

State of the Judiciary
Chief Justice Roger L. Wollman, South Dakota Supreme Court
Message to the Legislature
January 24, 1980, in Pierre, South Dakota

Mr. President, Mr. Speaker, Governor Janklow, members of the Legislature, and members of the Executive Branch. Continuing the tradition that was established in 1977, we of the Judicial Branch appear before you today to report on the work of the Unified Judicial System over the past year. My colleagues and I appreciate this opportunity to appear before you, and we hope that our report will be both interesting and informative.

WORK OF THE CIRCUIT COURTS AND MAGISTRATE COURTS

In accordance with our policy of emphasizing the need for continuing judicial education, a number of our trial judges attended judicial training sessions at the National Judicial College, located on the Reno campus of the University of Nevada. These training sessions, ranging in length from one-week specialized courses in such subjects as evidence and antitrust law to the four-week in-depth training session for new judges, provide valuable training to both us newly appointed and our experienced judges.

Because of the increasing workload within the circuit courts, it will be necessary for us to coordinate more closely the attendance at the College so that each of our trial judges is afforded an opportunity to participate periodically in these training sessions. I might add that this training is financed in large part by funds from the Law Enforcement Assistance Administration.

I emphasize this need for initial and continuing judicial education because no matter how knowledgeable and experienced a newly elected or appointed judge may be, he or she has much to learn about the practices and procedures that a judge must be familiar with in order to cope with the ever increasingly complex problems of substantive and procedural law. Those who have been on the Bench for some time similarly need to refresh their knowledge and to review the ongoing developments in areas, such as environmental protection and antitrust law, that either did not exist or were not a matter of concern to the state courts until only a few years ago.

The citizens of the State are entitled to judges that are abreast of emerging legal doctrines, and the members of our judiciary, both at the trial and appellate levels, have demonstrated their willingness to participate in the training that will insure their continued awareness of current legal and judicial thought.

As you know, there have been several changes in the membership of our trial bench. Last January, Judges Roland Grosshans and Jeff Davis were appointed to fill the vacancies in the Seventh Judicial Circuit resulting from Judge Joseph H. Bottum's retirement and Judge Frank E. Henderson's election to our Court. Also in January of 1979, Judge Eugene Martin was appointed to fill the vacancy created in the Third Judicial Circuit by the election of Judge Jon Fosheim to our Court. In November, Judge Robert C. Heege was appointed to fill the vacancy created in the Second Judicial Circuit by the resignation of Judge John L. Wilds in August. All of these newly

appointed judges are persons of outstanding ability, and they bring to our judiciary a deep sense of dedication to duty and commitment to professional excellence.

I would like to publicly acknowledge at this time the splendid cooperation of our circuit judges and law trained magistrates in assisting the judges in other circuits with the workload caused by special situations. I would specifically point to the assistance rendered to the judges of the Second Judicial Circuit during the period between Judge Wilds' resignation and Judge Heege's appointment, as well as during the period between Magistrate Keller's resignation and Magistrate Matheson's appointment. In addition, a number of judges served in other circuits as the need arose. This inter-circuit assignment of judges has given us the flexibility to operate effectively in times of temporary understaffing, and the response to my requests for this type of temporary assistance has been most gratifying.

As I mentioned during my address last year, although the court system does not exist to produce revenue, the effective, efficient operation of the judicial system does result in the collection of substantial amounts of money. In Fiscal Year 1979 (and all of these figures are rounded off) our circuit and magistrate courts collected \$2,970,000.00 in fines for violation of state laws. All of this money was distributed to school districts within the counties in which the fines were collected. Court-imposed forfeitures in state cases totaled \$44,700.00, all of which was retained by the counties wherein collected. Fines and forfeitures for violations of municipal ordinances totaled \$1,377,000.00, sixty-five percent of which remained with the cities wherein collected, with the balance being remitted to the state general fund.

To give you some idea of the number of cases handled by our circuit judges and magistrates in Fiscal Year 1979, there were 27,800 civil cases filed in the circuit courts within the state. During that same period, there were 128,800 criminal actions filed, consisting of 117,400 Class 2 misdemeanors and petty offenses, 9,900 Class 1 misdemeanors, and 1,900 felonies.

The comparable figures for Fiscal Year 1978 were 22,900 civil cases and 114,000 criminal actions.

In an effort to reduce the overall cost of the judicial system, several of the presiding judges have reduced the number of hours worked in certain clerks of courts' offices within their respective circuits. We are reviewing the workload of the clerks of courts' offices throughout the State in order to determine where adjustments should be made to reflect the amount of staffing necessary to provide adequate service to the public at the most economical cost.

