

State of the Judiciary
Chief Justice Michael K. Davis, Wyoming Supreme Court
Message to the Wyoming State Legislature
January 9, 2019

Mr. President, Mr. Speaker, Governor and Mrs. Gordon, members of the Sixty-Fifth Wyoming Legislature, elected officials, members of the judiciary, guests and citizens of the State of Wyoming. It is an honor to speak to you on behalf of the dedicated men and women who serve in the judicial branch of our state's government. Thank you, President Perkins and Speaker Harshman, for the opportunity to do so. I am pleased to report that the State of the Wyoming Judiciary is strong.

It has been a year of transitions and changes for the judiciary. Justice William Hill retired earlier this year, and Justice Lynne Boomgaarden has taken his seat on the Court. Justice Jim Burke retired in October of this year, and his seat has been filled by Justice Kari Jo Gray. Justices Boomgaarden and Gray have been hard at work producing excellent opinions, and the rest of the Court, although we miss our retired colleagues, is enjoying working with them in our common goal of rendering justice for the citizens of Wyoming.

Two district judges also retired this year. Judge Bob Skar of the Fifth Judicial District, based in Worland, left the judiciary after many years of faithful service in a number of positions of public trust, and his big shoes have been filled by Judge Bobbi Overfield. Judge Tom Sullins, who has been a role model to many of us both as lawyers and judges, has retired effective January 7, and his post has been filled by Judge Kerri Johnson.

In addition, after consulting with the Laramie County Commissioners and the three district judges sitting in Cheyenne, and after communicating with leaders in the Legislature, the fourth district judge opening which this body authorized in the First Judicial District was opened to the judicial nomination process. Peter Froelicher was selected to fill that position, and he is working toward assuming his duties and looking forward to relieving some of the burden on the other three judges, who have been doing the work of four and a half judges up until now.

Finally, Circuit Judge Tom Harrington, sitting in Worland, retired on January 7, and he plans to help coach wrestling and to continue to serve his community as he has done so well in the past. His seat has been filled by Ed Luhm, a long-time Worland attorney.

I would be remiss if I did not say something about the hard work of the Judicial Nominating Commission. Under our constitution, this body consists of three non-lawyers appointed by the Governor, and three attorneys elected by the Wyoming State Bar. From the second week of June through the third week of November, the Commission produced five sets of three nominees each for one position on the Supreme Court, three district court positions, and one circuit court judge, culling through numbers of applicants that ranged from nine to nineteen for each position. This entailed reading ten documents for each applicant, collating and assessing them, conducting interviews of those with the potential to be good judges, and then sending the names of three nominees to the Governor. The Commission's goal is to nominate three individuals, each of whom would be a great judge, and to make the Governor's choice as agonizing as possible. I

think they accomplished that, and they did so under tremendous time pressure. We should all be grateful for their volunteer service.

Although the Supreme Court seems like a quiet place, there is really a lot going on that affects not only our branch, but also the State in general. A few years ago, this body provided funding which was matched by private donations to build the Judicial Learning Center, which was modeled on a similar facility in Colorado. The Center is suitable for students from about fifth grade up to adults. The number of visitors continues to grow – the Center had nearly 1300 visitors of all ages in 2018. We expect that number to increase when the Capitol renovation is complete, and visitors come to see that wonderful renovated facility near our courthouse.

The Learning Center is also available on-line for those who cannot make it to Cheyenne to see it. Why so much emphasis on children, you may ask? As Chief Justice John Roberts of the United States Supreme Court recently observed: “If children do not understand the Constitution, they cannot understand how our government functions, or what their rights and responsibilities are as citizens of the United States.”

In addition, we continue to offer tours to schools and citizen groups of all ages, usually involving a chance to meet with a justice. We also continue to hold Supreme Court oral arguments in other cities, and we continue to support You Be The Judge programs. The latter are presented by local judges and the Supreme Court, who ask citizens to sit as judges on mock cases and to decide them as if they were real judges. They soon find that judging it is not as easy as it might appear to be.

Until a couple of years ago, the Wyoming judicial branch did not have a formal system for orientation of new judges and justices. Chief Justice Jim Burke and Justice Keith Kautz instituted a new judicial orientation program, which has been a great success. The best part of these orientations is provided by the trial judges themselves – they are able to guide new judges through pitfalls and best practices, and they are to be congratulated on their hard work supporting their new colleagues. Thirteen judicial orientations for all levels of the judiciary have been completed between January of 2017 and January of 2019, and we think they help new judges hit the ground running, which they have to do.

Two years ago, the Legislature increased the Judicial Systems Automation fee so that the judicial branch could, among other things, begin upgrading the audio and video capacities of our approximately seventy courtrooms around the state. A study conducted earlier had found that many of our courtrooms were only at a three or four on a functional scale of one to ten, often meaning that they did not have basic audio capabilities to allow participants and the court to hear what was going on in the courtroom. Although the funding from the JSA fee has not been as much as anticipated, the Court Technology Office is upgrading courtrooms as funds are available to assure adequate audio and hearing-impaired technology to comply with the Americans with Disabilities Act and to make sure hearings are actually proceedings where all present can hear. In the future, we will provide video technology to bring the courtrooms up to a modern functional level.

