

STATE OF THE JUDICIARY

Delivered by the Honorable Lawton R. Nuss
Chief Justice of the Kansas Supreme Court
At a Joint Session of the Legislature
Wednesday, January 18, 2012



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Speaker O'Neal, President Morris, distinguished members of the House and Senate, honored guests, and my fellow Kansans.

Last February I stood on this same spot and told you my great-grandparents once lived in a dugout carved in a creek bank outside Dodge City where they were homesteading their claim of 160 acres. I also said that as a descendant from these humble beginnings, I considered it a special honor to stand before all of you in this magnificent chamber of the people and to report on the judicial branch of my native state. I still consider it a very special honor. I thank you for this second opportunity.

On that Ford County farm, first my great-grandparents, and then my grandparents, and then my uncle, raised crops and livestock. For many years they sold their cream and their eggs, and their hogs, wheat, and cattle. And when my grandfather started farming, he walked behind a team of horses that pulled his plow. My mother fondly remembers one of those hardworking teams: Alice and Charlie.

Today, more than 130 years have passed since that first dugout. My mother still owns that farm. But the little store that bought their cream and eggs is gone. And there's no longer any real market demand for the few hogs her family raised. So she limits her production to beef cattle and wheat.

But my mother is replacing the lost income with oil and gas leases to permit something she had never heard of before: horizontal drilling. And she was recently asked about signing a lease for the rights to the Kansas wind blowing across her farm.

My mother is proof of what Governor Brownback told us one week ago today from this very spot. Times are changing, and Kansas is in transition.

The 250 judges and 1600 employees of the judicial branch of Kansas government fully realize this. And the Supreme Court decided to act on this realization in June 2010 – soon after closing all Kansas state courts for lack of money. My six colleagues and I decided that we would not do what the governor told us all last week had happened in Kansas on some other issues.

We decided we were not going to “keep kicking the can down the road.” We wanted to see if we could improve our administration of justice; be more efficient; and make best use of the hard-earned money of Kansas taxpayers. So we started “Project Pegasus.” Pegasus was the winged horse of Greek mythology. This neutral name was chosen because we did not want to suggest that any particular change would be required – and thus undermine public confidence in the project.

As you may recall, Project Pegasus consists of two parts: (1) a weighted caseload study to measure the actual workloads of all district courts in our 105 counties and (2) a Blue Ribbon Commission to review the judicial branch operations.

We began with the weighted caseload study. This study does not just consider the sheer number of cases filed each year in the courts of Kansas. But it also considers other factors such as the complexity of some of those cases. It allows us to compare “apples to apples” so we can accurately compare the workloads in our different courts. These accurate numbers then help the Supreme Court to fairly allocate our human resources to meet these needs.

We first signed a contract with the National Center for State Courts – to measure judge and staff workloads. Then we appointed two Kansas committees to help the National Center: one with 14 judges, one with 14 court staff members. This study meant that all judges in our more than 100 district courts, and approximately 700 employees in the offices of the clerk of each court, would record their tasks and the time needed to perform them. This time recording, or data collection, began shortly before my speech last February.

In the meantime, in December 2010 the Supreme Court appointed the Blue Ribbon Commission. The Blue Ribbon Commission was to consider the results of the weighted caseload study, to review the judicial branch operations, and to make recommendations to the Supreme Court for possible changes. It was not just to consider economics but also to consider access to justice. We modeled the Commission after a successful commission from the early 1970’s. That study resulted in the unification of all Kansas courts in 1977.

We took great care to make the Commission appointments representative of a variety of backgrounds and leadership positions across the state. And at our request, some members were appointed by then-Governor Parkinson, Governor-elect Brownback, Speaker O’Neal and President Morris.

I told you last February that our plan was to have the final reports of both the weighted caseload study and the Commission in our hands this month so we could provide

them to you early in your session. But there was one big problem with our plan. The state was in tough economic times. Which meant there was a real danger that our judicial budget would be cut, and then that courts would be closed, and that the Pegasus Project would be seriously compromised, if not destroyed altogether.

So in my February speech I asked that you return to your spirit from the spring of 2010. When you agreed to provide funding to keep Kansas courts open. I asked you last February to preserve that funding for FY 2011 and to also provide the funding we had requested for all of FY 2012. This would allow us to finish our important study without interruption and to start considering needed improvements to the judicial branch for the benefit of Kansas.

To your credit, you agreed to provide these funds. I know that was not an easy decision during hard economic times. For just as you did in providing funds to keep courts open in FY 2011, for FY 2012 you again had to reduce some funding requested by others.

Thanks to you, our courts have remained open. And open courts have allowed Kansans' access to justice to continue and have allowed Pegasus to be properly completed – all without interruption. On behalf of the judicial branch, I publicly thank you for making yet another important decision for Kansas.

After the weighted caseload data was collected, it was thoroughly analyzed by our two committees. Their final report was submitted to the Supreme Court in early November. Since then, this up-to-date information has been of great assistance to the Court in allocating our nonjudge employees to help meet the needs revealed.

