

# STATE OF THE JUDICIARY

Presented by Chief Justice Nancy A. Becker  
to the Legislature of Nevada,  
Seventy-Third Session, March 2, 2005

Lt. Governor Hunt, Senator Raggio, Speaker Perkins, distinguished members of the Senate and the Assembly, honorable Constitutional Officers, my esteemed colleagues of the Supreme Court and trial judiciary, and honored guests. It is my privilege and my honor to be able to present to you a synopsis of the tremendous efforts taken by the 150 men and women of Nevada's judiciary over the last biennium and our goals for the future.

First, however, I would like to introduce my colleagues, the Justices of the Nevada Supreme Court. Justice Bob Rose, Justice Bill Maupin, Justice Mark Gibbons, Justice Mike Douglas, Justice Jim Hardesty and Justice Ron Parraguirre. I also want to convey the judiciary's appreciation of the Legislature's kind words and thoughts on the passing of our colleague the Honorable Myron E. Leavitt. He is sorely missed.

Other judges from the District Courts, Justices' Courts and Municipal Courts are also with us today and I would like them to stand and be recognized.

Although you interact more with members of the Supreme Court, you should know that a District Judges' Association exists in Nevada and they are ably represented this year by their president, the Honorable Michael P. Gibbons of the 9<sup>th</sup> Judicial District Court in Douglas County. Not to be outdone, the Justices of the Peace and Municipal Judges also have an association and this year's president is the Honorable Cedric Kerns of the Las Vegas Municipal Court.

The courts also work closely with two other entities: the State Bar of Nevada, represented by President Anne Price McCarthy and Executive Director Allen Kimbrough, and the William Boyd School of Law, whose Dean, Richard Morgan is also with us today.

Finally, I would like you to see the faces of the Supreme Court's executive staff – Janette Bloom, Clerk of the Court; Joe Carpenter, Legal Counsel Criminal Division; Leslie Davis, Legal Counsel Civil Division; Kathleen Harrington, Director of the Supreme Court Law Library; and Ron Titus, Director of the Administrative Office of the Courts.

What is a judge?

The best description of the job I have found is not new – it was written in 1780 and is found in the Constitution of the State of Massachusetts:

“It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit.”

There was a time when the “lot of humanity” did not include women or minorities. Indeed, when Drew Pearson and Robert Allen wrote a book about the United States Supreme Court in 1936 they entitled it “*Nine Old Men.*” As I stand here today I am proud to say that the Judiciary of Nevada has achieved a level of diversity unparalleled in the State's history.

We are the “lot of humanity.”

I am an example of that diversity. Not just because I am a woman, but because of my family background. I

am the granddaughter of three immigrants. Two were Irish Catholics, one was a Russian Jew. My fourth grandparent, who was born in America, was the son of German Jewish immigrants. When I was young, my Irish grandmother was visiting at the same time as one of my Russian great-aunts. Both had immigrated in their teens, so they spoke English with heavy accents. They were watching 50s wrestling on the TV. One was cheering and swearing in Yiddish while the other was matching her in Gaelic. They understood, respected and enjoyed each other's company, despite their divergent cultural backgrounds.

Every day, judges from diverse backgrounds, make decisions affecting people's lives. Every day we are faced with complex decisions: should the death penalty be imposed, were the parties given a fair trial, who should be given custody of the children, how long should a child remain in foster care, should a juvenile offender be certified as an adult and face life imprisonment? We resolve them to the best of our ability based on the law and the evidence presented in an individual case. The Honorable Felix Frankfurter, one of the most recognized jurists in

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American history, said that because judging involves fallible creatures it is essential to get:

“[people] who bring to their task, first and foremost, humility and an understanding of the range of problems and of their own inadequacy in dealing with them; . . . loyalty . . . to nothing except the effort to find their path through precedent, through policy, through history, through their own gifts of insight to the best judgment that poor fallible creatures can arrive at in the most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law.”

