

State of the Judiciary
Chief Justice Robert A. Miller, South Dakota Supreme Court
Written Message to the Legislature
1995 in Pierre, South Dakota

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

I am pleased to report that South Dakota's unified judicial system, the UJS, is meeting the challenges of today and preparing for the challenges of tomorrow. Our courts function effectively, and cases are handled in a timely fashion. Still, efficient operation of the courts requires that new opportunities be studied and constant improvements made in order that the judiciary continue to be of the greatest service to the most people.

PERSONNEL CHANGES

The past year brought the retirement of two long-time justices of the Supreme Court. After serving more than 16 years on the Court, Justice Frank Henderson retired in September 1994. Governor Miller appointed John Konenkamp, Presiding Judge from Rapid City, as Justice Henderson's successor. Just a few weeks ago, Justice George Wuest retired after thirty years on the bench, ten of them on the Supreme Court. We wish Justices Wuest and Henderson health and happiness in their well deserved retirement.

At the circuit level, too, there have been several changes. In September, Milbank attorney Ronald Roehr was appointed by Governor Miller to replace retiring Third Circuit Judge Dale Bradshaw of Watertown. In the past year I appointed three new presiding judges: in the First Circuit, Judge Arthur Rusch of Vermillion succeeded Paul Kern, who resigned as presiding judge; in the Third Circuit, Judge Rodney Steele of Brookings succeeded retiring Presiding Judge Dale Bradshaw; and in the Seventh Circuit, Judge Merton Tice replaced Justice Konenkamp. Further, the Court created an additional magistrate judge position in the Second Circuit, which was filled by Peter Gregory of Sioux Falls.

A few weeks ago, our State Court Administrator left our branch to join Governor Janklow's Cabinet. Mr. Geraets was an outstanding judicial branch administrator. His resignation is a great loss to the judiciary and to me personally. All of us in the UJS wish him well in his new career.

SUPREME COURT

In 1994 the Court disposed of a near record 470 appeals of right, original proceedings and intermediate appeals. The number of intermediate motions requiring action by the Court did reach an all-time high of 372. While filings did not set a new record, they continued at near record levels in 1994.

In addition to its annual February Rules Hearing, the Court held a special Rules Hearing in September to consider several rules involving the discipline of attorneys. As a result of these hearings, the Court adopted 13 rules and three orders approving rule changes.

The Court supervised the admission of 109 attorneys in 1994, and I regret to report that a record number of attorney disciplinary actions were filed, many of which are still in various stages of adjudication. We did disbar two lawyers, suspend three and publicly censure two.

In a continuing effort to provide prompt access to the circuit courts, I made 103 appointments temporarily transferring circuit judges from one circuit to another.

The Court's annual trip to hold a term of Court at the Law School at USD was made in March. We thank Dean Vickrey and the law school staff, faculty and students for their fine hospitality. In October the Court held a term at SDSU in Brookings. President Wagner and the administration, faculty and students, as well as the city of Brookings and its business community, were marvelous hosts. Our sessions in Brookings were "standing room only" and, unfortunately, some area high school students had to be turned away. These trips outside our Capital City continue to draw ever larger audiences of high school and college students and members of the communities at large. They provide the justices a wonderful opportunity to meet and converse, one on one, with our young people and citizens.

WORK OF THE CIRCUIT COURTS

The steadily increasing caseload trends we have seen in recent years show no sign of abating in the foreseeable future. This past year, circuit court activity has continued to show growth in nearly every category. On the civil side, general filings have grown 18% to 10,967 cases. In addition, divorce filings have increased by 12.5%; small claims by 5%; probate by 10.6%; and juvenile filings by 16.5%. All other civil filings grew by 3%. Overall, total civil filings have increased by 6.4% to 53,847 cases, a new high in the number of civil cases filed in a fiscal year.

In addition to continually increasing case filings, the number of civil and divorce trials has increased at an even greater pace, from 1248 trials in FY 1993 to 3354 trials in FY 1994 -- a 169% increase!

On the criminal side, it appears overall case filings have declined by 3.8%. However, there has been a shift from less serious to more serious crimes; and increased felony caseload filings generally cause increased adjudication activity for the court. (Additional and more detailed statistical information and an outline of court structure and operations may be found in the attached 1994 Annual Report.)

Our judges have always been good about lending a hand when there's a need in other circuits or when there are disqualifications on the Supreme Court. Upon the vacancy created by the Justice Konenkamp's appointment to this Court, I assigned all Sixth and Eighth Circuit judges to assist the Seventh Circuit judges. With the burdensome workloads our circuit and magistrate judges carry and the additional assignments they willingly accept, that their caseloads are current is a real tribute to their dedication and hard work, and I salute them.

