

HOUSE JOURNAL
SIXTY-EIGHTH GENERAL ASSEMBLY
STATE OF COLORADO
First Regular Session

Third Legislative Day

Friday, January 14, 2011

1 The Speaker called the House to order at 9:00 a.m.

2

3 Prayer by the Reverend Brad Meuli, Denver Rescue Mission.

4

5 Pledge of Allegiance led by Andrew Salas, Jennica Lyons, Kelly Osborne
6 from, Betty Adams Elementary, Westminster.

7

8 The roll was called with the following result:

9

10 Present--64.

11 Excused--Representative(s) Sonnenberg--1.

12

13 The Speaker declared a quorum present.

14

15

16 On motion of Representative Barker, the reading of the journal of
17 January 13, 2011, was declared dispensed with and approved as corrected
18 by the Chief Clerk.

19

20

21 House in recess for Joint Session.

22

23

24

25

JOINT SESSION

26

27 The Joint Session was called to order by the Speaker of the House, Frank
28 McNulty.

29

30 On motion of Senator Morse, the morning roll call of the Senate was
31 made the roll call of the Joint Session.

32

33 Present--35.

34

35 On motion of Representative Stephens, the morning roll call of the
36 House was made the roll call of the Joint Session.

37

38 Present--64.

39 Excused--Representative(s) Sonnenberg--1.

40

41 The Speaker declared a quorum present and as is customary presented the
42 gavel to the President of the Senate to preside over the joint session.

43

1 President Shaffer requested the Joint Committee, composed of Senators
2 Johnston, Jahn, Mitchell, and Representatives B. Gardner, Barker, Ryden
3 to escort Chief Justice Michael L. Bender to the rostrum.
4

5 Chief Sergeant-at-Arms John Wallin announced the arrival of the
6 Honorable Michael L. Bender, Chief Justice of the State of Colorado.
7

8 The Joint Committee escorted the Chief Justice to the rostrum where he
9 addressed the Joint Session.
10

11
12
13 **ADDRESS BY THE HONORABLE**
14 **Michael L. Bender**
15

16 President Shaffer, Speaker McNulty, members of the General Assembly,
17 honored guests and friends.
18

19 It is my great privilege and pleasure to speak to you about the judiciary and to
20 continue the tradition of the Chief Justice addressing the Joint session of the
21 General Assembly.
22

23 Before I begin, I would like to introduce my colleagues on the Colorado
24 Supreme Court:
25

26 Justices:
27 Gregory Hobbs
28 Alex Martinez
29 Nancy Rice
30 Ben Coats
31 Allison Eid, and
32 Monica Márquez
33

34 I would also like to recognize State Court Administrator, Judge Gerald
35 Marroney.
36

37 I would also like to acknowledge members of my family who are here:
38

39 My wife, Dr. Helen H. Hand,
40 My sister, Ellyn Bender, who has travelled here from Florida, and
41 My children, Jeremy Bender, his wife, Melissa, and their daughter and
42 my granddaughter, Margot, Aviva Siegel, her daughter and my
43 granddaughter, Allison, and finally, Maryjean, Tess, and Ben
44 Hand-Bender.
45

46 On behalf of myself and my fellow justices, I thank you for this opportunity to
47 report on the state of the judiciary in Colorado.
48

49 As John Adams, one of our founding fathers, said we are a government of laws,
50 not men.
51

52 As an aside, as a rookie lawyer, Adams lost his first case on a technicality when
53 he forgot to follow a local rule of law. He was advised by his elders to study
54 the classics less and the local law more. But later in 1787, again inspired by the
55 classics, he urged ratification of the proposed federal constitution with these
56 enduring words:

1 ". . . that a form of government which unites all virtue . . . in a reverence and
2 obedience to the laws, is the only one in which liberty can be secure, and all
3 orders and ranks compelled to prefer the public good before their own; that is
4 the government for which we plead."
5

6 Adams' point rings true today -- to have a government that secures liberty and
7 freedom, all branches of the government must be obedient to the law. Our
8 government is not founded upon the good wishes and desires of individuals
9 because, as Adams noted, individuals cannot be counted on to "prefer the public
10 good before their own."
11

