

2017

STATE OF THE JUDICIARY

E. James Burke, Chief Justice

Delivered before a Joint Session of the
Wyoming State Legislature
January 11, 2017

Mr. President, Mr. Speaker, Governor and Mrs. Mead, members of the Sixty-Fourth 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. Thank you, President Bebout and Speaker Harshman, for the opportunity to do so. Congratulations to both of you for the well-deserved elevation to your leadership positions. We also offer our congratulations to all of the newly elected and re-elected members of our legislature.

There have also been changes in our judiciary. During this past year, District Judge Jeff Donnell and Circuit Judge Terry Tharp announced their retirements after long and distinguished careers on the bench. They will be missed. Judge Tori Kricken has replaced Judge Donnell in the Second Judicial District in Laramie and Judge Paul Phillips has replaced Judge Tharp in the Sixth Judicial District in Gillette. Both are highly qualified and we are pleased to welcome them as colleagues. I am pleased to point out that both took office on the first business day following the retirement of their predecessor. This is another testament to our merit selection process. In Wyoming, we do not have vacancies that linger to the detriment of those with pending cases in our courts.

On a more somber note, we must acknowledge the recent passing of former county and circuit judge, Don Hall. Judge Hall capably served the citizens of the Ninth Judicial District in Riverton for over 22 years before his retirement in 2004. We offer our prayers and condolences to his family and friends.

I was in the office this weekend, catching up on some work from last week and preparing for the upcoming events. During a break, I made a visit to the learning center. There is a lot of information packed into that location. I find that each time I visit, there is something else that captures my attention. This time it was

the subheading “Shared Power” that is on one of the pillars referencing our three branches of government. The phrase has influenced my remarks to you today.

No doubt, there are many aspects to the term when discussing our three branches of government and I do not intend to employ it as a “term of art” in my remarks today. Mutual respect for each branch seems to be inherent in the phrase and expression of that respect by another branch goes a long way in developing and maintaining the public trust and confidence that is so critical to the judicial branch. I want to highlight three moments from this past year to illustrate the point I am trying to make.

This summer, we hosted the annual Conference of Chief Justices and State Court Administrators. Nearly every state was represented. The conference was held in Jackson. The weather was perfect, the scenery sublime, and our small but mighty judicial branch administration staff, with spouses and staff attorneys pitching in, pulled it off without a hitch. (Special kudos to Ronda Munger who made sure that all of the trains ran on time). But for most in attendance, the big take away came from the welcoming remarks of our Governor. He spoke about the need for a strong judicial branch of government and all that entails. He brought down the house. Standing ovation, rave reviews. Some Chief Justices suggested he run for governor in their state. I think he had at least five offers. The positive reaction, I believe, was in large measure attributable to conditions in other states where support for the judicial branch pales in comparison to the support we receive here.

The Governor’s remarks were an extension of those he makes at each judicial robing that he attends. And he attends them all--over 20 during his term in office. And always, his remarks are well received and have a positive impact. It is one thing for a judge to tell the public about the need for a strong judicial branch, it is quite

another for our citizens to hear that from leaders of the other branches of government. We are deeply appreciative, and many of our colleagues throughout the country are envious.

We witnessed a similar display this Monday with the grand opening of our Judicial Learning Center. Many of you were in attendance. It was a wonderful event made more special by the remarks of Governor Mead and Speaker Harshman, both of whom expressed their support and recognized the collaborative effort that was essential to the success of the project. For those of you who have not yet had the opportunity to visit the learning center, we would encourage you, and all members of the public, to do so. We think you will enjoy it and leave with a better appreciation for the rule of law and our system of justice. I would add that this is not just a Cheyenne project. Within a couple of months, the materials developed for the learning center will be online and accessible for use in classrooms throughout the state. This project would never have gotten off the ground without the financial support authorized by the legislature. We think your investment will pay huge educational dividends in the years to come. Thank you.

