

STATE OF THE JUDICIARY – JANUARY 10, 2003
MARY J. MULLARKEY, CHIEF JUSTICE
COLORADO SUPREME COURT

INTRODUCTION

President Andrews, Speaker Spradley, Members of the 64th General Assembly, honored guests and friends:

It is my pleasure to be here today to discuss with you the current State of the Judiciary and to outline some of our accomplishments as well as some of the challenges we face.

Since I last addressed you in 2001, the terrorist attacks on our country have brought home one of the fundamental differences between the United States and many parts of the world. We are committed to the rule of law. We reject the idea that might makes right. We have divided the powers of government among three co-equal branches. Our courts are places where disputes are peacefully and openly resolved.

SUCSESSES AND INNOVATIONS

Colorado's legislative, executive and judicial branches have a long history of partnerships that has empowered each of us to achieve far more than we could individually. Together we have created strong, effective court and probation systems that have been recognized across the nation for their excellence and innovation.

Here are a few recent examples:

- In 2002, the United States Chamber of Commerce ranked Colorado's civil justice system as one of the top seven in the nation. Our judges were ranked second in the nation for impartiality and sixth for competence.
- Probation officer Meri Miyasaki of Mesa County was recognized by the American Probation and Parole Association as the *2002 Officer of the Year*.
- Colorado has become the first state in the nation to automate arrest warrants, turning a two to three day turnaround into real time entry.
- Colorado was recognized in both 2001 and 2002 as the number one state for technology in the area of courts and law enforcement.

Some of our successful projects like the Court Improvement Project will never show up on an opinion survey because its beneficiaries are our youngest and most vulnerable court users – dependent and neglected children. But the Supreme Court's Court Improvement Project, Jury Reform Committee and Commission on Families in the Colorado Courts are setting the standard in developing and implementing effective and efficient court procedures.

Our successes are due, in no small part, to the cooperation and assistance we have received from the Colorado General Assembly and the Governor. The Governor's Civil Justice Reform Committee, which included Justice Bender, Justice Kourlis and Justice Rice along with judges, members of the business and legal communities, and legislators, identified a serious deficiency in the number of judges available to hear cases. With the Governor's strong backing,

the General Assembly created 24 new district judgeships over a four-year period. We now have filled 12 new judge positions, with 12 more authorized if funding is available.

Our technological accomplishments have been achieved in partnership with the General Assembly and the various executive branch criminal justice and human service agencies. We have been able to make giant strides in helping Colorado's dependent and neglected children, and families in crisis come to permanency more quickly, less contentiously and more effectively through the court system with the help of legislators who have served on our Court Improvement Project and on the Commission on Families in the Colorado Courts.

Our successes are also due to the dedicated people who staff our courts and probation officers who manage offenders throughout the state. They work hard, sometimes keep impossible hours, and continuously come up with new and better ways of doing business.

Since I last reported to you, we have pilot tested some promising new ways to handle cases that resolve the cases more quickly, cost the parties less, and result in an outcome that is more satisfying to the parties.

Our projects involved both divorce cases and smaller civil cases in which less than \$100,000 is at stake. The key is that the judge or magistrate takes the lead in resolving cases and takes action early in the life of the case before the parties have spent a lot of money and their positions have hardened.

This faster, "hands on" process produces much better results. Cases are resolved more quickly and at less cost. The parties are more satisfied with the outcome, and the animosity and emotional harm that may be caused by the adversarial process are greatly reduced. In fact, an unexpected good consequence of the simplified divorce process is that more couples reconciled and withdrew their divorce petitions in those cases than in the usual divorce cases.

Today the simplified divorce process is widely used throughout the state. Similarly, we are expanding the use of the expedited procedure for smaller civil cases beyond the borders of the two districts that pioneered it. We are applying some of the lessons we learned from these two pilot projects to the other major area of the courts' responsibility: criminal law.

In two of our largest judicial districts, the 18th (Arapahoe, Douglas, Lincoln and Elbert counties) and the 4th (El Paso and Teller counties), we are concentrating on improving our processing of criminal cases. Our judges are working closely with all of the players including district attorneys, public defenders, and law enforcement agencies.

There are limits, however, on how much we can do, given the resources we have available. Because of the economic hard times, some offenders on probation may not be adequately supervised in the community, we are flooded with new cases, and we have fewer people to handle them. The lines in the courthouses are growing longer, hours of public access are being reduced, and services are slower. I worry that mistakes will be made, that delays will be unconscionably long, and that ultimately public safety will be compromised.

THE COLORADO JUDICIAL BRANCH

The Colorado Judicial Branch has two main parts: the court system and probation services. We are authorized for about 2,400 full time employees and 257 judges. About two-thirds of our employees work on the court side of our business and one-third in probation. The state court system includes county and district courts, the court of appeals and the supreme court. Our 257 judges collectively handle about 12,000 cases every week.

CHALLENGES TO THE COURTS

When I last reported to you, we had about 600,000 cases filed in the trial courts every year. In the fiscal year 2002, that number grew by slightly less than six percent or more than 34,000 cases. We are continuing to see caseloads increase at a comparable rate in the current fiscal year. The caseload growth reflects two facts: Caseloads tend to increase as our population increases and people tend to file more cases during hard economic times.

The increasing caseload levels and demands upon the courts compounded with declining resources are placing constant strains on our personnel. We have long since passed the point at which the problem can be solved by simply working harder.

