

State of the Judiciary
Chief Justice Mike McGrath, Montana Supreme Court
Message to the Legislature
January 15, 2015

Madam President, Mr. Speaker, 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 to schedule the time to hear from the Executive and Judicial Branches of Montana's government.

Let me also acknowledge the work of the Legislative Auditor's office. In the past few years we have had audit reviews of the Water Court, Drug Courts, and Court Help Programs. These reviews are very helpful to us as managers and allow us the opportunity to look at issues that need addressing. So thank you for providing that service.

Once again, this session, the State of the Judiciary is a mixed bag.

In Montana, our courts process about 1,000 cases each day, 350,000 per year. It adds up to one case for every three Montana residents. At 1,000 cases per day, our courts are busy and the workload for court employees is very heavy. The District Courts, which are the courts of general jurisdiction that handle the most serious cases, exceeded 53,000 new cases last year, another record.

Many people come to court because their lives are in crisis. They include victims of crime and people charged with crimes, children suffering from child abuse, ranchers who can't irrigate because of a water dispute, businesses being wrongfully sued by disgruntled employees, workers injured on the job, neighbors fighting over disputed property boundaries or roads, entrepreneurs challenging the government's interpretation of legislation, and mothers seeking child support to buy diapers.

In recent years, in many places throughout the world, governments are in major transition. Citizens have risen up, not only in protest, but in insurrection and civil war. Why? They want what we have. They want a right to be heard by their government. They want a place at the table when major decisions affecting their lives are being made by the government. And they want to be governed by the rule of law, where disputes can be resolved by an independent and impartial system of dispute resolution. Our founders developed a system that has become the blueprint for political and economic success for the modern world.

In the words of historian Joseph Ellis, American success is "about the triumph of representative government bottomed on the principle of popular sovereignty, a market economy fueled by the energies of our citizens, a secular state unaffiliated with any official religion, and the rule of law that presumes the equality of all."

The founders knew that the republic they had created had to be based upon the rule of law. 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. The rule of law means that disputes are resolved without regard to the social status, political beliefs, or religious preference of the individuals involved in the dispute, and each party has the opportunity to explain his or her position to an impartial magistrate. All of us have the right to equal protection under the law, and everyone has a right to due process.

In fact, our economy depends on this independent system. Investors and other businesses have the right to rely on an orderly and prompt dispute resolution process. They have the freedom to enter into contracts and the ability to have those contracts enforced.

The Judiciary in Montana understands that we have a tremendous responsibility and strive daily to ensure that we uphold these traditions. Those 1,000 people per day that end up in our courts know that our justice system is based on the rule of law and not individual whim. Our disputes are resolved within an orderly system that provides all parties the opportunity to be heard. They know that even in the most remote courthouse in Montana, they will get a fair hearing and hopefully a timely decision. Individual citizens have the rights enunciated in our Constitution and the ability to enforce those rights whether they are in Superior or Sidney, Billings or Butte. And all of us have the right to expect the courts to make those decisions based on the merits of each individual case, by judges independent of bias, prejudice or political influence.

The creation of these independent government branches to provide a system of checks and balances was an ingenious idea. Each Branch is independent, yet reliant on the other two. Members of all three Branches take the same oath of office "to support, protect and defend the Constitution of the United States and the Constitution of the state of Montana." As Chief Justice Roberts has noted: "By ensuring that no one in government has too much power, the Constitution helps protect ordinary Americans every day against abuse of power by those in authority."

As an independent third branch of government, our responsibilities are great but our needs are small. Our budget is less than 1 percent of the total state budget. Yet we recognize that with judicial independence comes the corresponding responsibility to be accountable:

- accountable to the people who elect us, and;
- accountable to the Legislature, especially as to how we spend public funds.

In an effort to be more accountable, the Judicial Branch has undertaken a series of performance measures. Specifically, at the Supreme Court, these measures have been implemented, and our case load continues to be current. We have no cases over 6 months old and our average time to resolve a case is less than 100 days.

The Supreme Court takes every case that is appealed. We don't go out and find disputes to resolve. We hear everything from multiple homicides to dog-at-large cases, from small claims disputes to multi-million dollar jury verdicts. We interpret laws passed by the Legislature and we have the responsibility to determine if laws pass constitutional muster. And, contrary to what some have said, we give great deference to legislative enactments. In the six years that I have been Chief Justice, 70 cases have come to us seeking to overthrow measures passed by this body as unconstitutional. We have upheld your actions in 62 of the 70 cases.

