

State of the Judiciary
Chief Justice Lawton R. Nuss, Kansas Supreme Court
Message to Judges and State Leaders
January 22, 2014, at Supreme Court chambers, Topeka, Kansas

Good afternoon. Distinguished members of the House and Senate, judges and justices, honored guests, and my fellow Kansans.

Many years ago I was receiving cold weather training in the snows at Camp Fuji in Japan. While I was there, a visiting Marine Corps lawyer learned that I was thinking about attending law school. So he gave me – a combat engineer – a book about an American lawyer.

Now there is not a lot of free time in the Marines. So I put that book in the side pocket of my camouflage uniform. And I carried it with me for weeks, reading a few pages here and there.

I still have that book. It has been snowed on in Japan, frozen shut in Korea, and soaked in the jungles of the Philippines. Although its pages are falling out, I would like to read something from it that made a lasting impression on me so long ago. As background, you should know this American lawyer had a case in France:

(COMPILER’S NOTE: THE EXCERPT FROM THE BOOK IS ITALICIZED HERE BUT WAS NOT IN THE ORIGINAL DOCUMENT) *“When we landed in Paris, we were met by a French avocat, a man I had asked to join the case because he knew his way around the Paris courts: ‘We can’t lose,’ he told me proudly after we had gotten into his car. ‘I have given the judge one hundred thousand francs.’*

“That gave me some pause. It wasn’t quite the way we did legal business in California. ‘Uhh,’ I said, ‘what about the other side? What did the other side give him?’

“My colleague was shocked. ‘Mr. Belli,’ he cooed, ‘we are dealing with a respectable judge. He is a man of honor. He would not think of taking from both sides.’ ”

We chuckle, and perhaps even laugh. Because that is certainly not the way judges decide cases in Kansas. We do not take any money from either side.

Nor do we decide cases based on money’s distant cousins: threats and other pressures. Instead, we carry on the tradition established by the judges who served this area in the 1850’s when it was simply the territory of Kansas.

Instead of deciding cases by money or pressure, what we do? We fairly and impartially apply the law to the facts. Because we all believe in the words inscribed on the U.S. Supreme Court building in Washington D.C.: equal justice under law. Because for more than 150 years Kansans have deserved no less.

And we try to keep in mind the pledge of allegiance that virtually everyone in this room took at one time or another – the one that ends with “and liberty and justice for all.”

But justice in Kansas is in some jeopardy. Since 2010, the Kansas Judicial Branch has been required to maintain at least 80 vacancies in our authorized workforce of 1600 employees. That computes to roughly a 5% loss of employees.

And operating with less authorized employees is exactly the opposite of what the weighted caseload study told us in late 2011, when, for the first time in state history, we measured the actual workloads of all district courts in our 105 counties. The study said we needed more than those authorized.

On top of these reductions in our historically authorized workforce, our employees have been paid below market rates. And they have not had a pay raise since July 2008, but watched while other groups of state employees have received raises.

But: I am pleased to report that within the past hour, the House of Representatives passed legislation granting our employees a 2% pay raise. That legislation should be on its way to the Governor. Please join me in thanking the Legislature for passing this legislation.

That gives us a big step toward equity with the Executive Branch employees – who two years ago received their own pay increase to progress toward meeting market levels.

But our employees are still understaffed. They handled more than 400,000 new cases filed last fiscal year, as well as many older ones.

Now, some may say justice is not in any jeopardy because the reduced number of employees have handled the workload the last four years. But let's take a closer look.

The Judicial Branch is blessed with hundreds of dedicated employees and judges. And because of their dedication and professionalism, we have kept the courts running as best we can.

But even dedicated employees reach their limit when there is no relief in sight. Some of our longtime employees have left for work in the private sector, many because they did not like the constant stress created by years of understaffing.

And some of them have left to work, ironically, for other branches of state government where their duties were comparable but the paycheck more certain. As one such employee put it last October in her letter of resignation, "As you know, my current position offers a strong likelihood of furloughs."

The departure of these experienced and well-trained employees puts additional strain on those who remain because the vacancies are not filled. Or if filled, filled by new employees who are not trained and who cannot have formed the good judgment that comes only from experience.

In the military, that would be like having senior sergeants leave the weapons groups they had led for years and then telling new enlistees to fill the mature leadership roles – enlistees who then ask, "What's a machine gun?" Simply put, units without experienced leaders cannot be efficient – or very effective.

Others have compared our situation to eating at a restaurant where you wait 20 minutes for the server to come to your table, then wait 10 more minutes for your water glasses to be filled, then wait one hour for your meal to be served. And when it arrives, it is underseasoned.

You are rightfully upset at the slow service and the meal's flavor. But what you do not know is that because of staffing shortages, the waiter has the responsibility for 50 tables. And only one cook is preparing all the meals. Yet they are doing their best.