Such is the life of a judge. But there are many moments of joy – marriages, adoptions and occasionally, an unusual request. A few years ago, I received a call from a friend. Knowing that I could perform marriages, she asked if I could marry Sloopy and Casey. I was puzzled – you see, Sloopy and Casey are birds – cockatiels to be exact. My friend went on to explain that her granddaughter had seen the birds, as my friend put it, vo-de-o-do-ing in their cage and asked if Sloopy and Casey were married. Hence, the reason for the phone call. I later unofficially presided over their joining. It must have had some meaning however, because although Sloopy and Casey had been a couple for 3 years before the ceremony, they had no offspring. After the ceremony they proceeded to hatch seventeen chicks. Who knew?

So what does judging in general have to do with the State of the Judiciary? Our melting pot culture, combined with our unique governmental system, is what distinguishes us from other Nations. And a key factor in that government is the Judicial Branch and its relationship with the Legislative and Executive Branches.

George Washington once wrote that:

“[T]he due administration of justice is the firmest pillar of good Government . . . [the judicial department is] essential to the happiness of our Country, and to the stability of its political system.”

Our system of justice and the creation of three branches of government, Executive, Legislative and

Judicial, is a defining aspect of this great Nation and State. Each year, judges from around the world attend courses at the National Judicial College to study America’s judiciary. Since the fall of the Soviet Union, Russian Federation Judges have attended seminars and classes, interacting with Nevada Judges, in order to create a viable judicial branch in their country. Our system, which has withstood the test of time for over 200 years, is a shining example of democracy in action. It exemplifies the Rule of Law; a society governed by law, not violence and terrorism.

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Because of our example, the Ukraine Republic adopted the Rule of Law. During their recent turmoil, all sides agreed to, and abided by, a legal decision of the Ukraine Supreme Court, thus avoiding military conflict. It is for this reason that other nations study our judicial system.

Yet a judicial system cannot stand alone. It exists with the cooperation and support of the Legislative and Executive Branches. Democracy is a fluid concept. As noted by Ilka Chase:

“Democracy is not an easy form of government, because it is never final; it is a living, changing organism, with a continuous shifting and adjusting of balance between individual freedom and general order.”

The Legislative and Executive Branches of this State, including the counties and cities, have been strong supporters of the Judicial Branch. Without you, Nevada’s judiciary would still be locked in the 19<sup>th</sup> century. Your assistance was essential to the development of new programs and methods of managing cases with a united purpose of promoting access to justice for all Nevadans.

I want to tell you a story that illustrates this point. Sixteen years ago, justices of the peace and municipal judges had no authority to suspend misdemeanor sentences. We had no ability to tackle recidivism through programs to combat domestic violence and drunk driving. We discussed the matter with the counties and cities, prosecutors and defense counsel and all agreed that expanding the authority of the judges made sense. We came to you, the Legislature, to seek that authority and you granted it. Such programs, with intensive judicial monitoring, have low-

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ered recidivism rates for misdemeanor crimes. Many of the Legislators who made this possible still serve today – Legislators like Senators Coffin, Raggio, Rhoads, Titus and Townsend, and Assemblymen Arberry, Carpenter and Marvel.

But you need to know more – you need to know what Legislative, Executive, and Judicial efforts have meant to people. So I'll give you one example. Eighteen years ago there was no mental health court. However, all Branches of Government came together for a common cause. A loose consortium of downtown leaders, nonprofits, the Las Vegas Municipal Court, the Las Vegas City Council and City Attorney's Office, the Clark County Public Defender and the State Division of Mental Health, specifically Carlos Brandenburg, formed to try a new method of handling mentally ill individuals.

This is the true story of one of those individuals – I'll call him "John" though that is not his real name. I tell this story only to illustrate my point – although there is humor in the story, there is nothing humorous about how mental illness affected John.

