

State of the Judiciary Message

Presented by Chief Justice A. William Maupin
to the Legislature of Nevada,
Seventy-Fourth Session, March 7, 2007

Governor Gibbons, Madam Speaker, Senator Raggio, Constitutional Officers, members of the Nevada State Senate, and members of the Nevada State Assembly, it is my privilege to address you tonight on the State of the Nevada judiciary, and I thank you for this opportunity. I speak on behalf of my colleagues on the State Supreme Court: Justice Mark Gibbons, Justice James Hardesty, Justice Ron Parraguirre, Justice Michael Douglas, Justice Michael Cherry, and Justice Nancy Saitta. Justice Saitta is not with us tonight. She is in New York attending a national summit on children as part of her agreement to work with us on the Court Improvement Project, an important project that provides federal grant money administered by the Administrative Office of the Courts here in our state.

I also speak for our 64 colleagues around the state who serve in our District Courts and our 81 colleagues around this state who serve as Municipal Court Judges and Justices of the Peace.

Before I begin, I would like to dedicate this message to an individual who has, as much as any one person in recent history, added greatly to the Nevada judicial landscape—Dean Richard Morgan of the Boyd School of Law.

Dean Morgan came to us from Arizona State University after this body approved funding for a new Law School to be housed on the campus of the University of Nevada, Las Vegas. With consummate skill, he gathered a top-flight faculty, effectively engaged in private fundraising, set protocols for student admissions, and set a course for full American Bar Association accreditation in record time. The Law School has proved to be an important component in the improvement of the practice of law in this state and in the improvement of our Judiciary. Every year the Boyd School of Law enriches the practice of law through its graduates, and every year its law review provides critical analysis of our judicial processes. Dean Morgan has now decided to retire. It is only fitting that the Judiciary and Legislature join tonight in recognizing his everlasting contribution to our state.

Today, right now, we face a series of crises related to the judicial system that tax the fiber of our state's resolve and its resources.

Turning now, to the state of the Nevada Judiciary, in summary and in short, the State of the Judiciary is as follows:

Our Municipal Courts, charged primarily with hearing trials of misdemeanor offenses committed within incorporated cities, everything from petit theft to traffic violations, heard and resolved over 310,000 matters last fiscal year.

Justice Courts, charged with hearing trials of misdemeanor offenses committed in the unincorporated areas of Nevada counties, hearing small civil cases, and screening major criminal cases for trial in District Court, heard over 418,000 matters last year.

District Courts around the state, charged with hearing trials of all major civil and criminal actions, heard and resolved over 26,000 civil cases last year and over 15,000 criminal cases. The Family Divisions of the two large districts resolved almost 47,000 matters.

The Supreme Court, one of the busiest appeals courts in the country, charged with hearing all appeals from final decisions rendered statewide by the District Court system, decided over 2,300 cases last year. In the last ten years, the Court's inventory has been reduced from over 2,500 cases to less than 1,400 at year's end. But for the first time since 1998, that trend is threatened by filings in excess of 2,000 new cases in each of the last two years.

Ladies and gentlemen, in their totality, our tasks involve the quality resolution of thousands of public and private disputes that come through our court system. Your Judiciary is working.

That, in the traditional sense of reports on the State of the Judiciary, is the State of the Judiciary. But I did not come here tonight to repeat a litany of comparative statistics and programs—programs that you have heard about before, programs that continue to prosper and grow as you intended. Rather, I want to talk with you about the joint legacy this Legislature and your court system will leave behind.

Today, right now, we face a series of crises related to the judicial system that tax the fiber of our state's resolve and its resources.

- There are confirmed reports of children in danger in our foster care system. We have overcrowded and understaffed prisons.

State of the Judiciary Message (cont.)

- There is pernicious and malignant growth of addiction to modern and more powerful illicit drugs.

- We are now experiencing overstressed court dockets creating undesirable compromises in processing serious criminal cases.

- We have unacceptable delays in the resolution of civil cases of all types, including unacceptable delays in dealing with families and children.

- We have outdated or even antiquated court facilities in places within this state.

