

The Annual Report
of the
Mississippi Judicial Advisory Study Committee

submitted to the
Legislature of the State of Mississippi

3 March 2003

The Judicial Advisory Study Committee
(est. 1993)

L.F. Sams, Jr., Chair

Robert Oswald, Vice-Chair

John W. Winkle III, Reporter

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**The Mississippi Judicial Advisory Study Committee
respectfully submits its annual report for 2002 to
the Members of the Legislature of the State of Mississippi.¹**

THE JUDICIAL ADVISORY STUDY COMMITTEE

The Mississippi Judicial Advisory Study Committee (hereinafter referred to as the Study Committee) is a statutory,² multi-member panel of judges, lawyers, court personnel, legislators, and lay persons. In operation since 1993, the Study Committee pursues as its primary purposes the comprehensive study of the Mississippi judicial system and the submission of policy recommendations for improving the administration of that system to the Legislature, the Supreme Court, and the Administrative Office of Courts (hereinafter referenced as the AOC).³ To these ends, the Study Committee is authorized to conduct necessary and relevant research, inquiries, hearings, and surveys.⁴ It must submit annual reports to the Legislature in January and to the Supreme Court in June.⁵

Since its inception the Study Committee had been routinely renewed for three-year intervals. During its 2001 session, the Legislature, at the request of the Study Committee, deleted the statutory repealer.⁶ This legislative action acknowledged the need for a permanent study and advisory group to monitor continuously the justice system and to make timely recommendations for change.

¹ § 9-21-31(1) *Miss. Code Ann. 1972 (1993 Cumulative Supplement)*. Unless otherwise noted all subsequent references come from the 1993 Supplement and will be cited as *Miss. Code Ann.*

² § 9-21-21 *Miss. Code Ann.* Lawmakers introduced legislation to establish the Judicial Advisory Study Committee through the reform package contained in Senate Bill No. 2620.

³ See §§ 9-21-23 and 9-21-31 *Miss. Code Ann.*

⁴ See §§ 9-21-23 and 9-21-31 *Miss. Code Ann.*

⁵ § 9-21-31(1) & (3) *Miss. Code Ann.*

⁶ The Legislature in H.B. 1474 deleted the statutory repealer set for June 30, 2002 (see §§ 9-21-21 through 9-21-41, *Miss. Code Ann.*, as amended).

RECOMMENDATIONS TO THE LEGISLATURE, 2003 SESSION

Commensurate with its statutory responsibility, the Study Committee makes annual recommendations for the improvement of the judicial process to the Mississippi Legislature. It presents the following for consideration in the 2003 Session.

Allocation of Judicial Resources

Following a lengthy and deliberate study of judicial redistricting, the Study Committee at its October special meeting unanimously approved the following recommendations regarding the allocation of circuit and chancery court resources. The full text of the resolution may be found in Appendix A.

- The Study Committee recommends that the Legislature make no change in current judicial district geographic boundaries.
- The Study Committee recommends that the Legislature add one judgeship to each of the following **circuit** court districts: **one, two, three, thirteen, fifteen, and twenty-two**.
- The Study Committee recommends that the Legislature add one judgeship to each of the following **chancery** court districts: **one, seven, ten, and thirteen**.

RECOMMENDATIONS TO THE LEGISLATURE, 2002 SESSION

By way of reminder, the Study Committee made three recommendations to the Legislature for its 2002 Session. Each was designed to increase accountability within the state court system and to diminish opportunities for political influence. The Study Committee unanimously approved a motion to increase the term of office to eight years for judges in circuit and chancery courts.⁷ Furthermore, the Study Committee submitted a proposal to change the filing deadline to August 1 before the general election for all judicial candidates in trial court elections. Finally, the Study Committee approved in concept a proposal to create a quick response team designed to monitor judicial campaigns and to protect judicial candidates, especially incumbents, against false or unfair charges leveled by advocacy groups.

RECOMMENDATIONS TO THE SUPREME COURT

The Study Committee routinely informs the legislative and judicial branches of its recommendations to the other. To that end, during 2002 the Study Committee approved the following two recommendations for changes in court rules to the Mississippi Supreme Court.

⁷ The Constitution presently sets the tenure at four (4) years (Article VI, § 153).

Rule 15 of M.R.A.P.

At the June meeting members unanimously approved the following recommendation to amend Rule 15 of the *Mississippi Rules of Appellate Procedure*. Vice Chairman Robert Oswald authored the proposal to improve the timely disposition of cases, consistent with the goal announced by Chief Justice Edwin Pittman. Cham Trotter, President of the Mississippi Bar, appeared at the June meeting in support of the proposal. As it now stands, when a trial judge takes a case under advisement and fails to enter a decision within six (6) months, the parties themselves must petition the Supreme Court to issue a *writ of mandamus* to order the decision. The proposed change would relieve the parties, who are sometimes reluctant to do so, of that responsibility. Instead, under a new and automatic procedure, the AOC at a specified time would file a certificate of the case with the Supreme Court. This action would be treated as a request for the *writ*. The approved proposal follows:

(a) When a trial judge in a civil case takes under advisement a motion or request for relief which would be dispositive of all the claims or rights and liabilities of all the parties, the plaintiff and the defendant shall each forthwith file with the clerk of said court a certificate signed by each counsel and identifying the style, number of the case, the name of the judge, the name and address of all parties and counsel, stating the date the judge took the case under advisement. Plaintiff and defendant shall furnish a copy of such certificate to the judge and counsel opposite. The clerk shall docket such certificates. If no decision is entered in the case within forty-five (45) days of the date it was taken under advisement, the clerk shall furnish the judge a copy of such certificates and shall send a copy to the Administrative Office of Court which shall calendar it. At any time thereafter that a decision is entered in the case, the clerk shall in writing promptly notify the Administrative Office of Courts of the date of entry of the decision. If no written notice is received from the clerk by the Administrative Office of Courts within six (6) months from the date the case was taken under advisement, the Administrative Office of Courts shall file with the Supreme Court a copy of the certificate it received from the clerk. The Supreme Court shall treat the certificate as the filing of an application for a *writ of mandamus* by all the parties to the action and shall proceed accordingly.

