

South Dakota Unified Judicial System



*2021
State of the
Judiciary Message*



Equal
Justice
for All.



THE SUPREME COURT IN JANUARY 2021



Justices of the Supreme Court, left to right: Hon. Patricia J. DeVaney, Pierre, Third District; Hon. Janine M. Kern, Rapid City, First District; Hon. Steven R. Jensen, Dakota Dunes, Chief Justice, Fourth District; Hon. Mark E. Salter, Sioux Falls, Second District; and Hon. Scott P. Myren, Mound City, Fifth District.

INTRODUCTORY MESSAGE

January 13, 2021

Dear Fellow Citizens of South Dakota:

It is an honor and my pleasure to present to you the State of the South Dakota Judiciary address for 2021.

As I begin my term as Chief Justice of the South Dakota Supreme Court, I am grateful for the opportunity to lead the South Dakota Unified Judicial System. I am so fortunate to follow in the footsteps of my predecessor, David Gilbertson, who retired earlier this month after twenty years as Chief Justice. He has left an enduring legacy on the courts in South Dakota and is a true public servant.

I also want to thank our judges and court personnel, who work tirelessly to carry out the mission and vision of the courts in South Dakota. I am privileged to work with them. I thank them for all they do every day to provide Justice for All.



*Steven R. Jensen
Chief Justice*

A handwritten signature in black ink, appearing to read "Steven R. Jensen". The signature is stylized and written in cursive.

Steven R. Jensen
Chief Justice



Chief Justice David Gilbertson, now retired, during swearing in ceremony of Chief Justice Steven R. Jensen.

2021 STATE OF THE JUDICIARY MESSAGE

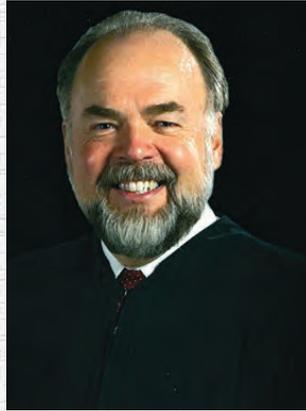
Governor Noem, Lieutenant Governor Rhoden, members of the Legislature, Constitutional Officers, my fellow Justices, Judges, Unified Judicial System (UJS) employees and citizens of the State of South Dakota

It is truly a privilege to address this joint session of the Legislature on behalf of the judicial branch of government. Governor Noem and this Legislature on matters impacting the judiciary.

Chief Justice David Gilbertson

Leaving a Legacy

Standing at the podium today, I feel much like I did when I was five years old and stepped into my dad's farm boots. My dad's boots were awfully big for my feet then, and so are the shoes of my predecessor today. One week ago, Chief Justice David Gilbertson retired after serving as a justice on the Supreme Court for twenty-five years and as Chief Justice for twenty years. Many of you witnessed David Gilbertson's vision, steady-hand and skill as the administrative head of the judicial branch in South Dakota. A few of his accomplishments as chief justice include establishing 19 problem-solving courts, starting the rural attorney recruitment program, overseeing criminal justice reform, moving our courts from paper filing to an electronic filing system, and restoring the Supreme Court Law Library to its original grandeur. One of Chief Justice Gilbertson's most significant but intangible contributions, was the collegiality and goodwill he fostered both inside and outside the court system during his time as Chief Justice. During his tenure, Chief Justice Gilbertson was a model of humility, dignity, and service.

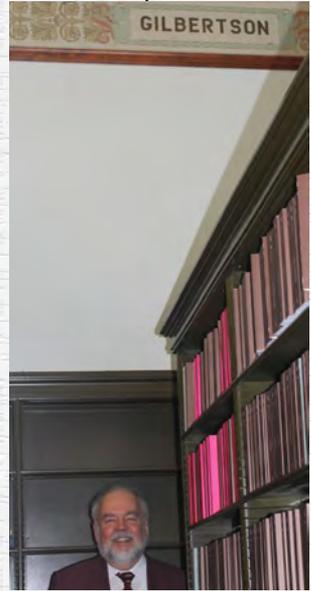


In addition to his administrative responsibilities, Chief Justice Gilbertson maintained a full case load as a member of the Court. He participated in nearly 6,000 decisions issued by the Court; 2,933 of these decisions resulted in written opinions. To provide you with some perspective, that work alone involved reading and studying hundreds of thousands of pages of legal briefs and opinions. Of the 2,933 written opinions issued during his time on the Court, Chief Justice Gilbertson authored nearly 700 of those opinions. His concise, thoughtful, and common-sense opinions will continue to

impact the jurisprudence in this state for years to come.