These challenges are here before us today, but they are not unapproachable and they are not unsolvable. They can be turned into the great opportunities of this generation if we properly apply the considerable resources at our disposal, all to the end that this state continue in its role as the greatest place in this country to live, work, and raise families.

So I say to you tonight, this is our time to fulfill our respective destinies. I believe those destinies, as I will mention later, are historically and inextricably intertwined.

As I hope to demonstrate, we in the Judiciary are keeping our pledge to do our utmost to apply existing resources to these problems. We continue to ask your help in addressing them. However, to provide continued adequate justice to this state, we will need more qualified and experienced judges, appropriate incentives to keep veteran jurists on board and to entice quality lawyers into the judiciary, improved penal facilities and programs, improved and expanded non-custodial programs, and expanded programs and resources to make sure dependent children are kept safe.

If we can keep faith with our shared destinies to attack these issues, we can and we will form a shared legacy that no one now living here will ever forget.

Several current programs and new ideas come to mind.

With regard to our crowded prison system, as noted a week and a half ago in the *Reno Gazette-Journal*, there are a number of views as to what has caused this.

- Some believe that it is the advent of new and powerful street drugs such as methamphetamine; some believe that increasingly harsh punishments and lack of rehabilitation programs are the key components.

- Others blame a lack of commitment to non-custodial treatment programs for the mentally ill or for persons with alcohol or drug dependency problems.

- Others blame schools or the disintegration of the family.

- Others blame society as a whole, and others blame it on a growing culture of non-responsibility for individual actions.

In my own view, the current state of our criminal justice system has resulted from a tragic and complex confluence of all these factors. But let me assure you, attacking only one facet will accomplish nothing. We need an all-out and varied approach that first and foremost continues the identification of the most dangerous defendants and separates them from the rest of society. Overcrowding works against this and works against any hope of dealing with these people beyond simply warehousing them.

Over and above this primary responsibility, we would propose approaches that would give judges more independent discretion in sentencing, that would provide comprehensive alternatives to incarceration, and that would make room for the most dangerous criminals by considering highly-conditioned releases of offenders who pose minimal public safety issues. This would include inmates serving mandatory prison sentences, inmates who have recently been revoked from probation for minor violations, and inmates who would be deported to their home countries through cooperation with federal authorities.

We also recommend providing improved community reentry programs for prisoners with substance addictions and the placement of more intense counseling programs within

our schools to keep children in school.

With regard to this last issue, there is one common denominator in the criminal justice system: Some 95 percent of criminal defendants have not gone beyond the eleventh grade in high school.

With regard to short-run problems of overcrowding, Justice Hardesty is currently working with the Governor's staff, legislators, prosecutors, law enforcement, prison officials, and federal authorities in studying the feasibility of paroling 400 to 700 prisoners to deportation holds for their immediate removal from the United States. During this process, federal

These challenges are here before us today, but they are not unapproachable and they are not unsolvable.

State of the Judiciary Message (cont.)

authorities have suggested other programs using federal funds that would expand the identification of illegal aliens through varied law enforcement initiatives that would also address local gang warfare and widespread use of fraudulent identity changes and identity theft. The Supreme Court stands by Justice Hardesty's efforts in this regard.

We should also embrace experiments with younger adult offenders. As a District Court judge in Clark County, I started a pilot program under which probationable adult offenders under 23 years of age were separately sentenced in individual hearings, away from the older defendants. Of the approximately 30 participants in this program, which involved agreed-to private meetings with the defendants without the presence of the attorneys, all were placed on probation; only one ever returned for revocation.

Turning now to Specialty Courts, which are a very important component in dealing with the problem of overcrowding and the problems with drug addiction and mental health issues of our citizens. We have been blessed by the commitment of our more senior members of the District Court bench with the creation and development of Specialty Courts across this state. These include Judge Jack Lehman, the founder of the Drug Court program in Las Vegas; Judges Peter Breen, Archie Blake, John McGroarty Mike Griffin, and Robert Lane; and more recently, Judge Andrew Puccinelli in Elko and Judge Jackie Glass in Clark County. These programs diverted some 3,000 people last year out of the criminal justice system. Whether defendants are addicted to drugs, alcohol, or suffer from mental problems, specialty courts are on the front line to help rehabilitate these individuals. We should also remember that the people helped by these programs would represent a considerable portion of the current Nevada inmate population, which is approaching 12,000 as we speak here tonight.

