

State of the Judiciary
Chief Justice Laura D. Stith, Missouri Supreme Court
Message to the Missouri Legislature
January 28, 2008, Jefferson City, Missouri

Introduction

President Kinder, President Pro Tem Shields, Speaker Richard, my fellow Supreme Court judges, Treasurer Zweifel, Auditor Montee, Attorney General Koster, other elected officials and my fellow citizens: I am truly honored to appear before you again to discuss the state of Missouri's judiciary.

The people of Missouri envisioned that the leaders of all three branches of our government would swear the same oaths to uphold Missouri's constitution and then work together as constitutional partners in serving the citizens of Missouri. Our constitution establishes distinct but interrelated roles for the judicial, legislative and executive branches. In this, my last year as chief justice, I have directed many of my efforts toward identifying more clearly the constitutional mission of the judicial branch and determining how best that mission can be accomplished. This task has taken on even greater urgency in light of the worsening economic forecast.

In evaluating the role of the judicial branch in our constitutional partnership, the place I naturally began is the people's law: our constitution, which, in article I, imposes certain requirements on the judiciary. Section 14 mandates "That the courts of justice shall be open to every person" Section 10 ensures that every person whose life, liberty or property is threatened receives "due process of law." Section 2 specifies that all persons are entitled to equal rights and opportunity under the law. If we do not work together to secure these rights for our citizens, then, as the constitution itself states (article I, section 2), our government "fails in its chief design." These and other overarching constitutional principles have led me to identify four strategic missions of our legal system:

- (1) Ensuring equal and affordable access to justice for all our citizens;
- (2) Providing a fair, unbiased and impartial forum for resolving disputes;
- (3) Effectively and efficiently administering our courts; and
- (4) Enhancing the public's trust and confidence in the justice system and, indeed, the whole government.

All of us in the judiciary strive each day to accomplish these missions. But we cannot do it alone. We will succeed only if we continue to collaborate with you, our constitutional partners. Together, we must encourage continued innovation as we face new and different challenges; we must learn to enhance our services while being more efficient; and we always must keep in mind that any path we choose should continue us toward the kind of open, responsive courts the constitution shows our citizens envisioned.

Implementing a strategic vision for Missouri's courts

Collaboration has been the foundation of our government, since the drafting of our constitution. The Missouri Constitution was not the work of just legislators – it evolved – and continues to evolve – through the collaboration of officials from all branches of government and ordinary citizens alike, with a healthy respect for tradition combined with an openness to new ideas.

Missouri's courts have adopted this same approach by reaching out to others as we seek to fulfill our constitutional duties. We know it is not enough for courts simply to do things as they always have done. Especially in the midst of these difficult economic times, we must focus not just on weathering the storm but on using our resources even more efficiently, and we cannot be afraid to ask the difficult questions that drive us toward an improved judiciary. Indeed, the challenges we face today make planning for tomorrow more essential now than ever before.

Some of you will remember that my colleague Mike Wolff helped initiate this process a few years ago by making Missouri the first judiciary in the nation to invite the American Bar Association to conduct a critical review of how well Missourians believe their courts are serving them. The report reassured us that the courts are doing their job very well. We were rated favorably on our professionalism, the quality and tenure of our judges, and our basic unified structure. Our ongoing plan for the use of information technology also was well received. The report also identified a few areas in which further progress must be made – such as adequately funding public defenders and streamlining case procedures.

To better address these and other challenges, the courts must recognize that we cannot simply force all modern problems to fit old judicial molds – we must look at the needs of our citizens and businesses today and ensure that the courts evolve to meet them. As a key part of that effort, I have invited those with the most contact with our legal system – lawyers, judges, court staff and others – to join me in using an open-ended “brainstorming” tool to help us identify ways in which we can make Missouri's courts even better. Their responses have been very helpful and insightful.

But I do not want to stop there. I want your input as well, for I am confident you will have additional insights, drawn from your own experience or that of your constituents, about how our courts can better serve Missouri today and in years to come. In the next few days, the Court will e-mail your office this short brainstorming tool. I know you all are busy and to say “you've got mail” is an understatement, but I ask that you take a moment to look at this tool and please share any ideas you have for us. With your ideas and those already suggested, I will prepare a more formal strategic initiative that will outline some of the programs that, in both the short and long term, will move us toward fulfilling our four missions. We will share this strategic document with you once it is completed in the coming weeks.

