

State of the Judiciary
Chief Justice Mary J. Mullarkey, Colorado Supreme Court
Message to the Legislature
January 15, 1999

I am honored to offer my thoughts on the state of the judiciary to you, the members of the 62nd General Assembly.

WHO WE ARE

First, let me tell you about who we are and what we do. We do two things: we resolve disputes and we supervise offenders on probation.

We do these two things with 239 judges and 2,500 staff (clerks, probation officers, magistrates, jury commissioners) located in 22 judicial districts throughout the state. The Supreme Court and the Court of Appeals are located here in Denver.

We have an operating budget of \$197 million; \$148 million of it is general fund dollars. Our general fund budget is 3 percent of the total state budget. Last year we collected \$34 million in court fees and fines, which went to the general fund.

COUNTY COURTS

We have a county court in each of Colorado's 63 counties. This year, we will have more than 470,000 cases filed in our county courts. Examples of cases in county courts include: traffic and drunk driving; landlord-tenant; domestic violence protective orders; misdemeanors; collection actions; small claims; and civil disputes involving less than \$10,000.

DISTRICT COURTS

The counties are organized into 22 judicial districts. This year, we will have almost 170,000 cases filed in our district courts. The district courts are courts of general jurisdiction, meaning that district judges hear all types of disputes. More than one-half of cases filed in metropolitan district courts involve family law -- divorce; custody; probate and mental health; juvenile delinquency; and dependency and neglect proceedings. Felonies are handled in the district courts, as are civil disputes involving more than \$10,000. Water cases are heard by specially designated district court judges.

COURT OF APPEALS

In 1998, the 16-member Court of Appeals received a record 2,606 cases on appeal. The court hears appeals of right from district courts and from administrative agencies and boards. Currently, the number of criminal appeals is the most rapidly increasing segment of the court's work. Between July 1 and December 31, 1998, 604 criminal appeals were filed in the Court of Appeals, compared with 403 in the same six-month period in 1997.

SUPREME COURT

Over 1,500 new cases were filed in the Supreme Court in the past year. The seven-member Supreme Court has discretion to review cases decided by the Court of Appeals and by the district courts acting on appeals from the county courts. The court has original jurisdiction to review ongoing matters in the trial courts and court of appeals. We also decide ballot title submissions, interlocutory appeals, attorney discipline cases, and certified questions from the governor, legislature, and federal courts. We rule in direct appeals in water cases, Public Utility Commission cases, and death penalty cases. The court is the licensing authority for attorneys practicing law in Colorado, and we recently made major changes to improve the handling of complaints against attorneys.

PROBATION

Probation is an important part of the judicial branch. Probation officers prepare presentence investigation reports to aid judges in sentencing criminal offenders. Probation officers also supervise nearly 50,000 offenders. That's 114 percent more than in 1987. Of those 50,000, nearly 10,000 are juveniles.

Our rate of success is good. While on probation, only 2.5 percent of juveniles and 3.3 percent of adults commit new crimes. In the year following successful completion of probation, less than 8 percent of juveniles and less than 12 percent of adults re-offend.

In adult probation, domestic violence offenses account for the majority of growth in the number of probationers. While there is a range of supervision options, most receive close supervision along with 24 to 36 weeks of treatment.

The most intense adult probation is maintained for sex offenders where a range of supervision and therapy are required for the duration of their probation (an average of 6 to 8 years and up to life).

Our juvenile probationers are assessed using the award-winning Colorado Standardized Assessment Program. Based upon the assessment, they are supervised according to their risk for re-offending. We have children in our system as young as ten years old, and we may continue to supervise them into their early 20's. Each child may be required to undergo some of the wide range of treatments available -- substance abuse treatment, family therapy, individual therapy, anger therapy, and, in some cases, parenting classes. We often supervise young girls who are parents themselves.

With that background in mind, I want to discuss some of the challenges we face and the responses we are making.

CHALLENGES FACING JUDICIAL

The courts face four major challenges:

- Growing caseloads
- More diverse court users
- More litigants proceeding without attorneys
- Changing nature of cases

1. Growing Caseloads

In the past ten years, the caseloads of our trial courts have increased by 23 percent -- from 517,000 to 636,000. New district court filings in 1998 were more than 9 percent higher than in 1997. Civil cases grew by 20 percent, and criminal cases grew by 15 percent. County court filings remained static over the last year, but the complexity of the cases has increased dramatically. One example is in the area of domestic violence, where restraining orders are issued and other actions are taken by the courts to assist the victims. In county courts alone, more than 12,000 restraining orders are issued annually.

Cases filed in the appellate courts also are on the rise. Over the past five years, the Supreme Court caseload has increased by 22 percent and the Court of Appeals filings have increased by 14 percent.

