mississippi Supreme Court also will continue to have nine members.[68] Mississippi cannot afford a nine-member judicial body which acts just as a supervising, policy-making entity. Instead, the Mississippi Supreme Court will be required to continue to shoulder much of the case-processing burden, as the Iowa Supreme Court does.

At this point, a word of caution is again in order. Mississippi is not Iowa. Mississippi may not be able to replicate the productivity of Iowa's appellate courts without substantial changes to the way in which the Mississippi Supreme Court processes cases. The addition of an intermediate appellate court in Mississippi should therefore be accompanied by a searching look for mechanisms which would enable the Mississippi Supreme Court to dispose of some cases with less judicial effort. By example, it might be prudent to consider ways to decide more cases without formal submission to the court; ways to reduce the number of judges that participate in the decision of routine cases; ways to decide fewer cases by formal opinion;[69] and other ways to decide routine appeals by more abbreviated procedures. Likewise, it might be useful to consider assigning blocks of similar cases

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68. MISS. CONST. art. 6, § 145B.

69. The Iowa Supreme Court decides over 28% more cases than the Mississippi Supreme Court while writing nearly 39% fewer opinions.

to a given panel, to reduce the transaction costs presented by constant shifts from subject to subject.

Enhanced appellate capacity, through both the addition of an intermediate appellate court and the implementation of more efficient case-processing procedures, holds the promise of aiding Mississippi's appellate judiciary in the performance of its chief responsibilities. Cases can be decided with less delay. Routine cases can therefore be reviewed for error without spending years on appeal. And the time the supreme court would no longer spend disposing of ordinary cases could instead be devoted to more difficult matters of judicial policy.

APPENDIX 7

COUNTY FUNDING OF TRIAL COURTS

Reporting County	Fines	Fees	Forfeitures	Other (Identify)	TOTAL	% Compared to Total Court General Fund Budget
Adams	269,749	80,414	1,490	89,671 (Reimbursement - Federal Program)	441,324	55.43
Alcorn	170,190	48,221	1,649	-0-	220,060	59.08
Amite	74,646	-0-	650	-0-	75,296	40.99
Attala	127,428	-0-	-0-	-0-	127,428	53.81
Benton	67,428	21,251	-0-	-0-	88,680	60.62
Bolivar	184,227	83,423	4,852	-0-	272,502	34.91
Calhoun	95,408	6,235	-0-	-0-	101,643	33.72
Carroll	239,709	30,434	2,686	-0-	272,829	178.11
Chickasaw						
Choctaw	52,776	2,727	-0-	-0-	55,503	41.25
Claiborne	-0-	96,727	-0-	-0-	96,727	32.93
Clarke						
Clay						
Coahoma						
Copiah	179,942	26,596	-0-	-0-	206,538	51.15
Covington	195,000	-0-	-0-	-0-	195,000	56.17
DeSoto	248,888	129,864	720	-0-	379,472	38.76
Forrest	618,418	75,407	67,500	-0-	761,325	63.19
Franklin	50,313	17,235	-0-	143,022	210,571	116.22
George	N/A	N/A	N/A	N/A	155,344	70.24
Greene	59,269	11,200	3,541	-0-	74,010	47.71
Grenada	219,833	41,384	-0-	2,656	263,873	60.70
Hancock	248,613	48,885	8,925	4,301	310,724	66.97
Harrison	220,499	-0-	-0-	107,622	328,121	11.86
Hinds	689,827	319,021	132,738	29,627	1,171,213	23.55
Holmes	164,428	47,898	1,064	6,158	219,548	67.93
Humphreys	97,077	7,693	20,966	-0-	125,738	43.54
Issaquena	8,012	3,151	5,794	-0-	16,958	10.68
Itawamba	121,676	42,203	-0-	-0-	163,880	71.04
Jackson	447,064	126,298	-0-	191,386 (Grants/Interest)	764,750	22.21
Jasper	152,529	39,279	-0-	-0-	191,809	69.64
Jefferson	60,021	-0-	-0-	-0-	60,021	33.29
Jefferson Davis	92,054	16,942	-0-	-0-	108,996	45.56
Jones	221,218	15,310	18,059	-0-	254,587	37.43
Kemper	79,740	18,992	-0-	-0-	98,732	93.68
Lafayette	166,264	49,128	-0-	-0-	215,392	47.12
Lamar	280,451	34,882	-0-	-0-	315,333	52.59
Lauderdale	432,265	348,540	17,624	77 (Littering)	798,507	65.56
Lawrence	86,902	12,470	5,704	-0-	105,076	47.20
Leake	150,900	20,400	-0-	9,200	145,500	57.50
Lee						