In the meantime, we will deliver to you this afternoon a pocket-sized brochure with basic facts about the judiciary as well as an electronic document outlining our key legislative issues for 2009. I will spend the remainder of my remarks this morning touching on key aspects of these issues. Together, we can build on the solid foundation we already have and forge an even better justice system for the future. Our citizens deserve nothing less.

Ensuring equal and affordable access to justice

The first mission of the judiciary is to ensure equal and affordable access to justice for all Missourians – no matter their color or creed or ability to pay. We can do no less if we are to

fulfill the promise of Missouri's constitution (article I, section 2) that all our citizens "are entitled to equal rights and opportunity under the law." This is one of our most critical challenges.

Much good work already is being done to advance this mission. In Kansas City, for example, the municipal court and city prosecutors run a program through which lawyers provide free legal assistance to homeless veterans who are arrested on municipal violations. Usually the veterans are asked to perform community service in lieu of fines. Lawyers in other Missouri cities also participate each year in a law day when they provide free legal advice to those who need help; lawyers in the Springfield area do this on a monthly basis.

Programs like these have sparked people to suggest that we implement statewide "veterans courts" or dockets overseen by judges who understand the unique problems and needs presented by some former members of the military. Other suggestions involve ways we can streamline procedural requirements in complex civil cases such as major labor and business disputes. Along with business leaders throughout our state, we recognize that the prompt resolution of these cases is essential for Missouri's economic engine to work, let alone to grow. Likewise, we must identify those litigants whose needs we can serve more efficiently in simple civil cases such as foreclosures and even traffic infractions, so that equal access is provided to all litigants, no matter the worth of their case.

I also am proud to tell you that we are seeking to make justice more affordable for all our citizens by expanding the use of teleconferencing and videoconferencing. We already use videoconferencing in some of our juvenile courts to enable parents whose children have been required to be placed far away to see their children and communicate with them on a regular basis. In addition, some courts – such as those in the St. Joseph area – use videoconferencing for criminal arraignments and juvenile dockets as well. The Court believes that expanding this technology could save the state money on staffing and transfer of judges to hear cases in areas where dockets are crowded. At the same time, it would make available to additional litigants quick, direct access to justice while eliminating much of their travel costs.

I have asked a group of knowledgeable judges and clerks to make recommendations – by the end of the current fiscal year – for the best ways to use this technology. Their leader will be a former trial judge with nearly two decades of experience representing all sorts of clients throughout northwest Missouri in all sorts of cases.

I am speaking of my newest colleague, Judge Zel Fischer, whose intelligence, experience and enthusiasm already have made Zel – as he much prefers to be called – an excellent addition to the Supreme Court. He is an extremely devoted family man, and his affable and easy-going manner is obvious to anyone who spends time with him. I am certain that you will come to like him; in fact, I don't know anyone who has met him who doesn't like him. Judge Fischer – Zel – will you please stand?

Public Defender Crisis as an Aspect of Access to Justice

One critical challenge, however, continues to be our ability to deliver equal and affordable access to justice in criminal matters. One measure of a society's justice system is how well it handles the worst of citizens who come before it. Well, I hope there are other measures too, because of all states with statewide public defender systems, Missouri ranks dead last in per capita funding of public defenders. This affects not just the defendant whose trial is delayed. It sometimes

means that justice is delayed or denied for the victims of crime, who watch in frustration as evidence or witnesses disappear and stress increases.

There is a serious public safety aspect of the public defender crisis as well. The federal constitution guarantees defendants both speedy trials and competent legal counsel. The inadequate number of public defenders, however, puts in question the state's ability to meet either of these requirements. In short, if not corrected, defendants potentially could be set free without going to trial. The United States Supreme Court has said that it is presumptively prejudicial for a criminal defendant in state courts to have to wait more than eight months for trial where the delay was caused by the prosecutor. But, just two weeks ago the United States Supreme Court heard an appeal suggesting that it is also the state's fault if gross underfunding causes public defenders to ask for continuances. Victims' advocates have expressed very understandable concern this could result in vast numbers of criminals being set free because their public defenders were unable to take them to trial soon enough. Missouri does not want to find itself in the position of other states, such as Indiana, Montana and Washington, that were faced with the possibility of releasing prisoners or lawsuits from the ACLU if they did not fix their public defender crises. It also does not want to be like Louisiana, where the legislature had to seek a bailout from Congress for the public defender program to avoid releasing hundreds of prisoners.