(b) Not later than thirty (30) days prior to the expiration of the six (6) months from the date the case was taken under advisement, the trial judge, for just cause, may apply in writing to the Supreme Court for additional time beyond said six (6) months in which to enter a decision. Concurrently, the judge shall provide a copy of such application to each of the parties through their respective counsel. In such application, the trial judge shall set forth fully the reasons additional time is needed. If the Supreme Court finds the application meritorious, it may grant such additional time as it deems appropriate. The Supreme Court clerk shall furnish the trial judge and all counsel of record a copy of the decision of the Supreme Court.

(c) The Supreme Court shall notify the Judicial Performance Commission of each *mandamus* it issues pursuant to Rule 15.

Rule 6.02 of the Uniform Circuit and County Court Rules

At its December meeting, the Study Committee unanimously supported a change in the Uniform Circuit and County Court Rules. Judge Oswald presented a proposal to modify Rule 6.02 to provide a clear identification of the names and addresses of bond signers.

THE ADMINISTRATIVE OFFICE OF COURTS

To facilitate the work of the Study Committee, the law requires that the AOC provide research, clerical and other necessary assistance.⁸ Established in 1993, the AOC is responsible for coordinating the management of Mississippi courts and for enhancing the administration of civil and criminal justice.⁹ To increase efficiency and accountability within the judicial system, the AOC collects and disseminates basic caseload data and provides assistance to those personnel who are responsible for the non-judicial business of state courts.¹⁰

Among other enumerated powers and responsibilities, its Administrative Director¹¹ has the statutory authority to prescribe means to insure a uniform system of record keeping and reporting, to prepare and submit the budget for the state judiciary, to address the security needs of the courts, to develop personnel policies for non-judicial court employees, to procure equipment and supplies for use by the courts, and to perform any other duties as properly assigned by the Supreme Court.¹²

Kevin Lackey, Acting Administrative Director, and the AOC staff continue the fine tradition of steady and exceptional support to the Study Committee. Mr. Lackey attended Study Committee meetings, routinely updated caseload conditions in Mississippi courts, and reported on new and ongoing AOC projects designed to improve judicial administration in the state. He provided members with photocopies of relevant reports and legislation, and informed them about national trends in court management. It should be noted that members of the AOC professional staff regularly address the Study Committee on technical matters related to state and local judicial management. The AOC also assumes the responsibility for

⁸ See §§ 9-21-3(2)(c) and 9-21-29 *Miss. Code Ann.*

⁹ § 9-21-1 *Miss. Code Ann.*

¹⁰ § 9-21-3 *Miss. Code Ann.*

¹¹ The Mississippi Supreme Court appoints the Administrative Director who serves at its pleasure (§ 9-21-5 *Miss. Code Ann.*).

¹² § 9-21-9 *Miss. Code Ann.*

printing and disseminating the annual reports to the members of the Legislature and to the justices of the Supreme Court.

MEMBERSHIP AND OFFICERS OF THE STUDY COMMITTEE

The Study Committee consists of twenty-one (21) voting¹³ and two (2) nonvoting members,¹⁴ elected or appointed by designated officials in the executive, legislative, and judicial branches of state government and by conferences of judges, clerk groups, and bar associations.¹⁵ Appendix B identifies the source of nomination for each of the delegates who presently serves on the Study Committee.

These citizens who volunteer¹⁶ their time and efforts represent an impressive array of lay and professional interests, and reflect the diverse geographic and social demography of the state (see Table 1). Members serve three-year terms and are eligible for re-appointment. Seven current members are serving their fourth terms, thereby preserving an important continuity in the work of the Study Committee.

The Study Committee chooses its own officers. On September 10, 1999, the membership by unanimous vote elected L.F. (Sandy) Sams, Jr. to succeed Chancellor Sebe Dale, Jr., as Chair.¹⁷ The membership re-elected Robert Oswald for a second consecutive term as Vice-Chair. The Chair appoints and routinely convenes a special executive committee to discuss matters to come before the Study Committee, plan agendas for

¹³ The Legislature in 1996 increased the membership to include one Court of Appeals judge (§ 9-21-21(b) *Miss. Code Ann.*) and one justice court judge (§9-21-21(c) *Miss. Code Ann.*).

¹⁴ The Chairs of the Senate Judiciary Committee and the House of Representatives Judiciary En Banc Committee serve as legislative liaisons and nonvoting members. The Honorable Bennie Turner and the Honorable Percy Watson, respectively, now hold these positions. The Honorable Hainon Miller, the Honorable Mike Mills, and the Honorable Ed Perry have previously served.

¹⁵ § 9-21-21 *Miss. Code Ann.* The Governor appoints three (3) members, and the Lieutenant Governor, two (2). The Speaker of the House appoints two (2). The Chief Justice of the Supreme Court appoints three (3), and the Chief Judge of the Court of Appeals appoints one (1). The Presidents of the Mississippi and Magnolia Bar Associations appoint two (2) members each. The Conference of Chancery Judges, the Conference of Circuit Judges, the Conference of County Judges, the Justice Court Judges Association, the Chancery Clerks Association, and the Circuit Clerks Association elect one (1) apiece.

¹⁶ Members of the Study Committee serve without pay but receive a per diem allowance and compensation for travel and other reasonable expenses in accordance with regulations set forth in the *Mississippi Code* (See § 9-21-39, § 25-3-41, and § 25-3-69).

