

The State of the Colorado Judiciary 1977
Chief Justice Edward E. Pringle, Colorado Supreme Court
Message to the General Assembly
February 22, 1977

President of the Senate Anderson, Mr. Speaker, members of the 51st General Assembly, ladies and gentlemen:

It is my great pleasure once again to address you on the state of the judiciary, as has been the practice in each long session beginning in 1971. The past two years have been concerned ones for the Colorado judicial system. The number of new cases continued to increase; new programs, such as community corrections and the small claims court, were enacted; and we have been confronted by emergency situations requiring a high concentration of judicial manpower and supporting staff to meet case volume and time limit requirements.

On the other side of the ledger, your provision of new judgeships and appropriation of funds to support the small claims court and for community corrections assisted greatly in our accomplishments in the past two years.

The Colorado judicial system continues to be viewed as a national model, not only because it has most of the features of a modern judicial system as viewed by students of judicial administration and set forth in various sets of national standards, but also because of what has been achieved here.

I do not intend to bore you with a lengthy statistical presentation, but I do feel that a few pivotal statistics are in order to illustrate the system's efficiency and effectiveness.

In 1965, when the present judicial organizational structure became effective, there were 69 district judges to handle an estimated 49,295 filings or 714 per judge. In the last fiscal year (11 years later), there were 89.5 district judges and seven referees to handle 87,219 filings or 975 per judge, during this 11-year period, filings increased 77 percent, while judicial manpower increased only 30 percent.

The system has been able to handle this litigation explosion without a corresponding increase in judges, because of a much greater disposition rate by the judges. Unlike the 450 to 500 dispositions per judge in rural areas and 800 to 900 in urban ones, considered the absolute maximum in 1965, our statewide average was 1,207 per judge and referee in FY 1976, with several urban districts showing more than 1,300 and some rural districts with more than 700.

The statistics are even more dramatic in county court, especially in large counties with full-time judges. In the nine largest counties (exclusive of Denver), there were 19.75 judges in 1965 to handle 54,600 filings or 2,765 per judge, in FY 1976, there were 136,438 filings in these nine counties (an increase of almost 150 percent), but the increase in the number of judges was just 11.5, or only 58.2 percent. The number of filings per judge was 4,366, almost 58 percent greater than in 1965, again it is the disposition rate that has allowed us to keep up without a corresponding increase in judicial manpower.

While the strength and vitality of the system lie in the dedication and quality of the judiciary and supporting staff, our administrative structure, organization, and innovation make the possible easier to accomplish and the impossible a seldom used phrase. But there is a physical and fiscal limit to what can be expected. Judges can hear and dispose of just so many cases. Even though the number has continued to increase, there is a finite limit, if the quality of justice is to be maintained and rights of the public protected, therefore, we are asking the General Assembly to provide additional judges in those districts and counties where they are needed.

Our caseload statistics and projections for the immediate future show the need for new district judges in seven districts: Adams (17th), Arapahoe (18th), Boulder (20th), Canon City (11th), Denver (2nd), Jefferson (1st), and Mesa (21st). Likewise, new county judges are required in Adams, El Paso, Jefferson, and Larimer Counties.

We are also asking the general assembly to provide an administrative tool to serve the public better by adopting a proposal which will provide a cadre of retired judges to meet emergencies, such as the Canon City situation and judicial illnesses; to handle protracted trials; to provide continuity in court dockets during vacation periods; to provide a settlement mechanism for litigants; and to handle matters of course, thereby, providing active judges with more time for their regular trial docket.

The proposal to provide a cadre of retired judges was before you last year. It passed the Senate with only one dissenting vote, but lost by one vote in the House. Under this plan, a retired judge who agrees to serve 60 days a year upon assignment of the Chief Justice would receive a twenty percent increase in his retirement annuity. In other words, the state would receive twenty-five percent of a full judge's time per year at a cost of less than twenty percent of an active judge's salary, because the additional annuity would be based on the judge's final average salary, which is less than that of an active judge.

