

State of the Judiciary  
Chief Justice Marilyn S. Kite, Wyoming Supreme Court  
Message to the Legislature  
February 13, 2012

Mr. President, Mr. Speaker, Governor and Mrs. Mead, members of the 61st Legislature, elected officials, members of the judiciary, and citizens of the State of Wyoming. It is an honor to speak to you on behalf of those that serve in the judicial branch of this state's government. Thank you, President Anderson and Speaker Buchannan for the invitation to do so.

While the duties and responsibilities of each of the three separate and independent branches of government are different, we share the obligation to serve the public with honor and dedication to our constitution. We are fortunate in Wyoming that the three branches of government show each other mutual respect. Sadly, that is often not true in the rest of our country and once again things are different, and better, in Wyoming. I speak for all of the members of the Wyoming Judiciary when I wish you all of the energy and wisdom you will need as you address the difficult issues ahead of you in this session. We know you are anxious to get started and I know you will be pleased to hear that I will not delay you long.

The faces of Wyoming's judiciary have changed since I reported to you last year. Long time Clerk of the Supreme Court, Judy Pacheco, known to many of you, retired last week. She has certainly been the friendly face of the court providing assistance to lawyers and citizens alike for many years. We will miss her greatly. We are pleased that the imminently qualified Chief Deputy Clerk, Carol Thompson, will take the reins of that office and provide leadership as the judicial branch continues its transition to the digital age. Sadly, we lost retired Supreme Court Justice Walter Urbigkit who also served as a distinguished member of this body. We will honor him later in May at a special memorial session of the Supreme Court and he will be remembered as a dedicated public servant and a stalwart defender of the constitutions of our state and nation. I would be remiss if I did not mention that this will be the 23rd and last Joint Session that Justice Michael Golden will attend as a member of the Supreme Court. He is facing the mandatory retirement age of 70 contained in our constitution, a provision that you recently have considered removing and we would urge you to do just that. No other state government position is limited in such a way and we are all realizing just how young that is and how much many of us can contribute after that age. We don't want to think about how much we will miss Justice Golden's wit and wisdom and will certainly take the opportunity to honor him during the upcoming year.

To update you on projects I mentioned last year; 1) the Wyoming Center for Legal Aid is up and running; 2) after the increase in the dollar threshold for civil jurisdiction in the circuit courts last session, simplified procedural rules were adopted and 1,000 new cases were handled by those courts without any increase in staff; 3) the Supreme Court IT department has developed and implemented electronic payment of fines in all of our circuit courts which has resulted in over \$3 million coming into state and local governments 24 hours a day and from all over the world; 4) we are hoping the Highway Patrol will finish its side of the e-citation effort and we can begin receiving citations electronically this summer; 5) our district court electronic docket management system will also be rolled out this summer.

This session you will be addressing, in SF26, a Joint Judiciary Committee bill providing for a new district judge in Johnson County. The 4th Judicial District, which includes both Johnson County and Sheridan County, is the only single judge district in the state. Economic development and population growth in that area have resulted in an increasing caseload that is much more than one judge can handle. The Board of Judicial Policy and Administration strongly supports that legislation and believes the citizens of that area are in need of additional judicial services that one judge cannot provide.

As we all know, our democracy requires educated and involved citizens who understand the fundamental structure of our government. Without that, public trust and confidence are at risk. National surveys show that two-thirds of our citizens cannot identify the three branches of government, let alone describe their respective responsibilities and a third cannot name any. Fewer than a third of eighth graders could identify the historical purpose of the Declaration of Independence; 15% of adults correctly name John Roberts as United States Chief Justice, but almost twice as many (27%) could identify the judges on the television show "American Idol." Last year, our Supreme Court learned about a project called iCivics, conceived of and initiated by retired Justice Sandra Day O'Connor which, among other things, has developed video games aimed at middle school students that teach players to write legislation, act as president, or argue a case before the Supreme Court. We have worked with the Governor's Office and the Legislative Service Office to bring that project to Wyoming. This Thursday, Wyoming's three branches of government will introduce iCivics to over 50 Wyoming educators from around the state. They will also have the unique opportunity to enjoy a live video conference address by Justice O'Connor herself. I would invite you to attend, but I am afraid it is already a standing room only crowd. We are confident Wyoming students will not be among those who are uninformed about their government. Although there is a natural tension between our three branches of government, most of the time good natured, this kind of effort shows that we can and do work together.