12 By deciding cases and resolving controversies according to the rule of law, the
13 judiciary furthers the paramount principle that we are a government of laws and
14 not men. It is important to emphasize that we only decide cases when there is
15 a dispute and the disputing parties bring that controversy to the court. To
16 accomplish our constitutional mission, we interpret and apply the law in an
17 even-handed and fair manner. Our courts protect individual rights and are open
18 to all, whether rich or poor. No one is above the law. By establishing justice,
19 courts serve the people.
20

21 As the highest court in the state, our Supreme Court upholds the rule of law by
22 deciding cases of statewide importance. Our opinions represent a collegial
23 product involving research, reflection, and deliberation. No one judge has the
24 answer to these complex controversies. The chief is but one of seven. A
25 majority of four justices must agree to render a decision. The rich mix of
26 backgrounds, cultures, and experiences that exist among the seven of us,
27 contributes to our deliberative process. Personally, I can attest to the fact that
28 the job is not only hard but also humbling. We debate, we agree to disagree,
29 and sometimes we are convinced to change our views. At all times, each of us
30 respects the other and each of us recognizes that we are dedicated, as urged by
31 John Adams, to the goal that as the rule of law prospers the public good thrives.
32

33 As Chief Justice, I stand before you as representative of the seven justices, as
34 well as the judiciary as a whole. I was elected to serve as chief by my peers and
35 began a little less than six weeks ago, so the job is a little new to me.
36

37 Let me give you a quick overview of the system. The third branch includes 316
38 judges with over 3,000 employees who work in all 64 counties. Each day, the
39 courts accept over 2,100 new filings. On the civil side, these cases run the
40 gamut from small claims to multi-party multi-million dollar claims—including
41 business, real estate, water, domestic, probate and juvenile matters. On the
42 criminal side, our cases range from speeding to first degree murder involving
43 the death penalty.
44

45 I would like to thank the General Assembly for the resources that have been
46 allocated to the courts and probation. I acknowledge the predicament you
47 assembly members are in, as you try to meet the needs of the entire state with
48 limited funds. Although adequate resources for court and probation functions
49 are critical, I have not come here today to present budgetary needs. Instead, I
50 will share some accomplishments, describe meeting the challenges posed by a
51 struggling economy, and explain my goals for strengthening the judiciary.
52

53 Our greatest strength is our people—judges, magistrates, administrators,
54 probation officers and clerks. Colorado's non-partisan merit selection system
55 assures that judges are selected from the ranks of lawyers in the community
56 who are hard working and honest, and have had distinguished legal careers.

1 The performance of each judge is reviewed by a bi-partisan community-based
2 performance commission composed of a majority of non-lawyers.

3
4 I want to single out two judges for their outstanding contributions: Judge Ron
5 Crowder in Colorado Springs and Chief District Court Judge Dennis Maes in
6 Pueblo.

7
8 Judge Crowder, a retired Army general, presides over a veteran's trauma court.
9 This court provides alternatives to incarceration for veterans with trauma
10 disorders who are charged with felonies. With federal funding, Judge Crowder
11 organized not only the district attorney and public defender to work
12 cooperatively on these cases, but also garnered support from numerous
13 community groups. Today, there are approximately 50 veterans receiving
14 treatment and counseling, who make regular appearances before the Judge.
15 This new court provides an opportunity for those who have served our country
16 to make a positive change and resume their lives as law-abiding citizens. This
17 veteran's court can serve as a model for expansion into other counties across the
18 state.

19
20 Chief Judge Dennis Maes initiated and developed a truancy court in Pueblo
21 over which he presides today. This court represents a collaboration of many
22 community groups—the schools, city, county, police, courts, probation, social
23 services, students and their parents. An example of the positive results comes
24 from a teenager, who at the age of 13 and in 7th grade, was a gang member, had
25 substance abuse issues, and had 28 unexcused absences from school.
26 Reluctantly, this young girl agreed to participate in truancy court rather than be
27 suspended. Judge Maes personally monitored her progress. Within a year, her
28 truancy case was dismissed, she was getting straight A's and she graduated
29 from Central High School one semester ahead of her class. She is now a pre-
30 med student at CSU in Pueblo, pursuing her dream of becoming a doctor.

31
32 I would be remiss in not emphasizing that the resources provided by the General
33 Assembly over the years have fully supported our mission. No matter how
34 capable our judges, they cannot be effective unless adequate resources are
35 provided. But there is no question that the economic downturn of the last few
36 years has impacted all branches of government. Despite diminished resources
37 and increasing demands, we have strengthened the operation of the courts by
38 increasing efficiency.