¹⁷ Sebe Dale, Jr., who served as Chair from February 9, 1996 to September 10, 1999, continues as a member of the Study Committee. Grady F. Tollison, Jr. served as Chair from the inception of the Study Committee until his resignation in January, 1996.

meetings, and invite guests to inform the membership on topics of interest.¹⁸

Table 1
Profiles of the Current Membership of the Study Committee

Name	Home	Position	Predecessor	Date
Willie Blackmon	Jackson	Dept. of Human Services	James Culliver Walter Wood	7/1/02
Howard Catchings	Jackson	Insurance	Jaby Denton Nevin Sledge	12/1/00
Phillip Cole	Tupelo	Court Administrator, 1 st Chancery Dist.	4 th Term	7/1/93
Sebe Dale, Jr.	Columbia	Chancellor, 10 th Chancery District	4 th Term	7/1/93
Norman Gillespie	Oxford	Chancellor, 18 th Chancery District	Mary Ann Connell Robert Khayat Grady Tollison	7/1/02
Wayne Herbert	Jackson	Judge, Justice Court, Hinds County	n/a	7/1/96
Tyree Irving	Jackson	Judge, Court of Appeals	Roger McMillin	7/1/99
Les Lampton	Jackson	Chairman of Board, Ergon, Inc.	4 th Term	7/1/93
Pamela Metzler	Bay St. Louis	Circuit Clerk, Hancock County	Joe Herring	10/16/95
Robin Midcalf	Gulfport	Judge, Harrison County Court	William Agin	6/4/99
Paul Minor	Biloxi	Attorney	Gary Carnathan	7/1/02
Thomas O'Beirne	Natchez	Chancery Clerk, Adams County	Oren Bailless	11/27/95
Robert Oswald	Pascagoula	Chancellor (ret.), 16 th Chan. Dist.	4 th Term	7/1/93
Lamar Pickard	Clarksdale	Judge, Circuit Court, 22 nd District	Elzy Smith	7/1/99
Alfred Rhodes	McComb	Attorney	Bob Owens	3/20/96
Jack Robertson	Jackson	President, Gulf Guaranty Life Ins.	4 th Term	7/1/93
Robin Robinson	Laurel	Sanderson Farms	John Rester	7/1/02
Rosemary Roosa	Gulfport	Owner, Small Business	4 th Term	7/1/93
L.F. Sandy Sams	Tupelo	Attorney	Richard Foxworth	6/19/96
Lillie Sanders	Natchez	Judge, Circuit Court, 6 th District	4 th term	7/1/93
Aleita Sullivan	Mendenhall	Attorney	Gary Carnathan	4/30/96
Bennie Turner	West Point	Chair, Senate Judiciary Committee	Hainon Miller	7/1/96
Percy Watson	Hattiesburg	Chair, House Judiciary Committee	Ed Perry Mike Mills	3/1/00

¹⁸ The Executive Committee for 2002 consisted of Sebe Dale, Jr., Phillip Cole, Les Lampton, Robert Oswald, Thomas O'Beirne, and Lillie Sanders.

The Mississippi Supreme Court continues its steady and active involvement with the Study Committee through the Chief Justice and a special liaison committee.¹⁹ Over time at least one member of the Court has attended each regular meeting.²⁰ Like his predecessors in the position, Chief Justice Edwin Pittman attended several meetings of the Study Committee during 2002, and participated in the discussions. His contributions are detailed below on pages 10-11.

MEETINGS OF THE STUDY COMMITTEE

The Study Committee actively pursues its statutory charge. Required to meet at least quarterly,²¹ the full Committee met five times during the past year. All meetings were held in Jackson in the AOC conference room of the Court of Appeals Building on the following dates: March 1, June 7, September 6, October 11 (special session), and December 6. Appendix C contains the agenda for each meeting. Minutes of these proceedings are available upon request from the AOC.²²

AREAS OF STUDY

Areas of Study over Time

The statutory mandate of the Study Committee is clear. It must examine issues of contemporary court organization and management in Mississippi and make appropriate recommendations to the Legislature and to the Supreme Court.²³ Improved information flow, better use of resources, and elevated accountability have remained paramount items on the working agenda of the Study Committee since 1993. The Committee initially targeted the following issues of systemic and universal concern to good state judicial administration: information technology, trial court workloads, indigent defense, and youth courts.

Over the years the Study Committee has systematically investigated several other legitimate interests and needs of our state court system. It has submitted carefully considered recommendations for improvements in the administration of civil and criminal justice to legislative and judicial audiences. The following topics addressed by the Study Committee span the spectrum from structure to process to personnel:

¹⁹ Justices Fred Banks, Michael Mills, Lenore Prather, James Roberts, James W. Smith, Jr., and Michael Sullivan have served in this capacity.

²⁰ Beverly Pettigrew Kraft, the Court's Public Information Officer, attends Study Committee meetings.

²¹ § 9-21-27 *Miss. Code Ann.*

²² Contact Kevin Lackey at lackeyjk@mssc.state.ms.us or at (601) 354-7406.

²³ § 9-21-23 *Miss. Code Ann.*

general

- public confidence and trust in the legal system
- the need to improve the public image of the judiciary
- prudent and systematic use of judicial resources

structure and law

- comprehensive overhaul of the criminal code
- use of mediation and arbitration as alternative means to resolve disputes
- a statewide public defender system
- a more responsive juvenile justice system
- alternative methods for selecting trial and appellate judges
- concurrent jurisdiction of circuit and chancery courts
- modifications in criminal sentencing

operations and processes

- feasibility of technological innovations and applications
- judicial campaigns and elections
- means to improve courtroom security
- funding sources for trial courts
- the creation of an AOC data bank index for publications on the judiciary
- the impact of the increasing numbers of *pro se* litigants
- standards for the management of funds in the offices of chancery clerks
- court access for hearing-impaired litigants
- more creative ways to finance state courts

personnel

- job descriptions for non-judicial court personnel
- research and clerical support for trial judges
- insurance protection for judges disabled during their tenure
- guidelines under which the attorney general will defend judges who are sued
- the practice of clerks serving as conservators and guardians
- compliance of clerks in reporting caseload data to the AOC;
- the need for a quick response team to respond to unfair campaign criticism of incumbent judges.

