

2009 State of the Judiciary
Chief Justice Barton R. Voigt, Wyoming Supreme Court
Message to the Wyoming State Legislature
January 14, 2009, State Capitol Building

Mr. Speaker, Mr. President, Governor and Mrs. Freudenthal, members of the Sixtieth Wyoming Legislature, elected officials, fellow judges, friends, and fellow citizens:

I am pleased to appear before you for my third report on the state of Wyoming's judiciary. The phrase "three strikes and you're out" occurred to me, but then again, you can't hit what you don't swing at, so here goes.

Two years ago, my remarks covered 24 pages. Last year, it was 31 pages. So my goal this year was 38 pages of absolutely essential information crucial to your understanding of the operation of the judicial branch of government.

Luckily for you, my wife tells me that I am getting considerably less interesting with age and that I really ought to say as little as possible. I will try to adhere to that advice.

The biggest news, at least for us in the supreme court, is that we are back home on the east side of Capitol Avenue after two years in exile. Many of you have been through the remodeled building, and I am sure you agree that it is now a treasure for the people of Wyoming. This body should congratulate itself for the foresight it showed in doing what was right to preserve the supreme court building and to enhance its utility. That building is the physical representation of the judicial branch of government in Wyoming, and it deserves the same veneration and respect as does the building in which we are now meeting. As you all know, we are holding a special court session this afternoon at 4:30 for the specific purpose of showing you the building and thanking you for it. The court session will be brief, leaving you all time to tour the building as your time permits and for some refreshments.

I have always believed, and I think most judges and political scientists agree, that the judiciary in America's system of government is meant to be the most conservative branch. By that I mean the judiciary is supposed to be the farthest removed from the whims, fancies and fads of the day, with the law developing slowly and surely over time, rather than in knee-jerk reaction to changing events.

Unfortunately, that precept has to some extent also controlled our approach to procedure and methodology—how we do what we do. That is why you will find more leather-bound ledger books and quill pens in America's courthouses than anywhere else.

I make that point to emphasize how amazed I have been that my tenure as Chief Justice has been marked by an almost constant attention to technology—computers, servers, electronic case management systems, electronic filing, electronic citations, digital courtroom recording, real-time court reporting, wireless internet service, video appearances—the list goes on and on.

In that regard, I will in passing ask you to give favorable attention to our supplemental budget

request this session. There are three items in the request, all involving computer technology: first, a joint project with the Wyoming highway patrol for electronic citations, which project will lead to electronic filing in the circuit courts along with simultaneous populating of internal highway patrol reports; second, an enhancement to the computer system that controls the information shared between the supreme court and the state bar, and third, uniform electronic case management in the district courts.

Ironically, I was unable to attend the presentation of this budget to the joint appropriations committee because I was participating in a national electronic filing seminar. The primary lesson that I learned at that seminar was that, while we may feel like we are leading the pack in technological advances, in truth we are barely keeping up with the rest of the world. The citizens of Wyoming deserve, and will demand, to have their government function like any modern business, and that includes keeping up with technology. Beyond that, we are finally figuring out how efficient electronic communication is in making sure that law enforcement officers have immediate access to court information. For instance, a deputy sheriff in Casper will be able to determine instantaneously whether an alleged Campbell county domestic violence order does or does not exist. So, our rapid technological developments required us to bring a supplemental budget request, rather than waiting another year to continue with all these projects.

Before I leave the topic of technology, I should tell you two additional things. First, the electronic docketing, case management, and filing system you funded for the supreme court is completely up and functional. You should visit our website to see what all can be done and what all information is available to the public. Today, the Wyoming supreme court is much more accessible and much more visible than it has ever been in the past. During your tour this afternoon, the clerk of court and her staff, and our i.t. staff will be happy to show you how all of it works.

The second thing I want to tell you about court technology has to do with our staff: Steven Dreher, James Bothamley, Frostie Sprout, Sergio Gonzalez, John Capron, Doug Schmidt, and Jennifer Petrella. We never had any doubt that their expertise was the primary factor in our technological successes, and we are very happy with the overwhelmingly positive feedback we have received about them from the trial courts across the state. Our confidence in them was recently reinforced when the vice-president of Itcourtech, the nationally experienced company that installed our electronic case management system, told me that he believed our staff to be the best court technology staff in the country.