39
40 For example, we have helped balance the state budget. Our probation
41 department, which the General Assembly has supported, has saved Colorado
42 taxpayers approximately 11 million dollars per year in the cost of incarceration.
43 We implemented hiring freezes in 2009 and in 2010, delayed newly authorized
44 judgeships and saved the state more than 10 million dollars. This year, we had
45 a one-time give back of 800,000 dollars and permanently cut 173 positions for
46 an on-going savings of almost 7 million dollars per year.

47
48 As you know, we are in the process of building a statewide e-filing system for
49 all cases, which will increase our efficiency and yield additional revenue. With
50 your support, Colorado continues to lead the nation in court technology
51 applications, as evidenced by the development and implementation of our
52 public access system last year.

53
54 We adopted new procedures for water matters, which should make access to
55 water courts less expensive and produce more timely results. As part of this
56 project, we provided a guide for non-attorneys who wish to participate in water

1 court cases.

2

3 We continue to ensure quality and integrity within our court system. For
4 example, we have been pioneers in the establishment of jury reform and the
5 establishment of over 60 community problem solving courts across the
6 state—these include veterans trauma, adult and juvenile drug, family
7 dependence and neglect, DUI, adult and juvenile mental health, and truancy
8 courts.

9

10 Our attorney discipline system, operated under the supervision of the Supreme
11 Court, serves as a national model. Our judicial disciplinary commission has
12 been re-organized, and is in the process of revising its rules to increase
13 transparency. We adopted a modern judicial code of ethics to assist judges
14 facing ethical issues.

15

16 The “Courts in the Community” program, which began in 1986, continues to
17 meet its goal of connecting the appellate courts with the community. The
18 Supreme Court and the Court of Appeals travel to high schools throughout the
19 state giving students the opportunity to hear oral arguments and mix and mingle
20 with justices and appellate judges.

21

22 Finally, we conducted a survey of persons using the courts in all 22 districts to
23 obtain feedback on how the courts are functioning. We use the results to
24 improve our services.

25

26 For the rule of law to prevail, individuals must have access to the judicial
27 system. Individuals and businesses alike are finding it increasingly difficult to
28 use our civil justice system. The high cost of legal services and the growing
29 complexity of the civil discovery process have made the cost of civil litigation
30 prohibitive. As a result, the number of civil trials has dramatically diminished
31 and many civil disputes are not resolved by a jury of peers. Just, speedy and
32 inexpensive determination of civil cases is increasingly rare. To address this
33 problem, the five chief judges in the Denver Metro area have requested that the
34 Supreme Court approve a two-year pilot project to increase mandatory
35 disclosure of information by the parties to their opponents and to streamline
36 discovery procedures in both business cases and medical malpractice claims.
37 The rules for this pilot project have been developed and agreed to, by both
38 plaintiff and defense counsel and members of the judiciary in coordination with
39 the Institute for the Advancement of the American Legal System at DU. Our
40 Supreme Court will hold a public hearing on these new pilot project rules next
41 week.

42

43 Access to the courts is also affected by the rapidly rising numbers of parties in
44 marital dissolutions who cannot afford legal representation. These
45 unrepresented parties, especially those with children, need legal advice and
46 counseling. We are working through the Supreme Court’s judicial advisory
47 council and the state and local bar associations to set up procedures whereby
48 local volunteer attorneys will represent on a pro bono basis some of these
49 clients who meet indigency guidelines.

50 As Chief Justice, I am committed to further strengthen the efficiency of our
51 judicial system, its quality and integrity, and to improve access to the courts. In
52 that vein, I have a number of additional goals.

53

54 Employee morale is critical. I don’t need to tell you how devastating job cuts
55 and hiring freezes can be. The cuts we’ve made branch wide have fostered
56 feelings that the work done in the local courts is not fully appreciated. One of

1 my tasks is to visit each of the 22 districts, listen to judges and staff and solicit
2 their ideas for improvement. I believe that our system should include increased
3 consultation with those in the field and that their suggestions should be factored
4 into policy decisions.