UNIFIED JUDICIAL SYSTEM

State Court Administrator's Office

During the past year, our State Court Administrator, Mark Geddes, and his staff have worked to improve the delivery of personnel, budgetary, and informational services to each of the judicial circuits. This is no small task, given the fact that there are 424 full-time equivalents in the Unified Judicial System, filled by some 625 full-time and part-time employees. For example, our Personnel and Training Officer processed some 1,171 personnel action forms during Fiscal Year

1979, a figure that is projected to increase to 1,500 in Fiscal Year 1980.

In addition, Mr. Geddes and the staff in our Planning and Research Development Division have worked to improve our judicial information system. We have investigated the feasibility of installing online docketing equipment in Minnehaha and Pennington Counties. The Unified Judicial System furnishes a good deal of statistical information to the Department of Public Safety, the Division of Criminal Investigation, and to other departments within state government. Our obligations in that regard, together with our overall need for current, accurate information regarding the case load in the circuit courts, mandate that our judicial information system work effectively.

I reported to you last year that Presiding Judge Robert A. Miller of the Sixth Judicial Circuit had been appointed to chair a committee to study the desirability of microfilming circuit and magistrate court records. Judge Miller also agreed to head a committee to study the question of the adoption of a records retention and destruction policy and schedule. Assisted by technical assistance furnished by the National Center for State Courts, the microfilm study committee has submitted a detailed report concerning the condition of our circuit court records and setting forth specific recommendations for the Court's consideration. The report from the committee studying records retention and destruction outlines a proposed retention and destruction schedule for records having permanent and ephemeral value. These reports indicate that there is a need to safeguard many of our records by preserving them on microfilm of archival quality and that substantial savings in space requirements can be achieved through the adoption of a carefully considered retention and destruction schedule. The Court has taken both of these reports under advisement. We wish to express our appreciation to Judge Miller and the members of the two committees, which included lawyers, clerks of courts, the Director of the Office of Records Management, and members of our staff.

We have received the audit reports covering the audits of selected clerks of courts' and clerk magistrates' financial records. Preliminary indications are that by and large the accounting systems for our clerks and magistrates are working well. Our Budget and Finance Officer, Jack Ellenbecker, will discuss with the respective presiding judges' areas of potential improvement in maintaining these accounting systems.

The Benchbook Advisory Committee, again chaired by Judge Miller, together with the help of the project staff, completed the South Dakota Benchbook this past summer. This sourcebook contains those forms, statutes, and rules that are the day-to-day working tools of our trial judges, and it should prove to be a valuable resource aid.

Court Services Department

Our Court Services Department, consisting of 63 Court Services officers and having a budget of some \$1,400,000.00, is administered and coordinated at the Supreme Court level by Jay Newberger, our Director of Court Services, his staff assistant and one secretary.

That the judiciary is concerned about the victims of crime is demonstrated by the fact that during Fiscal Year 1979 our Court Services restitution program was responsible for returning

\$177,753.00 to victims of criminal offenses.

Another form of restitution — community service work programs -- is being developed by our Court Services officers for nondangerous offenders. Under these programs, the offender is required to reimburse the victim or the community through in-kind service. During Fiscal Year 1979, 144 offenders provided 3,669 hours of labor. An example of this is the instruction that a carpenter gave to members of a boy's club on how to use woodworking tools properly and safely

Our Court Services officers are currently providing probation treatment services for 827 juveniles (11 times more than are incarcerated in the state training school) and for 708 felons (153 more than are incarcerated in the state penitentiary) at a cost dramatically less than the cost of institutionalization.

During Fiscal Year 1979, our Court Services misdemeanor program provided supervision and services to 3,060 misdemeanor offenders who otherwise would not have received any supervision and services. This program conservatively saved the counties \$485,500.00 in unnecessary jail costs and returned \$82,800.00 to victims of misdemeanor offenders.

We are currently undertaking a Court Services officer workload management study designed to identify the specific workload of each of our Court Services officers in order to better balance workloads and to enhance services to our local communities.

We are proud of the professional manner in which our Court Services officers are providing protection to our communities while at the same time providing treatment services to juvenile and adult offenders as an alternative to unnecessary and expensive institutionalization. They deserve our respect and recognition.

WORK OF THE SUPREME COURT

The year 1979 was a busy, productive time for the Court. I shall cover a few of the highlights and then outline the Court's proposed course of action with respect to its increased workload.

