

2013 State of the Judiciary  
Chief Justice Marilyn S. Kite, Wyoming Supreme Court  
Message to the Wyoming State Legislature  
January 9, 2013, State Capitol Building

Mr. President, Mr. Speaker, Governor and Mrs. Mead, members of the 62nd 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 the men and women who serve in the judicial branch of our state's government. Thank you, President Ross and Speaker Lubnau for the invitation to do so.

Our founders established different responsibilities for the three independent branches of government. However, we share the obligation to serve the public and to fulfill the charge given to us by our constitution. 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. Justice Voigt was unable to join us today as he had back surgery yesterday, but he sends his regards as well. We welcome the many new members of this body recently elected and look forward to working with you as we carry out our respective duties.

I am pleased to report to you the developments in our branch of government over the last year. We have said good-bye to many long-serving judges and welcomed many new ones. Both our dedicated Judicial Nominating Commission and the Governor have been busy performing their constitutional duties in that regard. The legislature authorized a new district court judge in Johnson County and that position was filled by William Edelman, a former assistant county attorney from Campbell County and he is enjoying performing his duties in a brand new courthouse in Buffalo. In Sweetwater County, Judge Jere Ryckman retired after 23 years of dedicated service and was replaced by Richard Lavery, an experienced attorney from Evanston and former President of the Wyoming Bar Association. Judge John Sampson, longtime circuit judge in Sheridan County, retired after serving over 21 years and in his place, Governor Mead appointed Shelley Cundiff, an experienced trial lawyer who will be sworn into office this Friday. As I reported to you last year, our own Justice Michael Golden reached the mandatory retirement age of 70 this year after serving 24 years on our Supreme Court and Governor Mead had a relatively rare opportunity to appoint a member of this court and chose one of Laramie County's sitting district judges, Michael Davis, whom we have welcomed and put right to work. His appointment created another opening which was filled by Assistant U.S. Attorney, Steven Sharpe, who will be sworn into office at the beginning of February. And if that was not enough, longtime Campbell County district judge, Dan Price, announced he is stepping down after 22 years of dedicated service and the process for selecting his replacement is underway. Most of you will recall last year when we discussed the need to increase judicial salaries, we predicted a significant turnover in our judicial ranks and that a fair salary was essential if we expected to attract strong candidates. As you can see, your actions to increase salaries was timely and had the desired result of encouraging numerous very qualified to change the course of their careers and enter public service. The positive impact of your decision last year will be felt by countless Wyoming citizens over many years.

On a sad note, former Supreme Court Justice Walter Urbigkit, who was also a member of this body, passed away and in 2012 the Supreme Court held its traditional memorial court session in

his honor.

The Judicial Branch has, with your support and leadership, continued its progress into the digital age. We have rolled out a new uniform district court docket management system in three pilot courts and hope to have all district courts on line this year. This has been a huge task because those 23 different courts were operating on five different systems. Designing and implementing a new uniform system, and transferring all of the data, required the extraordinary dedication and creativity of our IT staff as well as the cooperation and time of the 23 elected clerks of the district courts. From the first reports, there are few glitches and much satisfaction. We now begin the equally difficult tasks of building the judges' side of that system, an electronic filing system, and a similar system for the circuit courts. This entire effort represents a significant investment by the state in the improvement of the delivery of judicial services to Wyoming citizens.

You may recall that we reported over the last few years the progress we have made in providing for on-line payment of citations in our circuit courts. That system is working well and has collected over \$10 million 24 hours a day from all over the world. The speed and accessibility of that system has resulted in lower accounts receivable and an increase in the time value of the money collected, and, by the way, it was all accomplished by our IT staff without any increase in funding. While the payment side of the ledger was being implemented, we worked with the executive branch to create a system whereby the highway patrol could enter citations electronically further enhancing the efficiency of the entire system. It is difficult to describe the effort required by our IT staff and the staff of the highway patrol to get to the point this last month where officers in Laramie County are actually piloting the system and it is working! I want to thank the leadership of the Department of Transportation and the Highway Patrol for their steadfast support that was critical to reaching this milestone. In particular, I want to thank one member of that staff for his extraordinary personal effort over many years, through many changes in personnel and other challenges, because without his efforts, this project would still be on the drawing board. Captain Bill Morse is in the audience today and I would like to have him stand and be recognized for his service. While these e-citations will be of great help to our circuit courts, they may have even a greater impact on the efficiency of law enforcement in our state by not only increasing the speed with which citations enter the system, but also freeing up officers to perform their difficult jobs protecting the public.

Two final milestones on the technology front – we are increasing use of our video conferencing system which helps avoid unnecessary travel for judges and law enforcement. We hope to make use of that same system to minimize the cost of providing interpreters, the demand for which is increasing dramatically. For example, last month one district judge had to use his entire interpreter budget on one three day trial so it is obvious controlling this budget item is becoming increasingly critical. Also, this past month the Supreme Court began streaming its oral arguments live online and we hope to have them archived on line as well sometime this year. For the first time, lawyers and other citizens outside of Cheyenne can observe the operation of our Court in real time.

We have devoted substantial effort this year to responding to your call to reduce budgets while maintaining the same level of service to the public. As you know, folks like to have their budgets cut about as much as they like having their taxes raised. As Senator Wallop recounted years ago,

his old friend Sen. Russell Long said it best when he described his constituents saying, “Don’t tax me, and don’t tax thee, tax that guy under the tree.” Our Board of Judicial Policy and Administration, which for you new legislators is made up of judges from all of the courts, has proposed budget cuts to the JAC which will accomplish the 4% reduction over the next few years.

