

2015

STATE OF THE JUDICIARY

E. James Burke, Chief Justice

Delivered before a Joint Session of the
Wyoming State Legislature
State Capitol Building
January 14, 2015

Mr. President, Mr. Speaker, Governor and Mrs. Mead, members of the Sixty-Third Wyoming Legislature, elected officials, members of the judiciary, guests and citizens of the State of Wyoming. It is an honor to speak to you on behalf of the dedicated men and women who serve in the judicial branch of our state's government.

I want to offer our congratulations to the newly elected or re-elected members of the legislature and our five elected state officials. We also offer congratulations to President Nicholas and to Speaker Brown upon their well-deserved elevation to their leadership positions and thank them for their invitation to address you.

[Tell oath story]

Speaking of Justice Kite ... This year we will be celebrating the 125th year of statehood. There may be a tendency to go back in time for historical tidbits. But there has been history made during the last 4 years. During that time, Justice Kite served as Chief Justice of the Wyoming Supreme Court. She completed her tenure on June 30, 2014. She was Wyoming's first woman Chief Justice. In a few minutes, I'm going to tell you that the state of the Wyoming Judiciary is strong. That's true and it's largely because of her efforts. I'm going to talk about various programs and initiatives. Many were started on her watch. It has been an honor to serve with her on the Supreme Court and be part of history. She is a wonderful person and this state and our citizens have all benefitted greatly from her leadership. Please join me in acknowledging Justice Kite.

I am pleased to report that the state of the judiciary is strong and this morning I want to spend a few minutes explaining why that is so. More specifically, I'm going to spend time talking about the legislature's contribution to that state of affairs.

The primary mission of the judicial branch is to provide a forum for the fair, impartial, and timely resolution of legal disputes in accordance with the rule of law. In order to fulfill that mission, adequate resources must be committed and there must be an adequate structure in place. The basic structure was established in our constitution. Over the years, it has been tweaked. The most recent reorganization occurred at the beginning of this century when the circuit courts were established. Senator John Schiffer played a huge role in that endeavor. Like you, we mourn his passing.

Most often, the discussion between our two branches relates to funding. Sometimes, there has been disagreement. As someone once said, “The legislature answers every funding request. Sometimes the answer is “No!” But often, the answer has been “Yes.”

When the judicial branch has made the case, the legislature has provided funding to ensure that the judicial branch remains strong. It funded new judgeships when caseloads became prohibitive. It led the way in the transition to electronic filing. It increased judicial salaries to appropriate levels to ensure a high-quality pool of applicants. Five years ago, for the first time, it passed legislation providing funding for civil legal services for the indigent. It funded the renovation of the Supreme Court building. Throughout, the legislature has been responsive to our requests for adequate staff and resources to fulfill our mission. And the judicial branch of government has endeavored to use those resources wisely and efficiently.

In this current session, we will be making supplemental budget requests for funding in two areas. Before I address those requests, I would like to discuss funding for court security. Chief Justice Kite spoke at length about the issue last year in her address to this

audience. Her remarks were compelling and I will not repeat them now. Suffice it to say, it remains a priority.

During the last legislative session, Fremont and Sweetwater Counties were able to obtain state funding to assist them in the construction of improvements that were necessary to provide adequate security for their state court facilities. I'm pleased to report that construction of a new courthouse is well underway in Riverton. As you recall, a bullet through the metal walls of the building housing the circuit court in Riverton brought home the urgency of court security issues.

Since last session, we have taken additional steps to address court security. We received two grants from the State Justice Institute. The first was a \$50,000 grant to conduct court security assessments in Albany, Platte, Goshen, Niobrara, Weston, Crook, Big Horn, and Park Counties. The second was a \$30,000 grant to provide court security training at three regional sites. Over 160 judges, law enforcement personnel, attorneys and other community members attended. The last assessment was completed in December. In this session, we will be seeking funding for needed court security improvements in line with those assessments.

