

**STATE OF JUDICIARY MESSAGE
JANUARY 2002**

**DAVID GILBERTSON
CHIEF JUSTICE**

Dear Governor Janklow, members of the Legislature, Constitutional Officers, my fellow Justices, Circuit Court Judges, employees of the Unified Judicial System and all citizens of the State of South Dakota:

Continuing the tradition established by my predecessors, I am presenting my "State of the Judiciary" message to you in written form as part of the Annual Report of the South Dakota Unified Judicial System. I am pleased to report that our judiciary is alive and strong, and we continue to work together to meet the challenges confronting us.

THE WORK OF OUR COURTS

The Supreme Court, the highest Court in the State of South Dakota, is primarily responsible for hearing appeals from decisions of the circuit courts. To promote an increased public knowledge and awareness of our state's judicial system, the Court travels throughout the state to hear oral arguments. This past year we had the pleasure of holding terms of court at the University of South Dakota School of Law in Vermillion, South Dakota State University in Brookings and T.F. Riggs High School in Pierre. Students from neighboring colleges and high schools, as well as the general public, were invited to attend those oral arguments. This gave several thousand South Dakotans the opportunity to see and hear for themselves firsthand how our Court operates. Our decisions are also now available to the public soon after they are issued, on our website at www.state.sd.us/judicial.

Having 494 appeals filed and 480 dispositions issued in FY2001, I am pleased to report that the Supreme Court continues to be current with its cases with an exceptional "clearance" rate. Although we do not control our docket numbers as the South Dakota Constitution guarantees those who are unsuccessful in circuit court the right to appeal, the above figures show that no problems exist in this Court's management of its current caseload. While there were substantial increases in filings prior to 1997, for the past several years filings with this Court have remained at approximately the same level. The cooperation and dedication among the Justices and Supreme Court staff have resulted in our excellent disposition rate.

At the circuit court level, case filings increased approximately 2.4% in FY2001, up to 256,048. This figure represents an increase mainly in civil filings while criminal filings remained relatively consistent with the FY2000 filings. Lawsuits, juvenile matters and small claims are the three civil areas that experienced the most significant increases in FY2001.

PERSONNEL CHANGES

September 15, 2001, marked the end of an era with the retirement of the Honorable Robert A. Miller as Chief Justice of this Court. He has faithfully served in numerous capacities in the South Dakota judiciary since 1971 and deserves substantial credit and recognition for the current excellent status of this state's judiciary. Many of the programs discussed in this report came to fruition in no small part because of his leadership and vision. Each member of this Court wishes Chief Justice Miller and his wife Shirlee a long and happy retirement. I would also like to add my personal thank you to Chief Justice Miller for the time he spent during the transition period preparing me to assume the position of Chief Justice of the South Dakota Supreme Court.

Upon Chief Justice Miller's retirement, in order to keep this Court current while the process is completed for the selection of a new Justice, this Court appointed Circuit Judge Max Gors as an Acting Justice. Acting Justice Gors will serve until a permanent replacement takes office. Acting Justice Gors "hit the ground running" on this new assignment and we appreciate his willingness to undertake this additional responsibility.

In July, all members of the judiciary were saddened by the sudden death of Presiding Judge John E. Fitzgerald of the Seventh Circuit. Judge Fitzgerald was highly regarded as an excellent jurist as well as an excellent administrator of his circuit. For those of us who knew him, this "man for all seasons" will be greatly missed.

Other changes this year included Judge Richard Bogue's retirement. Judge Eugene L. Martin will retire in early 2002. Both have had long and distinguished careers with the South Dakota judiciary. We thank them for their dedicated service to the people of this state and hope both of them enjoy fulfilling retirements wherever life takes them.

In November, Circuit Judge Stuart Tiede of Sioux Falls took office in the Second Circuit to fill the vacancy created by Judge Bogue's retirement. Judge Tiede's 26 years of experience practicing law in South Dakota prepares him well for the judicial position he now assumes.