Another moment that has stayed with me occurred during the presentation of our supplemental budget to the Joint Appropriations Committee in December. We did not make any requests for additional funding. Instead, we suggested general fund cuts totaling over \$1.9 million. As you might expect, there were quite a few questions, some back and forth, but at one point we were asked by Chairman Ross (and I'm paraphrasing): "Can you afford it?" Essentially, he was asking, "Can you take these cuts and still perform your core mission?" Will our judicial branch be able to continue to perform as our citizens expect? In light of the difficult times this state is facing financially, the question surprised me. But, upon reflection, it shouldn't have. Over the years, the legislature has taken significant action, even in difficult times, to maintain and strengthen our judicial branch.

We have taken to heart your request that we participate in state budget cuts. We want to do our part. The reductions we have proposed are significant and come from a very lean budget. While there is some risk, we do not believe that our core mission will be negatively impacted.

In this day and age, technology plays an essential role in our ability to fulfill our mission. Our administrative office, including the information technology staff, has been working tirelessly to provide functional and reliable systems for statewide court automation, including case management, organizational tools for judges, electronic filing, public access, and jury management. Upon implementation of these various systems, we anticipate that the judicial branch, as a whole, will become more efficient and productive. Statewide court automation has been a goal of the judicial branch and the legislature for a number of years, and while the hope was that full automation of the courts would have been recognized sooner, we are confident that the judicial branch is now on a path that will provide a solid foundation for the statewide roll-out of the various systems in an effective and timely manner.

We are currently working on updating and transitioning the case management systems in both the district and circuit courts statewide. This will result in a uniform approach to case management across general and limited jurisdiction courts in Wyoming. Along with a new case management system, the district court judges will also benefit from electronic tools which will provide them a method to better manage their dockets and individual cases in a manner that conforms to each judge's practices. Additionally, electronic filing will provide attorneys with the convenience of filing documents online and without the necessity of leaving their offices. Public access will provide citizens with the ability to access non-confidential case information from any place that internet access is available.

The road to statewide court automation has not been smooth. We expected that these systems would be in place before this time. During this past year, we became convinced that a change in vendors was necessary if we were going to get to where we wanted to go. We have hired a new vendor and have embarked on an ambitious schedule to move forward with these projects. The current case management system will remain in place during transition to the new system. Roll-out of the new system will begin in June, 2018. E-filing will follow in 2019. We anticipate that the entire project will be completed in 2020 and that it will have been worth the wait. Again, I want to thank the district court clerks for their patience, cooperation, and support as we have worked through these issues. We also commend this body for its foresight and leadership in making this investment to improve the delivery of judicial services to our citizens.

Adequate technology in the courtroom is also an essential ingredient in a properly functioning judicial branch. This past year, we commissioned a study of the audio and visual technology in all 69 of our courtrooms in order to get a handle on the situation. The results were disturbing. Many of our courtrooms lack basic audio enhancement features and have no video equipment. As one judge put it, “Abraham Lincoln would be perfectly at home in my courtroom.” We must do better and that brings me to another aspect of “shared power” or perhaps “shared responsibility.” There is no serious dispute that there should be appropriate technology in all of our courtrooms. There is, however, a difference of opinion about responsibility for the purchase, installation, and maintenance of that equipment. Are the counties responsible? Or, is the judicial branch? Reasonable minds can differ. Pertinent legislation does not specifically define responsibility for courtroom technology.

Last year, I spoke at length about technology improvements in the courtrooms in Pinedale. The county paid for all of those

improvements. This year, it is necessary to discuss the flip side of the story. Again, I am going to use specific examples.