However, courts do not have optional programs that can be eliminated. In the operation of our library, our administrative staff and the circuit courts, we are making those budget reductions where we can and still function. Individual district judges have also made cuts to their budgets. Based on case filings and our workload studies, we are proposing to close the satellite circuit courts in Dubois, Lovell and Powell and operate in those circuit courts in the county seat just as we do in the other counties across the state. We do not make this proposal lightly and recognize there is some local opposition to our decision. Some local governments have even offered to pay the cost of operating those courts. We want you to know that the BJPA and the Supreme Court believe that would be absolutely the wrong approach and counter to the direction we all took over 20 years ago to implement a uniform state funded court system. We are working with the JAC to address the concerns of the citizens in these communities and still achieve some savings. This effort to become more efficient has shown us all how tough it will be if we are asked to make even more cuts in the future.

We have also identified statutes that require us to spend money unnecessarily. For us to make significant budget cuts, this body will have to be willing to change these statutes. The BJPA has recommended legislation to allow us to stop distribution of system where it is appropriate, and to allow district judges to determine what proceedings must be transcribed instead of mandating unnecessary, costly transcripts. Now, some judges have differing opinions about the wisdom of some these proposed changes. I know that you are not surprised to learn that judges have opinions . . . and differ on occasion. It is sort of like the joke about the Supreme Court justice, the law professor and the trial judge that go duck hunting.

Under state law, they are only permitted to shoot ducks at this time of year, so they obviously must be sure that anything they shoot is a duck.

A group of birds flies overhead, making noise. The Supreme Court justice stands up and says, “I conclude that those are ducks. I know this from applying the six-part, eight-factor test established in *Goose v. Duck*,” which she then explains in great detail. By the time she has finished her explanation, the ducks have flown out of range. She sits down.

A few minutes later, a second group of birds flies overhead. The law professor stands up and says “I conclude that those are ducks. But the test of *Goose v. Duck* is ridiculous, because it is biased against historically oppressed species, and ignores the insights of animal behavioral economics.” The professor continues to explain this all in great detail. By the time he has finished, the ducks have flown out of range. He sits down.

A few minutes later, a third group of birds flies overhead. The trial judge stands up, squeezes off three rounds and blows three birds out of the sky. He turns to his friends and says, “Boy, I hope those were ducks.”

We face the same challenges you do in affecting real budget savings. Nobody likes them in their own backyard. So as you hear differing opinions about our proposed budget measures, we urge you to support the Board of Judicial Policy and Administration's efforts to be a good steward of state funds and make the judicial branch more fiscally efficient.

While we are working hard to reduce our operating budget, we also support the Governor's position that while cuts need to be made where appropriate, to do our jobs, we need dedicated and fairly compensated employees. It is the first time in our memory that the governor has included judicial branch employees in his compensation proposal and we hope now and in the future this approach will result in judicial branch employees receiving salary increases equitably with the rest of state employees. The returning members of this body will remember that two years ago, when the executive branch received pay increases based on market, the judicial employees were, I think it is fair to say, unintentionally left out. Based upon the Hay analysis, we have sought funds to treat our employees like those of the other two branches of state government and have asked the JAC to correct that injustice to judicial employees.

Finally, I must report to you a disturbing development in our branch of government this past year. At the end of August, thankfully not while court was in session, a gun was fired into the metal building that houses the Riverton circuit courtroom, entering the wall behind the judge's bench, passing over the defense table and the audience seating area and lodging in the opposite wall. The perpetrator has not been identified and the investigation continues. This incident made very real the need for our judges, employees, witnesses, jurors and citizens who utilize our courts to be safe. As you know, in our state, court facilities are provided by county government. The Court Security Commission and the BJPA supported Fremont County's application for emergency state funds for the short term action of placing large metal containers around the building to protect it from an attack from a distance. But its metal exterior can still be easily breached by anyone close to the building. We understand the Fremont County Commission is working on a long term solution and if, in that effort, additional state assistance is necessary, we urge you to support such efforts.

In closing, although some natural tension always exists between the three branches of government, Wyoming continues to benefit from the respect we show each other, and, in that spirit, we want you to know we appreciate respect the leadership of the executive and legislative branches have shown us. Our only responsibility is to uphold the laws of this state embodied in our constitution and the statutes you adopt. In my effort to explain the work judges do, I was struck recently by the words of U.S. Supreme Court Justice Robert Jackson who, among many other accomplishments, was the chief architect, and prosecutor at the Nuremberg trials of Nazi criminals in 1945. His precondition for assistance in that heroic effort was that the defendants would be presumed innocent and only convicted by the rule of law. In his opening statement, Justice Jackson said this, "That four great nations, flushed with victory and stunned with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason."

While the work our judges do is in less dramatic circumstances, the fundamental principle is the exactly the same. Judges must employ reason through the application of law. In courtrooms all

over this state, the men and women of the Wyoming judiciary apply the law every day to those convicted of heinous violent crimes, to substance abusers convicted of grossly negligent acts like vehicular homicide, and to those involved in domestic disputes fueled by anger, economic distress, or sheer human failings. And they do so with dedication and honor, striving at all times to put aside personal beliefs and emotions, as well as popular opinion, to apply the rule of law.

We all wish you well in your work during this session as you strive to find solutions to the problems and challenges of our state. Good luck and God speed.