Areas of Study in 2002

As developed below, the Study Committee has focused its discussions and actions this year on the prudent use of judicial resources with a special emphasis on the workloads in judicial districts, the revision of the criminal code, judicial elections and campaigns, the management of fiduciary accounts by chancery clerks, and the revision of Rule 15. The full description of the deliberations and actions of the Study Committee on these topics is included on pages 12-14 below.

SUPPORT PERSONNEL AND ADVISORY RESOURCES

Consulting Groups

To assist in its pursuit of statutory tasks, the Study Committee initially set up eleven (11) subcommittees (or consulting groups as they were called) and appointed Mississippians who had interest, experience, and expertise in matters of court administration to lead them.²⁴ These units have considered policy issues, drafted reports, and proposed recommendations for adoption. Over time their research activities intensified or diminished commensurate with the evolving needs of the Study Committee. Only one group remains active today. Chaired by Professor Judy Johnson of Mississippi College, the subcommittee (see Appendix E) charged with the revision of the criminal code continues its steady and productive work. For summaries of the work of these groups, please consult the previous annual reports.

Reporter

The Study Committee selected Professor John W. Winkle III to serve as Reporter on September 23, 1993, and has renewed his appointment three times.²⁵ His duties include assigned research projects, the preparation of the minutes of meetings, and the preparation of the required annual reports to the Legislature and the Supreme Court. Appendix G reports his compensation and reimbursement for expenses.

Legislators

The chairs of the respective judiciary committees in the Mississippi Senate and House of Representatives are nonvoting members of the Study Committee. Sen. Bennie Turner and Rep. Percy Watson keep the membership informed of relevant developments, and particularly so when the Legislature is in session. From time to time other lawmakers appear before the Study Committee to report on special matters.

Invited Guests

The Study Committee regularly invites experienced professionals, practitioners, and observers to attend its plenary meetings and to report on substantive concerns. As part of the ongoing study on the reallocation of judicial resources, Mr. Keith Smith from the John C. Stennis Institute of Government at Mississippi State University attended several meetings and detailed progress on the project. The full discussion is presented below on pages 12-13.

At the March meeting of the Study Committee, Chancery Court Judge Jaye Bradley (16th District) reported on the Focus On Children In Separation (FOCIS) project recently implemented in George County. She stated that this program served several goals: 1) to teach coping skills to children whose parents are in the process of seeking divorce; 2) to

²⁴ The Hon. Evelyn Gandy and Judge Robert Gibbs served as chairs of the civil and criminal divisions, respectively. Appendix D lists the consulting groups and their chairs.

²⁵ John W. Winkle III is Professor of Political Science at the University of Mississippi.

make parents aware of the adverse effects of divorce on children; and, 3) to reduce the number of contempt cases in chancery court. Modeled after a program initiated two years ago by Judge Thomas Zebert in Rankin County, Judge Bradley said this one provides a four-hour educational program at a cost of \$30 per parent. Trained counselors separate the participants into three groups (adult, ages 6-12, and ages 13-17) and conduct two two-hour sessions. She noted that Jackson County had applied for an IOLTA grant to set up a program there. She further noted that the Legislature had under consideration a bill (S.B. 2644) that would require counseling statewide.

At that same meeting Mr. Lee Martin, Special Assistant to the Attorney General, and Mr. Mark Houston, from the Office of the State Auditor, addressed the critical issue of misappropriation of fiduciary funds in the chancery court. The full discussion is presented below on page 14.

At the September meeting of the Study Committee, Professor Robert Weems, University of Mississippi School of Law, spoke on the issue of punitive damages. He provided a history and an analysis of the current state of the law in Mississippi. In ruling that punitive damages do not violate the due process clauses of the Constitution, the U.S. Supreme Court has offered the following guidance to judges and juries: punitive damage awards must (1) result from an identifiable process with procedures and standards, and (2) be reasonable. The relevant Mississippi statute (§11-1-65), passed in 1993, calls for a bifurcated trial and sets forth new evidentiary factors. Professor Weems pointed out, though, that the new statute does not apply in cases involving contracts, asbestos, and defamation (libel and slander). As a result, in these circumstances, damage awards must be considered under the former standard of preponderance of evidence.

In December, Dr. Max Arinder and Ms. Lee Ann Robinson made a presentation on the PEER Committee report, issued in June, on the need for a uniform statewide computer system for data collection on government operations. The report (a copy of which was distributed to each member of the Study Committee) identified the problems with existing systems. It called for the creation of a special task force to study the matter in more depth and to offer recommendations for a cost-efficient system.

The Chief Justice

The Chief Justice of the Mississippi Supreme Court plays a prominent role in the operation of the Judicial Advisory Study Committee. Under the terms of the enabling act the Chief appoints three of its members.²⁶ Throughout the life of the Study Committee, each Chief Justice has taken an active interest in its work, attending its meetings and making both prepared and impromptu comments. Each has articulated and promoted clear objectives to improve statewide judicial management. Broadly speaking, these objectives have been designed to make courts more efficient, effective, and accessible. In turn, the expectation is that public trust in the judicial system will increase.

²⁶ § 9-21-21 *Miss. Code Ann.*

Chief Justice Pittman continues the same energetic support for the improvement of the Mississippi judicial system as his predecessors. His efforts have centered on protecting the integrity of the Mississippi court system and assuring citizens of that integrity. Of special and ongoing importance to the Chief Justice during this reporting period of the Study Committee are two reform measures. Noting that campaign money now threatens the stability of the third branch, the Chief has led the Supreme Court in revising the *Code of Judicial Conduct* and reforming the election process. A second important concern is the adoption of proposed time standards in the trial courts. Both of these revisions are now in process.

