

State of the Judiciary  
Chief Justice Mike McGrath, Montana Supreme Court  
Message to the Legislature  
February 4, 2009

Mr. Speaker.

Mr. President.

Members of the Court.

Honored Guests.

Members of this Joint Assembly.

Thank you for giving me this opportunity. It is indeed an honor to be here speaking on behalf of Montana's Judiciary.

It is very gracious of you, and appropriate I might add, to provide this opportunity to both the Executive and Judicial Branches of Montana's government.

So what is so special about the Judiciary? What do these courts do?

The citizens of this state come to the courthouse when they are in crises:

- The rancher who can't irrigate because of a water dispute;
- The man injured through no fault of his own who cannot work and cannot pay his mortgage, buy groceries for his family, or pay his medical bills;
- The defendant wrongfully accused;
- The mother who needs child support to buy diapers and formula;
- The victim of a crime seeking justice;
- The father whose child is wrongfully being withheld from him;
- The business owner who has put a second mortgage on her house to stay in business and is now being sued;
- The child crying in the crib after being abused and neglected by a parent.

All of these people come to the court because their lives are in crisis and cannot resume until this crisis is resolved.

And they come because they *know* they have rights. They *know* that there are laws that will protect them. They *know* that all they have to do is tell the judge their story and the crisis will be over.

And they know they will be treated fairly, by an independent judge—not a person beholden to money interests or partisanship or social status. Rather a judge who will listen to their grievance and make a decision based on the merits of each individual case.

Alexander Hamilton said that the “ordinary administration of criminal and civil justice . . . contributes more than any other circumstance” to the public support of a system of government.

What our founders knew was that if this republic they had created was going to succeed, it had to be based upon the rule of law, and that rule of law requires an independent and impartial manner of resolving disputes—be they commercial matters, family crises, criminal charges or removal of public officers.

And the system works!

Ted Olson served as the U.S. Solicitor General in a Republican Administration. His wife was killed on 9/11. Recently he wrote:

Every day, thousands and thousands of judges—jurists whose names we never hear, from our highest court to our most local tribunal—resolve controversies, render justice, and help keep the peace by providing a safe, reliable, efficient and honest dispute resolution process. The pay is modest, the work is frequently quite challenging, and the outcome often controversial. For every winner in these cases, there is a loser. Many disputes are close calls, and the judge’s decision is bound to be unpopular with someone. But in this country we accept the decisions of judges, even when we disagree on the merits, because the process itself is vastly more important than any individual decision. Our courts are essential to an orderly, lawful society. And a robust and productive economy depends upon a consistent, predictable, evenhanded, and respected rule of law. . . . Americans understand that no system is perfect and no judge immune from error, but also that our society would crumble if we did not respect the judicial process.

So I thank you for recognizing the importance of the Judicial Branch of our government and I thank you, again, for the opportunity to speak for the Judiciary.

Our Legislative Proposals this Session are modest—but significant. By the way, the Judicial branch, the court system for all Montanans, spends less than 1% of the entire State’s budget.

We hear a lot these days about access to justice. If citizens cannot get their cases heard; if businesses don’t have a way to resolve commercial disputes quickly; if the middle class can no longer afford to hire an attorney; if the poor have no redress for grievances; or if the system has become so complicated that only specialized attorneys can navigate the complexities, then they all are being denied access to justice.

Moreover, the old adage is true: justice delayed is justice denied.

- Our budget proposes to add some judges in highly overcrowded courts in some of our growing communities.

- We propose to reduce an extremely heavy workload at the Montana Supreme Court by bringing in a mediator to help settle cases that ought to be settled.
- We propose to assist individual Montana citizens with court service areas, places where you can get proper forms and assistance with the court process without unnecessary expense. Not all legal matters need attorneys. There are many ways we can simplify the process and provide people with helpful solutions.

Now we recognize that with judicial independence comes the corresponding responsibility, to be accountable:

- Accountable to the people we serve;
- Accountable to the Legislature, especially as to how we spend public funds; and
- Accountable to the rule of law by virtue of the responsibilities we have to our Constitution and Montana statute.

In an effort to be more accountable, the Judicial Branch has undertaken a series of performance measures. At the Supreme Court, a number of case processing measures have been identified.

The Court is very much aware of concerns about backlogged cases. Significant improvements have been made in the last few months, and now only a few cases have been sitting for more than a year. We hope to adopt other efficiencies in the near future, while at the same time upholding our duty to the litigants to do a quality job.

In the District Courts, performance standards are now being developed. Surveys of court users are completed and formulas have been adopted to accurately measure case loads and case timeliness.

Finally, let me say that there are a number of things we, the Judiciary, can do to prevent future expenditures of precious state funds.

Drug courts and Treatment courts in general can and do save taxpayer dollars. And last session, Legislators had the foresight to fund this program for the first time.

Two years ago 50% of the children in foster care were there because of their parents' use of drugs—methamphetamine in particular.

An incredibly high percentage—up to 90%—of prison inmates (both male and female) are incarcerated with chemical dependency problems—as many as half, or more, for meth. And, of course, many of our prisoners have severe mental illness problems.

All of these social problems cause a tremendous drain on state and local government budgets. Treatment courts divert some of these people to less expensive and more effective alternatives. They can keep kids out of Pine Hills or even more expensive out-of-state placements.

Treating mental illness in a community can prevent tragedies like the recent episode in Glasgow.

Drug courts do reunite shattered families.

Recently I attended a graduation ceremony at a family Drug court in Butte. One young woman had six children, all now out of foster care. She had a job and was a productive member of society and back together with her kids.

Many of our judges in Montana are committed to addressing these problems in their communities—problems they see every day. Treatment courts are a strain on judges' time and energy. However, they are very rewarding as well. They do see good things happen in a courtroom—not a common occurrence in our courts.

Nationally, it has been proven that Treatment courts are by far the most effective thing we can do to address drug abuse and the problems that go with it. And thanks to you, last session, for providing some funding for these important programs. I hope they will be able to continue.

We believe our proposals will help to ensure that the small business owner, the man injured through no fault of his own, the mom, the defendant wrongly accused, and the child crying in the crib get their opportunity to resolve their crises.

While I have been Chief Justice for only a short period of time, I have enjoyed the experience immensely. I thank the people of Montana for giving me this opportunity.

Thank you again for inviting me to speak with you today. I know all of you have a lot to do in the next 64 days! Good luck this Session!