

State of the Judiciary
Chief Justice Robert A. Miller, South Dakota Supreme Court
Written Message to the Legislature
1996 in Pierre, South Dakota

Governor Janklow, members of the Legislature, Constitutional Officers, fellow Justices and Friends:

It is again my pleasure to report to you that this state's judiciary is healthy and vibrant. In addition to continuing the judicial work in an efficient manner, we are undertaking a number of various new endeavors that are exciting and challenging. Most importantly, we are continuing to do our utmost to assure the citizens of this state that their work is of paramount concern to the Unified Judicial System (UJS).

PERSONNEL CHANGES

We are most pleased with the addition to our Court of Justice David Gilbertson from Sisseton, who was appointed by Governor Janklow to succeed Justice George Wuest. Justice Gilbertson brings a wealth of experience from his extensive law practice and several years as a circuit judge.

Our judiciary suffered a great loss in 1995 through the death of our good friend and colleague, Circuit Judge R.D. Hurd of Sioux Falls. He was a very special person, with many unique talents. Those of you who knew him will appreciate what I mean when I say, "There will never be another R.D."

On a more pleasant note, long-time Circuit Judge Paul Kern of Lake Andes retired and is among the ranks of those seriously utilizing the golf course and hunting fields. We wish him good health and a very happy retirement.

We welcome Judge Lee Tappe of Platte who succeeded Judge Kern and Judge Peter Lieberman of Sioux Falls who was appointed to replace Judge Hurd. Both of these judges have extensive experience and are fine additions to South Dakota's judiciary.

We are also pleased to welcome full time Magistrate Judges Patricia Riepel of Sioux Falls and Shawn Pahlke of Rapid City. Judge Riepel succeeds Judge Lieberman. Judge Pahlke succeeds Judge Jack Klauck who retired after many years of fine service to our state's judiciary. The experience and talents of Judges Riepel and Pahlke will serve them well in the two busiest courts in our state.

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.

Finally, although several of you have met him, I want to take this means to formally introduce Michael Buenger who took office as our State Court Administrator last June. Mike and his wife Caroline, both lawyers, moved here from Ohio where Mike was court administrator for Ohio's

Second District Court of Appeals in Dayton. In addition to overseeing the day-to-day operations of the busiest multi-county appellate court in Ohio, Mike was chief legal counsel and chief of staff to the court. Mike has also taught government, history and economics at a Dayton high school, served as a law clerk and legal intern, and was on the adjunct faculty of two institutions of higher education in Dayton.

Mike's education, training and background, coupled with his unique insight, talent and skills, allowed him to "hit the ground running." He is doing a marvelous job in his new position. I know you join me in welcoming Mike and Caroline to our state, and I am sure you will enjoy associating with him as he assists me in administrating the Unified Judicial System.

SUPREME COURT

In 1995 the Supreme Court's caseload continued apace without either a significant increase or decrease in filings. As in past years, the Court has continued to maintain a current status on cases and I am pleased to report that we have no backlog of cases. In addition to thirty-two case conferences, the Court met in conference another twenty-five occasions to consider 280 intermediate motions.

One hundred ten applicants were admitted to the Bar in 1995 and are now authorized to practice law in South Dakota. Eight attorney discipline actions were concluded this year with three attorneys being suspended from the practice of law and three other attorneys being disbarred.

Three terms of Court were held outside of the Capitol this year. As usual, in March we sat at the Law School in Vermillion. In April we held our term in the Riggs High School theater in Pierre, and in October we sat at Dakota State University in Madison. As in past years, our hearings were very well attended with a capacity crowd at each event. We are particularly pleased to see so many area high school students. Holding court in various parts of our state is always an exciting time for us because we have the opportunity to visit with a good variety of people and they have the opportunity to see the Supreme Court at work.

CIRCUIT COURTS

As the statistical data in the attached annual report reflects, our trial courts continue to experience record case filings and suffer under an ever burgeoning mound of paper. The increases in cases we have witnessed over the past several years continue to strain our resources and force us to make more strategic decisions about the placement of personnel and resources. In order to ensure that limited resources are placed properly, we initiated a position review process that requires that all vacancies be examined to determine where that personnel resource might best be placed. Also during 1995 we instituted a more sophisticated statistical filing system to capture important data that had not been accounted for in the past. As a result, we now have a better picture of the true workloads of many of our circuits. This new system will enable us to view with greater sophistication case filing trends in the state and will assist us in planning for the future.

Largely as a result of this new filing system, we are seeing for the first time the true measure to

which the citizens of South Dakota utilize their court system. On the civil side, we saw marked increases in every area except general civil actions. There was an 8% increase in probate filings and small claims actions.

