

State of the Judiciary
Chief Justice Jean A. Turnage, Montana Supreme Court
Message to the Legislature
1987

Thank you Speaker Marks, President Norman, Leaders of the Democratic and Republican Parties of the House and Senate, Members and staff of the 50th Legislature, distinguished guests, ladies and gentlemen.

On only six previous occasions have Chief Justices of the Montana Supreme Court had the privilege to come before this Assembly to deliver a formal State of the Judiciary Address. On those occasions, as now, the Judiciary has both the opportunity and the challenge of presenting to Montanans a summary of the past biennium's work and the next biennium's challenges. I am pleased to be invited here to share with you an overview of Montana's judicial system.

The picture that we paint today is one of solid accomplishments and future challenges.

The accomplishments of the Judiciary in the past two years are many. This record of accomplishment could only have occurred with the cooperation and continued support that you have provided.

The work of the courts in the past two years has encompassed 1,242 appeals and petitions to the Supreme Court, more than 30,000 case filings in district courts, and literally hundreds of thousands of cases brought before our courts of limited jurisdiction. Added to this, is a tremendous amount of work handled by the Water Court in adjudicating water rights in Montana's 85 water basins.

While caseload in the courts is the heart of the Judiciary's work, there are many other activities that go on each year that both sustain and improve the operation of Montana's judicial system. Under the general supervision of the Supreme Court, nearly a dozen boards and commissions perform various functions that are essential to the administration of justice. These boards and commissions act much in the same way as your standing and interim committees; they are workhorses that review rules, ensure fair judicial standards and procedures, monitor uniform criminal sentencing, police professional conduct, examine applicants to the Montana Bar, and accomplish many other important tasks.

The work of these boards and commissions is done by legal and lay volunteers from around the State who give generously of their time and energy to improve our judicial system. All Montanans owe these dedicated individuals a deep debt of gratitude.

In another area, the State Bar of Montana deserves praise for the dedication of its officers and 2,500 members who assist the Judiciary in areas such as law-related education, legal services to the poor, lawyer referral services, assistance to the Commission on Practice, and many other tasks important to our citizens. Most of these services are rendered without compensation as part of an attorney's obligation to the public.

In the past two years, the Judiciary has also been involved in a number of other areas of continued importance to the people of Montana. Because of your continued support we have been able to provide many hours of judicial education classes for district court judges and to send a number of them to the National Judicial College. Attendance at these seminars and courses is an extremely important element in keeping our judges educated, current, and motivated. Judicial education leads to confidence and efficiency in the courtroom and to long-term judicial improvements.

As many of you know, the Legislature has in recent years significantly expanded the jurisdiction, and therefore the responsibility, of justice courts. It has become more important than ever for the Commission on Courts of Limited Jurisdiction to conduct training classes for justices of the peace and city judges. The classes this year were attended by all of these justices and judges, and included comprehensive examinations on the final day of class. These classes are vital to keeping the limited jurisdiction courts informed, operating efficiently, and able to handle an increasingly complex caseload.

The Judiciary – like the other two branches of government – is not measured simply by a single biennium. It is measured by both where it has been and by where it is going.

Where have we been? As you know, caseloads in Montana have increased tremendously in past decades. The Supreme Court's filings went from 80 in 1960 to 194 filings in 1970. By the time the Court was expanded from five to seven members, the caseload had reached nearly 500 appeals per year. In 1986, the Supreme Court received a near-record number of appeals and petitions and wrote the largest number of opinions in the Court's history – 374.

District courts have seen a correspondingly high increase in their caseload over the same period of time. Approximately 13,000 cases were filed in district courts in Montana in 1960. In calendar year 1985 – the last full year for which statistics are available – more than 32,000 cases were filed in the State's 20 judicial districts.

The challenge of these last decades has been to deal with these rapidly increasing caseloads without unnecessary delay. With your help, I think we have done a reasonably good job – but we can all do better if given the tools and resources.

Now we turn to the question: "Where are we going?" There are a number of tasks and challenges that lay ahead. This legislative session you will consider a number of issues regarding the Judiciary. No more important issue is before you than that which determines the size of the Supreme Court. The Court was expanded in 1979 by the Legislature because a rational case was made that the caseload and the workload of the five-member Court required additional hands to chip away at a significant backlog and eventually to keep current.

The issue of the five-member versus the seven-member Court ultimately revolves around the maxim that justice delayed is justice denied. Delay in the final resolution of litigation is a concern to all Montanans, and a specific concern to the Judiciary. Delay results in added dollar costs to the taxpayer and to the litigants in the form of additional attorney fees and costs of litigation.

