

State of the Judiciary
Chief Justice Jean A. Turnage, Montana Supreme Court
Message to the Legislature
March 2, 1999

Speaker Mercer, President Crippen, leaders of the Democrat and Republican parties of the House and Senate, members and staff of the 56th Legislature, distinguished guests, ladies and gentlemen:

Thank you very much for the privilege to address this joint session of the 56th Legislative Assembly. I appreciate having this opportunity to share with you some highlights of Montana's judiciary – its workload, accomplishments and concerns. We take pride in our accomplishments this past biennium and look forward to continued achievements in the years ahead – in many of which you will have a part in setting the come and direction in your deliberations this session.

I know you can hardly wait to hear about the judicial statistics; however, unless you have some information about where we have been, you will not appreciate where we should be going.

My report on statistics will probably remind you of the two parishioners in the small country church in Missouri. They had just listened to the preacher deliver a lengthy sermon. One parishioner asked the other what he thought of the sermon. His friend replied, "It was the truth poorly told."

As you know, Montana's court system is comprised of three constitutionally-required levels. Today, I would like to take a few minutes to speak about the courts comprising each level.

The Justice of the Peace Courts, City Courts, and Municipal Courts, known as courts of limited jurisdiction, are most likely the courts with which Montana's citizens will have contact. These "people's courts" have jurisdiction over traffic offenses, small claims, and misdemeanor criminal offenses.

Currently, sixty-two men and forty-seven women serve as justices and judges of the courts of limited jurisdiction. Much like yours, their backgrounds are diverse – a few are attorneys, but others have many varied occupations. Some serve full time and some part time. All, however, share a commitment and dedication to performing their duties diligently, fairly, and without preconceptions and prejudice. In 1998, 302,221 cases were filed in the courts of limited jurisdiction across the state. Obviously, we are fortunate to have hardworking and devoted justices and judges at this level to keep abreast with such busy and ever-increasing workloads.

The second level of courts are Montana's District Courts. There are twenty-one judicial districts in the state, and the total number of judges sitting in these districts is thirty-seven. District Courts are courts of general jurisdiction – they handle criminal cases, dissolutions of marriage, property and contract disputes, probates and estates, and other filings as well as appeals from the courts of limited jurisdiction.

Montana is fortunate to have a long-serving, dedicated, highly-professional district court bench. The men and women serving as district judges are regularly confronted with complicated issues

and difficult decisions in our ever-changing society. Their experience and knowledge acquired over the years, as well as their integrity and devotion to their duties, serve all Montanans well.

In 1998, there were approximately 34,669 filings in the State's district courts. The number of cases filed continues to rise year after year, and there has not been an increase in the number of district judges serving the state since 1991. You have an opportunity to help us out in this regard – but more about that later.

The legislature has also created two other courts – the Workers' Compensation Court and the Water Court. Although not courts created by the Constitution, these courts perform very important functions for the people of Montana.

Finally, the next level of court in our judicial system is the Supreme Court. By law, the Montana Supreme Court must accept jurisdiction over all appeals taken from judgments entered in the district courts. It has no discretion in deciding which appeals to accept and consider. The Supreme Court also must review applications and petitions to the Court seeking its original jurisdiction – supervisory control, habeas corpus and declaratory judgment, to name a few. In 1998, 731 new cases were filed with the Supreme Court. In addition, the Court must address thousands of motions each year – some of which are relatively minor, such as a motion for an extension of time to file a brief, but some of which are extremely important, such as staying the execution of a death sentence. All, however, require the time and careful attention of the Court.

In addition to its duties in addressing the cases before it, the Supreme Court is also given, under Article VII, Section 2(3) of the Montana Constitution, the duty to "make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members." In this regard, the Court has various boards, commissions and other entities whose work is vital, not only to the smooth operation of the judiciary, but to all Montana citizens.

The disciplinary responsibilities of the Supreme Court are initially handled by the Commission on Practice and the Judicial Standards Commission. These commissions are the avenues for our citizens to file ethical grievances against attorneys and judges. In the last two years, the Supreme Court and Commission on Practice have disciplined fifty-seven attorneys, four of whom were disbarred from the practice of law.

