

**State of the Judiciary  
Chief Justice John Dan Kemp  
June 15, 2018**

President Hilliard, President-Elect Clark, Fellow Justices and Judges, Honorable Members of the Bar and Guests:

Last year, as Chief Justice, I had the distinct honor to deliver my first State of the Judiciary address to this joint meeting of the Arkansas Bar Association and the Arkansas Judicial Council. In that address, I shared both the challenges that we faced and the goals that I had for the coming year. I appreciate Bar President Tony Hilliard inviting me back today to present an update on progress made over the past twelve months.

Arkansas is one of 12 states that have not published a long-term strategic plan for the judicial branch. Thanks to my colleagues on the Supreme Court who adopted a strategic-planning initiative last year, by the end of 2018, this will no longer

be true. We understand that strategic planning is critical for any large-scale organization. The need to set direction and establish priorities, which will ensure the effective and efficient use of resources is imperative in any responsible branch of government. The strategic-planning committee, which is composed of judges, court personnel, and Bar representatives from all state-court levels, and from every corner of the state, has worked tremendously hard over the past year. We are on track to submit our first strategic plan this fall, entitled “Delivering Justice, Vision for 2025” to the Arkansas Supreme Court for approval and publication.

The committee has identified and focused on important issues such as improving access to justice, embracing twenty-first-century technology in courthouses, and fostering better communication with the public and the other branches of government. This plan will help lay the groundwork for moving the judicial branch forward in the coming years. I thank the

committee members for their insight and dedication to improving the administration of justice in our state. It has been an honor to work with them to produce this important, groundbreaking document.

Last year, I announced my plan to visit each of the twenty-eight judicial circuits by the end of 2018. The purpose of these meetings is for me to hear directly from the members of the court community, the legislature, and the local bar about issues and concerns in their hometowns. To date, I have visited 17 judicial circuits representing 46 counties from Van Buren to Forrest City and El Dorado to Bentonville. This time next week, I will be in Mena, and I have scheduled trips to the remaining 10 judicial circuits by the end of December.

These visits have been invigorating and have given me the opportunity to connect in a way that just isn't possible unless you're willing to get out and visit people in their local courthouses.

If I haven't been to your circuit yet, I plan to visit. I look forward to seeing your local court and hearing directly from you any concerns or suggestions you may have.

Last fall, the Supreme Court introduced a new social-media initiative to highlight the work of the court. By embracing the use of Instagram, Twitter, Facebook, and other social-media platforms, we have made it easier than ever for the bar and the citizens of Arkansas to be informed about the work we do. I reviewed the raw data a few weeks ago and was thrilled to learn that over 43,000 users have viewed our social-media content since its launch last October.

Please take the opportunity to follow our social media accounts. You will find the most current syllabus and published opinions from the Court of Appeals and the Supreme Court. You also will see how we celebrated Law Day and observe some of the thousands of visitors we have hosted in the Justice Building this

past year. We welcomed college students from Shorter College, Lyon College, and Arkansas Tech; high school students from Central Arkansas Christian, Conway Christian, Hot Springs, and Beebe Schools; and members of Boys and Girls State.

We have also held two oral arguments outside Little Rock in the past nine months through our Appeals on Wheels program. The Supreme Court traveled to Fayetteville High School in October and Heber Springs High School in April. 1,900 students in Fayetteville and Heber Springs had the opportunity to hear an oral argument in person. I'm extremely proud of this program. We want Arkansans to see the work we do firsthand, even if they can't make it to Little Rock. It's also a pleasure to visit with students and members of the community at these events. Having an opportunity to explain how the appellate process works is important. Our court system shouldn't be shrouded in mystery. The questions asked by students at these events always renew my

faith in the next generation. Today, I'm pleased to announce we will hold oral arguments in Harrison and Texarkana in the upcoming nine months. If you are interested in having the Supreme Court visit your town, let me know, and we will do our best to make it happen.

In this address last year, I announced my plan to relaunch the Arkansas Courts and Community Initiative (ACCI), which the Arkansas Supreme Court created several years ago. The goal of this initiative is to engage our communities in a conversation about the foundations of our democracy. We must ensure that the judiciary remains an equal and independent branch of government, and as Chief Justice, I will speak out against any attempt to erode the court's independence.

