

State of the Judiciary
Chief Justice Jean A. Turnage, Montana Supreme Court
Message to the Legislature
February 8, 1993

President Van Valkenburg, Speaker Mercer, leaders of the Democratic and Republican Parties of the House and Senate, Members and staff of the 53rd Legislature, distinguished guests, ladies and gentlemen.

Thank you very much for this privilege to address the 53rd Legislature. I know that these are trying and difficult times in Montana and that you have much hard work ahead of you. I will be brief.

I would like to take this time to highlight some of the Judiciary's workload, its accomplishments and its concerns.

CASELOADS

For almost two decades the caseload of the Montana Supreme Court has been extraordinarily high. 1992 was no exception. The Court received 627 appeals, wrote 340 formal Opinions, and considered numerous other informal petitions and matters affecting the Judiciary.

This continuing high level of appeals is an issue that the Legislature will undoubtedly be asked to consider during the 1995 Regular Session. The authorization for the seven-member Court expires on the first Monday of January 1997. Without action by the 1995 Legislature, the Supreme Court will revert to a five-member Court. Be assured, we will be back in two years to present our case for retaining the seven-member Court.

There were 27,943 new cases filed in Montana's District Courts in calendar year 1992. While this was an approximate 7 percent decline in total filings from the previous year, criminal cases increased slightly to 4,052 cases statewide – continuing a trend that began nearly a decade ago. Overall, the District Court caseload has remained at a high level for the past decade, and much of that caseload has become more complex. At the end of calendar year 1992, there were more than 37,000 cases pending in our District Court system. That's an average of 1,000 cases pending before each District Court Judge in the state.

In Montana's Courts of Limited Jurisdiction – Justice of the Peace, City and Municipal Courts – approximately 300,000 cases were filed in 1992. These courts are what I call the "people's courts," and they were very busy. These courts collected almost \$12 million dollars of revenue – most of which is retained by local governments.

ACCOMPLISHMENTS

In the past two years, since I last addressed this assembly, the Judiciary has accomplished many goals that we set for judicial improvements this biennium. I would like to share just a few highlights with you today.

For many years there was a considerable lag – up to six or seven years – between the time Supreme Court Opinions were handed down and their publication in the official Montana Reports. In the last two years, with the cooperation of Shauna Thomas of State Reporter Publishing, we have caught up with the severe backlog in the publication of the Court's Opinions. We are now completely up-to-date. With the soon-to- be-published Volume 254 of the Montana Reports, Supreme Court decisions will be current through October 1992. This makes Montana Reports an economical and useful research tool again.

We are also pleased to announce that, for the first time ever, Montana Supreme Court Opinions are available to the public on the state's electronic bulletin board. Any citizen with a personal computer can now dial-up the bulletin board and have access to recent Court Opinions immediately. The 1991 Legislature's support of a public bulletin board made it possible for the Court to provide this service to the public at no additional cost!

Both the District Court Judges and the Clerks of the District Courts have been very busy in the past two years on important judicial improvement projects.

Over the past two years District Court Judges from around the state created a District Court Judges' Benchbook. The Benchbook will be available to current and new District Court Judges as a guide for procedures in District Court. This project, headed by District Court Judge Thomas Olson from Bozeman, offers an inexpensive but effective way to encourage uniformity and consistency of practices and procedures in District Courts throughout the state.

Clerks of the District Courts throughout the state have worked very hard to establish a solid educational program aimed at increasing the efficiency and professionalism of their offices. Nearly 80 hours of high quality educational programs were presented to clerks and their deputies over the past three years as part of the Clerks' Association program of improving the operation of District Court Clerks' offices.

This kind of training is a vital aspect of keeping our judicial personnel – judges, clerks, and other staff – up-to-date and informed about changes in the law and potential improvements that can be made in judicial administration.

Finally, in the area of accomplishments, I would like to mention two up-coming projects that should be of interest to each of you.

First, and for the first time, the Fall Conference of Supreme Court Justices and District Court Judges will participate with youth probation officers in a statewide conference entitled "Courts, Children and the Family." This Conference is an important step in enhancing necessary communications between judges, youth probation officers, and other officials in Montana on issues relating to children and families. I look forward to the promises such a conference can offer in opening important lines of communications.

Second, the Supreme Court and the State Bar of Montana have agreed to an in-depth examination of the lawyer discipline system in Montana. The Supreme Court takes its disciplinary responsibilities very seriously. In the last two years, the Supreme Court and its Commission on Practice has disciplined 77 lawyers, including the disbarment of two attorneys.

The up-coming study, funded entirely by the private resources of the State Bar, will undoubtedly constitute the most thorough review of the lawyer discipline system in Montana history. The Court looks forward to receiving the comments and recommendations of this study commission, and will share the results with the public and the Legislature.

CONCERNS

During the legislative process, occasionally a judge may wish to comment on a particular legislative matter; or a legislator may contact an individual judge concerning a pending legislative matter. Although no judge should express how he or she would individually vote if any related question came before the court, it should be noted that Canon 23 of the Canons of Judicial Ethics provides that a judge has exceptional opportunity to observe the operation of statutes and may contribute to the public interest by advising the Legislature from time to time on issues of judicial administration.

I trust you will all agree that the following comments are meant to be of assistance in your deliberations.

Although seldom voiced, I believe from my personal viewpoint, that the fundamental foundation of Montana's government is stated in the very first substantive section of the Constitution of the State of Montana, Article 11, Section 1, Popular Sovereignty:

"All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole."