That brings me to the main reasons you are all here this year – that is the budget. In the Judiciary, we know these are difficult and challenging times for our country and our state. We see on a daily basis the consequences of economic hardship. You are facing many tough choices about how to fund necessary governmental services. It is critical that we communicate to you the needs of the judicial branch and ask for the funding necessary to deliver Equal Justice for All of our citizens. Keep in mind that the judicial branch is small, with only 51 judges and 240 employees, and our total budget is \$66 million – only 2% of the state budget. Our primary needs are technology and salaries. On the technology front, we are pleased the JAC has recommended approval of the funds necessary to finish the electronic docket management system in which you and we have already invested so much. We are confident that investment will pay off with more efficient and cost effective delivery of justice.

With regard to salaries, we have two issues – staff salaries and judicial salaries. You will recall that you granted a market raise of over \$7 million for the executive branch last year. Because our salaries had not undergone a review by your consultant, the Hay Group, we used their method to estimate the \$600,000 annually was necessary to bring our employees to 91% of market. You appropriated \$600,000 conditioned upon our completion of a full Hay study. However, for the first time in history, a footnote required the Governor to approve the judicial branch's final expenditures. Both we and the Governor agree that condition violated the constitutional

requirement of separation of powers and, therefore, he vetoed that portion of the budget resulting in the \$600,000 flowing into the executive branch which was then doubled for this upcoming biennium. In the past year, we undertook the Hay study at your direction at the cost of \$57,000 and it demonstrated our estimate was a little low and about \$800,000 was needed to get our staff to 91% of market. It was our firm understanding that the JAC intended in this session to correct the situation created last year and treat the judicial branch employees equitably. Accordingly, we were most distressed to learn that in the final throes of the budget mark up, our staff salary was first cut in half and then deleted entirely. Apparently, the reasoning was that other state employees were not getting a salary increase this year and it was only "fair" if judicial employees also did not get raises. Fair? That is like saying in the third quarter of the recent Super Bowl, when the Patriots were in the lead, the officials decided to change the rules and eliminate the 4th quarter, but don't worry...it was "fair" because they treated everyone the same.

Fairness does not ignore history. The executive branch got a market raise last year, in fact they got our raise too! Now an entry level attorney can go to work for the Attorney General's office for almost \$4,000 more than if they come to work at the Supreme Court. We are certainly not saying those in the executive branch did not deserve a raise last year, but were they more worthy than judicial employees? Of course not. In fact, if you decide not to correct this inequity, it will be the first time in our memory that you intentionally provided inferior pay to the judicial branch. We implore you to restore those funds to our budget and treat judicial branch employees equitably.

Even larger inequities exist with judicial salaries. The Hay study informed us that judge's salaries have fallen disturbingly far behind both the legislative and executive branches. We have always known that the private market far exceeded judicial salaries, but were frankly surprised with how poorly we compared with other state employees of equal or lesser responsibility. Many are paid tens of thousands of dollars more than any judge. It is difficult to find comparable positions to that of a judge, but as an example, there are employees in the Attorney General's Office, A & I, Workforce Services, Game & Fish, Oil & Gas Commission, Department of Corrections, the Retirement System, and 11 employees in the Department of Health, each of whom can and do appear before our judges to have their disputes resolved and rights and responsibilities determined, who are paid more than a Supreme Court Justice, in some cases \$30,000 to \$40,000 more. The same is true for the Legislature's highest paid employees whose pay is \$5,000 to \$26,000 higher than a Supreme Court Justice. Please do not hear us to say those people are not earning their pay...I am sure they are. But, as we examine the last twenty years, it becomes clear this inequity has been chronic.

