

State of the Judiciary
Chief Justice Michael L. Bender, Colorado Supreme Court
Message to the Legislature
January 11, 2013

President Morse, Speaker Ferrandino, members of the General Assembly, honored guests and friends:

It is my great privilege and pleasure to speak with 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:

Justice Gregory Hobbs,
Justice Nancy Rice,
Justice Ben Coats,
Justice Allison Eid,
Justice Monica Márquez, and
Justice Brian Boatright;
and, Judge Gerald Marroney, our State Court Administrator.

I want to acknowledge others who are present:

Marty Katz, Dean of the Sturm College of Law at the University of Denver;
Marianne Wesson, University of Colorado Law School Professor; and
Mark Fogg, President of the Colorado Bar Association.

Members of my family are here, and I would like to acknowledge them, as well:
My wife, Dr Helen H. Hand.

My son, Jeremy Bender and his wife Melissa, their children and my grandchildren,
Margo and Sam; my daughter Aviva Siegel; my daughter Maryjean Hand-Bender; and
my son Ben Hand-Bender.

Charlie Greer, a professor and poet, is a close college friend who grew up and lives in the Fort Collins area.

I am pleased to report that the judiciary is alive and well in the State of Colorado! Today I would like to tell you about the progress the judicial branch has made since I visited with you two years ago. I hope that by the end of my remarks you will share my conviction that Colorado has an outstanding judiciary, one that aspires to set the mark others hope to achieve. As I speak you will hear me emphasize three major themes:

- One, is the importance of citizen's trust in the rule of law in our democracy.

- Two, is the way in which the judicial branch in Colorado furthers the rule of law for our citizens.
- Three, is the importance for the courts and the legal community to understand the needs of the public they serve and to collaborate to create programs that address those needs.
Trust in the rule of law distinguishes our society from many others around the world. When the blind Chinese lawyer and activist, Chen Guangcheng, was allowed to leave China to study in the United States, he noted that China does not lack laws, but it lacks the rule of law. The legitimacy of government depends on the fair, impartial, and reliable administration of the laws.

Courts serve the people of the state by resolving disputes, protecting individual rights, and delivering justice in criminal and civil cases. To ensure a just society Courts must tailor the fair, effective, and efficient delivery of justice to fit each individual case. This mission requires us not only to reach a fair and just outcome but also to do so in a way that is perceived as being fair to all sides. The perception of fairness is as important as the fairness of the outcome.

When citizens who go to court feel they are treated with dignity and respect, research shows that they trust the court system and are more likely to understand, appreciate and follow court orders. The term "procedural fairness" has been coined by researchers to refer to the perception of fairness by those accessing the courts.

For citizens to trust the judicial system they must believe that justice is truly for all. Today, as historic events unfold in many parts of the world, we see that where a fair and open judicial system does not exist, citizens are alienated from their governments and instability occurs.

So, let me turn now to Colorado and tell you who we are and what we do. Last fiscal year, 777,000 cases came through our state court system. 99% of these cases were heard in our trial courts -- that is, our district and county courts -- and about 1% made their way to our appellate courts. The trial courts, which include judges, magistrates, probation officers, judicial assistants, court clerks, court reporters, and interpreters, are the face of justice in Colorado. The people in the trial courts number over 3,500, and include 319 judges who operate in 22 different judicial districts and 73 courthouses. We are the largest unified criminal justice agency in the state. Our adult and juvenile probation departments supervise more than 80,000 offenders.

Let me pause here to make a plea on behalf of our 3500-plus employees. A recent survey revealed that almost half of our employees sought to supplement their incomes with outside employment last year. In his budget request to the legislature, Governor Hickenlooper suggested pay increases for state workers across Colorado. The dedicated and hard-working employees of the judicial branch deserve to be included in this raise. The great orator, Daniel Webster, said "justice is the great interest of man on earth. It is the ligament which binds civilized beings and civilized nations together."

Litigants, witnesses, jurors, probationers and employees who move through our courts tell us that the Colorado system reflects Webster's ideal. Three features distinguish our judiciary.

First, the judiciary enjoys strong bipartisan support from the General Assembly. Over many years, the state legislature has provided sufficient resources for courts and probation to serve and meet the needs of the public. For that, I wholeheartedly thank you.

Second, our courts and probation systems are centrally financed and administered. We are fortunate to have as our State Court Administrator Judge Jerry Marroney who has done an outstanding job for the past 12 years.

Third, judges are selected through a non-partisan merit-based process which ensures that the most qualified individuals are selected. In addition, judges are rigorously evaluated by independent commissions on a regular basis. And, of course, Colorado's voters have the final say regarding whether a judge will be retained in office.

