

State of the Judiciary

Chief Justice Stephen N. Limbaugh, Missouri Supreme Court

Message to the Missouri Legislature

January 15, 2002, in Jefferson City, Missouri

President Maxwell, Speaker Kreider, distinguished members of the Senate and House of Representatives. My office in the beautiful red brick building across the street is adorned with photographs and wall hangings and tables full of mementos and newspaper clippings and all sorts of personal reminders of my family and my career and my many blessings. Prominently displayed on one wall is a framed copy of the collection of photographs of each of the members of the House of Representatives who served in the 56th General Assembly some 70 years ago in 1931 and 1932. The original of the collection hangs on the fourth floor of this building, and my copy is one of the items in my office that I cherish most. You see, one of the photographs depicts my grandfather, the original "Rush Limbaugh," who passed away just six years ago at age 104.

My grandfather served only one term. He didn't run for reelection. He said he couldn't afford it! But he looked back on those two short years with immense pride. While here, he co-sponsored the bill that created the Missouri State Highway Patrol and another bill that consolidated many dozens of tiny rural public school districts like that which operated the one-room school he attended as a child. And as a lawyer-legislator, he was one of three members of the House selected to prosecute the impeachment trial of the state treasurer for misdeeds in office. Although my grandfather served only one term, he always regarded the honor of his service as a member of the House of Representatives to be one of the highlights of his long career and, indeed, one of the highlights of his long life.

I learned about the honor of service, the honor of public service, first from my grandfather, then from my father, who is a senior United States District Judge in St. Louis. Having served on the bench myself for nearly 15 years, first as a circuit judge and now as a judge on the Supreme Court, I appreciate more than ever the honor of my office and the responsibilities that go with it.

The honor of serving the public is the theme of my presentation on the state of the judiciary. Those who serve as judges, like those of you who serve in the General Assembly, must do so for the honor of serving the public. In my mind, the best account of the state of the judiciary is to show how our judiciary lives up to that honor. To that end, and on behalf of our judges at every level of our judiciary, I invite you to our courthouses, so that you may see first hand the administration of justice in our great state. A visit to our courthouses, for you legislators who may be concerned about the doctrine of separation of powers, is no breach of protocol. To be sure, our forefathers built into our system of government a healthy tension between the three branches of government, but that tension should not preclude a healthy interaction between the three branches of government.

This very afternoon, we will hear oral arguments in the Supreme Court. You are invited. There are two cases on the docket, and they are representative of our usual fare in the sense that they are cases that present the novel and difficult and complex legal issues of the day. The first case is *State of Missouri v. Planned Parenthood and The Director of the Missouri Department of Health*, which deals with the constitutionality of and eligibility for family planning appropriations related to abortion services. The second case is *State of Missouri v. Andre Cole*, the direct appeal of a death sentence. If you cannot attend in person, you may tune in on the Internet.

Should you favor us with a visit, you will see the members of the Court engage in a vibrant, if sometimes esoteric, dialogue with the lawyers representing their clients. You will see the difficulty and complexity of the issues raised by the parties. You will see how we members of the Court struggle with those issues in an effort to follow the law as written in our constitution and the statutes you enact. And it is our hope that you will understand that the resolution of the cases depends not on our personal preference, or even on our personal notion of the equities involved, but on our abiding oath to follow the law as written in the constitution and the statutes you enact.

This afternoon will be the last time our colleague, Judge John Holstein, sits with the Court, as he has announced his retirement after 27 years on the bench. Judge Holstein is the only judge in the history of the state of Missouri to have served at every level of the judiciary — as magistrate/probate judge, associate circuit judge, circuit judge, judge of the court of appeals, and for the last 12 years, judge of the Missouri Supreme Court.

Though the difficult and weighty legal issues of the day are addressed in the Supreme Court, it is even more important that you visit the county courthouses throughout the state where every day, in hundreds of cases, justice is meted out person to person, face to face. The judges there will welcome you.

The decision-making process in the trial courts is different than that in the appellate courts. In general, appellate courts address only issues involving the application of the law, and they defer to the factual determinations made in the trial courts by judges and juries that have had the benefit of seeing the witnesses and hearing their testimony in person. Those of you who have served on juries know the difficulty and frustration of sorting out conflicting testimony, of determining whether seemingly believable witnesses are telling the truth, fabricating falsehoods, or perhaps simply mistaken. Trial judges sort out that testimony for a living, presiding over the great majority of cases that are tried without a jury. But that is only part of the job. After the factual determinations of a case are made, it is necessary to fashion a proper resolution. It is a hard thing to sit in judgment on another person, whether in the imposition of sentence in a criminal case, or the assessment of damages in a civil case, or perhaps the determination of custody and support in a dissolution case. The resolution of such cases requires more than the mere application of the law to the facts, the resolution requires the exercise of our sound discretion.

