

State of the Judiciary
Chief Justice Robert A. Miller, South Dakota Supreme Court
Written Message to the Legislature
1994 in Pierre, South Dakota

Governor Miller, Legislators, Constitutional Officers, fellow Justices and Citizens:

It is my pleasure to submit the State of the Judiciary Message together with the accompanying annual statistical report of the South Dakota Unified Judicial System (UJS) for the period commencing July 1, 1992 and ending June 30, 1993.

Of course the single event which will always stand out in my memories of the year 1993 occurred in April when my good friend, Governor George Mickelson, and seven other South Dakotan friends tragically lost their lives. I personally have felt a great loss and know that the entire judiciary shares my sorrow and expression of sympathy to all the families. Although it was a great honor for me to swear in Governor Miller, whom I am proud to have known and called a friend for nearly 30 years, I hope to never again perform the duty under such harrowing circumstances.

During the past year, the judiciary was met with many challenges and I am proud to say that by revising policies, consolidating efforts, reallocating resources, applying new technology, and through discussions and cooperation with the executive and legislative branches, the excellent condition of judicial operations was maintained. Indeed, the judicial branch fulfilled its constitutional and statutory responsibilities to provide comprehensive and effective legal services for the courts' constituents.

I would like to tell you a little about where we are today and what we have done over the past year to get to where we are.

TECHNOLOGY

This year saw further enhancement of the existing UJS technological network. At the end of 1993, we had 28 of the 64 counties operating the on-line Criminal Justice Information System (CJIS). In these 28 on-line counties, computer terminals have been installed in clerk of court offices allowing the clerks to keep the master database in Pierre updated with current information. The largest 14 counties have terminals right in the courtrooms so that information can be entered as the judge is pronouncing sentence. The sentencing information is in turn shared with various law enforcement agencies through the CJIS.

In Minnehaha County, the huge, custom-printed court calendars used for many years to schedule the circuit's judicial activities were replaced by a computer-based calendar system. This computerized scheduling system allows court and judges' schedules to be viewed and updated from any judge's or administrative staff work station and has resulted in an enormous time savings to the circuit. The scheduling system worked so well in Minnehaha County that it was later installed in Pennington County. In addition to the computerized scheduling system, a full-page optical scanner is being used in Rapid City to prepare and customize jury instructions, cutting secretarial time in half.

The Supreme Court researched and along with a circuit judge pilot tested a state-of-the-art computerized research tool which has been incorporated into the existing computer network. The Michie Company has produced a compact disc (CD-ROM) containing the entire contents of the South Dakota Codified Laws as well as the entire text of every South Dakota Supreme Court opinion since 1965. Using this CD-ROM for research activities saves an enormous amount of time.

After several years of system design, programming and testing, the UJS Automated Accounting System will be ready to pilot in Hughes County in the spring of 1994. Over the past 10 years, the court system caseload has increased by about 26%. Child support payments alone have increased from \$2.3 million in FY 1977 to \$7.1 million in FY 1983 to \$16.2 million in FY 1993. While this \$16.2 million is the single largest category of collections handled by our clerks' offices, I would be remiss if I did not mention that the receipts for FY 1993 totaled \$34,394,000. The current accounting system, which is maintained by hand in our clerk of court offices, was riot designed to handle this type of volume. An automated, computerized accounting system is long overdue

and will free the clerks to perform other duties which will in turn obviate the need to hire new people to keep up with the ever-increasing caseload. While computers aren't necessarily eliminating positions, they do allow us to perform more tasks. An additional benefit of the automated accounting system will be the ability to standardize the collection of delinquent accounts.

The UJS is presently working with the Division of Criminal Investigation (DCI) and Department of Game, Fish and Parks (GFP) to automate criminal case sentence reporting through CJIS so that when a clerk enters a sentence on a felony conviction, that conviction will automatically update the DCI rap card and the GFP Law Enforcement Record, when applicable. A similar interface process is already in place for driver's license records in the Department of Commerce, which are automatically updated whenever there are traffic convictions.

TELECOMMUNICATIONS

One area of technology in which I believe there will be tremendous growth in the future is the use of interactive television (the Rural Development Telecommunications Network or RDTN) for conducting court business. Already we have held some very productive teleconferences via the RDTN, allowing our employees to spend less time away from their jobs and saving travel costs.

