

State of the Judiciary
Chief Justice Robert A. Miller, South Dakota Supreme Court
Written Message to the Legislature
1991, in Pierre, South Dakota

Governor Mickelson, Legislators, Constitutional Officers, and fellow Justices:

I am departing from the precedent established by my predecessors. I will not be making an oral "State of the Judiciary" message to a Joint Session of the Legislature this year. Rather, I have concluded that it would be best to present my "State of the Judiciary" message to you in written form, as part of the Annual Report of the South Dakota Unified Judicial System. I sincerely hope that in future years, if I make the appropriate request, I will be afforded the privilege of addressing you personally.

It is important for the Chief Justice to use whatever media serves him best to present his goals and objectives and to remind everyone of the importance and independence of the judiciary. As United States Chief Justice John Marshall once said:

The judicial department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not to the last degree important, that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience?

So it is with the judiciary in South Dakota and we must continually be vigilant of that independence.

I am pleased to report to you that the South Dakota judiciary continues to be strong, busy and more productive than at any time in our history. Although we consider ourselves to be the most modern, and arguably the best, judicial system in the nation, we cannot rest on our laurels; our goal must be that of continued improvements, continued progress, and continued efficiencies. As I will articulate later in this message, we are taking measures, many in cooperation with the executive and legislative branches of our government, to fortify our goal of judicial excellence in this state.

JUDICIAL CHANGES

First, we regret the retirement of our fine colleague, Justice Robert E. Morgan, but wish him happiness and good health in his well-deserved retirement. I know and trust that the Governor will fill Justice Morgan's vacancy promptly, with a person well-qualified to sit on the highest court of our state. Until a new justice is selected and available to begin service, I have appointed one of our finest circuit judges, E.W. Hertz of Olivet, as an acting justice to sit with our Court. This is the third occasion Judge Hertz has assisted us in such a position, and I am most pleased to have a man of his capabilities and talents to assist us in these important times.

As you may know, we have several changes at the circuit court level. In the Sixth Circuit, Judge

Marvin S. Talbott of Winner has now retired. He had a most distinguished career as a county judge, district county judge and circuit judge. The electorate of the Sixth Circuit selected Max A. Gors of Pierre to succeed Judge Talbott, and Judge Gors has moved to Winner to assume his judicial duties.

Presiding Judge Marshall Gerken of the Fourth Circuit has also retired. He, too, has been a prominent member of the South Dakota Bar and judiciary for many years. Attorney Lee Anderson of Mitchell has been elected to succeed Judge Gerken.

In the Fifth Circuit, Law-Trained Magistrate Larry Lovrien of Aberdeen defeated incumbent Circuit Judge Vernon Evans of Redfield. Judge Evans had been on the circuit bench for twenty years. Judge Lovrien had been a law-trained magistrate since 1977.

YEAR OF RECONCILIATION

I applaud Governor Mickelson for his Year of Reconciliation, and the Native American community for its patience and willingness to work on this most important reconciliation effort.

We in the judiciary also feel there is much that can be done to open lines of communication and promote better understanding between the state courts and the tribal courts. In the spirit of this reconciliation effort, I have written the chief judges of all the tribal courts in this state indicating that I would be pleased to host a joint judicial conference between the tribal judges and state judges this spring. I have requested their suggestions regarding the agenda; their response has been superb. The conference will probably be held in May.

A similar conference was held several years ago at the behest of then-Chief Justice Roger Wollman. That conference was called shortly after the implementation of the Indian Child Welfare Act. As a circuit judge, I attended that conference and believe many great things flowed from it. I am confident this conference will be equally successful.

BUSINESS OF THE COURT

The courts of this state have been very busy. Unfortunately, the case load escalation has outdistanced our dwindling resources. I suggest that the judiciary has done a tremendous job in managing its personnel and financial resources. Detailed information and statistics are included in the Annual Report of the South Dakota Unified Judicial System which follows this message.

INTERIM COMMITTEES

This past summer several judges, as well as judicial employees, served on a number of executive and legislative branch interim committees: the South Dakota Juvenile Justice System study, Out-of-Home Placement Study, Assessment of the South Dakota Juvenile Justice System and Action Plan for 1991, South Dakota Governor's Task Force on Children's Justice Report, Report of the 1991 South Dakota Corrections Commission, and the Long-Range Prison Plan.

We have worked closely with these special committees. I do think it is important to continue our

joint planning efforts; however, I do not see a need to necessarily continue all the committees.

I must remind you that our FY92 budget request was not impacted to address the various committee recommendations. If you wish to implement any of the recommendations, it will be necessary to impact our budget accordingly. We would be pleased to work with the other branches of government in an attempt to prioritize these several recommendations.