Here are the facts. From 1990 to 2010, Wyoming's cost of living increased 209%, its per capita personal income increased 183%, and average state employee salaries increased 143%. Over the same period of time, a district judge's salary increased by only 82%! Those district judges are essentially making less than half of what they were making 20 years ago. It is probably fair to say that this situation is not the result of a conscious decision by the Legislature, but instead is caused by the manner in which judicial salaries are considered – only infrequently and then increases that were really needed to keep up were deemed too large politically so judges are forced to take whatever they can get. This inequity must be recognized and corrected so that the three co-equal branches of government are paid equitably. For the long term, the Legislature

should work with the Judicial Branch to develop a judicial salary plan that avoids the periodic necessity for judges to beg for salary increases just to keep up.

To become judges, we are asking attorneys to leave successful practices and to take on a job that is frankly less attractive and more difficult than ever before. I can tell you from experience as I have worked to recruit candidates for judicial openings, fewer and fewer top flight attorneys are interested. In the larger districts, historically we have had 30-40 applicants for a district court opening, now we are seeing 10-15. For the last circuit court opening in a large district, we had 6 applicants. We have been lucky to maintain a high quality of applicants, but I truly fear that if salaries do not keep pace, that will not continue. Over the next 2-6 years, over half of our judges will retire and the faces of the judiciary you will see in the balcony will look much different than they do today – fewer lines, less gray hair. Correcting this pay gap is not only important to those who now serve, but is critical to the future of this branch of government.

Although we know revenues are limited, we also know that this body will consider spending many millions more than we are asking for optional projects. Equal Justice for All is not optional, it is a core function of our democracy.

Senate File 40 proposes increases in judicial salaries to reduce that gap and we urge adoption of that legislation. It provides salaries for the district judges and Supreme Court that are comparable to the executive branch. However, the Board of Judicial Policy and Administration, which represents all levels of the courts, believes strongly that the bill as currently drafted does not provide for an adequate increase in the salary for circuit judges and we urge that SF40 be amended to retain the proportionality of salaries of the three levels of courts that has always existed. We need to encourage quality applicants for circuit courts. The proposed salary structure in SF40 will not do so. Don't forget that we recruit future district judges, and ultimately Supreme Court justices, from those ranks. In fact, two former chiefs of our Supreme Court started out as circuit judges, Justice Larry Lehman and Justice Barton Voigt.

Each of our judges strives to provide Equal Justice for All of Wyoming's citizens. Case by case, they must decide whether the other two branches of government are conforming their actions to the dictates of our constitution. Tough questions are present in every case we hear and the right answer is often hard to find. I read a story recently about a Texas judge that demonstrated just how challenging these questions can be. In Mt. Vernon, Texas, Drummond's Bar began construction on an expansion of their building to increase their business. In response, the local church started a campaign to block the bar from expanding with petitions and prayers. Work progressed right up until the week before the grand re-opening when lightning struck the bar and it burned to the ground! Afterward, the church folks were rather smug in their outlook, bragging about the power of prayer, until the bar owner sued the church on the grounds that the church was ultimately responsible for the demise of his building, either through direct or indirect means. In its reply to the court, the church vehemently denied all responsibility or any connection to the building's demise. The judge read through the plaintiff's complaint and the defendant's reply, and at the opening hearing he commented . . . "I don't know how I'm going to decide this, but it appears from the paperwork that we have a bar owner who believes in the power of prayer, and an entire church congregation that now does not."