When you visit your county courthouse, go first to the criminal courts. There you will find judges striving to maintain the balance between society's need for vigorous prosecution of criminal offenders and the equally important need to ensure to those who are accused of criminal offenses the fundamental and inalienable rights associated with the presentation of their defense. The vast majority of cases are disposed by pleas of guilty without a trial, and, as I mentioned, most of the cases that go to trial are tried without a jury. In all of those criminal cases, the judge must exercise his or her sound discretion in imposing punishment. You will see some cases that call for righteous indignation and a severe sentence, and other cases that call for a measure of compassion and a chance for redemption on probation. You will see that the saving of souls is a large part of the judge's work, and that for each judge, the dispositions in criminal cases are ultimately matters of conscience.

Allow me to offer two examples from my own experience that are representative of the kinds of cases on the dockets of the criminal courts. As a circuit judge, I heard only one death penalty case. Under the law, the range of punishment in those cases is simply death, or life imprisonment without parole. Like all death penalty cases, the crime in this case was horrendous. It involved an execution-style murder. The victim was bound up and shot in the back of the head. And so the prosecutor justifiably argued that the death penalty should be imposed. Defense counsel argued for a life sentence because the defendant did not have a significant history of criminal offenses, and, in fact, the defendant himself was genuine in expressing remorse for his conduct and expressing sympathy for his victim. In addition, he had pled guilty instead of going to trial. Unlike most of the defendants we see in capital cases, this man seemed salvageable, and I sentenced him to life in prison without parole.

The other case involved a defendant charged with felony child abuse. She was the mother of the child in question. The young child had been beaten and sexually abused. During the plea of guilty, it became clear that although her boyfriend was the actual perpetrator, the defendant, who had not been in any danger herself, knew of the abuse and allowed it to go on. Evidence was also developed, as is often the case, that the defendant had been the victim of similar abuse during her own upbringing. The discretionary call to be made was how best to cut the generational cycle of abuse — to send the defendant to prison so that she would understand the consequences of her acts and be deterred from those acts in the future, or to try to rehabilitate her by placing her on probation with conditions that she undergo counseling and therapeutic treatment and courses on parenting skills. I learned, however, that on more than one occasion before the offense occurred, the defendant had been reported to the Division of Family Services and that earlier efforts to rehabilitate her obviously had failed. In that case, I sent the defendant to prison.

As I said, these are the kinds of cases that confront our judges every day. They are hard cases, and it is not unusual for us to second-guess the wisdom of our decisions. Was the punishment too harsh? Was it not harsh enough? Have we lived up to the honor of our office by doing justice in the case?

On your visit to the courthouse, I would also direct you to the courtrooms in which our

judges hear domestic cases — dissolutions, motions to modify custody and support, cases involving emergency orders of protection, and the like. In the cities and the larger outstate circuits, domestic cases are heard in statutory family courts, presided over by judges who have special training in that area of the law. The common experience of judges who hear domestic cases is that all too often they see people at their worst, people who are ordinarily good and decent folks, but whose lives are in turmoil and trauma because of the breakup of a marriage or a battle over custody of their children. In many cases, it is no small chore for judges to divide the marital property, but that chore is nothing compared to the obligation to divide up the kids. It should be no wonder to you that the rate of attrition for judges working in the family courts is very high, and most judges transfer to the criminal or civil courts within two or three years. Except for a few saintly types like my friends Judge Tom Frawley in St. Louis City and Judge Susan Block in St. Louis County, burn out is unavoidable. Our sense of empathy for the parties to those cases — the anguish that we feel for both the parents and the children — can, after a time, be difficult to bear.

To draw on my own experience once again, I remember the visit to my court by my then state representative, and your longtime colleague, Mary Kasten. Undoubtedly, you remember that she was actively involved in issues pertaining to children and families, and on the day of her visit, I was hearing a child custody case. At the request of counsel for both sides, I agreed to conduct a closed-door examination of the child who, as I recall, was 8 or 9 years old. Although the arrangement was that neither the parents nor the lawyers would be present, everyone agreed that Representative Kasten, who as you know has always had a soothing influence, could sit in with me.