As a colleague, I have spent many hours with David Gilbertson. I can attest, he is the same man in private as he is in public. He is kind, patient and considerate. He is truly a man of faith and integrity. Further, fairness and sense of justice are deeply embedded in the fabric of his being and have been demonstrated throughout his career as a lawyer, judge and justice. I know I speak for all the members of the Court who have worked with David Gilbertson, past and present, when I express how much I appreciate his friendship, collegiality, and mentoring.

One week ago, the Court had David Gilbertson's name stenciled onto one of the ceiling tiles in our renovated Supreme Court Law Library. He is the first modern justice on the South Dakota Supreme Court to have his name inscribed on the law library tiles. The name "Gilbertson" joins a distinguished list of names, such as Dighton Corson, Alphonso Kellam, John Bennett, Philemon Bliss, Charles Whiting, and other early justices who served on the Supreme Court of Dakota Territory and the South Dakota Supreme Court. We are planning a public ceremony for later next year to unveil a portrait of Chief Justice Gilbertson that will hang permanently in the law library. It seems only fitting that the legacy David Gilbertson left on the court system and the State of South Dakota will be recognized by South Dakotans for generations to come.



Please help me in publicly expressing our thanks and appreciation for Chief Justice Gilbertson's many years of service to our state.

The Core Function of the Judicial Branch

The courts in South Dakota have seen significant changes over the past several years. Since 2015, the South Dakota Supreme Court has had a complete turnover, with new justices added to the Court in 2015, 2017,



2018, 2019, and just recently at the beginning of 2021. Additionally, during that same time, approximately 2/3 of the sitting circuit judges and magistrate judges have been appointed. As I reflect on these transitions, I am struck that while the names and faces of our judiciary may change, the fundamental purpose of our courts remains constant. That purpose is what I would call the core function of the courts – to provide a fair and impartial forum for the resolution of disputes and to decide those disputes based upon the established rule of law.

The courts have served this core function since Abraham Lincoln appointed the first three justices of the Dakota Territory Supreme Court in 1861. The work of the courts continued when South Dakota joined the Union and ratified the South Dakota Constitution in 1889. The South Dakota Constitution established the courts as one of the three co-equal branches of government for maintaining the peace, safety and functioning of our society; and protecting individual rights of life, liberty and property. Significantly, the framers of the South Dakota Constitution recognized two important elements for protecting those rights, stating that “[t]he blessings of a free government can only be maintained by a firm adherence to justice... and by frequent recurrence to fundamental principles.” S.D. Const. art. VI, § 27.

These words on the pages of the State Constitution become very real and practical as we consider the unique adjudicative role of the courts in protecting the fundamental rights of every person coming before them. For over 130 years, the courts in South Dakota have ensured the frequent recurrence to the fundamental principles of liberty and justice. Every day our state courts hear a variety of criminal and civil cases that directly impact the life, liberty and property of our citizens. Judges presiding in criminal cases must ensure the rights of the accused, the victims, and the State acting in its role as the citizens’ prosecuting authority. In a variety of civil cases, our courts hear business and property disputes, requests for protection orders, personal injury claims, and disputes involving families and children. Courts also review agency decisions that impact both individuals and businesses. In each case, judges are responsible to provide a fair and impartial forum to resolve these disputes.

Even those who never step foot into a courtroom are impacted every day by the court system. Business and commerce in our country has thrived over the years because the courts can be

trusted to fairly and impartially resolve disputes. Additionally, employers must follow labor laws, drivers must follow the rules of the road, and private property rights must be respected because of the work of the courts. The importance of the courts to ensuring the daily functioning of society is so obvious that it is often overlooked.

Just as important to our system of justice is the faithful application of the established rules of law expressed in our state and federal constitutions, statutes and common law. Adherence to the rule of law recognizes that no one, regardless of status or position, is above the law. The rule of law also requires that judges apply the law. In discussing the importance of the rule of law, President Dwight D. Eisenhower stated, “The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law as written and not based upon a preferred outcome. As the late Justice Antonin Scalia said, “If you are going to be a good and faithful judge, you have to resign yourself to the fact that you’re not always going to like the conclusions you reach. If you like them all the time, you’re probably doing something wrong.” Any other application of the rule of law subjects the law to the whims of a few and threatens the ideals of democracy.

In discussing the importance of the rule of law President Eisenhower’s warning can be observed both from historical and contemporary study. People are often surprised to learn that many authoritarian governments around the world today have constitutions that provide for freedoms of religion, speech, press, and other fundamental rights. Yet in practice those freedoms do not exist because the rule of law has been subjugated to the will of those in power.