The data in the Kansas weighted caseload study may very well be the most reliable data in the history of the National Center. Nearly all of the 33 other states conducting

such studies have been satisfied with only one data collection period. But our judges and staff agreed to perform in two: of 4 weeks each. And most states have been pleased to obtain participation rates in the 90 percent range. But a full 100 percent of Kansas judges in the district courts participated. And more than 99 percent of the assigned staff did as well.

So what does this study reveal? It tells us we have just enough judges. But we are understocked on employees.

Now someone might say, “That is no surprise. You put only judges and court clerks on the study committees. Of course the results will be favorable to the judicial branch.” But it was not just judges and clerks studying the results. It was also the nationally recognized experts, the National Center for State Courts. They have performed numerous studies around the country.

But someone still might say, “Their title is ‘the National Center FOR STATE COURTS.’ Of course they will give state courts the results that you want.” The facts, however, do not support that argument either. Last summer the National Center completed a weighted caseload study for Michigan’s judges. That study revealed Michigan was overstocked in judges. After considering an overstocking in some districts and understocking in others, the report appears to recommend a total reduction of 18 judges statewide in Michigan. And such a study in 2009 in Vermont showed a need for fewer numbers of both judges and staff in their probate courts, and fewer staff in their trial courts.

In other words, we now have a valuable, legitimate study – long overdue in Kansas. A study like this has been repeatedly discussed and recommended here since 1944. So if I may borrow a phrase we used in the Marine Corps 40 years ago: Kansas finally stopped “talking the talk.” We actually “walked the walk.”

The weighted caseload study report was timely completed. After the Commission reviewed this report and thoroughly reviewed the judicial branch operations for almost a year, it timely completed its report as well.

I am proud to now formally present its report, and the weighted caseload study report, to the legislature. One hour ago I presented a copy of both reports to Governor Brownback. So now all three branches of Kansas government have them.

Please permit me to have stand – on the floor with you and in the gallery above – some of the hardworking Kansans who served on the Commission and the weighted caseload committees. They all put in many long hours without pay simply because, like you, they love Kansas.

Based upon the Commission's recommendations, last week the Court began discussing possible improvements in the Kansas court system. The Commission's report is not quite as historic as the weighted caseload study – because other studies of the judicial branch have been performed over the years. But it is nevertheless historic in some of its recommendations. Several that I share with you now, the court would appreciate having addressed during this legislative session. Others will require more input and perhaps much further discussion.

THE FIRST BIG COMMISSION RECOMMENDATION:

LET US BE FREE TO ALLOCATE OUR HUMAN RESOURCES OURSELVES

I mentioned that the weighted caseload study revealed we have just enough judges. But the study also revealed an equally important point: some are in the wrong courthouses. These judges are not placed where the weighted caseloads show they are most needed. This is partially due to a statute passed in the early 1980's that absolutely

requires at least one judge to reside in, and have principal office in, each county – regardless of the demands of the legal market there.

But as Governor Brownback suggested last week, times have changed. What might have been a great idea 30 years ago – physically placing judges not because of caseloads but because of something altogether different – is no longer such a great idea.

Under the Kansas Constitution, the Supreme Court essentially is the manager of the Kansas court system. We therefore ask for managerial flexibility in applying limited resources to meet the demands made on our branch of government – both as the demands exist today and as they change in the future.

Just as for years we have been able to assign our employees where needed, we ask that we soon have the same ability to assign our judges where needed. This request will involve your addressing the statute I mentioned earlier. It will also entail addressing statutes which over the years have assigned specific numbers of judges to particular judicial districts. Again, assignments all done without regard to legitimate weighted caseloads.

If this old can is going to stop being kicked down the road, we need your help. For what was said from this spot last week applies equally to our request: “By running government more efficiently and effectively, we can save money and provide better service.” At a minimum, the judicial branch can make better use of taxpayer money.

But I cannot leave this subject without making one point very clearly. Our request for managerial flexibility does not necessarily mean a county will lose its resident judge. Our request is simply to remove this absolute requirement – one that effectively eliminates consideration of all other factors. The Supreme Court would then take all of these previously unconsidered factors into consideration in its allocation of human

resources. And we would not need to bother the legislature each time caseloads might substantially change and when other judicial assignments might need to be made in the district courts.

THE SECOND BIG COMMISSION RECOMMENDATION:
INVEST FUNDS FOR THE INCREASED USE OF THE
TREMENDOUS CAPABILITIES OF COMPUTERS

One of these areas is e-filing. E-filing allows lawsuits and related legal documents to be filed with the courts electronically – from one’s office or home. It saves gas used for driving to the courthouse. It also saves many court clerks from having to interrupt their duties at their desks, and then go to the counter, receive the paper copies, file stamp them, manually place them in a folder and physically file the folder.

To begin to estimate some of the savings, consider that approximately 500,000 court cases were filed last year. This is a system designed with the basic business philosophy in mind: Invest money now to save more money in the future.

E-filing systems in other states have demonstrated efficiencies that save both the public and the judiciary considerable time and resources. Just this month, the Illinois Supreme Court announced an e-filing pilot project for some of its criminal case filings. As a news article recently stated, e-filing in Illinois is recognized as “another step . . . to move the Illinois court system into the digital age with court efficiencies and related cost savings to users and Illinois taxpayers.”

