

State of the Judiciary  
Chief Justice Jean A. Turnage, Montana Supreme Court  
Message to the Legislature  
February 5, 1991

Thank you President Mazurek, Speaker Harper, Leaders of the Democratic and Republican Parties of the House and Senate, Members and staff of the 52nd Legislature, distinguished guests, ladies and gentlemen.

On behalf of the entire Court, I would like to thank you for allowing me this opportunity to speak before this 52nd assembly of the Montana Legislature. As a former member of the Legislature, I appreciate all the more the opportunity to be among old friends and to have the chance to meet new ones. I understand that there are 47 new members of the Legislature. To all the new members – and to the veterans who have been here before – I would like to extend an open invitation to visit the offices and members of the Supreme Court. If you have a chance during the Session – please come by.

This honor to speak before you today is also an opportunity. In the few minutes available, I would like to provide a brief overview of your judicial system; what it has accomplished in the past two years, what it should accomplish in the next two years, and to ask for your support in providing Montanan's with a healthy court system.

As we begin this last decade of the 20th century, we have a court system that is relatively healthy.

At the Supreme Court, the 1990 caseload is near historic highs; there were 633 new filings and 387 formal opinions issued. In addition, approximately 250 other cases or proceedings such as petitions for habeas corpus, post conviction relief and extraordinary writs were disposed of by the Court. Notwithstanding this caseload, there is little delay in adjudicating cases. This is due in large part to the diligence of seven Justices and their staff, and because the Court has adopted a number of changes over the past few years meant to improve caseload administration. Changes have included the use of abbreviated, non-citable opinions, changes in internal operating rules, and adoption of a classification system for cases that reduces work duplication and conserves resources.

This heavy caseload can only be handled because we have a 7-member court.

District Courts in Montana likewise have a large caseload – although the type of case mix is changing. The criminal caseload in District Courts has increased almost 15% since 1987. Civil cases statewide have fallen 13% over the same period. District Court Judges worked very hard in the past biennium keeping up with new cases. Just as importantly, they have reduced the total number of pending cases by about 8%.

It is in the Courts of Limited Jurisdiction – Justice of the Peace and City and Municipal Courts – that most Montanan's see their Judicial System up close. With about 120 judges, these courts handle close to 300,000 cases a year. These judges are to be commended for their dedication, hard work, and attention to detail. Their commitment to professionalism is high on the list of

accomplishments this biennium. For example, Limited Jurisdiction Judges participated in more than 50 hours of training this year and completed a grueling certification test.

There are many other actors in the Judiciary who play a crucial role in providing justice in Montana. I can not mention them all. But let me highlight three organizations that are vitally important.

The Supreme Court's Commission on Practice is charged with investigating complaints against attorneys. The Supreme Court is serious about lawyer discipline.

The Commission has seen an increase in its caseload in the past five years of 55%. The members of this Commission spend literally hundreds of hours each year – for no remuneration – policing the practice of law in our state and protecting the rights of our citizens. On behalf of the Court, and I believe I speak for all of us, I would like to publicly thank the members of this Commission for this important work.

Let there be no misunderstanding here. Lawyers needing discipline are the exception and not the rule in Montana. Complaints against the legal profession amount to less than one complaint per 100 attorneys per year. That low rate is due in large part to the professionalism of our Bar and the constant efforts of the State Bar of Montana. The State Bar has engaged in a number of public service programs in recent years. The State Bar's encouragement of free legal services to Montana's poor is an example of a State Bar that has renewed vigor and a commitment to all our people.

Individual members of the State Bar annually devote – without compensation – many hours of service on boards and commissions that assist and improve the justice system. The Judiciary and our citizens owe these dedicated men and women lawyers their sincere appreciation.

Let me turn from members of commissions and the State Bar to recognize other workers who contribute vital services to the judicial system. Montana's Clerks of District Court provide the basic record and case management work that keeps the judicial system moving. The Clerk's organization – the Montana Association of Clerks of District Court – recently celebrated its 25th anniversary. In this biennium the Clerks of Court have organized a comprehensive training program aimed at improving the operation of their offices statewide. Professional, quality training of this kind is vital to court improvement efforts. I commend the clerks for their hard work and vision.

I said earlier in my talk that the judicial system in Montana is "relatively healthy". Health is something we cannot take for granted. I would like to mention a couple of concerns that we have that this Legislature and future Legislatures may want to consider.

There are numerous elements of our system that are showing signs of stress and even crisis.

