

2020

STATE OF THE JUDICIARY

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Delivered before a Joint Session of the
Wyoming State Legislature
February 10, 2020

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Mr. President, Mr. Speaker, Governor and Mrs. Gordon, members of the 65th Legislature, elected officials, members of the judiciary, guests, and citizens of the Great State of Wyoming. It is an honor to speak with you today on behalf of the dedicated men and women of the judicial branch. It is also quite a privilege to be the first Chief Justice to speak in this beautiful chamber since it has been restored and renovated. Last month, with the help of the Legislative Service Office, the Supreme Court was able to hold an oral argument in the Historic Supreme Courtroom here, which was probably the first time a case has been heard there in over 80 years. It was a memorable day for all concerned.

Our trial courts have been busy administering justice since I spoke to you last. For each of the last five years, there have been at least 150,000 filings in our circuit and district courts combined. Behind every filing is a person or persons, many if not most of them your constituents, and that number is pretty startling for a state with a population of slightly less than 570,000 people. Most of us don't want to go to court, but crimes must be prosecuted, and everything from the simplest divorce to the most complex civil suit must be brought to conclusion. There are no other places to find justice than in our courts, where disputes can be resolved peacefully rather than through violence or self-help. Despite our dipping revenues in Wyoming, the work of the judiciary continues – in fact, it may increase as families are under stress, unemployment and poverty increase, and businesses fail.

In Federalist 78, Alexander Hamilton described the judicial branch of government as “the least dangerous branch,” because it has neither the power of the sword, nor the power of the purse. That is probably true, but it is most certainly not a less important branch of our balanced system of government. A stable and just court system is essential to assure that our State is seen as one in which justice is done. It is well-recognized that economies will not attract investors or thrive without assurances of a functional court system.

In our legal system, 2019 was another year of transitions. Circuit judges Frank Zebre, sitting in Kemmerer, and Randal Arp, sitting in Torrington, retired after years of faithful service – Judge Zebre had served for thirty-five years. They were replaced by Gregory Corpening and Nathaniel Hibben. District Judge Norman Young, sitting in Lander, retired after a long career in public service, and his seat was filled by Jason Conder. District Judge Nena James, sitting in Green River, who also had a long career of public service, retired, and her seat was filled by Suzannah Robinson.

We had plenty of good applicants for these positions. I can't prove cause and effect, but I'm sure that the judicial pay raise you approved last year helped bring those numbers up – at the very least, it reinforced the importance of the judiciary to the public and your branch of government. Thank you. I would be remiss if I didn't mention the hard work of the volunteer Judicial Nominating Commission – the Commission had a marathon stint during which in just over fourteen months, it sent 30 names for 10 judicial positions to Governor Mead or Governor Gordon. The Commissioners deserve our thanks for their selfless unpaid service.

I must also mention that our weighted workload studies show that Wyoming is short as many as four district judges. I understand that you may see separate legislation sponsored by your members that seeks to begin the process of adding two additional judges in two districts this session or in the next. Those are the Third Judicial District, comprised of Sweetwater, Uinta and Lincoln Counties, and the Sixth Judicial District, consisting of Campbell, Crook, and Weston Counties. A shortage of judges impacts our branch's ability to provide just, speedy and cost-effective resolution of disputes, and we support the legislators' and district judges' efforts to get the help they need.

We continue with a number of programs for the benefit of the public and the good of the branch. Our judicial education program for state judges continues under the able direction of Justice Keith Kautz, and we have begun to offer orientation and training to new municipal judges as well as state judges. Our access to justice program for civil cases, Equal Justice Wyoming, serves thousands of citizens who need legal services and cannot pay for them, and it has been very successful in obtaining and awarding grants to provide that assistance in a number of different ways.

The Judicial Learning Center at the Supreme Court Building, which was funded partly through an appropriation of this body and partly through private funding, has experienced excellent use by educational institutions and the public. In fact, now that this beautiful building is open and attracting students from around the state, we are literally besieged with requests to visit the Court and the Learning Center, and I believe we will shatter all past records this year.

The Court Security Commission, which is tasked with making our courts safer for those who work there and those who must use them, completed projects in several counties, using funding provided by this body and the counties, so we progress on that front as well.

