

State of the Judiciary

Chief Justice Lawton R. Nuss, Kansas Supreme Court

Message to Judges and State Leaders

February 3, 2016, at Supreme Court chambers, Topeka, Kansas

Good afternoon distinguished members of the House and Senate, Attorney General Schmidt, and other members of the executive branch, judges and justices, honored guests, and my fellow Kansans who are here physically or watching these proceedings on the internet. Thank you for listening today while I report to the people of Kansas on the state of their Judiciary.

Some years ago a preacher worked all week on writing his sermon. When he woke up Sunday morning, he saw more than 2 feet of snow now covered his parsonage, the church next door, and everything he could see. He was disappointed because he felt certain no parishioners would now come to church.

Then about 5 minutes before the services would have begun, he noticed an old pickup truck grinding through the snow and finally stopping in front of the church. An old cowboy got out and waded through the snow to the church's front door. The preacher welcomed the old cowboy inside. Then he mounted the pulpit and proudly delivered his sermon with the cowboy as the only congregant.

Thirty minutes later, when the sermon was over, the preacher stepped down to greet the old cowboy. The preacher asked him what he thought of the sermon. The old cowboy put on his hat, and looked the preacher straight in the eye. "Well, padre," he said. "I don't know anything about giving sermons. But I do know a lot about feeding hay to cattle. And when only one of the cows in my entire herd shows up to be fed, I darned sure don't give her the whole load."

Having fed my share of cattle, I agree with that cowboy. But since I've got a lot of people here today, you folks will get the whole load.

In Kansas, of course, we have one Supreme Court, one Court of Appeals, and more than 100 district courts. And the money for these courts comes from two basic sources: first, the 105 counties, and second, the state of Kansas. The counties provide the physical courthouses that contain facilities like the courtrooms, the jury rooms, and the clerk's offices. The counties also pay for things that we use in those courthouses like our electricity, our computers, desks, and chairs. But the people of the Kansas Judicial Branch – more than 250 judges and 1,600 employees – are paid by the state. In fact, about 96% of the base budget for the Judicial Branch goes to our wages and salaries. The amount spent on wages and salaries this last fiscal year was \$124 million.

During my speech last year you got to meet some of these folks from communities all across the state. You remember they demonstrated each of the many steps in how a criminal case moves through our court system. This year you deserve to meet more of our experienced judges and employees who have dedicated their careers to Kansans and our system of justice. They represent the many professionals who have been working for you year-round for many years. These people are:

–District Judge Daniel Duncan of the 29th Judicial District (Wyandotte County): 27 years;

- District Magistrate Judge David Casement of the 14th Judicial District (Chautauqua County): 24 years;
- Clerk of the District Court Darla Engel of the 17th Judicial District (Norton County): 39 years;
- Chief Court Services Officer Sara Mays of the 3rd Judicial District here in Shawnee County: 39 years;
- Court Reporter David Holt of the 18th Judicial District (Sedgwick County): 43 years;
- Administrative Assistant Patty Nurnberg of the 5th Judicial District (Lyon County): 32 years.

During this past fiscal year, these folks helped handle approximately 400,000 new cases filed in the courts. They include criminal cases, civil cases, child in need of care cases, juvenile, probate, domestic, traffic, adoptions, and many more. Please join me in thanking them for their service to Kansas.

But it's not enough for me to simply show you some of these professionals who provide you important services on a daily basis. I should tell you how we are getting better in providing them. Because of time constraints, I will mention just a few.

Position Inventory

I will start with a reminder about our Project Pegasus which began in late 2010. In many ways, Pegasus was like an efficiency study of the Judicial Branch. But it was much more than that. Pegasus contained a Blue Ribbon Commission whose members performed the most extensive review of Judicial Branch operations statewide since the 1970s. They then made recommendations to the Supreme Court for improvement. Pegasus also contained Kansas' first ever weighted caseload study. This allowed us to accurately determine, by actual workloads, how many judges and court clerks were needed and where they were needed.