We are all aware that the district courts in various areas are experiencing budgeting difficulty. You have before you several bills that address this issue. It would not be proper to comment on specific bills. However, I would like to ask that as you consider the alternatives, you take a long-range approach that seeks to fashion a system that provides reasonable funding for all our courts. The Constitution requires it and citizens who seek their day in court deserve it.

Judicial salaries seem to be a perennial issue in Montana. Why is that? The issue keeps coming back with such visibility because we have dug ourselves into a very large hole on this issue. Montana judicial salaries are the worst in the nation – below even Guam, Puerto Rico, and the Virgin Islands. They have not always been this bad by comparison.

Fully 50% of the 36 District Court Judges in our state have under 6 years of experience. This high turnover is due in part to an aging judiciary, but it is also due to inadequate compensation levels. The salary issue will keep coming back to the Legislature until it is solved because inadequate compensation fundamentally threatens our ability to maintain and attract first-rate candidates to judicial office.

The Montana Judges Association, with the support of many other organizations, will offer a bill this Session that is meant to bring Montana judicial compensation back to a reasonable level and it does so with hardly any general fund support. I hope you will give the bill favorable consideration.

There are many other issues affecting the health of our judicial system that demand our informed attention. I have time to highlight only a couple.

Take our general trial courts for example. Montana has 36 district court judges in 20 judicial districts sitting in 56 courthouses across our great state. More than half our district court judges do not have a law clerk. Many have no secretary. Most have none of the modern office equipment common in other county offices. This general paucity of resources is equally true in Limited Jurisdiction Courts. I mention this because I believe it is necessary for the Legislature and other Montanans to understand that this lack of resources is typical of Montana courts and affects our ability to provide modern judicial services.

Notwithstanding the lack of resources, there are serious efforts within the Judiciary to promote improvements. The training that is occurring at all levels of the court system is an important example of how we can improve the administration of courts and service to our citizens. These efforts are to be encouraged and commended.

Improvements recommended last year by the Supreme Court's Commission on Technology is one area that I would like to especially mention. After careful study, the Commission on Technology recommended to the Supreme Court the adoption of computer standards in Montana Courts. The Supreme Court, in March of 1990, adopted the recommended standards with the view in mind that we simply must plan for automation of our courts in a uniform, cost-effective manner. By the way, the standards adopted by the Court are the same standards employed in the Legislative and the Executive branches of state government.

This session we will ask you to consider a bill that funds court improvement through automation over a five year period. We propose to fund court automation through a \$1 fee on vehicle registrations and re-registrations. We believe such a fee is reasonable and that it has a direct connection to courts: 2/3rds of all cases in limited jurisdiction courts are related to vehicles; many cases before District Courts involve questions arising out of vehicular activity. I might also mention that the district court criminal reimbursement program receives 7% of the 2% tax on vehicles. There is a rational basis for considering this request.

There is an absolutely clear need for providing courts with modern tools to do the job that the Legislature charges them with doing. Let me mention just two examples. When someone is charged with DUI in Montana, the Legislature requires the judge (usually a Justice of the Peace or a City Judge) to apply progressively harsher penalties for 1st, 2nd, 3rd, and subsequent offenses. With the "shoe box technology" that exists in most of our courts, there is no easy way for most judges to know how many times someone has been convicted of DUI in their court – and almost no way at all to know if DUI convictions have occurred recently in other courts.

Enforcing restitution orders is another area that would benefit greatly from automation. Enforcing restitution to victims is a cooperative effort of the courts and the county attorneys. Manual systems for making sure that victims of crime are repaid are awkward and inefficient. Automation would allow better tracking of fines, business-like pursuit of unpaid restitution, and timely notice to county attorney and judge when problems are occurring. There are many other areas – such as child support – in the court system where timely enforcement can benefit our citizens, enhance restitution payments to victims of crime and reduce welfare costs.

Planned, uniform and systematic use of modern automation tools in our courts is long overdue in Montana and will pay dividends to all our citizens. I hope you will seriously consider our request. We need your help.

Finally, I would like to conclude by saying that it is truly a pleasure to address the members of this Legislature and to repeat a sincere invitation that you take a few

moments to come and visit not only the offices of the Supreme Court here in Helena but the courts in the cities and towns across our state. We need your help and your understanding to improve our judicial system. Only by working together can we make the improvements in our court system that all Montanans deserve.

Thank you for inviting the Court.