Our first supplemental budget request involves the transition to electronic filing. As most of you are probably aware, the Wyoming Supreme Court has utilized an electronic filing system which has provided public access to our cases since 2008. Our district courts, however, were operating on four separate electronic docket management systems which were incompatible with each other and generally inaccessible except to the courts which employed them. As of March 2014, all of the data held in those systems has been moved into a single system which is already accessible to the Supreme Court and the district judges. As with all new systems, this one provided challenges which were not anticipated in development, but many issues with the system have

been resolved, and the rest are scheduled for resolution soon. We appreciate the assistance and patience of the district clerks of court as we have worked through these challenges. We also appreciate the indispensable hard work and dedication of our Supreme Court information technology staff.

The new system is already yielding benefits for district judges and their chambers. They can access files electronically and store them on tablets or computers for easy and efficient use in chambers or in hearings in open court. Since the system's inception, an enormous amount of data has been stored in this new system. If it were in paper form, it would already exceed the height of the tallest building in the United States. We plan to add a module which will allow the judges to more efficiently schedule and track their cases within the next couple of months. We also plan to roll out electronic filing in test courts this year. This feature will allow attorneys to file and access documents from their offices. Our citizens can currently access the public docket and scanned filings using public terminals in our courthouses. With e-filing in place, that access becomes possible over the Internet.

We plan to adapt the district court system to the circuit courts next. To that end, we have asked the legislature to return \$400,000 which was previously appropriated but reverted to the general fund at the end of fiscal year 2014. Those funds will allow us to move data from the existing circuit court system to a new system which will also permit electronic docket management, electronic filing, and public access. We appreciate the foresight and wisdom this body has shown in allocating funds to help our courts achieve greater efficiency and greater transparency in the electronic age.

In our second supplemental budget request, we are seeking legislative authorization to spend an additional \$100,000 in support of the legislative mandate to provide civil legal services to the indigent of this state. These funds have already been collected. We

are just seeking authorization to put them to good use. For those who may not be familiar with this legislation, and because so much has happened in the last few years, a little background is warranted.

In 2010, the sixtieth legislature enacted Wyo. Stat. Ann. § 5-2-121 and related legislation. As a result of that legislation, an account was created to fund and support “a statewide program to provide civil legal services to indigent individuals within the state.” The account was to be funded from assessments on court filings in the same fashion as the court technology fund. It is administered by the Supreme Court. Eligibility for legal services funded by the account is limited to individuals with income at or below 200% of the federal poverty level. It is our understanding that there are approximately 67,005 or 11.5% of Wyoming’s estimated population living below the federal poverty line. The number of people living below 200% of poverty in Wyoming is estimated at 30% of the population, approximately 174,797.

In April 2011, the Wyoming Center for Legal Aid was created by the Wyoming Supreme Court as the entity responsible for building the statewide program. Because of potential confusion with the names of other legal service providers, the Center recently changed its name to Equal Justice Wyoming. Equal Justice Wyoming is governed by a Board of Commissioners appointed by the Supreme Court. Time does not permit me to list the names of all Board members but I mention them as a group because their time commitment has been substantial and their leadership remarkable. Throughout, they have stayed true to the legislative vision of a statewide program. Here is what has been accomplished.

They have used the grant process to provide direct legal services.

- There is a legal hotline run by Legal Aid of Wyoming that serves as a single point of entry. The hotline is manned by two

lawyers who provide direct and timely legal information. Those lawyer positions are funded by a grant from Equal Justice Wyoming.

