

STATE OF THE JUDICIARY

Delivered by the Honorable Lawton R. Nuss
Chief Justice of the Kansas Supreme Court
Wednesday, February 6, 2019

Good afternoon, Governor Kelly, Lt. Gov. Rogers, Speaker Ryckman, distinguished members of the House and Senate, Attorney General Schmidt, Insurance Commissioner Schmidt, judges and justices, and other honored guests, and my fellow Kansans.

Last week on Kansas Day, I started my 10th year of serving in the capacity of chief justice, and with it the privilege of reporting to all Kansans on the status of their courts. It is a special privilege to do so today – during the 14 days between the birthday of Kansas and the birthday of the man who became president just five weeks after we became a state, Abraham Lincoln, whose statue graces our Capitol grounds.

I thank you all for coming. I see that not everyone who was invited is actually here. I understand why some people might not want to attend because I have heard some may feel: "Chief Justice Nuss always says the same thing every year in his speech. 'All my employees and judges are paid below market rates.' Enough already," they say.

I suppose one might wonder where African-Americans would be today – if Thurgood Marshall had been disheartened by those who were tired of hearing him always talking about needing to desegregate public schools. Would we have the *Brown v. Board of Education of Topeka* decision by the United States Supreme Court – the decision we honor with a beautiful new mural in the Kansas Capitol? And one might wonder where women would be today if Ruth Bader Ginsburg had been discouraged by those who were weary of her constantly talking about equal rights for women?

But neither Marshall nor Ginsburg were talking to the good folks in Kansas government; good folks who want to do the right thing. That means, unlike these two future supreme court justices, I have several options. So here is the one I am privileged to choose today. Unlike my past State of the Judiciary speeches, I will not give you a full list of the financial concerns of your Judicial Branch of government. By the way, that's meant to be an applause line. I won't because last September we submitted our budget proposal for the next two fiscal years. Among other things, that proposal includes

requests for compensation increases for employees and judges who are paid below market rates. So there you can read all the details yourself, at your convenience.

And you don't have to worry throughout my entire speech about when I am going to give you my summarized "financial concern" because I will briefly address it now and simply give you several bits of information that I find concerning, just a few bits that illustrate some of the issues I would like you to remember after you leave here today:

- First, for our 167 district court judges, in pay they now rank "dead last" in the entire country among their fellow trial judges. We are 51st, behind all the states and the District of Columbia. And this is even after the pay raises legislators provided the last two sessions – for which we remain grateful. I am unaware of any other group of Kansas state employees whose pay ranks dead last nationally – the worst in the United States.
- Second, a federal magistrate judge position recently opened in Topeka. It pays about 50% more than our district court judges and about 200% more than our own magistrate judges. How many of our district court judges applied? 21 of them, or 12%.
- Finally, I will quote the president whose portrait hangs in the Oval Office. His soldiers nicknamed Andrew Jackson "Old Hickory" for his toughness and dedication to their welfare. These traits and others led the former general to be called a great champion of the people. This is what President Jackson said: "All the rights secured to the citizens under the Constitution are worth nothing . . . except guaranteed to them by an independent and virtuous Judiciary."

To your relief, this ends my "bits of information" on this financial subject. I will let you connect the dots between them. And you can perform your own analysis of the consequences this level of judicial pay can – and will – have on providing justice in Kansas, the standard of justice that Kansans expect and deserve.

In the meantime, allow me to introduce some of our district court judges who, like all of their colleagues, are tasked with providing justice, and in the process, often are making decisions that greatly alter the lives of Kansans.

