State of the Judiciary
Chief Justice Stephen N. Limbaugh, Missouri Supreme Court
Message to the Missouri Legislature
January 22, 2003, in Jefferson City, Missouri

President Maxwell, Speaker Hanaway, distinguished members of the Senate and House of Representatives. Let me begin with introductions of two of my colleagues on the Supreme Court. The first is Judge Richard Teitelman, our newest judge, who took office last March, after four years of service on the Court of Appeals in St. Louis, and 18 years as a legal aid lawyer, selflessly representing low-income citizens. Although Judge Teitelman is sight-impaired, he compensates by working day and night, with little sleep, and as the other judges will tell you, his caseload is the most current on the Court. In addition, he brings a personal kindness and graciousness that enhances the collegiality of a Court that already prides itself on its collegiality.

The other introduction is my friend Judge Ronnie White, who, on July 1, will take over my duties as chief justice as I complete my two-year rotation and he begins his. One hundred fifty years after Missouri's landmark Dred Scott case, which precipitated the Civil War, and in turn, the end of slavery, and the struggle for civil rights that followed, it is high time that an African-American is represented in the office of Chief Justice. And to that, I add that Judge White will be the first chief justice in 34 years who also has served in the legislature.

Last year at this time, you greeted me warmly, and many of you expressed to me that you appreciated my emphasis on the honor of public service. But it was also clear that my speech was well received because I didn't ask for money! Nor will I ask for money this year, knowing that the budget crisis is even worse. There is one exception: For the 3,000 or so court employees -- court clerks and secretaries and juvenile officers -- the people who staff the courthouses in our 114 counties and the City of St. Louis, the people who are the public's first and sometimes most critical contact with the court system, the people who keep the court records and process the data in the computers and who assist lawyers and litigants and the general public alike, the people who collect and process the myriad of fees and fines and child support payments and the like, the people who over years of dedicated service have worked themselves up a state pay grid that starts at just $17,000 per year, the people who for two years running have not had a raise in pay and whose take-home pay has actually been reduced because of increased insurance premiums -- for those people I ask your help. I ask nothing for judges, but I ask you to find the means to help those whose work allows the judges to administer justice.

In view of the budget crisis, the Court is attempting to fashion its own proactive solutions by securing alternative sources of funding for one of its most important administrative efforts, the ongoing and immensely successful court automation program. For those of you who are new to the General Assembly, the court automation program is, in a word, the "computerization" of the judicial system, and its purpose is to give courts greater capacity to manage caseloads, to provide the general public with instant access to all public court records, and to improve essential communication between courts, law

enforcement agencies, and other executive branch entities. The infrastructure has been completed statewide, and case management software is being used in about half of the courts. Although the original intent was to bring the remaining courts into the statewide system within the next few years, budget cuts have placed the program on hold. One exception is the 16th Judicial Circuit in Jackson County which, after a review of the several case management software programs throughout the country, decided to invest its own funds to expand its use of the state system. In fact, this alternative funding approach, which does not require state general revenue, has potential for other urban circuits as well, such as the City of St. Louis, where talks are underway for implementation of a project similar to that in Kansas City.

Some of you, particularly those who are lawyers, may have used the system's internet access called Case.Net, which is built on the case management software, and know full well that the promise of the court automation program -- instant electronic access to court records open to the public -- is now being met. The rest of you will find that you can access with ease everything from the courts' docket entries in any given case, to a judge's entire court calendar. And, for me, as one whose computer skills are far from proficient, the true test of the product is that even I can use it!

The Case.Net system was not the work of any vendor, but the result of the creativity and ingenuity of the employees of the Office of State Courts Administrator. You should know, too, that that creativity and ingenuity has been recognized on a national level. Just last summer, Case.Net received the "Best of Breed Award" from the Center for Digital Government, a think-tank of experts in the use of information technology at all levels of government. Indeed, Case.Net was one of only 30 programs selected from more than 1,500 entries nationwide. Additionally, we recently received word that the court automation program was designated as a Computerworld Honors Program Laureate. This prestigious award means that the court automation program will be on file and available for study at such renowned institutions as Oxford, Harvard, MIT, and the Smithsonian Institution's National Museum of American History.

To be sure, the automation of the courts, which the legislature has strongly supported over the years, is bearing fruit for our Missouri citizens and serves as a model for the country. We are especially grateful to Senator Klindt and Representative Crowell, who have attended nearly every meeting of the statutory court automation committee since their appointment and who provide invaluable legislative input and oversight.

