

State of the Judiciary
Chief Justice Lawton R. Nuss, Kansas Supreme Court
Kansas Legislature, Topeka, Kansas
March 15, 2017

Speaker Ryckman, President Wagle, distinguished members of the House and Senate, honored guests, and my fellow Kansans.

In 2011 and 2012 I stood in this same spot and told you about my great- grandparents. They once lived in a dugout carved in a creek bank outside Dodge City where they were homesteading their claim. I also said that as a descendant from these humble beginnings, I considered it a special honor to stand before all of you in this magnificent chamber of the people – and to report on the judicial branch of my native state. I still consider it a very special honor.

I thank Speaker Ryckman for generously offering me this third opportunity. And I thank President Wagle for graciously agreeing to the scheduling of this event.

Mr. Speaker, I also thank you for inviting my judicial colleagues who are with me today: the justices on the Supreme Court and the judges on the Court of Appeals. For many years the Supreme Court justices worked in the Capitol building, holding their proceedings in the courtroom here. So members of our three branches of government got to see one another on a regular basis, and perhaps they got to know each other as individuals. Once the courts moved to the Kansas Judicial Center in 1978, however, those opportunities for forging personal relationships between jurists and legislators decreased. So it's nice to have an occasion like this to get to know each other a little better because, after all, we all work for the people of Kansas. Or as cowboy singer and bronc rider Chris LeDoux would say, we're all "riding for the [Kansas] brand."

And toward that end, we have been allowed to schedule a reception outside the old Supreme Court chamber after my remarks. To help you navigate that reception, please permit me to now briefly introduce the jurists by court and by seniority. Starting with the:

Supreme Court justices:

- I am native of Salina: central part of state
- Marla Luckert: native of Goodland (western border)
- Carol Beier: native of KCK (eastern border)
- Eric Rosen: native of Topeka
- Lee Johnson: native of Caldwell (southern border)
- Dan Biles: native of El Dorado
- Caleb Stegall: native of Lawrence

Court of Appeals judges:

--Chief Judge Karen Arnold-Burger: of Overland Park (And recent recipient of an Award for Teaching Excellence as a faculty member of the National Judicial College in Reno, Nevada)

--G. Joseph Pierron, Jr.: Lawrence

--Henry W. Green, Jr.: Leavenworth

--Stephen D. Hill: Paola

--Michael B. Buser: Overland Park

--Melissa Taylor Standridge: Leawood

--G. Gordon Atcheson: Overland Park

--David Bruns: Kansas City, Kansas

--Tony Powell: Wichita

--Kim Schroeder: Hugoton

--Kathryn Gardner: Topeka

These are your appellate jurists.

A few minutes ago I mentioned cowboy singer Chris LeDoux and "ridin' for the brand." That lyric comes from his song, "You Just Can't See Him, From The Road." Now LeDoux is talking about cowboys – working out in the pastures far away from public view and any public acclaim but still in the saddle and still working. The same can often be said about many of the 250 judges and 1600 employees in the judicial branch. Kansans don't see us until they need us. So allow me to tell you a little bit about what "you just can't see, from the road" – but only from within the courthouses in our 105 counties.

This task creates a bit of a challenge. Because many of you are new to the legislature and may be unaware of judicial branch events the last few years. Others of you may not be new but for one reason or another were unable to attend my State of the Judiciary speeches after 2012. Still others may have been keeping close track of our events. So I have tried to strike a balance among these groups. My apologies to those who already know a lot of this.

In 2010, the Supreme Court had to close all Kansas courts for 4 days for lack of money. While virtually unavoidable due to the poor condition of the economy, it motivated the Court to see if we could improve our administration of justice, be more efficient, and make best use of the hard-earned money of Kansas taxpayers. So we started Project Pegasus. It consisted of two parts: (1) a weighted caseload study to measure the actual workloads of all district courts in our 105 counties and (2) a 24-person Blue Ribbon Commission.

The commission's purpose was to review the judicial branch operations and make recommendations to the Supreme Court for possible changes. In doing so, it performed the most extensive review of Judicial Branch operations statewide since the 1970's. One of its members, John Wheeler, is now a member of this House. Another member, Sam Williams, is now the Secretary of the Department of Revenue.

One of the Blue Ribbon Commission's main recommendations in Project Pegasus was to improve Judicial Branch efficiencies by making fuller use of advances in technology. So let me start by updating you on our electronic courts project which I first talked about in my speech here in 2011.

I will begin with electronic filing (or e-filing). You probably know this enables legal documents to be filed with the courts electronically. At this time I'm very proud to report some exciting news. After years of work, implementation of an e-filing system was completed in 2016 for all state courts – in 105 counties and in both the appellate courts.