An even more exciting "first" took place in Aberdeen when Presiding Judge Dobberpuhl used the RDTN to conduct an arraignment and sentencing hearing for a state penitentiary inmate in Sioux Falls. Using RDTN for the 25-minute hearing saved the county considerable money for transportation, food and lodging for the prisoner, plus two days of a deputy sheriff's and a guard's time and two hours of a judge's time. It was reported that using the ROT Network for this arraignment and hearing saved Edmunds County approximately \$2,000.

I envision adapting traditional courtroom operating methods to take advantage of emerging technologies, including telecommunications, as soon as these technologies become economically feasible and can be incorporated into our budget. As the state's RDTN system expands into additional communities, the potential for significant cost savings for local counties and the state's court system increases.

GENDER FAIRNESS IN THE COURTS COMMITTEE

Being concerned about the possibility of gender bias in our respective judiciaries, Chief United States District Judge John B. Jones, State Bar President Greg Eiesland, and I established a joint Gender Fairness in the Courts Committee. It is composed of citizens, lawyers, educators and court staff and has been asked to inquire into either the existence of gender bias or the perception of such in the courts. The committee will report back the results of its inquiry along with any recommendations it might have to alleviate any gender biased conduct by South Dakota judges, attorneys or court personnel, or perceptions thereof.

STRATEGIC PLANNING

As I mentioned in previous Messages, I believe that we, the South Dakota judiciary, need to take affirmative action to secure the future of the justice system. One way we can do this is by undertaking long-range strategic planning which will allow us to look ahead to the demands on the courts in the twenty-first century. The Supreme Court has determined that strategic planning will allow us to make enlightened and resourceful policy decisions about where the courts should be in the future and how we should get there. Assuming funding is available, we will be establishing a committee which will solicit organizational ideas and begin examining such areas as people's access to justice, court productivity, alternative dispute resolution, and court structure. I perceive this to be a broad-based committee, with members representing a cross-section of judges, lawyers, legislators, and other concerned citizens. This committee will be given the opportunity to learn more about the judiciary and to have input in its future.

FISCAL ISSUES

The judicial branch of government is a very small part of state government as a whole -- we are fewer than 431 of a total 13,950 state FTEs. Our gross budget is less than 1.2% of the total state budget. In the last fiscal year, our total expenditures were about \$18,700,000. In that same fiscal year, the courts collected \$34,349,000 in fines, costs, fees, restitution and child support. As you

well know, all fines go to the schools and other local governments. Thus it is clear that the UJS places a very small net burden on the state's budget.

WORK OF THE CIRCUIT COURTS

While we comprise only a small portion of the state's budget, our personnel, both judges and nonjudges, carry an increasing workload over which we have no control, yet for which we bear a duty to provide prompt, economical and efficient justice. In the past year, 211,290 cases were filed in our circuit courts. (More statistical data and details of the judicial caseload for the past year are contained in the Annual Report of the Unified Judicial System which follows this Message.) Despite this heavy caseload and ever-expanding administrative and judicial responsibilities, I am proud to report that our court system has maintained the status of being generally current in case disposition. The predominant reason for this is the outstanding ability of our judges and their deep sense of dedication to duty and commitment to professional excellence.

PERSONNEL

There have been several changes in the membership of our trial bench. We were joined this year by John Bastian, who was appointed to the Eighth Judicial Circuit Bench in Belle Fourche to replace retiring Judge Robert Tschetter. We currently have vacancies in the Fifth and Sixth Circuit due to the retirement of Judges Donald Heck in Kadoka and Leland Berndt in Mobridge. In addition, there is a vacancy in the First Circuit due to the resignation of Yankton Judge Jay Tapken. Although they have not yet taken office, Governor Miller has appointed Jack Von Wald of Selby to the Fifth Circuit bench, Kathleen Trandahl of Winner to the Sixth Circuit and Arthur Rusch of Vermillion to the First Circuit. We welcome these new members of the judiciary and send our best wishes with Judges Berndt, Heck and Tapken. We will miss them.

SUPREME COURT

In addition to our regular terms in Pierre, the Supreme Court traditionally holds two sessions outside the State Capitol to give citizens and school children throughout the state an opportunity to observe the state's highest court and to improve their understanding of the appellate process. In March we made our annual trip to the U.S.D. Law School in Vermillion and in October we were graciously hosted by Mount Marty College in Yankton where nearly two thousand high school students from South Dakota, Iowa, Nebraska and Minnesota attended one or more of the Court's sessions.