This constitutional mandate that government originates with, and is founded upon, the will of the people is further to be noted in the very first sections of the Montana Code:

"1-1-101. 'Law' is a solemn expression of the will of the supreme power of the state."

and

"1-1-102. The will of the supreme power is expressed by: (1) the constitution; (2) statutes."

When you, as Senators and Representatives, deliberate and legislate in the House and Senate chambers, in reality it is the people who are seated there – represented by you as the agents of the people.

The clearest expression of the doctrine of separation of powers between the legislative and judicial branches of government is found in Section 1-1-108:

"In this state there is no common law in any case where the law is declared by statute. But where not so declared, if the same is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision."

It is my belief that you, as representatives of the people, set the public policy of Montana through the statutes, and the role of the Judiciary is to exercise its common law powers in conformity with the constitutional mandate and statutes noted.

On another matter of concern, I bring to your attention that the State Bar has worked diligently during the past two years on a proposal to study the organization and funding of the Montana Judiciary. I hope we can all agree that such a study would be an appropriate starting place to understanding the strengths and weaknesses of our current judicial system, as well as the necessary instrument for shaping a public policy consensus on what the court system should look like in the future. I commend the idea of a study to the Legislature and pledge our best efforts to facilitate an effective analysis.

It will surprise no one, I suppose, that the Judiciary is still vitally interested in the issue of judicial salary increases! With your help and courage, we have made progress over the past two legislative sessions in beginning to compensate judges adequately. We must maintain that progress. The judicial salary issue is one that is critical to the judicial system. In that system, the judge is the key ingredient to the fair and impartial administration of justice. Judges are entrusted with enormous discretion and an equal amount of responsibility. For the system to work – and work without unnecessary delay – we must recruit and retain the best and brightest lawyers to the bench. We ask for your continued help.

We will also ask for your continued help this session in our efforts to improve judicial administration through statewide automation in District Courts and Courts of Limited Jurisdiction. We believe that we have made great strides in the past two years. Personnel of the Court Administrator's office have assisted judges and clerks of court in 33 counties in automation projects. We have made a good beginning, but we absolutely need your help to keep going. Our proposal this session – carried by Representative Bardanouve – will continue a cost-effective effort to help your local courts in this endeavor.

On the issue of the current judicial budget proposals, as you can imagine, we are very concerned.

The two special sessions of the Legislature in 1992 significantly reduced general funding of the Judiciary. Budget reductions forced the Court to reduce expenditures in many areas. We have eliminated a statewide case tracking system for District Courts; reduced the number of volumes of Montana Reports purchased; reduced the rates we pay investigators for various Court commissions; reduced the number of bar examinations offered in Montana to a single examination each year; reduced travel both in-state and out-of-state; canceled and consolidated subscriptions; reduced expenditures for equipment to a bare minimum; and forced vacancy saving seven on critical positions. The Court has also been keenly aware of the need to make sure that certain functions – such as the bar examination process – pay for themselves and not be a drain on the state general fund.

In addition to direct budget cuts, we have sustained the transfer of approximately \$500,000 of expenses from the state to District Court budgets for mental evaluations previously done at Warm Springs State Hospital.

We have done our share.

In preparing for this session, the Court directed the office of the Court Administrator to re-examine the August 1992 budget proposal and offer any additional cost savings that were reasonably possible. I believe that we have provided the General Government and Transportation Subcommittee with a number of realistic and helpful proposals.

I fear that some may think that the justice system is nothing more than another special interest group vying for a piece of the ever-dwindling pie. Their solution would be to try and satisfy everyone; if that cannot be done, to make as few people unhappy as possible; and, if that cannot be done, to make everyone unhappy and blame the uncontrollable circumstances.

Montana courts, however, are not a special interest, nor is the Judiciary just another government agency. Instead, as stated in Article III, Section I, "Separation of Powers," of the Montana Constitution:

“The power of the government of this state is divided into three distinct branches – legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others,”

The "separation of powers" doctrine in our federal and state constitutions, which depends upon the independence and support of the courts for its vitality, is nothing less than the source of our nation's and state's strength.

To those injured on the job or by a defective product, to victims of negligence, to those evicted unfairly, to defenders of our waterways against chemical dumping, to small businesses fending off monopolistic practices, to people with a grievance against their government, to abandoned children who need adoption, to farmers, ranchers and shop owners fighting to keep their farms, ranches and shops operating in a recession, to those discriminated against on the basis of race, age, sex, religion, or disability, our civil courts represent the fulfillment of the basic need for fairness and justice.

Freedom of all depends upon the rule of law. The rule of law depends upon due process. Due process is not a theoretical concept; it is a commitment to action by the government. As Judge Learned Hand remarked: "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."

Recent budgetary actions have hampered and diminished the court system in Montana. Further reduced funding would indeed invite a rationing of justice. We all must protect the constitutional mandates that courts of justice in Montana be open to every person and due process of law be denied no person.

On behalf of the Montana Judiciary, I thank the Legislative leadership on both sides of the aisle and each member of the Legislative Assembly for their support and willingness to listen to our accomplishments and concerns. I hope that each of you will attend the Legislative Reception, hosted by the Montana Judges' Association and the State Bar of Montana, this coming Thursday evening, February 11, from 6 to 8 p.m. in the Justice Building.

You have a tough session ahead of you. I wish you well in setting the State's course for the next two years! Thank you.