

Chief Justice Frank I. Haswell, Montana Supreme Court
State of the Judiciary Report
Delivered to 47th Legislative Assembly
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Thank Mr. Speaker Marks, Mr. President Turnage, Leaders of the Republican and Democratic parties in the House and Senate, Members and Staff of the Forty-seventh Legislative Assembly, Ladies and Gentlemen.

This is only the fourth time in the 92-year history of our State that the Chief Justice of the Montana Supreme Court has been invited to speak to a joint session of the Legislature on the State of the Judiciary. You are to be commended on your desire and willingness to acquaint yourselves with the operations, conditions and problems of this coordinate branch of State government. The health and well-being of Montana's judicial system is, to a large extent, dependent upon your understanding and willingness to help.

The top priority of the judiciary must always be to provide quality judicial services to meet the needs of the people of Montana as promptly, as efficiently, and as economically as conditions permit. With this in mind, I want to take you on a brief tour of Montana's judicial system, point out to you the changes that have occurred since I spoke to you two years ago, and give you an overview of its condition, highlighting some of the problem areas that merit your consideration in the forthcoming session.

On the Supreme Court level in the two-year period since I last addressed you the Court has been substantially current in hearing cases filed before it. The focus of our problem has been in deciding and finally concluding cases that have been submitted to us for decision in a prompt, thoughtful, and efficient manner. The process of research, deliberation and the preparation, revision and editing of written opinions is a time-consuming process little understood by persons outside the judiciary and the legal profession.

The cases that come before us, unlike many of the cases that are filed in the District Courts, are not routine cases of an on adversarial nature. They are all adversary contested matters with at least two sides represented by counsel. These cases have become increasingly more complex and time-consuming. Since I addressed you two years ago 962 new cases have been filed before us. During that period of time we have concluded 1,026 cases. Despite our best efforts, 57 cases submitted for decision remain undisposed of on Jan-uary 1st of this year. An additional 253 cases were in various states of completion but not yet ready for submission to us for decision.

In summary, during the last two calendar years, the Montana Supreme Court has handled, processed, and concluded more cases by far than ever before in the history of this state.

Nonetheless, we anticipate significant improvement in this area during the next biennium as a direct result of increasing the size of the Supreme Court by the addition of two justices which you approved during the last Legislative Session. The two new members are Justices Morrison and Weber who were elected last November, who assumed their office one week ago, and who

are seated with us in the chamber today. For the most part we will sit in rotating panels of five justices under operational rules adopted by the Court recently, thus enabling us to utilize our judicial resources more efficiently to accomplish the multitude of judicial and administrative functions assigned to us under the Constitution and Statutes of Montana.

On the District Court level of Montana's Judicial System, the progressive increase in case filings continues unabated. The Judiciary has no control over the number of cases filed. On a statewide basis, about 60,000 new cases were filed in the District Courts during the past two calendar years. We anticipate a continuation of this trend of increasing caseloads at a rate of increase of somewhere between 1200 and 1500 cases per year based on past experience. This basic problem of ever-increasing caseloads reflects trends which are deeply imbedded in our society and which will not suddenly nor miraculously disappear.

I suggest to you today that there is a substantial and serious imbalance in the caseloads and workloads among our judicial districts in Montana, among the various counties within these judicial districts, and among individual district judges throughout the State. As long as this imbalance is permitted to continue we are not utilizing our judicial resources effectively. As an example, during the last two calendar years case filings per judge varied from a high of about 1400 cases per judge to a low of about 400 cases per judge. Travel mileage, in handling caseloads, varied in both years from approximately 20,000 miles per judge per year to 300 miles per judge per year.

Under the Constitution of the State of Montana, the Legislature is charged with determining how many judicial districts are needed, the number of counties within each judicial district, and the number of district judges necessary to service the caseload in each judicial district. Presently Montana is divided into 19 judicial districts varying in size from one to seven counties, with each judicial district serviced to one to four district judges.

Two years ago when I spoke to you, I suggested the appointment of an interim legislative committee to look into this existing imbalance and judicial structure, but the bill was defeated.

The need is even greater today. The judiciary of Montana has recently been criticized by the Legislative Auditor's office and by some segments of the press for failure to promptly decide cases submitted for decision. A statute of Montana requires each Supreme Court Justice and each District Judge to file an affidavit that no matters submitted for decision remain undecided after 90 days or the justice or judge does not get paid. This statute was enacted in 1917 when caseloads were a small fraction of the caseloads today. Although the purpose behind the statute is commendable, it may produce results that are counterproductive. A judge needs a reasonable amount of time for deliberation and research in rendering quality judicial decisions. While 90 days may appear to be a reasonable allowance of time to decide a case, what about a judge who has a disproportionately high caseload, whose judicial time is substantially occupied in hearing cases? If this 64-year old statute is literally and strictly applied to 1981 conditions, it may result in many judges refusing to hear any more cases until their decisions are completed in cases already heard, thereby creating additional delay, backlogs, and access to the courts. I mention this simply as another facet of the problem of imbalance inherent in the existing judicial structure.

