

State of the Judiciary,
Chief Justice Michael L. Bender, Colorado Supreme Court
Message to the Legislature
January 14, 2011

President Shaffer, Speaker McNulty, members of the General Assembly, honored guests and friends.

It is my great privilege and pleasure to speak to you about the judiciary and to continue the tradition of the Chief Justice addressing the Joint session of the General Assembly.

Before I begin, I would like to introduce my colleagues on the Colorado Supreme Court:

Justices:
Gregory Hobbs
Alex Martinez
Nancy Rice
Ben Coats
Allison Eid, and
Monica Márquez.

I would also like to recognize State Court Administrator, Judge Gerald Marroney.

I would also like to acknowledge members of my family who are here:

My wife, Dr. Helen H. Hand,
My sister, Ellyn Bender, who has travelled here from Florida, and
My children, Jeremy Bender, his wife, Melissa, and their daughter and my granddaughter, Margot,
Aviva Siegel, her daughter and my granddaughter, Allison, and finally,
Maryjean, Tess, and Ben Hand-Bender.

On behalf of myself and my fellow justices, I thank you for this opportunity to report on the state of the judiciary in Colorado.

As John Adams, one of our founding fathers, said we are a government of laws, not men.

As an aside, as a rookie lawyer, Adams lost his first case on a technicality when he forgot to follow a local rule of law. He was advised by his elders to study the classics less and the local law more. But later in 1787, again inspired by the classics, he urged ratification of the proposed federal constitution with these enduring words:

". . . that a form of government which unites all virtue . . . in a reverence and obedience to the laws, is the only one in which liberty can be secure, and all orders and ranks compelled to prefer the public good before their own; that is the government for which we plead."

Adams' point rings true today -- to have a government that secures liberty and freedom, all branches of the government must be obedient to the law. Our government is not founded upon the good wishes and desires of individuals because, as Adams noted, individuals cannot be counted on to "prefer the public good before their own."

By deciding cases and resolving controversies according to the rule of law, the judiciary furthers the paramount principle that we are a government of laws and not men. It is important to emphasize that we only decide cases when there is a dispute and the disputing parties bring that controversy to the court. To accomplish our constitutional mission, we interpret and apply the law in an even-handed and fair manner. Our courts protect individual rights and are open to all, whether rich or poor. No one is above the law. By establishing justice, courts serve the people.

As the highest court in the state, our Supreme Court upholds the rule of law by deciding cases of statewide importance. Our opinions represent a collegial product involving research, reflection, and deliberation. No one judge has the answer to these complex controversies. The chief is but one of seven. A majority of four justices must agree to render a decision. The rich mix of backgrounds, cultures, and experiences that exist among the seven of us, contributes to our deliberative process. Personally, I can attest to the fact that the job is not only hard but also humbling. We debate, we agree to disagree, and sometimes we are convinced to change our views. At all times, each of us respects the other and each of us recognizes that we are dedicated, as urged by John Adams, to the goal that as the rule of law prospers the public good thrives.

As Chief Justice, I stand before you as representative of the seven justices, as well as the judiciary as a whole. I was elected to serve as chief by my peers and began a little less than six weeks ago, so the job is a little new to me.

Let me give you a quick overview of the system. The third branch includes 316 judges with over 3,000 employees who work in all 64 counties. Each day, the courts accept over 2,100 new filings. On the civil side, these cases run the gamut from small claims to multi-party multi-million dollar claims—including business, real estate, water, domestic, probate and juvenile matters. On the criminal side, our cases range from speeding to first degree murder involving the death penalty.

I would like to thank the General Assembly for the resources that have been allocated to the courts and probation. I acknowledge the predicament you assembly members are in, as you try to meet the needs of the entire state with limited funds. Although adequate resources for court and probation functions are critical, I have not come here today to present budgetary needs. Instead, I will share some accomplishments, describe meeting the challenges posed by a struggling economy, and explain my goals for strengthening the judiciary.

Our greatest strength is our people—judges, magistrates, administrators, probation officers and clerks. Colorado's non-partisan merit selection system assures that judges are selected from the ranks of lawyers in the community who are hardworking and honest,

and have had distinguished legal careers. The performance of each judge is reviewed by a bi-partisan community-based performance commission composed of a majority of non-lawyers.