You may choose to never go back to that particular restaurant. But you only have one court system in Kansas. And as much as I personally love eating, I think you will agree with me. The service you receive in our courts is more important than the service you receive in a restaurant.

So one thing is clear: adequate staffing is required for the Judicial Branch to meet its core functions – maintaining fair and impartial courts, enforcing Kansans’ rights, and serving their needs. Because as I said in my State of the Judiciary speech in 2011, “Kansas children are still being sexually victimized; Kansas citizens are still getting injured or killed; and our business owners’ contracts are still being breached.”

I am grateful that we do have many employees who despite these challenging conditions will continue to do everything they can to serve Kansans – as best they can, for as long as they can, regardless of how hard it is on them. But as their chief justice, I ask on their behalf, “Isn’t four years of understaffing enough?”

Now during the fiscal year that ends this June 30, the Judicial Branch of government does have enough money from the legislature to operate at these reduced levels. That means we should be able to keep the Kansas courts open. But things get somewhat darker as of July 1.

As most of you are aware, the money we are to receive for that fiscal year is below what we requested – \$8.25 million below our base budget request and \$19 million below what we need to operate as effectively as we should.

The \$8.25 million amount is not just something we dreamed up. That figure has been verified by the legislature’s financial analyst for the Judicial Branch. He participated in the work of the Court Budget Advisory Council that examined ways to reduce \$8.25 million in expenditures in the Judicial Branch. Members of the Council are here today. We are grateful for their hard work.

Because their mission was a challenging one. Each county is responsible for funding the operations costs of the district courts, which means approximately 96% of our budget is dedicated to personnel costs. And because the vast majority of Judicial Branch activities are mandated by state or federal law, we lack many of the options available to the other two branches, and to state agencies, for reducing budget costs.

Now some may quibble about the Council’s recommendations for reducing the expenditures. And some may quibble about the priorities for the reductions they suggest. But however you slice it, however you dice it, however you shuffle these cards, one unpleasant fact remains:

If some additional money is not provided, then employees will be sent home without pay, and Kansas courts will close statewide sometime after July 1. The only question is for how long. And on those days, the almost 3 million people in Kansas will have no place to go for justice.

If you find court closings unacceptable, and I hope you do, then let’s adequately fund the courts – the Judicial Branch of government created by the people of Kansas in their constitution more than 150 years ago.

I’d like to list a few of the reasons I hope you find court closures unacceptable. I mentioned earlier the pledge of allegiance. In addition to that national pledge, in Kansas every state employee or officer – including most of the people in this room – is required by law to take an oath.

And lest you think I only read paperbacks, let me read from the original volume – a statute passed by the Kansas Legislature in 1868 – that sets out this oath:

“I do solemnly swear that I will support the constitution of the United States *and the constitution of the state of Kansas* and faithfully discharge the duties of [my office].”

As you know, since 1861, Section 18 of the Kansas Constitution Bill of Rights has provided that Kansans are entitled to “remedy by due course of law, and justice administered without delay.” The Bill of Rights similarly guarantees “a speedy public trial by an impartial jury” to criminal defendants. Obviously, none of us can make good on our solemn oaths of office – to provide or guarantee these constitutional rights – when Kansas courts are closed.

Based in part on these constitutional rights, I wrote in last year’s report on the State of the Judiciary

“[I]t is clear that administering justice to all Kansans has been an original function of government performed by the Judicial Branch since 1861. Such an original function certainly qualifies as a core function, i.e., an essential service . . . Adequate court funding is critical to providing these essential services – *while inadequate funding undermines not only access to justice, but also the people’s belief in the justice system itself.*” (Emphasis added.)
(COMPILER’S NOTE: THE ORIGINAL DOCUMENT INCLUDED THESE ITALICS)

Chief Justice John Roberts of the U.S. Supreme Court expressed an even greater concern in his report last month on the state of the *federal* judiciary. Given the roles that the legislative and executive branches play in funding the courts, the chief justice said, “It takes no imagination to see that failing to meet the judiciary’s essential requirements undermines the public’s confidence *in all three branches of government.*”

Underfunding and court closings not only jeopardize the fundamental rights of Kansans and undermine the public’s confidence in all three branches of government, but they also undermine the economic plans for the State established by the heads of two of those branches.

Those leaders all have publicly set the course of promoting economic growth in Kansas. So at the outset, it is important to recognize the Kansas Judicial Branch as a vital factor in that formula for success.

Among other things, Kansas courts historically have enforced businesses’ rights by ordering monetary damages paid when contracts have been breached, protected valuable business trade secrets from misappropriation by a competitor, and provided a forum for the collection of businesses’ debts.

But the importance of the Kansas Judicial Branch as a factor in the formula for private business success is not just my opinion based upon reviewing past cases. That importance has been recognized by the U.S. Chamber of Commerce’s Institute for Legal Reform.