Therefore, I renew my previous suggestion to this Legislative Session. The time has come to take a good look at this judicial structure with a view toward restructuring the system to correct the imbalances and caseloads of which I have spoken. Two years from now district judges come up for election. Some have announced their intention not to seek reelection. This suggests that now is the time for the Legislature to address this problem if there is to be any phasing out or restructuring of judicial districts. Statistical information to aid you in this task is available to you through the Court Administrator's office.

Centralized authority, responsibility and accountability are fundamental to the effective operation of any court system. The 1972 Montana Constitution vested in the Montana Supreme Court "general supervisory control over all other courts" and the authority to "make rules governing... practice and procedure for other courts" subject to a veto power in the Legislature.

Since I addressed you two years ago we have handed down a decision requiring the district judges in all multiple judicial districts in this State to select one of their number as chief district judge and centered administrative authority for the operation of the district court in each judicial district in that chief district judge. We have required annual reports from the chief district judge concerning the operation of the district court, each judicial district covering their operation during the preceding year. This system has worked reasonably well except in one or two cases.

There is a definite need for revision and updating of the Rules of Practice and Procedure of various Boards and Commissions functioning under the Supreme Court. This work is well underway but has not been completed to date due to a lack of time and manpower. With the addition of two additional justices on this Court we hope to accomplish this during the coming biennium.

The 1972 Montana Constitution provides that the Supreme Court "may make rules governing... admission to the Bar and the conduct of its members." Pursuant to this Constitutional power we handed down a decision last March containing broad and comprehensive revision of the qualifications and eligibility for taking the bar examinations, for admission to the bar, abolishing the diploma privilege under which graduates of the University of Montana School of Law have been admitted to practice without examination, and various other related matters. We are still in the process of implementing this decision by detailed rules and procedures with the help and assistance of the Montana Board of Bar Examiners chaired by Mr. Robert Poore, Butte. We are in the process of transition to multi-state bar examination covering a standardized procedure and grading of bar examination questions by a national organization supplemented by essay type questions conducted by our own Board of Bar Examiners. We have raised the fee for taking bar examinations from \$25 to \$125 to cover the costs of administering the bar examination and have added a nationwide examination on professional responsibility of attorneys as a condition for admission to the Bar.

The Commission on Practice, which is charged with the duty of investigating ethical complaints against members of the Bar of Montana, conducting hearings and making recommendations to this Court, has processed 68 complaints in 1980, of which 3 cases have resulted in disciplinary action. Thirty-nine cases remain pending, awaiting commission review. Fifty of the complaints

reviewed by the Commission in the last calendar year were dismissed after review as not involving ethical violations or being without merit. The Commission is chaired by Mr. Bruce Brown of Miles City. During the last legislative session Senate Joint Resolution#27 was approved requesting this Court, among other things, to appoint laymen to the Commission on Practice as soon as possible. Thereafter, we appointed three laymen to this Commission, Mr. Ted Delaney, Missoula, Mr. William "Scotty" James, Great Falls, and Mr. John West of Billings. They have been functioning as members of the Commission for approximately the last year and one-half.

The Judicial Standards Commission created by the Montana Constitution and implemented by the statutes of this State is charged with the duty of investigating complaints against the Judiciary of Montana, making rules governing its operation, keeping its proceedings confidential, and making recommendations to the Supreme Court on retirement of judges for disability, and disciplining judges for willful misconduct in office, willful and persistent failure to perform their duties, and habitual intemperance. This Commission is chaired by District Judge A.B. Martin of Miles City. During the past two years a total of 16 matters have received the attention of the Commission involving two justices of the peace, 13 district court judges, and one justice of the Supreme Court. Eleven of these matters were summarily dismissed on the grounds that the complaints did not state grounds for instituting inquiry into judicial misconduct. Formal inquiry was made in two matters and one of these matters was dismissed by the Commission after investigation. One matter of inquiry is still pending. In each instance the Commission has sought to explain to the complaining party the basic reasons for the Commission's disposition of the complaint. As you know, the electors of Montana at the last general election empowered the Legislature to move the cloak of confidentiality from the proceedings of the Commission to such extent as the Legislature sees fit. Proposed legislation in this respect will be submitted to you for your consideration.

The Sentence Review Division is charged with the duty of reviewing sentences imposed in criminal cases. The Sentence Review Division consists of three district court judges appointed for overlapping three year terms by the Supreme Court. It is presently composed of Judge Holter of Libby, Chairman, and District Judges Langen of Glasgow, and Gary of Bozeman. During the past two calendar years the Sentence Review Division received 193 applications for review of sentences imposed in criminal cases, heard 126 of these applications which resulted in a change of sentence in whole or in part in 46 cases, one of which resulted in an increased sentence.

During the past two years the Commission on Courts of Limited Jurisdiction, chaired by Mr. Timothy O'Hare of Lewistown, has assisted us with Lower Court training. Programs mandated by the Legislature and has developed Rules and Procedures for practice before these courts under our supervision. This Commission deals with the operation of essentially local courts such as justices of the peace, police judges and city judges.