So as you consider what a judge is worth, picture in your mind the job judges do every day. The circuit courts handle over 170,000 cases in which they determine the rights of creditors, whether a substance abuser will get the opportunity for treatment, or how to best protect the victims of domestic violence. They manage clerk's offices that statewide handle \$30,000,000 a year. For most Wyoming citizens, the circuit judge is the face of the judiciary. In just the seemingly simple act of setting the bond a charged individual has to pay, something circuit judges may do 30 to 40 times a week, they must balance public safety with the impact of incarceration on an individual's job and their family's loss of support. Rather than trying to describe to you the importance of their decisions, I would like you to hear it from one Wyoming citizen whose life was changed by a circuit judge. In a letter, she said:

"Dear Judge, I want to let you know you saved me from being the next young woman on the obituary page. When I was on probation, my husband divorced me and took my babies and my plan was to drink my life away. I was arrested for public intoxication, and came before your court again, and you told me I was dangerous and I plead for another chance. Thank you for not giving me that chance. I am in a jail based program now and my life really does have a purpose."

Thousands of individual lives each year like that one are impacted, and sometimes saved, by our circuit courts. Over the years since you created this system, these judges have grown in ability and stature in their communities and we owe them our thanks and I ask them to stand and be recognized.

In over 20,000 cases a year, we ask district judges to solve the insoluble problems of our society one person at a time. When I asked a district judge to describe his job, he said, "I sit at my desk each morning and begin to sort through peoples lives. I determine who gets property and money. I decide what is in the best interest of the children in juvenile cases. I profoundly affect families in divorce cases. I decide who goes to prison and who doesn't. I do this within the bounds of a system that provides substantial discretion knowing that what is perceived as fairness and justice in my community depends on my decisions."

If you look at the schedule for a typical Monday for a district judge, as I have, you would be stunned by the breadth of the issues they face and the deadly serious nature of the decisions they must make. Once such day, one of our busy district judges arraigned 10 defendants charged with everything from assault on a police officer with a deadly weapon, to a 4th DUI felony, to 7 different drug crimes. Then he held hearings in 4 juvenile cases, 1 child abuse case, 2 divorce matters, 2 probation revocations and a sentencing, the most solemn exercise of judicial authority. One of the most difficult decisions a district judge has to make is which of two deserving parents will have the joy of custody of the children they both love. The wisdom of one of district judge is shown in the statement he made at the end of a difficult divorce case. He said:

"I want you to know that there is no case on the docket more important than this one, no case with higher stakes than the well being of these good children. This decision by the court today is the absolute best application of the law to your facts that I can do. I know that one side does not like this decision. But it is the hope of this court that you will respect it, respect each other and most of all respect your children. Because there will come a day that you will meet two judges you do have great respect for. Those judges will be these two children. Please conduct

yourselves when you leave here so that when you look your children in the eye in twenty years, you can say to them that everything I did was out of love for you. Court is adjourned."

I think you will agree that is the kind of district judge we want to attract and retain. I would like to ask the district judges who are here today to stand and let us thank them for their efforts.

Further, consider that every one of these trial court decisions, as well as actions of the legislature and the executive branch are subject to review and ultimate disposition by the five individuals who are entrusted as the court of last resort of this state.

Ask yourself what kind of individual you want sitting on the judicial bench and what are they worth? What is Equal Justice for All worth?

Equal Justice for All. Those are not just hallowed words. They are the creed of every judge. Judges struggle every day, in every case, to do justice. Of all of the values that support our democracy and direct your decisions as to how to spend the taxpayers' dollars, justice must rank as one of the most important. In the words of Daniel Webster spoken over 150 years ago, "Justice, Sir, is the great interest of man on earth. It is the ligament that holds civilized man and civilized nations together. Where ever her temple stands, so long as it is honored, there is a foundation for the improvement and progress of our race."

It is this same truth that weighs every day upon the shoulders of the men and women we ask to be our judges. They trust you to honor their efforts to provide Equal Justice for All of Wyoming's citizens.

Thank you.