In the last legislative session, you passed a law requiring the Supreme Court to set up a Chancery Court, which will be a specialized business court that will hear certain complex cases not involving jury trial. That project has moved forward briskly under the direction of Justice Kate Fox. She set up a Chancery Court Committee consisting of attorneys who are likely to practice there, judges, Representative Mike Greear, and others.

In the time since the legislation became effective, the committee has identified qualified retired district judges who are willing to serve as Chancery Court judges in the time between opening the court and the time that it is fully operational and a permanent chancery court judge can be chosen through the usual nonpartisan judicial selection process. The Committee also proposed draft rules for the chancery court, which the Court adopted by the deadline in the legislation you passed, and which are out for further comment by the bench and bar.

Lastly, a location for the Chancery Court was approved by the State Building Commission in the new Casper state office building, and plans are underway to construct the courtroom and associated facilities there. As I will shortly discuss, efforts are also well underway to have a case management and electronic filing system in place when the Chancery Court opens for business. We thank the members of the Chancery Court Committee and its various subcommittees for all of their hard work.

There are many other programs and success stories over the past year, and I would love to talk about them, and I would be glad to do so if you give me a call or send me an email. But this is a budget session, and I need to address financial issues. A person who for some reason read my address to you last year noted that, for a Chief Justice, I sure talked a lot about efforts to make technological advances, and he was right. And I'm going to have to do it again, because that's what the times call for.

As I think may be the case for the executive branch, the times force change upon us, as we move deeper into a digital era. It is a time when our citizens, like the citizens of other states, need and deserve digital courts – they are the industry standard. The point is to have an official electronic case record which permits access to court files and electronic filing, electronic notices of proceedings and orders, and tools for managing the docket, not to mention statistical information for our branch and the legislature. Digital courts mean increased transparency, efficiency, and ease of use for citizens, lawyers, and judges. As I will explain, our staff has laid the

foundation for digital courts, and we are on the cusp of attaining them. The risk of insufficient resources to preserve progress is great, and the cost of any regression or delay will be significant.

Let me just tell you about our progress. Although neither our staff nor the elected district court clerks are satisfied with it, we do have electronic district court records on the same system statewide, so we are not dealing with four separate case management systems provided by the counties as we were. We are all on one system. Our district judges and clerks are able to work from digital files rather than yards of unindexed paper files. We are nearly finished with customizing a different program to take the existing system's place, and the transition will be easier because we only have one system from which to migrate data.

Attorneys have been eager for us to get to electronic filing in district court. This would allow them to file a document in Laramie County from their offices in, say Cody, instantaneously. It would end the ridiculous situation we have now, when attorneys print their electronic documents and take them to the court, where they are scanned and converted back. The system would automatically immediately notify the other parties of the filing, rather than notice coming by snail mail. Attorneys, parties, and judges could work from those electronic files, and public access could be as broad or as narrow as this body or the Court decide it should be.

We formed an Electronic Filing Committee consisting of attorneys with experience with efilings in the Wyoming Supreme Court, the federal courts and in the courts of other states. Court personnel from various levels also serve. The Committee obtained quotes based on national efilings standards, and it set up presentations from three leading national efilings program vendors. Those vendors set up practice sites so that committee members could experiment with their programs and help select one that we can trust. We also vetted the programs with court administrators in other states using them.

We will soon make a selection and begin negotiating for electronic filing for the Chancery Court and all of the district courts, probably before the month is out. We thank the efilings committee for its hard work. The Joint Appropriations Committee has earmarked two million dollars for that purchase, and we think it will be sufficient, although we may have to forego some desirable features to get the job done for that amount.

Former Senate President Phil Nicholas has also agreed to chair a committee which will identify changes that need to be made to court rules and statutes to make

them appropriate to govern efilng and digital court records. We thank the members of this committee for their willingness to take on this labor-intensive task.

I could go on for quite a while about the steps we are taking to move to digital courts– we have a fantastic jury system that provides for electronic completion of juror questionnaires and electronic notification of trial dates that has been rolled out in about half of our courts – this has been good for the people and the courts. As to data security, I would guess most of you have read of recent ransomware attacks in this state and in the region. We have moved branch data, including case records, to the Cloud, where it is stored in two locations and monitored continuously for attempted cyberattacks. I can't say we could never be hacked, but these steps would assuredly make it much more difficult than it was before.

