

STATE OF THE JUDICIARY MESSAGE

JANUARY 2000

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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:

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 court system remains vibrant, healthy and ready to meet the challenges of the new century.

I am in my 30th year as a judge and in my 10th year as Chief Justice. As an old-timer reflecting on the past, I am struck by the enormous changes that have occurred in the South Dakota judiciary. At times, the change was small and incremental, almost unnoticeable. At other times, the changes came swiftly and monumentally. There were times when progress seemed excruciatingly slow, and I questioned whether the UJS was adequately responding to the challenges facing us. Yet, with the benefit of time and reflection, it is clear to me that we have seen tremendous positive changes in the judiciary of this state, particularly in recent years. Today's judiciary is a far cry from that we created in 1975 with court reorganization. We could not have gotten where we are today without the tremendous dedication of people within our system, both past and current, coupled with the support of members of the Bar and citizens throughout this state. Our progress has been the result of the collective efforts of many people.

THE PAST AND PRESENT

Time has a way of clouding memory and making the past seem more romantic and exciting than it actually was. When I recall the many challenges of past years, I am struck by the fact that most people in this state, including a vast majority of our employees, do not remember the judiciary before reorganization. I have heard some unthinking people call for a return to the past structure of the courts, as though that would somehow wash away the challenges that face us today. While we may have fond memories of the past, in actuality our early judicial history had its own challenges and difficulties that we sometimes choose to forget. Let me give you a picture of the courts before January 7, 1975, the date when South Dakota became one of the first states in the nation to truly unify its courts.

In early 1975 I had just completed four years as a circuit judge. Prior to that time there were twenty-one circuit court judges (paid by the state), nineteen district county judges (paid by multi-counties), and three municipal court judges (paid by the cities), not to mention many justices of the peace and police magistrates. Virtually every county and

small community had some type of citizen judge, usually completely unschooled in the law and legal procedure. It was truly a hodgepodge of courts, judges, and justice.

The jurisdiction of the courts was confusing, duplicative and contradictory. It was not uncommon for me as a circuit judge to wave greetings to a district county judge as I drove to a county seat where he had also held court that day. Jurisdictional provisions frequently required two judges to handle cases in one location that one judge could have comfortably handled. For example, as a circuit judge I would be in Philip handling divorces and other civil matters often on the same day the district county judge was there hearing juvenile and probate cases. Neither of us had jurisdiction to hear the cases of the other.

Not only was the jurisdiction of the courts convoluted, but so too was its administration and funding. Circuit courts were state funded, although our court reporters were paid by the counties in the circuit. District county courts, as well as county justices of the peace, were county funded. Municipal courts and police magistrates were city funded. There was no sensible administrative structure. Unlike today, the Supreme Court prior to unification had literally no superintending authority over the courts of the state. Thus, the administration of the courts was as diverse and disjointed as their respective jurisdictions. There was no State Court Administrator's Office to coordinate and support administrative, fiscal, and personnel policies across the state. The lack of uniformity in funding also created a lack of uniformity in justice. I dare say that had reorganization not occurred, the tax dollars spent by state and local governments would be enormous as compared to the \$22 million we spend today. That is definitely the experience in other states that have not unified their judiciaries.

Prior to reorganization clerks of court, our principal support at the county level, were elected county officials, not answerable to the judges. There were no qualifications beyond being popular with the electorate. Today's clerks of court and their staff are state employees appointed by the presiding judge. They must meet certain job qualifications; they receive training as they begin their jobs; and they are required to attend periodic training provided by the State Court Administrator.

Before reorganization, some district county judges had juvenile probation officers, who were also county employees. Circuit court adult probation services were provided by executive branch parole officers, many of whom lacked the interest to be effective probation officers. Their qualifications, direction and priorities were not set by any member of the judiciary. Today we have a complement of well-educated, highly skilled and trained court services officers, who supervise both juveniles and adults, as well as providing a number of other vital services to the judiciary and their communities. I am very proud of them.

So what has court reorganization brought to the people of South Dakota? First, we have a very efficient, cost-effective and streamlined state court system that is able to administer justice uniformly and effectively throughout the state. Reorganization empowered the Chief Justice and Supreme Court to uniformly and efficiently administer the court system

under one umbrella for the benefit of all people in the state. We no longer have judges passing each other on the road because varying jurisdictions require different judges to handle different matters. Today, one circuit judge can, and routinely does, handle all legal matters anywhere within the assigned circuit. More importantly, we have an organization of extraordinarily talented judges and employees capable of responding to the needs of our citizens.