I took the child to the jury room, and my court reporter and I sat with him at the conference table while Representative Kasten sat off to the side. I began with gentle questions designed to impress upon the child the importance of telling the truth and to assure the child that I was there solely to look out after his best interest. After I spent some time with questions about his school and his outside activities and his friends, I got around to the tough part. The exchange was something like this:

Do you love your mom? Yes.

Do you love your dad? Yes.

Do you like to be with your mom? Yes.

Do you like to be with your dad? Yes.

If you can't be with both of them, would you be happier with your mom or with your dad? And then he said, I want to be with both of them and I want them to be together.

Now I don't remember how I decided this case, but as you can see, there was no good solution. In any event, Mary Kasten went away with the kind of understanding of the

work of the courts that I wish all of you could have.

That said, whatever you learn from your trip to the courthouse still will not give you a full picture of the obligation of judges. Our judges know full well that the effort to live up to the honor of their office must not stop at the courthouse door and that the honor of their office means more than the competent and professional processing of the cases. In that regard, our judges statewide donate their time and talents to a host of activities that pertain to the improvement of the administration of justice as a whole. Some judges serve on our continuing education committees that provide essential training not only for judges, but also for court clerks and court reporters and juvenile officers. Most courses are taught by the judges, themselves, some of whom have become master teachers. Other judges, like Judge Robert Dierker of St. Louis, contribute with their writing skills. For instance, Judge Dierker has been instrumental in the preparation and publication of our scholarly and immensely practical Trial Judges Bench Books, and he recently published an invaluable treatise on the practice of criminal law in Missouri.

My immediate predecessor as chief justice, Judge Ray Price, chairs the Drug Court Commission, and serves with several other judges, legislators and executive branch officials. Certainly the work of that Commission, which is to make available alternatives to incarceration for non-violent drug offenders, is critically important in these times where there is no money to open new prisons, even those that are already built.

In addition, Judge Richard Teitelman of the Court of Appeals in St. Louis, who is sight-impaired, chairs the Supreme Court's Ad Hoc Committee on the Courts and the Disabled. He serves with several other interested members of the judiciary, as well as with a number of lay persons and with Representative Chuck Graham who has provided his valuable insight and assistance. The Committee is undertaking a survey of our courtrooms and the practices in our courts so that we can ensure that reasonable accommodations are provided to persons with disabilities. We judges want to convey the message that equal access to justice necessarily means equal access to the courthouse.

Indeed, there is a wide variety of administrative committees, and the list of judges who volunteer for the work of those committees is extensive. We have committees that address issues ranging from the review and promulgation of jury instructions in both civil and criminal cases, to forms and procedures for judicial record keeping, to the administration of examinations for our certified court reporters, to mention just a few.

But one administrative committee that merits particular attention is the statutorily created Missouri Court Automation Committee. The Committee is composed not only of judges, but also of court clerks and legislators, and the primary purpose, as you know, is to provide a uniform, statewide computerization system that gives courts greater capacity to manage dockets while allowing instant access to all public court records. Senators Jacob and Klindt, and Representatives Carnahan and Crowell, serve as the legislative members of the committee and are becoming well versed on the issues. The project is half-complete, and the need has never been greater, especially from the standpoint of law enforcement and public safety.

A case in point occurred three years ago when a Missouri State Highway Patrol trooper was shot and killed while making an arrest. The arrestee was wanted on felony warrants from another Missouri county, but the trooper had no idea of the need for extra caution because of the delay in manual transmission of the warrant information from the court to the Highway Patrol. One feature of court automation on the immediate horizon is the near real-time transmission of warrant information and adult protection orders to the Highway Patrol for statewide access by law enforcement agencies. It is a feature that may well save lives.

The extracurricular work of our judges is by no means limited to the work of our administrative committees. In that connection, I must admit that I have long looked forward to this opportunity to showcase the selfless public service performed by so many of our judges.

Consider the example of my friend Jack Garrett who is presiding judge of the 37th Circuit in southern Missouri. For about 5 years running, Judge Garrett and his chief juvenile officer have sponsored an annual conflict resolution task force for teenagers. They target 7th grade students in each of the circuit's 19 school districts. With the assistance of college students from SMSU, they conduct small group seminars to address issues such as bullying and school violence and substance abuse. In addition, Judge Garrett sponsors an annual mediation camp and workshop for students in grades 6 through 8, training those students to develop and implement peer-mediation panels in the schools.