In the area of domestic relations, the number of divorce petitions filed remained relatively constant. However, due to our new tracking system, we also now are able to identify and quantify the numbers of protection orders requested as well as the requests for modification of prior domestic relations orders and Uniform Reciprocal Enforcement of Support Act (URESA) filings. It is worthy of note that overall, our circuit courts handled 9,508 domestic relations filings in FY95. This number, I believe, gives a more accurate and precise picture of the volume of domestic relations matters brought before our courts.

In the area of juveniles-an area of growing concern to the UJS, state government as a whole and hopefully all the citizens of this state-we witnessed a significant increase in the number of matters filed. In FY95 there were 7,500 juveniles brought before our courts, a 30% increase over the prior year. This statistic should not only trouble those of us in the court system, but also has to be of concern to parents, educators, and every citizen of South Dakota. With increasing frequency, courts are being asked to deal with juvenile delinquency problems, abuse and neglect cases, and children in need of supervision. Needless to say, the increase has further strained our limited resources.

We also experienced a notable 8% increase in felony criminal filings in FY95. For the fifth straight year, the number of felony filings is up considerably. Likewise, Class I misdemeanor filings increased almost 4%. Overall, the picture our data paints is one of a court system that is handling growing caseloads efficiently and effectively, but also a system that is witnessing increases that are seriously straining our resources in certain areas of the state.

Fortunately or unfortunately, the public is increasingly turning to the courts to solve many of the social ills that plague our families and our society. I am proud that we in the UJS have been able to provide quality services to the public with efficiency and effectiveness. We have a long tradition of excellence in carrying out our judicial responsibilities and our administrative functions, a tradition that I intend to continue. I am, however, troubled by what the data suggests and what it may mean for the future of the UJS and the people of South Dakota. Clearly, we will not be able to provide the same level of service that the public has come to expect without adequate resources to do so.

COURT SERVICES

If there is one area of UJS operations that has been impacted more than any other by the increase in criminal and juvenile caseloads, it has been court services. Court services officers perform an ever increasingly important role in our juvenile and criminal justice systems by providing a cost-effective alternative to incarceration. Using an array of programs, courts are able to fashion alternatives to incarceration and preserve public safety at the same time. Although not every case is ripe for such court supervision, court services programs do work in a vast majority of the cases. The individual and collective success of these programs hinges largely on the dedicated work of court services officers. However, the extent to which we can continue to provide

effective alternatives to incarceration may be compromised by ever increasing demands at a time of stagnating resources.

Consider this: during FY95 17,053 people were in some type of court sponsored supervision program in this state at some point during the year. These, programs took the form of adult or juvenile probation, juvenile diversion, the adult 90-day case monitoring program, or the juvenile case monitoring program. The 70 court services officers assigned to local court sponsored supervision programs handled on average 243 cases during the year. With a court services budget of just over \$3 million, each case under a court sponsored supervision program cost the taxpayers of South Dakota a simple average of \$187, or about fifty-two cents per day per case when annualized over 365 days. Compare this to the cost of incarceration which, according to the Department of Corrections, averages approximately \$37.47 per day at the state penitentiary or \$81.77 at the Youth Forestry Camp. Clearly, an effective court services program is one of this state's most efficient means of corrections for appropriate cases.

Yet our court system, and specifically our exceptionally competent court services staff, cannot continue to provide diligent monitoring and supervision unless adequate resources are made available to handle the burgeoning caseload. We have, quite frankly, felons and serious repetitive juvenile offenders in this state who are seldom seen by court services officers because of the great caseload each officer is carrying. While our increasing use of community-based correction services is an important element in providing the public with safe alternatives to incarceration, our personnel resources are less than adequate to continue to pursue such avenues with greater diligence.

Nevertheless, we in the UJS recognize that resources are not unlimited and that we must continually find ways to work smarter with the resources at our disposal. Therefore, we continue to utilize such programs as home-based services and wrap-around programs to provide youthful offenders with a holistic program in their communities and their homes. We continue to do our very best to manage alternative care dollars to provide those youth needing out-of-home placements with the best possible treatment in the most cost efficient manner. Using our placement coordinators and internal program audit procedures, we have been able to manage more efficiently the limited dollars available for these services.

Finally, we have increased our efforts to collect and distribute restitution to the victims of crime. This past fiscal year we collected nearly \$1.9 million in court ordered restitution. Recently, we modified our Judicial Accounting System to allow for restitution tracking by court services officers by defendants' names. With the modification, court services officers can obtain real-time reports on outstanding balances so that defendants can be held more accountable for what they owe. We hope this simple modification will enable our court services officers to better utilize data in helping to collect court ordered restitution.