Reporting County	Fines	Fees	Forfeitures	Other (Identify)	TOTAL	% Compared to Total Court General Fund Budget
Leflore						
Lincoln	283,607	47,691	4,279	-0-	335,577	91.01
Lowndes	634,298	33,633	-0-	-0-	667,932	65.15
Madison	144,274	75,047	-0-	-0-	219,321	26.72
Marion						
Marshall	4,076	44,545	-0-	-0-	48,621	11.28
Monroe	193,731	70,209	-0-	-0-	263,940	42.31
Montgomery	157,456	40,584	-0-	-0-	198,040	107.73
Neshoba	116,224	30,870	20,085	-0-	170,179	62.21
Newton	143,772	36,700	-0-	-0-	180,472	61.09
Noxubee	61,110	21,464	-0-	-0-	82,574	40.94
Oktibbeha	159,436	85,066	-0-	12,392 (Sheriff Fines)	256,894	48.09
Panola	239,989	116,006	-0-	-0-	355,995	72.59
Pearl River	235,321	70,243	2,464	15,984 (Conf. Prop./ Restitution)	324,013	51.14
Perry	81,849	40,844	-0-	-0-	122,694	64.19
Pike	169,870	51,820	-0-	-0-	221,690	37.40
Pontotoc	247,046	-0-	-0-	-0-	247,046	78.59
Prentiss						
Quitman	56,480	62,610	-0-	-0-	119,090	40.21
Rankin	435,295	-0-	1,279	21,003 (Sheriff Fines)	457,577	34.29
Scott	143,047	3,874	2,380	-0-	149,301	43.45
Sharkey	N/A	N/A	N/A	N/A	95,791	67.12
Smith						
Stone	172,205	26,440	-0-	N/A	198,645	13.79
Sunflower	282,480	14,140	18,002	30,544	345,169	45.89
Tallahatchie						
Tate						
Tippah						
Tishomingo	166,819	49,044	-0-	-0-	215,864	97.36
Tunica						
Union						
Walthall	34,555	23,373	-0-	-0-	57,928	40.51
Warren	284,554	70,510	22,082	-0-	377,146	38.79
Washington	217,727	75,534	N/A	N/A	293,261	26.58
Wayne	56,888	14,023	11,245	-0-	82,156	25.87
Webster	93,928	14,303	-0-	-0-	108,231	74.49
Wilkinson						
Winston						
Yalobusha	97,041	23,585	5,263	-0-	125,889	53.51
Yazoo						

Reporting County	Total County Budget	Circuit	Chancery	County	Youth/ Family	Justice	Court Admin.	Public Defender	District Attorney	Total	% Co. Gen. Fund to Courts
Adams	5,753,156	219,281	72,449	164,567	50,000	216,961	Included in Circuit	19,129	53,772	796,159	13.80
Alcorn	2,722,707	92,000	60,000	-0-	10,000	114,000	12,269	49,760	34,445	372,474	13.00
Amite	1,816,900	52,000	40,000	-0-	17,000	57,500	-0-	-0-	17,200	183,700	10.10
Attala	2,985,845	75,079	32,134	-0-	12,683	83,834	-0-	-0-	33,059	236,791	8.00
Benton	1,799,565	46,371	2,141	-0-	5,798	57,279	Included in Circuit	7,044	7,644	146,277	9.00
Bolivar	4,734,942	265,360	80,856	77,165	89,305	220,550	29,580	30,190	900	780,601	16.00
Calhoun	4,281,813	78,000	26,125	5,375 (Lunacy)	24,700	104,600	5,280	31,100	26,205	301,385	7.00
Carroll	1,400,897	33,504	11,472	-0-	4,500	93,920	-0-	-0-	9,780	153,176	10.90
Chickasaw											
Choctaw	788,000	45,000	22,000	-0-	2,000	55,000	-0-	-0-	10,566	134,566	17.00
Claiborne	6,666,000	152,772	40,617	-0-	17,903	82,426	-0-	-0-	-0-	293,718	4.40
Clarke											
Clay											
Coahoma											
Copiah	3,571,500	156,500	45,500	-0-	18,500	140,300	-0-	-0-	43,500	403,800	11.31
Covington	2,623,371	117,675	24,000	8,200	13,000	105,000	-0-	43,300	36,000	347,175	13.25
DeSoto	9,139,727	253,058	104,550	154,696	32,397	262,886	24,600	92,561	54,217	978,965	10.70
Forrest	22,564,069	168,200	180,000	170,000	176,000	71,300	224,500	83,950	120,900	1,204,850	
Franklin	5,376,786	51,760	23,725	14,691	8,200	71,960	810	-0-	9,991	181,137	3.30
George	1,631,800	68,902	29,950	37,663	8,000	76,654	-0-	-0-	-0-	221,169	13.55
Greene	1,319,173	59,124	27,648	-0-	Included w/chancery	53,271	-0-	-0-	15,082	155,125	11.76
Grenada	3,079,902	153,067	53,117	-0-	27,245	137,175	-0-	36,571	27,528	434,703	14.10
Hancock	5,494,719	120,688	50,910	-0-	68,468	117,262	-0-	64,583	41,903	463,994	9.00
Harrison	21,401,093	839,243	141,117	353,806	743,853	448,252	115,177	-0-	125,090	2,766,540	13.00
Hinds	31,126,076	1,068,209	272,517	619,969 Lunacy. 895,587	604,353	626,406	222,395	493,676	169,525	4,972,637	15.98
Holmes	3,225,993	103,690	31,255	10,121 (Lunacy)	21,282	93,201	-0-	41,986	21,680	323,215	10.00
Humphreys	1,850,994	109,447	23,347	5,000 (Lunacy)	43,125	78,439	-0-	21,529	12,914	288,803	16.75
Issaquena	641,057	17,151	12,220	-0-	861	29,075	2,500	-0-	6,735	68,542	10.50
Itawamba	2,127,964	54,450	30,100	-0-	18,006	81,300	10,925	16,201	19,710	230,693	13.39
Jackson	18,428,236	480,165	432,000	218,660	1,140,935	598,290	103,084	237,577	232,777	3,443,488	18.69
Jasper	1,924,345	66,500	47,500	-0-	22,625	105,447	15,652	-0-	17,688	275,412	14.32
Jefferson	1,577,052	67,774	38,084	-0-	8,713	62,076	3,668	-0-	-0-	180,318	11.00
Jefferson Davis	2,698,586	53,838	22,782	-0-	8,269	100,191	-0-	54,176	-0-	239,256	9.00
Jones	6,856,196	155,080	28,923	124,105	38,651	202,267	-0-	37,366	93,785	680,177	10.00
Kemper	1,336,032	32,400	14,869	-0-	5,603	46,516	-0-	6,000	-0-	105,388	8.00