COURT SERVICES

Being ever mindful of the increasing costs of incarceration of both juvenile and adult offenders in public and private institutions, as well concerns for the safety of our state's citizens, judges and court services officers have placed greater emphasis on utilizing community-based alternatives. During the past five years the number of juveniles ordered to probation has increased 85%, from 1,403 to 2,754, and the number of adult felons ordered to probation has increased 26%, from 1,017 to 1,877. Our concern for victims, in part, is shown in the considerable increase in the amount of restitution returned to victims. During this period, payments to victims of crimes in South Dakota increased 98%, from \$917,106 to \$1,814,120. Similar increases have been experienced in the other 13 services performed by our court services officers. While the continuing increase in community-based services provided by our staff is admirable in terms of providing our citizens with safe alternatives to expensive incarceration, our personnel resources are less than adequate to continue such increases.

In a continuing effort to provide the least expensive, most appropriate alternative care services for youth who must be removed from their family homes for treatment, we have engaged in further cost shifting by increasing our use of other community-based options. For example, two years ago 55 families were placed in home-based services as an alternative to placing their adjudicated youth into a private residential treatment facility or into a Department of Corrections institution. Last year we were able to place 96 families into home-based services, thus saving thousands of dollars. Currently, we are embarking upon further cost shifting by providing our court services officer placement coordinators with wraparound training. Through this new alternative, provided by the leadership of the Department of Human Services and five community mental health centers, we are positioned to use these options as another alternative to the more expensive institutionalization of adjudicated youth. Both the Departments of Social Services and Human Services have served our youth well by their cooperation with our judges and court services officers.

Still, there remain those youth who require treatment in the private sector or in one of the Department of Corrections' institutions. Because they have been removed from their homes and their communities for an extended period of time, most of these youth need an aftercare program for reunification purposes. Aftercare case service plans must differ based upon the individual needs of the youth and the youth's family as well as the quality of treatment provided by the institution. Most of the youths aftercare needs can be met by the services provided by their supervising court services officers. Others need chemical abuse/dependency treatment, home-based services, independent living preparation, or perhaps out-patient family therapy. This caseload is also increasing! During FY 93, 161 youths received our aftercare services; in FY 94, 245 youths required this service.

During 1994, the UJS, in collaboration with the Department of Corrections, implemented a Risk and Needs Assessment System. It is a three component instrument designed to predict recidivism, identify public safety/custody issues, and identify individual treatment/service needs of youth considered for commitment to a Department of Corrections institution. This automated system will produce seven reports useful for planning and treatment of adjudicated youth. pilot tested. Currently the system is being

Just as one person in an organization cannot take credit for the organization's success, we in the

UJS cannot take sole credit for what we have been able to accomplish for our adjudicated youth and their families. It is through what we call the Three "Cs" -- cooperation, coordination and collaboration -- with the Departments of Social Services, Human Services, Corrections and Education and Cultural Affairs; Youth and Family Alliance; and the State and Local Interagency Coordinating Network Council that we are able to fulfill our responsibilities to you and to the other citizens of South Dakota.

COURT TECHNOLOGY

We in the judiciary strive to keep abreast of current technology to make the operations at the state and local level more efficient. In October, Justice Konenkamp and staff from the UJS Systems Development Office attended the fourth Court Technology Conference (CTC4) sponsored by the National Center for State Courts. CTC4 is the only national conference devoted exclusively to technology in the courts. Justice Konenkamp and staff attended sessions which demonstrated how technologies such as imaging, electronic filing, and personal computer video-conferencing can improve court productivity and effectiveness. These are exciting new ideas we will consider using in future development projects.

The following are but a few of the technology-based programs in which we are involved in our efforts to keep pace with the need for speedy and accurate information.

In 1994, the UJS finally began pilot testing our long-awaited automated Judicial Accounting System (JAS) in the Hughes and Stanley County Clerks of Court Offices. This automated, computerized accounting system was developed over a period of several years to help the clerks of court keep pace with the ever-increasing workload that has caused them to spend more and more time performing accounting procedures. Last year our clerks of court offices handled nearly \$37 million in moneys, yet in every county except Minnehaha, it was done entirely by manual means. The JAS eliminates the need for clerks to manually perform accounting duties, including the need to write receipts and checks, make ledger entries, and do the mandatory reconciliations and monthly reports.

In 1995, the clerks' offices in Beadle, Meade, Minnehaha, Brown and Pennington Counties will transfer their manual accounting books onto the computer system and in 1996, five additional clerks' offices will be brought on line.

