

The State of the Colorado Judiciary 1984
Chief Justice William H. Erickson, Colorado Supreme Court
Presented to the General Assembly
January 6, 1984

President of the Senate, Ted Strickland, Speaker of the House, Bev Bledsoe, distinguished members of the 54th General Assembly, ladies and gentlemen:

Since 1971 the Chief Justice of the Colorado Supreme Court has had the duty at the beginning of every regular session of the General Assembly to submit a written report to the Governor and to the Judiciary Committees of both houses of the General Assembly. The report must contain a review of the condition of the dockets and the business of administration of the Colorado courts. Section 13-3-102, C.R.S. 1973.

In the past, you have requested that the Chief Justice report to you only during your regular sessions, and your invitation that I address you during this short session is a privilege which I greatly appreciate. I feel particularly honored and pleased to be able to report to you during my first year as Chief Justice of the Colorado Supreme Court and to share with you my thoughts and observations regarding the state of the judiciary in Colorado.

During the short period that I have had the privilege to serve as the Chief Justice, I have had an opportunity to meet with many of you and I have been extremely gratified to learn that you recognize, as I do, that Colorado's judiciary, as structured by the Constitution and your enactments, is one of the finest of the state court systems and is nationally recognized as a model.

Those of us that work within the judicial system recognize the fiscal problems that the state is confronted with and have endeavored to cooperate with you in reducing costs wherever possible. In complying with your mandate, we have reduced the number of full-time employees in the judicial system and have attempted to carry out your directions in an equitable manner so as to not seriously affect the efficiency of the operation of our courts. In many cases, the reduction of full-time employees, who have served in the various judicial districts, has caused a reduction in important services which is not in the best interests of the citizens of Colorado.

However, the fiscal crisis which we have endured is hopefully coming to an end and the future appears to be bright. I would therefore like to call your attention to the positive aspects of the judicial system, including many of the changes which you have sponsored.

Three major improvements which were part of the constitutional amendment in 1966 provide the foundation for continued improvement of our Colorado judicial system. Our merit system for the selection of judges is a model which has been adopted and followed in a number of states. Today, we have a judiciary that he can all be proud of and it is a direct outgrowth of merit selection of judges. The administration of our courts is strengthened by other directives that are part and parcel of the constitutional amendment of 1966.

A unified court system which provides a means for effectively utilizing all judges in the state under the executive powers granted to the Chief Justice, has been successfully used within the limitation of our budget to transfer judges to other districts to meet emergencies and to better handle an ever-expanding docket.

The constitutional amendment granted the rule-making power to the Supreme Court which has permitted the Court to enact rules in response to the many procedural problems which routinely occur. The ability to respond quickly makes it possible for the judiciary to expedite and efficiently dispose of the court's business.

Our court is also grateful to you for the legislation which has implemented the constitutional amendment and has improved the operation of our courts. The legislation which created the senior judges program has enabled us to assign experienced judges to handle protracted trials which would tie up a single judge of the district court and bring litigation within that court to a halt. The senior judges have also been invaluable in assisting us in making assignments to avoid a conflict of interest or to replace judges who are ill or on vacation.

You will be pleased to know that our senior judges supplied nearly 1,000 days of service last year at a great saving in cost to the state. Without this program, Colorado would need at least 5 additional judges.

History points out how both the legislative and judicial branches of government have been confronted with ever-increasing burdens by an increase in population. It is difficult to recognize that our 13 colonies had a population of some 4 million people and an agrarian economy, state legislation which was required at the turn of the century to meet the demands of a small population cannot be compared with that which you face today.

As the Centennial State, we have seen our population grow, and it will continue to grow with each year. We now have a population of approximately 3 million people. The 50 states, in our computer age, will, according to demographers, have a population of 260 million people in the year 2000.

Today Colorado's courts are handling approximately 430,000 cases a year. We have determined from our records that since 1973, an increase in population of 1% causes the caseload in our courts to increase by 2%. By the year 2000, we project that the cases in the district courts will increase by at least 37% and the county courts by 46%. Projecting the percentages to the year 2000, we can expect that our courts will be called upon to handle 560,000 cases per year. Such an increase will precipitate the need for additional judges with their attendant staff and court facilities.

In recognizing that we can anticipate further growth in Colorado, both in population and in industrial development, we would be derelict if we did not follow the lead that has been provided by the corporate giants in industry. The 500 largest corporations as listed by Fortune Magazine have nearly all established long range plans which several states are attempting to establish for their state judicial system. I am pleased to state that long range planning will soon be an integral part of our judicial system.