John was arrested for stealing t-shirts from a downtown casino. He stole because he was unemployed as a result of his mental state. You see, when John was booked into the jail, he told officers he was from the planet Mars. A mental health social worker interviewed him and concluded John wasn't joking – he believed he was from Mars. Before his probable cause hearing, the prosecutor, public defender and I were all informed of the circumstances. John indicated that he understood the charges against him and that stealing was illegal on Mars too. He wanted to plead guilty, but was concerned that his spaceship would be towed if he stayed in jail too long. I inquired if the ship was disguised in some fashion and John told me yes – it looked like an old station wagon with California plates and he gave me a license number. We located the vehicle with the help of the hotel security where it was parked and, with their cooperation, saw that it wasn't towed. With the assistance of the social workers and nonprofits, we determined John wasn't dangerous, even when confronted about his beliefs. We were able to get John a job with an employer who knew about and under-

stood John's delusion. John became independent again, working, paying taxes and never coming before the law again. We, the Judicial, Legislative and Executive Branches, in partnership with the community, gave John his life back.

In the eighteen years since John's case, the Judiciary has undergone substantial changes. Changes made possible by the partnership between the three Branches, locally and statewide. These are just some of the programs and processes created by the judiciary with the assistance of the Legislature, Governor and local governments:

*Drug Court programs  
... resulting in  
70 percent or greater  
decreases in recidi-  
vism rates, saving  
taxpayers hundreds of  
thousands of dollars.*

- Self-help Centers in the Washoe County and Clark County Family Divisions, with outreach to other counties and Carson City. Last year, over a quarter of a million people were assisted in accessing the courts. Over three million forms were accessed through the Centers' websites.

- Violence Intervention Programs – courts provide space for volunteers who assist victims of domestic violence with protective

orders, shelter and counseling information.

- Drug Court programs servicing counties throughout the State resulting in 70 percent or greater decreases in recidivism rates, saving taxpayers hundreds of thousands of dollars. Last year alone, over 30 drug-free babies were born to participants in such programs.

- Court annexed short trial, arbitration and mediation programs to facilitate expeditious and cost-effective resolution of small civil suits.

- Fast-track criminal appeals, settlement conferences and panel hearings in the Supreme Court resulting in a 40 percent decrease in the Courts' backlog.

- Implementation of the Uniform System of Judicial Records – providing information on court operations and resources necessary to court management in the 21<sup>st</sup> century. Because of this System, the Supreme Court is able to publish annual reports. Reports like the one distributed to you earlier in this Session, and available on our website. They provide a wealth of information on the operations and needs of the Judicial Branch.

- Technology and case management systems enabling the Nation's busiest courts to tackle over-

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whelming caseloads more efficiently.

- Creation of standardized forms for family matters and protection orders under the auspices of the Supreme Court Pro Se Assistance Council and the Supreme Court and District Court Law Library Commissions.

- Creation of standards and case-processing procedures for family cases that have become a model for family courts around the Country.

- Support for legal services programs whose volunteer attorneys have provided millions of dollars of free legal services to economically disadvantaged citizens.

- Creation of rules and training for court staff and law librarians governing provision of services to self-represented litigants.

- Increased programs and representation for abused and neglected children under the auspices of Clark County Legal Services and Assemblywoman Barbara Buckley.

- Implementation of the recommendations of the Supreme Court

Jury Improvement Commission – whose work has been recognized by American Bar Association President Robert Gray as a model for jury improvement in the Nation.

I could go on, but the point has been made. Many judges, among them my colleagues on the Court, were instrumental in these programs. Governor Guinn and other members of the Executive Branch were also key advocates. Legislators like Speaker Perkins, Assemblywoman Giunchigliani, and Assemblyman Hettrick, as well as Senators Beers, Cegavske, and Mathews played their part. And the local mayors, councilpersons and commissioners were essential components. These programs are the result of enormous commitment by government as a whole.

Daniel Webster said:

“Justice, Sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together.”

The Legislative and Executive Branches are the personal trainers whose support allows the judicial ligaments to stretch. Still, every ligament can only stretch so far without rupturing. Growth in caseloads

and lack of resources have already strained our judicial ligaments – along with our tendons and muscles. We wish to walk freely, not hobble on canes or crutches, and so we call upon you once again to help.

