

STATE OF THE JUDICIARY

January 17, 2018

Chief Justice Lawton R. Nuss

Speaker Ryckman, President Wagle, distinguished members of the House and Senate, honored guests, and my fellow Kansans.

On January 29th, Kansas Day, I will start the 9th year of my privilege of serving in the capacity of chief justice of the supreme court. I thank Speaker Ryckman for generously offering me this fourth opportunity during that time to speak to you about Kansas courts. And I thank President Wagle for graciously agreeing to the scheduling of this event. Mr. Speaker, I also thank you for inviting my judicial colleagues: the justices on the Supreme Court and the judges on the Court of Appeals.

Many years ago when I was in the Marines, the Navy carried us all over the Pacific. On every ship, announcements were made over the intercom system called the "IMC." Announcements began with "Now hear this. Now hear this." The ultimate announcement said that too. But it was followed by, "This is the captain speaking." And sailors and Marines alike dropped whatever they were doing and paid strict attention – because the captain was the ultimate authority on the ship – in all matters. In fact, one I knew displayed a brass plaque that said, "I am the captain of this ship and I will do as I damn well please."

The people of Kansas, in their constitution, wisely decided that no single person would be completely in charge of their ship of state – in all matters. So they separated the powers – and created three equal branches of government. This means that even though at this moment I might say "Now hear this, now hear this, this is the chief justice speaking" – you are not obligated to drop what you are doing, nor obligated to pay strict attention, nor even pay any attention. But if you care about justice in Kansas like our founders did, and I hope you do, then I would ask you to grant me your attention for a few minutes.

Someone once said:

"I . . . believe that the Federal Government has an obligation to enforce the constitutional rights of even the least individual among us, wherever he may be, if those rights are being denied, and to do so at the point of bayonet if necessary."

Now, what wild eyed, left-leaning Hollywood celebrity said that? It was a Hollywood actor all right: named Ronald Reagan at his 1982 presidential news conference. And Reagan said it repeatedly during his presidency.

Perhaps you were surprised to hear President Reagan speak so passionately about government enforcing constitutional rights at the point of a bayonet. After all, he was a proud champion of reducing what he considered governmental "interference" in people's lives. But Reagan recognized a few things in life were essential. Because as governor of California he also had said,

"[A]t any level of government I have always subscribed to a belief that protecting the rights of even the least individual among us – is basically the only excuse the government has for even existing."

Fortunately, we rarely have to resort to bayonets. Instead, constitutional rights are enforced, and protected – for even the lowest person among us – in the Kansas court system as administered by our approximately 1600 employees and 260 judges spread across 105 counties. Some of those employees and judges are with us this afternoon in the gallery behind you. Those in robes are some of the chief judges from around the state who are responsible for the legal proceedings in our 31 judicial districts. They appear here today at their own expense. I will ask all judicial branch personnel there to stand. Please join me in thanking them for their service to our great state.

Now let me share with you some of the things Kansas judges and court employees have been doing.

eCourt and e-filing

I will start by updating you on our electronic (or eCourt) project which I first talked about in my speech here in 2011.

One part of that project is electronic filing (or e-filing). As you know, this enables legal documents to be filed with the courts electronically. After years of work, implementation of an e-filing system has been completed for all state courts – in 105 counties and in both the appellate courts. By June, no state court will any longer accept paper filings by attorneys. Completion of this big project was made possible because the 2014 legislature earmarked some docket fee revenues for the project for several years. I join many Kansans in thanking you for those important appropriations. It means that nearly 4 1/2 million court documents have been filed – without people having to travel to the courthouses or put them in the mail.

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

Just a few examples of the benefits that eCourt will provide:

- Improve case processing in the Courts.
- Increase the efficiency of information delivery to all judges.
- Increase operational efficiency by automating certain activities and streamlining others.
- Maintain and improve data sharing between various governmental and public entities.
- Enable our employees in any county courthouse to work from their computers on court business for other counties. This alone is a big benefit because it allows the Supreme Court to more effectively and efficiently manage the state's court system.