If the crisis with the budget is the most pressing concern of the General Assembly, the crisis in juvenile justice undoubtedly will command a good deal of your attention as well. At the outset, it is our pledge that we, the judges of this state, will do all in our power to correct the failures in the system whether or not those failures are of our own making. Investigations into alleged mishandling of juvenile court cases have been conducted by both the Governor's office and the Senate, and the reports have been submitted. A third investigation -- a DFS performance audit by State Auditor Claire McCaskill -- is pending, and I am grateful to her for affording me a preview of her findings. Although most of the focus has been on the Division of Family Services, I regret that in certain cases we judges

have come under fire for being heavy-handed in the removal of children from their homes, for failing to provide timely hearings to the parents and families of those children who have been removed, and for failing to require the communication and cooperation between the courts and DFS necessary to protect the children. Whether the truth of the allegations is perception or reality, the unfortunate result, of course, is public distrust and a lack of confidence in the system.

Now that investigations have been made and problems have been identified, it is time for solutions. I ask, however, that those solutions be informed by the perspective of our judges -- those who are the ultimate decision-makers -- and that you keep in mind that many of the cases we hear are exceedingly difficult and emotionally draining. In that regard, the nature of the complaints themselves point out the difficulty. On one hand, the charge is that judges too often remove kids unnecessarily; on the other hand, the charge is that too often kids are not removed soon enough. The fact is, in many cases, the evidence is conflicting -- not so much in the determination that the children are subject to harm, but in the determination of who or what is the cause of the harm, and, more importantly, in the determination of how best to prevent the continued harm. Given the stakes, I hope you understand why most judges tend to err on the side of protecting the kids.

I speak from my own hard experience as a prosecutor and former juvenile court judge. In those positions, one learns quickly of the unfathomable cruelty that can be inflicted on children. There is outrage against the perpetrators, and anguish and empathy for the victims, and a troubling sense of wonder that such cruelty can exist in our affluent and progressive society. I will not forget the awful details of the last case of child abuse I tried as a prosecutor. A six-year old boy had been locked alone in the basement of a house in Cape Girardeau by the boy's mother and her boyfriend, who then left the house for a weekend jaunt out of state. The basement had carpet, but no furniture, and there were two windows that were too high for the boy to reach, although they allowed him to hear the neighbor kids playing outside. He was given a blanket, a package of Twinkies and a soda, a couple of toys, and nothing else. If you have a sense of pity for the child in that makeshift prison, imagine the horror in his little eyes when the house caught fire. Though the house burned to the ground, a fireman-hero rescued the boy, unconscious and on the verge of death. On the operating table at the local hospital, physicians worked feverishly to resuscitate the boy, extricating gobs of white ash and black soot from his mouth and nose and throat, but as they were bringing him back to life, they were doubly alarmed at his pencil-thin arms and legs and his bloated belly. And sure enough, the secondary diagnosis was "failure to thrive," doctors' jargon for malnutrition. Miraculously, the boy survived and last heard is doing well in a placement overseas with his father's family. The mother was sentenced to time in the county jail, and the boyfriend, the main perpetrator, went to prison.

This case was not typical, but only because of the devastating fire. To the extent that cases can be characterized as typical, they most often involve children living with their unwed mother who is drug-addicted or alcoholic, barely functional and who is frequented by boyfriends who are abusive to her and her children both. In more cases than not, the fathers are unknown, absent, in jail, or are themselves drug-addicted, alcoholic and barely

functional. The children in those typical cases are clearly in danger. The salvation is that when the authorities are notified of the situation, and the system works properly, the children will be removed and placed in a nurturing and loving foster-care setting, and the lucky ones eventually will be adopted out.

In many other cases, however, the evidence is equivocal and the dispositions unsure. I recall, in particular, a case I had as a juvenile court judge involving an 18-year old woman -- an 18-year-old girl -- who already had five children by five different fathers. This is no exaggeration! She was not a drug addict or an alcoholic, nor did she abuse her kids or allow others to harm them, at least physically, and those facts dictated against removing the kids. But her home was a revolving door for boyfriends who were often drugged or drunken, and she and the kids survived on little more than food stamps, Medicaid, and family housing subsidies. She had few parenting skills, just an eighth-grade education, and no relatives she could count on, and, as you would expect, most of the time she was rather desperate. DFS efforts to teach parenting skills and household management were only marginally successful.

