

State of the Judiciary Address
Chief Justice Richard C. Bisson, New Mexico Supreme Court
Message to the Legislature
2005

Gov. Richardson, Lt. Gov. Denish, Mr. Speaker and Mr. President Pro Tern, Majority and Minority Leaders of the Senate and House, distinguished members of the Legislature, friends and family, colleagues of the New Mexico Judiciary, ladies and gentlemen, damas y caballeros. Buenos días le de Dios.

I am deeply honored to be invited here today to address this distinguished body. I appear before you today as a representative of the many fine members of our judiciary, many of whom are present today. I deeply appreciate the presence of so many judges and members of their staff. It also means a great deal to me to have present this morning former members of the Court of Appeals and the Supreme Court, many of whom taught me much over the years about what it means to be a judge.

Anyone in this position recognizes that he stands here on the shoulders of the many accomplished individuals who have preceded him. I want to take this opportunity to recognize the distinguished members of my own Court for all they have given to government service. Justice Maes, who has just concluded two exemplary years as Chief Justice, Justices Minzner and Serna, also former Chief Justices, and the newest member of our Court, Justice Chavez. Please join me in giving them a round of applause.

Last, but certainly not least, let me introduce the lady who has been my love and inspiration for 34 years this very month - my wife Gloria.

I stand before you today as Chief Justice, but I have also known many of you in other capacities. I have worked previously in the Executive Branch of state government. As a private attorney, I have many times walked these same legislative halls looking for a friendly ear. Even when I was turned down, and there were times when that did happen, I was always treated with respect. I have seen enough of what you do as legislators, that I understand and deeply respect the essential role you play in our state government. You are the maker of our laws and the guardians of the people's money. There is no more important mission in state government.

You should also know that, like many of you, I come to this job from the private sector, from the world of business. Long before becoming a judge, I represented business people, both as counsel and in the courtroom. I successfully ran a law firm, juggling professional demands with the sometimes harsh economics of the marketplace. I know what it is to run a business. I know what it is to make a payroll. I know what it is to make payroll when, sometimes, there is nothing left to pay the boss. I know what it means to pay the endless stream of taxes that fall so heavily on the shoulders of small businesses today all across America.

I know how important it is that those tax revenues be spent prudently, sparingly, and with full accountability. Accountability is not a bad word. As public servants we should expect nothing less. As a taxpayer, I demand nothing less.

My primary mission this morning is to describe for you the state of the New Mexico Judiciary- both our successes and our shortcomings - and our goals for the coming year. Before we can discuss the future, however, we must address the past. We must address the events of this past year, so well known to you all, as they have impacted our judiciary. I feel you have a right to know where we stand today in light of these events.

This past year has been one that none of us in the judiciary want to see repeated. In one terrible summer night, we were reminded that even the best of us can fall. We learned that a fellow judge - a man I still today call my friend - committed serious criminal acts. Thereafter, other accusations inevitably followed. We in the judiciary were humbled as we faced the prospect of losing that which we hold most dear - public confidence. For public confidence has a fragile spirit that once lost, can never be brought back to life. Our confidence in ourselves was shaken. As we struggled to deal with the real transgressions in our midst, we also endured the constant repetition of unfounded and speculative rumors that hung over us like a dark cloud. How we felt at that time reminds me of Adlai Stevenson quoting Abraham Lincoln after he suffered personal defeat in an election: "He said that he was too old to cry, but it hurt too much to laugh."

What the New Mexico Judiciary learned from the trials of the past year is that we can never do too much, we can never be too zealous, in our efforts to earn the public trust. We dealt with the events of last year openly, forcefully, and with accountability to all. If necessary we will do so again.

We have also made it clear that there is zero tolerance, zero, concerning the use of illegal drugs or abuse of alcohol by members of the New Mexico Judiciary. Simply put, judges must lead lives that are above reproach, above even the suspicion of impropriety. There is no other course.

To ensure compliance with appropriate conduct, we have called for increased attention to two agencies that play a vital role in preserving the integrity of our judiciary. First, is the Judicial Standards Commission. Created by our state constitution, the Commission investigates citizen complaints against judges, and then makes disciplinary recommendations to the Supreme Court. The Commission is like an internal police force for the judiciary. Its mission is vital. I know the Commission is coming to you this legislative session with additional budgetary requests. My request is a simple one. Give it to them. Give them whatever they ask for. Take whatever they ask for and double it. Their role is vital to the public's confidence in us. We do not fear the bright lights of scrutiny. Help them help us, to show the public and show all of you that our house is in order.