You have probably heard by now that according to a 2012 national survey of senior business executives and corporate lawyers conducted by the Chamber, Kansas courts rank fifth among the 50 states in the overall ranking of state liability systems, as perceived by U.S. businesses.

What you may not know is that a full 70% of the business leaders surveyed report that a state's litigation environment is likely to impact their important business decisions, "such as where to locate or do business."

But inadequately funded courts, or otherwise stagnant courts, will cause Kansas to drop both in their effectiveness and in those national rankings.

More important, any decrease in those rankings will demonstrate to the business community – whose growth the leaders of Kansas want to promote – that Kansas' abilities to administer justice have declined in comparison to other states. Particularly those that may be competing with us in attracting new business and creating new jobs.

But despite these hardships and challenges, thanks to the Judicial Branch's actual 1500 employees and 250 judges, not all is negative. So allow me to update you on some of the positives in this branch of government. Like last year's report, I start with progress made on some of the Blue Ribbon Commission recommendations from Project Pegasus.

You recall Project Pegasus – perhaps the largest study undertaken in the history of the Kansas court system. It consisted of two main parts: (1) The State's first-ever weighted caseload study I mentioned earlier and (2) the Blue Ribbon Commission of 25 Kansans from various backgrounds.

The Commission performed the most extensive review of Judicial Branch operations statewide since the 1970's and made recommendations to the Supreme Court for improvement.

I. The Commission Recommended Electronic Filing and Enhanced Use of Computer Capabilities

Electronic filing (or e-filing) allows lawsuits and related legal documents to be filed with the courts electronically – from one's office or home. But it is not only the capability to electronically submit documents to the courts. It is also to have those submissions integrate with electronic case management and document management systems used now by court personnel in processing cases. It reduces the system's dependence on paper documents and provides attorneys with immediate, 24-hour access to court systems.

First considered by the Supreme Court in 2009, development and implementation of the statewide e-filing system is underway in several locations. They include the appellate courts in Topeka. And for the district courts, they include three original pilot projects (Douglas, Leavenworth, and Sedgwick counties) – and as of Friday, Wyandotte County. By this month's end, Butler and Reno counties also will be online.

And by June 30, e-filing will be present in 11 counties, including Saline, Geary, Finney, Shawnee, and Johnson with its JIMS e-filing system. With these installations, more than half of the non-traffic case filings in the state will be eligible to use e-filing.

As for appellate courts, the briefs and thousands of other pages of paper that can accompany an appeal are scheduled to be sent to Topeka electronically from three counties thus far: Sedgwick, Shawnee, and Johnson.

The Supreme Court ultimately intends to develop and implement a complete centralized statewide e-courts environment – e-filing plus electronic case management systems and document management systems.

Upon completion, such a combination of statewide systems could allow court personnel in any location to work “virtually” on court business in any other location. That allows the Supreme Court to more effectively and efficiently manage the state’s court system.

The funding before this fiscal year has been provided primarily by federal grants. But continuing to receive federal grants is unlikely – so we will still need state funding to reach our goal.

II. The Commission Recommended Increased Use of Other Technology

The Court of Appeals continues to develop a pilot project to use video conferencing for certain activities in the appellate courts – instead of requiring attorneys from across the state to spend time and money going to and from Topeka.

Likewise, our development of rules and technical standards for video conferencing in the district courts statewide is nearing completion. Providing the equipment for video conferencing in those local courts will continue to be up to the counties. But the expanded use of this technology should result in further savings for law enforcement, attorneys and their clients.

In August 2012, the Supreme Court installed in this courtroom cameras and affiliated hardware for transmitting proceedings live over the internet. Since then, our proceedings have been viewable by anyone with an internet connection from anyplace in the world.

Last year one person observed our proceedings from Katmandu, Nepal. So in addition to you who are physically present at this moment, many more are watching from other locations. The digitized proceedings are archived for future reference – so you can enjoy us over and over again. Even from Nepal.

In addition to the Supreme Court making its proceedings more accessible to the people of Kansas through technology – such as this courtroom’s cameras – it has also taken its proceedings directly to the people’s locations.

Since 2011, we have traveled to hear cases argued in Salina, Wichita, Greensburg, Overland Park – and two months ago, on the beautiful campus of Pittsburg State University. Similarly, our colleagues on the Court of Appeals continue their great tradition by hearing cases argued in numerous locations all across the state.

III. The Commission suggested the possibility of increasing Judicial Branch funding through fee revenues.

For a number of years the fees collected for filing lawsuits were distributed among multiple state funds and entities. Last session the legislature altered that distribution so 99% of all this docket fee revenue currently goes to the Judicial Branch. Our State General Fund appropriation was reduced accordingly.