In carrying out our supervisory duties regarding training programs for county and city judges, we have found that in-state training sessions, where possible, are more cost-effective than out-of-state training. A majority of the judges of the Courts of Limited Jurisdiction are laymen and not lawyers. In 1979 two training sessions for these judges were conducted under our supervision with 123 such judges in attendance throughout Montana, who received a total of 2460 hours of

training in their duties. In 1980 two training sessions were held for judges of Courts of Limited Jurisdiction, the first dealing with rules, statutes and procedure concerning evidence, attended by 123 judges covering a total of 2460 hours of training. The second session dealt with searches and seizures, dealing with all aspects of searches and seizures from arrests through trial. There were 113 judges in attendance, each receiving 20 hours of instruction for a total of 2260 hours training.

In addition, one training session for clerks of the district courts was held in the past year at the Law Enforcement Academy at Bozeman. This workshop updated the clerk's management skills. Eighteen clerks attended these sessions for a total of 360 hours of training.

Additionally, six new district judges attended a workshop at the National Judicial College for new judges. Each received 168 hours of training for a total of 1008 hours for the six.

I would be remiss if I did not point out to you a continuing need for comprehensive evaluation and assessment of the present method of funding district court operations. The present method is a hodgepodge of State and local funding. During the last Legislative Session you provided for an increased permissive mill levy to finance district court operations with additional assistance at the State level in emergency situations. No funds were provided for this latter purpose. Based on our experience during the last biennium, this permissive mill levy for local funding of district court operations has proved insufficient to cover normal court operations entirely aside from emergency situations. I suggest that this is an area that needs further exploration and evaluation and that definite Legislative policy fixed concerning the funding of district court operations.

Legislation establishing Water Courts was enacted by the last session of the Legislature. The deadline for filing water claims is rapidly approaching with a cutoff date of January 1, 1982. Thereafter, the impact of increased water litigation will descend upon the Water Courts. The water judges are district judges selected by their colleagues to act in this capacity. Chief Water Judge is District Judge W.W. Lessley of Bozeman and additional water judges are Judge Robert Holter of Libby, Judge B.W. Thomas of Havre, and Judge Jack Shanstrom of Livingston. Judge Lessley and these water judges have spent many long hours and done an exceedingly meritorious job in connection with the organization of the system of water courts, the filing of claims, and the education of the public. Legislation will be submitted to you for additional help from retired district judges called back into active service by the Supreme Court or the Chief Justice to handle the considerable volume of water claims. They anticipate using from two to three retired district judges called back into active service on a more or less standby basis when needed. They anticipate the impact of water adjudications will hit the water courts in early 1983. This will impact upon the present use of retired district judges to assist in overworked judicial districts throughout the state. In this latter connection I will advise that during the past two calendar years we have used four retired judges to help out in the existing work of the judicial district court. They have worked a total of 338 days and the total costs have been approximately \$27,000

The State Law Library has undergone substantial modernization and upgrading in the last two years under the able direction and leadership of professional law librarian Claire Engel. According to our Librarian, the State Law Library now contains about 67,000 volumes with about 3,000 volumes having been added in the last biennium. There has been a substantial and

continuing substitution of modern legal works and materials for outdated and obsolescent research material. A modern cataloging program is well underway. The State Law Library provides needed research, books and materials for the Legislature and its staff, the Supreme Court, all agencies of State government, attorneys, district court judges and lawyers throughout the State. It is an essential resource of our judicial system.

Our Clerk of Court, Thomas Kearney, and his staff are presently engaged on a program of modernizing the operations of that office to achieve maximum efficiency at the lowest possible effort.

Mr. Mike Abley, the Court Administrator and his staff have been invaluable to the operation of all courts in the State of Montana. Without their efforts and assistance we would still be back in the dark ages in terms of identifying problems, making reasonable management decisions, and in handling the budgeting and financing of court operations throughout the entire spectrum of State and local courts in Montana.

Construction of the multi-purpose building to house the Supreme Court and staff, the Attorney General and his legal staff, the State Law Library, and the State Lending Library is well underway. Excavation has largely been completed and much of the foundation poured. The estimated completion date is August 1982. The site of the building is within the Capital Complex on Sixth Avenue, one block east of the State Historical Museum.

We have several new judges in our District Court and Supreme Court since you last met. In addition to Justices Weber and Morrison on the Supreme Court, District Judge Henson in Missoula and District Judge Sullivan in Butte have been appointed to judgeships and District Judge Harkin in Missoula has been elected to the fourth judgeship in the Fourth Judicial District. Judges Henson and Sullivan, having been appointed since you last met, will be up for Senate confirmation this session.

I hope I have given you an overview of the judicial system in Montana, its problem areas, and matters that seem to me to require legislative attention. We in the judicial system are doing all we can to provide quality judicial services that the people of Montana expect and demand. We earnestly seek your help and assistance in this project in those areas under legislative control. Together we can meet the challenge of the 80's in providing prompt and quality judicial service to meet the needs of the people of the State of Montana.

Thank you.