Under any conception of "the best interests of the children" -- the legal standard by which all court interventions are governed -- the children should have been removed. And from time to time, they were removed, and more than once at the request of the mother, herself. The likelihood was that those kids would flourish in most any other environment, and that they would only fail with their mother. But a competing presumption of law in effect at the time of the case required all-out efforts for reunification of the family -- which meant that the kids stayed with the mother. Under the law, then as now, kids are to be taken from their homes only if they are abused or neglected, not if the parents are poor and uneducated. And so it was, that for many months, until I left for my new position on the Supreme Court, I supported the rather valiant efforts of the juvenile officers and DFS workers on the outside chance that the young mother might eventually learn to adequately care for her own children.

Late yesterday afternoon, as I was finalizing my remarks, and realizing that my recollection of the young girl's case may be unduly harsh, I called Randy Rhodes, the chief juvenile officer in Cape Girardeau, to check my facts. Randy had been the juvenile officer assigned to the case, and he confirmed that my account of the case was accurate. As we finished the conversation, I asked, in passing, "Whatever happened to the girl?" To my surprise, he said that he saw her just a couple of weeks ago. And he told me this: Ten and a half years, and two more kids later, she is alive and well, she is stable and relatively self-supporting, and she has a job -- a full-time job! -- a job working for a sheriff's department across the river in Illinois, and even the kids have enjoyed a fair measure of success!

My goodness, how would it be if all the other families like hers fared half so well! But in my experience, unfortunately it is not that way. There are many failures, and the successful preservation of families, at least in the extreme cases like hers, is more the exception than the rule.

I have been on the bench for more than 15 years, and for 10 of those years, I have served on the Supreme Court, hearing the difficult, complex, and immensely important legal issues of the day. But the most difficult cases I have faced are child custody cases in the juvenile and family courts, the cases in which I was required to determine whether to favor one parent over another, or whether to take the kids from both. It was a time in my career that I relied on the sage advice of one of my predecessors in office, Judge Stanley Grimm, who capsulized the law in this unique way: He told me that a judge can take kids only from parents who rate a failing grade, not from parents who rate a D-. Too often, as I learned from the case of the 18-year old woman with five children, the difference between a D- and an F is murky and muddled, but the call must be made, and one hopes and prays that the children will be free from harm and somehow given a fair shake.

From these accounts and countless others like them, I hope you understand that there are so many pitiful and seemingly hopeless cases, cases that simply have no good answers, and that even with all the resources our society has to offer, and even with all the wisdom in the world, mistakes will be made, and tragedies will occur.

Agree with me on this proposition: When mistakes are made and when tragedies occur, the only acceptable response is to redouble our efforts to ensure that, in the future, decisions regarding the fate of our children are indeed made with all the resources we have to offer and all the wisdom we can muster.

Because we judges are the ultimate decision-makers in the cases, it is incumbent on us to take the lead. To that end, and with the blessing and encouragement of Senate President Pro Tem Kinder and House Speaker Hanaway and Governor Holden, himself, I am pleased to announce the formation of a commission composed primarily of judges and legislators, but also including key executive branch officials and other interested parties, to address the concerns raised in the several investigations, to review proposed legislative solutions, and to propose legislative changes of its own. The judges of this state ask that through the work of this commission, they be given input in the legislative process. We ask not to direct any legislation, but only that you hear our concerns, as we strive to hear yours, and we submit to you that the healthy interaction between judges and legislators, between representatives of co-equal branches of government, is the best way to yield the best product for our mutual constituents, our children.

There is precedent for this collaboration. In 1994, there was a crisis in juvenile justice that centered on juvenile delinquency rather than abused and neglected kids. The crisis then was born of a nationwide increase in juvenile crime coupled with the perception and, in some cases, the reality, that kids who committed crimes were going both unpunished and unrehabilitated. Just as today, people were wary of the system because of the secrecy of the proceedings. To meet that challenge, the Court, in cooperation with the General Assembly and the Department of Social Services, formed the Supreme Court Task Force on Children and Families, and just as today, the charge was to review proposed legislation and to propose legislation of its own. With helpful suggestions from the Task Force, the resulting enactments brought into better balance the competing interests of protecting society from juvenile offenders and offering those offenders, because of their

tender age, a chance at redemption and rehabilitation. The rules on confidentiality were lifted in the more serious cases to provide for public scrutiny, and the rules for certification of youthful offenders to stand trial as adults were strengthened to make those offenders more accountable. At the beginning of the process, the legislative proposals were, as they say, "all over the board," but the legislation that was enacted was consensus legislation. It was legislation that was hailed at the time and that since has proven its worth. It has brought stability and respect, and has increased the public's trust and confidence in the system. In fact, the juvenile delinquency side of the juvenile justice system and especially the innovative programs of the Division of Youth Services under its longtime director Mark Steward, are among the finest in the nation. It is that performance and reputation that we must bring to the abuse and neglect side of the system. That is the aim of our new commission.