- There are now legal aid offices in Rock Springs and Gillette. The offices are run by Legal Aid of Wyoming but funding for the two lawyers in those offices is provided by Equal Justice Wyoming. Every attempt was made to leverage resources. Office space was donated by community organizations. In Rock Springs, the office space and overhead is provided by the Sweetwater County Family Justice Center. Office space in Gillette is donated by the Council of Community Services.**
- Funds from an Equal Justice Wyoming grant have enabled the Coalition Against Domestic Violence and Sexual Assault to maintain two full-time attorneys to handle cases throughout the state to assist victims of domestic violence and sexual assault. The grant pays 100 percent of one attorney's position and a portion, roughly 25 percent, of a second full-time attorney position. The Coalition currently has cases pending in 15 counties across Wyoming.**
- The Teton County Access to Justice Center was created in 2012 with a grant from Equal Justice Wyoming and has continued to expand its services since that time. It is housed in the Teton County Law Library and provides legal information and self-help services in addition to providing legal representation through a panel of private contract attorneys. Eligible clients may be referred to a private attorney who provides services at no charge to the client. The services are paid at a reduced rate**

by the Teton County Access to Justice Center, using grant funds.

- **The Wyoming Children’s Law Center received a grant to provide assistance to children and families with legal needs. It fills an important need by providing advocacy to ensure children receive special education services to which they are entitled.**

Equal Justice Wyoming has also focused on the pro bono aspect of the puzzle:

- **It has partnered with the Wyoming State Bar to breathe new life into efforts to establish an effective and dependable pro bono program. They launched the “I’ll Do One” program last year. Its goal is to encourage Wyoming lawyers and law firms to take on at least one pro bono case. I would encourage you to view the program video. It can be found on the Bar’s website and the Equal Justice Wyoming website. It’s professionally done and, it should be noted, the services creating the video were donated.**
- **In coordination with the State Bar, they helped launch a pro bono program to provide legal services to our veterans. Sixty attorneys from across the state have signed up.**

And Equal Justice Wyoming has provided training:

- **Again, in cooperation and coordination with the Bar, they have traveled the state conducting training in Limited Scope representation. The goal is to raise attorney, judicial, and**

public awareness of that option. When limited scope representation is utilized, an attorney helps a client by providing limited, but crucial, legal assistance at an affordable cost for a specific aspect of a case. The concept is particularly applicable in the domestic relations environment where legal forms exist and clients often represent themselves.

Equal Justice Wyoming has made effective use of technology in an effort to serve as many as possible:

- It has a legal information and self-help website that was launched in 2012. The website had 19,660 visits last year.**
- The majority of client needs in this area involve domestic relations matters. Currently, there is a lack of lawyers who are willing to take on domestic relations cases. Equal Justice Wyoming, in conjunction with the Bar, is trying to change that and has also undertaken significant efforts to enable clients to help themselves. After two years of planning, preparation, and programming, and in collaboration with the Wyoming Supreme Court and the Court's I.T. Department, Equal Justice Wyoming launched an automated interview program that walks the litigant user through a series of questions and answers that are used to create complete and accurate family law forms, similar to turbo tax, that are ready for filing with the court. Currently, the program only applies to divorces without children, but a divorce with children program is on the way.**

- **Equal Justice Wyoming obtained a grant from the ABA to set up 5 Skype sites in rural communities to connect with attorneys providing pro bono advice. I could go on ...**

There is an old adage relating to perennial plants: “The first year you sow, the next year is slow, and the third year they grow.” I think it captures perfectly what we are witnessing as a result of your legislation and the efforts of Equal Justice Wyoming, the State Bar and its members, and all in our communities who are working to make the promise of “equal justice” and “access to the courts” contained in our constitution more attainable. We are confident that many of the programs that have been initiated will take root and flourish. More will come on line. More of our citizens will be served. And none of it would have been possible if the legislature had not taken that monumental step.

I also believe that the legislation has had an additional impact. It has influenced the tone and focus of discussions relating to our system of justice.

Our constitution promises equal justice for all, not just the wealthy or the very poor. Often those sentiments have been tied to the concept of the “rule of law” that was mentioned at the beginning of my remarks. The rule of law holds that no one is above the law. All are to be treated equally in our courts. “Our courts,” Atticus Finch told the jury, “are the great levelers.” And all that is true. Our courts and judges make very difficult decisions and apply the “rule of law” every day. It is what makes our system of justice the best in the world.