We want to stress further that the primary burden in the Specialty Court area falls on our senior judges and that the larger counties absolutely depend upon the Senior Judge Program to keep Specialty Courts current and effective without taking elected judges in

the two largest districts from their regular caseloads. This is one of the reasons why we will be asking you to continue funding the Senior Judge Program separate and apart from Specialty Court funding.

In addition to providing service as Drug Court judges, our senior judges fill in for judges around the state when needed, provide valuable service as settlement mediators in major cases, and help local courts with calendar congestion when caseloads become more than existing judges can handle.

Ladies and gentlemen, as we sit here tonight,

...as we sit here tonight, a cancer is pervasively invading our state—methamphetamine. This cancer has done more to destroy lives than almost any other street drug yet invented.

a cancer is pervasively invading our state—methamphetamine. This cancer has done more to destroy lives than almost any other street drug yet invented. As a District Court judge in Clark County in the mid-1990s, I first learned of the fantastic destruction this drug can wreak

upon the user and others. In the three or four hostage standoff cases over which I presided, every single defendant was high on methamphetamine. Every one terrorized immediate family members, neighbors, other bystanders, and even the police that responded.

Methamphetamine is also the single most addictive street drug yet developed. In its profound totality, this drug not only creates incredibly dangerous criminal confrontations, it destroys the lives of the users, their children, and their families. In fact, this drug is killing our young people, eating away their valuable lives before they even really begin to live. So it is only right that I ask you, not only as your Chief Justice, but as a resident of this state, that you do everything in your power to bring this modern plague to its knees.

This means resources for law enforcement and incarceration, particularly for manufacturers and pushers. And from our standpoint, we ask that you make a considerable General Fund commitment to our Specialty Courts to try and help those in the vice of this terrible addiction. In this, we laud the efforts of our First Lady, Dawn Gibbons. Society benefits greatly from these programs with reduced recidivism, taking these defendants out of the revolving door of the criminal justice system and creating citizens who contribute to our state instead of sapping valuable resources from Nevada taxpayers.

State of the Judiciary Message (cont.)

Turning now to issues related to child dependency, we have all responded with great concern over the recent reports of deaths and injuries of children in dependent and foster care situations in Clark County and elsewhere in Nevada. Judges in these matters are faced with heartbreaking situations with too little time and too little resources.

We must do all we can as judges in helping the helpless. To this end, yesterday at three o'clock, the Supreme Court issued an order, effective July 1, redeploying a judge of the Eighth Judicial District Family Division to help Judge Gerry Hardcastle with this terribly congested docket. For years I have watched this judge, with every fiber of his being, try to help these children. I want you to also know that the Family Division of the Clark County District Court has unanimously agreed to support Judge Hardcastle in this redeployment and has agreed to take on the resulting additional caseloads—caseloads that already stagger the imagination and need to be relieved with additional judicial positions at the state level and by additional masters and other support personnel at the local level.

More than that, this Court and the State Bar, through State Bar President Rew Goodenow, will seek to recruit more lawyers to provide volunteer representation of Nevada children who find themselves in dependency and foster care situations. Most will join the Children's Attorney Project in Las Vegas, where these volunteers assist lawyers at Clark County Legal Services who have taken the primary brunt of these caseloads. We pledge to you tonight that we on the Supreme Court and district judges across this state will become personally involved in this effort.

But, we also want to make clear that the current practice of placing the burden on a few dedicated staff lawyers at Clark County Legal Services and on the backs of volunteers is fundamentally irresponsible. In the long run, the state and local governments must fund more full-time attorney positions to represent these children. In its most fundamental terms, if adult offenders in the criminal justice system have a right to legal representation under the Sixth Amend-

ment of the United States Constitution, we should create such a right for dependent children under Nevada law.

As you may have surmised, everything mentioned tonight – triage of the most dangerous criminals, increased judicial discretion, short run evaluation of the current prison population, Specialty Courts, and innovative sentencing alternatives – all have a common thread: more individualized justice instead of mass-produced injustice – injustice that compromises the very safety and well-being of our people.