The courtrooms in Natrona County are some of the newest in the state. They are at the upper echelon in terms of technology. The equipment was purchased by the county. There is a county IT department. This past year, a major piece of equipment failed in one of the courtrooms. Berta Hartford, a judicial assistant for one of the judges, attempted to get the problem rectified. She initially contacted the county, and then the Supreme Court. When she received no immediate commitment to fix the problem, she sent an email to both the county and our IT department. Here is what she said:

On October 11, 2016, [county maintenance] requested a meeting with the Natrona County Commissioners to discuss issues with courtroom technology at the Natrona County Townsend Justice Center. [They] expressed a desire to have the meeting on the following day. To my knowledge, a meeting has not been scheduled yet. It occurred to me [the] request did not articulate the pressing nature of these repairs. Three of the four district courtrooms in the Natrona County Townsend Justice Center have critical technology issues which must be immediately addressed. In Judge Forgey's courtroom, 1A, there is a fan in the equipment closet which is burning out. If it quits, there is danger of the equipment becoming too hot and burning out, possibly frying the entire rack. The AV2 for Judge Wilking's courtroom is bad, rendering all the technology in her courtroom useless. County IT was able to install a telephone, but it is not attached to the sound system, causing this band-aid fix to possibly be of no use during hearings. Judge Wilking was required to move the sentencing for a gentleman, in custody and convicted of aggravated

assault and battery, to Judge Sullins' courtroom so the State could play a video from the scene of the crime, which the Defendant insisted on being played for the Court prior to sentencing. She has had to re-schedule hearings with parties participating by telephone. The projector, screen, and monitors are relied upon by attorneys in criminal cases to replay confessions and show footage of the crime and crime scene. The system is also used in civil matters to play video depositions, display photographs, and exhibits. The monitors enable the Judge, counsel, jury, witness and audience to easily view the display. The ELO monitor allows a witness to make notations on a picture or exhibit that will appear on all the monitors without leaving the witness stand. The volume on the microphones cannot be turned up, down, or muted. The white noise feature cannot be used. It prevents the jury from overhearing bench conferences, while allowing the judge and counsel to be audible to the court reporter and each other. The ability to participate by telephone is a feature that is used daily. It enables out of town counsel, including the Attorney General's Office and other state agencies, to avoid traveling to Casper for short hearings; allows correctional institutions, the state hospital, treatment facilities to call instead of transporting the party for the hearing; and prevents counsel and parties from driving in inclement weather.

Ms. Hartford's email is compelling. In a few paragraphs, she perfectly captures the benefits of courtroom technology, the significant consequences resulting from failure of that equipment, and the frustration that comes when there is no clear path to resolution of the problem. Ultimately, the problem was fixed with funds from the judicial branch.

Tim Knight is the IT Director for Sweetwater County. He is involved with the construction of the new Justice Center in Sweetwater County which is on track for completion in December of this year. He is concerned that there is no agreement in place for maintenance of the technology equipment to be installed in the new courtrooms. He is endeavoring to take a proactive approach to avoid the situation I just described. He offered his perspective in a recent email to our IT department.

The problem with no agreement in place is that there are several gaps in defining responsibility for costs that come up in regards to supporting this system. I do not believe that the State technology group gets to absolve itself from their statutory responsibility of supporting the operations of the courts and without an agreement in place, the Board of County Commissioners never formally accepted financial responsibility for the maintenance of the equipment. This might lead to a situation where the courts are not able to function and the State and County are in disagreement as to whose responsibility it is to fix it.

I am also concerned that we would be installing a system that the State is not able to support because it is a different platform than what they are set up for. There is an economy of scale in supporting a large common network rather than supporting a group of disparate systems and the State would be better served with a common platform in all the courtrooms. This appears to be a philosophy shared by the State as they hired a consultant to do an analysis of the courtrooms and come up with recommendations as to what they should be putting in those courtrooms. There are also several Counties that do not have IT support and it would not be fair to expect different levels of service from the State

based on which County you work in. Given all of this, I recognize that there are significant shortfalls in revenues in all areas of government and there are limited resources to be had in supporting courtroom technology.

Knowing that those shortfalls exist, Sweetwater County IT staff have been willing to assist in troubleshooting issues, replacing defective equipment, or setting up systems from time to time in order to compensate for the distances that separate the State IT staff from the courtrooms. This is done with a cooperative spirit without any discussion of remuneration. I believe that this relationship will continue as long as I am the IT Director.

