

## STATE OF THE JUDICIARY MESSAGE

JANUARY 1999

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CHIEF JUSTICE

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

As I begin my ninth year as Chief Justice of the South Dakota Supreme Court, it is again my pleasure to report on the state of the judiciary. I am pleased to report that the Unified Judicial System is well and that the work of the people is being done efficiently and effectively. This has been an exciting year for us. As many of you know, our Planning Council completed its work this year by issuing recommendations for changing circuit boundaries and reorganizing some services. Many of the changes previously recommended by the Council regarding our internal operations have been implemented. In the area of probation, we continue to expand restorative justice programs and have been recognized nationally as a leader in this area. We are working with the Attorney General and several local law enforcement agencies to develop an integrated criminal justice information system for the courts and law enforcement. And, our courts continue to provide excellent and expedient justice, even in the face of rising caseloads and limited resources. Thus, I am pleased to report that overall the judicial system is well.

In past years, I have reported on the specific work of the courts of this state. I will do so again later in this message. But, first I would like to reflect with you for a moment upon what I believe is the most pressing issue facing the judiciary of this nation and potentially this state. Over the past several years there has developed increasing apathy by the public and political leaders to the importance of maintaining an independent judiciary. In some corners, outright hostility to judicial independence has replaced indifference, while in other corners there is verbal support for judicial independence but practical indifference to respecting and maintaining it. The causes of this trend are many and varied: single issue political movements, public naiveté regarding the role of the judiciary in our civic life, declining trust in government institutions and their leaders, changing priorities on budgets that shift resources away from the justice system, faltering respect for public service, lapsed attention by the judiciary to the needs of the people, and the failure of public officials (including some in the judiciary) to recognize that courts are not an "agency" of government, but rather one of its three *equal, separate and coordinate* branches.

Over two hundred years ago our founding fathers constructed a new form of governing. Two principles forged the heart of the new government. First, to ensure equal treatment under the law and to secure individual liberty, the government was expected to conduct itself according to the "rule of law" as determined by the people. Hence the phrase, "no

one is above the law." Second, to prevent tyranny and ensure limited government, power was divided between three independent, separate and equal branches. As the late US Supreme Court Justice Louis Brandies once observed, "The doctrine of separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was \* \* \* to save the people from autocracy." The "separation of powers" doctrine is seen in our federal constitution and the constitution of *every* state in this nation.

These two principles continue to be our guiding light. They stand for a simple promise to ourselves: that the exercise of law in the pursuit of justice and liberty would not be based on political expediency, economic efficiency, or government impulse, but upon reasonable principles adopted by the people and applied equally to all. Principled reason, as expressed in the law and construed by an independent judiciary, would secure our continuing aspiration for individual liberty and equality. Largely because of these principles, for over two hundred years we have balanced individual liberty and civic order in a fashion never before experienced in history. We stand as the oldest constitutional democracy in the world, which is a testament to the staying power of these two simple principles.

It has been, and continues to be, uniquely the role of an independent judiciary to guard the rule of law against any attempt to erode it, whether by the exercise of individual power or the excesses of government. Of all of the innovations of our founding fathers, none was more novel nor more important than the creation of an independent judiciary. Until the American constitution, no people had separated the judicial function of government so clearly and so independently from the other functions of government. In the words of Alexander Hamilton, "The complete independence of the courts of justice is peculiarly essential in a limited constitution."

The judiciary must, therefore, be free to apply the rule of law without regard to political, economic, or social winds. It must be independent in more than just words if the "rule of law" is to be more than just an over-used cliché. Throughout our history it has been an independent judiciary that has prevented the unlawful deprivation of life, liberty and property by applying the law to curb individual and government excesses. It is to the courts that we turn to seek redress for illegitimate government action such as unlawful intrusions into the privacy of our homes and our lives. It is to the courts that we turn for justice in resolving private disputes in an ordered and principled process. In the end, it is an independent judiciary that stands as the sole institution to ensure that civic order does not come at the expense of ordered civil liberty.