Much work already is being done in Missouri to try to stave off problems like these. In the city of St. Louis, last year – for the first time in recent memory – more criminal cases were disposed of than were filed. How did they do it? Judges, private attorneys, and attorneys from the public defender's and circuit attorney's offices collaborated; our state courts administrator's office offered technical assistance in expediting case handling; and a method allowing for quicker disposition of criminal cases was established.

And in Springfield, the bar spearheaded a cooperative effort within the local legal community to recruit and train private attorneys to handle probation revocation cases where there are no other charges pending. Just six months after the program was born, more than 40 lawyers have volunteered, most of whom have received training and have begun taking cases. The public defender's office says this is making a real difference in caseloads there. We are hoping to draw on Springfield's expertise and replicate its cooperative program elsewhere in Missouri this year. Crista Hogan and Brian Hamburg, who have been intimately involved in that effort, braved the ice and snow to be here today. I ask you both to stand so we all can recognize you for your cooperation, innovation and success.

Even the most drastic of volunteer efforts, however, is not nearly enough. That is why working with you to find creative solutions to remedy the worsening situation in Missouri's public defender system is one of our key priorities this legislative session. We believe a substantial additional state commitment of resources is necessary, but that simply is not possible without the support of those of you in this room. I am confident that together, we can find ways to ease these burdens, comply with federal law, and enhance equal – and affordable – access to justice for all.

Providing fair, unbiased and impartial forums for resolving legal issues

Citizens in civil and criminal cases require more than just equal and affordable access to our legal system, though. They also expect – and deserve – our courts to be fair, unbiased and impartial forums, for the Missouri Constitution (article I, section 14) promises that a “certain

remedy [be] afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.” Fulfilling this promise also is one of the missions of the Missouri Judiciary.

In our focus on providing an unbiased and impartial forum to resolve disputes, we have found that some types of cases simply do not fit well within a traditional court framework. These cases can be handled better by looking for innovative solutions, such as the drug courts and other specialized “problem-solving” approaches now offered in most of our counties. These specialized dockets make the processing of such cases more efficient and best utilize the expertise of those who work on them – they serve as alternatives to imprisonment for generally non-violent offenders whom the judge believes have a real chance of turning their lives around if they receive serious, court-supervised treatment, oversight and mentoring.

I talked with you last year about the success of our drug courts and of the Greene County DWI court in making positive changes in the lives of participants and their families at a fraction of the cost of prison. These programs make our communities safer, because those who graduate from these courts are far less likely to reoffend than are those who are sent to prison.

A new and effective use of the treatment court model involves reintegration dockets, which reduce recidivism by placing offenders released from prison into intensive programs where they are taught the skills they need to readjust to life in their communities. The program requires random drug tests; regular meetings with a probation officer; frequent support group and treatment sessions; and maintaining employment. A judge monitors the participants’ behavior and can send them to jail or back to prison if they fail to comply. One reintegration success story is that of Larry Goodman, who, for much of his adult life, did not think he had a drug or alcohol problem despite frequent arrests while intoxicated. In 2007, instead of being released directly into the community to make his own way, he entered Boone County’s new reintegration program under the supervision of Judge Christine Carpenter. Now, as Mr. Goodman puts it: “I am living a life like I have never lived before, a life without drugs and alcohol ... Everything is brand new.” Mr. Goodman and Judge Carpenter, would you please stand and be recognized?

These innovative approaches are not limited to the criminal field. The courts and local mental hospitals in St. Joseph and the city of St. Louis have developed programs that allow civil commitment hearings to be held by videoconference without the patient or the doctor ever leaving the hospital. This allows cases to move more quickly, saves time and money, is less stressful and more dignified for the patient, and enhances public safety by eliminating the risk of escape during transport. Ron Dittmore of Heartland Health was instrumental in setting up the program in St. Joseph – a decision driven by economic necessity but that has great long-term effects well beyond the financial benefit. Mr. Dittmore, would you please stand and be recognized for your fine work?

I hope you will have other suggestions for helping our courts fit the kinds of cases brought before them, rather than trying to force unique cases into a one-size-fits-all traditional court structure.

Efficiently administering justice

Assuring that our citizens receive an unbiased forum to resolve their disputes dovetails with the third mission of Missouri’s judiciary: to administer our courts efficiently and effectively. We

view all our efforts to improve the efficiency within the judicial branch as part of the constitutional guarantee to our citizens of “due process of the law.”