But by limiting its review to the workloads of only judges and court clerks, this study had to leave out the important work of other employees such as you see today: Ms. Mays and 350 probation officers, Ms. Nurnberg and 150 administrative assistants, and Mr. Holt and 130 court reporters, among others. So last year the Supreme Court began a statewide "position inventory," perhaps the first one in our 155-year history.

Our administrative arm, the Office of Judicial Administration, worked with our 31 chief judges and others across the state to complete a comprehensive assessment of all judicial branch personnel needs based not only upon our hard data from our constantly- updated weighted caseload study from Pegasus but also the experience and actual observations of chief judges and their longtime employees. It was designed to be a zero-based budgeting approach backed by as much empirical data as possible. Our goal was to identify specific staffing levels required to provide efficient, effective, and timely service to Kansans in their communities. This project has also allowed us to consider the impact of recent technological advancements on those staffing needs.

I am very proud to report this comprehensive review was completed just 2 weeks ago. Its valuable results are already being put to good use and should be for years to come.

E-filing

One of the Blue Ribbon Commission's main recommendations in Pegasus was to improve efficiencies by making fuller use of advances in technology. Let me update you on our electronic courts project which was first discussed in 2009. I will begin with electronic filing (or e-filing). You all know this allows lawsuits and related legal documents to be filed with the courts electronically. I'm pleased to report that implementation of a statewide e-filing system continues to go well and is nearly completed.

Last January I told you that more than 100,000 court matters had been electronically filed in 2014. I am pleased to now report that more than 400,000 pleadings were filed electronically in 2015. I told you last January that e-filing was established in the district courts of 10 counties. I am pleased to say today that all cases involving attorneys are being filed in the appellate courts and in district courts in 77 counties, including Johnson County, with its JIMS e-filing system. We expect e-filing to be in place statewide by June 30.

I told you in past years that the plan has been for e-filing to eventually be integrated with a different electronic case management and document management system from the one presently used by court personnel in processing cases. This will allow us to shift from a paper-based system to one that will provide judges and litigants with immediate, statewide access to case information, details, and records provided by the Kansas courts. Eventually, the Kansas e-court system will also provide the public statewide 24-hour access to some of the most frequently requested court services from any computer with an Internet connection. And our employees in any county should be able to work from their computers on court business in any other county. This alone is a big benefit because it allows the Supreme Court to more effectively and efficiently manage the state's court system.

The latest development in our multi-million dollar e-courts plan came last fall when the new e-courts committee met to begin discussing exactly how to link the computer systems from courts in 105 counties to become one computer network. Because a variety of systems have developed in the different district courts over time, you can appreciate this is a massive undertaking. As an important first step, one subcommittee is currently surveying the state to identify the existing technical capacities and capabilities of all the different courthouses.

This spring the e-courts committee will look at products available to perform these capacity and capability functions and then put them out for bid. Anticipated completion date of the e-courts project is sometime in 2018 or 2019. That will be a great day indeed as we bring more uniformity to the entire court system to benefit Kansans.

Videoconferencing

As for our increased use of other technology, our Court of Appeals continues with its pilot project to use videoconferencing for certain activities in the appellate courts instead of requiring attorneys from around the state to sustain the expense of coming to Topeka. After months of planning, the Chief Judge of that court, Tom Malone, now has been able to approve its initial use for hearings that need to be continued to a special setting in Topeka.

As for videoconferencing in the district courts statewide, uniform rules and technical standards have been developed by a committee chaired by Judge Wendel Wurst of the 25th Judicial District in Finney County. These include standards for using videoconferencing in certain proceedings, recommendations for the type of equipment and technology to be used, and

proposed rules. Those have now been issued to district judges and staff. We expect video conferencing to begin soon in even more locations.

Collections

We have also increased judicial branch efforts to collect more of the monies actually ordered by the courts such as fees, fines, and court costs. Thanks to a grant we requested, the National Center for State Courts helped us to develop best practices and standardization of our collection methods. Special legislation which we sought and obtained last session should aid in our efforts to help collect more revenue for the state.