In the end, we know that the rule of law is only as good as the people that apply and enforce the rules. It goes without saying that continued selection and retention of good judges who seek to do justice and are faithful to the rule of law is integral to the rights and liberties that we treasure.

Recently, I spoke with a judge who described some of the frustrations and difficulties in his work. However, when I asked him how he was doing, his answer took me a bit by surprise. He added he was doing well, and then he added, “I love this job. It’s the best job I have ever had.” He proceeded to tell me about the satisfaction he found as a judge in providing a fair and impartial forum for

individuals to resolve their disputes and see that justice is done in the cases that come before him.

We are fortunate to have dedicated judges. I can tell you, from my experience in South Dakota, that dedicated men and women serving in the judiciary are the norm, not the exception. Moreover, I believe the people working in our judicial system are the greatest resource we have in carrying out the core function of the courts. This applies not just to our judges, but also our court reporters, clerks of court, court services officers, and administrative staff. Like judges, judicial staff are often the face of justice for individuals involved in the court system. Each member of our judicial staff plays a significant role in seeing that everyone has access to our courts, that they are treated fairly and respectfully, and that their cases are resolved with a constant eye toward justice and the faithful application of the rule of law.

When the threat of the pandemic has ended, I invite you to observe a court session in a courtroom in our state. I am concerned that many may draw conclusions about the courts from social media, sensational headlines, or courtroom dramas that often do not reflect reality. Yet most of the work of our courts in South Dakota is done without spectators, fanfare, or notice. Day in and day out, the men and women of our judiciary work hard to resolve every case fairly and consistently. This is extremely important, but difficult work. Our judges are repeatedly exposed to detailed testimony involving tragic and unimaginable events, the heart break of families in crisis, and the devastating impact of drugs and alcohol on individuals and families. Yet their job is the same in every case... to see that justice is provided to every person.

I am asking this Legislature to consider raises for our judges this year. The State Judicial Qualifications Commission has warned for several years that inadequate compensation is contributing to a lack of applicants for judicial positions. The UJS conducted an informal study of attorneys last year that showed judicial compensation was a significant issue discouraging qualified attorneys from applying for judicial positions. Over the past ten years, South Dakota judicial ensure the rights of the accused, the victims, and the State in its role as the citizens' prosecuting authority.. As of July 2020, a comparison of the judicial salaries of other states, the District of Columbia, and U.S territories shows that the salary for South Dakota justices and circuit judges was 51st and 49th, respectively. To provide some regional comparisons, the annual salary for our

circuit judges trail Nebraska judges by nearly \$40,000, Wyoming and Minnesota judges by nearly \$30,000, and North Dakota and Iowa judges by over \$15,000. We have been lucky so far to fill our vacant judicial positions across the state with qualified individuals. But I would respectfully suggest we should not trust the future of our justice system to luck.

The functioning of our courts is too crucial and too important to just hope that we will find a good candidate for the next open judicial position.

As I talk about the importance of the people working in our court system, I want to take a moment to highlight our clerks of court, a group that is often overlooked. In addition to managing the burgeoning case filings and other daily office tasks, our clerks issue warrants, appoint counsel, set bonds and conduct initial appearances in criminal cases. Our clerks are also responsible for scheduling court, managing the courtrooms, and summoning and communicating with jurors. Because there are no judges regularly stationed in many of our rural counties, the clerks in those counties serve many additional functions. In the larger counties, the workflow and tracking of the many cases and multiple courtrooms falls on the clerks. Our clerks must also be knowledgeable about the court process and procedure as they regularly work with unrepresented individuals who are unable to afford an attorney in civil cases, such as divorce, custody, and protection order proceedings. The expectations and responsibilities placed upon our clerks has changed significantly over the past few years, requiring more experience, training and skill for those hired to fill these positions. On many occasions, I have observed the dedication and professionalism of our clerks. The work of the courts simply could not be done without them.

This year I am requesting funding for additional clerk positions, particularly in Minnehaha and Lincoln Counties where the caseloads have grown with the area's population. I am grateful to Governor Noem for including these positions in her recommended budget. Additionally, I am also asking for an appropriation for targeted raises for certain employees in the UJS. This will particularly impact clerks of court. The dollars I am requesting for this appropriation are not large, but the need is significant to allow us to target positions where we are simply unable to offer competitive salaries.