Reporting County	Total County Budget	Circuit	Chancery	County	Youth/ Family	Justice	Court Admin.	Public Defender	District Attorney	Total	% Co. Gen. Fund to Courts
Lafayette	2,697,029	153,825	48,404	-0-	26,755	143,640	9,060	45,535	29,915	457,134	17.00
Lamar	1,859,911	285,979	84,722	-0-	36,481	123,993	12,530	Included with Circuit	55,897	599,606	31.57
Lauderdale	6,565,905	357,472	170,540	209,877	-0-	250,703	40,080	90,000	99,340	1,218,012	19.00
Lawrence	2,609,450	64,582	18,741	-0-	4,984	99,988	-0-	16,351	17,962	222,608	9.00
Leake	2,104,237	75,302	15,850	-0-	12,323	109,481	12,467	-0-	27,614	253,037	12.00
Lee											
Leflore											
Lincoln	3,039,951	158,293	48,527	-0-	17,316	124,258	1,444	-0-	18,891	368,729	12.13
Lowndes	16,402,195	253,938	62,200	216,037 Lunacy: 1,080	45,900	263,493	44,064	105,680	32,788	1,025,180	16.00
Madison	7,183,100	163,600	55,300	130,300	38,400	218,700	17,100	108,300	197,300	820,700	11.43
Marion											
Marshall	3,713,724	116,374	40,573	-0-	27,813	134,903	9,060	44,864	57,614	431,201	11.61
Monroe	3,968,915	176,404	129,011	N/A	28,259	198,110	52,404	-0-	39,708	623,898	15.72
Montgomery	1,415,898	66,819	18,265	2,896 (Lunacy)	7,843	88,003	-0-	-0-	-0-	183,826	12.98
Neshoba	1,945,376	86,160	37,875	675 (Lunacy)	17,841	95,043	8,143	18,784	9,037	273,559	14.06
Newton	2,135,501	103,371	30,000	-0-	19,465	101,605	24,399	16,070	500	295,410	7.23
Noxubee	1,566,434	81,213	18,016	-0-	7,180	67,133	1,500	10,000	17,677	201,719	13.00
Oktibbeha	3,188,109	114,298	45,280	3,600	21,852	224,585	17,610	65,580	41,431	534,225	16.80
Panola	3,070,258	223,039	38,359	-0- Included in Circuit	24,000	135,917	19,000 Included in Circuit	40,856	28,200	490,371	16.00
Pearl River	5,783,391	191,340	73,700	-0-	21,000	201,200	8,100	79,300	59,000	633,640	11.00
Perry	2,394,671	4,729	56,404	-0-	Included in Chancery	86,127	3,874	-0-	-0-	191,136	11.00
Pike	3,593,473	158,472	116,430	30,000		191,305	-0-	10,300	42,645	592,750	16.50
Pontotoc	6,964,782	83,500	44,050	7,500 (Lunacy)	38,000	115,955	-0-	-0-	25,360	314,365	4.00
Prentiss											
Quitman	1,652,200	122,500	23,000	-0-	41,700	83,000	-0-	Included in Circuit	26,000	296,200	18.00
Rankin	10,556,707	190,950	152,951	227,393	106,240	333,986	59,641	87,788	175,647	1,334,596	13.00
Scott	2,490,478	80,670	30,972	17,600 (Lunacy)	34,838	120,156	20,663	18,916 (Coroner)	19,820	343,635	13.80
Sharkey	1,514,842	51,848	11,515	2,375 (Lunacy)	14,032	41,010	-0-	-0-	21,936	142,716	9.42
Simpson	2,686,245	107,139	28,151	-0-	5,895	128,999	-0-	26,935	13,779	310,898	12.00
Smith											
Stone	1,440,058	55,600	30,000	20,000	30,000	87,000	876	N/A	1,000	224,476	15.59
Sunflower	3,747,285	193,935	42,625	-0-	50,280	279,321	39,458	155,342	30,570	752,073	20.00
Tallahatchie											