The growth in new cases is attributable, in large part, to the growth in the state population. About four million people lived in Colorado in July 1998. That number is expected to increase at a rate slightly under 2 percent per year through the next twenty years. More people mean more cases.

2. Diverse Court Users

As our population grows, so does the diversity of our fellow Coloradans. Courts are facing increasing demands for language translation. Judges and court staff must be able to deal with people of many different backgrounds and cultures. Court users come from a variety of countries and some have limited familiarity with our language, let alone our constitution or laws.

We are responding to the increased diversity among court users by building on the successful changes we made in response to gender bias concerns. Ten years ago the Supreme Court launched a study of gender bias in the courts. That study resulted in a report documenting problems in the court system. We have worked since then to make the necessary changes that will ensure fair treatment of all men and women. Through a multicultural commission chaired by Justice Scott, we have undertaken a similar examination of racial and ethnic bias in the courts.

The multicultural commission's report was issued a few months ago, and calls many issues to the court's attention. The commission's work will be an important aid in dealing with diversity. We know from our experience with gender issues that real change requires leadership from the top & continuous, ongoing educational programs for judges and all judicial staff.

3. Pro se Parties

Another part of the new reality for courts is that many more litigants represent themselves without the assistance of attorneys. This is especially true in domestic relations. In some

jurisdictions, at least one of the parties appears without an attorney in 50 to 65 percent of domestic relations matters. This places special burdens on the judges and court staff who are asked to answer questions and otherwise assist the unrepresented parties while at the same time remaining scrupulously neutral and fair to both sides of the dispute.

4. Changing Nature of Cases

Family law cases now are the majority of all cases filed in the metro area district courts. There's a growing consensus that many of these cases are not well suited to resolution by the traditional adversarial method used in courts. By passing the parenting law last session, which eliminates the notion of children as property, you have taken an important step in reducing the conflict involved in marital breakups.

The mix of cases in the courts changes with the legislation you pass. Trial courts are profoundly affected by new acts that change the existing structure of our laws or create new rights and responsibilities. Often new legislation means more litigation as the meaning of the law is developed on a case-by-case basis. Sometimes it means that the courts must develop new ways of handling cases.

Example: Responsibility for death penalty sentencing is now placed in a three-judge panel. We don't yet know the effect of the new law but we can predict that it will reduce those judges' ability to timely process other types of cases.

Similar challenges affect probation. Probation officers face overwhelming caseloads that often are three times the national standard. The nature of the cases has changed as well with more serious felons being placed on probation and many low risk probationers being supervised by private providers.

Probation is no longer reserved for first time offenders. Many probationers have been convicted of multiple felonies. Simply put, state probation officers end up with the more difficult and more dangerous cases. The officers perform their jobs with a remarkable degree of success.

RESPONSES TO THE CHALLENGES

Overall we are committed to improving the service we give to the public. 1999 is The Year of Customer Service in the judicial branch. We won't give frequent filer discounts and we don't necessarily want repeat customers, especially in probation. But we'll try to serve the public better through improved telephone service and courthouse signs and more efficient, courteous personal contact. Through its Outreach program, the seven Supreme Court justices will visit all 22 judicial districts and the Court of Appeals, meeting with judges, court staff, probation staff, attorneys and members of the public. This will give us first hand knowledge of local issues, strengths and weaknesses.

Another way we reach out to the public is by encouraging our judges to participate in the community. Examples: Chief Judge Buss of Grand Junction periodically entertains juvenile offenders in detention facilities by singing and playing the harmonica for them to let them know

they are not forgotten. Judge Polidori of Jefferson County founded a tandem bicycle program pairing sighted riders with people who are vision impaired. The Supreme Court and Court of Appeals continue their Courts in the Community program, bringing oral arguments in real cases to high school students throughout the state. We meet with the students after hearing the cases, often over lunch. We answer their questions and explain how the judiciary resolves disputes.

These contacts with the public are important if we are to develop the new ideas and new approaches necessary to turn these challenges into opportunities. We can resolve more cases and get better results by changing our old ways of doing business. Examples: Drug court, a high volume court pioneered in Denver District Court, emphasizes drug treatment and personal responsibility with swift consequences for bad behavior. Another adult drug court is in Fremont County District Court with juvenile drug courts in Denver Juvenile and Larimer County District Court. Domestic case managers employed by district courts such as Boulder help individuals with the difficult process of divorce. They inform the parties about community resources available to parents and children. They make sure that these cases are handled appropriately and expeditiously. In particular, the case managers ensure that children's interests are protected, and they help with the paperwork as necessary. With your support, we hope to expand case managers to ten other district courts.

Mediation and other alternative methods are used throughout the state to resolve disputes without trials. Four courts are multi-door courthouses offering a variety of techniques. Specially trained judges use mediation in dependency and neglect actions in the 4th (El Paso and Teller) judicial district. In Lamar, Chief Judge Arends and his staff have been trained in mediation techniques and are able to resolve child custody disputes without litigation. Senior (i.e., retired) judges have been trained as mediators and operate successfully as settlement judges in many parts of the state.

