

State of the Judiciary  
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Message to the Legislature  
January 12, 2001

It is an honor to address the 63rd session of the General Assembly on behalf of the third branch of Colorado state government, the Judicial Branch. Today I will update you on some of our issues and innovations and discuss three of our legislative priorities.

## WHO WE ARE

Let me begin by describing the Judicial Branch that, in our state, includes both the state court system and probation. We have 244 judges and justices and approximately 2,700 employees. Two-thirds of the employees work for the courts and one-third work in probation. Probation officers assist the trial courts in making sentencing decisions in criminal cases, and they supervise offenders who are placed on probation rather than incarcerated.

On the court side, we have four levels of state courts. The county courts are trial courts of limited jurisdiction handling criminal misdemeanors and civil cases under \$10,000. By constitution, every county has at least one county judge. This year you will see legislation to create a county judgeship for our newest county, Broomfield. The counties are organized geographically into 22 judicial districts.

The district courts are courts of general jurisdiction that can hear all kinds of cases including civil, felony crimes, dissolution of marriage, juvenile and probate.

There are two appellate courts both located here in Denver. We are your near neighbors located at 14th and Lincoln. The court of appeals decides appeals from decisions by the district court and by state administrative agencies. The supreme court is the state's highest court and reviews decisions of the trial courts and the court of appeals. It is also the administrative head of the Colorado Judicial Branch. I have been the Chief Justice for 2 years and have served on the court since 1987. I invite you to visit the courts. Any of the chief judges or I would be glad to help you arrange a visit.

## ISSUES IDENTIFIED IN 1999

When I spoke to the General Assembly two years ago, I identified some of the challenges facing the courts. These include the high volume of cases, the increasing diversity among court users and the Colorado population generally, the increasingly large numbers of parties appearing without attorneys, and the changing demands on judges to assume new, nontraditional roles.

These challenges are so important because our courts can succeed only if they are fair and they are perceived as being fair. We can have equal justice for all only if the courts are open and accessible to all. This means all court users must be treated with dignity and respect regardless of race, ethnicity, gender, or other irrelevant characteristics. Our citizens must see courts that reflect their diverse faces.

## ACHIEVING FAIRNESS

We've come a long way in improving the basic fairness of the Judicial Branch. Here are some brief examples. In 2000 we marked the 10th anniversary of the Gender & Justice Report on gender discrimination in the Colorado courts. We charted our progress in implementing the original report's recommendations, identified current gender bias issues, and now are making our plans for the future.

In 2001 we expect to begin a major effort to implement the Multicultural Commission's recommendations on addressing racial and ethnic bias. We already have made some progress in improving access to the courts for people who are not fluent in English. There is a strong demand for language interpreters throughout the state. Spanish predominates but many other languages are used as well. Last summer I swore in the first group of court interpreters to complete our rigorous certification program. These interpreters are able both to translate from another language into English and also to explain court terminology and procedure.

Another program in the 5th Judicial District (Summit County) attracted some national publicity. Called "Living in America," the program educates people who have recently moved here from Central and South American countries about basic legal requirements in this country, such as prohibitions against drunk driving and domestic violence. It has proved to be a successful way to divert participants from the criminal justice system.

## DRAMATIC INCREASE IN COURT CASELOADS

But the biggest obstacle to providing a fair decision in every case may be the sheer volume of cases each of our trial judges must carry. Let's look at what's happened over the last 20 years.

Caseloads per judge have increased dramatically as our population has grown. In 1980, the average caseload for each district judge was 1054 cases per year. Now there are 1,367 cases per judge per year. In 1980, a judge could spend 57.6 minutes per case. Now each case can have only 42 minutes of a judge's time per year. Caseloads have risen over 80 percent while the number of district judges has increased by 12 percent and the number of county judges by about 10 percent. Today we have 120 district court judges. If we wanted each judge today to have the same caseload as a judge did in 1980, we would need more than 100 additional district judges.

## CRIMINAL CASES DOMINATE THE COURTS

And, please don't think that everyone has their day in court. The significant increase in cases per judge has adversely impacted our ability to try 2 cases. You may find it interesting to know that today fewer than 2 percent of cases are tried. The rest are settled. Imagine the effect that one two-week trial has on the 42 minutes per case that is available to the judge. Very quickly the available time per case is reduced to mere seconds or perhaps nanoseconds. Death penalty cases have a particularly high impact on other pending cases.

Each death penalty case that is tried through the sentencing phase requires the equivalent of one-half of one judge for a full year. At present, 12 death penalty cases are pending in the trial courts. If all 12 go through the full process, those 12 cases will absorb the equivalent of 6 of our 120 district judges.

There are now slightly over 160,000 cases filed each year in the district courts, representing an increase of about 16 percent over the past ten years. During the same time period, criminal cases increased by 70 percent and now stand at almost 36,000 filed annually. This sharp increase in criminal filings has dominated the courts.