CAMERAS IN THE COURTROOM

In January 2001 former Chief Justice Miller established a committee to study the issue of expanded media coverage of Supreme Court proceedings. It was composed of court administrative, legal and technological staff, media personnel and a practicing attorney, with Justice Richard W. Sabers serving as liaison from the Court. The committee proposed rules for such coverage that the Court considered at an open hearing in Sioux Falls this past June. Following the hearing, which was well attended and included much discussion, the Court adopted the proposed rules in their entirety as a pilot project, subject to annual review. The rules are promulgated at SDCL 15-24-5 through -12 and are published on the UJS website at www.state.sd.us/judicial.

August 2001 was the first term of court following adoption of the rules. All of the oral arguments at the August term were covered by television, radio, and print media, and portions of the arguments were broadcast on television and radio news. All who participated—the justices, attorneys, court staff, and media personnel—proclaimed the new rules and expanded media coverage of the Supreme Court appellate arguments a success.

Each term of court since then, including the October term at the South Dakota State University campus in Brookings, has seen the inclusion of cameras and expanded media coverage. The public's response to the adoption of rules allowing greater public access to our Supreme Court proceedings has been very positive.

At present our proceedings are available to the media for reporting purposes as they see fit. For various reasons, this results in abbreviated reporting of our proceedings. Future proposals may hopefully include public viewing access to our proceedings in their entirety. This expanded coverage already exists in some other states, and we are monitoring how those systems work as well as their potential for adaptation in South Dakota.

COURT SERVICES

The Juvenile Intensive Probation Program (JIPP) has been an emphasis of the UJS over the past two legislative sessions. It is our belief that by providing these intensive services, many children can be served within their communities rather than being committed to the Department of Corrections. I am pleased to report that the legislature's financial commitment to JIPP has been well rewarded. From July 1, 1999, to June 30, 2001, 241 children entered the program and 187 remained in their community. This represents substantial savings to South Dakota. The program currently operates in ten communities, including the more rural areas of Lake Andes and Sisseton.

Several years ago, the UJS adopted the Balanced Approach to Restorative Justice as its philosophical approach for probation services. To insure that the practices of the Court Services Department remain appropriate with the philosophy of balancing community safety with victim and community healing and offender competency building, the department underwent an extensive assessment process utilizing the Correctional Program Assessment Inventory. Based on that assessment process, Court Services has embarked on a new initiative that includes the development of an innovative risk and needs assessment system for juvenile and adult offenders. Additionally, the chief court services officers were professionally trained in the Correctional Program Assessment Inventory so they can now apply the same assessment methods to community resources. Linking this improved risk and needs system with a resource assessment produces a more efficient and effective match between offenders and appropriate resources. This new initiative promises to improve community safety and build offender citizenship.

TECHNOLOGY ISSUES

The UJS Court Technology Committee and its subcommittees coordinate all current and future court automation projects. In August 2000 the UJS Technology Committee, chaired by Justice John K. Konenkamp, completed a Long-Range Information System Plan that laid the groundwork for UJS development projects for the next five years. The committee meets as needed when issues arise.

The past two years have been a very industrious time for the UJS in the area of technology as we move forward with electronic management of our court information. During this time, the UJS has implemented four new computer systems and we soon will be piloting a fifth.

- 1) An online Adult Probation System that serves as a tracking system and management tool for the adult probation caseload was implemented statewide in July 2000.
- 2) A new Query Interface System was implemented in the fall of 2000. This system allows our court services officers and judges access to criminal history and protection order information via a user-friendly “point-and-click” screen. Query Interface is installed on the bench in many courtrooms so judges now have real-time access to prior case history data before sentencing.
- 3) A Jury Case Management System was developed for less than \$50,000 with the assistance of the Center for Jury Studies at the National Center for State Courts. Features of the system include the ability to randomly draw jurors in the courtroom, an optional interface that provides to county auditors a data-set of jurors who need to be paid so that the county does not have to re-key voucher data, and a new web interface that gives prospective jurors the option of completing juror questionnaires and checking jury reporting instructions online. This system was presented at the National Court Technology Conference in Baltimore in August 2001, and reviewed in the September 2001 *Court Technology Bulletin* published by the National Center for State Courts.
- 4) An online Protection Order System will be installed in clerk of court offices statewide by the end of December 2001. During the first quarter of 2002 the UJS will begin a cooperative effort with the Bureau of Information and Technology (BIT) to provide data from this system to law enforcement.
- 5) An automated Juvenile Case Management System is reaching the final stages of development. A pilot is scheduled to begin in the Second Circuit during the first quarter of 2002.