We have taken steps to make our decisions more available to the public and the process more transparent.

We conduct more oral arguments, in court rooms and other locations that are available for public viewing. We prepare summaries of those cases and stream the arguments on-line. And we issue a synopsis of complicated cases to make it easier for the media and the public to understand the questions decided.

In the District Courts, performance standards are also now being implemented. The procedures have been adapted to accurately measure case loads and case timeliness. We recently completed, with the assistance of the National Center for State Courts, a systematic workload study for the District Courts. As I mentioned, last year 53,182 cases were filed, 1,156 cases for each judge. That is a heavy caseload.

Yet, in the last few sessions we have experienced very lean budgets, including vacancy savings and programs funded on a one-time only basis. Our branch consists of 54 independently elected officials, 46 of whom are elected from their local community. As the vast majority of our budget consists of personnel costs, it has been hard to find areas to cut.

We have done a good job of managing our resources; we have found the waste. We cut \$100,000 each year for library and computer research; \$90,000 each year for dues to national organizations; and \$400,000 for attorneys and guardian ad litem in child custody cases. We have decimated our training program and eliminated out-of-state travel, to the extent that our staff training programs are now inadequate. We do not have sufficient personnel in our technology department to support the computer and video conferencing equipment that now exists in the 200 plus courts we support throughout Montana.

Because of low interest rates and the decline of the prices of oil and gas, we will be seeking changes in the funding mechanism of the Water Court, the branch of the Judiciary that has been tasked with resolving over 200,000 water claims in Montana. Also, Senator Vincent's SB 57 has a number of performance measures that should continue the improvement in the water adjudication process. Water rights disputes are often complicated and difficult to conclude. Our new Water Judges, Russ McElyea and Doug Ritter, are doing a great job moving these cases to final decrees. I hope the Senate will be able to confirm their appointments soon.

Additional budget reductions will fall on the backs of an overworked local judiciary and inevitably result in delay and court backlogs. Of course the losers under that scenario are your constituents, especially small business and working people. We know that backlogged courts are bad for business. It is the commercial litigation that suffers most from court delay. Criminal cases, child abuse or custody cases, mental commitments and Youth Court cases by law must be given priority. As a result, the building contractor trying to resolve a contract dispute or the small business trying to collect a bad debt gets pushed back.

We are continuously looking to increase efficiency. Not all judicial caseloads are the same; some districts have significantly larger caseloads than others. LC 860, to be introduced by Representative Steve Fitzpatrick, provides the Legislature an opportunity to take an in depth look at the current geographical boundaries of the District Courts. It provides for a commission made

up of legislators, county commissioners, and judges, and requires them to analyze our workload study and make some recommendations to the 2017 Legislature if changes are warranted. This may be one method of avoiding the necessity of adding additional judges in some communities. We have other solutions that will help reduce judicial backlogs. Most importantly, we must continue the Court Help Program statewide. Most people and many small businesses either cannot afford an attorney, or can't find an attorney to take their case, so they represent themselves. At the trial court level, the pro se matter:

- Tend to be messy,
- Are time consuming,
- Are very frustrating – not only for the Judge but the parties themselves.

Consider this, almost 2/3 of the domestic relations cases, mostly divorces and parenting plans appear in court with at least one party not represented by a lawyer. Family cases are more than 20% of the case load in District Court. To put this into real numbers, about 6,500 family law cases each year come to court with no attorney. So other cases must wait while the judge and court staff work with a party that does not understand court procedure; does not know the correct forms or papers that must be filed; does not know the appropriate questions to ask a witness or what information the judge needs to decide that case.

With a staggering number of cases each year, we must recognize this situation as one reason, if not the biggest cause, for delay in our system. Court help is designed 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. The Judicial Branch's website receives 5,000 hits a month on the posted legal forms. Not all legal matters need attorneys. There are many ways we can simplify the process and provide people with helpful solutions. In a recent survey, an overwhelming majority of the users of the service indicated that they now understand their legal rights and were more prepared to handle their legal situation. Our Judges agree this program does significantly increase judicial efficiency and it does reduce court backlog. Incidentally, the Court Self Help staff does not offer legal advice.