The Commission on on Courts of Limited Jurisdiction planned and conducted two mandatory training conferences for Justices of the Peace, City Court Judges and Municipal Court Judges in the past year which totaled over 42 hours of education. Each of the newly-elected and re-elected judges of courts of limited jurisdiction was required to attend the fall certification conference which includes a proficiency test on detailed law-related questions which each judge must pass for certification.

The Court's advisory commissions on rules of appellate and civil procedure, rules of evidence, and criminal and civil jury instruction guidelines are also permanent commissions which periodically recommend to the Court for its consideration proposed changes to the rules of procedure under which our entire court system operates.

In addition to permanent committees, since I last addressed you the Supreme Court has appointed and received recommendations from three specially-created committees.

An advisory commission on rules for admission to the bar of Montana was appointed to study bar admission requirements in the state. Following the commission's recommendations to the Court and a public comment period, the Supreme Court adopted significant changes in its procedures and rules for admission to the Montana Bar – the most noteworthy of which is the elimination of any waiver provisions within the rules, thereby making the passing of the Montana bar examination mandatory for anyone wishing to practice law in the state.

A second study committee appointed by the Court was charged with the task of developing and recommending to the Supreme Court standards regarding the competency of counsel appointed to represent indigent persons in capital cases, both at the trial and appellate levels. This committee, comprised of one district judge, two prosecuting attorneys and two defense attorneys, submitted its Proposed Competency Standards to the Court in November, and a public comment period on the proposals is now being allowed. The Court anticipates that these standards, if adopted, will result in more effective representation for the accused in death penalty cases, in long-term savings in the costs of prosecution and defense of capital cases, and in more efficient and economic uses of the scarce and overburdened resources of the courts and the criminal justice system.

Since the last biennial report, the Supreme Court created a commission to make recommendations concerning an intermediate appellate court. The commission recognized the need for some form of intermediate appellate procedures. The Supreme Court has recommended the introduction of Senate Bill 443 which I will mention further in this report.

The Office of the Supreme Court Administrator has under its direction other programs designed to promote the efficient administration of certain areas of the judiciary.

Automation of the Montana court system has taken a much needed step forward. All fifty-six district courts have been provided hardware and software to automate case management. In 1998, 98 of the 109 judges of the courts of limited jurisdiction were trained and equipped to operate their courts using case management software. The judiciary has joined a collaborative effort with executive branch agencies to integrate judicial information for increased public safety. This integration allows for faster and more accurate exchange of court case information with the Departments of Justice and Corrections. District court automation also has provided an expedient method of relaying child support orders in divorce actions to the Child Support Enforcement Division as mandated by statute.

The Local Citizen Review Boards, a program statutorily assigned to the Judiciary, is currently active in three judicial districts within the state. The review boards are composed of volunteer citizens who review foster care placements made by the Department of Public Health and Human Services and make recommendations they believe will move these children to permanent placement as quickly as possible. Since the inception of this program, Missoula has recognized a 27 percent decrease in the number of youths in foster care. These boards have made and are continuing to make a difference in the lives of Montana's children with the involvement of their

local communities. It is a most important program and critical to the lives of children in foster care.

Another major program which is the responsibility of the Court is the Court Assessment Program, relating to children who are victims of abuse and neglect with a focus on safety, permanency, and stability in those children's lives. This program proposed legislation to incorporate the federal requirements of the Adoption and Safe Families Act into state law. Another proposal was to include district court expenses in abuse and neglect cases as eligible for reimbursement from the present District Court Criminal Reimbursement Program. This is a very beneficial program for the safety and well-being of children.

A very important program to all of the counties of Montana and the county taxpayers is the District Court Criminal Reimbursement Program. This program was enacted in the 1985 legislature, and in the calendar year 1998 this program reimbursed the counties of Montana and the taxpayers therein in the total amount of \$5,383,536 for criminal expenses incurred in the counties.

