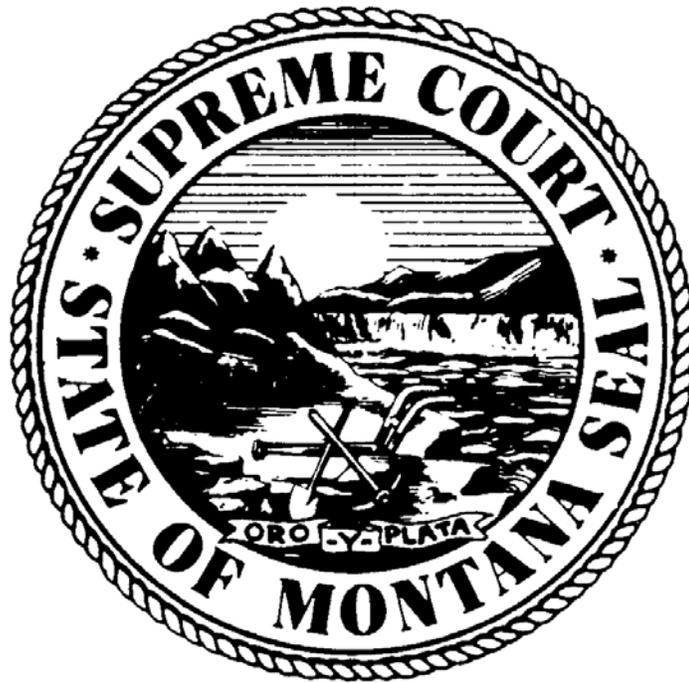


State of the Judiciary

Chief Justice Mike McGrath
Montana Supreme Court
January 13, 2013



NO COURTS

NO JUSTICE

NO FREEDOM

Mr. Speaker.

Mr. President.

Members of the Court.

Honored Guests.

Members of this Joint Assembly.

Thank you for giving me this opportunity. It is indeed an honor to be here speaking on behalf of Montana's Judiciary. It is very gracious of you, and appropriate I might add, to provide this opportunity to both the Executive and Judicial Branches of Montana's government.

I also want to acknowledge the work of the Legislative Auditor's office. In the past few years we have had audit reviews of the Water Court, Drug Courts, and Court Help Programs. These reviews are very helpful to us as managers and allow us the opportunity to look at issues that need addressing. So – thank you for providing that service.

This session, the State of the Judiciary is a mixed bag.

In Montana, our courts process about 1,000 cases each day – 350,000 per year. It adds up to one case for every three Montana residents. At 1,000 cases per day, our courts are busy and the workload for court employees is very heavy. The District Courts, those are the courts of general jurisdiction that handle the most serious cases, exceeded 50,000 cases last year—a new record.

Many people come to court because their lives are in crisis. They include victims of crime, and people charged with crimes, children suffering from child abuse, ranchers who can't irrigate because of a water dispute, businesses being wrongfully sued by disgruntled employees, workers injured on the job, neighbors fighting over disputed property boundaries, entrepreneurs challenging the government's interpretation of legislation and mothers seeking child support to buy diapers.

They come because they *know* they have rights. They *know* that there are laws that will protect them. They *know* they will get an answer to their problem.

And they know they will be treated fairly, by an independent judge – not a person beholden to money interests or partisanship or social status. Rather a judge who will listen to their grievance and make a decision based on the merits of each individual case.

Today in many places throughout the world, governments are in major transition. Citizens have risen up – not only in protest – but in insurrection and civil war. Why? They want what we have. They want a right to be heard by their government. They want a place at the table when major decisions affecting their lives are being made by the government. And they want to be governed by the rule of law.

Our founders developed a system that has become the blueprint for political and economic success for the modern world.

In the words of historian Joseph Ellis, American success is: “about the triumph of representative government bottomed on the principle of popular sovereignty, a market economy fueled by the energies of our citizens, a secular state unaffiliated with any official religion, and the rule of law that presumes the equality of all.”

What our founders knew was that if this republic they had created was going to succeed, it had to be based upon the rule of law. That rule of law requires an independent and impartial manner of resolving disputes—be they commercial matters, family crises, criminal charges or removal of public officers.

Ted Olson served as the U.S. Solicitor General in a Republican Administration. His wife was killed on 9/11.

Some of you have heard me quote his remarks, written in the Wall Street Journal, but I think it is worth repetition:

“Every day, thousands and thousands of judges—jurists whose names we never hear, from our highest court to our most local tribunal—resolve controversies, render justice, and help keep the peace by providing a safe, reliable, efficient, and honest dispute resolution process. The pay is modest, the work is frequently quite challenging,

and the outcome often controversial. For every winner in these cases, there is a loser. Many disputes are close calls, and the judge's decision is bound to be unpopular with someone.

