

STATE OF THE JUDICIARY



2015

ANNUAL REPORT OF THE CHIEF JUSTICE OF THE KANSAS SUPREME COURT
LAWTON R. NUSS, CHIEF JUSTICE

State of the Judiciary

**2015 Annual Report of the Chief Justice
of the Kansas Supreme Court**

**Lawton R. Nuss
Chief Justice**

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Thank you to the Washburn Rural High School Air Force ROTC unit who conducted the flag ceremony prior to the address.

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**Delivered by the Honorable Lawton R. Nuss
Chief Justice of the Kansas Supreme Court
Wednesday, January 21, 2015**

Good afternoon distinguished members of the House and Senate, Attorney General Schmidt and other members of the executive branch, judges and justices, honored guests, and my fellow Kansans.

I was recently watching a television clip that showed a man wearing a badge in a 1950s western. He was knocking down the bad guys with a few powerful punches. And in true 1950s TV style, he wasn't hurting anyone.

He was supposed to be that famous Kansas sheriff, Bat Masterson. Now the tag line describing this clip is a bit off color for a State of the Judiciary speech. But if you all agree that here I am only quoting from the television, I will share it. Have you braced yourselves? It said: "Bat Masterson, a real Bat ass."

I've always liked Masterson, in part because he was my great-grandparents' sheriff. He was friends with Wyatt Earp, a fellow law enforcement officer in Dodge City—and in Wichita. Abilene, Hays—and yes, Johnson County—were patrolled by Kansas lawman Wild Bill Hickok. Even Buffalo Bill Cody served as a government detective in Kansas. And yet another Bill—Tilghman of Dodge City—wore a badge for almost 50 years. His legendary work provided the title for his biography: *Guardian of the Law*.

The true adventures of these real Kansas law enforcement officers were larger than even Hollywood and TV could invent. We tip our hats to them because they kept the peace and enforced the law. We also tip our hats to the thousands of law enforcement officers in Kansas

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today who make this state a safer and a better place. But even these dedicated men and women will admit that they cannot do this alone. Other Kansans must also qualify as “guardians of the law.”

Today, I will talk about some of these other Kansans—the 250 judges and 1500 employees in your judicial branch of government, who perform a critical role in providing public safety and who, every day, make a difference in the lives of their neighbors and fellow Kansans. This is a timely message because just last week Governor Brownback declared in his inaugural address that “Every human . . . should be protected in law . . .” So let me illustrate this message of protection and public safety by showing how a typical criminal case in the courts would work.

1. Let’s say officers suspect a man is keeping a kilo of cocaine in his house. They apply to a judge for a search warrant.

– Here is District Magistrate Judge Peggy Alford of Grant County in southwest Kansas. She represents our 79 district magistrate judges in the state. And she must decide—based upon the officers’ affidavit—if probable cause exists to grant the warrant.

Let’s further say Judge Alford issued this warrant, and the officers then found the cocaine and a stolen handgun. And they arrested the man.

2. Based on these and other facts, the prosecutor files a complaint or information with the district court. In our example, we’ll say defendant is charged with a serious felony: possession of drugs with intent to sell.

– Here is Bernie Lumbreras, chief clerk of the district court of Sedgwick County. Like many of the 700 other employees in our clerks’ offices in our 105 counties, she accepts the complaint for filing to reflect the charges. She then starts a formal case file.

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Last year, Ms. Lumbreras and fellow clerks handled almost 35,000 criminal cases filed in Kansas district courts, cases where people were charged with doing harm to their fellow Kansans, or their property, or both. Almost 20,000 of these cases involved felonies.

3. Next comes the “first appearance,” a hearing held within 48 hours of the defendant’s arrest where the judge formally advises him of the crimes he is charged with committing.

– This is District Judge Jeffry Jack of Labette County in southeast Kansas. Judge Jack conducts such hearings—just like the state’s other 166 district judges. They may also be conducted by Judge Alford and our other 78 district magistrate judges. Here, the judge typically makes some initial decisions.

Now I suppose some of our judges might have pondered the hypothetical question of whether they would have sent the Royals’ Alex Gordon home from—third base. But here, they must decide the real question, of whether to send the defendant home—from jail or whether to keep him behind bars for the safety of their fellow Kansans.

The judge often makes these decisions about bonding and release based upon input from the prosecutor, defense lawyer, and perhaps from experience with this defendant.

In some courts, the judge will also ask for input from court services officers, or CSOs. These folks, also known as probation officers, may interview the defendant in jail, determine his criminal history, and make recommendations to the judge.