You may ask why I raise this issue. What is it in South Dakota that leads me to these remarks? Frankly, there have been no substantial developments that would lead anyone to conclude that judicial independence is in jeopardy in this state. We are blessed that many of the things happening in other states have not happened here. We are not beset by election controversies in which large sums of money dominate judicial selections. We have not seen judicial decisions that so deviate from the standard of reasonableness that people are losing faith in the competence of the judiciary. And we have a citizenry that

largely supports the principle that judges must be free to decide cases on the law, not political expediency.

But the erosion of judicial independence does not come in one fell-swoop. It comes through small steps that gradually weaken the ability of the courts to fulfill their responsibility, thus leading to public mistrust and suspicion of the judiciary as an institution. The erosion of judicial independence may be seen in stagnating resources for the justice system at a time for burgeoning resources for law enforcement and corrections, in calls for greater encroachment on judicial authority and restrictions on judicial discretion, in intrusions into court processes and procedures without consulting with or involving the judiciary, in the transfer of adjudication responsibility away from courts to other government bodies that do not enjoy true independence in applying the law, and in attempts to remove fundamental court operations from the supervision of the judiciary.

Much of the assault on judicial independence is occurring outside of South Dakota; it is affecting other state judiciaries and the federal system far more than our own. But South Dakota is not an isolated island; national problems can become our problems.

As Chief Justice, I recognize that the courts have a responsibility to act within the framework of our constitution and our laws. Judicial independence cannot be construed as relieving the courts of public accountability under the terms of the constitution. We too must deliver judicial services in an efficient and effective manner. We are stewards of the public purse and have an obligation to work cooperatively to bring the people of this state the best system of government at the lowest possible cost.

However, the judiciary has a far more pressing obligation that I fear we are losing sight of. That obligation is to ensure that the people of this state have confidence in the rule of law and in the equal administration of justice. It is fulfilling this obligation that must continue to be our foremost goal. Judicial independence is an absolute necessity in fulfilling this obligation, not just a nice concept from 200 years ago.

As we prepare to enter a new millennium, it is important that our citizens and government leaders -- inside and outside the judiciary -- renew their commitment to a strong and independent court system. Judicial independence is not a political catch-phrase. It is at the heart of our democracy and the workings of our government. It is the heart of our belief in a just society, in individual liberty, in equal application of the law to all people, and in limited -- not limitless -- government.

## **PERSONNEL CHANGES**

As you know, this past November all 37 circuit judges stood for election and four Supreme Court justices stood for retention. Thus, the judiciary of the state is largely determined for the next eight years. We are pleased that three new judges have joined the circuit bench: Judge Lori Wilbur who will serve in the sixth circuit, Judge John Flemmer who will serve in the Fifth Circuit, and Judge Jerome Eckrich who will serve in the

Eighth Circuit. I would like to take this opportunity to welcome these three new judges to the bench.

At the same time I would like to pay tribute to three circuit judges who are leaving the bench. Judge Patrick McKeever served the people in the sixth judicial circuit for 24 years. Judge Scott Moses served the people in the eighth judicial circuit for 24 years. And Judge Miles Devine served the people in the fifth judicial circuit for the last two years. Each of these judges brought to the bench a tremendous respect for the law and a deep concern for the people of this state. They will be missed. I would like to extend to Pat, Scott and Miles my deep gratitude for their years of service and many valuable contributions to the justice system, and our best wishes in their new endeavors.

### **THE WORK OF OUR COURTS**

A more detailed picture of the work of the courts is contained in the pages that follow this message. Unlike past years, I will not review statistical information that is stated in those pages. I would, however, briefly like to point-out several facts that I believe give an important picture of the extent to which the people are using their court system.

At the Supreme Court level, we experienced a slight increase in the number of cases filed in FY 1998. Notwithstanding this increase, I am pleased to report that the Court is more current with its docket than at any time in recent history. We are disposing of cases quickly and efficiently and have virtually no backlog of cases waiting for consideration. This speaks highly of the Justices and their commitment to ensure that justice is not delayed.