The Supreme Court is also responsible for the administration of the legislatively-created Sentence Review Division, composed of three sitting district judges. The Sentence Review Division hears petitions of prisoners sentenced to the state prisons who ask for review of their sentences. The Division heard 127 cases in 1998 and it has authority to increase, decrease or, in certain circumstances, modify a prison commitment.

In addition this year, the Montana Judges' Association, whose membership comprises the District Court Judges and Supreme Court Justices, has been actively working to increase the efficiency of the court system. The District Court Judges' Benchbook, used as a guidebook for procedures in the District Court, was updated and reprinted. This project, led by District Judge Thomas A. Olson of Bozeman, offers an inexpensive but effective way to encourage uniformity and consistency in district courts throughout the state.

The full 1998 Annual Report of the Montana Judiciary will be furnished to you soon.

I would like to thank those men and women who contribute their time, talent and professionalism to make the Supreme Court boards and commissions the vital, working entities that are so necessary – not only to the bench and bar, but, most importantly, to the people of this state. Many of the members of these essential commissions are attorneys who are unpaid and unrecognized for their generous contributions to the citizens of the state. Others are lay members who generously give of their time and talents. Montana's judiciary is extremely fortunate to have such giving, unselfish citizens to work for its betterment. They all deserve our gratitude and thanks.

The continued effective administration of the many duties of Montana's judiciary, courts at all levels, would not be possible without the professional and dedicated service of all of the courts' personnel in all levels. The Supreme Court would not possibly be able to process the 731 cases filed in 1998 without the dedication and hard work of its limited number of staff personnel.

I turn now to pending matters before you which can have a profound effect upon Montana's judiciary.

It can be said that almost all of the bills that you consider and pass during the legislative sessions affect the judiciary. Why? Because it is the duty of the courts to enforce the statutes you enact. There are, however, certain legislative bills and resolutions that directly affect the well-being of Montana's judiciary, and I would like to take this opportunity to briefly address a few of them.

There are two important bills in this legislature relating to the continued funding of our statewide court automation and case management system. I trust that you will agree that in 1999 and future years the judiciary could not function without an adequate and functioning computerized database system for the courts. The present funding for the installation and continued maintenance and support of the system is based upon a five dollar charge on most court filings. House bill 41 and House Bill 104 provide a continuation of this source of funding. Such funding is critical to the automation program and provides for the installation and maintenance of such services in all of the counties in the state without cost to the local taxpayers. The judicial automation system has solved in house the Y2K problem.

Senate Bill 273 provides for a new judicial district and the addition of one judge, which district would be composed of the Counties of Big Horn, Carbon and Stillwater to be taken from the present Thirteenth Judicial District, Yellowstone County. The bill also provides for an additional district judge in the Eleventh Judicial District in Flathead County, and an additional district judge in the Twentieth Judicial District composed of Sanders and Lake County. There is no question but that the caseload statistics support these additional judicial resources if timely and efficient administration of justice is to be continued in these areas.

Senate Bill 60 provides for the district court judges to appoint standing masters with the approval of the county commissioners. The ever-increasing load of family law cases that require an inordinate amount of time of district judges require such improvement in our judicial system. Your support of this bill is important.

Another very important bill to the judiciary is Senate Bill 443 that provides for the creation of an intermediate appellate court. The model of this bill is taken from the State of Nebraska. The ever-increasing appellate caseload creates an excessive demand upon the time of the Court to process effectively large, complex and controversial cases of great consequence to the people of Montana. All cases require careful and deliberate processing by the Court. Most of our states provide for some form of intermediate appellate court panel. Montana needs such legislation. I urge that you carefully consider and support this proposal.

A startling development throughout our court system is the huge increase in the number of pro se litigants. With the cuts in funding for legal services at the federal level, more and more citizens will be using our courts without the assistance of a lawyer. Legal service agencies have been nearly wiped out by budget cuts and restrictions adopted in Washington, D.C. For all practical purposes, legal services are now the responsibility of the states.

Montana should give a helping hand to the many low income people who are standing alone in the dark at the bottom of the courthouse stairs. They must have access to justice. I urge you not to exclude them. Justice will come when those of us who have never been injured, deprived, or silenced become as committed and concerned as those who have.