AOC Staff

Members of the AOC staff routinely make informed presentations. At each meeting of the Study Committee, the Acting Administrative Director provided an update on the work of the AOC. Mr. Lackey routinely reported in 2002 on topics that range the administrative gamut: personnel assignments; training programs; recent equipment purchases; and, special innovations in court management. The AOC has initiated, or assisted with, several ongoing projects that interest the Study Committee. Mr. Lackey detailed the progress to overcome technical difficulties in the development of a case weight system designed to provide a more accurate view of workloads and time management in chancery and circuit courts. That issue is addressed in more depth below.

Mr. Lackey also supplied the Study Committee with information on the legislative agenda of the judiciary. At the March meeting, he prepared and distributed summaries of relevant bills introduced in the 2002 Legislative Session. It should be noted that these hand-outs are most useful in informing the members of the Study Committee on the progress of matters affecting the judiciary and the administration of justice.

The AOC reported measurable progress during 2002 in efforts to modernize caseload management. The improved quality of case information received from trial court clerks as well as the more streamlined reporting process itself are encouraging signs for the AOC effort to achieve and maintain a uniform and reliable caseload data set. The undertaking is not without its impediments, however. The AOC, for example, needs a more reliable mechanism to impel recalcitrant clerks to submit requested information. Reporting discrepancies still remain due in large part to interpretive differences in local jurisdictions. Some cases are not accurately reported, and others are attributed to the wrong judges. Ultimately the best solution is the electronic transmission of all data, a goal that the AOC is steadily approaching.

To that end, staff members Jamie McBride (AOC) and Michael Jones (Supreme Court) reported at the March meeting on, and demonstrated the use of, the Mississippi Youth Court Information Delivery System (MYCIDS). Created and tailored for use in Mississippi, this case data system has been in use in Jackson County since September and is just underway in Adams County. MYCIDS tracks juvenile abuse/neglect and delinquency cases across county and district lines, providing docket information, personal data, files on associated persons, referrals, and aggravating factors. Mr. McBride explained that the program uses the Internet for two principal reasons: improved security and enhanced

flexibility for users. He listed several administrative benefits that will come from the implementation of this program. MYCIDS will speed information on multiple hearings, allow instant recording of courtroom proceedings, standardize Youth Court orders, and provide more accurate statistics for reports to the AOC.

CURRENT WORK OF THE STUDY COMMITTEE

During 2002 the Judicial Advisory Study Committee addressed five major and ongoing interests arrayed below.

STATE JUDICIAL WORKLOADS AND REALLOCATION OF RESOURCES

The more rational use of judicial resources is a critical concern in Mississippi. For more than two years the Study Committee has examined the workload imbalance between and among court districts and judges. The importance of finding an acceptable way to equalize those workloads is evident. It will assist judges and lawmakers alike in identifying more accurately, and meeting more systematically, the future needs of the state court system. A comprehensive and reliable analysis of volume of cases on trial dockets and times of dispositions for these cases may assist in the reconfiguration of judicial districts or the reallocation of judges.

The issue assumes currency because the law mandates that the Legislature redraw judicial districts within five years following each decennial census. If it is unable to do so in that time limit, the duty befalls the Mississippi Supreme Court. Legislative leaders have already indicated that lawmakers will likely defer that task to the judges. To that end, the Court asked the Study Committee to submit a proposal to the Legislature for equalizing trial court workloads.

As noted in previous annual reports, the Study Committee in 1999 contracted with the Stennis Institute at Mississippi State University to conduct a redistricting study. The goal of the study was to generate useable data on current caseload conditions in individual judicial districts and to apply case-weights provided by the AOC. Mr. Keith Smith, a researcher with the Institute, served as the liaison and regularly attended Study Committee meetings to report preliminary findings.

To determine the reallocation of judicial resources, experts say it is imprudent to rely solely on raw caseload data in a given district. It is necessary, moreover, to differentiate types of cases by the average time required for their disposition. To that end, the AOC surveyed trial judges with some success in an effort to derive standard case multipliers. Mr. Lackey worked steadily to upgrade the AOC database and to facilitate the reliable transfer of case information from trial courts. He provided the Study Committee with preliminary charts detailing filings, dispositions, and pending cases in circuit and chancery courts during the period 1994-2002.

At its September and October meetings, the Study Committee reviewed the Stennis Institute report, entitled *Mississippi's Circuit and Chancery Courts: Redistricting Options After 2000*. The study detailed two sets of current figures: (1) the raw numbers of caseloads

and judges by judicial district, and (2) the adjusted numbers in light of the weighted caseload formula. The members of the Study Committee engaged in a robust discussion of the issue of allocation on a district-by-district basis, considering, among other things, the importance of current and projected population as well as caseload in these calculations and the impact of change on incumbent African-American judges.

The Study Committee then approved resolutions to add judgeships to six circuit and five chancery districts without changing boundary lines (see p. 2 of this report). Judge Oswald noted that the actions by the Study Committee represented the first time that a proposal for new judgeships, supported by a rigorous analysis of statewide empirical data, had been submitted to the Legislature for consideration.

JUDICIAL ELECTIONS AND CAMPAIGN CONDUCT

Over the past eighteen months, the Study Committee has diligently considered the issue of the regulation of judicial elections. The problem is both real and timely. The Mississippi Commission on Judicial Performance received numerous complaints of recent campaign irregularities. In 1999, the Legislature passed a reform measure in 1998 (H.B. 1609) that, among other things, sets contribution limits and prohibits court staff from participating in campaigns, and will apply in the next round of trial court elections.

The Study Committee and the Chief Justice remain concerned about the need to regulate more effectively inappropriate conduct in judicial campaigns. Of primary concern to the Study Committee is the need for an impartial unit to respond to public statements or advertisements made by third parties when they do not act with approval or solicitation of a candidate. In its proposed revision of the Code of Judicial Conduct,²⁷ the Mississippi Supreme Court has incorporated such a unit, the Special Committee on Judicial Election Campaign Intervention, to oversee the electoral process. As designed, the Special Committee would be authorized to comment on inappropriate campaign statements when judges could, deal expeditiously with allegations of ethical misconduct, and even issue advisory opinions.