Many who have participated in our brainstorming exercise have praised our efforts to move cases more expeditiously. Three years ago, based in part on the Commission on Children’s Justice’s recommendations, we implemented time standards for certain hearings in child abuse and neglect cases. I am proud to announce that, last fall, we honored 25 judicial circuits for conducting at least 95 percent of these hearings within the requisite time frames and another dozen circuits for doing so in 100 percent of their hearings. You should be proud of the judges and staff in all these circuits for this wonderful progress.

Court technology is another area in which we have worked to make our system meet the needs of those we serve. Case.net, which provides public case information to anyone with an Internet connection, is only the tip of the iceberg. We recently completed our statewide case management system, allowing Missouri’s courts to work with almost every department in the state – as well as several government entities nationwide – to ensure prompt access to critical judicial information. For instance, transmitting criminal and traffic disposition information in near real time gets licenses of dangerous drivers revoked quickly and helps residential care facilities ensure their employees’ backgrounds make them appropriate to work with children or the elderly. In the coming year, we are working to send warrants and full orders of protection electronically to law enforcement, giving them this critical information as quickly as possible. As a next step, we are working with the Office of Administration to solicit bids from vendors for e-filing, which would allow litigants to submit and retrieve court documents from remote locations and after hours, reducing costs, saving time and allowing for greater access to filings.

For us to continue providing these critical services, however, we need continued legislative commitment to court technology. Most importantly, we need you to reauthorize the \$7 filing fee paid by those who file cases. Although it funds one-third of the court system’s technology needs, this fee is one of the lowest in the nation for this purpose, and it is scheduled to sunset this year. But without it, we literally would go back to pencil and paper in some places and could not sustain the kind of information sharing that public safety and efficiency require.

This also is important to the state’s bottom line, for if we could not maintain our statewide case management system, we would not be able to continue our efforts to collect monies owed to the state and her citizens. For example, in the four years since the judiciary and the legislature worked together to create the tax-offset and debt-collection programs, Missouri courts have captured for the state more than \$8.4 million that otherwise would not have been paid. This is just a small part of the tens of millions of dollars the judiciary collects each year that is earmarked for general revenue or other funds the state administers. In fiscal 2008, this amounted to \$40.6 million. This money – which goes to schools and state and local governments – can play a small, but key, part in alleviating some of the burden these difficult financial times are placing on all our government institutions.

We look forward to working with you to maintain the positive economic impact on the state that court technology has. We also look forward to your ideas for other ways to increase the courts’ efficiency.

Increasing public trust and understanding

I began by emphasizing our roles as constitutional partners. This partnership is established by the Missouri Constitution (article II, section 1), which provides our basic compact with the people: “The powers of government shall be divided into three distinct departments – the legislative, executive and judicial ...” and that no persons in one branch “... shall exercise any power properly belonging to either of the others”

Over the past few years, those of us in the legal community have been collaborating to explain the checks and balances of these three co-equal yet interdependent branches of government as a part of our fourth mission: enhancing the public’s trust and confidence in their whole government. I firmly believe that as our citizens increase their understanding of the role and workings of the judiciary and the other branches of government, their already high level of confidence in the judicial system, and their level of confidence in all parts of their government, only will improve. This is an important tie that binds us all: a deep-rooted desire to serve the citizens of this great state and to see justice brought to those who need it.

As a part of expanding the public’s understanding of the judicial role, judges and lawyers are volunteering to teach in schools on Constitution Day and in government classes. Just last week, I took part in a citizenship video program that will be shown to thousands of middle- and high-school students in which I explained the concepts underlying our constitutional democracy. We also are collaborating with The Missouri Bar and others to enhance the public’s understanding of the justice system by expanding the judicial performance evaluations that Judge Mike Wolff suggested two years ago and that the Bar instituted last fall to give voters better information about judges up for retention.

Conclusion

In conclusion, I want to reiterate how important it is that we all continue our joint commitment to a well-run judiciary. Our justice system is one leg of the three-legged stool that represents the system of governance our constitution establishes. I never will forget the difficulties inherent in your role, and I look forward to your input in the coming weeks and months as we in the courts continue to develop strategic initiatives for an even better and stronger justice system. And let us all – regardless of the branch of government in which we serve – be guided by a legal principle enshrined above the door of the red brick Supreme Court building – “The law: It has honored us. May we honor it.” The citizens of Missouri deserve – and expect – no less.

Thank you.