At the circuit court level we witnessed an explosion in case filings in FY 1998. Over 230,000 new cases were filed in FY 1998, an increase of over 15,200 as compared to FY 1997. This is a remarkable figure. Stated differently, almost a quarter-of-a-million cases were filed with the circuit court in just one year, an average of almost 925 new cases filed every business day of the year. We saw a slight decrease in felony filings but increases in juvenile filings, juvenile dependency filings, domestic relations filings, Class 1 and Class 2 misdemeanor filings, and general civil filings. As I have noted, this level of court use indicates a high trust by the people in the justice system. Further details concerning the work of the system can be found throughout the *Annual Report*.

### **WORK OF THE PLANNING COUNCIL**

As I noted at the beginning of this message, the work of the UJS Planning Council is now complete. In March, the Council submitted the second of two reports to the Supreme Court. The first report, submitted in October 1997, addressed many issues with the internal operations of the UJS. I am pleased to report that most of the recommendations proposed by the Council in the first report have been implemented, are being implemented, or are being studied further. Some examples of changes that have been made include the creation of a technology advisory committee comprised of people representing the various functions of the UJS and a representative of the Bureau of

Information Technology to help set a long-range technology plan for the judiciary. We also created the Administrative Advisory Council to continue the fine work of the Planning Council and to help coordinate major administrative policy issues between the various arms of the UJS. In the area of personnel, we have changed our employee evaluation system to promote better communications between employees and their supervisors, and we are examining a career path program to reward our most innovative employees who have made career commitments to the UJS. Thus, I am pleased to report that many of the over 60 recommendations contained in the first report of the Council have been implemented.

Because the first report addressed our internal operations, it drew little attention and thus generated little controversy. However, the second report, issued in March 1998, has been more controversial because it made a number of recommendations for re-drawing circuit court boundaries and consolidating some services. Given the nature of the report, the Supreme Court sent copies of the document to leadership in the legislative, judicial, and executive branches of state government, to many leaders in county government, to leaders in the media, and to leaders in the Bar. We received very few replies to our request for observations on the Planning Council proposals. Clearly, circuit reorganization impacts more than just the court system. Because of this reality, the Supreme Court needs further public comment on a proposed plan for re-organizing circuit court boundaries to ensure that the changes meet the needs of the people. The Court is developing a plan for meeting the public to discuss the issue.

Unfortunately, the debate concerning circuit court boundaries has also become enmeshed in the larger issue of county consolidation. Many view circuit court reorganization as the first step by the state to consolidate county service and reorganize county boundaries with an eye towards reducing the number of counties in the state. However, the issues are really quite distinct and county consolidation is something solely within the realm of the legislature and the public. The organization and structure of the *state court system* is a matter that falls under the supervision and authority of the Supreme Court. The court system organization is independent of the debate on county reorganization.

However, we must all remember that we no longer have county clerks of court, county court services officers, or county judges. Under our constitution, all court personnel and judges are state officers and employees subject to the overall supervisory authority of the Supreme Court.

Those of us charged with the administration of the state court system must ensure that the system works for the people of this state. Decisions to re-organize circuit boundaries, change the public hours of a circuit clerk's office, or relocate a judge should not be seen as the first step towards county consolidation, it is part of our continuing effort to maximize the use of our limited resources. Our duty to the people of this state is to adapt the system to the continuously changing needs of the state; and, of equal importance, the justice community must be given the necessary resources to fulfill that duty. Thus, I must reiterate and make it clear that we intend to make changes independent of any debate on the merits of county reorganization. County reorganization, if it is to come, must be

addressed by the elected representatives of the people, not by a judiciary that might well have to adjudicate legal disputes arising for such decisions.

## **TECHNOLOGY INITIATIVES**

This year marked a watershed in our continuing efforts to develop a truly integrated justice information system for the state. As many of you know, the criminal justice community of this state is currently served by multiple information systems. The lack of integration has led to multiple systems unable to communicate with each other and thus has deprived both the courts and law enforcement of accurate information about criminal activity.