- Judge Mike Ward from El Dorado: He represents judges who preside over capital punishment cases. If they decide the jury's imposition of the death penalty is not supported by the evidence, they can modify the sentence to life without parole.
- Judge Bruce Gatterman from Larned: He represents judges who preside over sexually violent predator hearings. They decide whether a person committed as a sexually violent predator is likely to engage in future acts of sexual violence and should remain in secure commitment – or whether that person is safe to be placed on transitional release back to the community.
- Judge Kelly Ryan from Olathe: He represents our judges who imposed criminal sentences in the more than 22,000 felony cases and more than 14,000 misdemeanor cases filed last year. They consider a range of sentencing alternatives available under the law and, using their discretion consistent with the sentencing guidelines, determine the appropriate sentence for each defendant. Last year nearly 150 of these cases involved the killing of a human being.
- Judge Mary Christopher from Topeka: She represents our judges who hear child in need of care cases – more than 7,000 filed last year. By statute this includes children who have “been physically, mentally or emotionally abused or neglected or sexually abused . . . [or] abandoned.” If they make such a finding, they can place the child in protective custody and issue restraining orders. They also conduct proceedings and decide whether a parent is unfit, and, if so, when termination of parental rights is in the best interests of the child.
- Judge Sally Pokorny from Lawrence: She represents our judges who handle child custody issues. As you can expect, these issues can be quite contentious during divorce – more than 11,000 divorce cases were filed last year. They determine the legal custody, residency, and parenting time of a child in accordance with the child's best interests.
- Judge Jeff Dewey from Wichita: He represents our judges who handle protection from abuse and similar issues. They can issue emergency orders on

finding immediate and present danger of abuse to an adult or any minor children. In domestic protection from abuse cases, they can place restraining orders on the defendant and order law enforcement to evict the defendant from the residence. They can also award temporary child custody or residency. They can also enter temporary orders to protect victims in cases involving stalking, sexual assault, and human trafficking. Last year, Kansas judges issued more than 14,000 restraining orders in protection from abuse and protection from stalking cases.

In deciding to leave the entire financial subject now, I was inspired by a cowboy poem called "The Whole Load."

Greatly summarized, a young preacher worked all week on his sermon, but on Sunday morning more than two feet of snow covered everything. So now, no one would come hear his wonderful sermon. But then he saw an old pickup truck grinding through the deep snow. It finally stopped in front of the church. An old cowboy got out and struggled to the door. The preacher got in the pulpit and proudly delivered his sermon to the lone cowboy. One hour later, the sermon was over and the preacher eagerly asked the old cowboy what he thought of it. "Well, padre," he said. "I don't know a thing 'bout giving sermons. But I do know a lot 'bout feeding hay to my cow herd. And sometimes only one of the cows shows up to be fed. But when she does, I damned sure don't give her – the whole load."

As I said, you can read our "whole load" in our budget submission. But for now – you all can relax because the unsettling part of my speech is over.

BRASS TACKS

So let's talk about the positives. What do these and the rest of our 267 Kansas judges – and our 1600 employees – do for the money Kansans currently invest in them? Money that is less than 1% of all funds in the state's entire budget.

eCourt and e-filing:

First, I will update you on our electronic (or eCourt) project which I first talked about in my speech in 2011. Our eCourt project committee has been chaired by Justices Dan Biles and Caleb Stegall.

One part of that project has been electronic filing (or e-filing). As you know, this enables legal documents to be filed with the courts electronically – and therefore remotely. I am pleased to report that after years of work, e-filing is available for all state courts and is mandatory for all lawyers, except when they show technology has failed.

I mentioned in past years that the eCourt long-term plan has been for e-filing to eventually be integrated with a centralized electronic case management system different from the ones presently used. Together, these two parts of eCourt will allow us to shift from a local, paper-based system to one that will provide judges, court staff, and attorneys with immediate, statewide electronic access to case information and records provided by the Kansas courts.

As a result, eCourt will stand as one of the greatest achievements for improving the administration of justice since statewide court unification some 40 years ago. Here are just a few of the many benefits that eCourt will provide:

- Improve processing of the 400,000 cases filed each year in the state courts.
- Increase efficiency and effectiveness by streamlining some activities and automating others – like improving the ability to process electronic payments.
- Standardize the various practices currently performed throughout all the state courts.
- Maintain and improve data sharing among various governmental and public entities.
- Provide the public with statewide 24-hour access to some of the most frequently requested court information.
- And as I first mentioned in my 2012 speech, it will enable our employees in any county courthouse to work from their computers on court business for other counties. This allows the Supreme Court to more effectively and efficiently manage the state's entire court system.

I am pleased to announce that the first "Go-live" will be in June. Because of the sheer size and scope of this project affecting all 105 counties, our 31 Judicial Districts will enter the centralized system in phases: Track 1 (this year) – 8th Judicial District (Dickinson, Geary, Marion, and Morris counties) and 21st Judicial District (Clay and Riley counties); Tracks 2, 3, and 4 in 2020; and finishing with tracks 5 and 6 by late 2021. This full implementation will bring even more uniformity and efficiency to the entire court system to benefit Kansans.