Sadly, citizens who do not have firsthand experience with our judicial system have a different perception than those who have actually moved through our courts. General public opinion polls reflect the attitude that only wealthy persons have access to fair justice and this perception is most prevalent in communities of color. Today we are making it a priority to change this misperception and to enhance the community's confidence in our system and, at the same time, continue to save taxpayers' dollars. Several of our recent initiatives tap into existing community resources and sometimes private dollars to leverage public funding. In the last two years:

- One. We have increased the number of problem solving courts from 61 to 72. These courts exist in 20 of our 22 judicial districts and serve the community by providing opportunities for treatment and rehabilitation in lieu of prison. Today persons in these courts number 3,700. Notable among these courts is the veteran trauma court in El Paso County which has treated more than 100 veterans. We also have two new veteran's courts, one in Denver and one in Arapahoe County. Problem-solving courts operate in a variety of areas: adult and juvenile substance abuse offenders, offenders who are mentally ill, juveniles struggling with truancy issues, and family and dependency cases.

Let me give you one example of how problem-solving courts can address the needs of society while also changing individual lives. Last year, I met a participant in Arapahoe County's problem-solving mental health court who had a substantial criminal record. After two years, she had completed her court-ordered treatment. At her graduation, she said the key to her change came when therapists and case workers taught her to trust and forgive. She had never learned these life skills and certainly didn't learn them in her repeated incarcerations. Through her experience in the problem-solving court, she began to find purpose in life and pride in the woman she has become. She is on her way to being a productive member of society.

- Two. We have increased the efficiency of the Probation Department. Compared to 2011, in 2012, Probation saved the State 12.4 million dollars through the use of evidence informed practices that have resulted in an increase in offenders successfully completing probation. We have decreased the number of technical revocations of probation, saving the state 2.76 million dollars.
- Three. We have developed and are rolling out a court-run civil e-filing system for all civil cases to coordinate with a new, internal case management system. As of today, we have successfully deployed the new filing system in 7 judicial districts. This project will be completed in the first half of this year and will reduce paper work, increase efficiency for clerks and judges, and provide a more user-friendly system for attorneys than had previously existed.
- Four. We have responded to the growing number of pro se cases. Each year, more and more individuals come to court without an attorney. We now have 12 pro se coordinators and self-help centers in 11 judicial districts to assist those who are not represented by attorneys. These coordinators assist individuals by providing procedural information, locating and printing out forms from our judicial branch Website, and by demystifying the often intimidating nature of the legal process. Community partnerships and collaborative efforts are key.

For example, the pro se coordinator in Adams County has trained local librarians to assist the public to use self-help forms located on our Website. In addition, Adams County has partnered with a large national law firm and the legal department of a large national company to develop an on-call legal clinic to assist members of the public seeking help from the court.

- Five. We have reviewed more than 35,000 guardianships and conservatorships to ensure that protected persons are indeed being protected. We did this in response to prodding by your legislative audit committee and with the assistance of 19 new probate clerks awarded us last year.
- Six. We are beginning the second year of our civil action pilot program in the metro area. This experimental program is the largest in the country and seeks to provide less expensive and more efficient resolution of business disputes by increasing parties' disclosure requirements and by eliminating expert witness depositions. Through the use of the principle of proportionality judges tailor case procedures based on a case's complexity.
- Seven. We have increased lawyers' commitment to giving free representation to folks who can't afford to hire a lawyer from 70,000 committed hours last year to 109,000 committed hours this year.
- Eight. We have improved procedural fairness. Surveys of individuals who come to court show that more individuals believe they were treated fairly and listened to this

year than last year. We, of course, can improve.

- Through the Chief Justice Commission on the Legal Profession, we have brought together the three main pillars of the legal profession -- judges, lawyers, and Colorado's two law schools -- in an effort to extend the mission of the judiciary to the legal profession as a whole.

What has the Commission done?

- It has assisted in the creation of the Bar Association's Colorado Lawyers for Colorado Veterans program which represented 275 indigent veterans.
- It has initiated a statewide mentoring program with more than 150 mentors to improve the quality of legal service provided by young lawyers.
- It has assisted in the planning and staffing of new self-help centers in many courthouses throughout the state.
- It has developed a legal professionalism month, which resulted in more than 50 programs throughout the state concerning professional and ethical conduct for attorneys.
- It has assisted the Colorado Supreme Court to increase the number of hours of free legal service Colorado lawyers have committed to.
- It has brought together all of Colorado's first-year law students to hear from lawyers, judges, and clients concerning the responsibilities of lawyers to serve the needs of their communities.