I want to single out two judges for their outstanding contributions: Judge Ron Crowder in Colorado Springs and Chief District Court Judge Dennis Maes in Pueblo.

Judge Crowder, a retired Army general, presides over a veteran's trauma court. This court provides alternatives to incarceration for veterans with trauma disorders who are charged with felonies. With federal funding, Judge Crowder organized not only the district attorney and public defender to work cooperatively on these cases, but also garnered support from numerous community groups. Today, there are approximately 50 veterans receiving treatment and counseling, who make regular appearances before the Judge. This new court provides an opportunity for those who have served our country to make a positive change and resume their lives as law-abiding citizens. This veteran's court can serve as a model for expansion into other counties across the state.

Chief Judge Dennis Maes initiated and developed a truancy court in Pueblo over which he presides today. This court represents a collaboration of many community groups—the schools, city, county, police, courts, probation, social services, students and their parents. An example of the positive results comes from a teenager, who at the age of 13 and in 7th grade, was a gang member, had substance abuse issues, and had 28 unexcused absences from school. Reluctantly, this young girl agreed to participate in truancy court rather than be suspended. Judge Maes personally monitored her progress. Within a year, her truancy case was dismissed, she was getting straight A's and she graduated from Central High School one semester ahead of her class. She is now a pre-med student at CSU in Pueblo, pursuing her dream of becoming a doctor.

I would be remiss in not emphasizing that the resources provided by the General Assembly over the years have fully supported our mission. No matter how capable our judges, they cannot be effective unless adequate resources are provided. But there is no question that the economic downturn of the last few years has impacted all branches of government. Despite diminished resources and increasing demands, we have strengthened the operation of the courts by increasing efficiency.

For example, we have helped balance the state budget. Our probation department, which the General Assembly has supported, has saved Colorado taxpayers approximately 11 million dollars per year in the cost of incarceration. We implemented hiring freezes in 2009 and in 2010, delayed newly authorized judgeships and saved the state more than 10 million dollars. This year, we had a one-time give back of 800,000 dollars and permanently cut 173 positions for an on-going savings of almost 7 million dollars per year.

As you know, we are in the process of building a statewide e-filing system for all cases, which will increase our efficiency and yield additional revenue. With your support,

Colorado continues to lead the nation in court technology applications, as evidenced by the development and implementation of our public access system last year.

We adopted new procedures for water matters, which should make access to water courts less expensive and produce more timely results. As part of this project, we provided a guide for non-attorneys who wish to participate in water court cases.

We continue to ensure quality and integrity within our court system. For example, we have been pioneers in the establishment of jury reform and the establishment of over 60 community problem solving courts across the state—these include veterans trauma, adult and juvenile drug, family dependence and neglect, DUI, adult and juvenile mental health, and truancy courts.

Our attorney discipline system, operated under the supervision of the Supreme Court, serves as a national model. Our judicial disciplinary commission has been re-organized, and is in the process of revising its rules to increase transparency. We adopted a modern judicial code of ethics to assist judges facing ethical issues.

The “Courts in the Community” program, which began in 1986, continues to meet its goal of connecting the appellate courts with the community. The Supreme Court and the Court of Appeals travel to high schools throughout the state giving students the opportunity to hear oral arguments and mix and mingle with justices and appellate judges.

Finally, we conducted a survey of persons using the courts in all 22 districts to obtain feedback on how the courts are functioning. We use the results to improve our services.

For the rule of law to prevail, individuals must have access to the judicial system. Individuals and businesses alike are finding it increasingly difficult to use our civil justice system. The high cost of legal services and the growing complexity of the civil discovery process have made the cost of civil litigation prohibitive. As a result, the number of civil trials has dramatically diminished and many civil disputes are not resolved by a jury of peers. Just, speedy and inexpensive determination of civil cases is increasingly rare. To address this problem, the five chief judges in the Denver Metro area have requested that the Supreme Court approve a two-year pilot project to increase mandatory disclosure of information by the parties to their opponents and to streamline discovery procedures in both business cases and medical malpractice claims. The rules for this pilot project have been developed and agreed to, by both plaintiff and defense counsel and members of the judiciary in coordination with the Institute for the Advancement of the American Legal System at DU. Our Supreme Court will hold a public hearing on these new pilot project rules next week.