But there is another cost of delay that is not measurable in dollars alone. It is the cost of human stress. Anyone who is a party to a lawsuit lives under a cloud of mental and emotional strain until the matter is finally resolved.

Opinions of the Supreme Court cannot be disposed of on a crash basis. Care and thoughtful deliberation must be given to every Court opinion. To reduce the Supreme Court to five members would have the obvious result of increasing delay in the flow of final opinions by approximately 30 percent. I believe you would agree that this would be an unacceptable imposition on your constituents. Justice delayed clearly results in justice denied.

The case that was presented to the Legislature in 1979 is still a good one. To move back to a five-member Court would be literally a move backwards. We cannot reasonably be asked to do more – much more – with less.

A number of other important issues will be before you during this legislative session relating to the Judiciary. I would like to draw your attention to several that I think deserve special attention.

Judges' salaries is an issue that has been before several legislative sessions. The issue keeps coming before you because Montana's judicial salaries are the lowest in the entire country. It is generally recognized that competitive salaries, or other forms of compensation, are an important factor in attracting well-qualified job applicants. This conventional wisdom is true not only in the world at large, but also for those who choose to offer their services for judicial positions.

Montana has been blessed by many fine judges who have been willing to serve their State for a level of compensation significantly below the national average. The dedication of these judges is commendable, but we must move as quickly as possible to raise the pay of judges. This is necessary to keep the high level of judges that we now have and to attract the best and brightest judges in the future.

In a related issue, you will be examining a bill this session dealing with judicial retirement. Under current law, the Judges' Retirement System contains a provision that provides very little incentive to judges with more than 15 years service to continue a judicial career. The State of Montana has invested greatly in the education, wisdom, and talent of these veteran judges. We can ill afford not to consider some minor amendments in the Judges' Retirement System aimed at encouraging experienced judges to remain on the bench.

Another piece of legislation that deserves your attention is one that imposes a \$100 fee whenever an attorney calls for the substitution of a judge. This bill aims at recovering some of the costs involved when substitutions occur. The fee also would discourage frivolous substitutions which in many rural areas in our state may result in thousands of extra miles driven by judges and lost time behind the wheel of a car – not to mention the inevitable delay in the litigation calendars of all judges involved.

There are many other challenges that the Judiciary faces in the next biennium for which there is little time to talk of here today. In the years ahead, the Judiciary will be involved in developing better monitoring methods for identifying and reducing court delay and enhancing information systems to better identify problem areas and provide management alternatives. We also need to

keep abreast of technological advances in other parts of the country that may be helpful in Montana.

I would like to talk with you for a couple of minutes about the budget for the Judiciary. I know that much of your business in the remaining days will be devoted to balancing revenues and expenditures. I also know that the balancing act will be difficult and painful.

With respect to the Judiciary, you can be assured that we will cooperate with you in making every reasonable effort we can to run an efficient, cost-effective operation. The budget proposal for operating the Judiciary in the next biennium is one that I believe is reasonable and necessary – and sensitive to current revenue difficulties. We have proposed a small amount of increased support in two areas that have experienced significant workload increases in the past five years – the Board of Bar Examiners and the Commission on Practice.

We also ask you to give careful consideration to the budget request for both the Water Court and the Law Library. The work of the Water Court is enormously important to all of your constituents. The Water Court deserves your support as it systematically adjudicates water rights in the various water basins of our State. Likewise, the Law Library is an important research and reference resource for the entire State -- and for the Legislature itself. The State Law Librarian has done a fine job in building a collection of which we all can be proud. I urge your continued support for this program.

We know money is tight, but we ask that you keep in mind that the court system in our State is an essential function of government. Under the Montana Constitution, the administration of justice is mandatory – not discretionary. And while the Constitution requires fair administration of justice, the people demand it. Each year the citizens of our great State bring many thousands of cases before the courts. While these cases are varied – from the very simple to the extremely complex – all Montanans expect that the court system will hear their cases in an equitable manner without unnecessary delay.

The court system in Montana must be adequately and reasonably funded. The reduced level of funding in the last two years cannot realistically be sustained if you expect to also maintain a healthy court system as a vital element in the governmental structure that protects the liberty, justice, and freedom that all Montanans deserve.

Finally, I would like to conclude by thanking you for the opportunity to give an overview of our court system. George Washington once said, "The administration of justice is the firmest pillar of government." Repeating Washington's words in this great chamber may be somewhat dangerous, but let me assure you all that the Judiciary recognizes that each branch of government shares a role in a partnership that requires patience and understanding as we shape and administer our laws and ultimately provide for an ordered, civilized community.

Thank you for inviting the Court to share our common concerns.