

State of the Judiciary  
Chief Justice Robert A. Miller, South Dakota Supreme Court  
Written Message to the Legislature  
1992 in Pierre, South Dakota

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

It is an honor for me to present to you this written State of the Judiciary message together with the accompanying annual statistical report of the South Dakota Unified Judicial System. After consultation with legislative leaders, it was determined that this would be a most effective means of giving my message, with the understanding that I have an open invitation from the Legislature to give an oral message at any time when I deem it particularly important or vital.

Although I will present more detail later herein, I am pleased to report that this state's judicial branch is in excellent shape and is functioning in a most efficient and productive manner. I am proud of our judiciary, and can assure you we have one of the most modern and effective judicial systems in the United States.

#### JUDICIAL PERSONNEL CHANGES

Last March, JUSTICE ROBERT A. AMUNDSON joined our Court, succeeding Retired Justice Robert E. Morgan. Justice Amundson, who chambers at the USO Law School in Vermillion, previously served four years as a circuit judge in Sioux Falls. Justice Amundson has a wealth of legal experience. He began his legal career as an assistant attorney general, followed by four years as this state's Commissioner of Securities and approximately 13 years in the private practice of law in Belle Fourche and Lead. He is a hardworking jurist who is dedicated to the rule of law. We are honored and pleased to have him on the supreme Court.

On the circuit court level, JUDGE WILLIAM J. SRSTKA, JR. was appointed to fill the vacancy created when Justice Amundson joined the Supreme Court. Judge Srstka practiced law for many years in Pierre and most of you are acquainted with him through either his legal or lobbying practices. He is a fine addition to our judiciary.

CIRCUIT JUDGE MARSHALL YOUNG of Rapid City has announced his retirement to take effect later this year. He will become a part-time U.S. Magistrate in Rapid City. Judge Young has had a most distinguished judicial career. He has attained national recognition as a judicial educator and leading authority on juvenile and family court matters. We will miss Judge Young, but surely wish him well in all future endeavors.

At the end of this calendar year we will lose two fine circuit judges through mandatory retirement. JUDGE E.W. HERTZ of Olivet and JUDGE ROBERT C. HEEGE of Sioux Falls will both turn 70 this year.

Judge Hertz joined the circuit bench in 1970 and has been presiding judge of the First Circuit since court reorganization in 1975. He is one of the most highly respected judges in this state, and deservedly so. Because of his unique judicial talents he has thrice been called upon to sit as an

Acting Justice of the Supreme Court when protracted vacancies existed.

Judge Heege also has a distinguished legal career. He practiced law for 32 years in Sioux Falls before becoming a circuit judge in 1979. He also served as presiding judge of the Second Circuit during 1981-1987. He has sat with the Supreme Court on many cases when justices were disqualified.

We wish Judge Hertz and Judge Heege the very best in their well-deserved retirement.

## RELATIONS WITH LEGISLATURE

The Five-State Judicial Conference in Helena this past summer devoted a large portion of the program to relations between the legislature and judiciary. Several legislators from the five states (Montana, Wyoming, North Dakota, South Dakota and Idaho) participated. Representative Nicolay represented the South Dakota Legislature and was most helpful in making it a meaningful conference. As she and I discussed, we in South Dakota are far ahead of many other states in opening and maintaining lines of communication and cooperation between our branches.

Even though we currently have a good mutual relationship, we became convinced that more could be done to improve the communication and understanding between our respective branches. Representative Nicolay and I agreed that more orientation of our members would be appropriate. I believe Representative Nicolay will be making various recommendations to the LRC Executive Board. Similarly, believing legislators need and deserve a better understanding of the judiciary, I invited all members of the House and Senate Judiciary Committees, as well as the Chair and Vice Chair of the House and Senate Appropriations Committees, to attend the 1991 Judicial Conference. Unfortunately, due to scheduling conflicts only Senator Emery and Representatives Schreiber and Hagg were able to attend. From my conversations with them, I believe they thought the conference was interesting, beneficial and worthwhile. I intend to extend the invitation each year, and hope the conference date will better coincide with the availability of the legislators.