We have upgraded our education and security efforts to comply with the Payment Card Industry Data Security Standards so that we can keep taking credit cards for traffic fines. Interestingly enough, this includes having a consultant hire a firm to try to hack us and tell us if they find any vulnerabilities, among many other things. We have also upgraded software and hardware branch-wide, and we have upgraded most courtrooms so that they now have adequate audio systems, although the video systems in many of those courtrooms lag behind due to lack of funds.

As we approached this budget session, we were privileged to meet with the Joint Appropriations Committee on more than one occasion, and it was suggested that we do a couple of things:

1. Figure out all the steps we need to take to accomplish the tasks requested by the legislature or required by the branch to provide adequate court services for the citizens, figure out what they will cost, prioritize them, and ask for the money to do what is needed.
2. Consider getting a consultant to make sure we are on the right track.

Thanks to our highly efficient Chief Information Officer Julie Goyen and her staff, we had already done the basic first step of identifying and prioritizing a plan, and so our staff tuned that up, put it in a graphic form, and responded to requests from the JAC for clarification. Then we put that plan in the form of exception requests and prioritized them in our proposed budget and during exchanges of information with the JAC.

But we were met with a certain understandable skepticism – how do our legislators even know we are doing the right things in the right way for our state court system? No one wants to waste money on things that don’t work. So, although I initially hated to spend the money, we hired Justice Management Institute to conduct the suggested review. JMI has done the kind of work we needed in California, Georgia, Louisiana and for the City of New Orleans, and in the State of Maryland. It has done work internationally in Israel, Abu Dhabi, and Hong Kong. The company came highly recommended.

JMI has now reported to us – we have uploaded their lengthy report and a two-page summary to our website. Here are some of the findings in the report brief they provided:

- The Wyoming judicial branch is aligned with and sometimes ahead of peer states, such as Colorado, Montana, South Dakota, and Utah, in achieving “digital courts” for the benefit of all stakeholders in the courts.
- The WJB has made this progress with significantly fewer resources (funding and staff) than comparable states.
- Effective and sustainable digital courts require a solid foundation; thus the WJB has built an infrastructure and is rolling out applications that can fully support a digital court. Built technologies include a robust case management system, e-citations, e-filing at the Supreme Court, electronic payment of fines and fees, integrated court calendars, and hearings by video conference. As important, over the last two years, the WJB has built a new technology infrastructure that is far more secure and adaptable.

So the answer to the question of whether we are on the right track is a resounding yes – our talented staff is doing the right things in the right way as quickly as it can. The consultants also observed a couple of other things. As already noted, we are understaffed – JMI estimates that we should, based on efforts in comparable states, have an additional eight employees working toward digital courts – we have 18 now. We’re not asking for more at this point. The consultants noted that our staff, although small, is getting the job done, but more slowly than it could with adequate personnel. And of course, JMI stated the obvious – the branch needs a stable funding source to attain digital courts.

I want to thank the Joint Appropriations Committee for all its hard work to understand the rather complex judicial branch budget and the interplay of our work

with the various independent district courts and the elected clerks of district court – the latter are actually outside our branch and are county officials. Our funding comes both from the General Fund, and through Special Revenue that I will talk about in a moment. And all of its work was done as the JAC was undertaking the Herculean task of balancing the entire state budget in a year in which revenues are far below what is needed, and when agencies in the executive branch and even the legislative branch are struggling to maintain operations and progress.

But here our branch is – poised to get to the digital courts that everyone wants, and on the right path, and ready to continue moving forward. But complete funding is simply not there due to a downturn in revenue. We may be able to limp along without some critical needs if we already have something in place – a good example is the C-Track electronic filing and case management system at the Wyoming Supreme Court. It has worked well, but it is now twelve years old. It was the first of its kind in the nation, and it is now so far out of date that it needs to be replaced because it can't be updated. But we may have to hold our breath and pray it continues to work for a while, until the economy improves. In a worst-case total failure scenario, I wonder what a high-tech company would think of moving to a state whose appellate court has been but no longer is digital.

In a valiant and much-appreciated effort to keep us moving in the right direction, I understand that the Joint Appropriations Committee will sponsor a bill that would increase the Judicial Systems Automations Fund fee to \$40 per case filed – this is an increase of \$10 or \$15, depending on the type of case. The purpose of this fund is to provide for court automation. The largest portion of these fees come from traffic violations. We strongly support the fee increase, and we hope you will pass it.