Last session we asked for more than \$2 million to fully fund e-filing statewide. Our request died the last day your budget conference committee met. But rather than let the concept die and waste hundreds of hours already invested, the Supreme Court obtained federal grants which helped us to slowly proceed. Those grant funds will be

spent this fiscal year on pilot projects in three Kansas counties (Sedgwick, Douglas, and Leavenworth). And, like in Illinois, they will be spent on a pilot project for our appellate courts.

But our ability to seek more federal grants is probably gone. To quote the governor's speech last week, "This state in transition will look less to what Washington can do for Kansas, and more to what we can do for ourselves." So with the governor's message in mind, we now ask you, our fellow Kansans, to help us do for ourselves, for Kansas.

For FY 2013 we will continue to ask for State General Funds to help us complete the e-filing project statewide. But after its completion, we propose to fund the project's maintenance and upgrades with user fees. And the users would mainly be lawyers.

The Commission also recommends the increased use of the tremendous capabilities of computers in other areas. I will not bore you with the details. But I will simply say that an electronic "court case" management system and an electronic "legal document" management system are critical. Under these management systems, all court records and court documents will be e-accessible – statewide.

The legislature unified the Kansas courts in the late 1970's to increase efficiency. For the same reason, it seems logical for the legislature to now unify our 100 independent information systems in the district courts. Once implemented, these statewide systems should allow a court clerk in one county to help a court clerk in another. Think of it: A clerk working in Oakley who may not be busy eight hours every day can stay in Oakley – but still help an overloaded Wichita clerk. And a judge who presently must drive to different counties to look at their court files may simply stay in her office and review them – and those from all the other counties – on her computer screen.

Properly used, such statewide electronic systems could help us to keep a functioning “open for business” court clerk’s office in all 105 counties. It might be suggested that these electronic systems are absolutely critical to keeping some of these offices open.

And it might be further suggested that keeping these offices open is absolutely critical to providing access to justice for our fellow Kansans living in those areas.

By looking less to what Washington can do for Kansas, we likewise agree with the Commission recommendation. The original investment in these statewide court information systems should come from a combination of user fees and State General Funds. And user fees should fund the systems’ maintenance and upgrades.

A THIRD SET OF COMMISSION RECOMMENDATIONS CONCERNED DISTRICT COURT FUNCTIONS AND PROCEDURES

The Commission made a number of recommendations regarding the district courts in your communities. I primarily mention this area because, you will be pleased to hear, many of these recommendations do not require much, if any, money.

Most share the same theme that is also contained in the e-filing, document management and case management systems I mentioned earlier. That is, to develop more uniformity – and thus increased efficiencies – among the district courts and their cases in our 105 counties. Some of these include recommending that the Supreme Court, as manager of the court system:

1. implement uniformity in court processes and procedures in all judicial districts;

2. promote statewide development of district court “best practices” through assistance of the National Center;
3. further consider statewide what types of cases should have priority over others and establish expedited timelines for their resolution – for example, adoptions; and
4. encourage all district courts to identify and vigorously pursue outstanding collectible court costs, fees, and fines – again, with the assistance of the National Center.

In a fiscal year where even the consumption of bottled water in state government was reduced to save money, I am pleased to report we have already taken steps to improve collections of monies ultimately owed to the state. We have submitted a grant request to the State Justice Institute to receive help from the court management experts of the National Center for State Courts. That grant should help us do several things:

1. ensure that court orders are taken seriously and will be enforced; and
2. increase, however slightly, the receipts going into public treasuries.

The judicial branch is once again, “Walking the walk.” The walk may soon become a march.

CONCLUSION

As you could see by the thickness of the Commission report, it is full of recommendations. It, and the weighted caseload study report, are being posted tonight on

the judicial branch website for all of Kansas to review and comment on. We are being open and accountable in our goal to improve the judicial branch of Kansas government.

In my remarks last year I often mentioned President Abraham Lincoln. So far tonight, I have refrained from quoting him. But as I draw to a close, I cannot resist. Now is clearly the time, as Lincoln once said, “To think anew, and act anew.”

Or to put it in the practical terms that Kansans like, we ask that the judicial branch no longer be absolutely required to plow with Alice and Charlie. We ask that we be free to decide, based upon our weighted caseload study and other important factors such as access to justice, whether Alice and Charlie would still be the best plan for Kansas. And if they are not, we ask that we be free to select from the better alternatives. And if a local market’s demand for legal matters is less than it used to be, we ask that – like my mother’s switch from cream and eggs income to horizontal drilling and wind leases – we be able to cover it with an increased use of technology and other modern aids.

In short, we ask to be free to exercise more of the flexibility practiced by today’s Kansas farmers and other business people. We ask because this increased flexibility is necessary for us to better meet the justice needs of Kansas citizens.

During your legislative session, I know that you will continue to take fair account of the judicial branch. And finally, for all the good work you have done for the people of our state in these difficult times, I again want to express my gratitude and bid you Godspeed.

Thank you.