PROBATION

When I became the chief justice in 1998, I also became the administrative head of the largest component of the Colorado corrections system – the Judicial Branch’s probation unit. Currently, approximately 78,000 people in Colorado convicted of criminal offenses are serving sentences in a variety of different settings including prison, community corrections, youth services, probation or parole. Two-thirds, or more than 52,000, of the 78,000 convicted adults and juveniles have been sentenced to probation and are supervised by probation officers within the Judicial Branch.

Probation provides a viable, effective alternative to incarceration. Persons who are sentenced to probation continue to live, work, or attend school in their communities. They make restitution to their victims, and are given the chance to get their lives back on track and modify their behavior to avoid further criminal conduct. In addition, offenders on probation help pay for part of the cost of their supervision. Three-quarters of adult offenders and two-thirds of juvenile offenders successfully complete their probation sentences.

Probation is clearly the lowest cost sentencing option available. We supervise two-thirds of the corrections population with only six percent of the state’s total corrections budget. Regular probation for one adult costs \$562 per year. All other sentencing alternatives such as parole, community corrections and prison incarceration are significantly more expensive, costing from 10 to 50 times as much as probation. Probation’s specialized diversion programs alone saved the state 576 prison beds or \$19.6 million in the last fiscal year.

Despite its many advantages, probation is in trouble. There are not enough treatment programs available for substance abusers. The number of cases assigned to each probation officer has increased at the rate of five to eight percent per year. The average caseload for regular probation is now 215 cases per officer, far exceeding the national average of 130 cases. A case level of 215 means an officer can spend only 9.5 hours per year with each offender. Our

probation officers are very dedicated and hardworking but we cannot expect them to work miracles. The public needs to have the confidence to know that an offender sentenced to probation will be properly supervised in the community.

THE CURRENT BUDGET CRISIS

Let me now update you on the measures the Judicial Branch has taken to address the current fiscal crisis. Last summer, I ordered a 4 percent reduction in our authorized expenditures. The Judicial Branch's general fund budget is approximately \$177 million, 25 percent of which cannot be touched because of constitutional and statutory restrictions. The cuts must come out of the remaining 75 percent of the budget which mostly funds our employees' salaries. We are now on track to hit a four percent reduction of \$7.1 million by June 30, 2003.

To do so, we instituted a hiring freeze on September 1, 2002, required our employees to take three days off without pay, and delayed the start dates of newly appointed judges by up to six weeks. Our employees have also had to absorb the increased workload created by the freeze and furloughs, and yet they continue to show their dedication to serve the public. Ultimately, we expect the hiring freeze to leave 10 percent (250) of our authorized positions vacant by June 2003.

Further cuts in our budget will require even more drastic steps. To go from the present 4 percent to a 10 percent reduction at this point in the fiscal year would require laying off a minimum of 700 employees. Alternatively, we would be required to close the courts one week per month for the remainder of the fiscal year. The courts would handle only the highest priority cases, we would lose valuable employees, and probation could not adequately protect public safety.

As Chief Justice it is my responsibility to do all I can to keep our courts open and functioning. Rather than further reducing our budget, I believe the public would be better served if court filing fees were raised. Currently, our fees, on average, are lower than those in 45 other states. A 50 percent increase would generate \$7 – 8 million per year and still keep us in the mid-range of filing fees nationwide. This computes to raising filing fees for a district civil case to \$135, county court filings to \$46 and appeals at the supreme court to \$225. The indigent and government agencies would continue to be exempt from paying fees. While I am reluctant to impact court users, I believe the public would be better served by this option than by closing courts.

My staff and I have talked with many of you to explain my fee increase proposal and I would be happy to meet with any of you at your request. Several of you have been receptive to the idea and understand the critical nature of this fee increase proposal to maintain the integrity of the courts. I hope that you will act quickly to raise the fees.

FISCAL YEAR 2004

For fiscal year 2004, we have requested a continuation budget. That budget would fund us at the level the General Assembly approved last year with whatever legislative adjustments are made for salaries and benefits. Frankly, this budget request does not adequately address our

needs. However, given the continuing poor financial picture, I think this budget request is appropriate.

One issue for your consideration this session is whether to fund the third installment of six new district court judges. When this legislation was passed, the General Assembly unanimously recognized the need for all 24 of the judges. That need has only increased with passage of time. I recognize, however, that you may need to defer these judges to another fiscal year. We will work with you on that issue.

Finally, as you look at the state's overall financial picture, I suggest that you to pay close attention to Colorado's sentencing structure. Some of this work was started in interim committee over the past two summers. While criminal sentencing is a very important issue to communities and the courts, we have learned that minor changes to sentencing laws can have dramatic impacts on the need for additional bed space. Increasing sentences by mere months can create the need for hundreds of new beds, conversely small decreases in length of stay may help alleviate some of the need to build new prisons. I know that this is a highly controversial issue. However, I believe that by working together, we can develop approaches that will simultaneously protect the public, respect the rights of victims, and alleviate some of the pressure on the state budget. I offer you the expertise of our judges who work with the sentencing laws every day, should you choose to focus on sentencing.

In addition, I urge you to consider probation as a viable sentencing alternative. Colorado's probation system is considered among the best in the nation and I believe we can find solutions given the proper resources.

FACING OUR CHALLENGES TOGETHER

We in the Judicial Branch face the looming fiscal challenges and escalating case demands with a commitment to the rule of law and in a cooperative spirit with the legislative and executive branches. The courts are critical to our way of life. We cannot make do without them. Adequate funding for courts and the probation system is not a political issue, but rather an issue of access to justice and public safety.

Let us continue the long and honorable tradition of the legislative, executive and judicial branches of Colorado working together to face challenges head-on, developing viable alternatives, and implementing solutions that strengthen the ability of the three branches to serve all Coloradans.

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