LEGISLATIVE PACKAGE

The judicial conference is a statutorily-created body composed of all Supreme Court justices and circuit judges. It was created as a conference for the improvement of the administration of justice. Traditionally, the conference recommends statutory change to the Legislature. At the November 1990 Judicial Conference, several items of suggested legislation were reviewed. They have been introduced on my behalf to the 1991 Legislature. Obviously, I will sincerely appreciate your favorable consideration.

This year I have a favor to ask of you. It is similar to the concept you operated under last year for local units of government. If you choose to pass new legislation affecting the Unified Judicial system, please be cognizant of its impact on the limited financial and personnel resources in the judiciary. We simply cannot continue to assume additional duties or responsibilities without a corresponding increase in our budget.

ALTERNATIVE CARE

It is always a challenge to secure funding to provide appropriate and timely treatment for our state's most troubled and troublesome juvenile offenders. It is equally challenging to expend those funds in an efficient and effective manner and to execute a case management system designed to ensure that the best interests of the child, his family and the citizens of our state are protected.

Through continued cooperation with administrators from the Departments of Social Services, Corrections, Education, and Human Services; the Office of the Attorney General; and the private sector, we have been able to augment the general funds you have provided to us for alternative care. These funds are directed towards our most troubled youth.

Shortly after being elected Chief Justice, I ordered a review of our out-of-home placement procedures. As a result, we have made some case management changes designed to ensure appropriate placement of juveniles. The new procedures provide for an on-going internal review of out-of-home placements.

COMMUNITY-BASED CORRECTION SERVICES FOR YOUTH

Community-based services such as diversion, probation services, home-based services, and now outpatient chemical dependency counseling are the lifeblood of the corrections system. These services allow the offender to maintain a family life, job, and attend school in the home community while receiving corrective treatment services. In addition, they provide an alternative

to our already overcrowded state institutions and private care providers.

When I came to the supreme Court approximately four years ago, we had 2,408 juvenile offenders receiving our community-based services (FY '86: 1,571 in diversion programs and 837 on probation). At the end of this past fiscal year we had 3,754 receiving these services (2,653 in diversion programs and 1,101 on probation), a 56% increase!

Four years ago, the Unified Judicial system had 2,226 adult offenders under community-based supervision and services; 1,035 were misdemeanants placed in diversion programs and thus were not in our county jails. The remaining 1,191 individuals were under community-based supervision and therefore diverted from serving their sentences in our penitentiary. At the end of Fiscal Year 1990, we had 2,770 adult offenders under our supervision, an increase of 24%. One thousand twenty-one were misdemeanor offenders and 1,749 felons. Diverting 1,749 convicted felons (an increase of 46%) from the state penitentiary to community-based services provided by our court services officers serves well toward reducing the costs of additional penitentiary cells.

To be sure, judges and court services officers are doing their part to prevent unnecessary and expensive out-of-home placement and commitments to the state correctional institutions without jeopardizing the safety of our communities.

VICTIM RESTITUTION

Services to victims of crime remain a priority of the Unified Judicial System. In addition to ensuring appropriate treatment of victims during the judicial process, during FY'90 the judiciary collected in excess of \$1 million in victim restitution from offenders. This is an increase of 45% over the funds returned to victims four years ago. These citizens, who through no fault of their own fell prey to criminals, deserve whatever services we are allowed to provide and whatever restitution we are capable of collecting.

FUTURE DIRECTIONS OF COURT SERVICES

During the past summer four study groups, each with from the three branches of government and the private sector, and assisted by consultants, studied South Dakota's juvenile and adult justice and correction system. I have directed staff to compile all the conclusions and recommendations and to estimate the cost for implementation thereof. We will work with the other branches of government to develop a collaborative plan of action commensurate with South Dakota's public policy. I must reiterate, however, the various committee recommendations have not been impacted in our budget request.

CIVIL AND CRIMINAL CASE LOAD STATISTICS

For details on judicial case load, I refer you to the statistical data in the Annual Report of the South Dakota Unified Judicial System which follows this message.

CRIMINAL DOCKETING AND AUTOMATED ACCOUNTING SYSTEM

We continue implementation of the criminal Justice Information System (CJIS) and expect to have it on line in the thirteen largest counties by December 1991. At this time seven counties are on line and all reports indicate the system is working well.

While progress on the criminal docketing phase continues at a steady pace, I wish I could be as happy about the progress of the automated accounting system. Through no fault of our own, we still do not have an automated accounting system; we still, manually collect, account for and distribute millions of dollars. This is not acceptable! We simply must move from the pencil to the computer. I hope my next message to you will be more positive in this respect!