Our highly competent state court administrator, Jim Thomas, and his staff, have assisted judges throughout the state in handling administrative problems that are tied to every court. His office is now cooperating with us in formulating a long range plan that will enable us to present a realistic picture to you of the legislation that will be required for a period of five or possibly as long as ten years.

Corporate management has learned that to plan for the future it is necessary to determine what is being done on a current basis and the funds that are being devoted to every segment of an industrial operation. Thereafter, in formulating a long range plan it is necessary to attempt to predict what that corporation intends to accomplish in five or ten years and to lay out a method of accomplishing those goals within that period of time.

In adapting such a planning process to the judiciary, the same steps must be taken and we must necessarily depend upon you to recognize the validity and merit of the plan so that it can be implemented through legislation.

In the past the relationship between the judicial and legislative branches of our government has been excellent, and we hope that we can even improve that relationship in the future. You all recognize that the legislation which you enact has a judicial impact and for that reason we study your legislation with great care.

The fiscal impact of new legislation cannot be overlooked when we look at what our budget requirements are going to be on a year-to-year basis. Our long range plan should be available for examination within the next year and may be reviewed by you to determine legislation that is necessary to cause our courts to operate properly. The long range plan may avoid the necessity of our coming to you on a yearly basis with requests for legislation to take care of requirements that have occurred since we last met.

I am pleased to report to you that with the assistance of our state court administrator we have created a cost model that has assisted us in determining the needs of our courts throughout the state. I can also report that on a statewide basis the cost of processing a case has decreased while productivity has increased as a result of improved management techniques. Some of the techniques which we have employed include establishing a workload level for judges and staff, automation, individual judicial district management plans, telephone conferencing, and jury management programs. Our cost model, which has been utilized since fiscal year 1980, has provided a method for making maximum utilization of staff to avoid duplication and unnecessary costs.

On July 1, 1982, the Supreme Court promulgated practice standards to streamline the adjudicatory process. These standards provide for uniform practices in each of the 22 judicial districts that should lead to a more rapid disposition of civil cases. The number of cases each district judge can handle has increased by 18% and county judges are now handling more than 40% more cases than they handled in 1980. The result of these changes is that judges are now determining more cases than they ever did before. Numbers, however, do not always measure justice, the number of cases handled per judge or court employee is only part of the equation,

productivity is comprised of efficiency and effectiveness, our goal must be to establish fair and equitable standards for judicial and administrative caseloads within the judicial system without compromising our true function, the delivery of justice.

I have mentioned a number of judicial innovations that have had positive results. I am certain that many of you have learned through your constituents of the widespread public acceptance of the one-day/one-jury concept. It has all but eliminated the age-old waiting problems that jurors face when they are called for jury service. Most jurors now appear in court one day or if selected for one trial. We have caused telephone answering devices to be put into service in most courts which help us avoid having jurors report when they are not needed. Payments for jury service are now made within 10 days as opposed to 30 days a year ago. We are still confronted with the fact that jurors are not adequately compensated for their service and are paid at much lower daily rates than that paid in most states.

Arbitration is being used in Colorado as an alternative to litigation and as a means of dispute resolution, but it does not constitute a significant cost saving because the arbitrators must be paid; they resolve the controverted issues much as a court or jury would.

Mediation which is now in operation in Arapahoe County in domestic relations cases, is a means of bringing the parties together to resolve disputes through mutual agreement. The program should work very well. Illinois, in its mediation program, has found mediation in custody cases to be successful in 92.5% of the cases.

Telephone conferencing has been a great savings to litigants in Colorado because it saves an enormous amount of legal time. The only equipment that is required is a conference telephone. Motions can be disposed of without having lawyers in the courthouse, thus avoiding travel time and waiting time. The clerk calls the lawyers and asks that they be in their offices at a particular time. The judge has a conference call made to the lawyer within the time frame provided and the motions are argued over the telephone.

The American Bar Association Action Commission to Reduce Court Costs and Delay has spent 5 years in the development of means for reducing court costs and reducing delay. Nearly all of the techniques which they have recommended are in use in Colorado.

You should recognize that the Judicial Department has made every effort to handle an ever-increasing caseload without calling upon you for additional judges. The Court of Appeals has a tremendous backlog which they can only meet with a new panel or additional judges. However, recognizing the fiscal crisis, the Court of Appeals has turned to the use of retired judges and the innovative use of their staff attorneys to attempt to solve the problem. Senior judges Hodges and Silverstein have agreed to participate in this new program that hopefully will make a small dent in the backlog.