REVISION OF THE CRIMINAL CODE

The comprehensive overhaul of the criminal code is an ambitious but essential undertaking. A recent study reported that the *Mississippi Code* ranks among the top five nationwide in need of revision. Professor Judy Johnson, Chair of the Criminal Code Revision Consulting Group, and Professor Matt Steffey²⁸ have made frequent appearances before the Study Committee. To promote efficiency, several years ago this group merged with a companion Bar committee and now meets monthly (Appendix E contains the names of the members.). Professors Johnson and Steffey have detailed the demanding task of clarifying and reconciling *Code* provisions in complex areas of law, and especially those that

²⁷ The Study Committee gave all its collected materials on the topic to the Court for its use.

²⁸ Professors Johnson and Steffey are faculty members at Mississippi College School of Law.

are not well covered by the Model Penal Code. Work now focuses on statutes relating to crimes against the person. Drafts for several sections are now finished (such as Assault, Insanity Defense, Conspiracy, and Theft) with others near completion. Professor Johnson estimated that the project would require two more years to complete.

FIDUCIARY FUNDS MANAGEMENT

At the request of Vice Chairman Oswald, the Study Committee addressed the issue of the mismanagement of fiduciary funds by chancery court clerks. The problem arises when a chancery court clerk, without authority or order from a judge, writes a check or receives funds illegally. In an attempt to ascertain the scope of the problem, the executive committee invited two experienced professionals to discuss the matter at the June meeting. Mr. Lee Martin, representing the Public Integrity Division of the Office of the Attorney General, commented that, while there are actually few criminal violations, the negative publicity of any case, such as the recent one in Jackson County, hurts the judicial system. Mr. Mark Houston, representing the Office of State Auditor, reported that his office could track only those fiduciary accounts mandated by state law that are uniform across counties. They are not authorized to examine guardianship or conservatorship accounts. The law itself (§ 9-1-43 that sets limits on salaries of clerks) poses some interpretive challenges. It is not always clear what income qualifies under the statute and what does not. Both agreed that the current bond for chancery clerks was sufficient, especially because clerks may stack qualifying bonds. After discussion the Study Committee agreed to pursue its investigation further.

RULE 15

After discussion of the need for constructive change, the Study Committee at its June meeting unanimously adopted a proposal to revise Rule 15 of the *Mississippi Rules of Appellate Procedure* to insure the more timely disposition of cases under advisement. The proposal is reproduced above on page 3 of this report.

FUTURE AGENDA OF THE STUDY COMMITTEE

The work agenda of the Study Committee is ambitious. The executive committee has prepared a list of topics for future consideration. In addition to the major interest areas outlined above (caseloads and judicial redistricting, judicial campaigns, criminal code, case management, and management of fiduciary funds), other items include the following: the youth court system, the public defender system, the development of uniform policies and procedures (chancery and circuit court districts, civil commitments, massive torts, minor's settlements, court files, and money deposited in the registry of court), the FOCIS program, judicial selection methods, anti-bias education and the Judicial College, and the defense of judges.

EXPENSES OF THE STUDY COMMITTEE

The Administrative Office of Courts provides support, financial and otherwise, for

the operations of the Judicial Advisory Study Committee.²⁹ During 2002 the Study Committee incurred \$6,561.46 for contractual services, travel and lodging, and miscellaneous expenses. Appendix F contains an expenditure register that itemizes and totals expenses by category.

CONCLUSION

Now in its tenth year of work, the Judicial Advisory Study Committee continues its active pursuit of its statutory responsibilities. In an informed, effective, and cost-efficient way, the Study Committee conscientiously studies the Mississippi court system. It offers carefully studied and reasoned recommendations for constructive changes in the management of civil and criminal justice systems to the AOC, the Legislature, and the Supreme Court.

Unless otherwise indicated, the Study Committee regularly meets on the first Friday in the third month of each quarter. All sessions for the upcoming year are planned for the AOC Conference Room of the Court of Appeals Building in Jackson. The next regular meeting is scheduled for March 7, 2002.

Supplemental documentation for this annual report is available upon request. Please contact L.F. Sams, Jr., Kevin Lackey, or John Winkle.³⁰

²⁹ See §§ 9-21-3(2)(c) and 9-21-29 *Miss. Code Ann.*

³⁰ Contact Professor Winkle by phone at (662) 915-5406 or by e-mail at jww@olemiss.edu.

Appendix A

Resolution on Allocation of Trial Court Judgeships³¹

RESOLUTION

WHEREAS, pursuant to its responsibility to report to the legislature regarding the subject of redistricting of the Circuit and Chancery courts after each decennial census, this committee engaged the services of The John C. Stennis Institute of Government to perform a statistical analysis of the data resulting from the federal census for the decade ending with the year 2000 and data supplied by the Administrative Office of Courts as to number of judges, case filings, weighted case load factors, geographic composition of court districts, and state costs per judge.

WHEREAS, this committee directed the Stennis Institute also to include in its analysis a projection of various options for redistricting, applying as additional factors:

- G. a. 60% importance to case load
- b. 20% importance to current population
- c. 20% importance to future population (2010)

- H. a. 100% importance to case load
- b. 0% current population
- c. 0% future population

and providing a variety of potential options for changes in the number of judges. See Stennis Report Table 5 and 6.

