

STATE OF THE JUDICIARY



2009

Annual Report of the Chief Justice of the Kansas Supreme Court
Robert E. Davis, Chief Justice

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of the Kansas Supreme Court**

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**Delivered by the Honorable Robert E. Davis
Chief Justice of the Kansas Supreme Court
At a Joint Session of the Legislature
Tuesday, February 10, 2009**

Speaker O'Neal, President Morris, distinguished members of the Senate and House, honored guests: Thank you for the opportunity to address both houses of the Legislature today as I report on the State of the Judiciary in Kansas. I consider it a privilege and an honor to stand before you.

Before I begin, please allow me to introduce my colleagues on the Kansas Supreme Court who are with me today. In order of seniority, they are: Justice Lawton R. Nuss, Justice Marla J. Luckert, Justice Carol A. Beier, Justice Eric S. Rosen, and Justice Lee A. Johnson. Also present today is Dan Biles, who has recently been appointed to the court by Governor Sebelius and will be sworn in as our newest justice next month. The justices of Kansas' highest court contribute not only their high-quality legal analysis in our opinions, but we as a court also set policy for administering the Judicial Branch of our government. We are all here today to report to you that the State of the Judiciary in Kansas is sound and that we continue to render quality service to all of our citizens.

For those of you who have not yet met me, I am Bob Davis. I took over the reins as Chief Justice of the Kansas Judicial Branch upon Chief Justice Kay McFarland's retirement in January. Chief Justice McFarland served an impressive 31 years as a justice of the Kansas

State of the Judiciary

Supreme Court—13 of those years as Chief Justice. We are grateful to her for dedicating her career to the people of Kansas. Chief Justice McFarland is a tough act to follow, and I am honored to have had the opportunity to serve with her.

As for me, I am a 16-year veteran of the Kansas Supreme Court. I previously served on the Kansas Court of Appeals for seven years from 1986 until 1993. My background also includes service in the trial and appellate levels of the United States Army JAG Corps, in the private practice of law, and as a county attorney and district court judge.

In my office across the street, I have on display an envelope hand-addressed by the Honorable David J. Brewer. Justice Brewer began his professional career in Leavenworth and eventually became a Kansas Supreme Court justice in 1870. He was appointed to the United States Supreme Court in 1889, where he served until his death in 1910.

While Justice Brewer was on the United States Supreme Court, he said, "Let it never be forgotten that the protection of . . . liberty . . . is the great duty of the republic." These words harken back to George Washington, who wrote in a letter to Edmond Randolph that "[t]he administration of justice is the firmest pillar of government."

What Justice Brewer and George Washington recognized is that the great aim of all public service is to justly protect the liberties of those we serve.

Chief Justice Robert E. Davis

We all promote justice in our different responsibilities. You in the Legislative Branch create and enact the laws we live by. The Executive Branch administers these laws. We in the Judicial Branch interpret the laws and assure that they are within the parameters of our state and federal constitutions.

Perhaps the most commonly stated maxim in our court opinions is that, in cases of statutory interpretation, the intent of the Legislature governs. Our courts seek, in interpreting the law, to determine your intent. Of all the laws we in the courts are called on to interpret and apply, two come immediately to mind. K.S.A. 22-2103, which is found at the beginning of our Criminal Procedure Act, instructs the courts "to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." K.S.A. 60-102, its civil counterpart, charges Kansas' courts "to secure the just, speedy and inexpensive determination of every action or proceeding."

These are high orders, and we in the Judicial Branch take them very seriously. They can be summed up in three words: Justice, Efficiency, and Affordability.

Our first and primary goal, as the statutes make clear, is the administration of justice in all proceedings. It is my strong opinion that the best account of our efforts in this regard is not what I say today, but rather lies in the observation of how our courts promote justice on a day-to-day basis. To that end, and on behalf of our judges at every level of the Kansas Judicial Branch, I invite you to our courthouses. There, you will see first-hand the administration of justice.

State of the Judiciary

More than 30 years ago, the Kansas Legislature unified our state court system. They established one court of justice and created a Court of Appeals. Court unification enabled the Supreme Court to administer the third branch of government uniformly throughout our state. Unification also had the dual benefit of saving litigants' expenses by reducing travel costs and bringing the appellate system to people's doorsteps. Eighty percent of the appeals filed in our state are decided by the Court of Appeals.

Today and tomorrow, panels of the Court of Appeals are hearing cases in Wichita, El Dorado, Kansas City, and Topeka. I invite you to come across the street and observe the parties' oral arguments and the judges' pointed questions regarding the application of the law in those cases.

The Supreme Court will next hear oral arguments in March. I invite you to visit our courtroom and observe those arguments as well. All oral arguments are open to the public. Supreme Court arguments may also be heard online, accessed through the Judicial Branch's website.

Perhaps even more visible are the trial courts—the district and magistrate judges throughout our state. In hundreds of cases heard daily, children, crime victims, and all citizens depend upon our trial courts for justice.

Chief Justice Robert E. Davis

While you are visiting the courthouses of this state—whether at the trial or appellate level—keep in mind that the very important work being carried on in those courtrooms still does not give you a full picture of the obligation of judges and other employees of the Judicial Branch. Equally important to our charge of administering justice in this state is our work to assure that all have access to justice. This task involves efforts to educate the public and to increase efficiency and affordability in all of our activities. I would like to discuss a few of the programs we have instituted to demonstrate how we are striving to meet these goals.

We know that, in difficult economic times, the public need for access to the courts does not diminish. In many instances, the need to access the courts actually increases. At the same time, the ability to afford legal representation has become increasingly more difficult for some parties. Over the past several years, the number of self-represented litigants appearing in our district courts has increased substantially.