We are also proud of our probation departments, which, through the restitution program, have caused victims to be repaid for the losses which they suffered. During the fiscal year which ended on June 30, 1983, a total \$2,844,000 was collected, this is nearly triple the amount that was collected 5 years ago.

Our Judicial Department has also embarked on an ambitious program to educate the public about the courts. The result is that more than 150,000 copies of a booklet which we have published entitled "You and Your Colorado Courts" have been distributed in schools and to various public agencies. Judges also are serving through a speakers bureau to assist in educating the public about the judicial branch of our government.

We have made substantial progress in improving the operation of courts during the last few years. The improvements have been accomplished with the cooperation of judges, administrators, legislators, and lawyers. We need to maintain our momentum in order to improve the quality and morale of the judiciary. I suggest three programs for this purpose.

First, we have learned through experience that good judges are made, not born. The selection process is very important and we heartily endorse the governor's efforts to create a training program for the members of judicial nominating commissions, the local group of citizens who have the responsibility of screening and nominating candidates for judicial office. We believe that the legislature would be well advised to fund a permanent training program for new members of nominating commissions.

Second, we need to strengthen and improve the training program for judges. We have an orientation program for new judges that operates on a shoestring. Our in-service training program is at the lowest point in the last five years. We have \$13,000 this year to train and maintain the skills of more than 230 judges and to train the other 1,200 employees in the Judicial Department. Training should not be considered a luxury. It is fundamental to maintaining the quality of the Colorado judicial system.

Third, we believe that legislation should be enacted which would ensure fair and adequate compensation for the judiciary. Compensation programs for judges should be fair and adequate so that highly skilled and qualified lawyers will be attracted to the judiciary and not have to worry about personal economic considerations. We have established as the number one priority an increase in judicial compensation. Judicial morale is at an all time low. The 1981 session of the General Assembly enacted the last bill for a salary increase which became effective January 1, 1982. In May of 1983, compensation of judges on our highest appellate court ranked 27th among the states our intermediate appellate court ranked 26th among the states and our general trial court ranked 30th. 28 states have or will soon have increased salaries in effect for their judges and justices which will cause Colorado to fall to a lower place in the national ranking among the states.

In my mind, every lawyer should seek the opportunity to serve on the judiciary since I believe it is the greatest honor that a lawyer can be granted within his profession. A lawyer should not have to take a financial loss that forces the judge to lose the opportunity to obtain financial security that lawyers in private practice can provide for their families.

I am advised that legislation will be presented to you for a salary adjustment for the judiciary as well as a request for additional judges, and I would hope that you could support that legislation.

I am also informed that there will be a bill introduced to increase filing fees in certain cases to defray a certain portion of the costs of operating our courts. Cash funding can never pay for the full operation of the courts. In our view, we should recognize that the judicial branch of government has a function to perform that falls within the service that can be expected by the public.

Every year we see an increase in mandated costs relating to counsel appointed to represent indigents and other cost tied to representation of the indigent by the public defender. Nearly every year we have had to make a request for a supplemental budget. Both the prosecution and the defense function should be independent and apart from the judiciary. The public defender's office is under our statutory scheme part of the judicial branch of government. Other states have taken a different approach. Vermont has a defender general and a separate department within the executive branch of government that is responsible for providing defense services. The public defender has shown interest in the Vermont plan and I urge you to give serious thought to a plan that would take the public defender's office out of the Judicial Department.

I would also be derelict if I did not comment on the fact that the press has suggested that judges have been overly lenient in sentencing. An examination of the record does not bear this out. The increasing numbers of felons that are being committed to the Department of Corrections suggests that judges as a group are taking a firm stance against crime. Isolated cases do not prove the rule. Longer terms in prison will not solve the crime problem, as you all know. Prison overcrowding continues to be a problem. We recognize that crime must be addressed on a system-wide basis through a cooperative effort among all branches of government. There must be a proper mix of remedies involving incarceration, community corrections, and probation. We hope that you will focus on these areas during this legislative session and produce a program that may be properly administered, more capable of being understood by the public in general, and more likely to address the long term problems of the criminal justice system.

In conclusion, I repeat that we can all be proud of the court system in Colorado and much of that pride can be assumed by the General Assembly since you have created the statutory scheme for the operation of our courts. We must continue to work together to maintain what so many have worked so hard to achieve. Your job is most difficult in coping with the demands of the entire citizenry and I express my sincere appreciation on behalf of the Supreme Court and the entire Judicial Department for your concern and positive reaction to the needs of the judiciary.

I am indeed grateful for the opportunity to address you and I look forward to working with you during my tenure as Chief Justice. Cooperation between the three branches of government provides proof that our system of government has the proper balance and the means to meet the challenges of the future.