JUDICIAL ELECTIONS

The judicial elections for circuit judges this year were somewhat controversial. All thirty-six judges were up for re-election; however, only six had opposition. (There were judicial elections in the Fourth and Sixth Circuits; however, the candidates were seeking the office vacated by a retiring judge.) Questions have been raised whether popular election of circuit judges is appropriate. Others suggest that the retention election method, like that for Supreme Court positions in this state, should be considered for the circuit courts. I know several people join me in the strong belief that no lawyer should be allowed to become a candidate for a judicial position until they are certified as qualified for such position by the Judicial Qualifications Commission or some other appropriate group.

I would like to appoint a broad-based committee, comprised of judges, lawyers, legislators, and lay people, to review the existing laws in this state and the laws of other states and to then prepare recommended changes, if any, concerning the judicial election process in South Dakota. After review and comment, in consultation with the judicial conference and the Supreme Court, I will prepare and submit recommendations to the Legislature for proposed legislative or constitutional changes that would be appropriate to address the judicial election issues. At my request the Supreme Court has put a small amount of money in our FY92 budget request to pay the expenses of this endeavor.

GENERAL BUDGET

As some of you may appreciate, the budget of the Unified Judicial System is but a minuscule portion of the overall state budget. The pie chart on the cover of the Governor's Budget for Fiscal Year 1992 is somewhat misleading (and I am convinced that it was not done in bad faith). The pie chart below more accurately reflects what "share of the pie" our third branch of government actually received in Fiscal Year 1991.

Compiler's note: Pie chart omitted here.

Fiscal Year 1991 Operating Budget

Most of the funds in the UJS budget are for programs over which we have little discretion or flexibility. The following pie chart shows that the greatest share of our \$15 million budget is allocated for personnel services, with another significant amount designated for alternative care

(which appropriately is "sacred" money reserved for problem youth). As you can see, the funds remaining for other necessary support services are very small.

Compiler's note: Budget summary omitted.

As an independent, third branch of government, the Unified Judicial System has its own internal budget review process and policies. We receive budget requests from the circuit presiding judges and from our administrative staff. The Supreme Court then meets and scrutinizes each budget request before it is submitted to the Legislature. Being basically a sound, conservative group, we put no frills in our budget. Rather, as responsible constitutional officers and sound fiscal managers, we submit a budget to the Legislature for what we genuinely need.

This year we have departed from tradition and are allowing the Bureau of Finance and Management to review our budget. That decision was made after the budget book was printed. We anticipate that the Bureau of Finance and Management will be reasonable, realistic and prudent. It is my information that the Governor will then make a recommendation to the Legislature, and the appropriate page or pages of the budget book will be amended or substituted.

I conclude this section by saying it is unthinkable to ask that we maintain and operate a modern, effective judicial system, providing tremendous services to the people of this state, without appropriate funding. I must observe that the public, the Legislature, and the executive branch are constantly making requests and demands upon us for judicial and administrative services. We simply cannot properly respond to those requests without additional funding. I trust and Legislature will fairly act upon our request. assume that the Perhaps with all of the review it has received, our budget request will be favorably considered and fully appropriated.

JUDICIAL SALARIES

No "State of the Judiciary" message would be complete without a mention of judicial salaries. You have undoubtedly seen the recent news reports indicating that supreme court Justices' salaries in South Dakota rank 49th nationally. The article did not mention that circuit judge salaries rank 48th. Not mentioned in those articles is the fact that although we have a good judicial retirement program in this state, unlike many states, the judges and justices pay significantly for it. Nine percent of our salary is withheld to apply towards our retirement benefits. Many states are noncontributory.

You should know that we are most grateful for the salary increase the Legislature gave us last year. However, it is interesting to note that although you increased my base salary by approximately \$3,100, my take home pay, as reflected by my paycheck stubs, only increased \$58 per pay period.

Proposals will be made to you to increase judicial salaries. South Dakota has an outstanding complement of justices and judges. They are dedicated and hard-working men and women. Most have made great sacrifices, financial and otherwise, to become judges. Considering the important, stressful duties they perform, they are entitled to increased pay. I hope you will look

favorably upon the proposals that are made.

CLOSING

I begin my closing by thanking my colleagues on the supreme Court for their confidence and support of me. My predecessor, Chief Justice Wuest, did an outstanding job of leading the judiciary. Following his guidance, the UJS made many strides into the continued improvement of the judiciary. I hope to continue his programs and implement many of my own. Our single goal is the betterment of the Unified Judicial System and the state of South Dakota.

I am committed to working closely with the executive and legislative branches of our state. We all have many important independent duties; however, most of our obligations require cooperation and unity with one or both of the other branches. I am a team player and will strive to be an active, productive member of the constitutional government team, which the people of our state genuinely want and deserve.

Please feel free to contact me or any of my staff at any time. We welcome your contacts!

I extend to you my sincere best wishes.

ROBERT A. MILLER
Chief Justice