

State of the Judiciary
Chief Justice Robert A. Miller, South Dakota Supreme Court
Written Message to the Legislature
January 2001 in Pierre, South Dakota

Dear Governor Janklow, members of the Legislature, Constitutional Officers, my fellow Justices, Circuit Court Judges, and Friends and Employees of the Unified Judicial System:

Once again, it is my pleasure to report to you on the state of the Unified Judicial System of South Dakota. I am pleased to advise that our judiciary remains alive and strong, and that it is meeting the challenges confronting us.

Since I am in the twilight of my judicial career, there are a few personal comments that I feel need to be made in this message. Thank you for the opportunity to share them with you.

On January 2, I celebrated my 30th anniversary as a judge. On that date in 1971, Governor Frank L. Farrar took a chance and appointed a young 31-year-old Philip, South Dakota, attorney to the Sixth Circuit Court bench. I was and am extremely grateful for his confidence in me and for giving me the opportunity to begin what I have found to be a happy and rewarding career. Nearly 16 years later, in December 1986, I was honored when Governor William J. Janklow appointed me to be a justice of the South Dakota Supreme Court, a position I continue to hold with pride. I thank Governor Janklow, as well as the voters of South Dakota who retained me in office in the 1990 and 1998 general elections. I also thank my colleagues on the Supreme Court for their confidence in selecting me as Chief Justice in 1990, and for having me continue in that position since that time.

I am using this means to thank Governors Farrar and Janklow, my fellow judges and justices, members of the South Dakota Bar Association and the citizens of our fine state for their friendship, association and support throughout the past 30 years. Words cannot express how happy I have been in my judicial career and I hope that I have served my state with distinction.

Most importantly, I must thank my wife Shirlee and our children, Cathy, Scott, David, Gerri and Rob, for their unending support, understanding and patience these past many years. Few people can truly appreciate and understand how difficult it is to be the spouse or child of a judge. My family has made many sacrifices for me, most of which have gone unheralded by me or anyone else. I am eternally grateful to them and I love each of them more than words permit me to express.

Having said all of this, let me get on with the business at hand and report to you on the status of the judiciary.

ADMINISTRATIVE CHANGES

During this past year Michael Buenger resigned as our State Court Administrator and accepted a similar position in the state of Missouri. Although Mike's departure was a significant loss to the

administration of the UJS and a personal loss for me, we have been most fortunate to find a very capable replacement. D.J. Hanson, a native of Sioux Falls and a graduate of the University of South Dakota, has over 20 years of experience as a trial court administrator in North Dakota and Minnesota. For the past 17 years, D.J. served as the administrator of Minnesota's 9th Judicial District. Headquartering in Bemidji, he administered a 22 judge trial court that comprised about one-third of the geographical area of that state. His talents and experience bring to the UJS a tremendous depth that will serve our judiciary well at all levels. Although he has been with us only a few months, I have been most impressed with him and his abilities. We are pleased to have him as a leader of our administrative team.

In another significant administrative change, we implemented the new position of deputy state court administrator. Dallas Johnson, former chief court services officer for the 4th Circuit in Madison, was selected for that position. In addition to other roles related to his position, Dallas will coordinate and supervise our court services division. Dallas is a tremendously talented person who brings a great deal of experience to our administrative team.

I would be remiss were I not to recognize and thank Dan Schenk for all he has done to assist and support me in the past year. Upon Mike Buenger's resignation, Dan was assigned the duties of acting state court administrator in addition to his regular duties as our personnel and training officer. This was the third occasion Dan has acted in that capacity. Under his capable leadership, we were able to manage and administer the UJS until D.J. joined us. Dan did a tremendous job and I know that all of us on the Supreme Court and everyone involved in the administration of the UJS are grateful to him.

RESTRUCTURING THE CIRCUITS

As I have reported to you in prior years, the UJS has undergone a significant long-range planning endeavor. Based upon the recommendations of our Planning Council, coupled with public and Bar input, we implemented a number of changes within our judiciary. My earlier messages to you have outlined most of the specifics.

The circuit boundary changes established by the Supreme Court went into effect on July 1, 2000. Thanks in great measure to the presiding judges and circuit administrators, the transition was orderly and smooth. The state is now divided into seven judicial circuits rather than eight. The counties of the former 4th Circuit were blended into the 1st and 3rd Circuits. Lincoln County was moved from the 1st Circuit and joined with Minnehaha County to comprise the 2nd Circuit. The 8th Circuit was renumbered the 4th.