Last biennium, the Self Help centers had over 26,000 contracts with individuals and small businesses, helping them navigate through the complexity of our court system. Statewide, we do this primarily with volunteers who are recruited and trained by the limited staff that we have. Because of our tiny budget, we leverage staff with volunteer labor, often AmeriCorps volunteers. This program operates in urban and rural counties throughout Montana.

The way our citizens approach the court system is changing dramatically; clearly our courts must adapt to these changing times. (In that regard, I would like to thank Senators Ripley and Swandal, and Representative Hunter, for serving as members of our Access to Justice Commission.)

There is another area where decline in family and personal responsibility has a tremendous impact on our courts, to say nothing of the devastating influences on the young children involved. When children are seriously abused or neglected, law enforcement and state social workers are often called to intervene, called most often by doctors or teachers or other family

members. Sometimes, when the parents are unable, or simply will not take the responsibility to raise their children without abusing them, courts become involved. In all cases, these parents are provided with the tools and resources they need to be able to become capable parents. When these efforts fail, and by law the State is required to make every possible effort to keep these families united, the State is compelled to ask the courts to terminate the parental rights and allow these children to be permanently placed with caring, loving families.

In 2009, our Court had 36 cases where parents appealed a decision of the District Court to terminate the parental rights to their children. Last year, after increasing exponentially each year, we decided 81 cases where the District Courts permanently terminated parental rights to children, a 125% increase. In the same period of time, the District Courts went from 1,006 abuse and neglect cases being filed, to 1,609-a 60% increase. As you can imagine, all of these cases present tragic and sad circumstances. They also are time consuming and costly. And, by law, they must be given priority by the courts, so other cases get pushed back further in the queue.

Drug Courts and Treatment Courts have proven to be very successful in reuniting these families. Drug courts can and do save taxpayer dollars. Fortunately, during the last three sessions, Legislators had the foresight to fund a small portion of these courts. Not long ago 50% of the children in foster care were there because of their parents' use of drugs, methamphetamine in particular. I suspect the number is higher now. An incredibly high percentage, up to 90%, of prison inmates (both male and female) are incarcerated with chemical dependency problems, as many as half for meth. And, of course, many of our prisoners have severe mental illness issues.

All of these social problems cause a tremendous drain on state and local government budgets. This is why governors across the country are proposing increased funding for drug courts, as a cost saving measure.

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.
- They divert new commitments from our prisons to less expensive alternatives in the community.
- They help our veterans repair their shattered lives and return to their families and communities.
- Drug courts reunite broken families and turn participants into productive members of society.

On October 31, Montana had 535 active participants in a Drug Court program. We have studies that demonstrate the success of Montana's Drug Courts. Some of the highlights include:

- Recidivism rates are lower-most Drug Court graduates do not commit new offenses. Unemployment among Drug Court participants fell by 90%.
- In the 78 months that the Branch has been collecting data,

- 61 babies were born while the mother was in Drug Court, and 57 of them were born drug free, a tremendous decrease in human suffering, and an immense saving of taxpayer dollars.
- As of September 30th, there were 12 pregnant women in Drug Court-women who are receiving treatment and are subject to routine drug testing to remain drug free.

We have 24 active Drug Court dockets in Montana. Three of those are dedicated to our returning veterans that are having problems with readjustment to civilian life. These programs are very difficult to complete. Drug Courts don't take easy clients, these people are chemically addicted and have likely never functioned as a productive member of society. 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 social and crime related problems that go with it.

Judges in Montana are committed to addressing the problems in their communities, problems they see every day.

The Judicial Branch has only 429 employees. We are a group that is dedicated and committed to our mission; most are even passionate about the purposes and role of the rule of law in our society. They understand that the hallmark of a flourishing democracy is an adequately funded judiciary that can settle people's disputes in an orderly fashion. Only in that way can the economy move forward and our citizens prosper.

Our modest proposals will help to ensure that the small business owner, the woman injured through no fault of her own, the rancher seeking legal rights to his water, the defendant wrongly accused, and the child crying in their crib get the opportunity to resolve their crises. We also hope that by making the court system more efficient and responsive to the public's needs, we can avoid coming to you in a future session asking for more Judges, something I do not want to do.

An independent, adequately funded judiciary is the key to constitutional democracy.

As I have said before, **WITHOUT COURTS, THERE IS NO JUSTICE. WITHOUT JUSTICE, THERE IS NO FREEDOM.**

Thank you again for inviting me to speak with you today.