Over the last 4 years, caseloads in the Washoe-Reno-Sparks and Greater Las Vegas Judicial Districts have grown by over 40 percent. In some instances, the growth in filings has exceeded growth in the general population. In addition, the complexity of cases has increased, requiring more judicial hours per case. This affects the ability of courts to process cases in a timely fashion. The American Bar Association standard regarding disposition times for criminal cases indicates that a court should dispose of 100 percent of its criminal cases within 1 year. Clark County, for example, disposes of only 63 percent of its criminal cases in 1 year and is falling further behind. And, although the Family Divisions of the Washoe County and Clark County District Courts are meeting standards for timely processing of domestic cases, the increased case-

loads make it impossible to maintain those standards. The civil case dispositions also fall short of meeting ABA standards. Percentages alone do not give an adequate picture. We are talking about delays in thousands of cases.

These courts have implemented tremendous changes in case processing to improve case dispositions, but the growth is simply outstripping all of their efforts. The National Center for State Courts indicates that a trial judge’s caseload should be about 1,400 case per judge. In Washoe County that figure is 1,800 cases per judge and in Clark County each judge has 2,400 cases. For appellate courts, the standard is 100 cases per justice. The Nevada Supreme Court’s average per justice is 246 cases.

In the face of this overwhelming growth, we are seeking new judges and an increase in funding of the senior judge program to avoid causing Nevada’s citizens increased delays in the resolution of their cases. No victim, litigant, business entity or injured party should see a case linger for lack of judicial resources.

The rural courts are not without their problems. Our rural judges spend days traveling between communities. Citizens regularly travel over a hundred miles roundtrip to access a courthouse. Juveniles must be driven hundreds of miles to facilities in other

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## State of the Judiciary Message (cont.)

counties. My colleagues in rural communities face unique challenges. Take jury selection, for example. Even Mark Twain noted how difficult it can be to select a jury in a small community. He said:

“ . . . a jury of twelve men were impaneled – a jury who swore that they had neither heard, read, talked about nor expressed an opinion concerning a murder which the very cattle in the corrals . . . the sagebrush and the stones in the street were cognizant of.”

Judges in rural areas know the litigants, the jurors and the community. Each and every decision that judge makes will impact on that community. It is an awesome responsibility and I wish to publicly acknowledge their dedication and service to Nevada.

Last session, this august body funded a study of the rural criminal justice system. A large facet of that study involved the courts. Thanks to the efforts of Senator McGinness and others, a comprehensive look at the needs of the rural justice system was accomplished. Issues such as lack of adequate local juvenile facilities, counselors, secured court facilities, and management staff were reviewed.

As a result of the Study’s recommendations, several bills will be introduced this Session to address these issues, among them the construction of a new courthouse in Ely and the establishment of a Rural Court Coordinator position in the Administrative Office of the Courts.

Finally, I want to mention another report that you will be seeing in a few days. In 2003, then Chief Justice Deborah Agosti undertook a formidable task. She created a Commission composed of judges, business leaders, representatives of local government and leg-

islators, namely Senator Amodei and Assemblyman Anderson, to determine an estimate of the costs to run the entire judiciary, not just the operations of the Supreme Court. Her efforts, together with those who served on the Commission, resulted in a comprehensive look at the cost to operate our statewide judicial system and how it is funded.

It has long been known that the Supreme Court’s operations represent less than 1 percent of the State’s total budget. But such information was not available about the total Judicial Branch because funding and expenses are divided between the State and local

governments. As a result of the Commission’s efforts, we now know that the entire Judicial Branch would only make up 5 percent of the State’s budget. When the Judicial Branch is compared to the combined budgets of the State and local governments, the Judicial Branch represents an even smaller percentage of the total expenditures.

But the Commission was just a first step. From here, we ask the help of the Legislature, community leaders, local governments and the judiciary in taking the next step—implementation of the Commission’s recommendations and formation of a second commission to determine the optimum method for funding the judiciary in the future.

I have spoken today of the past and the future, of all we have accomplished and all we can accomplish. This is the goal of the judiciary. To serve Nevada’s citizens by providing a fair, impartial, cost-effective and expeditious method of resolving disputes, protecting children, adjudicating guilt and, where possible, rehabilitating individuals into self-sufficient productive citizens. Together we can achieve this goal.

Thank you.

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