## RELATIONS WITH EXECUTIVE BRANCH

We have all benefitted from the continued cooperative working relationship with the Governor and his departmental leadership and program administrators. For example, I have been an active participant of the Governor's Telecommunications Task Force. The task force has identified the communications resources in our state and is now coordinating those resources to provide a statewide interactive telecommunications network. Such a network holds many exciting possibilities for future application in the judiciary.

We have worked particularly closely with the Departments of Corrections, Social Services, Human Services and Education and Cultural Affairs in carrying out our joint responsibilities to South Dakota's youthful offenders. Moreover, the creation of the Youth and Family Alliance by Governor Mickelson will serve to strengthen and re-enforce state and local planning and collaboration through its inter-departmental membership and local interagency network councils. To be sure, our state's young citizens and their families are benefitting from this spirit of

cooperation among government and private youth agencies.

## RELATIONS WITH TRIBAL COURTS

I am pleased to advise that we have an excellent, rejuvenated relationship with the tribal courts of the state.

In May 1991 I hosted a joint judicial conference of state and tribal judges. Most of the tribal judges, trial and appellate, joined the entire state judiciary in a meaningful educational endeavor. The program was organized and developed with the fine assistance of USO Law Professor Frank Pommersheim, himself a tribal appellate judge. Several other tribal judges were on the program. Through various plenary sessions and small group discussions, all judges were afforded the opportunity to learn more about each others' legal systems. We noted a number of mutual concerns and attempted to identify methods of solving them. Based on discussions I had with the judges after the conference, I am convinced most considered it a worthwhile and beneficial conference, not only in the area of state/tribal relations, but, more importantly, in appreciating that we are all in the "justice" business and need to perform our jobs in the most appropriate manner.

Some very exciting ideas and action flowed from the conference. Time and space does not permit me to set them forth in great detail in this message. However, I do feel it important for you to know that there is now a joint committee, comprised of three state circuit judges and three tribal judges, which is actively identifying and considering a number of proposals for the future. Additionally, I adopted a policy of inviting tribal judges to annual training sessions of state judges and inviting tribal probation officers to annual training sessions of our court services officers. Further, at the local level several agreements have been implemented for joint sharing of courtrooms, as well as proposals that tribal juveniles adjudicated in state court be supervised at home by tribal probation officers.

We look forward to expanding upon this wonderful relationship.

The best interests of justice and our people deserve that.

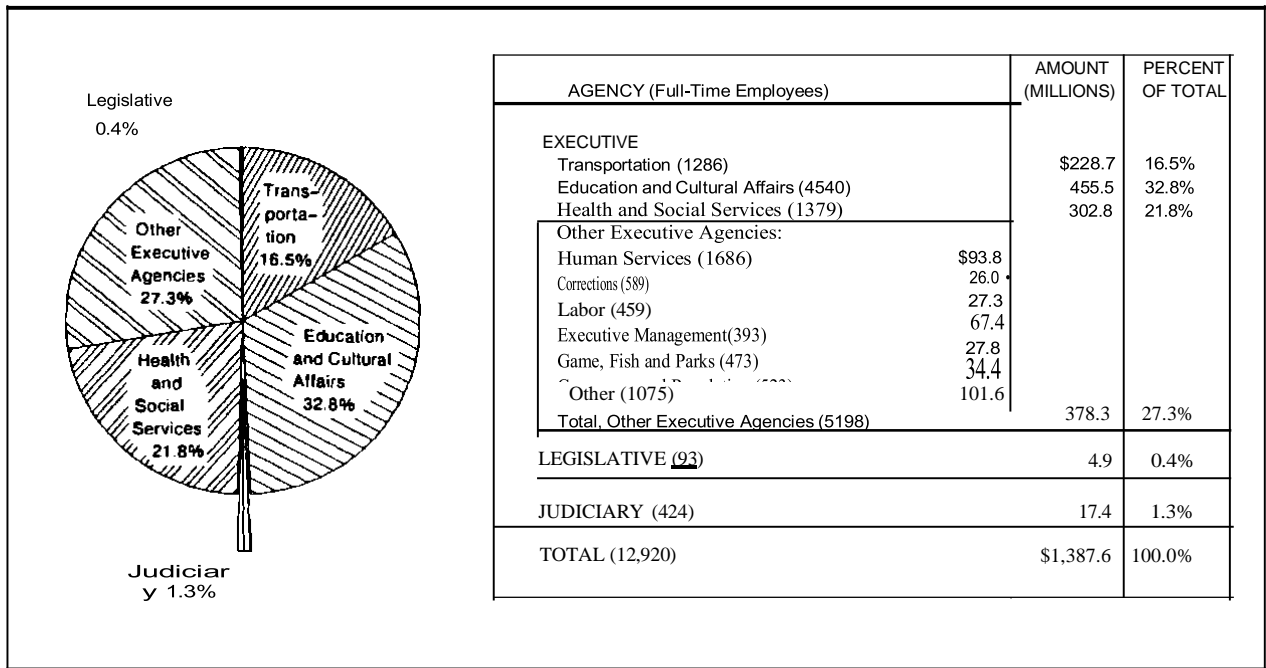
## IMPACT OF CRIMINAL JUSTICE SYSTEM ON UJS