But the rule of law doesn’t help much if you can’t get into court. It doesn’t help if you forgo pursuing justice because it takes too long or is too expensive. It doesn’t help if cases are settled

because of cost and delay rather than on the merits. While our courts have always been concerned with the practical aspects of litigation, it seems now that there is a greater sense of urgency and willingness to take a fresh look at how justice is administered. Historically, the justice system has taken a one-size fits all approach to litigation. We can no longer continue down that path.

Under the leadership of Chief Justice Kite, the Rule 1 initiative explored potential changes to bring our system more in tune with the goal of “just, speedy, and inexpensive determination of every action.” When the jurisdiction of circuit courts was increased to \$50,000 by this body, the Supreme Court, upon the recommendation of the Board of Judicial Policy, enacted rule changes for civil actions in circuit courts, limiting discovery and establishing a timeframe by which the litigation should be concluded. More study is required, but it is our understanding that the rules are proving effective.

Domestic relations cases comprise a significant percentage of the district court docket. As mentioned previously, it is an area where more individuals are representing themselves. The primary reason is cost. At the beginning of this year, a pilot project for divorce cases went into effect in three districts. Under the program, parties can opt in. Discovery is limited. Depositions cannot be taken. Experts cannot be used. The parties will receive a trial within 150 days of the opt in. Trial time will be limited to 4 hours with two hours for each side. We are hopeful that the program can relieve some congestion in the courts and result in lower costs for the parties. If it works, it will be expanded. If it fails, we’ll go back to the drawing board.

In any event, we will continue to explore options to increase efficiency and reduce costs for the parties. We must understand the practical realities of our system of justice and do what we can to eliminate cost and delay. The trick is that all of this has to be

accomplished while maintaining the opportunity for a fair and full hearing.

Our judges are focusing even more on docket management techniques in an effort to identify methods that will allow cases to be resolved in a timeframe that will provide timely justice for the parties. The technological advances discussed previously will make it easier for our judges to manage their dockets. It will become easier to identify the cases that are lagging and move them along.

And speaking of our judiciary ... There have been some changes. Five new judges were appointed last year. Judge Catherine Rogers was appointed as a district judge in the First Judicial District here in Cheyenne to replace Judge Peter Arnold who retired. Judge Tom Lee was appointed to the circuit court to replace Judge Rogers. Judge Matt Castano filled the circuit court vacancy resulting from the untimely death of Judge Fred Dollison, who passed away in February of last year. Fred had served the citizens of Crook and Weston Counties and the Sixth Judicial District as a circuit judge for 11 years. He was a good judge and a better man. He will be missed.

Judge Antoinette Healy was sworn in on the last day of the year to take over as a circuit judge for retiring Judge Roberta Coates in the First Judicial District. Her robing was held Monday. It was a wonderful affair. Governor Mead attended. He has attended every robing since he has been in office. We simply cannot express how much it means to the new judge and the judicial branch that he finds the time to attend. Additionally, he speaks so eloquently regarding our system of merit selection. With his words and actions, he inspires public confidence and trust in our system of justice. Thank you, Governor Mead.

Finally, Joe Bluemel will be replacing Judge Dennis Sanderson as a district judge in the Third Judicial District. He will be sworn in

this week. We offer our thanks for a job well done to those judges who are retiring and offer our congratulations and support to the new members of the judiciary.

Before leaving this topic, I should also mention the passing of Judge Vernon Bentley. He was 99. Judge Bentley served with distinction as a district judge in the Second Judicial District in Laramie for 25 years. As you are also aware, in 2014, Federal District Judge Clarence Brimmer also left us. He, too, was a wonderful judge and a mentor to many, including several who now sit on the bench. He was a remarkable individual and this ceremony today, which he attended so often, is diminished somewhat because of his absence. We miss him and his smile.