Self-represented litigants generally pose more questions and make more procedural errors than litigants represented by an attorney. Judges of the district courts, as well as our court clerks, spend additional time assisting these individuals in filing, processing, and understanding their cases. The issue becomes more complex when one considers the fact that clerks of the district court are not attorneys. They are prohibited from providing legal advice to self-represented litigants. Judges, who are neutral fact-finders, also are limited in the advice and guidance they can provide.

State of the Judiciary

These and other issues led the Kansas Supreme Court to create the Self-Represented Study Committee in 2007. With a membership that includes judges, attorneys, court administrators, and clerks of the district court, this committee has been working hard to provide insight and to seek improvements that will benefit self-represented litigants. The intent of this committee's work is not to marginalize or do away with the need for attorneys, but to make better use of limited resources for everyone involved in the system. We are committed to providing self-represented litigants more and easier access to our trial courts.

Just as we are committed to educating self-represented litigants about courtroom activities, we are committed to informing the public about who we are as judges and what we do. With the help of funding from the Legislature, we have for the first time helped to provide our citizens with a systematic review of judicial performance. The Kansas Commission on Judicial Performance published the first round of judicial performance evaluations last year, giving voters in the past general election the opportunity to find out much more about their judges. The performance evaluations were based on surveys that were mailed to attorneys, jurors, witnesses, staff, and others who had contact with those justices and judges who stood for retention in the November general election.

One additional way that we are reaching out to the public to inform Kansas citizens about the workings of the Judicial Branch—and save time and money in the process—is through our expansion of court technology. Our Kansas Judicial Branch website, www.kscourts.org,

Chief Justice Robert E. Davis

provides access to, among many other things, all Kansas printed appellate decisions, real-time Supreme Court arguments, and all oral arguments before our court since 2004.

I am also pleased to announce that, since our last legislative update in February 2008, the Judicial Branch has completed two major technological upgrades of what was a recent major achievement, our statewide case management system called FullCourt.

Document scanning, also called document imaging, and online access to court records are now operational in all Kansas counties. Document scanning makes it possible to electronically access case pleadings without having to manually retrieve paper files. Court personnel and your constituents are already experiencing the benefits of this enhanced technology. Members of the public may also access public court documents from public computer terminals located in each courthouse.

The online records feature will save citizens both time and money by enabling them to view court actions from the comfort of their own homes. With the index of public court records available online in all Kansas counties at this time, we can look toward our next step, which is to expand electronic access and research capabilities.

In addition, we are working toward accepting credit and debit cards for all transactions handled by the Judicial Branch. As you may or may not know, the district courts currently accept credit and debit card payments in new cases that are filed by fax. The citizens of Kansas

State of the Judiciary

have expressed a strong desire for the convenience of paying all court transactions such as traffic tickets, marriage licenses, and other fees by credit or debit card. We are very close to meeting this request.

With these technological advancements in place, the Judicial Branch can now proceed with our exploration of the electronic filing of cases. Electronic filing, or e-filing, will allow litigants to electronically file district court cases from their homes and offices.

These represent only a sampling of our efforts to educate the public and increase the efficiency of our judicial system. These programs, coupled with our award-winning court delay reduction program implemented after unification, demonstrate that we have taken to heart the Legislature's charge that we promote efficient and affordable access to justice in the State of Kansas.

With your help and cooperation, we strive to meet the goals of Justice, Efficiency, and Affordability. As many of you know, we are somewhat unique in our budgetary structure. With court unification in 1977, the state elected to assume all payroll costs for our system. The counties, however, continue to fund almost all other expenses associated with court operating costs throughout Kansas. What this means to you as policy makers is that more than 97 percent of our state Judicial Branch budget is for employee salaries. As a result, there are very few items that can be cut out of the budget. For example, those cases dealing with the well-being of children in need of care cannot be compromised, and the public safety concerns inherent in

Chief Justice Robert E. Davis

criminal cases must be addressed promptly. We are all faced with the difficult task of providing justice to the people of Kansas in this economy. I understand that the budget is at the forefront of your agenda, and I look forward to the opportunity to work with you in earnest on this issue.

I would like to close today with a story that demonstrates the profound dedication to justice exhibited by our courts in this state. I ask you to recall the extraordinary challenge that confronted my friend Chief Judge Dan Love, of Dodge City, and the other judges and citizens who were so devastated by the May 2007 Category 5 tornado that ripped through Greensburg and the surrounding area. The Kiowa County courthouse, though still standing at the end of the day, was rendered unusable when the tornado destroyed approximately 95 percent of the town. District Magistrate Judge Ann Dixson, herself a resident of Greensburg, was among those whose homes were destroyed by this horrific tornado.

What most people do not know is that Chief Judge Love, other judges, and court employees from surrounding counties started the recovery effort the very next morning. In the can-do spirit that epitomizes Kansans, criminal court proceedings were held on the very next Wednesday at a temporary court location set up seven miles down the road in Mullinville. The commitment and effort of these Judicial Branch employees set the gold standard for what it means to assure access to justice in our state. Yet they represent just one example of our dedication to providing justice for all Kansans.

State of the Judiciary

Thomas Jefferson once said that "[m]an's capacity for justice makes democracy possible." I am incredibly proud of the people of our Judicial Branch and am profoundly grateful for all that they do to safeguard the administration of justice in our state. I have discussed only some of those efforts today.

Thank you, once again, for this opportunity to address you today. As you progress with the legislative session, I know that you will take fair account of the needs of the Judicial Branch of our government, as well as the vital services that we provide to the public. And finally, for all the good work you have done and continue to do for the citizens of Kansas in this difficult time, I want to express my gratitude and bid you Godspeed. Thank you.