

2014

State of the Judiciary

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Mr. President, Mr. Speaker, Governor and Mrs. Mead, members of the 62<sup>nd</sup> Legislature, elected officials, members of the judiciary, and citizens of the State of Wyoming. It is an honor to speak to you on behalf of the men and women who serve in the judicial branch of our state's government. Thank you, President Ross and Speaker Lubnau for the invitation to do so.

Although the constitution creates different responsibilities for the three branches of our state's government represented here today, it imposes the duty on us all to serve the public. I speak for all of the members of the Wyoming Judiciary when I wish you the energy and wisdom you will need as you perform your legislative responsibilities in this upcoming session.

I decided I could not stand before you today and ignore the elephant in the room. Last session, this body passed SF104 with a two-thirds vote. The constitutionality of that law was challenged and two weeks ago, with a split vote of 3 to 2, the Supreme Court ruled that statute unconstitutional. We understand that decision caused great concern for many in this chamber and, just as certain, it will present new challenges for the legislature and the Governor, and likely for the Court as well. Clearly, there is nothing to be done but embrace those challenges and go back to work fulfilling our respective constitutional obligations to the people of this state. As the philosopher once said, "The moving finger writes and having writ, moves on. Not all the piety nor wit will lure it back to cancel half a line."

This session presents you with a myriad of other issues, some of which involve the Wyoming judiciary, and I want to focus on those during the limited time I have with you today.

First, we have continued to see rapid turnover in the ranks of our judges. As we predicted several years ago during your consideration of the much needed pay raise for the judiciary, a generational shift is occurring as more of us baby boomers choose retirement. In the last three and a half years, we have added 16 new judges and, in just the next two years, 16 more of our judges will reach 65 or older. We can all be proud of our judicial selection process that operates on merit and not on politics. Since I spoke to you last, our dedicated Judicial Nominating Commission and the Governor have been busy selecting six new judges. Circuit Judge John Prokos in Green River replaced retiring Judge Vicki Schofield; Circuit Judge Craig Jones in Rock Springs replaced Judge Dan Forgey who moved to Natrona County to replace retiring District Judge David Park; Circuit Judge Brian Christensen, also in Natrona County, replaced retiring Judge Michael Huber; and, of course, Justice Kate Fox, who was just sworn into her new position on the Supreme Court, replaced retiring Justice Barton Voigt. We will miss those who retired and we welcome our new colleagues.

We could not accomplish delivery of equal justice to all without our dedicated judicial employees. On that score, we have experienced a costly 30% turnover rate in our circuit courts because our salaries have simply not kept pace. We strongly support the Governor's position that it is time to provide raises for all state employees.

Technology continues to offer opportunities and challenges to our judicial system. We have reported to you the last few years about our progress on developing and implementing a new uniform district court docket management system. We are happy to announce today that it is operating in 22 district courts with the last court to come on line in less than a month. Remember that there were different county operated systems and elected district court clerks in each of those counties. Designing and implementing the new uniform system, and transferring all of the data, in some counties going back to statehood, required the extraordinary dedication and creativity of our IT staff as well as the cooperation and time of the 23 clerks of the district courts. We are now designing a similar system for the circuit courts and an electronic filing system for both circuit and district courts. We commend this body for its foresight and leadership in making this investment to improve the delivery of judicial services to Wyoming citizens.

In the last three legislative sessions, I have reported about our efforts to accomplish issuance and payment of citations electronically. In the last two years, we received over \$9.5 million through the e-payment system 24 hours a day from all over the world. The speed and accessibility of that system has lowered accounts receivable and increased the time value of the money collected, and, by the way, it was all accomplished by our IT staff without any increase in funding. Enabling issuance of electronic citations was a slower and more difficult process as it required a complete overhaul of the highway patrol's data management system. I am happy to report that patrolmen all over the state

now can enter citations electronically and the Department of Transportation and our circuit courts can receive them the same way. We have many to thank for that accomplishment, and one of them is here with us today. Sgt. Jim Gates road herd on that effort and we owe him and his team a great debt. While e-citations will be of great assistance to our circuit courts, they may have an even greater impact on law enforcement by freeing up officers to focus on their difficult job protecting the public. Our budget also includes some funding to assist local law enforcement agencies so they can also enjoy those same technological improvements, and we commend the Joint Appropriations Committee for supporting that request.

Without a doubt, technology has improved our system of justice, however, it has also created huge challenges for courts and lawyers. As has happened in every facet of our lives, the web has changed everything. An explosion of websites tout free legal advice and documents: \$50 dollars for a will, \$75 for divorce pleadings, and \$89.99 for on-line mediation of your disputes, all with assurances that these legal services comply with your local state laws. Companies of unknown ownership reap hundreds of millions of dollars in profits, many outsourcing the actual work to India and other locations far beyond the reach of our ethical rules. Your families and friends are becoming easy targets of their entrepreneurial efforts. We have witnessed the results in our courts when families found their estates were not protected; businesses relying on unenforceable contracts lost money; and self represented people were denied relief because of faulty documents. Our entire profession is struggling with how to protect the public and still

support access to our courts for those that cannot afford legal counsel. We are committed to working to meet these challenges, and having just returned from the Conference of Chief Justices, I know every state is struggling with the same issues.