The first years were funded through federal grants. But the completion was made possible because the legislature earmarked some docket fee revenues for the project the last several years. I join many Kansans in thanking you for those important appropriations. It means hundreds of thousands of court documents are being filed without people having to travel to the courthouses or put them in the mail.

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

Over a year ago the planning committee for our multi-million dollar e-courts project began to discuss exactly how to link the computer systems from courts in 105 counties to become one centralized computer network. Because a variety of systems have developed in the different district courts over time, you can appreciate this is a massive undertaking. One subcommittee surveyed the state to identify the existing technical capacities and capabilities of all the different courthouses. The full committee then received vendor bids in response to our request for proposal based upon that survey. In about 3 weeks the committee will observe vendor demonstrations as a step toward final selection. During this time, another subcommittee has been looking to standardize the various practices currently performed throughout all the state courts.

We anticipate that the statewide e-courts project will be completed within 3 years. That will be an important day because it will bring more uniformity and efficiency to the entire court system to benefit Kansans – one of the greatest achievements since court unification in the 1970's.

Another one of the 77 Blue Ribbon Commission recommendations I wish to touch upon today is the weighted caseload study. This statewide study allowed us to accurately determine, by actual workloads, how many judges and court clerks were needed and where they were needed in the state. But it excluded any employee not working directly in the offices of the clerks of the court, such as administrative assistants, court reporters, and probation officers.

So last year we conducted a "position inventory" to include these additional 700 employees. This process reviewed not only the hard data from the continually-updated weighted caseload study

from Pegasus, but it also considered the experience and actual observations of our 31 chief judges and their longtime employees. This assessment, together with the updated weighted caseload information, helps us determine needed personnel levels on an ongoing basis. It also allows us to consider the impact of recent advancements in technology on those staffing needs.

These studies and our increased use of technology such as e-filing have indeed been valuable tools in modernizing court operations. That in turn benefits the Kansans we serve.

But as we are gaining efficiency through them, we are also losing efficiency through increased turnover of highly experienced judges and employees. Besides retirement, these losses are primarily because of low compensation. For the same reason, we often have had real trouble finding suitable replacements in many courthouses.

According to the polls, the team from my alma mater, the University of Kansas, was recently ranked #1 in the nation for playing basketball. A lot of Kansans are rightfully proud of that – even some diehard K-State fans like Justice Luckert and Wichita State graduates like my son Graham. By contrast, according to the National Center for State Courts, Kansas district judges (the trial judges in your communities), rank next to last in the nation for what they get paid. And only 45th when adjusted for cost of living.

The National Center for State Courts does not maintain information from all other states that we can compare with the compensation earned by our (1) court employees and (2) district magistrate judges. So using a grant, last year we hired the experts from that organization to study these two groups.

For magistrate pay, among the things the National Center's compensation study revealed:

A little over 22% is needed to raise district magistrate judge salaries to market level.

More than one-fourth of our magistrate judges who responded to the survey indicated they are seeking employment outside the judicial branch. The number one reason given? Compensation.

For employee pay, among the things we learned:

More than one-fourth of our employee positions have starting salaries below the federal poverty level for a family of four.

Every single judicial branch job classification is below market pay rate, some by as much as 22%.

Approximately 700 of our 1600 employees are paid about 18% below market.

Nearly one-third of our employees also need to work jobs outside the Judicial Branch to make ends meet. This is 24 % higher than the Kansas average.

One hour before my State of the Judiciary speech in 2014, legislators voted to give our employees a 2% cost of living adjustment. In my remarks, I led the audience in applauding and publicly thanking the legislature. Outside of that adjustment, no compensation increase has been provided to all Judicial Branch employees or judges since July 2008 – nearly 9 years ago.

Conclusion: It is human nature for people to devote their time and money to those things that are most valuable to them. So all Kansans may want to ask themselves: what value do we place on the administration of justice in our state?

Getting down to brass tacks, or hard facts, what do all these people in the Judicial Branch do for the money you currently invest in them? Well, last fiscal year, they processed almost 400,000 new cases filed in the district courts. This caseload included more than 20,000 felony cases and more than 14,000 misdemeanor cases. They supervised nearly 17,000 convicted criminals on probation, including 3,000 convicted sex offenders. They protected almost 7,000 children who were in need of care by ruling on requests related to their safety and wellbeing. And they protected nearly 14,000 people by issuing restraining orders, to say nothing of the civil cases, probate, juvenile, domestic, traffic, and others.

Last year our court clerks also collected more than \$180 million. This included restitution for crime victims and monies for private judgments, for some state agencies, and for the general funds of counties and the State. Of that \$180 million, we collected \$53 million to fund state government.