To assist with the over-burdening caseload in the 1st Circuit, a new circuit judgeship was created. Governor Janklow appointed Flandreau attorney Glen Eng to that position. Judge Eng has moved his residence to Yankton and he maintains his chambers there. To further assist with the workload in that circuit, Presiding Judge Arthur Rusch changed some judicial duty stations. Judge Ronald Miller's chambers have been moved from Chamberlain to Plankinton, and Judge Boyd McMurchie will be moving from Mitchell to another locale to help better serve the southeast portion of the circuit.

Although not specifically related to planning efforts, other administrative changes have been

made to better utilize our resources and make the judiciary more efficient. When a vacancy occurred in the Buffalo County Clerk of Court's Office, and because of the very limited caseload there, the decision was made to not fill the position. Rather, the responsibilities of the office were transferred to the Brule County Clerk of Courts. Appreciating the need to have clerk services available to the citizens of that county, we entered into a contract with the Buffalo County Commissioners to have one of their county officers provide ministerial clerk duties. Similarly, upon the retirement of Stanley County Clerk of Court Darleen Harris, 6th Circuit Presiding Judge Steven Zinter merged that office with the Hughes County Clerk's Office, all under the supervision of Hughes County Clerk Mary Erickson. The Ft. Pierre office remains open full time; however, services are being performed for both counties in each office using a smaller staff.

THE WORK OF OUR COURTS

I will not restate the detailed statistical information provided in the annual report following this message. It speaks for itself. However, I am pleased to report that the Supreme Court continues to be current with our cases, notwithstanding increased record filings. At the same time, we continue to have an exceptional "clearance" rate. The members of the Court have a strong commitment to our citizens and to a high quality of justice, rendered in an expeditious manner.

At the circuit court level, case filings continue to increase. In FY 2000 an all-time high of over 250,000 cases were filed. We witnessed a dramatic rise in criminal filings, almost 12,500 more cases than last fiscal year. Fortunately, as in the past few years, most of the major criminal action increases were misdemeanors, not felonies. Yet, while misdemeanor cases generally require less judicial work, they consume a significant amount of staff time just handling the paperwork. I applaud the circuit judges, magistrate judges, and all court staff for their exceptional work in dispensing full, fair and efficient justice under difficult circumstances.

I would also like to recognize two committees, the Court Technology Advisory Committee and the Administrative Advisory Council. The Court Technology Advisory Committee, under the leadership of Justice Konenkamp, stays abreast of the changing nature of technology and the technological needs of the UJS. The Administrative Advisory Council addresses issues related to judicial administration and reports their findings and recommendations to the Supreme Court. The commitment and hard work of the members of these two committees have significantly contributed to the improvement of the UJS.

COURT SERVICES

In 1997, the judiciary of this state adopted the Balanced Approach to Restorative Justice as our primary philosophy in dealing with juvenile and adult offenders. This philosophy of balancing community safety with victim and community healing and offender competency building continues to be the focus of our court services staff. While therapeutic justice initiatives are gaining favor nationally, South Dakota remains the only state that successfully incorporates the philosophy throughout its entire system.

With this philosophy comes responsibility. This past year, with help from a State Justice Institute

grant, our court services division began an assessment of its operations and programming to nationally accepted best practice standards. Although the division ranked very high in many categories, some deficiencies were identified. One such deficiency is a gap in the continuum of sanctions, i.e. a gap between standard probation services and those delivered by the Department of Corrections (DOC). Specialized programming can generally be delivered less expensively than incarceration or commitment and can have a social benefit. Our Juvenile Intensive Probation Program (JIPP) is an example of this type of service.

The 2000 South Dakota State Legislature expanded JIPP by adding 5 FTEs, and we are proud to report that the state of South Dakota is getting their money's worth. Through November 30, 2000, 130 DOC-bound youth had been referred to intensive probation. Of the 130, 30 violated and were ultimately committed to the DOC. Stated differently, only 23% of the 130 high-risk youth ended up in a DOC facility. Bearing in mind that without JIPP all 130 youth would have been placed with the DOC, 100 offenders remained in their communities with their families, rather than being placed in some state facility. This represents a very significant monetary saving to the state.

We were recently notified that additional federal moneys have been awarded to the South Dakota Juvenile Intensive Probation Program. This most welcome news is a direct result of the commitment and efforts of Senators Tom Daschle and Tim Johnson and their staffs. I want to publicly recognize Senators Daschle and Johnson for their continued support of our intensive program and its importance in our efforts to change in a positive way the lives of juvenile offenders.

Because intensive probation is not universally applicable, the UJS will continue to develop alternative programming to address the special needs and unique problems of specific populations, such as the chronic and repetitive Children in Need of Supervision (CHINS), that impact the DOC's budget.

Part of the success of the JIPP, and certainly a major factor in the development of our CHINS Program, is the utilization of community resources. We recognize the Legislature's role in funding resources like mental health and chemical dependency treatment programs, education, and employment counseling, and we attempt to use them to the fullest. These resources are vital to our operations and we believe the quality of services of our court services division is directly related to these resources.