But in this country we accept the decisions of judges, even when we disagree on the merits, because the process itself is vastly more important than any individual decision. Our courts are essential to an orderly, lawful society. And a robust and productive economy depends upon a consistent, predictable, evenhanded, and respected rule of law. . . . Americans understand that no system is perfect and no judge immune from error, but also that our society would crumble if we did not respect the judicial process.”

The Judiciary in Montana understands that we have a tremendous responsibility and strive daily to ensure that we uphold these traditions.

Those 1,000 people per day that end up in our courts know that our justice system is based on the rule of law and not individual whim. Our disputes are resolved within an orderly system that provides all parties the opportunity to be heard, and is based upon law.

In fact, our economy depends on this independent system. Investors and other businesses have the right to rely on an orderly and prompt dispute resolution process. They have the freedom to enter contracts and the ability to have those contracts enforced. They know that even in the most remote courthouse in Montana, they will get a fair hearing and hopefully a timely decision.

Individual citizens have the rights enunciated in our Constitution and the ability to enforce those rights whether they are in Libby or Terry, Billings or Butte.

And all of us have the right to expect the courts to make those decisions based on the merits of each individual case—by judges independent of bias, prejudice or political influence.

As an independent third branch of government, our responsibilities are great but our needs are small. Our budget is less than 1 percent of the total state budget. Yet we recognize that with judicial independence comes the corresponding responsibility, to be accountable:

- accountable to the people who elect us, and;
- accountable to the Legislature, especially as to how we spend public funds.

In an effort to be more accountable, the Judicial Branch has undertaken a series of performance measures. Specifically, at the Supreme Court, new procedures have been implemented.

Last session, I told you that the Court is very much aware of the concerns about backlogged cases. Significant improvements have been made. Four years ago there were 71 cases that were more than 1 year old. Our case load is now current. We have no cases over 6 months old and our average time to resolve a case is less than 100 days.

Of course, the Supreme Court takes every case that is appealed. We don't go out and find disputes to resolve. We have the responsibility to determine if laws pass constitutional muster. And, contrary to what some have said, we give great deference to legislative enactments. In the past four years, 44 cases have come to us seeking to overthrow measures passed by this body. We have upheld your actions in 40 of the 44 cases.

We have taken steps to make our decisions more available to the public and the process more transparent.

We conduct more oral arguments—in court rooms and other locations that are available for public viewing. We prepare summaries of those cases and stream the arguments on-line. And we issue a synopsis of complicated cases to make it easier for the media and the public to understand the questions decided.

In the District Courts, even with caseloads dramatically increasing, performance standards are now being implemented. The procedures have been adapted to accurately measure case loads and case timeliness.

But as I mentioned, the State of the Judiciary is good and bad.

In the last two sessions we have experienced significant budget reductions—including vacancy savings and across the board cuts. Our branch consists of 54 independently-elected officials, 46 of who are elected from their local community. As the vast majority of our budget consists of personnel costs, it has been hard to find areas to cut. Now, our budget is approaching a crisis level.

We have done a good job of managing our resources; we have found the waste. We cut \$100,000 each year for library and computer research; \$90,000 each year for dues to national organizations, (I might add—the only branch that has done that); \$400,000 for attorneys and guardian ad litem in child custody cases. We have decimated our training program and eliminated out of state travel. (I worry that our inability to properly train our personnel will come back to haunt us in the near future.)

We do not have sufficient personnel in our technology department to support the computer and video conferencing equipment that now exists in the 200 plus courts we support throughout Montana.

Additional budget reductions will fall on the backs of an overworked local judiciary and inevitably result in delay and court backlogs. Of course the losers under that scenario are your constituents, especially small business and working people.

We know that backlogged courts are bad for business. It is the commercial litigation that suffers most from court delay. Criminal cases, child abuse or custody cases, mental commitments and youth court cases by law must be given priority. As a result, the building contractor trying to resolve a contract dispute or the small business trying to collect a bad debt gets pushed back.

We do, however, offer some solutions that will help with these backlogs.

We must continue our Court Help Program statewide. Almost 2/3 of the domestic relations cases—mostly divorces and parenting plans—came to court with at least one party not represented by a lawyer. Well -- what's wrong with that you might ask? Delay and insufficiency is the end result here. Family cases are 25% of the case load in District Court.

To put this into real numbers, about 6,500 family law cases each year come to court with pro-se litigants—(no attorney). So other cases must wait while the judge and court staff work with a party that generally does not understand court

procedure; does not know the correct forms or papers that must be filed; does not know the appropriate questions to ask a witness or what information the judge needs to decide that case.

