

State of the Judiciary
Chief Justice Laura D. Stith, Missouri Supreme Court
Message to the Missouri Legislature
February 5, 2008, in Jefferson City, Missouri

Introduction

President Kinder, President Pro Tem Gibbons, Speaker Jetton, statewide elected officials, members of the General Assembly, members of the cabinet, my fellow Supreme Court judges, my family – my husband Don Scott and my daughter Cynthia Scott – honored guests and fellow citizens:

Thank you for that incredibly warm welcome. I am truly honored to be here today. When I began my legal career nearly 30 years ago as a Supreme Court law clerk, I had no idea that one day I would have the opportunity to come before this honored assembly, as the state's second female chief justice, to deliver Missouri's 35th state of the judiciary address.

When I began my career, there were no female appellate or Supreme Court judges in Missouri and very few elsewhere. But now, for the first time in Missouri's history, we have three women on the Supreme Court. I thank Governor Matt Blunt for his appointment of Judge Patricia Breckenridge to the Court.

Courts and judges make a positive impact on Missouri's communities

Like many of you, Judge Breckenridge is a true public servant. Over the past nine years, she has mentored five Kansas City children who, under her guidance, have become thriving teenagers looking forward to a promising future. Such efforts are the norm in the judiciary. Just a few weeks ago, for example, the judges and staff of the Western District appeals court finished a food drive that will feed nearly 400 needy families in the Kansas City area.

I tell you about these activities for two reasons. First, we are proud of the community involvement and personal contributions of our judges. Second, a review of these activities affirms that, just as you legislators are well-known for your civic participation at all levels, so too are the vast majority of our judges. They are in the same civic groups as you; they work to make a difference in their communities, like you; and, like you, judges and court staff make a positive impact on their communities through the performance of their official duties.

Just last month, for example, Jackson County received national honors for its family court probation and aftercare services. This program has reduced the recidivism rate drastically; now only 4 percent of its youth are referred back to the family court within six months.

Across the state, in the city of St. Louis, Judge Jimmie Edwards has reorganized the juvenile court so effectively that most felony offenses are processed within five weeks and misdemeanor offenses within two weeks. This gets juvenile offenders off the streets, out of detention centers and into rehabilitative services sooner. And it's also reduced the city's juvenile detention population by about a third, saving precious resources.

Judge Mary Sheffield and the 25th circuit in south-central Missouri – along with Judge Rick Zerr and the 11th circuit in St. Charles County – are piloting what we hope will become a statewide model for family courts. This enhanced "unified family court" system assigns a single judge to a particular family, which diminishes the likelihood of fragmented and inconsistent results and reduces the time families have to spend in court. This new unified family court system will make a real difference in the lives of your constituents.

Drug courts are important for Missourians

Programs like these demonstrate how hard-working court professionals can turn around young lives and keep families together. Drug courts, also, are helping urban and rural communities throughout the state reap similar benefits. Since they were established in Missouri 15 years ago through bipartisan efforts, our drug courts have graduated more than 6,200 individuals. An incredible 90 percent of these never return to our criminal justice system! I thank my colleague, Judge Ray Price, for his instrumental role in the development and oversight of these courts as chairman of Missouri's statewide drug court commission. In fact, the reason he is unable to be with us today is that he is in Washington, D.C., attending a board meeting of the National Association of Drug Court Professionals.

I encourage all of you to attend a local drug court graduation – it's an amazing experience. In Stone County, for example, one graduate went from having no place to live, no relationship with his two sons, no job and spending his time committing crimes and his money on drugs to having a solid marriage, running a masonry business and coaching his son's football team.

His story is echoed in the experiences of many of our drug court graduates. We have a number of recent graduates here today, along with some of our drug court staff and judges, and I invite them to stand and be recognized for their achievements.

These are the types of outcomes that timely and effective court intervention creates all over Missouri. Keeping offenders out of prison allows them to remain in the workforce and their families to stay intact. In fact, our juvenile courts have been able to place 120 children back in their natural homes after a parent graduated from drug court. The success of our drug courts even affects the next generation of Missourians, as more than 325 drug-free babies have been born to female drug-court participants! And as I'm sure you are aware, protecting our unborn children from the ravages of drugs saves the state literally tens of thousands of dollars per child and gives every child a chance at a better life.

Alcohol abuse, like drug abuse, can ruin lives. Missouri has had the foresight to establish DWI courts as part of its drug court programs. The Greene County DWI court recently was one of only four such courts nationwide to be honored as a model court for its work in turning around repeat DWI offenders. Of its 143 graduates since 2003, only four have been convicted of subsequent DWIs.