Getting out of the technology arena, I will give you a few statistics. I won't bore you with details, but I thought you might want to hear a bit about filing trends. In fiscal year 2007, there were 173,937 cases filed in the circuit courts. Most of those cases were, as usual, traffic citations. That number grew to 175,651 in 2008. In fiscal year 2007, there were 18,514 cases filed in the district courts. That number dropped to 17,444 in 2008. In calendar year 2007, 299 appeals were filed in the supreme court. That number dropped to 281 in calendar year 2008. We have not explored the reasons for these minor changes—both up and down—but we do not consider any of them to be of major statistical significance at this point, in the sense of showing a general trend in any particular direction.

What these statistics do show us, when we study them in detail, county by county, and district by district, is that the system is generally in balance; meaning that there is a pretty good correlation between the number of judges needed and the number of judges available. As I have mentioned before, however, there are some areas of concern that we will continue to study to make sure that all of Wyoming's citizens have equal access to the courtroom. Sweetwater county is probably at the top of that list, with a shortage of coverage in both the district court and the circuit court. We are waiting there for some local facilities decisions.

I should also mention that we—the supreme court and the board of judicial policy and administration—strive to make sure that judicial resources in Wyoming remain in balance. We continually monitor caseload statistics and docketing delays to ensure that the judicial process works as well as possible. In the trial courts, this is accomplished mainly in an informal fashion, with judges covering for each other upon a simple phone request to keep the more crowded dockets moving as rapidly as possible. District judges routinely cross over into other districts to handle lengthy jury trials to allow the local judge to catch up on bench trials and motion hearings.

I have been either a judge or a justice now for twenty years. I am not exaggerating when I tell you that the district judges' conference and the circuit judges' conference are "policing themselves," if you will, better right now than at any time during that period. Both conferences have regular meetings, arrange for specialized training, discuss common problems, and work toward standard procedures. There was a time when Wyoming trial judges were an "empire unto themselves." Those days are over.

While I am discussing the trial courts, I will mention the changes on the bench since last session. Michael Davis replaced Nick Kalokathis as a district judge here in Cheyenne. Bob Skar replaced Gary Hartman as the district judge in Worland. Tom Harrington, in turn, replaced Bob Skar as the circuit judge in Worland. And finally, Marv Tyler was appointed to fill the newly created district court position in Pinedale. We welcome all these new judges to the fold and wish them the best. You may not know that the governor attends all of the new judge robing ceremonies. The judges, and I believe the public, very much appreciate this effort and the recognition he gives to the importance of these occasions.

There are a few specific activities of the judiciary about which I want to tell you:

We continue actively to pursue the concept of court security, through a variety of avenues. First and foremost, we have hired Kevin White, a former legislator most of you probably know, as our Court Security Officer. His primary focus will be building and personal security here at the supreme court, but he also will spearhead our statewide court security efforts.

The court security commission also continues to meet regularly, for the purpose of developing a rational approach to courthouse security in the many and varied county courthouses across Wyoming. In June we brought in staff members from the national center for state courts to give security seminars for judges, court clerks and security officers. With six separate sessions---two each in Rock Springs, Casper, and Cheyenne—we trained over 200 court personnel. Our goal is to develop emergency response plans for all county courthouses, and to implement whatever

recommendations are made by the Court Security Commission. This planning will incorporate the concept of “continuation of business” in the event of a disaster. For instance, how will a local district court and circuit court continue operation if a court house happens to burn down? We do not now have a ready answer to that question.

Finally in regard to security, I want to thank Colonel Powell and the Highway Patrol Capitol Security Division for their fine cooperation in getting Kevin commissioned and in providing additional security during special court functions. I am sure you will see some of them this afternoon.

In another initiative, our administrative and i.t. staffs worked with the Secretary of State’s Office and the Department of Motor Vehicles to revise the method by which master jury lists, which lists are used in both the district and circuit courts, are created. The master jury lists are a combination of voter registration and driver license lists. The replacement of the software utilized by the secretary of state’s office necessitated this change. This inter-branch cooperation was a fine example of how public servants should quickly do what is necessary to solve problems for the benefit of the populace.

