

2011 State of the Judiciary
Chief Justice Marilyn S. Kite, Wyoming Supreme Court
Message to the Wyoming State Legislature
January 12, 2011, State Capitol Building

Mr. President, Mr. Speaker, Governor and Mrs. Mead, members of the 61st Legislature, elected officials, members of the Judiciary, family, friends and citizens of our great State. It is an honor and privilege to speak to you on behalf of the dedicated men and women of the Wyoming Judiciary. Thank you, President Anderson and Speaker Buchanan for the invitation.

As you know, this is my first opportunity to speak to you as Chief Justice and I am humbled and honored to do so. It is also the first time many of you have sat in this chamber as members of the legislature. And it is our new Governor's first chance to share his vision of Wyoming's future with all of us.

My memories of this chamber date back to Governor Hathaway's time when I was lucky enough to serve as an Assistant Attorney General for the newly created Department of Environmental Quality. In that capacity, I had the amazing opportunity to assist the likes of Malcolm Wallop, Warren Morton, John Turner, Tom Stroock, Dave Nicholas and Alan Simpson and many others as they worked to craft a balance between development of this State's resources and protection of its many natural wonders. I was impressed then, as I am today, with the dedication and willingness to serve exhibited by this legislature - one of the few truly citizen legislatures left in this country. We all appreciate the personal sacrifice each of you must make to serve our democracy.

What we are doing here today, bringing together the three separate and independent branches of government, constitutes an important tradition, symbolizing a unity of purpose, and provides us with a brief moment in which we can speak to each other and to the citizens of Wyoming as well as listen to each other and appreciate the importance of our respective efforts on behalf of this State. All of the members of Wyoming's Judiciary wish you energy, wisdom, and endurance as you take on the challenges facing our State and its people at this point in our history.

We also wish you, Governor Mead, great success in your tenure. You follow the trail of many wise and dedicated individuals who sacrificed their personal lives for a period of time to devote limitless time and energy to leading the way for our State. You have the great fortune to have unmatched role models within your own family for how to lead with integrity, humility, wisdom and humor and we know they are smiling down on this chamber today. Congratulations.

I know you have a busy agenda and are anxious to get started. I will not delay you long, but do want to report on the changes in the judiciary over the past year and highlight a few issues facing our branch of government. I suppose one of the most obvious changes is that after four years of accomplished leadership, Justice Barton Voigt has passed that mantle on to me. Justice Voigt's efforts over the past four years are far too many to mention, not the least of which were overseeing the design and construction of the remodel of the Supreme Court Building and leading the court system into the 21st century with electronic filing and docket management. On behalf of all of us serving in the Judiciary, I want to thank you, Justice Voigt, for your devotion

to the job, your diligence, and your ever-present sense of humor. We all owe you a great debt. And through it all, he kept completely current on his case assignments and sometimes seemed to have his opinion drafted before the rest of us got back to our offices. You might notice a particularly happy, relaxed expression on his face which we all recognize as that of a former chief justice!

I also want to thank my other colleagues on the Supreme Court, Justices Golden, Hill, and Burke for their friendship, their professional support and the confidence and trust they have shown by electing me as Justice Voigt's successor.

In 2010, we said farewell to some old friends and welcomed some new. We were saddened by the passing of former District Court Judge Jim Wolfe of Sheridan, and retired Supreme Court Justices Al Taylor and Richard Thomas, each having had significant impact on the law of this State as well as its citizens. District Judge Nancy Guthrie, of Jackson, retired after 15 years of service in Lander and Jackson. Our judicial selection process resulted in Jackson Circuit Judge Tim Day being appointed to replace Judge Guthrie. Experienced Jackson attorney, James Radda, from the Teton County Attorney's office, was appointed to replace Judge Day. In Gillette, Circuit Court Judge Bill Edwards retired having served 19 years in that busy circuit and Wendy Bartlett, an energetic, well-respected Gillette attorney, from the Campbell County Attorney's office, was appointed to replace him. Most recently, District Judge Scott Skavdahl of Casper announced his resignation after 7 years of service to pursue a career in the federal judiciary. Catherine Wilking, a respected Casper attorney with experience in civil and criminal law as well as juvenile issues, was appointed to fill that vacancy. Judge Wilking's formal installation will occur in a few weeks. As always, the Wyoming Judicial Nominating Commission performed efficiently, fairly, and free of political influence. As we watch with dismay the politicalization of judicial selection in other states, we are again thankful for the wisdom shown by the legislature and our citizens in the adoption of the constitutional amendment establishing our system of judicial selection some 40 years ago.