As the Springfield News-Leader recently noted, expanded funding of the proven, cost-effective services offered by such courts will reduce the impact of substance abuse in Missouri. At any given time, our 108 drug courts are working with more than 3,200 offenders – that's approximately equal to the population of two state prisons Missouri has not had to build. This money-saving investment in our drug courts really is an investment in a positive future for Missourians. And all drug court funds go directly to treatment services for your constituents in your communities.

Courts have a positive impact on the state's economy

These are only a few of the many positive effects of Missouri's courts. The next time you visit your local courthouse, I encourage you to meet the skilled professionals working there. Nearly half of the judiciary's general revenue budget pays for these court clerks, court reporters, juvenile officers and other vital court staff. These are your constituents, and they serve your constituents every day.

Investing in these people makes fiscal sense, too, because Missouri's courts help buoy the state economy. At an annual cost of slightly more than \$164 million in general revenue, our courts last year produced a positive economic impact of more than twice that amount – approximately \$395 million in damages, offsets, fines, fees and costs. Much of that money went to local schools and county governments and other government funds. In other words, we courts do our share in contributing to the state's bottom line.

We are managing the courts' resources more efficiently

Part of doing our share also means managing court resources as efficiently as possible. Before last year, the courts had only incomplete information to give in response to legislative inquiries whether additional judges were needed and, if so, where. To assist you better, we asked the nation's expert in judicial weighted workloads to study our trial courts. Its results show we need more judges. We are not asking you, however, to fund all the additional judges now – we know this is not the right time.

But the study shows where the need for additional judges is the most urgent, where justice for citizens may be delayed as a result of these shortages – including Greene, Jackson, St. Charles and St. Louis counties, among others. Armed with the facts and figures this study provides, you will be well-equipped to make informed decisions about where it is most critical to add judges throughout the state, as funds become available.

In the meantime, we are taking proactive steps, based on information in the study, to use

our judicial resources more wisely. As one example, we are initiating improvements in our judge transfer program. Judges sometimes are transferred into another circuit to help cover for an illness or a temporary absence, but many other transfers help overburdened courts handle their dockets on a routine and continuing basis. For instance, in the 26th circuit in the Lake of the Ozarks area, three judges suffered lengthy illnesses, and two of them eventually died, leaving that circuit shorthanded and unable to meet the needs of its growing population. To resolve this problem, we transferred in senior judges on a long-term basis, allowing civil trials to proceed and greatly expediting all cases.

Of course, the area may soon need another judge – Presiding Judge Greg Kays was one of two Missouri judges whom President George Bush recently nominated to become a federal district court judge. He is a fine judge and an outstanding individual. In fact, Judge Kays was honored by both the Highway Patrol and the Supreme Court for his selfless service in helping to save the life of his wilderness guide during a 2005 fishing expedition near the Arctic Circle. Judge Kays is here today; will you please stand?

We hope the judicial weighted workload study will help us avoid future crises like the one in the 26th circuit. Instead of the chief justice managing transfers, we are instituting a "judicial partnership program" pairing circuits that need extra judges with circuits in the region with judges who have time to help. As this new program gets underway, we are focusing on the circuits with the most critical need first and will follow up with additional partnerships over the next year.

We must fix the criminal justice system

But, as newspapers in Springfield and St. Louis noted last month, adding more judges will not end the problems we are seeing in our criminal justice system. Even if we had more judges, we still would need more public defenders and prosecutors because not enough attorneys are available to try all the pending criminal cases, resulting in lengthy pretrial incarcerations. This is a critical problem in every jurisdiction but most acutely so in our urban areas, where the criminal justice system is on the brink of a shutdown and basic constitutional rights are in jeopardy.

It benefits the public, the victims of crime, witnesses and the entire justice system if these cases are processed in a reasonable time; in fact, the constitution requires it. We are pleased to hear the state's budget analysts predict a surplus will be available this year to meet some of the state's most critical needs. Few could be more critical than in the criminal justice system, where we are on the verge of risking release of some prisoners for failure to give them a speedy trial because there simply is no public defender available to advocate on their behalf. I cannot emphasize enough the urgency of this crisis and ask you to give the utmost consideration to the public defender's budget request.