In Kansas City, our family court judges have implemented a truancy diversion program in which several judges, led by Judge Steve Nixon and Judge Marco Roldan, meet with "at risk" children and their parents or parent once each week at 7:30 a.m. The judges discuss not only the truancy problem, but also other family needs that may be contributing to the problem, including the child's safety and well-being and parental accountability for the child's needs. Last summer, Judge Nixon took the children he is working with to a Royals baseball game. Judge Roldan has found his Hispanic roots to be of value in working with the families at the McCoy Elementary School where English is a second language.

The truancy diversion program originated in St. Louis City and County where it continues to flourish. The two saintly judges I mentioned earlier, Tom Frawley in the City and Susan Block in the County, are the chief administrative judges of their respective family courts. In that capacity, they have assembled teams of judges and an occasional lawyer who make weekly visits to troubled children in the city and county school districts.

Circuit Judge Joan Burger, who sits in a criminal division of the Circuit Court of St. Louis City, is one of the volunteers for the truancy program. Several weeks ago she authored an article published in the St. Louis Post-Dispatch describing the program, and I have taken the liberty of sending a copy of that article to each one of you. She wrote that "My motivation is simply this: 85 percent of the people in prison are high school

dropouts. I thought that if I can keep them in school, then maybe I won't have to send them to prison." I ask that you read about the details of the program yourselves, but I'll share Judge Burger's conclusion: "In most cases, attendance improves immediately. All the words and threats and tears of parents, teachers and counselors haven't worked, but the authority of the judge and the frequent court dates turn these kids around." Despite that conclusion, progress is often made in small steps. According to Judge Burger, "One child was doing poorly in history, so I gave him an assignment of going to the library and bringing a history book to court. He brought me [a book on] the history of skateboarding!"

I also want to mention another St. Louis City judge, Judge Henry Autrey, a former prosecutor, who serves in a number of other ways. He speaks to various groups on the issue of child abuse prevention. He also participates in reading exercises and tutoring programs for young children at city schools. But his most personally fulfilling service is playing the role of Santa Claus for the elderly residents at a local nursing home. According to Judge Autrey, "We forget the sacrifices they made and the hard work they endured so that we could achieve our personal successes."

And then there is my new colleague, Judge Laura Stith, who, despite her appointment to this Court, continues her service as a charter member of a Kansas City organization called LEAP, Lawyers Encouraging Academic Performance. For two or three hours every week, Judge Stith and several other judges take one or two grade school girls each, girls who are from the inner city, from needy families, and some from homeless families, and they buy their school supplies, tutor them, mentor them, and help them through school.

I apologize for having spent too much time dwelling on the challenges and difficulties and the sacrifices of judicial service. We judges are honored to serve. That honor comes first and foremost from the fact that we are the ones entrusted to resolve the challenging and difficult cases of the day. When we are able to resolve those cases with competence, professionalism, impartiality and dispatch — indeed when we resolve those cases with justice — our jobs are fulfilling and rewarding beyond measure.

It must be said, too, that not all of our cases pose challenges and difficulties, but the honor of serving is present nonetheless. As a trial judge, among my favorite cases were adoption cases, which I handled for two or three years as part of my duties as a judge of the juvenile court. I held juvenile court on Fridays, and I heard adoption cases on the first Friday of each month, except in December, when I saved all the adoption cases for the Friday before Christmas. Adoption cases fall into several categories, the adoption of children from unwanted pregnancies, the adoption of children of parents whose parental rights were terminated for abuse or neglect, step-parent adoptions, and international adoptions of orphaned children who are given hope for a bright future in the United States. Unlike other cases where all too often we see people at their worst and the conflicts presented seem irreconcilable and the solutions we have to offer are less than satisfactory, in adoption cases we see people at their best, and the only complications are those in tying up the legal loose ends to ensure that the adoptive child will have the

blessing of a safe home and a loving family.

At the conclusion of one of the first adoption cases I heard, a remarkable thing happened. As I pronounced judgment, the lawyer for the adoptive family asked leave to approach the bench. And as he came up to me, he whispered, "Judge, would you mind having your picture taken with the new family?" And so I came down off the bench in my black robe, and I took the baby in my arms flanked by the two proud parents with tears in their eyes, and the guardian ad litem, who was not about to miss out on the action, snapped picture after picture. And we all rejoiced!

Now that is an honor! From that day forward, the lawyers in my adoption cases didn't have to ask whether I would mind having my picture taken with the new family!

In conclusion, I wish that each of you could experience the great honor to serve as judge of this state, but I am sure that my grandfather had it right — that each of you feels the same way about the great honor you have of serving in the legislature.

As you progress with the session, I ask that you take account of the needs of the judiciary.

And finally, for all the good work you will do for the citizens of this state, I bid you Godspeed.

Thank you.