Reporting County	Total County Budget	Circuit	Chancery	County	Youth/ Family	Justice	Court Admin.
Tate							
Tippah							
Tishomingo	3,314,459	79,261	40,000	-0-	10,014	89,662	-0-
Tunica							
Union							
Walthall	1,177,846	45,500	15,000	-0-	3,000	61,500	-0-
Warren	6,654,495	318,932	113,730 Plus Lunacy: 119,775	174,636	68,786	224,380	-0-
Washington	8,005,154	268,582	69,469	133,095	148,335	198,074	88,852
Wayne	2,057,597	24,792	137,537	28,520	21,306	105,215	-0-
Webster	1,329,576	47,078	19,407	-0-	1,607	77,193	-0-
Wilkinson							
Winston							
Yalobusha	1,768,329	75,000	39,068	3,500	18,211	90,085	7,600
Yazoo							

Reporting County	Public Defender	District Attorney	Total	% Co. Gen. Fund to Courts
Tate				
Tippah				
Tishomingo	-0-	27,844	221,721	6.70
Tunica				
Union				
Walthall	-0-	18,000	143,000	12.00
Warren	-0-	71,641	972,105	14.60
Washington	158,055	38,719	1,103,181	14.00
Wayne	-0-	-0-	317,550	15.50
Webster	-0-	-0-	145,285	11.00
Wilkinson				
Winston				
Yalobusha	-0-	1,800	235,264	13.00
Yazoo				

APPENDIX 8

REPORT OF THE COURT TECHNOLOGY SUBCOMMITTEE

The Court Technology Subcommittee, Chaired by John B. Clark, presented its report to the Commission at its March 12, 1993, meeting. The report was approved by the unanimous vote of the full Commission.

I. THE SCOPE OF NEEDED TECHNOLOGY

To increase efficiency and accountability, Mississippi's courts must fully embrace information technology of all types. Having lagged far behind to date, our courts must aggressively seek to take maximum advantage of the benefits technology presents for improving the delivery of justice.

As a beginning, information technology should serve these ends:

A. Records Management

- All court records should be automated, and the bar and the public should be able to retrieve all non-confidential records.[70]
- Courts should provide electronic filing and transfer of court documents.
- Automation should support remote "dial up" access to both court records and document transfer.
- Courts should store recorded data electronically to diminish the growing storage problems in many county courthouses and state buildings.

B. Automated Case Management

- Courts should employ modern automated case management systems designed to promote the just and expeditious movement of cases through the court system.
- Automated case management systems should follow nationally recognized time standards for the resolution of cases at both the trial and appellate levels, and should provide for differentiated screening of cases and appeals.

C. System Access and Security

- All information should be linked in a statewide network which supports "read only" access to the data bases of all courts.

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70. The software system purchased or developed for case-processing and management must be able to provide all basic case information, party information (including identification of attorneys), docketing information, scheduling information, and disposition information. Specifically, the software must provide:

(a) automated case tracking of all cases from initiation through final disposition;

(b) electronic transfer of case information to appellate courts;

(c) indexing by the name of any party, including the capability to retrieve by full or partial name, or by phonetic name where the exact spelling is not known;

(d) full docketing of all case events, including filings and court actions;

(e) scheduling capabilities to maintain court calendars;

(f) capability to generate notices automatically for any scheduled event (i.e., docket call, hearing dates, etc.);

(g) full range of management and statistical reports;

(h) capability to archive selected records as files are purged and to retrieve files from archive; and

(i) capability to facilitate remote "read only" access by state and local agencies and attorneys.

- Automated systems should be designed with sophisticated security features to prevent tampering and should include modern back-up capabilities.

D. Statistical Reporting

- The court system, through the Administrative Office of the Courts, should establish standardized methods of collection and reporting of statistics on the production of all courts. This reporting function should be centralized at the state level and should ensure compliance with uniform reporting standards applicable to all courts. Where possible, reporting should be electronic. Statistical collection should support the production of management reports (i.e., caseload, types of cases, etc.) from which judicial leaders may better plan for the courts and state leaders may better allocate resources to the judicial branch.
- Statistical reporting and statewide automation concerns should be coordinated by a central state authority. Under the direction of the Administrative Office of the Courts, there should be established a Division of Management Information Systems (MIS). To support its goals, this division should be fully staffed and include professional systems personnel. This division should serve as coordinator of all statewide automation functions pursuant to policy set by the judicial branch.