I would like to now address one of the most dangerous locations in this state. I am not referring to some street gang location in Las Vegas, I am not referring to a crack house in northern Nevada, and I am not referring to the freeway interchanges in Reno and Las Vegas. In truth, and in fact, I am referring to the White Pine County Courthouse. Ladies and gentlemen, Nevada's most dangerous criminal defendants, those incarcerated at the Ely State Prison, frequently appear in court in Ely and sit in a witness box that is within arm's reach of juror positions one and two. Many of you have seen the videotape of the facility I asked Judges Papez and Dobrescu to make. I defy any one of us in this room to try and quell a distur-

Nevada's most dangerous criminal defendants, those incarcerated at the Ely State Prison, frequently appear in court in Ely and sit in a witness box that is within arm's reach of juror positions one and two.

bance started by a desperate and physically imposing prisoner with nothing to lose but an opportunity to create further havoc. White Pine County needs our help. It stepped up and it volunteered to accept placement of the prison there, but it cannot now afford to solve the problems attendant to its beautiful, but antiquated, court facility. Now, I know

our more populace counties need our help also, but please find a way to help this county. This would be an appropriate time for political altruism to help this county help itself and the state as a whole.

Needless to say, if we are to continue past successes and create new ones, considerable costs and commitments are involved.

More judges, more courtrooms, and more operatives will be required, but much of this is already in place with existing infrastructures.

State of the Judiciary Message (cont.)

- Business Courts, which we created to fulfill your mandate to help Nevada become a business friendly state so as to diversify its economy;
 - Construction defect dockets;
 - Senior judge settlement programs in the District Courts;
 - Mandatory arbitration programs;
 - Short jury trial programs for civil cases;
 - Specialty Courts in place supported by our existing senior judges;
 - The Children’s Attorney Project in Las Vegas;
 - The Court Improvement Project, which provides grants for training lawyers and local personnel concerning dependency representation and other matters;
 - Grants for a new National Chief Justices Initiative for Mental Health Courts—thanks to Assemblywoman Sheila Leslie;
 - And special efforts by individual judges, lawyers, and many others.
- Not coincidentally, the prospective culling out of current inmates can save millions of dollars in new prison construction and millions of dollars in inmate housing costs.

In conclusion, I would like to make it absolutely clear that the resolution of over 750,000 court matters within the judicial system last year could not have occurred without one of the most important collaborations in the history of state government—a partnership, in fact, that has formed between and among the Judiciary, the Legislature, and local governments over the last 20 years. The people in this room, working with the Judiciary, have time after time, session after session, stepped to the plate and given us the necessary personnel, facilities, and technology to do our important work.

But none of our recent progress could have been made without the long-term relationship that has grown between our respective staffs. These include our department heads, the Administrative Office of the Courts led by Ron Titus; your fiscal analysts; the Legislative Counsel Bureau; and your individual staff members. So, it is only fitting that we recognize all of these dedicated public servants. They have worked tirelessly to ensure that we have been given the resources to do our jobs. All have our respect and all have our gratitude, and I applaud them tonight.

Nevadans want to be able to prosper, they want to live here and contribute to our great state, and ladies and gentlemen, we must create a safe environment for this to happen.

Let me close with this. As everyone in this room understands, the majesty of Nevada goes far beyond its mountains, its lakes, and its wide expanses. Nevada’s true majesty is found in the hearts of its people. Nevadans want to be able to prosper, they want to live here and contribute to our great

state, and ladies and gentlemen, we must create a safe environment for this to happen. Nevadans also want the protection of the Judiciary as the last great barrier between themselves and the power of government. We, as judges, must renew our covenant to provide that protection fairly and expeditiously every time we take the bench to preside over court proceedings.

You, yourselves, renew that very same covenant every time you enter this building. So, as we in the Judiciary and you in the Legislature go about the people’s business, it is essential that your work with us continue—continue in line with the great tradition of cooperation and good will that has been built up between us over the last 20 years. This, ladies and gentlemen, is our shared destiny.

Thank you very much.