Personnel Changes

The year began on a sad note when we learned in February of the serious illness of Lyman A. Melby, who had served as Clerk of the Supreme Court from May of 1965 to February of 1977, when he was appointed Chief of Legal Research, Law Librarian, Reporter of Decisions, and Secretary to the Board of Bar Examiners. Mr. Melby resigned effective March 31, 1979 and died on July 25.

Effective August 1, 1979, the Court appointed Mrs. Sheridan Cash Anderson to fill the vacancy created by Mr. Melby's resignation. Mrs. Anderson had previously served as a research assistant and as law clerk to Justice Henderson. At the time of her appointment, she was serving as an Assistant Attorney General. With her legal training and her training in library science, Mrs. Anderson has already done much to continue Mr. Melby's efforts toward upgrading our law library, this in addition to her principal duties as Chief of Legal Research and her additional

duties as Reporter of Decisions and Secretary to the Board of Bar Examiners. She has rendered invaluable assistance in screening briefs. Through her assistance, the Court has been able to place a number of cases on the per curiam and non-oral calendar. She is also performing the duties imposed upon the Court by the new capital punishment law.

Judicial Planning Committee

We established a Judicial Planning Committee last August. The Committee's membership includes a member of the House of Representatives, judges, laypersons, public officials, and lawyers. In preparation for its second meeting, which was held last Thursday and Friday, the Committee sent 196 survey questionnaires to representative individuals and groups, including Indian tribal leaders, lawyers, law enforcement groups, and representatives of county and municipal government, as well as to judges and other members of the Unified Judicial System. The questionnaires were designed to elicit responses concerning problem areas within our judicial system.

In addition to evaluating these responses, the Committee received comments from representatives of some seven groups, including the press and the electronic media, during the public comment portion of the meeting. From these responses and comments, the Committee will distill a proposed plan for addressing the needs of the judiciary that will be submitted to the Court for its approval.

We look upon the Judicial Planning Committee as a representative group of citizens and public officials that can add a valuable perspective to the long-range planning needs of the Unified Judicial System.

Meetings With Tribal Court Judges

As a part of the commitment on the part of the Court to meet the responsibilities imposed upon our state court judges by the terms of the Indian Child Welfare Act of 1978, the Court sponsored a two-day meeting in Pierre last May. For the first time in the history of the State, a joint meeting was held between our state court judges and tribal court judges. Assistance in hosting the meeting was provided by the Aberdeen Area Office of the Bureau of Indian Affairs. New lines of communications were opened and greater insight into the relationship between state and tribal courts was developed as a result of this meeting.

In October, Circuit Judges Mildred Ramynke and Merton B. Tice, Jr., Assistant Attorney General John Guhin, Mr. Newberger, and I met with tribal court judges and tribal personnel at the Sisseton Wahpeton Tribal Offices at Sisseton. This meeting helped to develop new channels of communication and a greater awareness of the jurisdiction of our respective court systems.

Although there may well be disagreements in the future over the extent of our respective roles, all of us came away from these two meetings with our counterparts in the tribal courts with a sense that we had accomplished much in gaining a greater appreciation of our mutual concerns and problems.

Mr. Newberger and I have been invited to attend a training seminar on the Indian Civil Rights Act that will be sponsored by the Cheyenne River Sioux Tribe next month. We look forward to the opportunity of participating in this meeting.

Clerk of the Supreme Court

Mrs. Gloria J. Engel, Clerk of the Supreme Court, and Mrs. Dorothy A. Smith, her deputy, have proceeded with the microfilming of the Court's records. With the technical assistance of the Director of the Office of Records Management and his staff, they have now completed microfilming 9,500 of the 11,000 cases that will ultimately be so recorded.

To conform with the requirements of our new appellate rules, Mrs. Engel and Mrs. Smith have modified their case-tracking system to ensure that all steps in the appellate process are complied with on schedule.

In addition to their regular duties, Mrs. Engel and Mrs. Smith have scheduled training seminars for the clerks of courts on the new appellate rules. In order to reduce total expense and travel time these seminars are being held within each judicial circuit. The clerks have expressed their appreciation for this local training, and we are confident that it will assist them in administering the new appellate rules more effectively.

Unified Judicial System Budget

Our Fiscal Year 1981 budget request for the Unified Judicial System, exclusive of any adjustment for salary increases, calls for an expenditure of approximately \$9,348,000.00, or an increase of some 3.2 percent over our Fiscal Year 1980 budget. In submitting this budget to the Bureau of Finance and Management and to the Legislature, the Court was not unaware of or insensitive to the economic constraints that face the State as a result of the national energy situation. Our budget request represents that figure that the Court determined would be necessary to fund the Unified Judicial System at an acceptable level for the coming fiscal year. A more detailed picture of our budget was presented to the Appropriations Committee earlier this month.