In considering the costs that may be involved in some of this legislation, I would like to comment that of the state's budget of an approximate 4.5 billion dollars for the biennium, the percentage of this amount for the judicial budget is 0.35 percent for the biennium – certainly not an excessive amount for a branch of Montana's government that is co-equal with the Legislative and Executive branches.

Our civil courts underpin our economy and way of life. They mirror and help develop positive changes in the economic, technological, ideological and moral conditions of society. They yield benefits far greater than those accruing to the litigants alone. For example, landmark cases represent turning points in law and social attitudes. Nonlitigants order their affairs by the results of these cases.

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 or protective care, to farmers, ranchers and shop owners fighting to keep their properties and their doors open in difficult times, to those discriminated against on the basis of race, age, sex, religion, disability or other unlawful reasons, our civil courts represent the fulfillment of the basic need for fairness and justice.

When a young mother goes into a busy court to obtain an order that will protect her and her children from an abusive mate, she doesn't distinguish between the law enacted by the legislature and the judge who administers it. In her view, it is one system. Either the law works and she is protected or the law doesn't work and she and her children remain in danger.

Montana's judiciary strives to deliver an independent justice system that carefully considers the rights and obligations of our citizens, and promptly renders impartial decisions free of outside influences or pressures. The system cannot survive without the trust and confidence of those it serves.

Fourteen years have passed since I first spoke to this honorable assembly as the Chief Justice of the Montana Supreme Court. In those fourteen years, we all have seen much change. The public no longer must rely on the media for information – with a simple click of a mouse, Supreme Court opinions are available to anyone connected to the Internet, as are all the bill drafts, amendments, and enactments you must consider. The judiciary has done its best to keep pace in our ever-changing times. It needs your support to continue to do so. Your deliberations and actions in the next few weeks will set the course and direction for the future progress of the court system.

On behalf of the Bar of Montana, it must be noted that without the members of the Bar, who deliver professional and competent services to the people of Montana, our Constitution, statutory law, and bills that you are presently passing, would not be implemented and enforced. The Constitution and statutory law of this State are not self-executing. The safeguards to the safety, liberties, and property of our citizens would derive no benefit from our laws without competent, dedicated courts and members of the Bar that see to their fair and impartial implementation.

This has been true since the Magna Carta of June 15, 1215 – and notwithstanding some jests about lawyers. One I recall as a cartoon, which I believe would have been created about the year 1750, depicting the "lawsuit milk cow." In the cartoon there was a picture of a milk cow, the ownership of which was the subject of litigation between two farmers. One of the farmers had a rope around the cow's horns and was tugging on the rope in that direction, and the other farmer had the cow by the tail and was pulling her in that direction. Each farmer had an attorney, each of whom was sitting on a pile of law books on either side of the cow – vigorously milking her.

I know that for many of you, this will be your last session and, perhaps, the most difficult. Your years of service to the State of Montana and its citizens, and in particular your continued willingness to listen to and respond to our concerns during your terms, is appreciated.

On a personal note, this will be the last time that I am privileged to deliver to a joint session of the House and Senate on behalf of Montana's judiciary a State of the Judiciary Address.

I will not seek reelection in 2000 as Chief Justice of the Montana Supreme Court.

I am deeply appreciative and humbled by having been honored by the people of Montana for electing me to important public offices in all three branches of the government – Executive, Legislative, and Judicial – since the June primary of 1952, forty-seven years ago.

My public service commenced in 1944 when I enlisted in the Army Air Force. I was elected Lake County Attorney for five terms starting in 1952. In 1962 I was elected as State Representative and in 1964 as State Senator from Lake County, where I served for twenty years. In 1984 I was elected for an eight-year term as Chief Justice of the Montana Supreme Court and reelected for an eight-year term in November 1992, which term ends in December 2000. It is time to bring to closure the forty-eight years of public service I have been permitted to serve. It has been a great privilege and personal satisfaction to have served in public office all of these years.

Thank you again for allowing me the opportunity of addressing you today.