This proposal would encourage judges to retire at age 65, rather than waiting until the mandatory retirement age of 72. It would provide us with additional judicial manpower for the purposes I have already mentioned. It certainly would have reduced the cost of handling the penitentiary cases in Canon City. The cost savings would have been even more dramatic, if we had been required to try those 55 cases.

Other examples of where these judges would expedite litigation and thereby serve the public include protracted civil cases, such as the Beatrice Food case, which was originally scheduled for three months trial, requiring an active judge without such help to postpone all other pending matters on his docket and lengthy criminal cases, which now require judges to delay their civil dockets to comply with the six-month rule.

Our judges now set two or three civil cases for trial at the same time to expedite the docket. If two cases go to trial a retired judge under this proposal would be available to take the second case, which otherwise might be set over for six months.

I hope that this measure can be passed early in the session, so that I have time to prepare the

schedule for mandatory service by these judges starting in July.

We already use retired judges as much as we can to meet the needs of the system, but without a waiver as proposed here, they must by constitutional directive receive the same salary as an active judge for each day they sit. We have already exhausted our appropriation for this year and have asked for a supplemental appropriation for this purpose. We must have these funds, because for example, all of the United States water rights on the western slope are ready to be adjudicated and the appropriate judge to hear them is the retired one who handled all the preliminary work. We have other water rights in the Arkansas Valley, which would be expedited by the retired judge who has already worked on these cases. We have another retired judge who has pending several motions for a new trial, and another retired judge has been assigned an important and lengthy criminal case arising out of the statewide grand jury in southern Colorado. There are other examples, but these should suffice. In this connection, you should be aware that crowded dockets throughout the state make the assignment of active judges for any length of time extremely difficult if not impossible.

This proposal is essentially an administrative measure, even though it is tied to retirement benefits. Much needs to be done about judicial retirement, as the Colorado State Officials Compensation Commission pointed out in its recent report to the General Assembly.

I would like to turn now to another subject. Emphasis is now being placed on community corrections, but I would like to remind you that probation is the oldest form of community corrections and is also the key to successful expanded community correction programs for offenders before incarceration in state institutions. Probation carries the heaviest load in corrections at the lowest cost (\$115 in general fund money per case), and the success rate has been between 92 and 94 percent.

As I said about judicial capacity, there is a finite limit to the number of offenders that can be worked with beneficially by any one probation officer. These are human beings, they are not numbers, and their salvage and return to a productive life is more than a mere statistic. We cannot continually be funded to last year's level of over achievement and expect quality results. Adequate support of probation services and training is a must if we are to meet public expectations for this program.

In the last session, you passed legislation authorizing restitution programs for the Parole Department, which the court system had been applying for many years. From statements made on the floor, it appeared that it was not generally known that the courts were engaged in a program of restitution to victims. For example, in FY 1975 we collected \$518,704 in restitution from probationers, and in FY 1976 we collected \$658,718, an increase of 27 percent.

My comments on probation services should not be construed as a buttress for the often heard contention that judges are too lenient. The penitentiary and reformatory are full, and their inmates did not get there by falling out of the sky.

In December 1975, Colorado held a sentencing conference, jointly sponsored by the three branches of government, personally represented by the Governor, the Chief Justice, and the

Chairmen of the House and Senate Judiciary Committees. The conferees, including some of you, were all concerned participants in the criminal process and raised a number of questions. Are judges "too tough," ignoring rehabilitation and concentrating on punishment? Are judges "too lenient," risking the public safety by giving probation to serious offenders with prior histories? What are the variables which determine the types of sentences being given? For similar offenses, are extremely disparate sentences being granted?