Because of the statutory and constitutional rights of a criminal defendant to a speedy trial, criminal cases drive the dockets in trial courts. In general, a criminal defendant in Colorado must be tried within 6 months or the charges must be dismissed. Simply put, civil and domestic relations cases take the back seat in the courts to criminal cases.

The strong increase in criminal case filings reflects the increased emphasis on crime prevention that has occurred at all levels of government. There has been a close collaboration between the legislative and judicial branches to increase our ability to fulfill our public safety functions.

#### PROBATION AND RESTORATIVE JUSTICE

Since 1980, the General Assembly has made significant increases in funding and staffing for the Probation Department. As a result, probation supervised over 19,000 adults and 7,600 juveniles last year. About 2,500 of these probationers were offenders who were placed in specialized programs that the legislature has funded for high risk or high need offenders. Without these specialized programs, many of the 2,500 offenders would have been incarcerated.

The General Assembly has supported important recent innovations that may reduce the size of future criminal dockets. For several years, our Probation Department has been committed to the principles of restorative justice. It is not a substitute for the standard criminal justice process and is not suitable in all cases. Rather, it is a concept that recognizes that crime tears the fabric of society. The harm done by the offender extends beyond the immediate victim to the victim's family, friends, neighbors, and the community at large. Restorative justice tries to repair that harm to society so that ultimately the offender can be reintegrated into the community.

In legislation adopted in the last session, the General Assembly endorsed restorative justice for use with juvenile offenders.

#### PROBLEM SOLVING COURTS

On the court side, the equivalent of restorative justice is sometimes referred to as therapeutic courts or, the term I prefer, problem-solving courts. These are specialized courts such as drug courts aimed at cases involving complex social and psychological problems. The judge plays an active role in changing chronic behavior of the defendant by monitoring the defendant closely and requiring treatment. Such courts have been effective in reducing recidivism rates. According

to one national study, only 10 percent of offenders who successfully completed the treatment program are charged with new crimes.

Again, the legislature has supported this innovation. The Denver District Court has operated a successful drug court for over 5 years. Eight new drug courts are beginning operations throughout the state during 2000 and 2001.

We are also expanding the problem solving court to another important area. The 19th Judicial District (Weld County) is the first in the state to begin a domestic violence court.

The concentration on criminal law has occurred not just at the state level but also at the national and local levels. The result has been significant investment on the front end of the process. Increasingly more money has been spent on policing, prosecuting, defending and incarcerating offenders. Similarly, many millions of dollars have been spent on the end of the process to build prisons. But little attention has been paid to the judging phase in the middle of the process. The courts have shifted resources to handle the increased criminal caseload. We have come to rely on magistrates to assume more of the responsibilities in civil and family cases. Magistrates perform very important functions and we couldn't get along without them. However, they are not judges and cannot try cases. I think that it is time to add more judges to adjudicate civil cases and family matters.

#### GOVERNOR'S TASK FORCE REPORT

The Governor's Task Force on Civil Justice Reform took an in-depth look at the trial courts' civil dockets and concluded that the civil justice system is approaching a crisis. It endorsed a series of changes, some of which will come before you for legislative action this session.

The most important proposal is legislation to add 24 new district judgeships over the next four years. The bill, which will be sponsored by Representative Mitchell and Senator Perlmutter, requires a 2/3 majority of each house and will be presented to you very early in the session. The reason for this expedited schedule is to allow the Joint Budget Committee to include the first year cost of the new judgeships in the Judicial Branch's appropriation in the long bill. The Mitchell-Perlmutter bill will specify exactly what districts will get new judgeships in each of the next 4 years. In general, the new judgeships will go to the fastest growing areas in the state.

#### HIGHER STANDARDS

If these new judgeships are authorized, we can and will hold ourselves to higher standards. Our present standards for timely disposition of cases were set in 1989. We think the public will be better served if we can adopt the performance standards set by the American Bar Association. At present, we close 86 percent of criminal cases within 12 months. With the new judges, we can reach the ABA goal of closing 100 percent of the criminal cases within 12 months of filing by 2007. In the civil area, we now are able to close 74 percent of the cases within 12 months. With the added judges, we can reach the ABA standard of closing 90 percent of the civil cases within 12 months of filing by 2007.

## WORKING WITH OUR COMMUNITIES

Of course, we recognize that our ability to set higher standards and reach them is not solely a product of adding more judges. It also requires all of the judges to improve the management of their cases. With the help of nationally recognized consultants and with the full commitment of the chief judges, we have started a concentrated effort to improve the way we do business. It requires the judges to work closely with the lawyers and court users in their local communities to reach consensus on how specific case types can be expedited.