This change was intended to be revenue neutral. But it obviously requires the Judicial Branch to rely even more heavily on docket fees. Unfortunately, this is an uncertain source of revenue which has been steadily declining [at roughly 6% each year] for each of the last three years. I understand this year’s legislative proposals may include further increasing all docket fees.

Don't get me wrong. We gladly accept additional funding. But some argue that the last few years' reductions in court case filings – that in turn generate the revenue through their filing fees – is because of already high filing fees. I am told that in California this is known as “fee fatigue.”

IV. Commission Miscellaneous:

1. The Commission recommended increasing Judicial Branch efforts to collect more of the monies actually ordered by the courts such as fees, fines, and court costs. Last year the National Center for State Courts gave us technical assistance in reviewing our processes. And then in developing best practices and standardization of collection methods.

Implementing a number of their recommendations will assure that court orders are taken seriously and will be enforced. It will also increase the receipts going into our public treasuries.

2. The Commission recommended examining our specialty or problem-solving courts. Approximately 15 of these courts have been established by various trial judges throughout the state.

They differ from the usual courts because they coordinate services provided to criminal offenders with direct, sometimes intense, supervision by a judge. Most of these are drug courts, which attempt to address an offender's underlying substance-abuse problems – problems that often lead to criminal offenses.

National research has shown that drug courts can be effective in reducing offender recidivism. That in turn saves considerable judicial and correctional resources.

We created the Specialty Courts Commission which examined these courts' operations. Last month we received its report. Its recommendations include increasing uniformity by establishing statewide specialty court standards for better serving the users of this unique system.

3. The Commission recommended looking at the nationwide issue of providing language access to the state courts. According to our information, including a recent language access survey, some users of the courts in 69 of our 105 counties do not speak English as their first language. Across the state, that amounts to 31 different languages: from Burmese to German Mennonite. Our recent efforts include reviewing language access programs in similar states such as Nebraska.

4. The Commission recommended our looking at certain functions and procedures in the district and appellate courts. After review at all levels, the Judicial Branch is continuing to improve on timely disposition of pending cases.

5. The Commission recommended we look at mediation which is required in some federal appellate courts. The Court of Appeals has developed a pilot project for mediating its cases. At this stage of the pilot, parties have the option of accepting appellate mediation – and at no cost through the use of volunteer mediators. Our first case has already been resolved through this process.

We look for more to come. Because when successful, mediation can save resources of Kansans and the appellate courts. Just as important, it can permit the courts to concentrate efforts on the other hundreds of cases that would remain on their dockets every year.

As for some of the positives in areas not necessarily addressed by the Blue Ribbon Commission:

1. Several Kansans in the Judicial Branch won national awards in 2013. Judge Patrick McAnany received an Award of Merit from the American Judges' Association. Judge Mary Throter received an Award from the Specialized Court Judges Division of the American Bar Association.

And our employee Denise Kilwein won a national award for her excellence as Director of Judicial Education.

2. Shawnee County District Court received a \$50,000 grant for helping to address operational improvements in processing its cases. The court will retain the National Center to assist in this review.

3. And the Judicial Branch is working with the KBI and the Kansas Department of Transportation in the submission of DUI information to the "KBI Report and Police" Impaired Driver portal. As a result, more timely and accurate information about repeat DUI violators is available to prosecutors, judges, and probation officers across the state.

As I mentioned, these are but a few of the positives happening in the Judicial Branch.

Finally, I want to thank you for helping us make history today. To my knowledge, for the first time in the 153-year history of Kansas, the State of the Judiciary address is being presented in the courtroom of the Supreme Court. For the first time in our history, the address is being video streamed live over the internet.

These proceedings, like the trials and hearings in the district courts, and oral arguments in the appellate courts, are open for the people of Kansas to see.

I began my remarks by reading from a worn out paperback to make a strong point about Kansas judges. I will not return to that old paperback in closing. Instead, I will make an equally strong, and related, point as I adopt the words from a State of the Judiciary Address delivered by Kansas Chief Justice Richard Holmes to a joint session of the legislature in January 1991.

"In closing, I want to extend to you my sincere pledge of our cooperation with both the legislative and executive branches of government, with the overriding goal of better government as a whole for the people of Kansas. The lines of communication . . . are open at all times. Give us a call."

I like to think the passage of the pay raise bill this morning is a fine example of that cooperation.

And speaking with my own words, please allow me to express my gratitude today for your careful attention, and to bid you Godspeed. Thank you.

In the spirit of cooperation, allow me to invite you to our reception downstairs in the Hall of Justice. And tours of the Judicial Center are available starting here. Just as Chief Justice Holmes invited legislators and guests after his speech in January 1991.

BUT, if you would like a rare glimpse into my chief justice's chambers – something very few people have seen since they were built in 1978 – please move to the side door where a guide will accommodate you.

Thank you again.