Last fall, in an effort to raise civics awareness, we launched a new ACCI website, [www.acci.arkansas.gov](http://www.acci.arkansas.gov), which features links to updated PowerPoint materials, video resources, and contact

information for our reactivated speakers bureau. You can use the site to request a presentation about the importance of separation of powers and the need for fair and impartial courts in your community. You can also sign up as a volunteer to give one of these presentations about the role of government in your hometown. Since the reboot of this program a few months ago, judges and members of the Bar have already conducted over fifteen ACCI presentations across eight counties.

To date, ACCI presentations have been made in all judicial circuits, and over 100 presentations have been given to thousands of Arkansans at events such as meetings of Kiwanis Clubs, Rotary Clubs, Lions Clubs, Chambers of Commerce, VFWs, Leadership groups, and high schools. It is my hope that by the end of this year, we can say that we have held ACCI presentations in all 75 counties.

During my travels around the state over the past year, one concern that I have heard most often is the need for increased and improved security in our courtrooms and courthouses. The public, the parties, and our court officials need to be assured of their safety when utilizing the court system.

The judiciary thanks the Arkansas legislature, which passed Act 576 of 2007. This Act calls for \$250,000 per year to be appropriated to the Administrative Office of the Courts to implement a grant program to distribute funds to counties to help purchase equipment to make courthouses safer. Since the program's inception, counties across Arkansas have requested over \$4.3 million in court-security improvements, such as closed-circuit television monitors, metal detectors, and panic alarms. While the program has been highly successful with more than \$2.4 million in grants awarded, approximately \$1.9 million in requests have gone unfunded because of lack of funds. During the last fiscal



session, I requested that the legislature increase funding to the grant program by an additional \$250,000 per year, the first increase in this appropriation since its inception.

While the increase didn't occur this fiscal session, we have garnered a lot of support from members of the legislature, and I plan on asking again for this increase in the upcoming general session. In the meantime, last month Governor Hutchinson stepped in and released \$300,000 from "rainy day" funds to address this critical need. Thanks to his support, the Arkansas Supreme Court Committee on Security and Emergency Preparedness approved grant applications from thirty-six counties in part because of these additional funds. This is a perfect example of how the branches of government can work together to address a serious public-safety concern.

I have said publicly that e-filing should be available in all judicial circuits by 2025, if not sooner. The judiciary must

embrace new technologies that will help the administration of justice become more efficient, effective, and user friendly. In the past nine months, e-filing projects have gone live in Craighead, Garland, Baxter, Boone, Marion, Newton, and Searcy Counties. This coming Monday, e-filing will be available in Washington County. Before the end of 2018, e-filing will be available in an additional eight counties. I'm proud of the progress that the Administrative Office of the Courts is making with such limited resources. They are striving to become technological innovators, and their innovations will save the state millions of dollars.

Updating our jury and case-management systems is one of my top priorities. Last fall, I was presented a plan that showed we could update our systems by hiring 10 contract programmers at a cost of \$1.2 million per year, far below the \$20 million plus quoted to us by an out-of-state vendor. Our current case-management system is over twenty years old. It is cumbersome and not user-

friendly. Our court employees deserve a system that helps make their jobs easier, not more difficult.

By investing in technology, we will become more efficient. With these efficiencies comes more accounting control measures, which reduces the risk of theft by court personnel. Negative news reports hurt the image of the judiciary. We must do everything in our power to keep public trust and confidence in the judiciary. Effective technology can help do just that.

In Arkansas, the salaries of trial court administrators and court reporters are funded through the Administration of Justice Fund (AOJ), which is based on the collection of court costs and fees. In my view, it doesn't look right for judges to impose fines that pay the salaries of their employees. This upcoming legislative session I will request the legislature move these employees from the AOJ fund and pay them from State Central Services. I propose we transfer the dollars from the AOJ fund to State Central Services to

pay for their salaries. This will not cost the taxpayers of this state one dime, and this is good public policy.