No one person or arm of government is solely responsible for the multitude of successes we have had in working with families, youth and others. Much of our success comes from the cooperative relationships we have forged with various executive departments, private organizations, and many dedicated people inside and outside of government. It is my hope that we will build new relationships and continue to strengthen old relationships in order to provide the citizens of South

Dakota with an exceptional court services program.

COURT TECHNOLOGY

With the addition of Beadle, Meade, Minnehaha, Brown and Yankton Counties, we now have seven clerk of court offices on-line with the new automated Judicial Accounting System (JAS). Last year our clerk of court offices handled \$38 million. JAS eliminates the need for the clerks in those offices to manually write receipts and checks, make handwritten ledger entries, and perform monthly reconciliations and reports. Initial response from personnel who work with JAS is that it saves them time and has simplified accounting procedures.

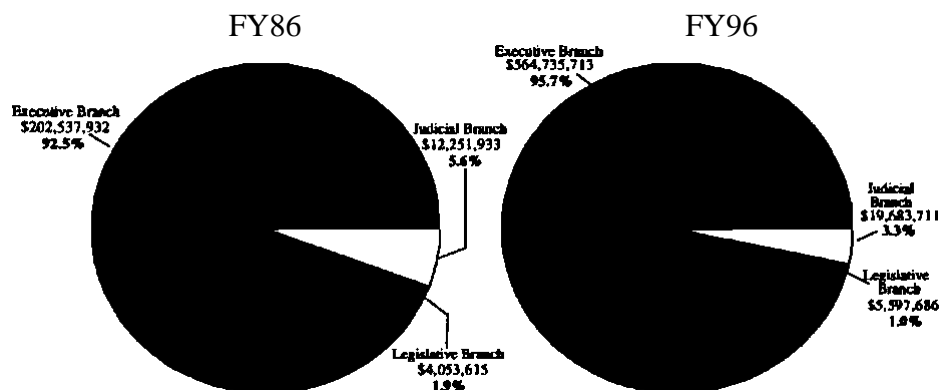
In 1996 Brookings, Pennington, Davison, Lawrence and Codington Counties will also transfer their manual accounting books onto the computer system, and in 1997 another five will be added.

FINANCES/UJSBUDGET

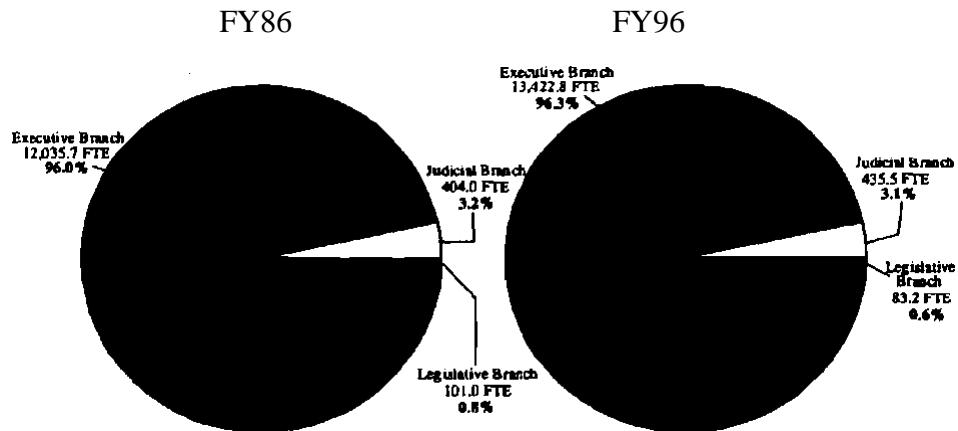
Even though the judicial branch uses only 1.2% of the overall state budget, we, like the executive branch of government, realize our state is facing difficult times. In preparing the FY97 budget request, the Supreme Court was very cognizant of changes in state government and the anticipated lack of general funds. Thus, we entered into the budget process with the goal of constructing a zero-growth budget. Not only were we able to meet this goal, but we reduced our overall budget request by approximately \$170,000 from that appropriated in FY96. This, of course, required some painful decisions, and forced us to look at a more strategic approach to using and placing resources.