The branch also is rolling out a new jury selection program called AgileJury, which allows jurors

to complete questionnaires on-line and to receive text and email messages of upcoming trials. The system was piloted in Laramie County District Court, where it received rave reviews. Over a thousand citizens have already used the system. It has greatly reduced the time the clerks of court must spend notifying jurors when they must come to court, and it has enhanced the experience of potential and serving jurors.

The electronic case management system in our circuit courts reached end of life a few years back, and we are beginning to pilot an upgraded program and expect to have it installed and operational in all of the circuit courts by early 2020. This project, like others, requires extensive travel by our small IT staff, but it is getting done as quickly as we can.

As to the district courts, everyone, including and especially me, is impatient to get electronic filing in place in those courts. Beginning in about 2010, the judicial branch began to work on a state-wide electronic case management system for the district courts – before that, each county had its own electronic system, if it had any at all – and it was impossible to conveniently collect statewide data from it. A state-wide system was put in place, and so now all district courts are on the same system, meaning that data can be collected, and judges can work electronically both in their home courts and on cases assigned from out of district.

Unfortunately, the system was not completely satisfactory to either the clerks of district court or to our staff, and we pivoted to an upgrade of the Full Court program which had been used in fifteen of the twenty-three district courts, and which is used in the circuit courts and is being upgraded. These systems are complex, and they require extensive and time-consuming customization to fit the Wyoming legal system. The clerks of district court, and our IT staff, have been working to get the system ready for use, and we hope to begin testing it in pilot courts later this year.

Until the new system is in place, however, it is not possible – or at least not desirable to the clerks of court or our staff – to initiate e-filing. We anticipate that an e-filing system will be tested in district pilot courts by early 2023. We would all like this to happen much sooner, and we continue to look for ways to speed things up both on our end and with the contractor, but we are making progress as quickly as the capabilities of the district court clerks, our contractors, and our small staff allow.

I hesitate to descend into any more detail on IT issues, but I did want to mention that we have been involved in securing our court data statewide. Courts around the country have been subject to hacking and denial-of-service attacks, and there is good reason to believe that someday there will be successful data ransom demands in courts around the country, as well as other data breaches. We have been told that there doesn't really have to be a rational purpose behind those attacks – if a system can be brought down, there will be someone who will do it just because he or she can. I don't want to go into specifics in this very public forum for security reasons, but we have upgraded our threat protection, hired contractors to try to penetrate our defenses, instituted policies to make ourselves a harder target, and arranged for cloud backup so that we can always get our data.

We also now have a disaster recovery plan, so that our courts can continue to operate in the event

of a man-made or natural disaster. As part of our security efforts, we have also upgraded hardware and software statewide – the newer software is much more secure, and newer hardware was needed to run the newer software.

In addition, we have expanded cooperation with outside agencies, including counties, Vital Statistics, ETS, the Division of Criminal Investigation, Drivers Services, the Wyoming Highway Patrol, and local law enforcement agencies. This cooperation allows legislatively authorized electronic transfer of court data to these agencies for their own activities.

In terms of Supreme Court personnel, we have lost our Chief Financial Officer Kristi Racines, who succumbed to the siren song of elected office, and who is now the State Auditor. We will miss her. However, we have been able to recruit Claire Smith, a CPA with extensive government experience, and we look forward to working with her. She should be appearing before you in committee shortly.

Now I must turn to the compensation of the good men and women of the judicial branch. Governor Mead and now Governor Gordon have asked for a pay raise for executive branch employees. The judges and justices wholeheartedly support a pay increase for the non-judge judicial branch employees who sustain our efforts, like the raises for their counterparts in the executive branch. It will be approximately four years since they received a raise, and those employees are certainly due one. We are proud of those who keep the judicial branch running, from those based in Cheyenne at the Supreme Court Building, to those in the district and circuit courts around the state. They are the best. They deal with people in very stressful situations many times every day, and they deserve compensation that keeps up with inflationary and market pressures.

Now I must turn to a different topic and speak for a pay increase for the judges and justices of our branch. In 2012, the Legislature approved a pay raise for all judges and justices in the Wyoming Judicial Branch. Although the circuit judges, who received a lesser increase than had been sought in 2012, received a small increase in 2017, the justices and district judges have not received any pay increase since 2012.

I want to make it clear that attorneys who become judges do not expect to earn what they could make by working hard in private practice. Our judges have chosen public service. But they also have families and obligations, and they can only afford to reduce their earnings so much and still live up to those obligations.

It is of course a great honor to be trusted to be a judge, and we all feel not only the tremendous obligation of the office, but also great pride to hold the public trust. However, those who would become judges face the reality that they may make a legally sound and correct decision which is unpopular, and thus fail retention for doing the right thing. This is a daunting prospect for lawyers already making a good living when they choose to seek a judgeship. Moreover, being a judge is not always the safest of occupations – the difficult choices they must make, and the often-violent individuals who appear before them, guarantee a certain level of apprehension, as well as a genuine risk of harm to themselves and their families.