So how do we move forward?

- 1. The County and State should work to ensure that the equipment installed at the new facility is in alignment with the State courtroom plan.**
- 2. The State should work on ways to increase funding to the court technology group so they have adequate resources to support the courtroom technology through the State.**
- 3. The County and State could work out an agreement that is satisfactory to each side regarding ongoing support of these systems.**

I really hope that the legislature makes it possible for the State technology group to do its job and make this a model facility that can be replicated throughout the State.

We agree with Mr. Knight. Appropriate technology should be in place in all of our state courtrooms. The quality of presentations and the ability to hear what is going on in our public courtrooms should not depend on the county in which the case is tried. Economies of scale dictate that the equipment be uniform so that it can be purchased, installed, and maintained in the most cost effective manner possible. The state and the counties must continue to work together but, in every county, for every courtroom, there must be a clear understanding of responsibility. Funding must be adequate and sustainable.

These are not new issues and it is time they were addressed. We recognize that there may be different viewpoints as to how responsibility should be apportioned and that all stakeholders should have an opportunity to weigh in. Perhaps it is an appropriate interim topic. But there is no question that our courtrooms do not have adequate technology and that additional funding is required. Senator Perkins and Representative Nicholas are sponsoring legislation this session to address the funding issue. The proposed legislation increases the court automation fees by \$10. Those fees have been in place since the “judicial systems automation account” was established in 2000. Even with the increase, our court fees are substantially below those charged in other states. The technology burdens on the judicial branch have increased exponentially since that time. We would urge your support of that legislation.

Before closing, there is one other piece of pending legislation that I would like to discuss. It involves our circuit court judges.

Our circuit court judges are the unsung heroes of the judiciary. They are on the front lines handling a high volume of cases and are essentially on call 24-7. They are the ones that get called in the middle of the night for search warrants. They operate under strict deadlines in a large percentage of their cases. Bond

hearings must be held within 72 hours of arrest and protection order hearings must be held within 72 hours of request. They are required to have quick settings for eviction proceedings and must determine probable cause for felonies within 10 days of arrest if the alleged felon is incarcerated.

We continually ask more from our circuit judges. In 2011, civil jurisdiction in circuit court was increased from \$7,000 to \$50,000. This has led to more contested civil hearings and trials. The legal issues presented in those cases can be as complicated as those presented in district court. The circuit judges, however, must address those issues without any assistance from a law clerk or, in many cases, from an attorney for any party because a large portion of their caseload involves *pro se* litigants. On top of that, they are also tasked with the administrative oversight of daily office operations, including personnel. I could go on, but time is short.

Historically, there has been an informal judicial salary structure in place where circuit judges receive somewhere between \$15,000-\$20,000 less in annual salary than district judges. That changed in 2012 when the legislature approved a significant pay raise to bring the judiciary in line with salaries for employees of other branches. Salaries for supreme court justices and district court judges were set in line with the recommendations from the Board of Judicial Policy. Inexplicably, at least from our perspective, the salary for circuit court judges was set at \$119,000, well below the \$132,000 recommendation. The new salary structure created a \$31,000 gap between district and circuit court judges. There have been no judicial raises in the past five years, so the gap remains.

Senator Christensen and Representative Miller are co-sponsoring legislation to correct that inequity. The Board of Judicial Policy has unanimously reiterated the recommendation it made five years ago. We urge your support of that legislation.

We recognize that there are many other aspects of state government, many other considerations that you must take into account in reaching your decisions. We know that it is a heavy responsibility but we have every confidence that you are up to the challenge.

During my remarks, I have emphasized the concept of shared power or shared responsibility. I did so because I think it is important to recognize how fortunate we are in this state. The mutual respect that exists among our branches does not exist everywhere. Yes, there is constitutional “separation of power,” but there is also cooperation and communication. We are a better state for that and, ultimately, that benefits our citizens.

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