WHEREAS, this committee found it helpful to create on a single page all of the relevant statistical information applicable respectively to the Circuit Court districts and to the Chancery Court districts. These two statistical tables are fold-out pages attached as Exhibits “A” and “B”, respectively, to this Resolution and contain data pertaining to each court district as follows:

1. Court district by number
2. Current number of judges in each district
3. Current number of cases per judge in each district; the state average case filings per circuit judge is 1,029; the state average case filings per chancery judge is 1,726
4. Number of cases per judge if one judge is added in designated districts
5. Current number of filings above or below state average
6. Percent of filings above or below state average
7. Current weighted case load per judge; the state average weighted case load

³¹ Any attachments to the Resolution may be obtained from the Administrative Office of Courts.

per circuit judge is 6,354; the state average weighted case load per chancery judge is 23,562

8. Percent of weighted case load per judge above or below state average
9. Weighted case load if one judge is added to the district
10. Weighted case load after one judge is added to the district
11. Current ranking of case filings per judge per district
12. Current ranking of weighted case load per judge per district
13. Names of counties in each court district
14. Square miles contained in each court district
15. Population Trends
 - a. 1990 population per district
 - b. 2000 population per district
 - c. Percent of change 1990-2000
 - d. 2000 population per judge per district
 - e. 2010 projected district population
 - f. Project percent of change 2000-2010
 - g. Projected 2010 population per judge per district

WHEREAS, this committee foresees improved and standardized techniques evolving for the acquisition of relevant data state-wide and the use of improved data in considering the subject of redistricting the judiciary. Timely acquisition of accurate statistics from some counties has delayed this committee in its current consideration of redistricting. Part of the current difficulties in obtaining accurate statistics results from the fact that there is no state-wide structured, standardized data development/maintenance system and a few counties have no computer system.

Historically, as counties began to acquire computers in the early 1980's, there was no requirement that each county purchase the same type equipment and systems and there were no recognized court statistics software programs available on the market, consequently, each county which purchased computers obtained hardware and software of its choice for its perceived local needs. This uncoordinated approach to computer acquisition resulted inevitably in the current incompatibility problems which complicate accurate data acquisition. This problem is not restricted to court data but also affects many other aspects of the local-state relationship. The information acquisition problems in Mississippi are amply addressed in the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) Report to the Mississippi Legislature dated June 4, 2002. The improvements proposed by the PEER Committee would, if implemented and including the judiciary, provide a workable means of addressing in greater depth and with greater accuracy the subject of redistricting the judiciary.

WHEREAS, the averages for case load and weighted case load are nothing more than that – averages. They reflect what exists at this time. This committee has no information available at this time to conclude whether the state average case load is reasonable or not. We are requesting the National Center for State Courts to assist us by providing information as to case loads in other states, especially in our sister states in the deep south.

WHEREAS, this committee, in light of the implications of Section 5 of the Voting Rights Act of 1965, has sought to propose a minimum of change by deleting no positions, and making no geographical changes. Otherwise, this committee recommends adding positions only where the evidence justifies it; and

WHEREAS, this committee recognized that the 19 county courts in Mississippi carry part of the case load which would be carried by the circuit court if there were no county court; and

WHEREAS, in compiling data to consider regarding weighted case load, this committee had the Administrative Office of Courts write to each circuit and chancery judge on three separate occasions soliciting their individual in-put for their district. Although only a minority of judges responded, the committee used the information supplied to incorporate into the weighted case load factors which were then supplied for use by the Stennis Institute.

WHEREAS, this committee polled all of the circuit and chancery judges soliciting their views as to the need for any changes in their respective districts and this committee has considered their responses;

WHEREAS, this committee has considered the above described information and factors shown in the attached exhibits hereto relevant to redistricting of said courts, recognizing factors in addition to statistical ones will be considered by the legislature;

NOW, THEREFORE, BE IT RESOLVED that this committee hereby recommends to the Legislature of the State of Mississippi as follows:

1. That the redistricting of the circuit courts not involve the change of the geographic area (county composition) of any district and that redistricting consist of adding one judge to each of circuit court districts one, two, three, thirteen, fifteen and twenty-two.

2. That the redistricting of the chancery courts not involve the changing of the geographic are (county composition) of any district, and that redistricting consist of adding one judge to each of chancery court districts one, seven, ten and thirteen.

3. Exhibits are attached as follows:

Exhibit A - Circuit Court Statistical Table

Exhibit B - Chancery Court Statistical Table

Exhibit C - Administrative Office of Courts listing of criteria for weighted case load indicators

Exhibit D - Stennis Institute report

Exhibit E - Comments

Exhibit F - Comparison of Circuit Court filings and weighted case load in heavy work load districts, and other districts requesting an additional judge

Exhibit G - Comparison of Chancery Court filings and weighted case load in heavy work load districts, and other districts requesting an additional

judge

RESOLVED by the Judicial Advisory Study Committee of the State of Mississippi,
this the 11th day of October, 2002.

BY: _____
L. F. Sams, Jr., Chairman

Appendix B

Selection Methods for Members of the Judicial Advisory Study Committee

Members	Appointed by
Norman Gillespie	Chief Justice
Paul Minor	Chief Justice
L.F. (Sandy) Sams, Jr.	Chief Justice
Tyree Irving	Chief Judge, Court of Appeals
Sebe Dale, Jr.	Conf. of Chancery Judges
Lamar Pickard	Conf. of Circuit Judges
Robin Midcalf	Conf. of County Judges
Wayne Hebert	Justice Court Judges Assn.
Thomas O'Beirne	Chancery Clerk Association
Pamela Metzler	Circuit Clerk Association
Rosemary Roosa	Governor
Lee Lampton	Governor
Jack Robertson	Governor
Howard Catchings	Lt. Governor
Robin Robinson	Lt. Governor
Phillip Cole	Speaker of House
Willie Blackmon	Speaker of House
Bennie Turner	Senate Judiciary
Percy Watson	House Judiciary
Robert Oswald	MS Bar President
Aleita M. Sullivan	MS Bar President
Lillie Blackmon Sanders	Magnolia Bar President
Alfred H. Rhodes, Jr.	Magnolia Bar President

Appendix C

Agendas of Meetings of the Judicial Advisory Study Committee, 2002*

March 1, 2002

- I. Call to Order - L. F. Sams, Jr.
- II. Minutes of the Previous Meeting
- III. Report on FOCIS Program - Judge Jay Bradley
- IV. Report on MYCIDS Program - Jamie McBride and Michael Jones
- V. Weighted Caseload Study - Kevin Lackey
- VI. Report on the 2002 Legislative Session - Kevin Lackey
- VII. Report on the Administrative Office of Courts - Kevin Lackey
- VIII. Closing Remarks - L.F. Sams, Jr.