The Supreme Court and the Access to Justice Commission have been busy implementing legislation this body adopted last year to provide funding through an increase in court filing fees to coordinate and support legal services for over 70,000 of our citizens who are financially eligible. We have had several statewide public meetings, have created a non-profit corporation, the Wyoming Center for Legal Aid, appointed an initial board of directors for the Center, drafted proposed bylaws and rules, and reported our progress to the legislature as required by statute. The upcoming year will see much progress in this effort and we are committed to fulfilling this body's intent to provide for justice for all of our citizens, not just those that can afford it.

I want to take a minute or two to so share with you some thoughts about the work of the Wyoming judiciary. As noted by Alexander Hamilton in Federalist Paper 78, the Judiciary is the weakest of the three branches of government. We do not hold the power of the purse, and we cannot raise armies. We do, however, hold in our hands the lives and fortunes of thousands of citizens every year and we have the constitutional responsibility to protect the fundamental fabric of our society – the rule of law. We provide that level playing field envisioned by our founders – justice for all.

In performing our work, we are facing some major challenges and we are working hard to meet them. While statistics certainly don't tell the whole story, a quick look at our case filings show that the Wyoming courts are vibrant, busy, and getting their job done. The circuit courts processed over 180,000 cases last year, that includes all of law enforcement's citations, and the district courts handled over 20,000 cases. I would like the circuit and district judges who are here today to stand and be recognized for their hard work.

I am also pleased to report that those cases that do reach the Supreme Court are being handled promptly and we continue to rank near the top nationally in the number of opinions authored annually.

Despite this good news, we, like the other two branches of government, face extraordinary challenges. I want to talk to you today about two of those challenges in particular. No. 1 is how to become more efficient internally as we perform our jobs. And No. 2 is how to reduce the cost and delay to the private citizens in civil litigation.

1. How do we manage an ever-increasing workload with static or even declining revenues? We are all well aware that other states have not been as fortunate as we have financially, and many have seen draconian cuts in funding to the point of even closing some courts thus denying citizens access to justice. We are committed to assuring that we spend state resources responsibly and efficiently in order to assure the citizens of Wyoming never face that prospect.

Even though our budget represents only 2% of the entire state government budget, in response to the decreasing state revenues of the last several years and in cooperation with the executive branch, we have worked to reduce any expenditures that were not absolutely necessary. However, we do not have optional programs that can be eliminated. Our primary cost is for the personnel necessary to handle the caseload, the size of which is beyond our control.

In recognition of that fact, we are examining our structure to see if we can become more efficient. The most obvious opportunity for enhanced efficiency is to better utilize the circuit courts. As you know, their jurisdiction is currently limited to misdemeanors and civil cases involving less than \$7,000. That limit was set 15 years ago and needs to be significantly increased. That will allow us to take better advantage of circuit courts as well as to reduce the ever-increasing burden on our district courts. In consultation with the Board of Judicial Policy and Administration as well as the Circuit Court judges, we have proposed, and the Joint Judiciary Committee has supported, an increase of the 15 year old jurisdictional limit to \$50,000. Sen. File 15, which is a committee bill, will accomplish that change and we urge your support of that legislation

While this change may have some impact on the clerks of both the circuit and the district courts, we believe those impacts are manageable and should not be a reason for a less efficient judicial system.

In addition to SF 15, we are working to improve our productivity through technology. Electronic filing and docket management is in place and functioning well in the Supreme Court. We are

about half way through the effort to get all district courts on the same docket management system and to provide electronic filing in those courts as well. As soon as that is complete, we will do the same in the circuit courts. We have already installed public computer terminals in some circuit courts so the public can electronically search non-confidential court dockets and plan to have the rest in place this year. You have generously and wisely provided us the funding necessary to accomplish our case management needs at the district court level, even in the face of budget reduction pressure, recognizing that in the long run, this effort will reduce operating

We would like to claim credit for all of this progress, but honestly, we were late to this party. It is thanks to the leadership, and dare I say prodding, from you, that we have made such significant progress. Often, institutions of government are resistant to change and that is the case with the judiciary. I learned recently that a cowboy who wants to participate in a roping event at Frontier Days can now enter the competition, pay the entry fee, draw the steer or calf, rope it, have the time immediately recorded, and the prize money calculated and paid the same day ... all electronically ... well maybe not the roping part! Now I don't know about you, but no cowboy I know likes change very much. The good old days were plenty good enough for them. So if cowboys can join the electronic age ... judges can too, don't you agree?