New ideas and new approaches will work only if we hold ourselves to high standards and identify where we fall short. A good example is our "court improvement project" for abused and neglected children. Our studies showed that we were taking too long to make decisions regarding permanent homes for these children - children often waited for years to find out whether they would return to their families or be free for adoption. Since the inception of the court improvement project, we have seen these timeframes shrink. For example, the original 1995 study showed that 70 percent of abused and neglected children in Mesa County waited in excess of 18 months for a hearing regarding their permanent home. Recent numbers indicate that the Mesa district court now reaches this critical hearing for 100 percent of the children within 18 months. 67 percent reach this stage within one year.

We know that we must streamline and improve judicial services at the points most affecting the public. Jury service is the court function that affects the largest number of people. For the last three years, Justice Kourlis has chaired a jury reform effort that has made significant improvements in this most American of institutions. Jurors are given more relevant information upfront. They are allowed to take notes and may ask questions through the judge. All are common sense changes and make trials function better.

Next to jury service, traffic cases involve the largest numbers of people. First Appearance Centers are being tested in four county courts (El Paso, Larimer, Douglas and Park) to expedite the resolution of traffic offenses. A form of "one stop shopping," it allows individuals who wish to contest traffic tickets to finish the process in one visit to the courthouse lasting about one hour. Under traditional methods, the same result would take two or three court visits and six or more hours of time.

These centers are only part of a larger effort in which the district attorneys are key players. In many courts, the back of a traffic ticket is now an offer of a plea bargain. A reduced fine and points are offered, and the driver can accept by mail within a certain period of time. No court visit is required.

We're also looking at new ideas in the context of criminal law. Restorative justice is a concept that attempts to address the harm done by crimes. Those most affected by crimes, of course, are the victims who suffer the physical injury or property damage. But there are many secondary victims as well, including the victim's family, friends, neighbors, and the greater community. Restorative justice is not a substitute for punishment of the offender. Rather, it focuses on redressing the harm caused by the crime, repairing the tear in the fabric of society.

Probation has been working with restorative justice for several years. It has been used successfully with juvenile offenders who are on probation for committing property crimes. With the victim's consent, victim and offender are brought together to discuss the crime and an appropriate remedy. This use of restorative justice brings closure or resolution to the crime that is far more satisfying to the victim than traditional sentencing standing alone.

Bricks and mortar also are part of the solution to the challenges facing us. Counties have responded to growing caseloads and overcrowded antiquated courthouses with new buildings. Under our law, counties build local courthouses and the state buys the courthouse furnishings. Adams, Douglas and Montrose counties opened new courthouses in 1998. Two new Larimer County courthouses in Fort Collins and Loveland and one new courthouse in Fremont County will be underway in 1999. New buildings can be designed to solve problems such as security at the entrances and the segregation of persons in custody from the public. I am asking that all new courthouses include children's waiting rooms. Children should not be exposed to what so many of them hear and see every day in courtrooms and courthouse corridors. We have recognized the need for victims' waiting areas and should extend the idea to children.

An increase in qualified language interpreters (and funding to pay them) is quickly moving up our priority list. We are not confident that all our court users understand the process or what is happening to them. Competent language translation can help to ensure they are treated fairly. As a mandated cost, this is an area where the legislature can make a significant difference.

With strong legislative support, we have invested heavily in electronic technology over the past ten years. We now have a statewide case management and financial data system. Electronic research is available to judges statewide. We've been able to improve our collections and better serve the public. We are continuing to assess how technological advances can better serve the public by experimenting with electronic filing of documents in the Arapahoe District Court.

More judges, court staff and probation staff are part of the answer. You created two new district judgeships in 1998 for the 18th (Arapahoe, Douglas and Elbert) district and the 4th (El Paso and Teller). In 1999, we're asking for one new district judgeship in the 1st (Jefferson and Gilpin) district and two county judgeships in Larimer and Boulder. We're also asking for more court and probation staff.

For the past 30 years, Colorado has used a merit-based method for selecting its judges. The result is one of the best judiciaries in the country. We seek a pay raise for judges to bring their salaries from 39th in the nation to the national average for state judges. The pay raise is a matter of fairness, given the high demands we in Colorado place on our judges. It is necessary in order to attract and retain the most qualified individuals to serve as our state judges. Finally, we ask for you to continue the judicial performance commissions, which were created ten years ago. Fair, objective assessment of judges is vital to an informed electorate.

CONCLUSION

I hope that I have given you a brief picture of the workings of the judicial branch and its many talented people. You are welcome to visit our courts and probation offices at any time. My door is open to you. Please call or stop by.