Committee on fees, fines, and bonds:

We all know that after the riots in Ferguson, Missouri, serious problems were uncovered in its municipal court. So for the nearly 400 municipal courts in Kansas, the Supreme Court created a committee to review the current practices in these courts that last year processed more than 350,000 cases. Specifically, the committee was to examine each court's standards for allowing defendants to "bond out" of jail before their trial, the fines levied against defendants for violations of ordinances, and the fees charged to them.

The committee – chaired by Salina municipal judge, Brenda Stoss – studied current municipal court practices not only in Kansas but also across the country. The committee's work was somewhat unique. As explained by the executive director of the League of Kansas Municipalities: "Reviewing systems and programs in search of efficiencies is a common function within government. What this review did— . . . is it considered whether the municipal court system acts in an equitable way for individuals, rather than just efficiency." The committee made 18 recommendations for Kansas municipal courts.

Its report was reviewed by city attorneys last fall – with more statewide groups to follow. The League is following up on gathering data from municipal courts across the state. It will be sharing those survey results among these courts so that cities can evaluate their fine structures to see if they are in line with surrounding communities. Cities are also being encouraged to make the fees charged to defendants reasonably related to the actual cost of the service provided.

The committee also recommended that "training and education should be provided to ensure protection of the rights of a defendant." So, the report has been

placed on the April educational program for municipal judges' training conducted by the Supreme Court. Some of the educational topics will include:

- Practices that have been identified as disproportionately jailing "economically disadvantaged" persons;
- Best methods used to reduce (1) the issuance of bench warrants and (2) jailing of persons for nonpayment of fines and fees;
- Best court practices for persons bonding out of jail before trial;
- Lessons learned regarding unnecessary detention and the consequences of that practice.

All of these efforts are geared toward improving justice in the Kansas municipal courts.

Pretrial detention practices in district courts:

In November, the Supreme Court formed a similar group to examine pretrial detention practices in our state district courts. The task force, chaired by Chief Judge Karen Arnold-Burger of our Court of Appeals, includes judges, defense attorneys, prosecutors, and court services and community corrections officers. For continuity, it includes Judge Stoss from the municipal court committee. In addition to examining current pretrial detention practices, the task force will examine alternatives. It will also compare those current Kansas practices to the effective practices – and detention alternatives – identified by other courts so that "best practices" can be developed for our state.

Why is this so important? Because it is believed more than half of the people in our local jails are simply awaiting trial before their guilt or innocence has been determined. We know that even short periods of pretrial detention can result in loss of a job impacting not only a defendant but also his or her family. And extended family members' lives can also be impacted by a defendant's pretrial detention. For example, a grandparent may need to miss work to care for the defendant's children.

The task force seeks to balance, on the one hand, a person's right to be presumed "innocent until proven guilty" with the risk of flight and the risk to public safety – two risks that pretrial detention tries to address. The task force wants to see that no person is unconstitutionally or unnecessarily deprived of his or her liberty before a decision is made on guilt or innocence.

While best practices and some degree of uniformity are worthy goals, the bedrock of the task force is the desire to maintain Kansans' faith in their system of justice. So, as with the municipal courts' committee, if the task force finds problems in the state's court system, we intend to see they are fixed.

Specialty courts:

Specialty Courts have increased and now operate in nearly one-half of our 31 judicial districts. Often called problem-solving courts, they differ from the usual courts because they coordinate services provided to offenders with direct supervision by a judge. The goal is to avoid incarceration and recurring problems. They now include adult and juvenile drug courts, behavioral and mental health courts, juvenile truancy courts, a veterans treatment court, a probation review court, a teen court, and a home court for low risk juvenile offenders with parental care issues.

These special courts are created and run by judges and staff who voluntarily take on this extra work. The work is especially hard – and time-consuming – because it requires intense supervision of defendants by judges and probation officers, often in cooperation with prosecutors. They receive no extra compensation for it. They do it because they all care deeply.