I have attempted to articulate what I believe to be the core

function of our courts, and the importance of attracting and retaining skilled and competent judges and staff to continue carrying out this function for the citizens of South Dakota. Perhaps, the core function of the courts is best summed up in the three words of the UJS mission statement - "Justice for All." This statement is both actual and aspirational. We must always be about doing justice, but we dare not stop the continued pursuit to improve our system of justice. The "Justice for All" mission statement serves as a powerful reminder of the work to be accomplished in every case that comes before our courts. It also serves as a directional beacon in setting our goals, priorities and plans moving forward as a court system.

COVID-19

I want to touch on a couple of other current topics of significance to the courts. The first is the impact of the Coronavirus pandemic during the past year,

In March, the Supreme Court entered an emergency order designed to keep the courts open and operating safely during the pandemic. The order permits the presiding judge of each circuit, with the approval of the Chief Justice, to implement circuit-specific protocols which balance the importance of reducing the spread of the virus with the commitment to conducting court business as necessary. Videoconferencing technology has been used to conduct many court proceedings throughout the year. This includes the South Dakota Supreme Court, which for the first time in its history held oral arguments by video conference. For necessary in-person proceedings, our judges and court staff have come up with innovative solutions and protocols to protect the health and safety of those working in and entering our courts.

One of the most significant challenges for our courts has been, and continues to be, our ability to hold jury trials. A jury trial must be held in person and necessitates bringing in a cross-section of citizens from the community to potentially serve as jurors in a case. Unfortunately, our courtrooms, jury boxes and jury deliberation rooms were not built with a pandemic in mind. As a result, judges and clerks have instituted protocols, such as pre-screening jurors, modifying juror check-ins, and using additional courtrooms and other large spaces to protect the judicial staff, jurors, lawyers, and public. Despite the challenges, our judges report that South Dakota citizens have continued to respond and faithfully perform their service as jurors during this time.

Although it has been necessary to modify trial schedules in some cases, the South Dakota courts have still conducted 75 jury trials and more than 2,000 court trials since March of 2020. While courts in other states cancelled trials for months, our courts held jury trials and court trials every month in 2020. In addition to trials, our courts have daily held civil and criminal motion hearings, arraignments, sentencing, protection order proceedings, and many other proceedings needing immediate resolution.

The Coronavirus pandemic has also impacted our probation supervision and problem-solving courts. All nineteen problem-solving courts have continued operating since March, but with adjustments to their operations. One of the results of the pandemic has also been a reduction in the number of new applicants since March. This will likely impact the number of future participants in our problem-solving courts. Despite the challenges, I am pleased to report that our problem-solving courts served and graduated more participants this past year than each the past three.

Court services officers have also adapted their work, using technology and other measures to continue providing supervision to individuals placed on felony probation. Some of their supervision work, such as obtaining UA samples from a drug offender, simply cannot be done remotely, however. Our probation officers are to be particularly commended for their dedication and commitment during this time. Their supervision of probationers on felony probation play a significant role in public safety.

I want to take a moment to thank our seven presiding judges for their extra work this past year in consulting with local health experts, developing safety protocols, and communicating with judges, employees, and the public to keep our courts operating as safely as possible during the pandemic. I can guarantee you that the



court system in this state would not have been able to continue operating over the past year without their dedicated service.

Additionally, our judges and court staff have gone above and beyond the call of duty to keep our courts open since the pandemic started. I also want to express my appreciation to the attorneys, jurors, and parties who have cooperated with additional court protocols in place during this time. While the courts will have catching up to do after the threat of the pandemic has ended, I am proud of the fact that our courts have remained open to provide a safe forum for litigants. After all, the reality is that criminal behavior, domestic abuse, disputes involving families and children, and a myriad of other cases needing prompt resolution have not taken a break during the Coronavirus crises.

Courthouse Security

Another important topic of discussion for the UJS over the past year has been judicial security. One need only read or listen to the news to understand the importance of security for the courts. This past year the Supreme Court commissioned a group to study courthouse security across the state. To consider this issue, we brought together a committee consisting of judges, court staff and law enforcement. The Committee was chaired by Justice Janine Kern. Justice Patty DeVaney served as Vice Chair. The Committee initially polled judges and court staff about existing security measures and needs in our county courthouses. The Committee also considered information from other courts and court security experts. From its work, the Committee developed several recommendations to improve security in our courthouses. I want to highlight a portion of the executive summary from the Committee:

Of the sixty-six counties only six have full-time court security with protective measures in place for all courthouse visitors. In many courthouses, some security is provided on days when court is in session, others only have security available when a judicial officer specifically requests the presence of law enforcement in the courtroom. Any security in the county courthouses is provided by the county sheriff. There is no employee in the UJS responsible for coordinating judicial security[.]