June 7, 2002

- I. Call to Order - L. F. Sams, Jr.
- II. Minutes of the Previous Meeting
- III. Discussion of Fiduciary Accounts - Lee Martin and Mark Houston
- IV. Proposed Amendment to M.R.A.P. 15 - Writs of Mandamus - Judge Robert Oswald
- V. Weighted Caseload Study - Kevin Lackey
- VI. Report on the Administrative Office of Courts - Kevin Lackey
- VII. Closing Remarks - L.F. Sams, Jr.

September 6, 2002

- I. Call to Order - L. F. Sams, Jr.
- II. Minutes of the Previous Meeting
- III. Weighted Caseload Study - Kevin Lackey
- IV. Presentation on Punitive Damages - Robert Weems
- V. Judicial Selection in Mississippi - L.F. Sams, Jr.
- VI. Report on the Administrative Office of Courts - Kevin Lackey
- VII. Closing Remarks - L.F. Sams, Jr.

October 11, 2002

- I. Call to Order - L. F. Sams, Jr.
- II. Minutes of the Previous Meeting
- III. Weighted Caseload Study - L.F. Sams, Jr. & Robert Oswald
- IV. Closing Remarks - L.F. Sams, Jr.

December 6, 2002

- I. Call to Order - L. F. Sams, Jr.
- II. Minutes of the Previous Meeting
- III. Weighted Caseload Study and Recommendations - L.F. Sams, Jr.
- IV. Uniform Statewide Computer System (Peer Committee) - Max Arrinder & Lee Ann Robinson
- V. Amendment to Rule 6.02 of the Uniform Circuit and County Court Rules - Robert Oswald
- VI. Closing Remarks - L.F. Sams, Jr.

*Copies of the minutes of the meetings of the Judicial Advisory Study Committee are available upon request from the AOC. Please contact Kevin Lackey.

Appendix D

Judicial Advisory Study Committee Consulting Groups

Civil Division

C	Compensation and Administrative Support	Reuben V. Anderson
C	Election and Selection	James Bell
C	Facilities, Security, Personnel and Equipment	Brad Dye
C	Finance and Administration	Amy Whitten
C	Redistricting	Michael Landon
C	Technology	Emmette F. Hale, Jr.
C	Trial Court Support Staff, Court Reporters, and Clerks of Court ³²	Jimmy Radford

Criminal Division

C	Indigent Defense	James L. Robertson
C	Sentencing	Carmen Castilla
C	Uniform Criminal Code ³³	Judith J. Johnson
C	Youth Court	Pat Flynn

Appendix E

³² Formerly titled Administrators and Clerks of Court.

³³ Only this consulting group remained active during 2001-02.

**Mississippi Judicial Advisory Study Committee
Consulting Group on Criminal Code Revision**

Professor Judy Johnson, Chair
Professor Matt Steffey, Reporter
Justice Fred Banks
Julie Epps
Tom Fortner, Esq.
Judge Robert Gibbs
Chris Klontz
Robert McDuff, Esq.
E.J. Mitchell, Esq.
Caryn Quilter (Ex Officio)
C.J. (Jimbo) Richardson (Ex Officio)
Professor Ron Rychlak
Edwin Snyder, Esq.
Kathy Sones, Esq.
Judge Leslie Southwick
Judge Frank Vollar
Professor Carol West

**CALENDAR YEAR 2003 EXPENDITURES
JUDICIAL ADVISORY STUDY COMMITTEE AND CONSULTING GROUPS**

GROUP	JOHN WINKLE								TOTAL
	PER DIEM	MEALS	LODGING	TRAVEL	CONTRACT	PRINTING	FOOD	OTHER	
Board	\$200.00		\$134.67	\$1,276.74	\$2,615.50	\$516.80	\$655.65	\$225.95	\$5,625.31
Compensation									\$0.00
Criminal Code							\$936.15		\$936.15
Election & Selection									\$0.00
Finance & Administration									\$0.00
Indigent Defense									\$0.00
Redistricting									\$0.00
Sentencing									\$0.00
Support Staff									\$0.00
Technology									\$0.00
Youth Court									\$0.00
TOTAL	<u>\$200.00</u>	<u>\$0.00</u>	<u>\$134.67</u>	<u>\$1,276.74</u>	<u>\$2,615.50</u>	<u>\$516.80</u>	<u>\$1,591.80</u>	<u>\$225.95</u>	<u>\$6,561.46</u>

**JOHN WINKLE
JUDICIAL ADVISORY STUDY COMMITTEE CONSULTANT**

Calendar Year 2003 Expenditures

MONTH	ADMINISTRATIVE	PHONE	TRAVEL	PER DIEM	ANNUAL REPORT	TOTAL
January						\$0.00
February	\$225.00				\$650.00	\$875.00
March						\$0.00
April	\$250.00		\$117.30			\$367.30
May						\$0.00
June	\$250.00		\$124.10		\$600.00	\$974.10
July						\$0.00
August						\$0.00
September						\$0.00
October	\$275.00		\$124.10			\$399.10
November						\$0.00
December						\$0.00
TOTAL	<u>\$1,000.00</u>	<u>\$0.00</u>	<u>\$365.50</u>	<u>\$0.00</u>	<u>\$1,250.00</u>	<u>\$2,615.50</u>

Appendix G