

Journal of the Joint Assembly

IN JOINT ASSEMBLY, FEBRUARY 19, 2009

The Senate and House of Representatives met in the hall of the House of Representatives pursuant to a joint resolution which was read by the Clerk and is as follows:

By Senator Shumlin,

J.R.S. 20. Joint resolution providing for a State of the Judiciary message.

Whereas, the State of the Judiciary is an issue of importance to every citizen of the state and every member of this General Assembly; and

Whereas, the General Assembly and the Judiciary, as co-equal branches of state government, should take advantage of opportunities to understand and better appreciate the mission and goals of the other; and

Whereas, a State of the Judiciary message offers a unique opportunity for inter-branch communication on the special challenges currently facing the Judiciary, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Senate and the House of Representatives shall meet in Joint Assembly on Thursday, February 19, 2009, at 11:30 A.M. for the purpose of hearing the Chief Justice of the Supreme Court of the State of Vermont address the Joint Assembly on the State of the Judiciary.

Presiding Officer

Honorable Brian E. Dubie, President of the Senate, in the Chair.

Clerk

David A. Gibson, Secretary of the Senate, Clerk.

Committee Appointed

Senator Peter E. Shumlin of Windham District moved that a Committee of three Senators and three Representatives be appointed by the Chair to wait upon His Excellency, the Chief Justice of the Supreme Court, and inform him that the Joint Assembly was now convened for the purpose of receiving his State-of-the-Judiciary message.

Which was agreed to.

The Chair appointed as members of such Committee:

Senator John F. Campbell, of Windsor District
Senator Kevin J. Mullin, of Rutland District
Senator Richard W. Sears, Jr., of Bennington District
Representative Margaret K. Flory, of Pittsford
Representative Maxine Grad, of Moretown
Representative William J. Lippert, Jr., of Hinesburg

The Committee performed the duty assigned to it and appeared within the Joint Assembly accompanied by Honorable Paul L. Reiber, Chief Justice of the Supreme Court of the State of Vermont, who delivered the following message:

Chief Justice's State-of-the-Judiciary Message

“President pro tem Shumlin, Speaker Smith, Senators, Representatives and guests. On behalf of the judges, magistrates and staff of the Vermont court system, I am grateful for the opportunity to speak to you today. I have looked forward to this opportunity to come before you to discuss the state of our justice system and what the future holds for us.

“First I must recognize my colleagues on the Supreme Court, who over the last 18 months have dedicated countless hours to our common goal of improving access to justice in these times of declining state revenues. I also want to recognize our Court Administrator's office, people who have served so well in their support roles to all of the different Courts in this state through late nights and long hours. I must also mention our rugged, independent and hard-working trial judges, court managers, clerks and staff. As we face the problem of lower funding for our branch, and fewer dollars allocated to the courts to meet caseloads, they continue to shoulder their daily work with compassion, wisdom, knowledge and skill. They have remained resilient and resourceful in the face of mounting challenges in our branch. I am deeply grateful to them for their service to all Vermonters.

“As I'm sure many of you do, I tend to return to the fundamentals during trying times. I think about the core mission of the courts and about their place in our system of government. Over two hundred years ago, the Chief Justice of the United States, John Marshall, said this about the role of the

courts: “The very *essence* of . . . liberty certainly consists in the right of every individual to claim the protection of the laws.” It is no exaggeration to say that democracy *itself* depends on the courts’ ability to protect those individual rights. A robust and independent court system is vital, also, to our state’s commercial livelihood. Our courts provide a stable, unbiased forum in which individual and commercial disputes are resolved. Without that forum and the predictability it provides, particularly in uncertain times like these, investors might shy away, fearing that contracts could not be enforced. If we did not have the robust court system we do, Vermonters would not be able to turn to the courts to resolve the most pressing issues in their lives, from housing and family matters to criminal prosecutions. So there are many powerful reasons for the Vermont Constitution to require that “the Courts of Justice shall be open for the trial of all causes . . . and justice shall be therein impartially administered, without corruption or unnecessary delay.”

“Our Constitution also says that Vermont shall have a “unified court system.” A unified court system is a worthy objective because it is a system that promotes rational and uniform administration of the courts. Justice cannot be properly served if there are inconsistencies in its administration. Justice cannot be properly served when there are two different funding streams and employees working in the courts who are not subject to the same system of management and control. Justice cannot be served when a dispersed management structure stands in the way of allocating resources to priorities in times of need.

“But a justice system that is both unified and flexible serves justice in good times and bad. In such a system, resources can be shifted and moved between priorities. All judges are qualified decision makers. Training is emphasized to keep up with changing statutes and emerging issues within the law. Justice is properly served with a system that can expand and contract with relative ease, and that is populated by dynamic judges who are capable of working in any court and hearing *any* case that has to be heard that day. Justice is properly served where redundancies in court structure are minimized and the workload leveled between courts.