The tremendous volume of work generated by the large number of appellate filings and corresponding number of written opinions continues, and we do not anticipate it will abate any time in the future. Additionally, during the past year the Court considered over 300 intermediate motions, supervised the admission of 109 new attorneys, took disciplinary action against 12 attorneys, and adopted 22 new Supreme Court Rules. In order to provide prompt access to the circuit courts of the state, I made 68 appointments temporarily transferring circuit judges from one circuit to another. I would be remiss if I did not here express my gratitude to those judges who are always willing to take on yet another case to assist with the business in another circuit.

Although I will mention more about them in the future, I would here like to point out that this will be the last year on the Court for two of my colleagues. Justice George W. Wuest and Justice Frank E. Henderson will be retiring sometime before next January. They both have long, distinguished careers in serving their nation and state in a variety of governmental positions before joining the judiciary as circuit judges and later as justices of this Court. I am honored to have served with them and am proud to call them my friends.

JUDICIAL SALARIES

If we are to continue to recruit highly qualified candidates to replace court vacancies, legislative passage of a judicial salary improvement statute is a must. Your consideration and your assistance in passage of the legislation pending before you will ensure the competency of sitting judges and the continued excellence of the justice delivery system.

COURT SERVICES

During the past five years the number of juveniles placed on probation has increased 17%, from 625 to 731, and the number of adult felons placed on probation has increased 30%, from 803 to

1,045. These are persons who might have otherwise been institutionalized at a much greater cost. Similar increases have been experienced in the other fourteen services that our court services officers perform for the state. The continuing increase in numbers of probationers challenges the capacity of our court services officers to provide both the quality and quantity of services they are otherwise qualified to provide.

As always, we in the judiciary -- together with the legislative and executive branches continue to give significant attention to the needs and rights of children. Our state's young troubled and troublesome juveniles and their families continue, on an ever-increasing basis, to experience difficulties that require the consumption of our alternative care program budget. Early on during this fiscal year we recognized a potential shortage in our budget and we moved quickly to alleviate a much larger shortfall. We immediately took steps to curtail spending and maximize available resources. The Supreme Court implemented nine policies that already have served to moderate our rate of expenditures without being harmful to our state's adjudicated youth. This is being accomplished by restructuring our court services officer responsibilities emphasizing the utilization of additional community-based alternatives, requiring more accountability from our providers, accountability and increasing management and judicial accountability.

TRIBAL-STATE RELATIONS

We continue to improve our working relationship and communications with the tribal courts. The on-going Tribal-State Judicial Liaison Committee comprised of three state judges and three tribal judges continues to meet and seek ways to mutually help each other through cooperative efforts to provide our respective jurisdictions with the best judiciary possible.

As part of our effort to continue the process of mutual help and understanding through communication, the judges of the tribal courts were once again invited to participate in the annual judges' in-state training in April and the court services officers' annual fall training. I am pleased to report that tribal court representatives participated at each event. Additionally, there continues to be an on-going sharing of facilities and a movement towards more joint agreements for supervision of probationers.

This past summer our Systems Development Office was able to provide technical assistance to the Rosebud Tribal Court. We shared programs with their administrative staff which enabled them to track small claims records and to automate their register of actions. In return, the Tribal Court Administrator in Rosebud has invited us to observe their imaging project. We welcome these opportunities to share our knowledge and experience with our colleagues in the tribal courts. Working with the tribal judges and their staffs has been, and continues to be, a most gratifying experience.

In September, Judge McKeever and I were invited to attend a leadership conference in Santa Fe where we shared our experiences with the Tribal-State Forum Project with several other states hoping to undertake similar projects, or at least to begin a meaningful state/tribal court relationship. The Tribal Court Handbook and Tribal-State Forum Report developed as a result of South Dakota's Tribal-State Forum Project were in great demand from other states who are looking to the South Dakota judiciary for leadership in the area of open communication and harmonious relations between tribal and state courts.

CONCLUSION

As I stated at the outset, I believe the third branch of government is in excellent condition. Credit for this belongs to the UJS personnel whose dedication and hard work resulted in the accomplishments of the past year. I look forward to working with you to further improve court services in the future. As always, I would be pleased to have the opportunity to talk with each of you individually to learn your views on court issues and to ask for your suggestions for improving our judicial system. I also invite you to visit any of our county clerk of court offices or circuit courts. Our staff are always happy to show you around and describe their duties and the services available.