I would like to give you a sampling of some of the important innovations and developments that I believe have made the UJS a dynamic organization, and one for which all citizens of South Dakota can be proud.

- Technologically, we continue to develop new and innovative ways to share information throughout state and local government, and to respond to our growing workload. Ten years ago we developed the Criminal Justice Information System (CJIS) to track criminal case information. Today that system is the backbone of efforts to maintain an integrated information system linking the courts, state and local law enforcement and other state agencies. We created a uniform Judicial Accounting System (JAS) to account for the tens of millions of dollars collected and disbursed annually by the courts. We are currently implementing a Court Automated Tracking System (CATS) to track probationers and provide statewide information to court services officers and the law enforcement community. In July 2000 we will implement a statewide domestic violence protection order system that will share real-time case information with other court officials and the law enforcement community. And, currently in development is a case management and docketing system.
- Improving public access to justice and the judiciary continues to be an important goal for us. We implemented the Child Support Referee System to more rapidly and effectively address the needs of people seeking modification of child support orders. We developed record search centers to improve our response time in handling public inquiries, which also reduced the demand this service was placing on our larger offices. In addition, we are now embarking on a project to widen the availability of alternative dispute resolution programs such as mediation. Working with the State Bar, in April 2000 the UJS will sponsor a statewide mediation training program for judges and lawyers with the goal of expanding the availability of mediation as an alternative to litigation in resolving civil disputes. I thank Justice Koenkamp for his leadership on behalf of the Court in those endeavors.
- Administratively, we continue to seek better ways of doing business. Following a recommendation of the UJS Planning Council, we have committed ourselves to hiring professionally trained court administrators to assist in administering our circuit courts. The nature of our business is constantly changing, and professional administrators greatly improve our ability to anticipate and react to the changing administrative needs of our courts. Likewise, to broaden employee participation in the administration of the system, we continue to rely heavily on employee groups. While I believe leadership must flow from the top-down, I am convinced

- innovation comes from the bottom-up. Employee participation is critical to innovation. We have also developed a sophisticated computer modeling system to construct weighted workload studies that allow us to allocate our judicial personnel resources more effectively.
- Well-trained judges and employees make a tremendous difference in the ability of the UJS to handle its work and respond to change. Thus, we have and continue to expand opportunities for judicial and employee training. Judges attend annual in-state training conducted by national legal experts. We also encourage judges to attend out-of-state programs to broaden their legal knowledge and thinking. Administrators attend Institute for Court Management programs. All our chief court services officers are enrolled in programs leading to certification as probation program managers. There is regular mandatory training for court services officers and for clerks of court and their deputies. In order to enable all deputy clerks of court to receive training, after becoming Chief Justice I directed that there be annual regional training throughout the state, where our training staff takes the training to the field. This emphasis on training pays enormous dividends in the end.
 - In our probation programs, we continue to emphasize the importance of restorative justice. As one chief court services officer said, "The decision to make Restorative Justice the basis for the work of Court Services has been extremely positive. It has enabled the development of a statewide approach to our work." Or, as another chief court services officer recently wrote, "What can I say? Any time a system begins to look at [criminal] cases in terms of community protection, offender competency development, and restoration to crime victims, everyone involved wins." Using restorative justice principles, we have created such diverse programs as a victim-offender mediation process, criminal thinking programs, victim impact panels, toys-for-tots programs, and the list goes on. Because of restorative justice and the victims rights legislation passed several years ago, restitution for victims of crime has increased almost 35% over five years. Last fiscal year we collected restitution amounting to almost \$2.7 million. Today, not only do we supervise probationers, we also work hard to hold them accountable to themselves, the victims of their crimes, and the community. Later in this message I will address another innovation in our probation programs, intensive juvenile probation.
 - The Planning Council was a tremendous event for the UJS and our state as a whole, not only because of the recommended results, but also because of the process. It showed that we could and must continue to review our operations to ensure that we are meeting the needs of the people. The Planning Council process not only resulted in many internal changes to the system, it also enabled us to look at the difficult and controversial issue of allocation of resources. As a result of the Planning Council process, the Supreme Court has restructured our circuit courts effective July 1, 2000, to recognize the demographic changes that have occurred in South Dakota over the last twenty-five years.