This year the UJS undertook several important initiatives through the State Court Administrator's Office to begin the process of integrating criminal justice information systems. With my strong support and encouragement, this office has been working closely with state and local law enforcement agencies to integrate criminal justice information largely using *existing* systems. Particularly encouraging are two projects.

First, the UJS has been working with the Rapid City police and various law enforcement agencies in Brown County to integrate existing information systems to allow for "one-point" data entry for most Class 2 misdemeanors. In place of the court's duplicating data entry on arrest activity and law enforcement duplicating data entry on dispositions, law enforcement would create criminal complaints, pass the information to the UJS which in turn would pass back to the agency sentencing information. This system will eliminate duplicate data entry thus saving the need for more personnel resources and providing the courts and these law enforcement agencies with a freer exchange of needed criminal justice information.

The second project is even more exciting. With the tremendous cooperation of Attorney General Barnett and his staff, the UJS and state police radio are working on several projects to provide law enforcement with access to the Criminal Justice Information System, the circuit court docket, and the UJS adult and juvenile probation systems using the existing state police radio network. In addition, the UJS is developing a statewide domestic violence protection order system to provide the courts and law enforcement with real-time access to important domestic violence information such as the existence of a restraining order and the conditions of that order. I would like to thank Attorney General Barnett whose interest in these projects went beyond vocal support to include obtaining over \$400,000 in federal grants to make these projects possible.

Why are these projects important? As we in the UJS view it, an integrated justice information system provides two significant benefits. First, it reduces redundant data entry thus reducing personnel needs and eliminates the potential for conflicting data resulting from the same information being entered multiple times in different systems. Second, it provides for a free-flow of justice information between the courts and law enforcement. Unfortunately, criminals do not confine their activity to specific jurisdictions or geographical areas. Given the mobility of our society, we must have a

criminal justice information system that provides the courts and law enforcement with up-to-the-minute information on criminal activity.

When completed, the projects outlined above will provide the courts and law enforcement with access to statewide criminal justice information on a scale not currently available. Yet, I believe there is more we can do to improve the justice information system of this state for the benefit of our fellow citizens. It is ludicrous that law enforcement is unaware of outstanding arrest warrants, cannot easily obtain prior criminal case information, or have access to a statewide domestic violence protection order system. We would be hard-pressed to explain to our citizens why a convicted pedophile stopped on I-90 on a traffic violation was able to continue his trip with a young child because we lacked an integrated justice information system that alerted the officer of the driver's prior criminal history. All of these projects demonstrate that various branches and arms of the government can work cooperatively for the benefit of all of the people of this state.

### **THE BUDGET**

This year the UJS is presenting a budget that has necessary growth to meet the needs of the judicial system. As noted, we saw an increase of more than 15,000 cases filed in FY 1998 as compared to FY 1997; a record number. We have taken steps this past year to minimize the need for additional personnel in our circuit courts. For example, we have created "record search centers" around the state to process the over 19,400 requests we received last year for civil and criminal background checks. The growing demand for this service was straining clerk of court operations in our busiest offices which also experienced a disproportionate increase in case filings. At the same time, the record search centers have greatly improved public service. In some areas of the state, criminal background checks were taking up to three weeks because of the press of other court business. They generally now take less than 24 hours. Criminal record requests received in our busiest offices are forwarded to less busy offices for processing. We estimate that we shifted the work of over 5 FTE thus freeing in our busiest offices needed personnel resources for other work while more fully utilizing our personnel in the rural areas of the state. This process alone alleviated our need to seek funding for 5 additional FTE in our clerk of courts operation. We are examining a similar process for handling Class 2 misdemeanors.