Representing these specialty court judges are Judge Pokorny of Douglas County's behavioral health court and Judge Timothy McCarthy of Johnson County's Veterans' Treatment Court. I would like to share a story from a graduate of Judge McCarthy's program. Its lesson can actually apply to many users of all our specialty courts. This recent graduate said, "I really felt like, coming in as a combat veteran, I went from a hero to a zero. And I thought there was no way to ever get back to being a hero, whether it be in the eyes of society or in the eyes of my own wife and children." So he held up a crisp \$20 bill to make his point and then crumpled it to tell us that no matter

how crumpled the bill gets, it's still worth \$20. Likewise, as he said, no matter how life "sullies our minds, souls, beliefs," human beings still have value.

I thank that veteran for serving his country, for his courage in saying, "I need help," for his commitment in graduating from this long, intense program, and finally, for serving as an example to others. I ask you to join me in thanking him as I introduce Donald Miller, a life salvaged in the justice system.

Self-help centers:

More and more Kansans can't afford to hire a lawyer. So they represent themselves in court. To prevent their lack of knowledge from slowing down the legal proceedings while still providing them meaningful access to justice, some Kansas courts have created and staffed self-help centers. They now exist in the courthouses of five counties: Johnson, Wyandotte, Sedgwick, Miami, and Ellis. And our court clerks continue to assist with a variety of self-help activities in all 31 districts while being careful not to actually provide legal advice.

The Supreme Court's Access to Justice Committee continues to explore how to best help our district courts by (1) evaluating which self-help models will work best for Kansas based upon each county's needs and resources; (2) creating methods for clerks' offices across the state to share resources to help these folks; and (3) standardizing forms and processes to promote consistency in the help they provide.

Pro bono legal services:

The Supreme Court has also increased access to justice for Kansans by allowing more lawyers to provide free legal services. For years we have granted limited licenses to certain lawyers who perform legal services just for their employers. In September, we began allowing those lawyers to also perform free services to people who can't afford a lawyer as long as this service is provided through either a not-for-profit civil legal services provider or an accredited law school clinic approved by the court for that purpose.

Supreme Court travel:

My last topic on the State of the Kansas judiciary concerns the appellate courts' continuing efforts to bring their proceedings directly to the people of Kansas. The Court of Appeals has heard its cases argued across the state for years – recently in Kansas City and Wichita.

As for the Supreme Court, we started eight years ago. Last year we heard cases at the high school auditoriums in Colby and Manhattan. Both sessions were live-streamed.

In April, we will be at the Lied Center at KU. Like others, that session will be in the evening – so that people who work during the day can come and see for themselves who we are, what we do, and how we do it.

This fall we will hear cases in yet another Kansas community. Here is your hint where:

Gaily bedight,
A gallant knight,
In sunshine and in shadow,
Had journeyed long,
Singing a song,
In search of . . . Eldorado.

(Yes, I know in Kansas it is pronounced "El Dorado," Justice Biles' hometown.)

This poem was written by Edgar Allan Poe in 1849. But some of you western fans may instead recognize it from the classic 1966 John Wayne cowboy movie "El Dorado."

So if you close your eyes, maybe you can envision the Duke and call it cowboy poetry – the kind I have been lucky enough to judge over the years with celebrities like Governor Kelly, Senator Longbine, and Representative Carlin.

CONCLUSION

In closing, I call upon the Greek philosopher Aristotle, who said more than 300 years before the birth of Jesus: "At his best, man is the noblest of all animals; separated from law and justice, he is the worst."

The professionals of your Judicial Branch – some of whose work I have described today – are doing their best, all year long, to keep Kansans the noblest of all. And that obviously includes professionals like our district magistrate judges, court clerks, court reporters, and administrative assistants. They also help handle the probate, juvenile, domestic, traffic, and other cases such as the thousands of civil cases filed by Kansas business owners to collect money owed them. And it includes professionals like court services officers who supervise more than 17,000 convicted criminals on probation (including sex offenders).

Remember that today I have chosen to focus on just one of the Judicial Branch's financial concerns. As for concerns in other parts of state government, I will not attempt to speak knowledgeably. But here I am to speak, what I do know. That is: on January 29, 1861, we became the 34th state in the nation. And nationally we now rank 35th in population. But we rank 51st in trial judge pay. That said, I believe the good folks in the Legislature will take fair account of the needs of the Judicial Branch – all our judges and employees – as we administer justice to Kansans.

Thank you for listening carefully. Please join us for a reception downstairs in the Hall of Justice and accept our invitation for tours of Kansans' Judicial Center, including my judicial chambers.

I wish you Godspeed.