The Board of Judicial Policy and Administration, which is the body representing all levels of the state judiciary, recently formed a Judicial Salaries Committee, which is chaired by Justice Kate Fox. The committee reviewed the compensation paid in neighboring states, among other things. The committee's research revealed that the compensation of our judges and justices who perform work similar to that of our colleagues in other states has fallen behind. For example, our district judges earn a salary of \$150,000 per year. Salaries for district judges in Nebraska, Colorado and Utah range from \$163,000 to \$168,000 per year. Similar disparities exist with regard to the equivalent of the circuit courts and the supreme courts of those states.

Judicial salaries will determine, in part, the caliber of applicants we can expect for judicial openings. The Committee learned that over the course of the next ten years, fourteen of the twenty-nine district court judges and Supreme Court justices will face mandatory retirement. Additionally, although there is no mandatory retirement age for circuit court judges, if we assume they may choose to retire at age seventy, sixteen of the twenty-four circuit judges may retire in that time frame as well.

It is true that our neighbors Montana and South Dakota, and perhaps other states around the nation, pay their judges and justices less than Wyoming does, but I do not believe that Wyoming could take pride in having poorly compensated judges. Sir Francis Bacon observed that "Justice must not only be done, but it must be seen to be done." How much confidence will attorneys and citizens have in judicial decisions rendered by judges who are regarded as underpaid and thus perhaps not as well-qualified as those in neighboring states? Alexander Hamilton in Federalist 78 described the judicial branch as "the least dangerous branch" of government. We have no army or police force, and we do not have control of our own finances. Our decisions are honored because other branches of government and our citizens respect the Rule of Law and believe that judges are independent of political and other pressures in their decision-making.

The salaries committee also learned that various executive branch employees and employees of local government entities often earn more than judges or justices in the branch. While we do not suggest that these individuals are over-compensated by any means, we do suggest that the burdens undertaken by judges at all levels warrant fair compensation which can be compared to these positions.

It is true that we continue to be able to recruit well-qualified judges, although in the recent recruiting efforts I already described, the number of applicants reached a low of nine for a district judgeship in Natrona County, where the work is interesting and demanding.

It is also important to note that since the judicial pay raise went into effect in 2012, there has been total inflation of 10.9 percent over the intervening years. This is based upon Wyoming inflation figures from the Economic Analysis Division of the Department of Administration and Information. I don't claim to be much of a mathematician, but I'm pretty sure that means that the \$150,000 salary district judges received in 2012 has been cut by inflation to \$133,650 in today's purchasing power. This also means that to keep pace with that salary in 2012, a district judge would have to receive \$166,350 per year. The same is true, in differing degrees, of the other two levels of the judiciary, circuit courts and Supreme Court.

The Judicial Salaries Committee has recommended, and the Board of Judicial Policy and Administration has endorsed, pay increases as follows: \$150,000 for circuit judges (which is what district judges receive now), \$165,000 for district judges (which is what the five Supreme Court justices now receive), and \$180,000 for the five justices of the Wyoming Supreme Court. We estimate the economic impact of this increase at approximately \$2.75 million dollars per biennium. I note that for the district judges and the Supreme Court justices, these raises would not take effect on the effective date of legislation, but instead, due to constitutional constraints, would only take effect when a new judge or justice is sworn in. We cannot predict when someone may retire early, but we do know that one judge will reach mandatory retirement age in the Spring of 2020, a little over a year from the end of this session. Raises for the circuit judges, on the other hand, would take effect on the effective date of any act granting them a raise, or on such other date as the legislature might choose.

Finally as to this topic, I note that there is no linkage between raises for judges and those that might be granted from time to time for other state employees. This always results, as it does now, in the judiciary having to ask for what seems like a large percentage increase, when in fact it is one that will basically keep up with inflation. I would urge the legislature to address the existing situation this session, but to consider a means of periodic increases that would fairly relate to incremental salary increases for other state employees, perhaps as an interim topic.

The online Merriam Webster dictionary found that the word of the year for 2018 was justice – it has been the most-looked up word in that dictionary in the past year. It has always been and always will be the mission of the judicial branch to do justice in the individual cases that come before judges at all levels. Justice is often if not always elusive, but the judges who pursue it never give up the quest, although they see the same intractable problems of addiction, greed, mental illness, poverty, economic disasters, and sometimes just plain meanness every day.

Our system of government functions as it does because each branch is dependent on the other in some way. The executive and legislative branches must trust the judicial branch to determine the lawfulness and constitutionality of legislation and executive action, with due regard and deference to those branches' prerogatives. The judicial branch must trust the legislative branch to provide funding to continue that elusive quest for justice at the ground level, face to face with litigants, in courtrooms around this state, in cases involving men, women, families, business organizations, and governmental entities. We ask only that the representatives of the people who fill this chamber continue to give us the means not only to do our work well, but to assure that we have the confidence of the people who appear before us and of the public.

Thank you for the opportunity to speak with you this morning, and for all you do for the judicial branch and State of Wyoming. We wish you well in this challenging session. Good luck, and Godspeed.