These are but a few highlights of the changes to the judiciary that have occurred in the recent past. I suspect that the future holds still further challenges and the need for more

change. But, as the longest term member of the judiciary, in reflecting on where we were twenty-five years ago when we started this experiment of reorganization, and where we are today, I am convinced that all South Dakotans can be proud of their court system. Change is a constant, and with it comes new challenges yet unrecognized. Our track record shows that we have the will, coupled with the tremendous personnel talent, to meet the challenges that face us. I am very confident in our system of justice and am very proud of the UJS.

THE WORK OF OUR COURTS

A very detailed picture of the work of the courts is contained in the pages that follow this message. I will not restate statistical information provided there. I will, however, briefly highlight several facts that provide important insight into the work of the courts.

I am pleased to report that at the Supreme Court we are more current with our cases than at any time in recent memory, notwithstanding a record 498 filings in FY 1999. At the same time that we experienced record filings, we disposed of some 482 cases, the second highest "clearance" rate of the last five years. While our pending caseload has grown, I see nothing to suggest that the public or the Bar need be concerned with getting cases before the Court or in getting timely decisions from the Court. Our clearance rate and complete absence of any backlog speak highly of the Justices' commitment to fair, wise, and expeditious justice. We are firmly committed to holding ourselves to a high standard, both in the quality and in timeliness of our decisions.

At the circuit court level, case filings continue to increase. In FY 1999 an all-time high of over 237,000 cases were filed. We witnessed a dramatic rise in criminal filings, with an increase of almost 5,000 cases over last fiscal year. Fortunately, the major criminal action increases were misdemeanor cases, not felonies. While misdemeanor cases are generally less work, judicially speaking, they still consume a tremendous amount of staff time just handling the paperwork. We also saw increases in domestic relations filings and juvenile abuse and neglect cases. These cases, as you can imagine, present courts with some of the most difficult, emotionally trying, and time-consuming problems we face.

Particularly disturbing is the continuing increase in requests for domestic violence protection orders. We saw almost 2,700 new petitions last year. Stated differently, 2,700 people appeared at the courts of our small state claiming to be victims of domestic abuse and seeking the court's protection from the abuser. To better coordinate our response to this increase, we are using federal money available through the Department of Social Services to hire domestic violence coordinators in Sioux Falls and Rapid City. Under the pilot project, these individuals will be the primary contact for victims of domestic violence, and will coordinate the delivery of services to the victims. We hope that these pilot projects can more effectively identify the true victims of domestic violence, as opposed to those who may be using the system as a means of retribution or to gain an advantage in pending domestic relations cases. We must focus our attention on helping true victims through this unthinkable difficult time.

We are implementing judicial guidelines for processing abuse and neglect cases. The guidelines were developed under a federal grant by a broad consortium of experts in the area of judicial process and child development. The guidelines will assist judges, attorneys, social workers and others in expeditiously handling cases. In implementing these guidelines, we hope to accelerate the placement of children into permanent homes where they can have a semblance of a normal life. In the grand scheme of our caseload, it is easy to think of an abuse and neglect case as simply "another case." However, these cases are so much more. We in the judiciary must continue to give these cases our highest priority. Those of us who are parents know that the most important thing in rearing a child is a stable and loving home environment. Many of the children involved in these cases rarely have had such an experience. Our goal is to place children into permanent homes as quickly as possible and to eliminate red tape, neglect, or ignorance as an excuse for not doing so. I believe the guidelines that are being initiated will greatly assist in reaching this goal. I would like to thank the many people who worked on developing the guidelines.

COURT SERVICES AND INTENSIVE PROBATION

This past July the UJS resurrected its highly successful intensive juvenile probation program that was terminated a year ago for lack of funding. Through the tremendous efforts and commitment of Senator Tom Daschle, the UJS was able to directly access over \$100,000 in federal money to hire three intensive juvenile court services officers. I would like to publicly thank Senator Daschle and his staff for their efforts. Then, using those funds, coupled with an additional court services officer funded in our FY 2000 budget, we were able to place four intensive juvenile court services officers in the field with one each in Aberdeen, Mitchell, Rapid City and Yankton.