Recognizing the fact that the counties are required to pay twenty-five percent of the cost of the Unified Judicial System's budget, I have asked each of the eight presiding judges to stand ready to discuss with the county commissioners within their respective circuits any areas of concern that the commissioners may have with respect to our budget or the operation of the court system. I have likewise advised the commissioners in each county that I and our staff stand ready to do the same. In November, several of the presiding judges and I were invited to attend a meeting with selected members of the County Commissioners' Association, a meeting that was most productive in terms of an exchange of questions and concerns. We recognize the fact that all of state government is being asked to hold the line on spending. We have, therefore, tried to hold our budget request to a figure that will enable us to fulfill our obligation to provide the judicial services that our citizens require. I might point out in this regard that our courts neither seek nor shirk work. They exist only to do that which is required of them.

Just as last year I expressed a word of appreciation for the salary increase that you had

authorized the preceding year, I must again say a word about judicial salaries. As you know, the Commission Salaries of Elective State Officials submitted its report to you and to Governor Janklow last November. We hope that you will agree that the amount of salary increase recommended by the Commission, when adjusted for the inflation rate of the past year and that which is predicted for the present year, together with the increase in social security withholding that will take effect next January, is relatively modest.

I hope that these words will convey to you the depth of the concern that our judges share concerning this matter. As the head of the Unified Judicial System, I respectfully and earnestly ask for your support of the Commission's recommendations.

Courtroom Restoration Project

As you know, our courtroom has been unavailable to us since last August, when the first stages of the restoration project were begun. Since that time, we, as the nomads of the judiciary, have held arguments in the Senate Chambers, the Hughes County Courthouse, and, just this week, in the Division of Emergency and Disaster Service room in the basement of this building. United States District Judge Donald J. Porter, our former colleague, has generously offered us the use of his courtroom for our arguments next week.

We look forward to the day when we will be able to return to our courtroom. We have striven to endure our dispossession with patience and good cheer, fortified by the knowledge that the restoration will benefit generations to come.

Our one request regarding this project is for an appropriation to install an adequate sound system. The amount requested is relatively modest, given the total cost of the restoration project. The resulting enhancement of the working conditions within the courtroom would complement the esthetic changes wrought by the restoration project and render the project truly complete.

Review of the Court's Work

In addition to our regular terms in Pierre, the Court continued its tradition of holding two terms of court each year outside of the Capital. We heard three days of argument at the Law School in March. In October, we held three days of argument on the campus of Dakota Wesleyan University in Mitchell, where we were most graciously hosted by President Messer and his staff.

In my message to you last year, I stated that the Court had heard, or would shortly hear, all of the cases that were then ready for argument, and I expressed the hope, too optimistically, it now appears, that at our next appearance before you we could report that the work of the Court was completely current.

The Court handed down 165 written opinions disposing of 196 appeals this past year. Although these figures do not match those achieved in 1978, a more truly reflective picture of the Court's activity is revealed by the fact that of the 196 cases that were considered by the Court in 1979, opinions have been filed in 156 cases, leaving only 40 of those cases pending decision as of today. In addition to the 156 cases in which formal written opinions were filed, 125 additional

cases were disposed of through denial of petitions for intermediate appeal, issuance or denial of writs, and dismissal.

The list of undecided cases, although not as brief as we would like, is not the principal cause of our concern. What gives us pause is the fact that as I speak to you today there are some 104 cases that are ready for the calendar, in addition to the 31 cases that are currently on the January calendar, and 101 cases that have been filed but that are not yet ready for the calendar. Simply stated, as hard as the Court worked this past year, we have been unable to keep up with the influx of appeals. There are two principal reasons for the sharp rise in the number of cases ready to be heard. First, you will recall that last year I reported that we had adopted new appellate rules, effective July 1, 1979, that were designed to reduce the time required to submit a case on appeal. These rules have had that intended effect, with the result that the dates on which the briefs were due in cases that were pending as of July 1, were sharply accelerated, causing a substantial bunching of cases ready for the calendar. Second, the number of appeals filed in 1979 exceeded by 55 the number filed in 1978. The following table illustrates the increase in the cases filed over the past ten years:

Year	Number of Cases Filed	Number of Opinions Filed	Other Dispositions
1970	130	79	disposing of 98 39
1971	162	61	disposing of 65 50
1972	166	87	disposing of 99 70
1973	160	85	disposing of 105 60
1974	203	85	disposing of 89 71
1975	218	111	disposing of 122 74
1976	297	131	disposing of 152 100
1977	280	99	disposing of 130 116
1978	279	203	disposing of 244 87
1979	334	165	disposing of 196 125

(The number of cases filed in 1979 represents a 157 percent increase over filings in 1970. Other dispositions increased 220 percent over 1970 figures. The number of opinions filed in 1979 represents a 109 percent increase over the number filed in 1970.)