The number of these cases is dramatically increasing. With a staggering number of cases each year, we must recognize this situation as one reason, if not the biggest cause for delay in our system.

And speaking of family law—last year Montana had a 25% increase in child abuse and negligent cases—cases that are difficult, often time consuming, and by law must be given court priority.

Most people either cannot afford an attorney, or can't find an attorney to take their case—so they come to court without. Fully 30% of our Court's cases at the Supreme Court are presented with at least one party not represented by an attorney. At the trial court level, the domestic relations matters that are pro se

- Tend to be very messy,
- Are time consuming,
- Are very frustrating—not only for the Judge but the parties themselves.

Court help is designed to assist individual Montana citizens with court service areas, places where you can get proper forms and assistance with the court

process without unnecessary expense. Not all legal matters need attorneys. There are many ways we simplify the process and provide people with helpful solutions.

This program provides some direction—some explanation of how to navigate through the process,

- It does not offer legal advice.

Since the Legislature created and funded the program in 2007, the Self Help centers have assisted 30,000 individuals and small businesses navigate through the complexity of our court system. Statewide, we do this primarily with volunteers who are recruited and trained by the limited staff that we have. Because of our tiny budget, we leverage staff with volunteer labor, often AmeriCorps volunteers. This program operates in urban and rural counties—all across our state.

The way our citizens approach the court system is changing dramatically; clearly our courts must adopt to these changing times.

This program does significantly increase judicial efficiency and it does reduce court backlog.

One other point in the area of family law. Some legislators and practitioners have had discussions about whether it is time to review Montana's system in this

area of the law. Our adversarial system may not be the best approach--especially considering the 6500 pro se cases in this area alone. I understand you may be asked to support a resolution requiring an interim study in the family law area. From my perspective, this may be the time to undertake such a study.

Drug courts and Treatment courts in general can and do save taxpayer dollars. And the last two sessions, Legislators had the foresight to fund a small portion of these programs.

Not long ago 50% of the children in foster care were there because of their parents' use of drugs--methamphetamine in particular.

An incredibly high percentage—up to 90%--of prison inmates (both male and female) are incarcerated with chemical dependency problems—as many as half for meth. And, of course, many of our prisoners have severe mental illness issues.

All of these social problems cause a tremendous drain on state and local government budgets. This is why governors across the country are proposing increased funding for drug courts--as a cost-saving measure.

Treatment courts divert some of these people to less expensive and more effective alternatives.

- They can keep kids out of Pine Hills or even more expensive out-of-state placements.
- They divert new commitments from our prisons to less expensive alternatives in the community.
- Drug courts reunite shattered families and turn participants into productive members of society.

We have studies that demonstrate the success of Montana's drug courts. Some of the highlights include:

- 82% of drug court graduates that do not commit new offenses, a remarkable statistic and
 - A significant drop in recidivism.

Here is a good one:

- In the 53 months that the Branch has been collecting data about drug court,
 - 46 babies were born drug free--an immense saving of taxpayer dollars. Only one was born drug affected.

We have 29 active drug court dockets in Montana. Two of those are dedicated to our returning veterans that are having problems with readjustment to civilian life. We have 1,300 citizens who have participated in these courts.

These programs are very difficult to complete. Drug courts don't take easy clients. Treatment courts are a strain on judges' time and energy. However, they are very rewarding as well. They do see good things happen in a courtroom—not a common occurrence in our courts.

Judges in Montana are committed to addressing the problems in their communities—problems they see every day.

Nationally, it has been proven that Treatment courts are by far the most effective thing we can do to address drug abuse and the social and crime related problems that go with it.

Over 400 of our employees have not had a pay raise since October 2008. That is approaching 5 years if you provide a raise this session. Of course, it is very difficult to retain good employees under those circumstances. The Montana Judges Association voted to support salary increases for our staff as its first legislative priority.

Even so, we are a group that is dedicated and committed to our mission; most are even passionate about the purposes and role of the rule law in our society. They understand that the hallmark of a flourishing democracy is an adequately funded judiciary that can settle people's disputes in an orderly fashion. Only in that way can the economy move forward and our citizens prosper.

We are optimistic that better days are coming and that you will see fit to provide the Judicial Branch an appropriate level of support.

Our modest proposals will help to ensure that the small business owner, the woman injured through no fault of her own, the defendant wrongly accused, and the child crying in the crib get their opportunity to resolve their crises. We also hope that by making the court system more efficient and responsive to the public's needs, we can avoid coming to you in a future session asking for more Judges--- something I do not want to do.

An independent, adequately funded judiciary is the key to constitutional democracy. Without courts, there is no justice. Without justice, there is no freedom.

Thank you again for inviting me to speak with you today.

I know all of you have a lot to do in the next 76 days!

Good luck this Session!