E. Funding and Responsibility

- The state should provide full funding for the purchase of hardware, software, and supporting equipment. Counties should provide funding for physical facility modifications necessary to accommodate the state-funded equipment.
- Responsibilities for managing, storing, processing, and maintaining automated information should be placed at the local level.

F. Beyond Record-keeping

- All available and affordable technological applications should be employed which render the courts more accessible to persons covered by the Americans with Disabilities Act.
- Courts should be encouraged to apply video technology to those functions which might be enhanced by its use. Examples might include videotaped arraignments and prisoner hearings, videotaped recordings of trial proceedings, etc.
- Trial courts should employ modern court-reporting techniques capable of producing immediate transcripts, supporting computer use in the courtroom, and so forth.
- The use of optical imaging technology should be expanded.

II. The Current State of Affairs in Mississippi

Automated information technology, together with an Administrative Office of the Courts, can be a catalyst for unifying, streamlining, and strengthening the hodgepodge of semi-independent trial courts into a unified modern court *system*. Mississippi's court system has taken some steps toward modern information

management. Most notably, for some years now, the Mississippi Supreme Court has had in place its nationally recognized Automated Case Tracking System (ACTS). This system has allowed the supreme court to enter the modern era of automated tracking and caseload management.

In November 1988, the supreme court, per Chief Justice Roy Noble Lee, ordered the planning and implementation of the Mississippi Judicial Information Systems (MAJIS). MAJIS was described by the court as "a comprehensive and long-awaited plan which, when complete, will provide an automated mechanism for the acquisition, storage, and retrieval of data essential to the effective and efficient operation of the courts of this state." Endorsing fully the use of technology, the court further declared in its 1988 order:

> Undoubtedly, modern day judicial efficiency depends most prominently on our embrace of the vast resources provided by the computer revolution. In today's world, concepts of docket management and data storage can be made tangible only within the confines of an automated program. Moreover, critical choices in the areas of software applications and equipment must be made by those persons whose energies and expertise lie in the operation of the courts.

Pursuant to the court's order, a vendor-developed system of software for trial court case management, based on the ACTS system, was acquired and put to use in several pilot locations. While functional, the system is not user-friendly. Moreover, due to the rapid development of information technology, MAJIS is quickly nearing obsolescence.

While only partially successful as an information management system, MAJIS has been a useful and instructive trial run. Mississippi is now better poised to employ information technology comprehensively, productively, and efficiently.

III. Trends in Current Systems and Ware

In the early 1980s, centralized data processing on mainframe computers was the prevailing practice. Late in the 1980s, personal computers prompted a trend toward distributed data bases and decentralized systems linked by PCs in local- and wide-area networks. This latter trend continues today, and is widely preferred.

Developments in software have paralleled developments in hardware. Proprietary software systems used to be the norm. The shake-out and resulting bankruptcies in the computer industry have demonstrated the perils of using software which can only be supported and modified by a single vendor or small group of vendors. The current trend is toward "open systems" based on UNIX operating software. UNIX has been described as the most universally compatible software operating system.

IV. Recommended Approach

Because, in the long run, the MAJIS system is unsuitable, the Commission recommends development of a software system based on an open systems approach. The system must be able to interface with popular off-the-shelf software such as

Lotus 1, 2, 3, WordPerfect, and the like. Adopting UNIX as the software operating system should be considered.

While it is possible that one or more of the larger counties would be willing to enter into a joint venture with the state to develop the new system, it is more likely that the state will need to employ a vendor to work with state employees in developing the new system.

After the system is developed, the vendor should be responsible for training, installation, and maintenance of the product in each county or court district. Presumably, the cost of installing and training would be a local cost.

V. CONCLUSION

Efficiency should not replace thoughtful consideration. Instead, improvements generated by technology should complement tested and proven methods of administering justice. The effective application of technology under the direction of the Administrative Office of Courts, Management Information Systems Division, would bring our courts into the future by producing orderly, consistent, and refined court operations.

First and foremost, informed judges are better decision-makers. Information technology can give judges better access to crucial facts. Careful application of emerging technologies can increase productivity and heighten responsiveness to the public's requests for service, without a loss of traditional values which form the foundation of the court's search for a just resolution of disputes. Technology can produce high quality justice by reducing delay and inconvenience while improving accessibility. Technology can bring about full and complete public access, media coverage, and public education. Technology can promote openness and convenience as courts employ state-of-the-art methods for the free exchange of information while protecting citizen's legitimate expectations of privacy. Better-informed decision-making, improved administration, and increased access and convenience are but several ways prudent use of information technology can enhance the quality of justice in the next century.

APPENDIX 9

REPORT OF THE CRIMINAL JUSTICE SUBCOMMITTEE

I. THE PROBLEMS SELECTED FOR STUDY: DISPARITY IN SENTENCING AND INDIGENT REPRESENTATION

Early in its study process, the Commission formed a Criminal Justice Subcommittee, chaired by Edwin A. Snyder, to study problems with the criminal justice system. However, "the criminal justice system" is a topic so broad and one which encompasses so many issues that the Subcommittee was asked first to survey the entire field and then to pinpoint subjects most in need of immediate reform. In this vein, the Subcommittee studied in detail two discreet problems: sentencing and indigent representation. The Subcommittee presented a report on these two topics to the full Commission at its March 12, 1993, meeting. The report received unanimous approval.