Eventually, eCourt will also provide the public with statewide 24-hour access to some of the most frequently requested court information – from any computer with an internet connection.

Three years ago the eCourt steering committee began to review exactly how to change from different computer systems in the courts to one centralized case management system. The committee also looked to standardize the various practices currently performed throughout all the state courts. Their long study for the right vendor is now complete. And I am pleased to report that during the last 30 days, a contract was signed with Tyler Technologies of Plano, Texas. The \$11.5 million in the contract also comes from docket fees earmarked by the 2014 legislature for this purpose. Tyler has worked well with statewide judicial systems in 13 other states; they were our committee's clear choice.

We anticipate that the statewide eCourt project will be completed within about four years. That day will bring even more uniformity and efficiency to the entire court system to benefit Kansans – one of the greatest achievements since court unification in the 1970's.

In the meantime, we have been expanding our use of existing technology in other areas and embraced the efficiencies it produces.

Videoconferencing:

In most of our 31 judicial districts, after arrest, a criminal defendant's first appearance before a judge in the courtroom is conducted by camera from the jail. This saves the time and cost of transporting the hundreds, if not thousands, of defendants to the courtroom and back. Many districts also use video conferencing for similar

proceedings: juvenile detention, mental illness hearings, criminal arraignments, or testimony of expert witnesses or KBI lab personnel, all with a view toward savings.

Our Court of Appeals and Office of Judicial Administration both use videoconferencing for certain activities instead of requiring attorneys and others to sustain the expense of coming to Topeka. OJA uses it for training court personnel across the state; the Court of Appeals for oral arguments on some cases.

As for the supreme court, we recently obtained video capability in our Topeka conference room. I had the privilege of being the system's first user. In November, at the invitation of Major General Vic Braden of the 35th Infantry Division, I presented a legal education program for him and the lawyers under his command. By the way, they were in Kuwait at the time. Because of the eight-hour time difference, I had to get up at what the military calls O Dark Thirty. I thank them for their service to us all – 7,000 miles from home.

Personnel efficiencies:

The judicial branch has also looked at personnel efficiencies. Our weighted caseload study several years ago allowed us to accurately determine, by actual workloads, how many judges and court clerks were needed and where they were needed in the state. Because the study excluded the 700 employees not working directly in the offices of the clerks of the court, in 2016 we conducted a "position inventory" to address them. These assessments, which are continually updated, help us determine needed personnel levels on an ongoing basis. It also allows us to consider the impact of recent advancements in technology on those staffing needs. We are currently working with the National Center for State Courts to perform a workload study of our more than 300 Court Services Officers (also known as CSO's). Essentially, they supervise offenders on probation.

These studies and our increased use of technology have indeed been valuable tools in modernizing court operations. That in turn benefits the Kansans we all serve.

But as I mentioned from this podium last March, while we are gaining efficiency through them, we are also continuing to lose efficiency – through increased turnover of highly experienced judges and employees. Besides retirement, these losses are primarily because of low compensation. For the same reason, we often have had real trouble finding suitable replacements in many courthouses.

- As you may recall, using a grant, in 2016 we hired the experts from the National Center for State Courts to study the compensation earned by our (1) court employees and (2) district magistrate judges. They looked at compensation levels of these folks in other state court systems, and in comparable positions in local government and private business.

- After you authorized judicial branch personnel a 2½% pay increase last session, for which I publicly thank you, the National Center then updated its findings and conclusions. Among other things, it considered recent increases in employee compensation in the sources it examined last year, such as other states' court systems.