Specialty Courts

We have also closely examined our increasing number of specialty or problem-solving courts across 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 a frustrating cycle of criminal offenses, incarceration, and then more offenses.

Acting on another recommendation from Pegasus, our specialty courts commission recently suggested mandatory statewide standards for better serving the users of this unique system. The commission, chaired by Judge Steve Leben of the Court of Appeals, also recommended establishing a process under which specialty courts would be certified every 3 years for compliance with the new standards and maintaining their legitimacy. The proposed standards provide that specialty courts should:

- have measurable objectives;
- follow evidence-based practices;
- have written eligibility criteria; and
- have written procedures for incentives, rewards, and sanctions.

My comments about specialty courts lead me to probably the newest services provided by the judicial branch to Kansans. It was my privilege last month to speak at the opening ceremonies of the first Veterans Treatment Court in the history of Kansas. Our 10th Judicial District, Johnson County, established this court for those military veterans who have committed misdemeanors or lower-level felonies and who are eligible for treatment by the Veterans Administration. Like drug courts, veterans' courts offer alternatives to incarceration offering eligible veterans treatment and court supervision. Contrary to some beliefs, these courts do not treat criminal defendant veterans differently just because they happen to be veterans. Rather, as Judge Timothy McCarthy of that court has said, they help veterans who may be suffering as a result of serving our country.

Several years ago when the 10th Judicial District was considering the possibility of a veterans' court, some thought there simply was no need in a place like Johnson County. So Judge Kelly Ryan called the county jail: the number of veterans behind bars that day? 60. Not all of them would qualify for this program. But the 10th Judicial District has made a great start. I want to again commend their judges and employees for joining with the Veterans Administration and others to start this program.

My last introduction of the day is for one of their team members: Tom Whitworth, a probation officer – and himself an Army veteran. I appreciate their efforts to help those who have served their country.

Judicial Branch Website

My introduction of Mr. Whitworth and our other court professionals, as well as my remarks today, are designed to give you information about the Judicial Branch. But our informational efforts do not end there. For years the Judicial Branch website has been a valuable source of information for the public. But it has become terribly outdated. For too long, too many Kansans have found it difficult to navigate and find information they want to know. So I am pleased to report that last spring our application for a \$50,000 grant from the State Justice Institute was approved. It allows us to work with consultants from the National Center for State Courts to begin a website redevelopment project. When the grant project concludes, we will have specifications we can use to request proposals from website developers to build a brand new site. Kansans deserve a site that will easily keep them well-informed about our Judicial Branch programs and what goes on here in the Kansas Judicial Center.

As an aside, I advised our public information officer, Lisa Taylor, that one of the advantages of the new website is it will then be so much easier for people to find out exactly when my State of the Judiciary speeches will be given. And I wondered whether the website's navigation problems were the reason why we had never needed to hold my speeches in Allen Fieldhouse at KU. Lisa responded with her reason why thousands of people were not standing in line to hear me speak today: perhaps because during my 13 years on the court, they had actually heard one of my earlier speeches and they did not wish to relive that experience. Thank you, Lisa.

Mediation

As we progress, let me tell you our Court of Appeals also continues its pilot project for mediating some of the nearly 2,000 cases filed in that court each year – a mediation where participation is strictly voluntary and where the mediators serve at no cost to the state. So far 32 cases have been assigned to this project. The attorneys from seven of those cases in turn agreed to try mediation. Three of those seven were settled and those cases were dismissed. This is a modest beginning to be sure, but we look for more to come because settlement of cases can save resources not only of individual Kansans but also their appellate courts. Just as important, it can permit the judges of the appellate courts to concentrate their efforts on the other hundreds of cases that remain on their dockets every year.