The growth of South Dakota's prison population, as well as the growth of our three juvenile correctional institutions, and the associated costs is an issue both the Legislature and Governor Mickelson have addressed on a number of occasions. The UJS has, in its own quiet way, also responded to this challenge. Balancing our dual roles of ensuring public safety and providing intermediate sanctions for convicted felons and adjudicated youthful offenders, our judges and court services officers have increased their caseloads as an alternative to unnecessary and expensive institutionalization. During the past five years, our felony probation caseload has increased by 48% from 1,287 on probation at the end of FY87 to 1,911 at the end of FY91. During this same time, our juvenile probation caseload increased 40% from 880 to 1,231 on probation. Yet, during this period we have received only one additional court services officer FTE. Further, through our two intensive probation supervision programs we have been able to divert 157 prison-bound felons from our prison system since July 1988. Providing responsible

community-based alternatives at a significant reduction in costs has resulted in great savings for the taxpayer and has contributed much towards curtailing further growth in South Dakota's adult and juvenile correctional institutions.

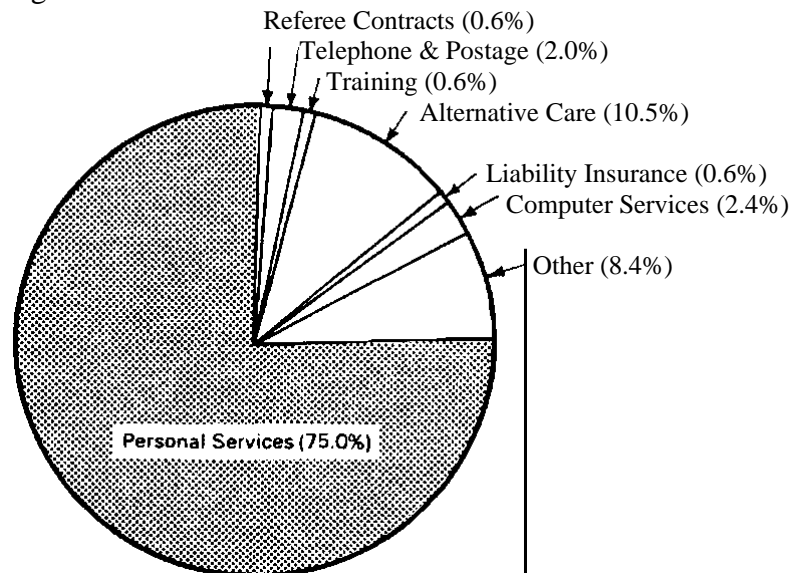
## BUDGET

As all of you may know and hopefully may appreciate, the budget of the UJS is a very small part of the overall state budget as illustrated by the following pie chart.



