State of the Judiciary
Chief Justice Jean A. Turnage, Montana Supreme Court
Message to the Legislature
1985

President of the Senate Norman, Speaker of the House of Representatives Vincent, Senator and representatives.

The Montana Supreme Court appreciates this opportunity to report to you matters of importance to the citizens of Montana concerning their judicial system. This report will be in summary from the perspective of the Chief Justice. As you know, former Chief Justice Frank I. Haswell retired from the court as of January 7th of this year after many years of service to the citizens of Montana in their judicial system. The court and Montana will miss Frank's leadership and experience. As your new Chief Justice. I promise that I will endeavor to fulfill the duties of this office to the utmost of my ability.

Since the last "State of the Judiciary" report to this body, 1028 cases have been filed with the Montana Supreme Court, a 3 percent increase over the previous biennium. That increase, though modest, reflects a trend that in the last eight years has seen an average 4.5 percent increase per year. The exact cause of this trend is unknown but human relationships have become far more complex in recent years and partly as a result, partly as a cause, we are more and more inclined to resolve disputes within these relationships in a more formal manner, that is, in the courts.

There are 209 files where notices of appeal or other applications are pending in the office of Ethel Harrison, Clerk of The Supreme Court. These cases are not in a condition for decision by the court, but are waiting for filing of transcripts of the record on appeal and briefing by the litigants' attorneys. It, therefore, is readily apparent that a massive amount of work for the court is imminent as the year begins, and, of course, we can anticipate that there will be many more cases filed as the year progresses.

More detailed information is available at your request from the Office of the Court Administrator, Mr. Michael Abley.

The Montana Supreme Court, until recently, has felt itself capable of handling the growing caseload, annually concluding the approximate number of cases filed. However, it has become apparent that we are now beginning to lose ground. The court wrote 370 opinions this year, exceeding the previous record number by 50. Even so, that number plus other forms of conclusions did not quite equal the number of cases filed, and the same said of the two previous years as well. We believe this is indicative of the future and that regardless of our efforts, we will slowly fall further and further behind. This leaves us faced with a choice of limiting in some way the number of appeals filed; accepting longer and longer delays in the final resolution of these matters; or making changes in the way cases are handled. The citizens of this state are entitled to their day in court and are just as entitled to having their cases handled expeditiously.

Article VII, section 2, of the Montana constitution provides that the supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. The court may, and on occasion does, dismiss appeals and other applications that are clearly frivolous and which present

no substantial question which is not clearly covered by statute or precedent. (However, this authority of the court must always be exercised with care to assure that no citizen will ever be denied justice in our courts.) If the court did not possess this authority, frivolous appeals and applications presenting no substantial issues would flood the court docket causing delay in the determination of cases that are of great importance to the public and private sectors of our state.

Delay at all levels is the greatest problem facing our judicial system.

Delay in the judicial process is costly to our citizens. Delay in the public sector means more costs to the Montana taxpayer. Delay in the private sector means more costs to private citizen litigants. There is another inevitable cost involved in delay, the human factor: any citizen involved as a litigant in a lawsuit has his or her life clouded. Undue delay ever increases this burden which cannot be measured in dollars.

There is much routine work in the court that takes valuable and irreplaceable hours of the justices' productive time, time that should be devoted to deciding cases before the court, cases that present serious questions of great importance to the citizens of Montana in both the civil and criminal fields.

In an effort to address this problem, our plan is to delegate more routine work to the court's professional staff, and more of their routine work to the clerical staff. To implement the plan, we have requested one additional professional position and three clerical positions. We are well aware that a request for additional staff in these hard times is not a popular action, but the court feels that, considering the alternative, it is justified. We will be presenting more information with regard to our plan and the request in the budget hearings.

The state law library, under the direction of Judy Meadows, our new librarian, who I urge you all to become acquainted with, is working on new ideas to extend access to its collection, services and programs for more judges, agencies, public libraries and the citizens of the state of Montana. The staff is actively promoting the library's subscriptions to legal and business databases for computerized research. State agencies have been encouraged to work with the library when they conduct law-related seminars and training programs. Operating hours have been increased by one-third during the legislative session in order to accommodate the needs of the legislators and the legislative council.

The library now holds over 70,000 volumes, plus audio and video cassettes which are an important component of the acquisition program that enhances the library's support of the continuing legal education needs of Montana's bench and bar.

In the district courts, substantial changes have taken place since this body last met. The 48th legislature realigned many of the judicial districts, created another, and increased the number of judges by four. The changes went into effect the first of this year and should significantly reduce the number of cases each judge must handle as well as the number of miles traveled. By the next legislative session, we should be able to report to you the impact on pending caseloads and average times for conclusions.

Criminal jury instructions, which in his last "State of the Judiciary", then Chief Justice Haswell reported were being reviewed, have been revised and adopted as have the rules of civil

procedure. The rules of appellate civil procedure have also been revised and are now in the process of finalization.

During the last session of the legislature, Senate Joint Resolution 24 was passed requesting the court to study venue and statutes of limitation. The Supreme Court commission on the rules of evidence, chaired by attorney Sam E. Haddon of Missoula, submitted proposed legislation on venue, and I understand that this legislation has or will be introduced this session by Senator Joseph P. Mazurek. The commission reported that the work on statutes of limitation has not been completed.

In the previous biennium, the court mandated continuing legal education for attorneys and has now done so for members of the judiciary. The new rules cover the justices and judges of the Supreme Court and the District Court, mandatory training having already been established by legislative action of the lower courts.

Chaired by Justice Haswell, a committee sponsored by the state bar and made up of attorneys and members of the news media drew up fair trial/free press guidelines. The guidelines are voluntary but if followed, should ensure both the defendant's rights to a fair trial and the public's right to know.

One of the important parts of our judiciary is the Montana Water Court. This court was created by the legislature to generally adjudicate all our existing water, and under Judge Lessley the court is doing what you asked them to – "expedite and facilitate the adjudication of existing water rights."

The record of this court is impressive. Even as I speak with you, they have adjudicated over 30 basins. Of this number, four are presently finally adjudicated with three more basins to be finalized by the end of January.

A total number of water claims adjudicated is over 60,880 claims. We estimate that they will finish the job in five to six years from now, and for the first time in the history of Montana, we will have a judicial record of all the water before 1973.

We must see that this court is supported, and its task is finished.

In the courts of limited jurisdiction we are continuing our training efforts. During this biennium, the approximately 180 justices of the peace, municipal judges and city judges attended a DUI traffic law adjudication program; a seminar devoted to review of the 1983 session laws and update of the lower court benchbook; a course on evidence; and a course on misdemeanor drug and traffic cases.

The commission on courts of limited jurisdiction continued to assist in the provision of this training as well as providing technical assistance to the lower courts. The commission also conducted an extensive survey of those courts which included caseloads, support staff, facilities, costs, and revenues generated and the commission revised the lower court bail bond schedule.

In conclusion, I believe it appropriate to restate what John Marshall said in a speech before the Virginia constitutional convention in June 1788 on the importance of the judiciary. Marshall

stated: “What is the service or purpose of a judiciary but to execute the laws in a peaceable, orderly manner, without shedding blood or availing ourselves of force. To what other quarter will our citizens look for protection from infringement on the constitution?”

Montana’s judicial system is the quarter where our citizens can look for protection from infringement from any source, public or private, of their constitution and their laws. It is only proper that the duty and burden of those that serve Montana in the judiciary is to see that force must give way to reason and power of justice.

Thank you.