Time Standards

And speaking of appellate courts, 2 months ago the Supreme Court created a committee to help review and revise time standards for decisions in appellate court and district court cases. Justice Carol Beier chairs the committee. It includes judges from the Court of Appeals, judges and magistrate judges of the district court, civil practice lawyers, prosecutors and criminal defense lawyers, and the Chief Deputy Attorney General Jeff Chanay. The committee held its first meeting 2 weeks ago. Its goal, after reviewing time standards from the National Center for State Courts and the other 49 states, is to present a comprehensive set of recommendations for the Supreme Court to consider by this fall.

Language Access

In today's ever-changing world, it is clear that more and more users of our court system do not have English as their primary language. In Kansas we have experienced more than 30 different languages in our courts, ranging from German Mennonite to Burmese. When the courts assign interpreters for them, we need to ensure the quality and accuracy of their services. So our Language Access Committee drafted a mandatory Code of Professional Responsibility for foreign language interpreters. The committee, chaired by Judge Eric Commer of the 18th Judicial District in Wichita, has also prepared an agreement for interpreters to sign stating they will abide by this code of ethics. These agreements will be kept on file and the code obviously will be enforced. These proposals and related rules have been submitted to the public for your comment. Judge Commer's committee will analyze your comments and make its final recommendations to the Supreme Court.

So as you can see, your courts are continually trying to improve their operations through these and other methods. But instead of proceeding alone, we welcome your input, as evidenced by the public comment period for these language access proposals. But if you prefer a more direct communication with the Supreme Court justices and the Court of Appeals judges, you always have that opportunity. The 14 Court of Appeals judges will visit numerous communities this year as they continue their long-standing practice of hearing cases argued across the state.

Community Outreach

Beginning 5 years ago, the Supreme Court started a similar tradition. Most recently, in October, we held court in the high school auditorium in Garden City and heard several cases argued. More than 500 people from southwest Kansas attended our session. Last April we heard cases argued at Fort Hays State University where more than 600 attended. And I am pleased to announce that on March 9 – 5 weeks from today – we will hear arguments in the auditorium of Topeka High School just a few blocks from here. These hearings will be at night so that people who work during the day, including our legislators, can come and see for themselves who we are, what we do, and how we do it. I anticipate the same excellent turnout as when we heard cases argued in the old Supreme Court courtroom in the Capitol building to help celebrate Kansas' 150th birthday in January 2011. This April we will hear arguments in yet another Kansas community – our tenth since we started in 2011.

Now during my remarks, I have essentially given you, the Kansas taxpayer, a report card. Mainly about the innovations of your judicial branch and its increased efficiencies. It might be regarded as a very businesslike, mere cataloguing of these items. So I apologize for any dry recitation as I report to you on the state of the Judiciary. But as evidenced by our many trips to Kansas communities, increasing our efficiencies, although important, is not our main concern. After all, it would be a more efficient use of the Supreme Court's time:

- to not make the 5-hour drive to Garden City or 4-hour drive to Hays;
- to not meet with the community leaders;
- to not speak to hundreds of students at the surrounding schools and colleges;
- to not visit with hundreds of members of the public after oral arguments;
- and to not have to drive back to Topeka.

In short, our 3-day trips included only 2-3 hours of actually hearing oral argument – a function that could have been performed much more easily, and more efficiently, by simply staying in this courtroom. The same holds true for the similar activities of the Court of Appeals in its trips outside of Topeka. And if we are ever tempted to exalt efficiency over all else, we would do well to remember the wisdom of the statesman, Winston Churchill, who said, "Do not let the better be the enemy of the good." Put another way, the good to be accomplished with these trips is this: helping our local courts demonstrate to the people of Kansas that they do have a system of justice they can believe in, a system of fair and impartial courts. And based upon the great number of enthusiastic comments we receive during and after our trips, we are accomplishing that goal.

Why is this so important? To answer this question, I call upon the Greek philosopher Aristotle, who said more than 300 years before the birth of Jesus: "At his best, man is the noblest of all animals; separated from law and justice, he is the worst."

The professionals of your judicial branch – some of whom you have met today – are doing their best, all year long, to keep Kansans the noblest of all.

Thank you for listening. I wish you Godspeed.