The bottom line is that many of our judges and court staff work with limited security available to them, particularly in civil cases. Unfortunately, civil cases, such as those involving domestic relations, are often some of the most emotionally charged cases that our judges hear. I would venture that if you spoke to a judge or member of our court staff who work with the public, they would all have at least one story about a significant incident that caused concern for their own safety or the safety of another while working.

As the Committee noted, the security for court personnel and the public entering courthouses is primarily provided by county sheriffs. The counties have generally been responsive to security concerns raised by UJS personnel, but their resources are limited and our approach to security has often been reactive rather proactive. For instance, many courthouses have not had an assessment to consider security risks and needs. Our judges and court staff are well-aware of the importance of security, but often do not have the expertise or time to address and implement additional security measures. The lack of a full-time employee within UJS, who has the expertise and is exclusively dedicated to addressing judicial security, hampers our ability to improve security for the men and women who daily work in, and participate in court proceedings around the state, as well as members of the public who access our courts.

The Committee recommended several steps to improve security in our courthouses. The first is to engage a security consultant to develop a statewide plan for court security. The National Center for State Courts has agreed to provide security consultation services to assist the UJS in developing a security plan. We



anticipate that a plan for the UJS will be completed in 2021 and no Legislative appropriation will be necessary for this consultation.

The Coronavirus pandemic has also impacted our problem-solving courts and probation supervision. I am asking the Legislature to authorize funds to allow the Unified Judicial System to hire a full-time Court Security Coordinator in FY2022 after the National Center has completed its consulting work. This will likely have a short-term impact on the number of future participants in our problem-solving courts. The Security Coordinator will be responsible for developing recommendations and overseeing security assessments at courthouses across the state. Many of these assessments can be completed by the United States Marshall's Office and the Department of Homeland Security without additional cost to the State. Once an assessment is completed, the Security Coordinator will work with local court personnel and county officials to discuss and implement any additional security measures. The Security Coordinator will also be responsible for addressing ongoing security concerns, identifying funding for security upgrades, conducting security trainings, and working with each circuit to develop committees to facilitate ongoing security measures in courthouses within each circuit.

I want to thank Governor Noem for including the funding for this crucial position in her budget. I also look forward to visiting with legislators during the course of the session about the importance of this position for the courts

Justice Scott Myren

I want to welcome our newest Justice to the Court, Scott Myren. Governor Noem appointed Justice Myren to replace Chief Justice Gilbertson. Last week Justice Myren was sworn as the 53rd Justice of the South Dakota Supreme Court. He immediately jumped in with both feet and is sitting on the January Term of Court.



Justice Myren served as a circuit judge in the 5th Judicial Circuit for the past 17 years and has served as the presiding judge in the 5th Circuit for the past several years. Justice Myren is respected around the state for his demeanor, intellect, judgment

and practical approach to the law. He has also been involved in several UJS initiatives over the years, including the Hope Program, that has enhanced the supervision of individuals who are struggling with drug addiction. Justice Myren's appointment to the Supreme Court is also a bit of a homecoming as he served as a staff attorney for the Supreme Court early in his legal career. Justice Myren brings a wealth of experience and will be a tremendous addition to the Court. Please join me in welcoming Justice Scott Myren to the South Dakota Supreme Court.

Finally, I want to express my appreciation to my colleagues on the



Court for their support and confidence as I begin my position as Chief Justice of the South Dakota Supreme Court. It is truly an honor to serve on this Court with Justice Janine Kern, Justice Mark Salter, Justice Patty DeVaney and Justice Scott Myren. They are extremely talented, hard-working jurists who hold the rule of law in high esteem. I am also grateful for the mutual respect and collaboration that

exists between each of the members of the Court. I consider it a privilege to work with and learn from each of you.

Finally, I begin this new year and this new role reflecting on the words of the prophet Micah in Chapter 6, Verse 8 of the Bible. He asks himself, "And what does the Lord require of you?" Then he answers, "To act justly, to love Mercy, and to walk humbly with your God." So then, justice is not just a job, or title, it is a way of life. And, it leaves the world a better place.

Respectfully Submitted,

A handwritten signature in black ink, which appears to read "Steven R. Jensen". The signature is fluid and cursive.

Steven R. Jensen

Chief Justice

Under the direction of:
Steven Jensen,
Chief Justice of the South Dakota
Supreme Court
Sheridan Anderson,
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