At my direction and with the assistance of L.E.A.A. funds, the Colorado Judicial Department undertook a statewide study designed to provide answers to these and related sentencing questions. The study focused on three crimes: aggravated robbery, second degree burglary, and second degree assault. It was necessary to select crimes generally considered to be so serious that the judge would have to decide whether or not to incarcerate the offender.

The first thing we learned was that the average overall time to complete all of these cases was five and one-half months from filing to sentencing, which means they are being handled from arraignment to disposition in four months or less - a very commendable showing in light of our docket problems and related pressures.

The sentencing study also showed that judges are tough when they need to be; that is, serious offenders with prior histories are being given prison or reformatory sentences in every district in this state. When a crime is considered extremely serious by the general public and by those in the criminal justice community, such as aggravated robbery, judges are uniformly giving severe sentences.

At the same time, judges are willing to try rehabilitation outside of locked cells when they feel they can do it without putting the public in danger. That is, if they have an offender who has no prior criminal history and whose background otherwise indicates that he is a good candidate for probation, they are willing to give the person a chance, and, as I said, the success rate is 92 to 94 percent.

These are just a few of the findings. Time does not permit more extensive comments. These should illustrate, however, that criminal cases are being disposed of in a timely fashion and that judges are tough when the crime, prior record, and other circumstances so require. Of course, there will be some sentences either too tough or too lenient with which you do not agree, and the judge may be wrong in what he does in a particular case. But sentencing judges are human beings, and they make mistakes just as you and I do, and we must not tar the entire sentencing process because of some mistakes in a very large job.

Earlier, I mentioned briefly the need for adequate support of our probation officer training program. I would like to stress my strong support of continuing education for all segments of the judicial system; judges, supporting personnel, and probation staff, in this rapidly changing world, it is imperative that we keep abreast of changes in the law, understand new concepts and procedures, and continue to improve the ways in which we do things. For this reason, we have requested funding of our training officers for probation and administrative services and a slight increase in state support of judicial education.

As well as improvement in the quality of our probation services, training and education have played an important role in our ability to handle more cases with fewer people. Training and the use of automatic data processing in our largest courts and new simplified case processing systems in the non-automated courts have increased dramatically the number of cases that can be processed per employee in the district and county courts. We have absorbed a caseload increase of almost 45 percent in the last four years in the nine largest district courts, which are automated, without adding any case processing personnel. In fact, we have eliminated 63 positions in these courts. This is a record without equal in the country. By itself, it justifies our computer operation, even without considering statewide automated jury selection, our caseflow and probation information systems, and all of the applications we have developed.

I must now bring to your attention a very serious problem which plagues the judicial system constantly. Often legislation is introduced and adopted relating to the judiciary itself or relating to other areas of government without any consideration of the impact both physical and fiscal on court operation. As I indicated, this was not true with the small claims court and community corrections, but it is so often true that I have asked our staff now to check all legislation carefully and to inform you as to fiscal impact, so that this problem can be alleviated. Our overall funding level leaves us no margin to absorb additional expense.

One of the attributes of our system is its ability to meet emergency situations, such as the one in Canon City, although emergencies of that proportion require additional funds. We faced a somewhat similar situation in Montrose County last October where some 142 jury trials were scheduled in four months, with only a part-time residential county judge to try these cases.

Without going into the background of the situation, it appeared that jury demands were made in an excessively large number of more-or-less routine traffic and misdemeanor cases. After consultation with the State Court Administrator and the judge of the Durango County Court, whom I asked to sit in because of his experience in handling a high volume of cases as a part-time county judge, a plan of action to meet this problem was arrived at by the Montrose County Court judge and the Chief Judge of the judicial district.

Additional space was found in which to hold court, and the district courtroom was also used when available. All of the county judges in the district were asked to cooperate in this effort to the extent possible, and beginning October 18, we scheduled two and, on some days, three jury trials each day until this backlog was eliminated. A strict policy on continuances was imposed, as well as time limits on submitting motions. Because of our unified system, we were able to move in the necessary supporting personnel and recording equipment and handle the expanded jury selection process. As a result we were able to try those cases that actually proceeded to jury trial, and most of them were settled without trial, so that no cases had to be dismissed because of the six-month rule on the disposition of criminal cases. There are only a handful of judicial systems in the country that are able to handle the people's business with such dispatch.