– Here is CSO Brian Swenson of Saline County in central Kansas. Mr. Swenson represents 350 CSOs in the state who can supply this information.

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4. Next comes a court proceeding called the preliminary hearing.

Here, after considering the evidence presented, the judge must determine whether a crime has been committed and whether there is probable cause to believe it was committed by the defendant. If so, the judge binds the defendant over for trial and arraignment. This hearing, like some of the others I mention, can be conducted by either district magistrate judges like Judge Alford or by the district judges like Judge Jack.

As with many court proceedings, a court reporter may participate in this important hearing.

– Here is Marilyn Bailey, court reporter from Thomas County in northwest Kansas. Like the other 130 court reporters across the state, Ms. Bailey records everything and produces a verbatim transcript. These transcripts can be valuable in this case's later proceedings at the district court. And they are indispensable at the case's appeal.

5. Then comes the arraignment.

This is where the judge advises the defendant of the charges for which he's been bound over and the possible range of his sentence and where the defendant must enter a plea to the charges. If he pleads not guilty, the judge sets the case for trial.

Because our example involves a felony, the presiding jurist here generally is a district judge such as Judge Jack. A court reporter like Ms. Bailey generally is also present to make a record of the hearing.

6. Additionally, there can be other hearings. In our example, the defendant may try to keep out of evidence the cocaine and handgun seized through the search warrant, claiming they were illegally obtained. A judge must hear these suppression arguments and make these rulings. The court reporter usually attends and makes a record of the hearing.

7. Next is the jury trial itself, where Judge Jack and other district judges preside. Sometimes the judge's administrative assistant attends, acting as the courtroom bailiff. Typically, this assistant has coordinated the various schedules of the judge, the prosecutor, and defense counsel to arrange the trial.

– Here is Arleen Schuman, a judicial administrative assistant in Johnson County. Ms. Schuman represents approximately 150 administrative assistants throughout the State. Besides trials, they schedule hearings and conferences and perform many other important administrative duties as the judge's right arm. Their work frees the judge to concentrate on the purely judicial functions.

Ms. Bailey, or one of her court reporter colleagues, is also present. In addition to recording the proceedings, she marks and controls the exhibits admitted into evidence—such as the stolen handgun. Clerks such as Ms. Lumbreras do things like summoning all the prospective jurors and issuing subpoenas for the attendance of trial witnesses.

8. If the jury convicts the defendant, next comes the sentencing hearing.

For the felony in our example, Judge Jack would preside, and a court reporter like Ms. Bailey would certainly record.

Before this event, the CSO such as Mr. Swenson would conduct a presentence investigation. This includes calculating the defendant's criminal history, the sentencing ranges for his crimes, and other relevant background information. Mr. Swenson's report would be filed with the clerk—Ms. Lumbreras or one of her colleagues—and a copy would be given to the prosecutor and defense counsel. Judge Jack would use the report to help him decide the appropriate sentence.

Because our example involves a serious felony, the defendant could be sent to prison and become the responsibility of the Department of Corrections. Depending on his criminal history, however, he might be placed on probation supervised by a CSO like Mr. Swenson.

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Last year Mr. Swenson and his 350 colleagues supervised the probation of nearly 17,000 people convicted of crimes in your communities. To put that in perspective: approximately 175 people are in this courtroom right now. So look around you, and multiply that by about 100.

9. Post-sentencing

If Mr. Swenson later believes this man is not meeting the terms and conditions of his probation—perhaps failing to check in with Swenson—he will file a report asking for the probation to be revoked.

If the prosecutor files a motion to revoke, then Judge Jack will conduct a hearing where he may decide to revoke the defendant’s probation and then reinstate it, sometimes with additional conditions, or to revoke and put him in jail for a period of time, or, under the right circumstances, put him in prison to serve his original sentence. Court reporter Ms. Bailey will attend. The administrative assistants like Ms. Schuman will help with scheduling the hearing.

This is a fast overview of one example of the 35,000 criminal cases filed last year in the district courts of Kansas, which I have greatly simplified because our judges and employees handle many more types of hearings and do much more in the criminal justice system than time permits me to explain.

The criminal law, however, is not the only vehicle courts use to protect Kansans from those who would do them harm.

Last year we also issued restraining orders to protect more than 12,000 Kansans from abuse or from stalking by another: protection from abuse that was directed toward an intimate partner or household member, including minor children, and protection from stalking that was directed toward an adult or minor children.