5
6 We must take an active role in the integration and coordination of the legal
7 profession, including the law schools, the practicing bar, and the judiciary. To
8 this end, I have established a Chief Justice's committee on the legal profession
9 which includes state and federal judges, bar leaders and the deans of both law
10 schools in the state. This committee will meet regularly to develop initiatives
11 and policies concerning: how students are taught to be practitioners in light of
12 the historical role of lawyers in society; what are the appropriate qualifications
13 for practice; how lawyers should treat both clients and fellow lawyers; and how
14 judges and lawyers should treat each other.

15
16 We, as judges, need to expand our efforts to educate the public about what we
17 do and what the rule of law means to the Judiciary. The educational outreach
18 program "*Our Courts*," initiated by Court of Appeals Judge Russell Carparelli
19 and Federal District Court Judge Marcia Krieger and supported by the Colorado
20 Bar association and the Colorado Judicial Institute, needs our full support. As
21 a practical matter, we must spend time with students and civic groups in
22 addition to our regular judicial duties. I see my task as encouraging others to
23 do this and to take my own advice to heart and do as I urge others to do.

24
25 We have a great need for judicial training. About half of the trial judges in the
26 state were appointed in the last six years and it takes up to six years for a judge
27 to be fully trained. Training sadly competes with the need to keep up with the
28 burgeoning case loads. We continue to explore ways to provide education to
29 new judges, to judges in need of specialized training to preside over certain
30 types of cases, and to judges in need of education on new and different issues
31 that come before the court. Judges face jurors who use Twitter and Facebook,
32 litigants who come from various countries and speak hundreds of languages,
33 and cases with complex legal issues involving construction, finance, medical
34 malpractice, product liability and engineering. Our judges are expected to
35 become experts within a short time of taking the bench on all types of cases
36 including probate, mental health, juvenile, civil, criminal and domestic. Our
37 efforts to provide this type of education at a low cost have included distance
38 learning, regional meetings, scholarships to attend out-of-state offerings and
39 pairing with other agencies to provide training. We continue to explore ways
40 to provide the type of education necessary to keep our judges informed and
41 able.

42
43 Before I close I want to talk a little about our new building. Thank you again
44 General Assembly for your bipartisan support in championing this project. The
45 Ralph L. Carr Colorado Judicial Center, which is being built without any
46 general fund impact, will be finished in the spring of 2013. This center will
47 house our appellate courts, the State Court Administrator's Office, the Attorney
48 General's Office and other state legally related entities. There will be
49 substantial savings in maintenance costs and shared services over the years. A
50 fundamental part of the new courthouse will be the learning center which will
51 occupy premier space on the first floor. This is something I am particularly
52 excited about. The learning center will be unique—it will house interactive
53 devices designed to teach from the K-7 level to the college level about the three
54 branches of government, how they interact with each other, and focus on the
55 special role courts play in our society to uphold the rule of law. The learning
56 center will be keyed to the state's required civics curriculum.

1 The Judicial Center will provide a stately and visible reminder at the seat of our
2 state government of the critical importance of the Colorado judiciary. It will
3 symbolically represent the judiciary as it seeks to uphold the rule of law in our
4 state.

5

6 Thank you for the opportunity to talk about the legal system which I love and
7 of which I am so proud. I leave you with Harper Lee's words, taken from her
8 novel, To Kill a Mockingbird, and spoken by Atticus Finch, a wise father and
9 a passionate lawyer:

10

11 But there is one way in this country in which all men are created equal—there
12 is one human institution that makes a pauper the equal of a Rockefeller, the
13 stupid man the equal of an Einstein, and the ignorant man the equal of any
14 college president. The institution, gentleman, is a court. It can be the Supreme
15 Court of the United States or the humblest JP court in the land. Our courts have
16 their faults, as does any human institution, but in this country our courts are the
17 great levelers, and in our courts all men are created equal.

18

19 Thank you. I look forward to working with you during this session.

20

21

22 The Joint Committee escorted the Chief Justice from the Chambers.

23

24

25 On motion of Representative Stephens, the Chief Justice message was
26 ordered printed in the House Journal.

27

28

29 On motion of Senator Morse, the Joint Session was dissolved.

30

31

32

House reconvened.

33

34

35

36 On motion of Representative Stephens, the House adjourned until
37 10:00 a.m., January 18, 2011.

38

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40

41

Approved:
FRANK McNULTY,
Speaker

42

43

44

Attest:
MARILYN EDDINS,
Chief Clerk