“A unified judiciary is a branch of government that the other branches—the legislative and the executive—recognize as a coequal partner. It is a branch of government operating within laws that demand accountability from a central authority charged with delivering justice at acceptable cost. A unified court structure is one that prepares and submits its own budget. And a unified system is one that is capable ultimately of changing itself—as the other branches do—when existing structures have been outpaced by societal change.

“Some steps have been made toward the goal of unification. A statewide district court, divided regionally, exercises broad jurisdiction over criminal prosecutions. The district court carries one of the heaviest and most demanding case loads in our state, even as it seeks new and innovative means of dispensing justice. Among these are the specialized treatment court dockets (sometimes called the “drug courts”) designed to provide intensive, court-supervised treatment and supervision of nonviolent offenders as an alternative to traditional punishment; and an experimental “mental health docket” intended to divert the mentally ill from the criminal justice system and into treatment when appropriate.

“Another major step toward a rational, unified court system was realized in 1990 with the creation of the statewide family court. To list the cases routinely heard in the family court is to catalog some of the most profound social challenges of our time: divorce, juvenile delinquency, child abuse and neglect, domestic violence. In difficult economic times, these challenges are more widespread, not less.

“And a family court with adequate resources will very directly improve the lives of children. Children who lie awake wondering—quite literally—who their parents will be or where they will be living this summer or even next week. Court delays caused by disruption of services due to erratic funding and an inability to match our resources to those cases, is a burden we should see no child forced to bear. The family court is, in a very real sense, the voice of state government that speaks to children and to families in troubled circumstances.

“There have been other notable advances. The Administrative Judge for the trial courts, established over a decade ago and appointed by the Supreme Court, supervises and assigns all trial judges who are qualified to sit in any of the three courts. Other states marvel at this progressive step toward judicial economy. In addition, the state judicial bureau in White River Junction deals with all traffic violations. This innovation has allowed the trial courts and the state’s attorneys and defenders to better concentrate their resources on more serious offenses.

“As I said, we have come a long way towards realizing the goal of a truly unified court system. Many of you in this room have played instrumental roles in that progress. Thank you.

“In other ways, however, we are still operating a structure passed down from an earlier time. In some ways it serves us well. But in other respects our court system is like the one-room-schoolhouses that once dotted Vermont’s countryside. Vermont lacks cohesive management, control and accountability of all of the money the State spends through general fund revenues and

county tax receipts for judicial services. Our present inability to change that structure without legislative action means that we, the Judiciary, cannot respond to balance the harsh realities of declining revenues with the constitutional imperatives that define us as a state. This rigid structure, and its limitation on change, is of great concern to me. Under these circumstances we cannot continue to meet even the most pressing needs of the state within the limits imposed by the tightening economy.

“In all, the courts include 63 worksites in 32 courthouses across the state. The total workload, as you may know, is far from evenly distributed, largely as a result of shifting population centers. While consolidating functions among the less-busy courts would seem a common-sense solution, it is beyond our authority. As a result we cannot staff the busiest courts adequately.

“Inconsistencies in staffing are frequently the story. One county might have a single manager effectively supervising the district, family, and superior courts, while another might have two separate managers despite a lower population and caseload. One probate judge in a single district for one county may handle a certain number of cases, while another county, split into two districts, could have double the judges and staff to cover the same number of cases. This is neither efficient nor cost-effective, and results in some employees being subject to different salaries and benefits for doing essentially the same job.

“Consider this regarding our current structure: the Supreme Court has administrative responsibility for all courts under the Constitution but the Court Administrator, by statute, does not hire all the staff who work in those courts. Most staff *are* hired and paid for by us, but some staff are hired and paid for by the counties. Then, some are hired by the counties but paid out of our budget. We do not choose where most courts are sited, or which counties or districts they are in, yet we are required to staff them. These are the practices that are mandated by the current laws on the books. As a result, given the unequal and shifting workloads I’ve mentioned, we are unable to match resources with demands. The inefficiencies in this system are thrown into particularly stark relief when the economic climate is coldest. We cannot expand or contract, in a rational way, to match priority caseloads statewide, in either good or bad economic times.

“Were we to change this structure we would be able to provide—in every county and in every court—the proper staffing level based on changing case loads. Were we to change this structure we would be able to set the pay of court staff uniformly, county to county and between courts in the same county. Were we to change this structure we would be able to combine courts presently divided based on county lines and equalize staffing to meet the

state's most pressing high-priority needs. And change would also relieve some of the burden on local property taxpayers by saving some of the money that is currently collected from towns in county accounts. These funds are presently managed county-by-county with little transparency.

