

State of the Judiciary Address
Chief Justice Duane Benton, Missouri Supreme Court
Message to the Missouri Legislature
January 13, 1999, in Jefferson City, Missouri

Mr. Speaker Mr. President Members of the 90th General Assembly:

"The life of the law has not been logic. The life of the law has been experience." So said Oliver Wendell Holmes—one of the most famous justices of the United States Supreme Court. It reminds me, though, of an old Missouri saying: "Experience is what you get, when you go looking for something else."

The first experience I should tell about—for the three new senators and 20 new representatives not here last year—is my own experience with the General Assembly. My first connection to state government was working as an intern right here in the House of Representatives. Later, while in law school, I drafted legislation for House members. More recently, the Senate confirmed me to four different positions on boards and in the executive branch of state government. I have been at hearings that seemed to last forever, and others that were seemingly over in seconds. On a personal note, I have enjoyed serving as Chief Justice for the past 18 months, and I look forward to my next six months in that capacity. I thank you for the hospitality you have shown, and appreciate my two opportunities to address you.

In this State of the Judiciary address, I want to report to you on the experience of the third branch of government, and how we together can build on that experience to improve the structure of the judiciary.

Twenty years ago, the General Assembly—at the request of the judiciary—examined our branch of government and proposed a constitutional amendment that reorganized the structure of Missouri courts from top to bottom. This became what is now Article V of the Constitution.

Among other reforms, that new Article V unified the courts of this state and organized them into a hierarchical pyramid. As a result, the courts can better serve your constituents, and cases move through the system as they never had before. I am proud to tell you there are no case backlogs in Missouri courts. Your amendment has worked. For 20 years, there has been no major change in the structure of the judiciary. For example, during those two decades, we have handled more and more cases, but have had very few new judgeships created.

The Article V constitutional amendment took effect on January 2, 1979. Today, in 1999, based on 20 years experience, I present some changes to the structure of the judiciary that will help achieve our ultimate goal: the prompt access to justice by the people of this state from a judiciary second to none. As the insightful commentator Alexis de Tocqueville observed about a century and a half ago, Americans "consider society as a body in a state of improvement, humanity as a changing scene, in which nothing is, or ought to be permanent; and Americans admit that what appears to them today to be good, may be superseded by something better tomorrow." This General Assembly—bridging the 20th and 21st centuries—can make some course corrections that will build an even better judiciary.

During this session, the judicial branch will ask you to make the clerk of each circuit court an appointed position. Election of circuit clerks no longer suits the needs of the modern judicial

system. As late as when the 1979 constitutional amendment was adopted, circuit clerks were locally paid and had more discretion in the performance of their duties.

Twenty years ago, the General Assembly considered whether circuit clerks ought to be elected. The 1979 constitutional amendment left the matter open. As amended, the Constitution now reads: "Until otherwise provided by law, circuit clerks in each circuit and county shall be selected in the same manner as provided by law on the effective date of this article ". The Constitution invites you to address this issue.

Today, circuit clerks are state employees, paid by the state, performing their duties to rigorous state standards. As a result, the position of circuit clerk has fewer and fewer discretionary duties. Missouri law details specifically how case files are handled, the deadlines for action, and how money is collected and disbursed. In contrast, county commissioners, sheriffs, prosecutors—among others—enjoy a great deal of discretion in carrying out their jobs. In accordance with court guidelines, the circuit clerk supervises data processing for the court, coordinates the court's staff, and docket cases for each judge. Additionally, by Missouri statute, circuit clerks must help citizens seeking domestic relations restraining orders, or requesting enforcement of visitation orders.

For those of you with in-district assistants, electing circuit clerks is like electing your in-district assistant. More generally, electing circuit clerks is like electing the Secretary of the Senate and the Clerk of this House. Legislative assistants and your clerks are highly responsible positions that ensure the day-to-day functioning of the General Assembly. They have many administrative duties that do not end when session ends. Your assistants have few discretionary duties, but instead carry out their jobs subject to your direction as the elected decision-maker. No one should seriously recommend that these legislative clerks be elected by the voters of Missouri.

More to the point, there is no training program or background that qualifies a person to be a legislative clerk or district assistant—they have to be appointed to the position and "learn on the job". Similarly, there is no training program or background that qualifies a person to be a circuit clerk, other than on the job experience.

The time has come for Missouri to join the growing number of states that appoint most of their judicial administrators. Missouri spends a great deal of state money and time in order to train newly elected circuit clerks to fulfill the requirements of their jobs. We should not lose a highly trained employee after just four years, often to someone with no background or qualifications for the job.

Last week, I met with the leadership of the Circuit Clerks Association. While there are differences of opinion and degrees of commitment, about two-thirds of the circuit clerks themselves believe that their positions should be appointed. On behalf of the Judicial Conference, I endorse legislation to make the position of circuit clerk appointed rather than elected.