A. Disparity in Sentencing

Presently, in Mississippi sentencing is "partially indeterminate." The judge has restricted discretion to vary the length of the sentences imposed on different offenders who commit the same crime. In Mississippi, the judge has the discretion to set the maximum period of incarceration, but not the minimum. The actual date of release, however, is determined by a parole board. The disparities inherent in partially indeterminate sentencing have created an enormous amount of disrespect among both the public and those involved in the criminal justice process.

B. Indigent Representation

Quality legal representation in criminal proceedings benefits the accused; as importantly, it benefits the public interest. There should be no distinction in the availability of quality legal representation based upon a person's ability to pay. Presently, Mississippi's indigent defender system (if one can call ad hoc mechanisms a system) is based on court-appointed counsel and various forms of full and part-time public defender offices. The quality of legal services has been erratic. The current approach is flawed in that there are no safeguards to ensure that highly skilled lawyers, or simply lawyers knowledgeable in the area of criminal law, are selected.

II. REDUCING DISPARITY IN SENTENCING

A. Alternative Sentencing Methods

At various times in the history of criminal incarceration in the United States, sentencing has been based on one of the following theories: deterrence, rehabilitation, incapacitation, and retribution. For much of this century, the prevailing sentencing principle was to rehabilitate the criminal. Despite decades of sentencing based on the rehabilitation concept, the evidence seems conclusive that little, if any, rehabilitation, actually takes place in prison. Imprisonment will incapacitate

prisoners and prevent them during their term of incarceration from committing crimes outside the prison. However, most studies agree that sentencing deters few, if any, persons other than the incarcerated individual. The theory most reflected by modern-day sentencing is retribution.

Currently, there are two kinds of sentencing plans: determinate and indeterminate. The purpose of determinate sentencing is to ensure consistency and equality in sentencing. Indeterminate sentencing, on the other hand, is based on a notion of rehabilitation: different individuals may need different lengths of incarceration for the same crime in order to be rehabilitated.

It is time to move away from sentencing based upon the outdated notion that rehabilitation is the goal of sentencing. We must move to a method of sentencing which addresses the problems of disparate sentences for similar offenses and offenders.

There are several forms of determinative sentencing:

- *Mandatory Sentencing.* When using a mandatory sentencing structure, the sentencing judge has no discretion over either the fact or the length of incarceration.
- *Non-mandatory guidelines.* In jurisdictions which use sentencing guidelines, the judge is apt to follow the guidelines. In those cases where she does not, the judge must file written explanations specifying the factors which caused her to deviate from the guidelines.
- *Presumptive sentencing.* Here, too, the judge follows what is considered a typical sentence for the charge. If the judge wishes to deviate from the typical sentence, he may do so within a narrow range of options depending on whether there are aggravating or ameliorating circumstances.
- *Sentencing within a range of discretion.* This type of sentencing may give the judge a narrow range within which she has discretion to fix the sentence, or may give the judge a broader range of discretion.

Indeterminate sentencing usually comes in one or two forms:

- *Statutory minimum and maximum.* In this plan there is a statutory minimum and maximum and the parole board determines the actual release date.
- *Statutory maximum.* In this plan there is a mandatory maximum, but the court has the discretion to set the minimum. Date of release is still dependent on the parole board.

A central characteristic which distinguishes determinate from indeterminate sentencing is that in the latter, the parole board determines the actual length of incarceration and the release date. In both indeterminate sentencing and partially indeterminate sentencing, the parole board's powers complicate the procedure and give another layer of unpredictability to sentences.

If a sentencing policy is based on the rehabilitation theory, then sentences will be made on an indeterminate basis. The release of the prisoner will depend on whether a parole board believes that the prisoner has been rehabilitated. To the extent that this theory has permitted sentencing disparities, it has created an enormous amount of disrespect among both the public and those involved in the

criminal justice process. A prime consideration in sentencing under the retribution theory is that equal sentences should be imposed for like offenses.

To achieve parity in sentencing, many jurisdictions, including the federal government, have established mandatory sentencing guidelines. Although there are variations on the theme, these guidelines generally involve a point system giving the judge little or no flexibility in terms of sentencing. Other states have established voluntary guidelines. Still others have declined to develop guidelines, but have instead chosen to develop a set of factors for the judge to use as a "blueprint" in sentencing.

III. Recommendation: The Creation of a Sentencing Commission

Mississippi currently adheres to a partially indeterminate sentencing plan. For instance, the court has the discretion to set the maximum period of incarceration, but not the minimum. The actual date of release is determined by the parole board.