Last year your courts also issued orders to protect more than 6,000 Kansas kids who unfortunately qualified as “children in need of care.” By statute, this includes children who

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“have been physically, mentally or emotionally abused or neglected or sexually abused . . . or abandoned.”

These cases involving the safety of Kansans are just some of the various types of the 400,000 cases handled by your courts last year. For we also decided approximately 105,000 civil contract cases, more than 9,000 probate cases, and almost 8,000 property disputes. On the heartwarming side, we also granted nearly 1,800 adoptions of children.

I assure you our clerks, court reporters, administrative assistants, and judges work just as hard on the civil cases as they do on the criminal matters I mentioned.

Oh yes. Last year our court clerks—Ms. Lumbreras and her colleagues—also collected approximately \$180 million. This included restitution for crime victims and monies for private judgments, for some state agencies, and for the general funds of counties and the State. Of that \$180 million, we collected \$54 million to fund state government.

The judicial branch of your government did all this and more, with an annual budget of approximately \$133 million. This figure represents less than 1% of the entire state budget.

Now I don't claim to be a financial expert. But, for these core services our branch of government provides—that is, fair and impartial courts to administer justice for nearly 3 million people of Kansas—I believe most Kansans would say, “This is a good investment.”

But it's not enough for me to simply say we provide these important services. I should tell you how we are getting better in providing them. Again, because of time constraints, I will mention just a few.

I will start with a reminder about our Project Pegasus.

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Pegasus contained a blue ribbon commission of 25 Kansans from various backgrounds. Its members performed the most extensive review of judicial branch operations statewide since the 1970s. In 2012 they made recommendations to the Supreme Court for improvement.

Pegasus also contained Kansas' first ever weighted caseload study. This allowed us to accurately determine, by actual workloads, how many judges and court clerks were needed, and where they were needed.

We have kept the weighted caseload study current by adjusting it based upon case filing statistics every year. These adjustments have allowed it to remain a valuable resource for the Supreme Court in making statewide personnel decisions. But by limiting its review to the workloads of only judges and court clerks, this study had to leave out the important work of other employees such as you see today, Mr. Swenson and 350 probation officers, Ms. Schuman and 150 administrative assistants, Ms. Bailey and 130 court reporters, among others.

So the Supreme Court has launched a statewide "position inventory." We have begun working with our 31 chief judges across the state to complete a comprehensive assessment of all judicial branch personnel needs, based not only upon our hard data, but also the experience and observations of chief judges and their employees. Our goal is to identify staffing levels we need to provide efficient, effective, and timely service to Kansans. This inventory will also allow us to consider the impact of recent technological advancements on staffing needs.

Speaking of technology, let me update you on our electronic courts project.

I will begin with electronic filing (or E-filing). You all know this allows lawsuits and related legal documents to be filed with the courts electronically. I'm pleased to report that implementation of a statewide E-filing system continues to forge ahead. Today's E-filing locations include both appellate courts in Topeka and the district courts in 10 counties. These include Ms. Lumbreras' Sedgwick County, and Ms. Schuman's Johnson County with its JIMS E-filing system. During this past calendar year, more than 100,000 electronic filings were completed. We will continue to roll out this system statewide.

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I told you in past years that E-filing will be integrated with the different electronic case management and document management systems presently used by court personnel in processing cases. In other words, through a complete centralized E-courts environment, we will shift from the present paper-based system to one that will provide judges—like Alford and Jack—and litigants with immediate, statewide access to case information, details, and records provided by the Kansas courts.

Eventually it will also allow our employees in any location to work “virtually” on Court business in any other location. This additional advantage is a big one, as it allows the Supreme Court to more effectively and efficiently manage the state’s court system. The value of this E-court system was recognized by the Legislature last year when it allocated approximately \$3 million for this year and for several years to come.

As for our increased use of other technology, we are making strides to expand videoconferencing well beyond those district courts where it is currently used. This technology should save law enforcement, attorneys, and their clients the time and expense of traveling to courthouses for various hearings conducted by Judges Alford, Jack, and their colleagues. The videoconferencing committee already has developed uniform rules and technical standards which it provided to the public for your comment. Those have now been issued to district judges and staff. Increased implementation of videoconferencing is expected to begin soon in many more locations.