A second structural issue is the position of commissioner in the circuit courts of this state. In commendable efforts, in various areas of the law, the General Assembly has enacted legislation that commissioners, rather than judges, hear certain types of cases. Currently, Missouri law establishes commissioners in certain counties and circuits to hear probate, juvenile, domestic relations, drug-related, traffic-related and landlord/tenant cases. There are now over two dozen

(26, to be exact) full-time circuit court commissioners in this state, and a couple of part-time commissioners.

These commissioners have served well, meeting the needs of your constituents in a number of critical areas. Commissioners have gone beyond the courthouses to serve the people, such as in St. Louis County, where traffic court commissioners hear cases all over the county. Juvenile court commissioners hear cases at juvenile centers and other settings away from the main courthouses.

However, as the number of commissioners has multiplied, the challenges to their authority have also increased. The 1979 constitutional amendment simply does not anticipate commissioners acting as judges. Serious questions have been presented to the Supreme Court regarding the authority of circuit court commissioners to sign final court judgments, to issue warrants and to take other judicial action. These questions continue to be raised. In disapproving Senate Bill 614 last year, the Governor questioned the wisdom of extending judicial authority to persons not selected as are other trial court judges.

I am pleased to stand with the Governor and call for the conversion of circuit court commissioners to judges. Conversion could take place no later than the expiration of the current commissioners' terms. This legislation has almost no cost, since commissioners are paid at the same level as judges. Passage of this legislation will eliminate the nagging questions about those who decide the people's cases.

As I travel the state of Missouri as Chief Justice, when I walk the halls of this building, I am frequently asked about court automation. No project will enable the judiciary to better serve your constituents than new court technology. Court automation allows the judicial system to operate efficiently within the structure mandated in 1979. You are to be commended for recognizing the needs of your constituents by enacting and continuing to support the automation of the courts. Missouri is now recognized as the leader in the country in computerizing our law enforcement and courts.

The federal government searched the states last fall for a site to experiment with linking juvenile officers, in order to study the effect on juvenile crime. They quickly settled on Missouri as a model for the nation. Now all juvenile offices through the state are linked. A local juvenile officer can ask all other juvenile officers about the history and status of particular juvenile offenders, in order to tailor services for a specific juvenile. Congress also chose Missouri as the state to pioneer a database that collects background information on juvenile offenders.

Public access to case files on the Internet has made its debut. In Jackson County, the public can access on-line probate information. Court automation is developing a system for all citizens to access court dockets without having to visit the courthouse. The Eastern District of the Court of Appeals will have electronic access to its case files within the next month.

The Eastern District Court of Appeals can have such public access because that court is the first appellate court in America to use the same case management system as is used in the trial courts. Other states' courts have to convert data from the trial courts' systems, to the system used by the appellate court. Missouri has adapted the same case management for both trial courts and appellate courts.

As I reported last year, we are now installing court automation throughout the state. The groundwork has been laid for an automated judicial system that will be the national model for some time to come.

I should address other items before you this year. Several filed bills would exclude various persons from jury service. This issue was addressed in the 1995 report of The Advisory Commission on the Organization of the Judicial Department, a commission appointed by the governor. That Commission noted "jury service is an obligation and privilege of citizenship from which no eligible citizen should be disqualified or exempt." The Commission also said, "The ability to be excused upon request contributes substantially to reducing a representative jury since it is likely that those who can avoid jury service will do so." I request that the General Assembly most carefully consider legislation excluding any person from jury service, in order to preserve one of the great hallmarks of our justice system: the right to trial by a jury representative of the community.

But I do recommend that you lessen the burden of jury service. Juror compensation is a glaring shortfall. The Supreme Court recently hosted a diverse citizen's group of educators, law enforcement, community leaders and others to solicit changes in the judiciary to meet the needs of Missourians into the 21st century. This group cited inadequate juror pay as a major challenge in Missouri justice. This issue was also noted in 1995 by the Governor's Advisory Commission I earlier mentioned. Statutory minimum jury compensation remains \$6 per day, and has been so since 1957—for over 41 years. Such minimal pay causes many of your constituents to avoid juror service due to the financial hardship of serving on a jury.

Inadequate juror compensation most hurts those called for lengthy jury trials. The National Center for State Courts has proposed that the states adopt legislation that keeps low levels of juror compensation for short service, say 2 or 3 days, but then dramatically increases juror payment for longer service. I am pleased to report that the average length of a jury trial in Missouri is less than 3 days, so an increase in compensation beyond such a point could ease juror hardship while not greatly increasing total jury expenses. Again, I am pleased that proposals to improve jury compensation are serious this year.

I began my remarks by referring to the "life of the law", which is not logic, but is experience. Another definition of law also focuses on experience and links it to the "goal of the law". Samuel Johnson, a non-attorney author, defined law as, "the last result of human wisdom, acting upon human experience, for the benefit of the public." From experience, we know the unified court system of 1979 has well served your constituents for the last 20 years. Experience shows that some course corrections will make the courts even better able to serve the needs of the public for years to come.

Have a great session!