The JAC has also sent us a message that improving our courtrooms with adequate technology should be our lowest priority. I do not interpret this to say that we shouldn't use funds to fix what is already there when it breaks if we can find the money to do so. I don't think anyone wants to revert to courtrooms in which the participants in cases can't hear or be heard, at a minimum.

But even if the JSA fee is increased, there will not be enough funding to move ahead with courtroom technology upgrades, including the video displays that the federal courts and those of other states have, to the great benefit of the judges, attorneys, and citizens who use the courts there.

You will recall that in 2017, our trial judges had often found their courtrooms to be out of date. A study we commissioned rated many of them a 2 or 3 on a scale of 10, meaning that they didn't even have adequate audio. A good many counties either could not or did not believe they had the duty to provide this kind of technology, and so by statute that duty was shifted to the judicial branch.

On this point – the prioritization and lack of funding – I simply want to remind everyone once again that there are citizens using our trial courtrooms every day. There is no other place to go for justice. For them, their cases, however mundane they might seem to an outsider, are the most important ones in the system, and our judges do treat each case as if all were of equal and critical importance. But out of date courtrooms do not increase confidence in the results of the process, and they detract from the dignity and authority of courts.

In addition, I know that this body, the Governor, and various citizen groups want to attract companies which might diversify our economy so that we don't endure the bust part of the cycle we are now in. Economists and others recognize that reliable functional courts are necessary to encourage investment of capital and create a stable economy, and I would imagine that companies would want to know that Wyoming's courts are keeping up with the times before they stake their future on locating in our beautiful state.

I also want to assure you that courtroom technology has not been upgraded willy-nilly. A courtroom technology committee consisting of all levels of the judiciary was formed, and it looked at national courtroom technology standards, and then it developed standards for equipment that is functional but certainly not extravagant. Courtroom equipment is standardized as it is upgraded, and in many cases it can be repaired remotely by a contractor. And if repairs can't be made without replacements, we have a small stockpile of essential parts that can be overnighted and installed to minimize downtime. I would add that sometimes our trial judges would like more than our standards provide, and a few have expressed concerns, but we have held to those standards in order to assure that we are supplying necessary technology with no frills.

You will recall what I just said about moving the data the judicial branch has in its three court levels to the cloud, and how that will help assure that this data is not stolen. I think that's the least we owe litigants – we require them to provide us information that could lead to identity theft, which we maintain confidentially – we should be able to assure them that we have taken all available precautions to keep their data safe from cyberattack. Moving our data to the cloud also allowed us to

decommission servers that were not as secure and avoid the expense of buying and maintaining them. In addition, we have a duty to comply with the standards required to take credit cards, which are often used to pay traffic fines, which fines generate a good deal of the revenue in the Justice Systems Automation account that pays for technology.

Under the budget as it now stands, even with an increase in the JSA fee to \$40 per case, we would have no funds to pay for the cloud storage or credit card industry compliance requirements, not to mention funds for software maintenance and refreshing hardware before it fails. All told, these cost almost \$4.5 million per biennium. We can't really go back from where we are at this point – for example, we can't retreat from secure cloud storage to storage on outdated and insecure servers, or get out of compliance with credit card standards so that our revenue from that source dries up.

So although the branch is poised to move forward, we will fall back in working toward modern courtrooms and data security due to lack of funding under the budget as it is now proposed. We will be approximately \$7 million short in the area of courtroom technology and data security if the Justice Systems Account increase passes. If it does not, we will be approximately \$10 million short, which could further impact court operations at every level of the judicial branch.

It is customary in these addresses for the Chief Justice to assure the legislature that the State of the Judiciary is strong, and it always has been, thanks to the good men and women of the branch. It is still strong at this moment, thanks to the hard work of our judges and employees, who are the best. Unfortunately, if we stay on the course that seems to have been set, I do not know if I will be able to say that next year, or that whoever takes my place as chief in the next budget session will be able to do so two years from now. Regardless, rest assured that we will all be doing the best we can with what we have to serve the people of our state. But we may not be able to give them what they deserve, and what we would be capable of delivering with adequate funding.

In conclusion, we thank you all for your selfless service to the State of Wyoming. However this comes out, we are all in it together, and our branch deeply respects all that you do. Good luck in your difficult if not impossible job this session, and God Speed. Thank you.