For those unfamiliar with intensive probation, the program has a very focused and measurable goal. We will, over the course of this fiscal year, defer 80 juveniles from the Department of Corrections (DOC), subjecting them to intensive court supervision, family and mental health counseling, and strict conditions of probation in an effort to turn their lives around. Each intensive juvenile court services officer will supervise ten juveniles every six months. At the successful conclusion of intensive supervision, the juveniles will be "stepped-down" to more standard supervision levels under the direction of other court services officers. Through this approach, we hope to teach these juvenile offenders personal responsibility, accountability and the skills necessary to become productive citizens *within their communities*. We also intend to hold them – and in many situations their families – strictly accountable for their actions through a regimen of paying restitution and cooperatively participating in counseling programs.

The juveniles placed on intensive probation are typically repeat visitors to the courts. Many of these kids have chemical dependency problems, are chronic truants, have threatened teachers or family members, or have been involved in serious criminal conduct. Each has exhausted the traditional options available to judges for dealing with their conduct and faces either participating in the program or being sent to the DOC. They are literally standing at DOC's door.

Some may be surprised by the low ratio of intensive court services officers to juveniles. I should give you a flavor for some of the things these officers will do in the course of supervising a juvenile. An officer is expected to stop at the juvenile's home at any hour to ensure they are complying with curfew, to appear unannounced at school to see that the juvenile is attending and participating in classes, or to meet with mental health professionals. These officers work closely with the family because, as we all know from experience, many of our juvenile offenders come from family backgrounds that are less than desirable. By involving mental health professionals, family counselors, school officials, local law enforcement and the community in the supervision of these kids, the intensive juvenile officers have made a true difference in the lives of many offenders and their families.

This program has gotten very little publicity despite the fact it has achieved remarkable results. The first year of the program, 78% of the juvenile offenders successfully completed intensive probation. We continued to track these juveniles and have found that even 18 months after being released from intensive probation, they were leading productive lives. Between August 1 and December 1, 1999, 33 juveniles were placed on intensive probation and only three failed, a remarkable 90.9% success rate thus far.

Clearly, intensive juvenile probation will not work for every offender. However, it is appropriate and does work with many. It provides a cost-effective means for handling juvenile offenders. The cost of the intensive juvenile probation program principally includes the salaries of the officers and the costs of mental health counseling, approximately \$2,300 per juvenile. This is a far cry from the cost of placement with the DOC, which over a six-month period can easily exceed \$15,000 per juvenile. I am so convinced of the effectiveness of this program that I call upon the legislature to appropriate general fund dollars to end our stop-and-start reliance on federal funding. Thus, we requested in our budget that the three federally funded officers be converted to general funds. Equally importantly, if the program continues to show such promise, serious consideration should be given to expanding its availability to other areas of the state.

THE BUDGET

Once again, we are presenting a budget that contains only that growth necessary to meet the immediate demands being placed on the court system. Over 7,000 more cases were filed in our circuit courts in FY 1999 compared to FY 1998. In just two years, the caseload of the system has increased some 22,000 cases. We have taken steps to minimize the need for additional personnel by relying heavily on our reallocation of existing resources to other areas of the state which are experiencing the greatest demands.

This year's budget increases our general fund spending by a mere \$287,084, or 1.4%, over the current year's general fund budget, not including salary policy. The overall increase in the FY 2001 budget is 3.3%, including increases in "other fund" authority. Increases in "other fund" authority recognize the benefits we are seeing from additional

revenues in our court automation fund. For the first time in years, we now have sufficient revenue flowing into that fund to move several lagging technology initiatives forward.

In our FY 2001 budget the Supreme Court approved five new FTEs. Three are to convert our currently federally funded intensive juvenile probation officers to general fund dollars that I spoke to earlier. The remaining two FTEs are to improve our computer support in the field. Technology will continue to be an important part of improving the delivery of justice services. Improving computer support is critical given our ever-growing reliance on technology.

CONCLUSION

In closing, I want to thank my fellow justices for their support and encouragement for the years I have served as Chief Justice. I also want to again acknowledge the very fine work of the judges and all employees of the UJS. Many of the 600 people who work for our court system receive little recognition of their contributions to our civic life. And yet the pursuit of justice, from the simple filing of a paper with a clerk to the rendering of a decision by a judge, is vital to the integrity of our society. I continue to be inspired and impressed by the talent and commitment of people throughout the system. 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 better the lives of the people of South Dakota.

Thank you!