It is obvious that sufficient funding will be required if we are to maintain the quality of justice in this state and meet the demands placed upon the system. Our budget request was designed to maintain current program levels, handle special statutory activities, such as the small claims court and community corrections, and comply with certain requirements of the state auditor. A

substantial portion of the increase, as in other years, is for uncontrollable items because of constitutional and statutory requirements, for example, court appointed counsel, jury costs, and court costs. such as witness fees and sheriff fees, and the expenses related to water adjudication. These costs have to be met, but we must not be required to reduce our level of operations in other important areas to do so. These items constitute one-fourth of the total increase requested.

We greatly appreciate the budget considerations given us by the General Assembly in the past, and we recognize the many demands made upon you for funding--always greater than the money available. But I cannot urge too strongly that you give us the necessary resources for us to continue to provide the citizens of Colorado with a judicial system of which we can all be proud. For the courts don't belong to you and me, or to the bench and bar, they belong to all the citizens, and they must be accessible to all the people for a ready resolution of their litigation.

I would like now to say a few words about the Commission on Judicial Qualifications, which is charged with the constitutional responsibility of investigating complaints alleging judicial misconduct, failure to perform duties, intemperance, and mental or physical incapacity. The work of this commission is confidential, as required by the Colorado Constitution, and, even though it issues annual reports, the latest is now ready for distribution, its efforts are generally not noted.

The commission has held 67 meetings since its formation in 1967 with ten meetings in 1976, and 231 cases have been filed during that time. Since 1967, 15 judges have resigned or retired following commission investigation and 20 have been censured.

I do not, of course, mean to say that every resignation or retirement is a result of a commission investigation, because judges have resigned or retired for reasons completely unconnected with the commission's activities. I would like once again to emphasize that Colorado can and should be proud of its judiciary. It is generally hard working, conscientious, and dedicated, but the commission has proven an effective means of dealing with those few who are incapacitated or who have not performed their duties.

The citizens of Colorado should be proud that our system of judicial merit selection and tenure has served as the model for the proposed merit plan for selection of federal judges supported by both of this state's senators and endorsed by the president and the attorney general. Chancellor Chester Alter, who has long been active in judicial system improvement in this state and throughout the country and who chairs the compensation commission, spearheaded this plan for the federal judiciary as chairman of a special committee of the American Judicature Society.

During 1976, four more states, through constitutional amendments, joined the ranks of those with merit selection plans for all or part of their judiciary: North Dakota, Nevada, Florida, and Maryland. The mountain and plains states with some version of Judicial merit selection now include: Colorado, Arizona, Utah, Wyoming, Kansas, Nebraska, Nevada, and North Dakota. There are some 31 or 32 states which now have merit selection of judges.

We are soon to move into the new Judicial Building, which will be a visible symbol of the majesty, stability, and dignity of the judicial system of the state. The architect and contractor inform me that the building is right on schedule and within costs. If this is so, and I have no

reason to doubt it, it may be another first as far as public buildings of this magnitude are concerned. We hope to dedicate this building on Colorado Day and expect persons of national stature to be here to participate.

In conclusion, let me thank you once again for the opportunity to appear before you and for your continuing interest in the administration of justice as evidenced by your many contributions to the improvement of the Colorado judicial system.

The state of the Colorado judicial system is generally good. With your continued support and the hard work and dedication of the judges and other personnel in the system, we can meet and solve existing and anticipated problems. All of us working together can provide the citizens of Colorado with even more efficient and effective administration of justice in their judicial system, an administration of justice dedicated to the just and speedy determination of all matters, no matter how large or small.