We, through the actions of circuit presiding judges, have also reduced clerk of court operations in some areas of the state to achieve greater parity between the resources we have assigned to an office and the work of that office. This has not been without controversy. Title companies, local law enforcement, county commissioners, legislators, and bankers have all raised concern with these decisions. This is understandable because the office hours are not as convenient as before. However, we must operate our state court system as efficiently as possible given the limited resources available. This means aligning our resources more closely with the demands of an office. We can no longer afford to maintain full-time or even half-time offices in every county of the state when the work dictates something less.

Although our present needs are being handled by shifting of existing resources, I would be remiss if I did not state that such shifting will only go so far in addressing the personnel needs of the system. If case filings continue to rise at the level of the last few years, we will need additional personnel notwithstanding these internal shifts.

The budget we present this year is quite realistic. Although presented as a \$1.6 million dollar increase, it is important to note that half of the increase comes from state salary policy afforded to all state personnel. The judicial branch of this state does not ask that its employees receive special treatment not accorded other state employees. However, neither do we expect less treatment of our employees. Thus, contrary to what you may believe as a result of the published budget, 50% of the increase in our budget parallels increases applicable to all branches of government in the area of salary policy. The difference lies in the accounting of the increase which is generally not reflected in departmental operating budgets. Even with our proposed increase, we still account for just 2.9% of the state's general fund and 1.2% of the overall state budget.

This year the Supreme Court approved increasing our court services officer staffing by three additional officers. As I have repeatedly said, a well-funded, well-staffed probation program remains this state's most cost-effective means of corrections for many offenders. During FY 1998, over 14,300 individuals were continued in, or placed on probation. In FY 1998, we added 8,752 people to the probation rolls of the state, an average of almost 35 people for every business day of the year or 127 *new* people per court services officer. On any one day in South Dakota we have under supervision approximately 2,300 juveniles and 3,600 adults. We manage this caseload using 69 field officers, or one officer for every 81 people. The ratio of officers to supervisees means that the average officer has just 5 minutes per day per person, if the officers did not also have to complete such tasks as pre-hearing social case studies and pre-sentence investigations. This ratio and time availability is hardly adequate. I continue to commend the court services staff for their excellent work in serving the people of this state. I would encourage the legislature to appropriate money for additional court services officers not only in the interest of reducing workloads, but more importantly in the interest of public safety and cost-effective corrections. Every person placed under court supervision is one less person sent to the Department of Corrections.

Finally, a significant portion of our general fund request is in the area of capital assets and technology expenditures. I have informed the Governor and leadership in the legislature that we are prepared to reduce our general fund request by approximately \$300,000 *if* the legislature will support and pass an increase in the court automation fund surcharge. This fund has become our sole source of money to handle the court system's growing technology needs. It is clear to us that in the absence of adding more people, technology will be our only means to process burgeoning caseloads in a timely manner and relieve some the pressure on our larger offices. At the same time, technology will also benefit the state. The absence of a case management system, for example, can hamper our ability to track and dispose of cases at a tremendous cost to the state and the public. It is essential that in the absence of additional personnel, adequate funding be available to bring technological solutions to bear. Moreover, we are asking by this

proposed increase that the users of the system help foot the cost of improvements. If approved, the increase in the court automation fund not only improves court operations by expanding our level of technological support, but saves the state money by reducing the need for additional personnel to manage our burgeoning caseload.

## **CONCLUSION**

I want to take this opportunity to thank my fellow justices for their support and encouragement over the past year as I continue to serve the people of this great state as Chief Justice. I also want to acknowledge the work of the fine people of the UJS who quietly serve with distinction and excellence. Implementing such programs as the records search centers, Planning Council recommendations, and our continuing efforts at restorative justice in our probation programs, does not come without the full cooperation of employees throughout the system. I am very proud of our court system and its ability to respond to the needs of our people. Although the UJS is far from perfect, the system is comprised of many exceptionally talented individuals who have dedicated their lives to serving the people of this state. This is no small deed given that in the last twenty-five years the great respect given to public service has all but evaporated. Relying on the creative talents of judges and employees, we continue to build upon our successes, correct our failings, and respond to the needs of our people to see that justice is done.