While technology can allow the judicial process to move more quickly and inexpensively, our rules and decades of traditional practice by lawyers and judges sometimes present hurdles to real progress. We must modernize the civil justice process so it operates faster and less expensively or we risk becoming irrelevant. You may recall that when retired Justice Voigt last spoke to this body, he warned that the cost and delay experienced in civil cases was causing the citizens to look past the courts to resolve their disputes, forcing people to try their cases in the backroom of the Holiday Inn with rented mediators, judges and even juries. The general structure of our civil justice system remains unchanged for over three quarters of a century. The first rule of civil procedure, Rule 1, promises a system that will secure “just, speedy and inexpensive determination of every action.” While our system is certainly delivering just determinations, it has not lived up to the promise of speedy or inexpensive. We have assembled a group of judges and lawyers to help us reform those rules so that that promise can be kept, but the work is slow. With your assistance, we did increase the circuit court jurisdiction to cases involving \$50,000 or less in dispute and that allowed us to direct more small cases into that simpler, faster process. The feedback on that change is good. However, progress on the larger cases and domestic relations matters is harder to achieve. Our Rule 1 Initiative has held focus groups with lawyers and interviews with the district judges to explore how

to reduce the time and cost of civil litigation, but we have not found an effective way to obtain input from members of the public and they deserve to be heard. You will not be surprised to learn that the legal system resists change, after all judges and lawyers are taught to rely on precedent. In addition, with independent district court judges and clerks of district courts, and a hodgepodge of outdated statutes passed in the Model T Ford days, we are simply not structured in a way that makes uniform change easy. We need to reexamine how we function. I am reminded of the story about the little girl learning from her mom how to bake the Christmas ham. First, mom cuts the end of the ham off and places it in the pan. The little girl asks, “why do you cut the end off?” Mom says, “that’s what your grandma always did.” The little girl asks grandma, who says, “that’s the way my mom did it.” So, the little girl goes over to her great grandmother and asks her, “why do you cut off the end of the ham?” Great grandmother replies, “I did it because I didn’t have a big enough pan.”

Doing things because that’s the way we’ve always done them is not a good reason. We have to question why we do things the way we do them and not fear changing to find a better way. We are committed to continuing our efforts and will keep you informed of our progress.

Finally, I need to discuss the issue of greatest importance to the judicial branch this session – court security. I reported last year about the incident in the Riverton circuit court where a gun was fired into the metal building that houses that courtroom, entering

the wall behind the judge's bench, passing over the defense table and lodging in the opposite wall. This incident was a wake up call about the vulnerability of our judges, employees, witnesses, jurors and citizens who use our courts every day. Even though our courts operate with state employees who perform constitutionally guaranteed state functions, court facilities have historically been provided by county government. We have been essentially non-paying tenants in their buildings. In addition, our citizens, jurors, witnesses and litigants, come into court buildings not by choice, but because they are compelled to do so. We all know that court proceedings frequently involve violent, angry and mentally unstable people. And we all know that it is not a question of if, but when, a Wyoming court will join the long list of courts throughout the country as a target of a violent attack. We will not allow that to happen without making every effort to prevent such a tragedy. We were very pleased with the leadership of the Joint Appropriations Committee when it approved SF 14, creating a \$10 million court security fund for matching grants to partner with counties that do not have even minimally secure court facilities. The experts on the Court Security Commission will prioritize the needs and SLIB will have final approval of any grant. For you who represent counties with unsafe court facilities, and it is fair to say that means well over half of you, this bill should be one of your highest priorities. We are a state that can well afford to protect the safety of our citizens and this legislation is long overdue. We urge your support of SF 14.



In closing, I want to add a personal note. This is the last time I will have the privilege to speak to you as Chief Justice. I am proud of the accomplishments of the judicial branch over the last four years and I know that Justice Burke, who will succeed me, is dedicated to continuing that progress and will bring energy and commitment to the job. Leading the legislative efforts of the judicial branch is one of the most important responsibilities of the chief justice. I have been inspired and enriched by the opportunity to work collaboratively with you for the betterment of our judicial system. At the beginning of January, as I thought back on my goals for this position, and forward to challenges of the future, I came across a poem that captured my sentiments perfectly. It was written by one of your own, Rep. Sue Wallis, and I was so looking forward to watching her smiling face as I read it you today. A force greater than ours determined she would not be here to share this moment with us. We mourn her passing and will miss her greatly. I urge us all to strive to live up to the inspired words of her poem entitled “Long Term Objectives”:

To live life with purpose, with passion,  
sucking it all with great slurps  
like sacred water,  
orgasmic twitters fingering the high notes,  
strumming the bass,  
with finesse and grace.

To have descendants  
ubiquitous and stubborn as sagebrush,  
adaptable and illusive as coyotes,

challenging everywhere their colleagues,  
their constituents, their countries  
to ever expanding  
scopes of integrity and  
humanity.

And to write words that sweat truth  
a century from now.

We wish you well in your work during this session as you strive to find solutions  
to the challenges our state faces. Good luck and God speed.