Missouri cannot afford to let this continue. We thank those of you who have been working on this problem and we urge you to intensify your efforts at solving this critical flaw, one that reaches even beyond the criminal justice system. As shown by the 26th

circuit's experience, backlogs in criminal cases can translate into delays for our civil litigants as well. This has not gone unnoticed by our business community. Business leaders tell us that they have no desire to operate in a state unless it has a fair and impartial court system that moves cases efficiently. Businesses are in litigation every day, all over the country, and the prompt resolution of their cases helps our economy to remain strong and to move forward.

Improving court technology enhances public safety and public access

Ensuring access to Missouri's courts extends beyond the courthouse walls, so we have strived to improve our online legal resources also. I am proud that the Supreme Court now offers streaming audio of its oral arguments so all members of the public can listen to them as they occur.

I am also pleased to announce that our electronic case management system will be complete statewide with the addition of Greene County this spring. Why does this matter? Well, by integrating technology into our court services, we are better able to meet your constituents' expectations about making all of government operate more efficiently. Because of its court technology, Missouri is the first state in the nation that allows the courts, the schools and the executive branch agencies that serve youth, to share juvenile case information through a secure, statewide system. And Missouri's court technology ensures that law enforcement agencies receive orders of protection within a few minutes of their entry and that the Highway Patrol more quickly can receive thousands of convictions and mental incapacity determinations.

We are also proud of our nationally recognized Case.net system, which lets you and your constituents access statewide adult case information around the clock through our Web site. Case.net is purely a Missouri product: It was designed by Missouri court technology staff, with input from courts and citizens throughout the state, and it is something of which we should all be proud.

The technology you have helped us build now positions us to take the next step for Missouri's citizens. With your support for our budget request to pilot electronic filing, we can begin providing Missourians electronic access to their court documents, increasing transparency of the courts for less money for your constituents. E-filing also will be more efficient. It will enable litigants and lawyers to obtain court files and specific documents from their homes or offices any time of day. And it will enhance public safety by giving judges, court personnel and law enforcement officers round-the-clock access to case information. This will be an important step forward for everyone.

The advances we've made would not have been possible without your investments in court technology, because modern computer systems provide the foundation for information sharing and access. We thank you, and we ask for your continued support to enable Missouri's courts to provide the kind of service our citizens expect in the 21st century.

The nonpartisan plan for selecting judges on merit continues to work

I'll spend the remainder of my comments addressing something many of you have asked me about – the nonpartisan court plan. In fact, your enhanced interest gave me the privilege of being the first chief justice in recent memory to be invited to speak with a legislative committee even before the state of the judiciary. I was thankful for that opportunity.

As I noted then, I believe that in the nearly three-quarters of a century since its adoption, Missouri's nonpartisan merit-selection court plan has worked well in attracting high-quality judges in the least political way and in ultimately giving Missouri's voters – not lawyers, not the governor, not the legislature and not the Supreme Court – the final say. This renowned method of judicial selection – what some have called "Missouri's gift to the art of governance" – should be treasured.

Most Missourians agree. In a poll of 600 Missourians recently conducted by Public Opinion Strategies, the majority opposed replacing the plan, either with partisan judicial elections – in which judges raise literally millions, if not tens of millions, of dollars to keep their office – or with a federal-type system in which judges are hand-picked by the governor and confirmed by the senate.

The process the Appellate Judicial Commission followed in filling Judge Ronnie White's vacancy on the Supreme Court was the same process that the same seven commissioners followed to fill the five additional appellate vacancies this year. This process became part of Missouri's structure of government in 1940, when a group of mostly Republican legislators and civic leaders, including my colleague Steve Limbaugh's grandfather, "the original" Rush Limbaugh, successfully led a citizen initiative to end partisan control of the judiciary. The only significant change made since then came in 1978, when citizens – to minimize further the influence of partisan politics in our judicial system – eliminated the governor's ability to force the nonpartisan commissions to nominate additional panels for the same vacancy.

In the end, the process has worked essentially the same way for all those years. It is a neutral, even-handed process that blends the best features of merit screening, executive branch appointment and voter participation in judicial selection while preserving the public's confidence in fair and impartial courts. And it is the process that led to the selection of fine jurists such as John Holstein, Ann Covington, Charles Blackmar, Andrew Jackson Higgins, Joseph Simeone, J.P. Morgan and my own mentors – Robert Seiler and Elwood Thomas – to name but a few.

We are further opening the nonpartisan selection process

Pride in these and other fine judges appointed under the Missouri plan no doubt has played an important role in the rejection of prior attempts to dismantle the plan or allow it to become subject to expensive fundraising efforts, special interest influence or shifting political winds. As Missourians have always recognized, this is not a Democratic or

Republican issue – it's a matter of good government.