Each of these “systems” is actually a component of an integrated court case management database. Final development work will begin in 2002 to integrate two additional case types—civil case management and juvenile probation—with our existing databases.

Once these projects are complete, the UJS will have achieved its long-term goal of having a single, integrated court case management database.

JUDICIAL MILITARY VETERANS

A review of the biographies of South Dakota judges and justices shows that a substantial number of our judiciary served in the United States military from the Civil War through Viet Nam. All who served were defending the American way of life that is built upon the rule of law rather than the rule of individuals or despots. This year special recognition was given in our state to veterans who served during World War II. On September 15, 2001, a Memorial on the Capitol grounds in Pierre was dedicated to those thousands of South Dakotans who served during World War II. Although our Court records may not be complete, we were able to ascertain that the following South Dakota justices and judges served during that conflict:

Anderson, Sigurd	Bogue, Andrew
Bradshaw, Dale	Braithwaite, Richard
Brandenburg, Roy	Cheever, Lyle
Christensen, Wayne	Connelly, Riley
Cooper, Clarence	Grievess, Don
Hanson, Charles	Heege, Robert
Hersrud, Leslie	Hertz, Ernest
Homeyer, Fred	Leedom, Boyd,
Jones, John	Manson, R.F
Morgan, Robert	Mydland, Gordon
Nichol, Fred	Norbeck, Kermit
Parker, F. Thomas	Dunn, Francis
Patterson, Robert	Porter, Donald
Ramynke, Mildred	Ries, Thomas
Talbott, Marvin	Tice, Merton Sr.

Although they all are now retired and unfortunately many are deceased, we extend a belated “WELL DONE” to those members of the judiciary who were also members of the “Greatest Generation.” You served your country by public service both in times of war and peace.

SEPTEMBER 11, 2001

Our state motto is “Under God the People Rule.” That motto is the culmination of concepts of self-government under written laws rather than edicts and whims of tyrants. It traces its roots from ancient Greece, goes through the Magna Carta and the American Declaration of Independence and now finds itself as the permanent basis of the Constitutions of the United States and the State of South Dakota. On September 11, 2001, the concept “Under God the People Rule” was directly attacked by foreign enemies sworn to destroy this country, its rule of law and everything for which it stands. As in past generations, we are now faced with defending our way of life, governed by the rule of law and its equal and fair application, not by fanatics or despots. In the past, our nation has risen to the occasion to successfully overcome such challenges and it is doing so again.

It is no accident, that when one studies the tenure of governments around the world, the oldest and most stable all adhere to the rule of law. While they survived and generally prospered despite shortcomings and challenges, during that same period of time history is replete with those tyrannical systems that instead of prevailing over democracies now grace only history’s garbage heap.

We extend to Chief Judge Judith L. Kaye and the entire New York judiciary, our sympathy over the loss of judicial personnel on September 11th and our full support in maintaining the rule of law in what have now become the front lines of this conflict. Most applicable to both the living and deceased of this judiciary is the Churchillian benediction, that this is their finest hour.

On a local level, the South Dakota judiciary, along with the rest of state government, is addressing the issue of bioterrorism via the mail system. We are cooperating with other state agencies in attempting to promptly process the large amount of public mail we receive daily while taking all available safeguards to insure the safety of those UJS personnel who handle this mail. The challenge is greater because we do not have a single workplace, but rather have UJS employees in substantially every county and courthouse in the state, nearly all of whom receive mail directly from the public. To date we have had several “incidents” of suspicious letters that fortunately, when examined by experts, turned out to be false alarms. However, history has not been kind to those who underestimate their enemies’ resolve. Therefore, we shall remain vigilant.

CONCLUSION

In closing, I would like to thank my colleagues for entrusting me with the position of Chief Justice of South Dakota's Unified Judicial System. Upon my selection, I promised them I would do the best job that I could in that position and I make this same commitment to the citizens of this state.

After serving 15 years in various capacities of the judiciary of this state, I am convinced of the dedication of the UJS judges and employees to the rule of law and of their dedication to successfully provide judicial services to all the citizens of this state. We will continue to strive to meet the challenges of the future and to improve the judicial system of this state in the process.

Respectfully submitted,

Chief Justice