Returning to a few other Blue Ribbon Commission recommendations, one generally was to increase Judicial Branch use of technology in addition to e-courts. One specific example I will share is the expanded use of:

Videoconferencing: Our Court of Appeals continues with its pilot project to use videoconferencing for certain activities instead of requiring attorneys to sustain the expense of coming to Topeka. Last year it heard its first cases argued by videoconference. In the latest case, the judges sat in their courtroom in the Judicial Center and the attorneys spoke from their offices in Hill City more than 250 miles away. Everyone involved pronounced it a success; so look for more cost-saving videoconference arguments in the future.

Specialty Courts: The Commission also recommended we continue examining the effectiveness of our 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. National research has shown that drug courts can be effective in reducing offender recidivism. That in turn saves considerable judicial and correctional resources.

Two new types of specialty courts have recently been established with this same goal in mind. Johnson County District Court started our state's first veterans' court in 2016 for those 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. They do not treat criminal defendant veterans differently just because they happen to be veterans. Rather, they help veterans who may be suffering as a result of serving our country. The veterans' court programs allow eligible veterans to voluntarily participate in a 12-18 month program of frequent court appearances, drug and alcohol testing at least twice a week, treatment, recovery support meetings, and mentoring by another veteran. As a veteran myself, and the grandfather of a soldier who deploys to Afghanistan next month, I am especially pleased to report that currently

about 20 veterans are participating in the program with the first one graduating several weeks ago.

Similarly, Douglas County District Court established a Behavioral Health Court to target those whose mental health issues may have contributed to the criminal charges against them. Inmates with mental health issues or dual diagnosis of mental illness and substance abuse are released from the county jail to the court, which then orders and monitors treatment. The goal is to dismiss the charges after a period of successful intervention and treatment. The Behavioral Health Court expects to divert as many as 30 inmates from the jail each year. This program represents excellent collaboration among the court, the District Attorney, Court Services, a behavioral health center, local law enforcement, and other community based treatment providers.

Time Standards: Acting on another Commission recommendation, the Supreme Court created a committee to help review and revise time standards for decisions in appellate court and district court cases. The committee includes judges from the appellate courts, judges and magistrate judges of the district court, civil practice lawyers, prosecutors, and criminal defense lawyers. While its work is not complete, it has resulted in the Supreme Court adopting internal standards for timeliness of issuing its decisions.

Those standards are:

25 percent of all decisions released to the public within 90 days of oral argument 50 percent released within 180 days; and

95 percent within 270 days.

Death penalty cases are the exception.

Supreme Court travel: My last topic on the State of the Kansas Judiciary is not a Commission recommendation but nevertheless of great value. That is, the appellate courts have taken their proceedings directly to the people of Kansas. The Court of Appeals has heard cases argued across the state for years.

Starting in 2011, the Supreme Court followed that lead and heard cases in Salina, Greensburg and Wichita. Since then, we have heard cases in Garden City, Hays, Hiawatha, Hutchinson, Kansas City, Overland Park, Pittsburg and Topeka. Later this month we will be in Winfield. That session will be our sixth one held in the evening; so that people who work during the day can come and see for themselves, who we are, what we do, and how we do it.

To date it appears that Hays has the record turnout: nearly 700 people attended. But remember, Winfield, records are made to be broken.

CONCLUSION:

During recent times, it has become especially clear that Americans hold different views on important subjects: Democrats and Republicans; conservative Republicans and moderate Republicans; Progressives and Libertarians, maybe even Jayhawks and Shockers. One side quotes its guru while another side quotes its own champion from history. In my past State of the Judiciary speeches I too have quoted historic figures. They ranged from Abraham Lincoln in 1859 to Winston Churchill in the 20th century. And tonight I quoted a more recent, but lesser-known, Chris LeDoux.

But for a conclusion, I searched for someone who not only is well-known but also is nonpartisan – who is as uncontroversial as possible. I found someone who served as head of the Army; as the unanimously-elected chairman of the constitutional convention of 1787; as the first president of the United States – twice receiving all electoral college votes; a man who refused to serve more than two terms as president because he was concerned about abuse of power. I speak, of course, of George Washington. So what did President Washington say that is of relevance to us this afternoon?

"The administration of justice – is the firmest pillar of government."

Your Kansas judges and Judicial Branch employees have been proudly "firming up" this pillar of government for the last 156 years. With your help, we can look forward to doing so for years to come.

Now I am well aware you are facing many challenges during this legislative session. Maybe some of the biggest ones ever. But I also believe that you will continue to take fair account of the needs of the Judicial Branch – our judges and employees – as we administer justice to Kansans.

And finally, for the good work you have done for the people of our state in these difficult times, I want to express my gratitude.

I look forward to visiting with you at the reception. I bid you Godspeed.