I might add that during this period, when the case filings increased some 157 percent, the staff involved in the research, adjudicatory, and rule-making functions of the Supreme Court increased from 14 to 19.2 full-time equivalents, including justices, law clerks, and related personnel.

We have attempted to cope with this increased number of cases by putting the simpler, more routine cases on the per curiam and non-oral calendar, reserving for oral argument those cases that present questions of greater complexity. As I mentioned to you earlier, Mrs. Anderson has given us much assistance in identifying those cases that are appropriate for disposition without oral argument and in preparing memorandum drafts for the Court's consideration. Likewise, our law clerks have kept pace with our increased need for research memorandums and pre-argument

bench memos.

This staff assistance, essential and valuable as it may be, does not, and should not, eliminate the collegial process of full-court review of each case and of each proposed opinion. Regardless of whether it is on the per curiam, non-oral, or oral calendar, each case is discussed at a full-court conference and each opinion is likewise reviewed and approved by each member of the Court. It is this collegial decision-making process that imposes a practical limitation on the number of cases to which any appellate court can give considered attention and workmanlike treatment during the course of a year. It appears that the Court may be reaching that limit now.

Accordingly, my colleagues and I will in the months ahead conduct a study of the feasibility of requesting, pursuant to Article V, Section 2, of the Constitution, that two additional justices be added to the Court. We will analyze the fiscal impact and the need for increased space for chambers, library, and staff. We will study the need to restructure our appellate process to provide for consideration of cases by three-judge panels, with a procedure available for en banc, or full-court, review of cases of particular significance. In addition to the authorization of the two additional positions, legislative action would be required to change the number of Supreme Court Districts from five to seven, as well as to provide for decisions by less than a majority of the full Court. We hope to complete our study in time to present a detailed picture of the fiscal impact of this proposal along with our Fiscal Year 1982 budget, should the Court determine that such a request should be presented for legislative consideration in 1981.

In the meantime, of course, we will continue to use the means available to us to keep our case load as current as possible. To help us achieve that goal, we have asked for one additional full-time equivalent on our Court staff, that of the position of research attorney to assist the Court in screening appeals for procedural defects, preparing research memos on procedural problems, and in relieving Mrs. Anderson of some of the multiplicity of tasks that devolve upon one who is performing the duties of four separate positions.

I hope that the press accounts of this message are not captioned "Chief Justice Complains of Court's Workload," for that is not the intended tenor of these remarks. Rather, my colleagues and I are concerned about the Court's capacity to render timely decisions that reflect that degree of judicial thoughtfulness and craftsmanship that is worthy of the respect of the members of the legal profession and of the citizens of this State. It is out of this concern that we are here today advising you of our intention to conduct the study that I have outlined.

CONCLUSION

This month marks the fifth anniversary of the Unified Judicial System. Time does not permit a review of all that has been accomplished or of that which remains to be done. We occasionally still hear complaints about the reorganized judicial system, usually in conjunction with a reference to some bygone day when, apparently, we had a more smoothly operating judicial system that functioned at minuscule cost. Most of these complaints have no more basis in fact than do the comparisons. Nonetheless, we have attempted to respond to each complaint with reasoned explanation and, when necessary, with corrective action.

My own views on this fifth anniversary of court reorganization are probably best expressed in

the following paragraph of a letter that I sent to each of our circuit court judges earlier this month:

The Unified Judicial System has been in effect for some five years now. Much has been accomplished; much remains to be done. As we enter this new decade, we must put aside our nostalgic reveries of a bygone day when the judicial system was, it seemed, simpler and less demanding. If anything, the new decade will see additional demands being placed upon the judicial system. I hope that those of us who are privileged to be members of the judiciary will respond to these new demands with good grace and true professionalism.

It is with that attitude that I bring these remarks to a close. Just as the new decade will demand more from the executive and legislative branches of state government, more will be expected of the judicial branch, all at a time when the total resources available may not greatly exceed those of the present.

My colleagues and I pledge our continued efforts to meet the challenges of the new decade. We welcome your support in this endeavor.