A founding father of our country, Alexander Hamilton, has often been attributed with saying, "The first duty of society is justice." Seemingly at odds with Hamilton's view is the fact that even with last session's 2½% increase:

- Nearly 1/3 of all the employee positions in our justice system still have starting salaries below the 2017 federal poverty level – for a family of four;
- And the fact that every Kansas judicial branch job classification is still below market pay rate, some by as much as 21%.
- Standing in the gallery now is Ms. Penny Timmons, (trial court clerk IV) who represents those of our employees who are paid 20.4% below market. And Ms. Karen Hughes, (word processing tech) who represents our employees paid below the federal poverty level I mentioned.

Thomas Jefferson was a great rival of Hamilton's among the founding fathers. Because like Reagan, President Jefferson believed in smaller government. Even so, Jefferson also believed that, "The most sacred of the duties of a government [is] to do equal and impartial justice to all its citizens." I hope you can appreciate that this most sacred duty of government becomes more difficult to perform when approximately 700 of our justice system's 1600 employees (44%) are still paid about 16.5% below market. This includes many court services officers, who each year supervise 18,000 convicted criminals on probation, including approximately 3,000 sex offenders. And we can only wonder what Jefferson might have to say about our ability to perform this most sacred duty – when told that nearly one-third of our employees also need to work jobs outside the Judicial Branch to make ends meet. This is five times higher than the Kansas average.

- Now standing in the gallery is Mr. Brad Schuh, (a CSO I) who represents the 700 employees paid 16.5 % below market. And also Ms. Miranda Cummings (managing court reporter) who represents the approximate 500 employees having to work at least one other job to make ends meet.

Let's fast forward from Hamilton and President Jefferson to yet another president, Andrew Jackson – who is considered by many historians to be a great champion of the people. 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."

So let's look at our judiciary. Among the things the compensation study revealed are that even after last year's 2½% increase:

- Over 21% is still needed to raise district magistrate judge salaries to market level.
- And more than one-fourth of our magistrate judges who responded to the survey have indicated they are seeking employment outside the judicial branch. The number one reason given? Compensation.

The people's champion, Andrew Jackson, was not alone in his beliefs. An Atchison businessman named Robert Graham was a delegate at the Wyandotte Convention in 1859 – which was established to create a constitution so Kansas could be admitted as the 34th state. Graham told his fellow delegates,

"[E]verything should be done for the purpose of calling to the bench the best legal talent in the country. As a safeguard to the interests of the people, this is of more importance than anything else that will come before us."

This sentiment was echoed by other delegates.

It is a matter of public record, however, that even after last session's increase, today Kansas district judges (the trial judges in your communities), still rank next to last in the nation for what they get paid. Kansas is only ahead of New Mexico.

Last year from this podium I said it is human nature for people to devote their time and money to those things that are most valuable to them. So after recalling these statements of the founders of this country and our state, all Kansans again may want to ask themselves: what value do we place today on the administration of justice in our state? Some may respond that although the National Center's work does provide objective market data based on various sources, it has no bearing on the real world in Kansas. So allow me to share our judicial branch reality.

Actual numbers establish that because of low pay, we are losing more and more good, experienced people in our branch of government. And actual numbers show it also is hard to recruit suitable replacements. First, according to the Bureau of Labor Statistics, the current average turnover rate nationally is 3.2 %. Ours in the judicial branch? Almost 5 times as high: 15%.

Second, we have also seen a large drop in the number of qualified applicants for our positions. Let me provide some examples.

Trial Court Clerk II positions (entry level)

In 2017, the 19th Judicial District (Winfield and Arkansas City) had 11 applicants for two positions. Five of them eventually withdrew, either because they could not take a pay cut or already found a better position elsewhere – so essentially six applicants, down from 42 applicants for two positions in 2010.

Unfortunately, the pay raises from last session have not reversed this downward trend for clerks. Two months ago:

- The 28th Judicial District (Salina and Minneapolis) had only eight applications for an opening, down from 50 for an opening just five years ago.
- The 5th Judicial District (Emporia and Cottonwood Falls) had only 12 applications for an opening, down from 38 just five years ago.
- And the Sedgwick County Court had five openings – but only six applicants. Only three were hired. Last month that court had three openings but only three applicants – of which only one was deemed qualified.