All of our new judges are products of our merit selection process. Since becoming Chief, I have had the opportunity to witness our Judicial Nominating Commission in action. You would be proud. They understand the magnitude of their responsibility and treat it accordingly. The Governor will attest that they make his job of selection very difficult because he must choose from three very qualified candidates.

For those who may be unaware, our merit selection system is now more than 40 years old. Since it has been with us for so long, perhaps we now take it for granted. But that would be a mistake. It is a system that should be appreciated, cherished, and protected. And the legislative leadership that provided our citizens the opportunity to ratify the constitutional amendment establishing this selection method should be applauded.

It is fortunate that our merit selection system works smoothly. Our courts are busy and all five of our new judges confronted very busy dockets when they took office. The judicial workload is excessive in several of our districts. In Laramie County, for example, the three district judges are handling the caseload of four

judges. The Third, Fifth, and Sixth Judicial Districts also could use additional help. We will continue to monitor the situation and will keep you apprised.

Everything we can do to improve public trust and confidence in our system of justice should be done. Our judges promote that trust when they handle cases efficiently, ensure that litigants feel that they have had a fair hearing, and decide cases in a timely manner with a solid explanation of the reasons for their decision. Our merit selection process contributes also. But that is no longer enough. In this day and age, public trust and confidence in our system of justice must be cultivated.

There is no question that the more people understand about our system of justice, the more confidence they have in it. Unfortunately, many of our citizens do not have a solid understanding and appreciation of our justice system. Our judicial branch is committed to an outreach program to close the education gap. We have been involved with the iCivics program since 2012. Last year, we initiated the “You Be the Judge Program.” The first session was held in Laramie County. The students, ranging in age from 10 to 80, were presented with close fact situations and had to apply the rule of law to decide those cases. They had to decide who gets custody, whether evidence should be admitted or rejected, whether someone should receive prison or probation. And they took it very seriously. One student, agonizing over a custody decision, provided this insight: “You said this would be easy, you said this would be fun, but it’s hard, how do judges make these decisions every day?”

We think the students who attended have a better appreciation of our system of justice and we intend to take this or similar programs to every judicial district. One is coming up in Rock Springs in early February and it looks like we’ll be going to Sheridan in April. Yesterday, we received calls asking for one in

Casper and another wondering when the next Cheyenne session will be held.

But in terms of outreach, nothing compares to the Judicial Learning Center that you addressed last session. We have made significant progress in obtaining matching funds and are close to reaching our first phase funding goals. As you may be aware, there are serious limitations on the judiciary's ability to obtain donations. Fortunately, the Wyoming Bar has stepped up and taken on the funding aspect of this important project. We believe that the educational dividends generated by this project will benefit our citizens and our state for years to come.

One of the best things about becoming Chief Justice is that you get to meet more of our judicial branch employees and learn of the important work they are doing. Our branch is very lean when it comes to the number of employees but the employees we have are very dedicated to our mission. The strength of our judicial branch is in large measure a result of their efforts. We also have a dedicated judiciary. We expect a lot from them but, if you attended Judge Healy's robing, or for that matter any judicial robing, you would know that no one expects more from our judges than they expect from themselves.

Before closing, I should also mention some changes here at the Supreme Court. We have a new Court Librarian, Eugenia Charles-Newton. Eugenia will be invaluable in assisting with our Court outreach efforts. We also have a new Court Administrator. Lily Sharpe replaces Joann Odendahl who will be missed greatly. But we're excited to have Lily and believe that she is the perfect person for this position. You'll be seeing a lot of her as we move through the session.

Finally, I would be remiss if I did not mention my colleagues on the Supreme Court bench. It is a pleasure to work with Justices

Hill, Kite, Davis, and Fox and it is an indescribable honor to have been selected by them to serve as Chief Justice.

[Leanna fist pump]

Thank you again for the opportunity to visit with you this morning. We wish you well in this legislative session as you grapple with the important issues facing our state.

Good luck and Godspeed.