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 \$17 million budget is allocated for personal services (75%) and alternative care (10.5%), which are funds solely dedicated for out-of-home placement of problem youth. As you can see, the funds remaining for other necessary support services are very small. I urge the Legislature to look favorably upon our budget request, which was submitted in detail to the Appropriations Committee.

## Unified Judicial System Budget Allocation



## BUSINESS OF THE SUPREME COURT

The Supreme court continues to be very busy. In 1991 we disposed of 421 cases. Additionally, we entered 235 non-dispositional case orders, which although not "full blown" formal appeals, require extensive reading by each justice, as well as formal discussion and action at our bi-weekly conferences. Additionally, we considered and adopted a large number of rules dealing with a variety of subjects from civil procedure to establishing trust accounting reporting requirements for attorneys.

Since the majority of the public is aware only of our written opinions and monthly court terms, it is perhaps difficult for them to fully appreciate the constant work needed to fulfill our primary obligation of giving each case before us serious, important, academic consideration. Consider that every month each justice reads about 2000 pages of legal briefs plus all of our own individual writings (generally several drafts before they are in final form) and those of the other justices, innumerable pages of case authorities, routine papers for our bi-weekly conferences, and large quantities of materials required for routine administrative matters.

I am proud of the members of this Court and their dedication to the serious business undertaken by us. The quality of our opinions equals or surpasses that of any appellate court in the country, even those whose caseloads are significantly lower than ours.

## CIVIL AND CRIMINAL CASELOAD STATISTICS

We have highly talented, dedicated and hard-working circuit judges and law trained magistrates in this state. I am proud of them! The statistical data demonstrates how hard they are working. I am proud to advise, too, that the circuit judges are promptly disposing of the cases they hear. Our rules require them to report to me, on a quarterly basis, any cases that are or were under advisement for over 90 days. Generally there are but a handful of cases reported, and often there are none. Considering the number of cases heard, that is most admirable.

## JUDICIAL SALARIES

I would be remiss if I did not commend to you the need for improved salaries for our South Dakota judges. South Dakota judges currently rank 49th when compared to their counterparts in other states. In line with Governor Mickelson's goal of raising personal income and state employee salaries of South Dakotans to 35th in the nation, the commission on Salaries of Elective State Officials has recommended that over the next four fiscal years, the salaries of elected officials be raised by 5% in addition to the annual salary adjustment received by all state employees. I applaud the Governor and the Commission for recognizing that dedication alone cannot be counted on to attract the best and brightest. Our mission of providing the people of South Dakota a judiciary of the highest quality demands that we do everything in our power to attract and retain the best talent. I urge the Legislature to look favorably upon the recommendations of the Commission and the Governor.

## JUDICIAL ELECTION COMMITTEE

Last summer I appointed a committee to review, study and make recommendations to the

Judicial Conference of possible changes in the manner in which circuit judges are elected. It was a broad-based committee comprised of four circuit judges (Davis, Hurd, Gilbertson and Steele), three lawyers (Charles Kornmann of Aberdeen, Darla Rogers of Onida and David Gerdes of Pierre), two legislators (Senator Stoick and Representative Beddow) and two lay people (Philip Mayor Nancy Ekstrum and Larry Fuller, publisher of the Argus Leader.)

Following a series of public hearings, the committee made several recommendations. The recommendation subject to the most attention and controversy is that our constitution be amended to provide for a retention election for circuit judges to be conducted in the same manner as that for supreme court justices. Under the current election process, all circuit judges stand for re-election on a popular non-political ballot every eight years. There is no process to assure the electorate that candidates in a judicial election are qualified to hold that office.

After spirited debate and consideration of all the issues, the Judicial Conference accepted this recommendation by a close vote. Appreciating the interest and concerns the State Bar would have with such a proposal, the Judicial Conference voted to defer final action in order to obtain the recommendation of the Bar at its annual meeting in June 1992. Thus, the issue will not be presented to the Legislature this year.