As of December 1994 the UJS has 32 counties operating on the on-line Criminal Justice Information System (CJIS). On-line CJIS allows clerks of court to immediately enter criminal case filings, scheduled hearings, sentence and other relevant information into a database and then access that information from a computer terminal rather than from case files. After the data has been entered into the database, it can be managed by the clerk to very quickly and efficiently produce documents like court calendars and bench warrants. In 13 counties there are terminals located in the courtrooms to provide the clerks and judges immediate access to court records. During calendar year 1994, networks in Minnehaha, Pennington and Brown Counties were upgraded as part of a long-range plan to join all circuit offices into a state-wide Wide Area Network (WAN). Presently, tying our Local Area Networks (LANs) to a statewide WAN is cost prohibitive, but we are now in a position to be able to proceed with WAN connectivity should

costs become justifiable.

One of the other state-of-the-art technologies with which we are involved is the interactive audio/video link, the Rural Development Telecommunications Network (RDTN). I foresee a tremendous potential for increasing future usage of the RDTN for judicial proceedings, especially when the current 15 telecommunications studios are expanded to include even more sites. We have held numerous meetings, and some court proceedings, via the RDTN, and have been most pleased with the results. The cost of an RDTN meeting is a fraction of the cost for transportation, food, and lodging, and more importantly, down-time is minimal.

EDUCATION/TRAINING

The UJS continues to provide training and educational opportunities for our judges and non-judicial employees as part of our ongoing commitment to maintaining a vibrant, innovative and responsive education program. Our annual in-state training program for justices, judges and magistrate judges attempts to keep judicial personnel abreast of the constant changes in the law, and offers them the most current and up-to-date information. Clerks of court are offered annual workshops offering a broad range of educational topics to assist them in performing their duties. In order to accommodate deputy clerks, who find it difficult to be away from their offices, regional training sessions are held each year in various locations around the state. These outreach training programs continue to be very successful. Regular training events are also offered to court services officers and court reporters on an annual basis.

In July of 1995, the South Dakota judiciary will be hosting the annual five-state judicial conference in the Black Hills for the supreme court justices and trial court judges of the states of North Dakota, Montana, Wyoming and Idaho. We are very excited about this event, and anxiously anticipate the opportunity to again meet and share educational experiences with members of the judiciary of these five sister states.

RELATIONSHIPS WITH OTHER BRANCHES

Although each of the three branches of government is separate and equal, I remain committed to working closely with the executive and legislative branches. I believe that close, cooperative communication between us can go a long way towards diffusing tension and fostering mutual understanding. I was most pleased when the judicial branch was invited to participate in the November new legislator orientation program. That is the second time we have been invited to participate in this program, and I thoroughly enjoyed both occasions. I only hope my remarks at that time were helpful. Some of you may recall that during my first term as chief justice I began inviting legislators serving on the judiciary and appropriations committees to attend the judicial conference. Also, I routinely assign judges to be my liaison with interim legislative committees.

Though we have separate powers, all three branches of government enjoy a unity of purpose and concern, for we are all accountable to the citizens of South Dakota. I sincerely hope our lines of communication remain open and that we continue to meet and talk about the issues that confront us all.

FINANCES

We in the judiciary understand fiscal realities, and appreciate the difficulties facing our state. Yet, in the scheme of things, we are a very small part of the financial picture -- a mere 1.2% of the total state budget. Over the years, we have employed a fiscally conservative approach and have always exercised great fiscal restraint in our budget requests. Our total expenditures were about \$20,200,000 in Fiscal Year 1994. At the same time, our courts collected \$36,840,000 in fines, costs, fees, restitution and child support. All fines, of course, go to the schools and other local governments.

GENDER FAIRNESS COMMITTEE

As you may remember, last year I advised that Chief U.S. District Judge John B. Jones, State Bar President Greg Eiesland, and I had established a joint Gender Fairness in the Courts Committee to inquire into the existence or perception of gender bias in all the courts of our state. The committee completed its inquiry and presented its report and recommendations in November. They performed a difficult task and rendered an important and meaningful report. The Supreme Court will address the problems and recommendations identified by the committee, and will act on the committee's recommendations; this is an area I feel should involve the new justice who will be joining our Court in the near future.

STRATEGIC PLANNING

In past State of the Judiciary addresses, I have stressed my belief that we in the judiciary must undertake long-range strategic planning in order to establish a plan -- a vision for the future, and that this strategic planning for the future of the courts in South Dakota must be a priority. Of course, we must not discount nor lose sight of the value of the court system as it exists today; but at the same time, it is our duty to the citizens of the state to be a forward-looking judiciary, seeking always to improve the delivery of justice.

I am planning a spring retreat of the justices. At that time, we will bring together key staff to discuss important issues within the judiciary, and, among other things, we hopefully will develop a method for futures planning in the South Dakota judiciary.

CONCLUSION

As I continue with my second term as Chief Justice, I assure you that although the state of justice in South Dakota is not perfect, it is ever improving; and we in the judiciary will continue to meet the challenges which come before us.

Please feel free to contact me at any time. My staff and I will be available to you throughout the Session to discuss court system issues with you.

ROBERT A. MILLER
Chief Justice