Apparently, there has never been a systematic study of sentencing in Mississippi courts. A sentencing commission should be established to look at moving toward some form of sentencing which results in statewide parity; Mississippi needs to ensure that sentences have a sufficient measure of equality. Parity in sentencing is extremely important both in terms of just punishment and in terms of societal respect for, and public confidence in, the criminal justice system. Still, a system with a modicum amount of flexibility would probably best serve the public's need for certainty in punishment as well as the sentencing judge's need for discretion.

A sentencing commission could study whether to choose a set of sentencing factors as a guide, or choose voluntary sentencing guidelines, or adopt some other similar approach. But whatever path is ultimately taken, the Commission considers that *mandatory sentencing guidelines do not present a satisfactory alternative.* There was wide agreement among members of the Commission that the federal experience with mandatory sentencing guidelines has shown this approach to be deficient. The system leaves judges with too little discretion. Moreover, this loss of discretion has not been the palatable cost of a more efficient system. The federal sentencing guidelines have been expensive and are overly complicated. Probation staff and expenses have multiplied enormously. The guidelines are so complex that lawyers have difficulty working with the system, which diminishes their ability to settle cases by agreement and generates more appeals.

A sentencing commission would operate in three phases:

- Phase I would be the study phase. The staff of the sentencing commission would oversee a process of gathering sentencing information, processing this information, and making an appropriate analysis.
- Phase II would be the development of a new sentencing system, based on the analysis of the data in Phase I.
- Phase III would be the pilot implementation. During Phase III, the Mississippi Judicial College could conduct training programs for judges on the proper use of the new sentencing system.

One further note is in order. In the end, sentencing reform cannot succeed without reform to the criminal code. A study of sentencing alternatives, therefore, implicates a comprehensive, complete study and revision of Mississippi's criminal statutes.

IV. Improving the Quality of Indigent Representation

Mississippi's indigent defender system is based on court-appointed counsel and various forms of full and part-time public defender offices.[71] The quality of legal services has been erratic. The current system is flawed to the extent that there are no safeguards to ensure that quality lawyers, or simply lawyers knowledgeable in the area of criminal law, are selected. It is clear that some changes are needed. A method which provides for the systematic delivery of indigent representation will result in better legal services for the defendant than a system based solely on court-appointed defenders.

A. Possible Solutions

A review of other jurisdictions indicates that there are several possible approaches. Twenty states have a state-administered public defender system. Nineteen states have some form of a locally administered public defender system. Nine states, including Mississippi, rely heavily on court-appointed counsel. With the exception of Texas, eight of those nine states are demographically comparable to Mississippi.

One of the states currently using the court-appointment method is Virginia. However, Virginia is moving toward abandoning this method. In 1989, the Commission on the Future of Virginia's Judicial System recommended moving to a system of public defender offices. The Commission's recommendation eloquently stated the case:

> There is a disagreement . . . as to whether criminal defendants are better represented by court-appointed counsel or by public defenders. The Commission believes that both systems are needed and that each needs improvement to better meet the goal of equal access in criminal proceedings. The primary channel for such representation, however, is through appropriately staffed and funded public defender offices covering the entire state. Court-appointed counsel should continue to handle those cases in which the public defender has a conflict of interest or when workload precludes the public defender from accepting the assignment.

The Virginia Commission suggested that a public defender system be established in each judicial district. Additionally, it recommended that a Public

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71. At present, the cost of court-appointed counsel is borne by each individual county. By statute, compensation for court-appointed counsel is capped at $1,000, plus actual expenses. However, in Wilson v. State, 574 So. 2d 1338 (Miss. 1990), the Mississippi Supreme Court interpreted expenses to include a lawyer's office overhead, and created a rebuttable presumption that overhead equals $25 per hour of the lawyer's time. This expense can be substantial. In *Wilson*, for example, the lawyers worked 1,341.2 hours; at $25 per hour, overhead expenses would total $33,530. In addition, counties bear the cost of other expenses, such as hiring investigators, consulting expert witnesses, interviewing witnesses, and so forth.

Defender Commission be created which would provide training for all public defenders and court-appointed counsel, and which would oversee standards and criteria for appointment.

B. Recommendations

1. Modification of the Virginia plan

The Virginia model might be modified to create a county-wide or district-wide public defender system throughout Mississippi. Larger counties could be required to establish a public defender office, smaller contiguous counties could join together to form a regional defender's office. Such a multi-county office should attempt to parallel the district attorney's jurisdiction as closely as possible. The expense of such a system would be primarily borne by the counties.

2. State Appellate Defender's Office

One approach to appellate representation would be to create a state Appellate Defender's Office which would correspond to the criminal appellate arm of the state Attorney General's Office. In addition to providing indigent representation in criminal appeals, the Appellate Defender's Office could assume the duties of the Capitol Resource Committee, which oversees representation in death penalty cases and which is largely financed by the state bar. Depending on cost, the Appellate Defender's Office might be entirely staffed by public defenders or serviced by a combination of public appellate lawyers and assigned private lawyers.