Trying to fill these particular positions will only become more difficult. Starting pay is \$11.80 per hour. But recently WalMart announced it is raising its minimum wage to \$11 per hour and is adding eligibility for bonuses up to \$1000.

For CSO I's (probation officers) the news is regrettably about the same.

- For example, in 2016 the 17th Judicial District in northwest Kansas had only four applications for an opening; down from 21 applications in 2005.

And unfortunately, the recent pay raises have not reversed this downward trend for CSO's. Three months ago:

- The 28th Judicial District (Salina and Minneapolis) had only 11 applicants; down from 38 in 2011.

Average cost of turnover

The National Center described some of the hidden cost of underpaying employees – which results in turnover. As mentioned, our turnover rate is nearly five times higher than the national average.

Among the relevant factors considered in this cycle of inefficiency were the time and energy spent on recruiting, interviewing, and hiring new employees, with existing employees trying to cover all the work until the vacancies are filled. And then time and energy is spent on training the new person – by existing employees who again have to put aside their regular duties. If this increase in turnover and decline in applicants continues to worsen, at some point we will find ourselves – particularly in the smaller, rural counties – with no suitable applicants. And because Kansas statute requires at least one judge per county, that means the only judge in the county will be doing all the court's work.

Putting aside the obvious inefficiencies, the real question then becomes: how many judges will be willing to perform all these court functions in these counties – when today many of our magistrate judges already want to leave their existing workloads for higher paying jobs? In light of this reality, an even more important question may arise: do you want to continue to keep at least one judge in each of our 105 counties if we are unable to hire any suitable staff to support them? That is a policy question for this legislature to consider. I take no position on it today.

Getting down to brass tacks, what do all these people in the Judicial Branch do for the money you currently invest in them?

Well, last fiscal year, they processed almost 400,000 new cases filed in the district courts. This caseload included more than 20,000 felony cases and more than 14,000 misdemeanor cases. In addition to supervising convicted criminals on probation, they protected almost 7,000 children who were in need of care by ruling on requests related to their safety and wellbeing. And they protected nearly 14,000 people by issuing restraining orders – to say nothing of the probate, juvenile, domestic, traffic, and other cases. Among the thousands of civil cases filed were those by Kansas business owners to collect money owed them.

Last week the governor said from this podium, that we "will fight the scourge of human trafficking like no other state and throw that darkness from our borders." In response to his request for us to recognize the efforts of the Attorney General and the legislature on this issue, General Schmidt got a standing ovation. Rightfully so. But with this renewed emphasis on increasing the numbers of people prosecuted for these terrible crimes, we need to remember where the Attorney General – and all of the prosecutors of this state – will go to do that: the Kansas courts whose personnel will shoulder these increased caseloads. The same can be said for any other new legislation passed to achieve the worthy goals of protecting human rights, criminalizing conduct, or both.

Let me return to a few examples of the many other things the courts have done.

Committee on fees, fines, and bonds:

We are all painfully aware of the problems that were disclosed in the city of Ferguson, Missouri. Although municipal court problems of that magnitude have not arisen in Kansas, your supreme court has nevertheless been proactive. First, I have communicated with the judge who served as the Chief Justice of Missouri at that time.

Second, we have created a committee to review bonding practices, fines, and fees of the more than 300 municipal courts in Kansas. Among other things, the committee will examine the operations of these courts and compile a "best practices" model for them to follow. Committee members from across the state include Rep. Brad Ralph of Dodge City. The committee has now met twice – with more to come. It will report its ultimate findings to not only our judicial administrator but also the League of Kansas Municipalities.

With that municipal courts committee as a model, a number of chief judges have asked the supreme court to later form a similar one for our state court system. While best practices and some degree of uniformity are worthy goals, the real foundation for the entire project is the desire to maintain Kansans' faith in their system of justice. So if problems are found, we intend to see they are fixed.