For example, judges in the First Judicial District (Jefferson and Gilpin Counties) have been working with community agencies on juvenile case processing, to give more attention to the needs of juveniles. The 4th Judicial District (El Paso and Teller Counties) decided to work on their criminal case management in order to create more time for family court dockets.

Nine of the 22 judicial districts began this process last summer. Each of the projects selected by the districts is different to reflect local priorities across the state. The second batch of districts began the process in December and we expect projects to be underway in all districts this year.

Adding new district judges is our first legislative priority this year and adding new court staff is our second priority. I have no doubt that staff shortages in the courts contribute to the perception of approaching crisis in the civil justice system. As part of our budget, we are asking for 69 new court employees for 17 of the 22 judicial districts.

We have been unsuccessful in obtaining new court staff for courts in our larger cities for several years and the shortages have become severe. For example, we are requesting 8 new court staff in the 19th Judicial District (Weld County) and 9 in the 8th Judicial District (Larimer and Jackson Counties). Many of our employees work too much overtime and suffer work-related illnesses and injuries. It is inevitable that more mistakes are made. Court users are forced to wait in long lines and routine functions like garnishments and the paperwork to reinstate drivers' licenses cannot be processed in a timely manner. I hope that you will look favorably upon our budget request so that we can improve our service to the public.

## BUSINESS COURT PILOT

Another recommendation from the Governor's Task Force urged the development of a specialized business court so that business disputes can be handled more expertly and resolved more promptly. In response to the recommendation, we have analyzed our business cases and we are seeking funding for a pilot project to be based in the Denver District Court. We have made this our third priority.

The Denver District Court has the largest number of business cases pending, about 230 cases. That number is too small to justify a specialized court. However, we believe that the goals of the task force can be met by specialized case management. We propose hiring personnel with business expertise who can work with the parties and the judges to prepare the cases for decision.

Having intensive, hands-on management of each case at an early stage should result in faster, better decisions. We think it is important to develop this service because we recognize the need for orderly development of case precedent in business law. Without court decisions, businesses cannot have the predictability they need to plan their futures.

## THE IMPORTANCE OF FAMILY CASES

I have saved the discussion of family cases for the last because I hope my thoughts on this subject will stay with you the longest. It is difficult to exaggerate the importance of family cases to the district court dockets. Family cases account for more than one-half of the filings in the district courts today. That is a sea change since 1980.

There are some interesting and potentially very significant experiments currently underway in the Colorado courts. Three judicial districts are testing a model to simplify the divorce process. The model calls for the judge to act more as a mediator than an adjudicator. A court employee, who is a lawyer experienced in this area of law, acts as a case facilitator to work with the parties. The facilitator helps the parties to resolve issues if possible and to prepare the disputed issues for resolution by the judge. Although the test period is not over, preliminary results suggest that the simplified divorce procedure substantially reduces the time to complete the case. If the preliminary results hold true, the simplified procedure would reduce the expense and trauma of dissolution of marriage action.

In September, a pilot project testing the “one judge/one family” concept began in Adams County District Court. We know that a family may have several different cases pending at the same time in the same jurisdiction. In a large urban court, the cases may be assigned to several different judges. For example, a family could have simultaneous cases involving domestic abuse, drug abuse, delinquency, truancy and dependency and neglect. Human services agencies often are involved with several of the cases. Handling these cases separately seems to create gaps in services, needless duplication and possibly conflicting rulings.

Without additional cost to the court, the pilot project will bring all of the cases related to one family before the same judge. It will track 25 families through the experimental family court and compare the results with 25 families whose cases are handled through the usual process. We’ll compare the two groups to see if the family court model produces better outcomes for families.

## APPOINTMENT OF COMMISSION ON FAMILIES

In addition to these special projects, I have established a Commission on Families in the Colorado Courts. It is co-chaired by one of your former colleagues, Senator Dottie Wham, and one of my former colleagues, Senior Judge Pattie O’Rourke. I am grateful that several present and former legislators have agreed to serve on the Commission.

I have asked the Commission over the next 18 months to study how we handle family cases and to recommend how we can improve. A court committee co-chaired by Chief Judge Chuck Buss of the 21st District Court (Mesa County) and Judge Jesse Vigil of the 17th District Court (Adams

County) will provide the Commission with background on our current system, the best practices around the country and suggestions for change.

I hope that the Commission will use our internal report as a springboard for its study, and will gather other views from around the state. By the summer of 2002, the Commission will report on its findings and recommendations. It is a major undertaking but well worth doing because of the importance of family cases to all of us.

## CONCLUSION

In conclusion, I want to thank you for your past support. Without you many of the innovations I discussed would not have happened. One of the hallmarks of Colorado state government when operating at its best has been the ability of the three branches to work together for the common good of our citizens. I ask for your favorable consideration of the proposed new district judges and of our budget requests including the new court staff and the business 8 court pilot project.

Please remember that my door is open to you. I look forward to working with you.