3. A Public Defender Commission

A Public Defender Commission should be created to provide training for public defenders and court-appointed counsel. Additionally, the Commission would oversee the program and delineate standards and criteria for appointments.

APPENDIX 10

REPORT OF THE YOUTH COURT SUBCOMMITTEE

The Youth Court Subcommittee, Chaired by C.E. Morgan, III, presented its report to the Commission at its March 12, 1993, meeting. After much discussion, it became clear that the report of the Youth Court Subcommittee lacked sufficient support among the members of the Commission to be approved as the Commission's recommendation on the subject. Many members of the Commission, including the Chair and both Vice-Chairs, voiced concern that the approach adopted in the Youth Court Subcommittee's report was at odds with the Commission's basic philosophy of streamlining Mississippi's courts. Many members of the Commission were reluctant to recommend adding another appendage to Mississippi's already fragmented court system. However, the Commission also believed that the Subcommittee's report should be included in this Discussion Draft, as further debate on issues of juvenile justice should not be hampered by a lack of information regarding work done to date, and approaches considered and rejected.

I. THE PROBLEMS

Juvenile justice matters fall under the jurisdiction of various courts—including chancery courts, county courts, family courts, and special masters. Fragmenting responsibility in this manner causes several severe problems.

- Youth courts are effectively denied their own identity.
- There is a lack of statewide consistency.
- There are no uniform rules or procedures. (However, the Subcommittee is advised that the Council of Youth Court Judges is presently studying rules to submit to the supreme court.)

Fragmentation is not the only source of problems.

- Youth court judges receive too little initial training and too little continuing training. Training is insufficient both in areas particular to youth courts and as to judicial matters more generally.
- There is no centralized youth court administration, and thus the collection of essential statistical data is impossible.
- There is no uniformity in the compensation of judges who handle youth court matters.

II. RECOMMENDATIONS

Since July 1992, the Youth Court Subcommittee has studied ways to integrate Mississippi's Youth Court system into the overall judicial system, toward a goal of providing a more efficient court that is structurally and procedurally consistent throughout the state. The Subcommittee used as a foundation for its deliberations the Report and Recommendations of the Mississippi Commission on a Uniform Youth Court System dated September 23, 1989 (the "1989 Report"). The Subcommittee felt that youth court reform would best be affected by following the recommendations set forth in the 1989 Report. Indeed, the Subcommittee found the

1989 Report so comprehensive that it did not attempt to undertake a new study of the issues. However, because the 1989 Report goes beyond what the Subcommittee saw as its charge, and because the 1989 Report has yet to be implemented, the Youth Court Subcommittee sought to recommend what it saw as immediately viable alternatives. In order of preference, they are as follows.

- A county court should be established in every county and vested with youth court jurisdiction as now established by statute. Adjoining counties should be allowed to enter into cooperative agreements for the establishment and funding of a single-judge county court district; provided, however, no more than two counties should be allowed to enter into any particular agreement. (The purpose of this part of the recommendation as with the alternatives set forth below is to ensure prompt access to the court for its emergency responsibilities established by statute.) All funding for the court, including judges' salaries, should be disbursed through the state office of judicial administration, regardless of the source of the funding.
- In the event that it is not possible to obtain legislative approval for the first recommendation, a separate and distinct youth court should be established in every county not having a county court or family court, and the position of Family Master should be abolished. In counties which have a county or family court, youth court jurisdiction would be retained by those courts. If a county which does not have a county or family court establishes either, then the separate youth court would be abolished and its jurisdiction vested in the county or family court.
- Each youth court would have its own judge, who shall be an attorney appointed by the senior Chancellor of the district in which the county is located. The appointment should be made within thirty days of the beginning of the Chancellor's term of office. The youth court judge should be appointed for a term that runs concurrent with the term of other elected trial judges. In addition, the youth court judge should be a part-time judge and allowed to practice law, as long as her practice does not involve youth court matters or matters that conflict with youth court jurisdiction. In counties without either a practicing attorney or an attorney willing to take the appointment, the Chancellor would have the authority to appoint an attorney from outside the county.
- The salary of a youth court judge who is neither a county court judge nor a family court judge should be based on the population of the county and should be $1,000.00 per year above the salary of the justice court judges of the county. The salary of the county court judges should be uniform throughout the state and should be set at $1,000.00 per year less than that of circuit and chancery judges. The salary of a family court judge should remain as now set by statute, unless there is a substantial increase in the number of family courts, at which time salaries should be made uniform.
- As with the first recommendation, all salary funding should be disbursed through a state office of judicial administration.

- The supreme court should adopt Uniform Youth Court Rules and Procedures.
- All youth courts, county courts, and family courts should be subject to administration by the Administrative Office of the Courts.
- All new youth court judges should be required to take a course on juvenile justice at the University of Nevada-Reno Judicial College, at state expense, and all youth court judges should be required to have annual continuing legal education in the specific area of juvenile justice.
- The Subcommittee does not believe that multi-county family court districts are viable, thus the Subcommittee recommends that the family court statute remain as is, and existing family courts remain unchanged.