Another issue with the Administration of Justice Fund is that the money being taken from that fund should go to the administration of justice. Unfortunately, that is not the case. Many groups receive money from this fund that are not related to the justice system. I think many Arkansans would be shocked to learn that only about 30 percent of the money that funds our justice system comes from general revenue. That's not an ideal way to support a co-equal branch of government.

As part of the Supreme Court's goal of modernizing and reducing costs associated with the appeal process, last week the court issued a proposed change to Rule 4-2 to simplify the abstract. We encourage you to submit comments to our Clerk by September 1 on the proposed rule change. We would like to hear your thoughts on the steps to improve the appeal process.

An aspect of practicing law that needs to be addressed is lawyer well-being. A survey conducted in 2016 by the American Bar Association showed that a significant number of lawyers qualify as problem drinkers, struggle with some level of depression, suffer from anxiety, and deal with stress symptoms. These problems are also exhibited by law students. As a court system, we need to be supporting lawyer well-being because it contributes to organization success in law firms, corporations and courts, enhances lawyer ethics and professionalism, and is a critical component in improving family and social relationships. I am hopeful that our court will adopt the recommendations of National Task Force on Lawyer Well-Being report entitled, “The Path to Lawyers Well-Being: Practical Recommendations for Positive Change.”

In closing, I want to take this opportunity to address some concerns about a proposal, Issue I, that would affect the judiciary if passed.

I am not speaking on the “tort reform” section of Issue 1, but only on the rule making authority. I do not speak on behalf of the court. I speak only for myself.

Canon 3.2 of the Arkansas Code of Judicial Conduct allows a judge to offer advice when the matter “concerns the law, legal system, the administration of justice, or matters of proposals affecting the judiciary.” Issue 1 concerns the law, legal system and administration of justice.

The Code recognizes that judges have special expertise on these matters and can speak based on that experience.

I have a unique point of view having served in the judiciary for over forty years in various roles – as a municipal judge, a circuit judge and currently as Chief Justice.

I am not making any pledge or promise as to how I would rule on the issue should it come before the Court.

I am speaking based on my knowledge and my judicial experience to address an issue in a manner that is permitted under the Code.

I am addressing the basic principle of separation of powers from my view as a jurist. I am also using my practical experience as a judge and a justice to point out problems with the rule making proposal.

Prominent in the language of this proposed constitutional amendment is legislative control over the Supreme Court's rule-making authority.

Our founding fathers were clear -- the cornerstone of our democratic society is the separation of powers, including an independent judiciary that makes this country so great. An independent judiciary protects the Rule of Law and must be protected.

James Madison warned, “[T]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”

Issue 1, if passed, will expose the courts and court rules to the undue influence of special interests during legislation sessions. That influence is illustrated by the fact that special interest lobbyists arranged for a majority of House members and nearly a majority of Senate members to be sponsors of SJR 8 prior to it being introduced and made available to the public in the 2017 legislative session.



The process of rule making is a meticulous process in order to maintain fairness and impartiality. It is a slow process subject to review by committees which study rule changes and propose those changes to the Supreme Court, which puts them out for comment by the public and the bar before adopting those rules. It is important that the Supreme Court be fair and impartial in adopting these rules and also be perceived as being fair and impartial.

Our current deliberative process for making court rules, which involves committees that include attorneys, judges, and representatives from the state's two law schools, collectively develop recommendations for the Supreme Court to consider. Recommendations are published for public comment before we take action. This system works, and it works well.

Hopefully, the voters will not favor disrupting a process that has served the public well. Imagine the changes in our court rules, such as those of evidence and of civil procedure, that special

interests could influence for their benefit through legislative action.

The founders rejected this attempt to put the finger of politics on the scales of justice. I have faith the voters will not let this happen. Alexander Hamilton said it best, “Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments.”

For this reason, I am voting No on Issue 1, and I urge you, your family, your friends, and your clients to do the same. We must protect our democratic institutions for future generations.

I appreciate you placing your trust in me. With your help, we will continue to have a strong and independent judiciary, grounded in precepts of the past and looking forward to a bright future. I thank you for your attention and for your commitment to ensuring a fair and impartial justice system for all Arkansans.