Now, the next technological leap that will have the most impact on our day to day productivity will be when law enforcement is able to issue electronic citations and ultimately the fines can be paid electronically. The Highway Patrol has begun to implement e-citations and they are responsible for a large share of the work of the circuit courts. We have done the necessary work to allow the court's data system to accept their e-citations. We understand they will be ready to roll next summer and we look forward to that day. Once an officer can enter a citation electronically, the work load of our circuit court clerks should be substantially reduced. In some circuits, one full time person is necessary just to enter this data by hand.

Although you do not have a specific request before you, we want to call to your attention the need to provide funding to counties and cities so local law enforcement can acquire that e-citation capability as soon as possible. We understand a recommendation for that funding was contained in the report from Governor Freudenthal's Task Force on Impaired Driving and we hope that the executive branch will bring such a proposal to you soon. The resulting increase in speed and efficiency in processing citations will significantly enhance law enforcement's ability to deal with repeat offenders.

We are also working with law enforcement to facilitate payment of fines electronically and, in fact, just this week Laramie County has implemented its program and is receiving fines on line. When we can do this statewide, we will dramatically improve the fine collection rate. With outstanding unpaid fines in the range of \$10,000,000, the fiscal benefit of that advancement is obvious. So we hope you keep this issue on your radar ... so to speak.

Finally, on the technology front, most of our judicial districts have video conferencing capability and we are all learning how to use that tool effectively. Many judges are using it for arraignments, depositions and other proceedings thus reducing the cost and risk of transporting prisoners to and from jail, minimizing lost judge time and the expense of their travel and allowing cases to move forward more quickly. Last month we held a statewide Access to Justice

Commission meeting with participants from six cities all over the state. Everyone heard and saw each other clearly and we had participation from many that simply could not have attended in person. Also last month, we held a Board of Judicial Policy and Administration meeting by video conference and saved \$3,500 in hard travel expenses, about the same in value of lost work time, and no lives were put in danger on our winter roads.

2. How do we address the growing discontent with the cost and delay involved in civil litigation? Keeping in mind that our primary job is to provide fair and efficient justice to our citizens, we have initiated an effort to examine our rules and procedures to see how we can do that better. We started by conducting a survey of all Wyoming lawyers and judges and, not surprisingly, it showed that an overwhelming majority of both believe that civil litigation costs too much and takes too long. The cause of this failure of the system is likely a combination of district court workloads in some areas, and outdated, cumbersome rules. The growing demand on our district court judges, particularly in the domestic relations and juvenile dockets, can prevent them from resolving some cases expeditiously. And that, by the way, provides another important reason to support S.F. 15 – which I discussed earlier - to allow the circuit court judges to assume some of that load.

The rules of civil procedure that we follow today were adopted 72 years ago and have been modified very little since. The intent of those rules is clearly stated in Rule 1, “to secure the just, speedy, and inexpensive determination of every action.” It is safe to say that we have failed too often to realize that intent. The Board of Judicial Policy and Administration and the Supreme Court have initiated several different projects to begin to address these problems. Judge Norman Young, from the 9th Judicial District and current president of the district court judges conference, is heading up an effort to examine the rules to determine if changes can be made to allow cases, especially smaller ones, to move more quickly and without unnecessary expense. Judge Keith Kautz, from the 8th District, is heading up a group of judges and lawyers to address problems with domestic relations cases specifically. The Circuit Court judges, under Judge Curt Haws’ leadership, are drafting rules for simplified procedures in circuit courts aimed at reducing cost and delay. I anticipate we will consider rules changes and possibly propose statutory changes over the next year.

As this summary of the challenges, changes, and opportunities facing the third branch of government shows, our plate is full. The men and women of the Wyoming judiciary are fully committed to continual improvement in the way we do business while at the same time, doing justice in the cases at hand. We invite you to visit your local courts to see first hand the quality of your judges and we urge you to continue to provide us the necessary resources to get our job done as you have in the past.

Finally, with the tragic events in Arizona last weekend, we all, as public servants, increasingly feel the weight of our responsibilities. We cannot prevent all acts of anger and violence directed at those who serve. But we can, and must, work to maintain an environment in which institutions of our government, and the individuals holding office within those institutions, are respected. Our democracy depends upon that respect.

I thought it appropriate to close by quoting a former governor and senator whose service

Wyoming enjoyed and whose legacy has produced our new Governor. In 1965, then Governor Clifford P. Hansen addressed the 38th Wyoming Legislature and said, "Let me observe that we are elected officials, and as such, we are but temporary custodians of trust, favor, leadership, and responsibility. We know the difference between right and wrong; we know that our sole duty is to give dedication and loyalty to the full public interest. History will deal with us. May the truth be that we gave our best." Thank you.