Access to the courts is also affected by the rapidly rising numbers of parties in marital dissolutions who cannot afford legal representation. These unrepresented parties, especially those with children, need legal advice and counseling. We are working through the Supreme Court’s judicial advisory council and the state and local bar associations to

set up procedures whereby local volunteer attorneys will represent on a pro bono basis some of these clients who meet indigency guidelines.

As Chief Justice, I am committed to further strengthen the efficiency of our judicial system, its quality and integrity, and to improve access to the courts. In that vein, I have a number of additional goals.

Employee morale is critical. I don't need to tell you how devastating job cuts and hiring freezes can be. The cuts we've made branch wide have fostered feelings that the work done in the local courts is not fully appreciated. One of my tasks is to visit each of the 22 districts, listen to judges and staff and solicit their ideas for improvement. I believe that our system should include increased consultation with those in the field and that their suggestions should be factored into policy decisions.

We must take an active role in the integration and coordination of the legal profession, including the law schools, the practicing bar, and the judiciary. To this end, I have established a Chief Justice's committee on the legal profession which includes state and federal judges, bar leaders and the deans of both law schools in the state. This committee will meet regularly to develop initiatives and policies concerning: how students are taught to be practitioners in light of the historical role of lawyers in society; what are the appropriate qualifications for practice; how lawyers should treat both clients and fellow lawyers; and how judges and lawyers should treat each other.

We, as judges, need to expand our efforts to educate the public about what we do and what the rule of law means to the Judiciary. The educational outreach program "Our Courts," initiated by Court of Appeals Judge Russell Carparelli and Federal District Court Judge Marcia Krieger and supported by the Colorado Bar association and the Colorado Judicial Institute, needs our full support. As a practical matter, we must spend time with students and civic groups in addition to our regular judicial duties. I see my task as encouraging others to do this and to take my own advice to heart and do as I urge others to do.

We have a great need for judicial training. About half of the trial judges in the state were appointed in the last six years and it takes up to six years for a judge to be fully trained. Training sadly competes with the need to keep up with the burgeoning case loads. We continue to explore ways to provide education to new judges, to judges in need of specialized training to preside over certain types of cases, and to judges in need of education on new and different issues that come before the court. Judges face jurors who use Twitter and Facebook, litigants who come from various countries and speak hundreds of languages, and cases with complex legal issues involving construction, finance, medical malpractice, product liability and engineering. Our judges are expected to become experts within a short time of taking the bench on all types of cases including probate, mental health, juvenile, civil, criminal and domestic. Our efforts to provide this type of education at a low cost have included distance learning, regional meetings, scholarships to attend out-of-state offerings and pairing with other agencies to provide

training. We continue to explore ways to provide the type of education necessary to keep our judges informed and able.

Before I close I want to talk a little about our new building. Thank you again General Assembly for your bipartisan support in championing this project. The Ralph L. Carr Colorado Judicial Center, which is being built without any general fund impact, will be finished in the spring of 2013. This center will house our appellate courts, the State Court Administrator's Office, the Attorney General's Office and other state legally related entities. There will be substantial savings in maintenance costs and shared services over the years. A fundamental part of the new courthouse will be the learning center which will occupy premier space on the first floor. This is something I am particularly excited about. The learning center will be unique—it will house interactive devices designed to teach from the K-7 level to the college level about the three branches of government, how they interact with each other, and focus on the special role courts play in our society to uphold the rule of law. The learning center will be keyed to the state's required civics curriculum.

The Judicial Center will provide a stately and visible reminder at the seat of our state government of the critical importance of the Colorado judiciary. It will symbolically represent the judiciary as it seeks to uphold the rule of law in our state.

Thank you for the opportunity to talk about the legal system which I love and of which I am so proud. I leave you with Harper Lee's words, taken from her novel, *To Kill a Mockingbird*, and spoken by Atticus Finch, a wise father and a passionate lawyer:

"But there is one way in this country in which all men are created equal—there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. The institution, gentleman, is a court. It can be the Supreme Court of the United States or the humblest JP court in the land. Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal."

Thank you. I look forward to working with you during this session.