THE BUDGET

Following our tradition, we have presented a budget that contains merely the growth necessary to meet the immediate demands. As noted earlier, over 12,500 more cases were filed in our circuit courts in FY 2000 compared to FY 1999. In just two years, the caseload has increased some 17,200 cases. By reallocating existing resources to the areas of the state experiencing the greatest demands, we have minimized the need for additional personnel.

This year's budget increases our general fund spending by a mere \$349,504, or 1.5% over the current year's general fund budget, not including salary policy. The overall increase in the FY

2002 budget is 2.8%, including increases in "other fund" authority. Increases in "other fund" authority recognizes the benefits from additional revenues in our court automation fund. Sufficient revenue now flows into the court automation fund to allow us to proceed with several lagging technology initiatives.

In our FY 2002 budget, the Supreme Court approved seven new FTEs. Two FTEs are for court service officers, including one who will do intensive juvenile probation. Two FTEs are for law clerks to assist circuit judges in legal research. One FTE is for a scheduling clerk in the 1st Circuit who will perform centralized scheduling of eight judges' courtroom time. The two remaining FTEs are computer related: a project manager/analyst to coordinate eight contract programmers and an information technology trainer who will design training programs and train UJS personnel. Technology will continue to be an important part of improving the delivery of justice services, and improving computer support is critical given our ever-growing reliance on technology.

As the statistical data later in the report shows, in the past 10 years the UJS has remained 2.8% of the state's general fund budget. Also, even with an increase of 23 employees over the past 10 years, we comprise only 3.8% of the state's work force, compared to 3.3% in 1991.

MAJOR CONFERENCE

This past August we had the honor of hosting the joint annual meeting of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) in Rapid City. This was no small undertaking. More than 300 people attended, including 48 of the nation's chief justices and a similar number of state court administrators.

Opening ceremonies at Mt. Rushmore were impressive and moving. It was a beautiful, clear South Dakota summer morning. United States Supreme Court Justice Sandra Day O'Connor gave the keynote address; Girl Scouts and Boy Scouts from the area displayed the flags of the 54 states and territories; the SD National Guard played the national anthem; and four SD Air National Guard F16 fighter planes made a fly-over. I could not have been more proud.

The day ended with dinner at Crazy Horse Memorial. Prior to dinner, Ms. Ruth Ziolkowski, always a most gracious and convivial host, arranged for all conference attendees to travel to the top of the mountain. Many people told me that the experience was not only the highlight of the conference, but also a memory they would carry with them forever.

The amount of work that goes into such events is incredible. My staff and that of the 7th and 4th Circuits did yeoman's work in making it one of the most successful CCJ/COSCA conferences ever. It is impossible to thank everyone involved. I must give special recognition and thanks to Dan Schenk and Jill Gusso for their work in spearheading the conference, and 7th Circuit Presiding Judge John Fitzgerald for coordinating the efforts of his staff.

I have no hesitation or reservation in saying that you and our citizens can be very proud of the image of our state and its judiciary among the state judiciaries throughout the nation.

SPECIAL COMMITTEE

South Dakota is one of two states where no type of camera is permitted in any courtroom. Many states permit cameras in their trial courts, others only in their appellate courts and yet others permit cameras in all their courts. The rules, policies, technology, etc. vary greatly from state to state. My colleagues have agreed to create a special committee to explore the opportunities and review the practices and technology in use in the appellate courts of other states. The committee's mission is to recommend to the Supreme Court whether cameras should be permitted in our Supreme Court proceedings, and if so, what methodologies and technologies would be best suited to us. In addition to members of our administrative, legal and technological staff, the committee includes prominent Sioux Falls attorney James McMahan, KELO-LAND TV News Director Mark Millage, and Associated Press Bureau Chief Tena Haraldson.

The committee is undertaking a very important mission and I feel very comfortable that the work is in most capable hands.

CONCLUSION

The state of our third branch of government, the judiciary, is excellent and continues to be one of the finest in the nation. South Dakota citizens have come to expect a fair, efficient, accessible judiciary, and because of the dedication and hard work of our 600 employees, they have not been disappointed. I have always been, and I continue to be, inspired and impressed by the talent and commitment of our UJS employees. Most of these people receive little or no recognition for their enormous contributions towards meeting the challenge of administering a judicial system that is responsive to the needs of our citizens.

I would like to particularly thank my colleagues on the Supreme Court for their steadfast support and encouragement for the years I have served as Chief Justice.

Those of us in public service must recognize the great responsibility we have to better the lives of the people of this state. The judges and employees of the UJS remain committed to that precise goal – to bettering the lives of the people of South Dakota.

Thank you!