“In the past, the only way to guarantee access to justice was by providing *physical* access by having multiple courts, and often courthouses, in all parts of the state. Soon, technology will give us the opportunity to ensure even better access in new ways. For example, one of our most difficult challenges has been to give effective access to courts and court proceedings to litigants who represent themselves, a substantial percentage of the litigants in family court and an increasing number in all courts in this recession. As part of the new case management computer system, we are instituting a new and exciting way for litigants to prepare and file court papers and forms by answering questions on a special website, with extensive help available to ensure the answers are correct. This system will greatly improve effective access for pro se users when it is fully implemented.

“The transition to electronic filing and the electronic case file, and away from paper records, will make all litigation easier and improve access for all users. At the same time, it will make the courts much more efficient and allow work to be moved from place to place within the state wherever the resources are available to handle it. We believe that we can reduce costs and reduce the stress on our overtaxed clerks' offices.

“The legislature has taken the lead in the introduction of video technology to reduce costs and improve access, particularly with respect to prisoners who are lodged pretrial in corrections facilities. We in the judiciary believe you are on the right track. We want to move to the day where video facilities are available in every court and correctional facility and in other locations to allow lawyers and litigants, including prisoners, to routinely appear by video in court proceedings, particularly those where no evidence is taken. Again, here, our goal is to increase access while reducing both public costs and the private costs of transportation, time and expense.

“With the support of the Governor and many others of you in this room, we have begun to consider in detail what changes are needed in our court system. The Court is particularly gratified that the Legislature has created the Commission on Judicial Operation. This is a blue-ribbon panel with members from all branches of government and the private sector, and its mission is to address many of the issues I've discussed today. The Commission is tackling “consolidation of staff,” “regionalization of court administrative functions,” “the use of technology to reduce unnecessary expenditures,” “reallocation of jurisdiction between courts,” and more broadly “any other idea for the efficient

and effective delivery of judicial services.” We are assisted in this endeavor by the National Center for State Courts, which provides a wealth of experience in translating the vision of a modern court system into a reality.

“But a complete upgrade to a more flexible structure—and the profound efficiency gains that will come with it—is still years away. Although you set up a special fund to allow purchase of the new computer system over time, it will take years for this technology to come on-line. This is one of the reasons we have submitted our request for level funding. We believe that we can improve the judicial system, at reduced cost even in this recession, but we cannot produce that result overnight. We must have time to complete the work of the Commission, time to engage the public at large and the groups with a particular interest in the courts, in a meaningful dialogue about the changes proposed. We need time to pay for and implement the technology. If we do not accomplish some greater measure of stability in this system than exists now, if funding levels continue to decline before our flexibility to manage the budget is improved, we will have to choose one bad option over another. The paradox is that unless we find short-term stability to fix long-term problems, the courts’ central purpose—applying the laws that you pass—will be compromised.

“As evidence of the problem, we have recently had to institute a system of periodic court closures and furlough days. These closures are permitted by statute, but we know well that in passing the statute you—the Legislature—did not mean to give us a tool we would use lightly. And I want to be clear: we have used it only reluctantly, after much deliberation. Closing courts aggravates backlogs, but we are able to realize significant cost savings only by reducing personnel costs. Because case loads do not change, furloughing judges has had a benefit to many employees who work on the closure days and are able to catch up on their work without distraction. However, the unfortunate overall effect is to lessen access to the courts—even if only slightly—and, ultimately, to tax already-pressured employees. We did not, as I said, undertake these closures lightly, and will continue to search for alternatives, but our statutory inability to respond in other ways to further budget cuts will inevitably raise the specter of wider closures. Our colleagues in New Hampshire have recently suspended jury trials temporarily, a step we reluctantly took during a past budget crisis as well. We sincerely hope not to have to take that step again.

“We in the Judiciary are keenly aware of the difficult decisions you in the Legislature, and the Governor are facing. We face them with you. Although budget forecasts and economic outlooks change daily, I know that we all share a commitment to the Constitution, and to preserving a judicial structure that ensures fairness in the resolution of matters that affect the lives

of every Vermonter. The Judiciary understands its obligation to contribute solutions to meet the essential needs of the people of Vermont, but we must have the tools to do so. Like you, we are putting our shoulders to the wheel, every day and in every courthouse. However, I have the obligation to tell you that without change—without further progress towards a unified court system—we run the risk of not meeting our citizens’ most important needs.

“I know that the changes I’ve mentioned today are substantial ones, and some may not be politically popular. But this is an historic moment when bad times can forge good things. This is an historic opportunity to provide Vermonters with a court system as modern and forward-looking as they are. It is a time, as Abraham Lincoln once said, “to think anew, and act anew.” Our actions in this challenging time will inevitably define us. With needed change, we can assure Vermonters access to the courts for generations to come. We ask for your continued help and support.

“I look forward to working with you, and I thank you for the work we have already done together.”

Dissolution

The purposes for which the Joint Assembly was convened having been accomplished, the Chair then declared the Joint Assembly dissolved.

DAVID A. GIBSON
Secretary of the Senate
Clerk of the Joint Assembly