But does that mean I think that we have implemented the plan perfectly? As I told the Senate Rules Committee last fall, actually, I don't – and those of us on the Supreme Court are working to improve its operation in two significant ways.

The first involves giving even more information to the media and the public. The nonpartisan plan process already makes more information public than what is shared in any other area of state government. Under the plan, the public learns who the three finalists are for positions on Missouri's nonpartisan courts so they can offer comment to the governor. For most other appointed positions in government, including the directors of executive branch agencies and the legislative leadership, all the public learns is the name of the person finally selected.

That said, the Supreme Court has listened to the public and the media and plans to open up the process even more. Beginning later this month, the Court will require commissions to announce the time, date and location of their meetings and to provide demographic information about the applicant pool prior to those meetings. Once the three finalists are determined, the commissions will be required to make public the three nominees' applications – with private information redacted, of course.

We plan to enhance public involvement in the process of rating and retaining nonpartisan judges

The second area designated for improvement is the retention election process. The Supreme Court is working to make sure that Missouri's citizens have more, and better, access to information about the performance of their judges when they exercise their right to have the final say on whether judges should remain in office.

In 2006, The Missouri Bar spent more than \$100,000 to conduct evaluations of nonpartisan judges and distribute the results to the public – by holding news conferences, distributing evaluations to the media, putting the results online, sending them to organizations such as the chambers of commerce – the Bar even made them available in libraries and supermarkets. We commend the Bar for its many efforts, but we can do even more for Missourians.

We want citizens to have ready information about the performance of their judges so they can make fully informed decisions when they exercise their right to vote. Ideally, Missouri would follow Arizona's lead and appropriate a million dollars each election cycle so the secretary of state can print and mail to each voter in the state a pamphlet summarizing and evaluating the qualifications and performance of each judge up for retention.

But we're not standing still just because full funding for these efforts is not available. As a member of the national Conference of Chief Justices, I am helping to draft a resolution – which we will vote on this summer – to support federal legislation allowing this type of

voter guide to be distributed postage-free. If successful, this could reduce the cost of the pamphlets by up to one-third. I ask each of you to voice your support for this type of legislative proposal to your counterparts in Congress. Together, we can make a difference.

The Supreme Court is also requiring the creation of judicial performance committees to use objective standards to conduct in-depth evaluations of nonpartisan judges seeking retention. These performance committees, composed of an equal number of lay persons and lawyers, will release their evaluation summaries and will recommend whether a nonpartisan judge should be retained. The bottom line recommendations, and directions to a Web site with detailed evaluation information, will be made available in a concise voter information pamphlet – the type of pamphlet we hope one day to be able to send to all the voters.

Each of these proposals is feasible. None require any state funding or any new legislation; all are within the scope of the Supreme Court's constitutional authority over the judiciary. We look forward to the public's feedback about the improved retention evaluation system and to any other creative suggestions they may have for additional enhancements.

Conclusion

In conclusion, all the things I have talked about this morning merely help us accomplish our mission of providing fair and impartial justice in the nearly 1 million cases that come before our state's courts each year. We take every one of these cases very seriously, because we know that each one is the most important case in the world to the people involved.

While we judges often are struck by the weight of this responsibility, and while we may agonize about doing what the facts and the law of a particular case require, this responsibility is part of what we cherish most about our role in the court system. In the end, we are honored to be public servants, just like you.

As most of you know, one of Missouri's fine nonpartisan judges – my colleague Steve Limbaugh – was recently nominated by President Bush to become a federal district court judge. Steve is the epitome of a public servant. His life in public service – first as a prosecutor in Cape Girardeau County, then as a circuit judge there and, since 1992, as a Supreme Court judge – has been shaped by the examples of civility, courtesy and professionalism that Steve's grandfather and father set for him. He has been a real mentor for me on the Court, and I will greatly miss his sharp intellect, his insight, his wit and his camaraderie.

But I know Judge Limbaugh is eager to bring that same wisdom to the federal bench. When he does so, he will become the latest in a long series of Missouri nonpartisan plan judges who had such merit that they were nominated to join the federal bench, including Duane Benton and Theodore McMillian on the 8th Circuit appeals court

as well as Henry Autrey, Gary Fenner, Fernando Gaitan, George Gunn, Jean Hamilton and Elmo Hunter on the district court bench, to name but a few.

We know Judge Limbaugh and Judge Kays, like their predecessors, will make Missouri proud. Thank you.

And thanks to all of you.