I believe it is vital to review some important historical information. Although experiencing most significant increases in caseloads at all levels of the UJS, we have consistently done so without a corresponding increase in funding. In 1986 our general fund operating budget was approximately \$12.2 million. This fiscal year we are requesting a general fund operating budget of approximately \$19.6 million (excluding federal dollars dedicated to alternative care programs), all at a time when the overall state budget increased from approximately \$220 million to nearly \$600 million. In 1986 the judiciary's budget comprised about 5.6% of the state's general fund spending, whereas today it is 3.3%. Further, our staffing has remained much the same. We went from 404 FTEs in 1986 (3.2% of the state's work force) to 435 in 1996 (3.1% of the total state work force). The following charts provide a stark illustration of our minimal growth over the past ten years.

Growth of General Funds from FY86 to FY96



Growth of FTE from FY86 to FY96



This demonstrates why it was so difficult for us to present a "no growth" budget and why we are not able to realistically make the profound reductions being undertaken in the executive branch. At a time when overall state government has significantly expanded, we have not. We have consistently been frugal, effective managers of our resources and will continue that practice in the future.

We will continue to look for the most effective and efficient methods to institute justice in the state of South Dakota. We believe the FY97 budget request is reasonable and will allow the Unified Judicial System to continue to provide the people of South Dakota with the quality service they have come to expect.

JUSTICES' RETREAT

An exciting first for the Supreme Court and UJS this past year was a retreat we justices held in October. The retreat provided us with a wonderful opportunity to exchange ideas and concerns with key members of our legal and administrative staff, presiding judges, and officers of the State Bar and Judicial Qualifications Commission, and to develop a path of the future. This time away from the rush of papers provided each of us with an opportunity to stop for a few days and reflect upon the past, present and future of the UJS. We discussed a wide range of topics. At the conclusion of the retreat, each of us were reinforced with the belief that we have one of the finest judicial systems in the country. We also believe, however, that having worked hard over the past twenty years to build an exceptional system, now is not the time for complacency. It is only through proactively identifying problems and exploring innovative solutions that we will continue to provide the people of South Dakota with the exceptional service they have come to expect.

LONG-RANGE STRATEGIC PLANNING

Perhaps one of the most important items developed at the justices' retreat was the beginning of long-range, strategic planning for the judiciary. A review of my earlier annual messages will reveal that this has been one of my goals for many years.

Subsequent to the retreat, a planning council was selected. It is comprised of a broad-based cross-section of UJS officers and employees, most of whom were selected by their peers.

Initially, we are soliciting suggestions from every UJS employee. Each suggestion will be reviewed by the council for possible recommendation to the Supreme Court.

The first meeting of the planning council is scheduled for late January. At that time there will be an orientation program to familiarize the members with many of the issues facing the UJS and the state of South Dakota. There will also be presentations on court planning processes, demographic changes in the state, and technologies currently available to courts.

I am most excited about this undertaking and hope next year to be able to report on the progress they have made.

COMMITTEE ON RACIAL, GENDER AND ETHNIC FAIRNESS IN THE COURTS

Also at the retreat, the justices agreed to continue our earlier gender and racial fairness activities by implementing a process to organize a committee and get it into operation. The committee I have appointed is co-chaired by Circuit Judges Pat McKeever of Pierre and Judith Meierhenry of Sioux Falls. It is broad-based, comprising a good cross-section of UJS employees and geographical areas.

The committee's goal is to inquire into the possible presence of improper gender, racial or ethnic practices in the courts of South Dakota in order to ensure that all persons appearing before and interacting with our court system are treated respectfully and impartially. Upon completing its inquiry, the committee is to issue to the Supreme Court a report on the presence of such practices and recommendations (1) for ending such practices, (2) for educating judges and staff on issues related to improper gender, racial and ethnic practices, and (3) for developing an informal process for the resolution of complaints of improper treatment of individuals by court officials based on gender, or race, or ethnic considerations.

Although I am convinced that there are no significant problems in our judiciary, we all know problems exist to a certain degree everywhere. We in the judiciary have a particularly important role in assuring fairness to all citizens.

Hopefully, the Committee on Gender, Racial and Ethnic Fairness in the Courts will go a long way towards preserving this inherent right for everyone.

CONCLUSION

I want to take this opportunity to publicly thank the other justices for all of their support and encouragement as I continue to serve the people of South Dakota as Chief Justice. I am proud of our accomplishments and excited by the potential that the future presents. Although our court system is far from perfect, it is a system comprised of many dedicated people who are truly interested in the work of justice. This dedication alone has enabled us to become an efficient and effective state judicial system. Relying upon the creative thinking and collective talents of our

judges and our employees, we hope to continue to build upon successes in positioning the UJS for the next millennium.

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.

Thank you.