There are two more initiatives that deserve special recognition for their contribution to building public trust in the fairness and accessibility of the judicial system in Colorado. The first, the Mesa County Criminal justice group, serves as a shining example of how stakeholders with divergent interests, can work together to solve community legal problems. The second, the Ralph L. Carr Judicial Center, represents a judicial branch milestone achieved due to the cooperation and bi-partisan efforts of the General Assembly.

Mesa County is now a recognized national model for a plan to reduce criminal recidivism by applying evidence-based decision-making practices. These practices rely on actual data to determine such things as which defendants pose the greatest risks, what circumstances drive that risk, what outcomes or sentences will have the best impact, and what programs best serve public safety. Mesa County has formed a criminal justice leadership group that includes every single criminal justice agency in the county -- the courts, the district attorney, the public defender, the private defense bar, local law enforcement, probation officers, parole officers, community corrections, and treatment providers. Although these groups represent divergent interests within an adversarial

system, they have found a way to collaborate by focusing on a common value -- the need for public safety. They have trained personnel and have set up a pilot criminal courtroom where evidence-based decision-making practices are applied in each stage of the criminal process.

A second accomplishment is particularly dear to my heart: our new Ralph L. Carr Colorado Judicial Center. I want to thank you, the legislature, for your bipartisan support for the building, named for one of Colorado's most heroic and courageous governors.

Governor Carr inspires us today with these words, “. . . The Japanese are protected by the same Constitution that protects us. An American citizen of Japanese descent has the same rights as any other citizen. . . . If you harm them, you must first harm me. I was brought up in small towns where I know the shame and dishonor of race hatred. I grew to despise it because it threatened the happiness of you, and you, and you.”

The Judicial Center stands tall, rock solid, at the seat and center of our state government, symbolizing protection of the weak and guardianship of the hopes and aspirations of all of us. A civics education center is visible from the street and accessible to the public on the first floor and is expected to open this April. Using interactive displays, students and citizens will be able to learn how courts function and why the rule of law is essential to the freedoms of our nation. They will learn about Governor Carr and see his statue set against a backdrop of the state capitol. Best of all, it's free and will be open to all. I want to give special thanks to those who have toiled for many hours to design these displays – Janice Davidson, Chief Judge of the Court of Appeals; Gregory Hobbs, Nancy Rice, and Monica Marquez, Supreme Court Justices; Russ Carparelli, Court of Appeals Judge; David Prince, District Court Judge in El Paso County; Dan Cordova, the Supreme Court Law Librarian; Christopher Ryan, Clerk of the Supreme Court and the Court of Appeals; Rob McCallum and Jon Sarché, the public relations team for the Judicial Branch; and Joe Turnage, Supreme Court Education Specialist.

To thank the General Assembly for this building, Attorney General John Suthers and the supreme court and the court of appeals will host a ribbon-cutting ceremony and reception on Monday, January 14th at 3 PM. Governor Hickenlooper will also be on hand to say a few words. The appellate judges and justices and their law clerks will offer their services as docents to show you around this spectacular building so that you can see for yourself what a tribute it is to the ideal of Justice for all. I hope you will all attend. You are also invited on May 2nd, to attend a formal dedication ceremony where United States Supreme Court Justice Sonia Sotomayor will be our honored speaker.

Today is the last time I will have the opportunity to address you. Our constitution mandates that I step down as a justice in about a year, when I turn 72 and am sent out to pasture. It has been a great honor for me to serve on the court for 16-plus years and, for the last two years as Chief Justice.

I'd like to close with a return to the main themes that I outlined at the beginning and my hopes for the future.

For our democracy to thrive, citizens must trust in the rule of law. Judges are the leaders of the judicial system and the face of justice in the eyes of the public. To earn the respect of the public, they have to go beyond being fair arbiters of disputes by reaching out to their employees, to the legal profession, and to their communities. They must engage in constructive problem-solving through collaboration with other stakeholders, even when these parties hold divergent views. They need to articulate a clear vision for how the legal problems facing their communities and brought in their courtrooms can be addressed and eventually solved.

With the assistance of others, as Chief I have strived to support the effectiveness of our system by empowering all the chief judges and the justices on the supreme court to broaden their practice of leadership. I have initiated a procedural fairness campaign in the court system to include all of our employees; I have created the Chief Justice Commission on the Legal Profession, bringing together representatives of all the various parts of the legal community to find ways to improve our system; and I have sought to foster teamwork among all courts, their administrators, and personnel.

Initiatives such as these require time to take hold. I believe that with the outstanding people that work in our courts and probation, with ongoing dedication to the vision, and with the support of you, the legislature, Colorado will continue to improve and to stand as a model to other states for what a judiciary can be.

Thank you for the opportunity to talk about the legal system which I love and of which I am so proud. Once again, 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 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.