We have also increased our efforts to collect more of the monies actually ordered by the courts—such as fees, fines, and court costs. The National Center for State Courts helped review our processes and develop best practices and standardization of our collection methods. Acting on these recommendations will assure that court orders are taken seriously and will be enforced. They will also increase the receipts going into the public treasuries I mentioned earlier. To help accomplish these goals, our debt collection committee has recommended a number of statutory changes. For now, we have submitted two proposed changes to the legislature this session.

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We have also closely examined our increasing number of specialty or problem-solving courts. They obviously differ from the usual courts because they coordinate services provided to criminal offenders with direct, sometimes intense, 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 criminal offenses, then more offenses even after conviction, resulting in a frustrating cycle that expends considerable judicial and correctional resources. Our specialty courts commission is currently establishing statewide standards for better serving the increasing number of users of this unique system.

For the last 6 months Johnson County has worked on creating our state's first veterans court for those military veterans who have committed misdemeanors or lower-level felonies and who are eligible for treatment by the Veterans Administration. The goal of veterans courts is similar to drug courts. As one expert said recently, that goal is "to treat those veterans who have diagnosed conditions that are at the root of their behavior." District Judge Timothy McCarthy of Johnson County hopes to have this court operational by October. As a Marine Corps veteran myself, and as the father of a soldier who is a veteran of the wars in both Iraq and Afghanistan, I appreciate these efforts to help those who have served their country.

Our Court of Appeals also continues its pilot project for mediating its cases where participation is strictly voluntary and where the mediators serve at no cost. So far 18 cases have been assigned to this project. We look for more to come because successful settlement of cases can save resources of Kansans and the appellate courts. Just as important, it can permit the appellate courts to concentrate efforts on the other hundreds of cases that would remain on their dockets every year.

Similarly, the Supreme Court has looked at reducing, if not eliminating, those lawsuits in our district courts whose main purpose apparently is to abuse the legal system. One of our committees has developed guidelines for judges like Judge Jack to consider in deciding whether to restrict, and how to restrict, court filings from those litigants who have filed frivolous, malicious, harassing, or simply repetitive lawsuits and motions.

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As you can see, your courts are constantly trying to improve their operations through these and other methods because the time saved through improvements can otherwise be spent securing public safety and enforcing the rights of Kansans.

But rather than proceed alone, we continue to welcome your input. As with the videoconferencing committee report, the committee on abusive lawsuits has also forwarded its recommendations to the public for comment. We hope the response is similar to the one we received when we asked for citizen volunteers to serve on our state child support guidelines advisory committee. For these four positions, we received 231 applications.

But if you prefer a more direct communication with the Supreme Court justices and the Court of Appeals judges, you have that opportunity also. Numerous communities will be visited this year by the Court of Appeals as it continues its long-standing practice of hearing cases argued across the state.

And beginning 4 years ago, the Supreme Court started a similar tradition. Most recently, on October 29 we heard cases argued on the beautiful campus of Kansas City Kansas Community College. We had set that date months earlier. And I have to admit, I had not foreseen that later that night the Royals would be playing in game seven of the World Series in Kansas City. Judge Dan Duncan told me his community would love to have us back—if we would again bring the World Series with us.

This April we will hear cases argued in a town one of its judges calls, “Hays City, America.” And while we are there, I will ask him to show me the streets where Wild Bill Hickok once walked as another “guardian of the law.”

In closing, I want to thank you for coming here today. And to thank those who are watching us right now on the Internet because having access to information about your Kansas courts is nearly as important as having access to justice in those courts.

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As I did last year, I invite you all to attend our reception downstairs and to participate in tours of the Judicial Center, which are available starting right here.

And as you visit with us, please consider personally congratulating two Kansas judges. As I mentioned last January, two Kansas judges won national awards in 2013. But today I'm talking about two more national award winners.

Two months ago Judge Steven Leben received the William Rehnquist Award from the National Center for State Courts—the first Kansas judge to receive this award in its 19-year history. It was personally presented in the United States Supreme Court in Washington, D.C., by the Chief Justice of the United States and was awarded for Judge Leben's continual promotion of procedural fairness in our courts.

And his Court of Appeals colleague, Judge Karen Arnold-Burger, learned just last week she is to receive the Burnham Greeley Award from the American Bar Association. It will be presented next month in Houston for her excellent work increasing the public awareness of the need for a fair and impartial judiciary.

Unlike Masterson and Earp, Hickok and Tilghman, these two national award winners probably will not be the subject of books, Hollywood movies, or television programs. But the judicial branch is still very proud of them both and what they stand for.

All Kansans should be as well.

Thank you again for your careful attention. I bid you Godspeed.