Briefly, I will also mention that we are working on a branch-wide policy governing access to court records. Lately, largely due to the proliferation of the computer world and the world-wide web, we have received an increasing number of requests for the mass production of records. Literally, requests such as “I want a copy of all your circuit court records.” Or “all your civil judgment records.” We believe that court records presumptively should be open and available to the public, but we need policies recognizing what is and what is not confidential, as well as how and when access may be obtained. As to confidential information, such as social security numbers, financial account numbers, birth dates, addresses, and the like, we have concluded that something we might call “pre-emptive redaction” will be the best approach. In other words, keep that information out of court documents from the beginning, rather than later trying to redact it piece- by-piece. On another front, about a month ago, the Board of Judicial Policy and Administration asked the Supreme Court to create a commission to deal with the problem of access to receiving federal funds to provide civil representation to indigents folded, leaving a huge hole in the availability of such services. A temporary fix is in place, but long-term resolution is needed. That commission may also look into other issues that impact the ability of Wyoming’s citizens to get into the courtroom, such as delayed docketing and case management problems.

We also continue to deal with the perennial issue of the extent to which municipal courts can and should be drawn into the state court system. Much of the law enforcement in this state takes place in municipal courts, yet the municipalities are not part of the state system in many ways. We hope in the future to work more closely with mayors, town councils, town attorneys, and chiefs of police to create more cooperation, uniformity, and sharing of information. We are, for instance, looking at the possibility of a uniform municipal criminal code, the purpose of which would be to enhance the sharing of data among law enforcement agencies via our judicial branch database.

I should not conclude these remarks without mentioning the two aspects of our work that

continue to draw the most attention in the media. Those two areas are juvenile courts and court-based drug treatment programs. There appears to be a widely held belief that our juvenile courts—which means our district judges sitting in juvenile court—are failing adequately to deliver juvenile justice. I believe you will find that, almost universally, the prosecutors and the district judges do not agree with that assessment. They will tell you that the allegation that the right hand—the juvenile courts—do not know what the left hand—the circuit and municipal courts—is doing, is simply not true. In addition, they will tell you that the answer to the problem of providing services to juveniles is not re-structuring the juvenile court statutes but ensuring the availability of services within the community.

As to court-based drug treatment programs—or “drug courts” as some like to call them—I am happy to report that efforts are being made, and those efforts will come before you this session, to compromise the differences between those who favor such programs and those who oppose such programs. The hope is to allow the programs to continue to operate where local interest is sufficient to sustain them, to create uniformity and predictability within the programs through department of health oversight, and narrowly to draw judicial participation so as to ameliorate the constitutional separation of powers concerns that have plagued the existing program.

Well, that about covers it. But you know me better than to think that I am going to just sit down and pass up the opportunity to offer you some advice on how to make this session both productive and painless. For many years, I have been telling law students and young lawyers that, when they deal with a panel of jurors, they need to remember that each of those jurors comes from a different background and has a different perspective on the world. In short, all the jurors hear the same words, but each puts his or her own particular spin on those words.

It occurred to me that the same is true of legislators. When you are talking to one another, trying, say, to garner support for a bill of yours, you need to remember that the person to whom you are speaking is interpreting your remarks through his or her own particular prism. I have found that the best way to demonstrate this phenomenon is by reference to the age-old question of why the chicken crossed the road.

Now, if you ask that question of your fellow legislator, and he or she happens to be a kindergarten teacher, he or she will probably answer, “to get to the other side.”

But other legislators will have other perspectives. For instance, Captain James T. Kirk might respond that “the chicken crossed the road to boldly go where no chicken has gone before.”

Legislator Richard M. Nixon would tell you that “the chicken did not cross the road.”

Legislator bill gates will ignore you and start thinking that he could release a new software program called Chicken 2009, which not only will cross roads, but will lay eggs, file your important documents, and balance your checkbook.

Any legislator over 50 years of age will tell you that “in my day, we didn’t ask why the chicken crossed the road. If someone told us the chicken crossed the road, that was good enough for us.”

So be careful out there, my friends. Don't make any assumptions about your fellows. Google 'em, if you have to, but find out what makes them tick. You'll get everything you want.

Thank you. See you again at 4:30.