The Committee also recommended that the Judicial Qualifications Commission publicize the names of candidates determined, as a preliminary matter, to be qualified and likely to have their names submitted to the Governor. The Committee felt this would give the public an opportunity to comment. This, too, was a controversial proposal. Several judges felt publicizing the names would have a chilling effect on applicants who did not want it publicly known that they were interested in leaving their private law practices or other employment to join the judiciary. By a very slim margin, the Judicial Conference accepted this recommendation and communicated that request to the Judicial Qualifications Commission.

Third, the Committee recommended that shortly before the retention election the Judicial Qualifications Commission should conduct a poll of lawyers, and perhaps others as determined by the Commission, as to the qualifications and abilities of judges and should make the results public. The Conference strongly opposed this recommendation, expressing concern over the absence of appropriate logistics and guidelines under which such a poll would be conducted.

Finally, the Committee recommended that the present law be changed so only residents of a circuit would be eligible for appointment to a circuit judgeship vacancy in that circuit. They felt residency should exist at the time application is made to the Judicial Qualifications Commission. By a six vote margin, the Conference rejected that recommendation.

It is obvious this Committee undertook the study of a very controversial subject. The election of judges is very important, more to the public than to the judges themselves. I hope all citizens are interested in having only qualified lawyers become judges -- they should insist on it. Judges deal with all the most important affairs of life -- yes, even life itself -- and only qualified people should hold those positions.

Time will tell whether we will be recommending a change to you. In the meantime, we should all

give it serious consideration. At the very least, we owe a great debt of gratitude to the Judicial Election Committee for their interest, effort and fine work. They have performed an important duty for the citizens of this state.

## A LOOK TO THE FUTURE

Most of my message to this point has dealt with the present and the past. While important, it is incumbent upon us to also consider the future and not just the immediate future, but years into the next century.

We have a modern judiciary. You undoubtedly recall that court reorganization occurred as the result of a constitutional amendment passed in the 1972 general election. Most of the laws implementing the UJS were passed in the 1973 Session of the Legislature. Reorganization was not actually implemented until January 1975.

Nearly 20 years have passed since our courts were reorganized into this wonderful, effective unified system. It has served the judiciary and state well, and will continue to do so in the future. However, changes periodically need to be considered. In the years since 1975 the state has experienced significant demographic changes. There have been many rapid advancements in the field of technology. All of these have and will continue to impact the judiciary. We must be prepared to respond.

I know many other state judiciaries have created commissions or task forces to begin long-range planning efforts for their court systems. Their goals are to look to the needs of the court system beyond the year 2000 and to predict the role of the courts in the future, as well as to seek solutions to present and future problems. I suggest that South Dakota should now consider such a movement.

The South Dakota Judiciary, in my opinion, needs to be involved in some long-range planning efforts. Hopefully, in the next year or so we can consider the creation of a futures task force to examine not only the quality of justice, access to courts, public education and cost of litigation, but also to review the structure of our court system and explore future needs of the judiciary. We will also need to consider the likely impact of social trends, as well as demographic changes, on the future of the criminal, domestic and civil caseloads of the future.

I envision a broad-based task force, comprised of judges, lawyers, legislators, educators, judicial administrators and citizens. We have an abundance of talent within our state which gives us the ability to tap innumerable resources to assist in such an important project.

This is something I will be discussing with my colleagues on the Supreme Court. Hopefully, I will be able to give you something more definitive in my next message.

## CLOSING/SUMMARY

The foregoing are just the highlights of our continuing efforts to improve the judiciary. We have been involved in many other important issues I could relate, but that would make this message too lengthy. Presumably you may have questions or want more detailed information concerning

the judiciary and its activities. I extend to you an invitation to contact me at any time. I welcome the opportunity to tell people about our judiciary!

Please accept my sincere best wishes.