Specialty Courts:

Specialty, or problem-solving courts, differ from the usual courts because they coordinate services provided to criminal offenders with direct supervision by a judge. Most of these are drug courts which attempt to address an offender's underlying substance abuse problems – problems that often lead to a frustrating cycle of criminal offenses, incarceration, and then more offenses. National research has shown that drug courts can be effective in reducing offender recidivism. That in turn saves considerable judicial – and correctional – resources. To date, some variation of drug courts – ranging from juvenile drug courts to those limited to defendants addicted to meth – exist in 10 of our 31 judicial districts.

But the tradeoff for these rewards continues to be more judicial time: they often require intense supervision by judges, in addition to that by their regular probation officers. Despite this extra work, several more districts are looking to start drug courts in 2018 because they see the benefits for the individuals and the state.

Other types of specialty courts have been established with this same goal in mind. Veterans' court in Johnson County was created for those who have committed misdemeanors or lower-level felonies and who are eligible for treatment by the Veterans Administration. Like drug courts, the veterans' court offers alternatives to incarceration. A recent graduate of the 18-month long program credits it with turning him away from suicide after his return from a combat tour in Afghanistan.

Similarly, Douglas County District Court established a Behavioral Health Court to target those whose mental health issues may have contributed to the low level, nonviolent criminal charges against them. The goal is to dismiss the charges after a period of successful intervention and treatment.

And other judicial districts have similar nontraditional courts with similar goals. The 29th Judicial District, Wyandotte County, has "mental health court." Lyon County in the 5th Judicial District has "Home Court" for supervising low risk juvenile offenders with capable parental involvement. And three districts have juvenile truancy courts. All of these specialty courts operate pursuant to Supreme Court Rule that adopts statewide operating standards for such courts.

Supreme Court travel:

My last topic on the State of the Kansas judiciary concerns the appellate courts continuing to take their proceedings directly to the people of Kansas. The Court of Appeals has heard its cases argued across the state for years – recently in Hugoton and Ulysses in southwest Kansas.

As for the supreme court, most recently we heard cases in Winfield and Emporia. This spring we will be in northwest Kansas. Like others, that session will be held 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. To date, Hays has the record turnout: nearly 700 people attended. But Goodland is where Justice Luckert grew up. So we may see that record broken as people come out to see their "hometown achiever."

CONCLUSION:

In closing, for the good work you have done for Kansans in these difficult times, I want to express my gratitude. Now I am well aware you are still facing many challenges during this legislative session. Maybe some of the biggest ones ever.

From my remarks this afternoon, clearly one challenge is this: If things continue on this financial path in the judicial branch, there are serious concerns about our ability to administer the quality of justice that Kansans have come to expect and deserve. But I believe that you will continue to take fair account of the needs of the Judicial Branch – our judges and employees – as we continue to enforce the constitutional rights held so dear by Ronald Reagan. And continue to provide justice embraced by the founders of not only this nation but also this great state.

I began with a quote from President Reagan. Let me end with one from another president, our fellow Kansan, Dwight Eisenhower. Sixty years ago, President Eisenhower said:

"If civilization is to survive, it must choose the rule of law. . . . [W]e honor not only the principle of the rule of law, but also those judges, legislators, lawyers and law-abiding citizens who actively work to preserve our liberties under law."

His words ring so true today. If justice, liberty and the rule of law are not to wither in Kansas, but to thrive, then as the man from Abilene said, we all need to work together. And we need your help as legislators. It's nice to have an occasion like this to get to know each other a little better. So we invite you to a reception outside the old Supreme Court chamber after my remarks. My fellow judges and I look forward to introducing ourselves and visiting with you there, and to talk about how to implement what Eisenhower said.

I bid you Godspeed. And to wish you, as they say on ships, "Fair winds and following seas." Thank you.