Senator Kinder and Speaker Hanaway are so enthused about the project that they have appointed themselves to the commission! The other members are Senators Bill Foster and Pat Dougherty, and Representatives Bryan Stevenson and Yvonne Wilson. The chair of the commission is Judge John C. Holstein of Springfield, who, as most of you know, is a former judge and Chief Justice of the Supreme Court and, more importantly, is a former judge of the juvenile court in West Plains, Missouri. Judge Holstein, would you please stand? Because time is of the essence, the work of the commission will begin immediately, and I mean immediately! Judge Holstein will meet with the legislative members this very afternoon.

In addition to the work of our joint commission, let me emphasize that much can and will be done outside the legislative process. Specifically, I am directing the judiciary to undertake the following measures:

1. We will prepare and publish a best practices manual for juvenile court judges so that we can implement, throughout the state, what we know that works, and I am pleased to advise you that the first portion of the manual is already in circulation;

2. We will promulgate time standards to ensure the timely processing of abuse and neglect cases;

3. We will ensure that whenever possible, children are placed first with qualified relatives before other alternatives are pursued; and this effort, too, already is being undertaken in every one of our juvenile courts;

4. With the cooperation of DFS, we will provide and mandate cross-training for all juvenile officers and DFS caseworkers and even the judges, themselves, so that everyone within the system knows the processes and personalities of each constituent part of the system; and

5. We will look very seriously at opening our court proceedings, at least to some extent, so that there is a better balance between the need to protect the privacy of children and the need to inform the public and shed light on the system.

Finally, so that your difficult legislative decisions will be as informed as possible, I invite you to participate -- no, I urge you to participate -- in a symposium for legislators sponsored by the Supreme Court and the Missouri Juvenile Justice Association to be held Monday afternoon, February 3, from 3 to 7 p.m., at a local hotel. In recognition of the immediacy and crucial importance of the juvenile justice issues, the legislative leadership has agreed to call you into session at 2 p.m. on that Monday afternoon, to do the necessary business at hand, and then to adjourn before 3 p.m., so that each of you can attend. Professor Douglas Abrams of the University of Missouri-Columbia School of Law will begin with a brief history of the tragedies and triumphs of Missouri's juvenile courts. A copy of Professor Abrams' new book -- "A Very Special Place in Life" -- which commemorates the 100th anniversary of the founding of the juvenile courts in this state, will be distributed to you at that time. Four of our juvenile and family court judges will then present the main program, complete with flow charts and handouts of pertinent statutes and an assortment of other useful materials. Each judge will focus on a different part of the system -- cases involving abuse and neglect, cases involving what we call "status offenses" (runaways, truants and the like), cases involving juvenile delinquency, and the special extracurricular activities of our judges that are designed to reach children before they need to be admitted to the system in the first place. At 5 p.m., each of you will be assigned to one of six breakout groups organized by geographic region and staffed by your local juvenile court judges and juvenile officers, as well as local DFS, DYS and DMH caseworkers. For the next hour, you will be encouraged to ask questions and offer your suggestions about the system in general and about local implementation in particular. Following the breakout sessions, The Missouri Bar will sponsor an hour-long reception at the hotel to further the networking opportunities for all participants. By engaging in this dialogue and by opening the lines of communication, it is our profound hope, that at the end of the day, we can better respond to your concerns, and thus better serve our children.

To conclude, despite the current challenges, you will learn from Professor Abrams' book that Missouri has become a national leader in many social reforms that have served and continue to serve the best interests of children and, indeed, Missouri boasts a remarkable heritage of leadership and innovation that forms the perfect foundation for our actions today and in the future. To build on that rich heritage, we must cooperate and collaborate. We must find ourselves on the same page. We must have a common understanding of the problems. We must devote our full resources to the solutions. And together, we must win the day for our children.

And why this common commitment? It is because our goal is the same. Our goal is the same! And it is simply this: A safe home, and a loving family, for every child.

Thank you.