The other agency so important to us in commanding the respect of the public is the Judicial Performance Evaluation Commission. Headed by a wonderful public servant and distinguished private attorney, Mr. Felix Briones of Farmington, JPEC is a group of dedicated volunteers from private life. They meet year-round to evaluate every metropolitan, district, and appellate judge in the state, as they face retention election. The Commission then issues a report card to the public in which they recommend, when appropriate, that some judges not be retained. The Commission is one of the public's only opportunities to gather unvarnished, unbiased information about judges and their performance from a neutral, objective source. Again, our attitude is open and

positive. We want inquiry. We want our judges to be held accountable. Please address the Commission's fiscal needs as well.

One final note before I move on. On the heels of the political season just ended, I well recall the unfortunate occasion of charges and counter-charges of political bias, baseless in my opinion, leveled even against the judiciary. My response is straightforward. There is no room for partisanship in performing the duties of a judge.

There never has been and there never will be. The judiciary's mission is simple; it is inscribed on the walls of the Supreme Court chambers, where it says: "Dedicated to the administration of equal justice under law." Equal for everyone. There is no Republican justice, there is no Democratic justice, there is only one justice, equal justice under law for all New Mexicans.

As the legislative session opens, it is worth reminding us all of the duty we share in common. We are all public servants; we are all here to do the work of the people. The judiciary is of course an independent branch of government; it must stand strong and free in the defense of the rights of the people. Yet the judiciary also stands ready to work with the other branches of government. We strive to create open lines of communication with the executive and legislative branches, to ensure a collective understanding of how best to serve the citizens of New Mexico. We deeply appreciate the efforts of both branches at maintaining a productive dialogue with us over the past year.

So what is the state of our Judiciary? After the events of the past year, I can report to you that our state is sound, shaken perhaps, but stronger for it in the end. We are fortunate to attract to the judiciary men and women of strong character. They are good, decent folks, who work long hours, conscientiously trying to solve some of society's thorniest problems. Most of them lead exemplary lives, they serve as role models in their communities, they decide cases with fairness and impartiality to all. Like many of you in the legislature, local judges sometimes pay a heavy price for public service. They are sometimes misunderstood and criticized unfairly in their own home towns just for doing their jobs, as they see it, the best they know how. I am proud that many of them are here today. I am proud to be one of them.

And because these good people try so hard to do their jobs in an impartial, professional manner, they need your help. You in the legislature have helped us in so many ways in the past; I want to thank all of you for all you have done. Thanks to your confidence in us, we have a unified, centrally accountable judiciary, fully automated, that is the envy of other states far richer than our own. You have helped us with innovative programs like drug courts, that are in such demand today we cannot keep up. And yes, I would be remiss without acknowledging your help, just this last year, to increase our judicial salaries. Regrettably, we are still last in the nation. But rather than trouble you further this year, we are asking you to create a Judicial Salary Commission, appointed by all three branches of government, that will study salary equity and retirement issues over the next year and make recommendations to the legislative and executive branches about corrective action. To negate any fiscal impact from the Commission, we offer to staff the commission from the current AOC staff. I hope you will get behind this idea.

I also appreciate how receptive the legislature has been to our Unified Budget. As you know, we work diligently over the year to fashion our own priorities, based on only the most serious, and proven, need. We work hard at it. Judge Wechsler's Budget Committee does the heavy lifting; they demand strict proof and accountability from all courts. When appropriate, they say no to those who ask simply for what they wish, rather than what they really need. After the Budget Committee has completed its work, there is blood on the floor. This is as it should be, because we are serious about being good stewards of the people's money. And so when we present our Unified Budget to the legislature, I know from experience that it will be received with respect and an open mind. Let me just hit the high spots for this next fiscal year.

Apart from the essential needs in our base budget, we have concentrated on improving compensation equity for some of our lowest paid employees. These are usually clerks in our magistrate courts in every corner of the state who are paid below what is called for and below what we need to keep them. We are asking for your help to bring them up to just 90% of compa ratio; 90% of a comparable average wage. We owe them no less.

Recently with your help the judiciary completed a statewide staffing study to evaluate the staffing needs of our courts at all levels. That study concluded what we have known for a long time, that we are seriously understaffed at all levels. That study showed a need for over 170 additional employees, many of them clerical, in all courts across the state. Our Budget Committee narrowed that request down to 52 for this year, and every court in the state had to settle for far less than their proven need. We ask for your help in meeting that need. Virtually every court in the state is touched by this issue.

We also are responding to an overwhelming demand for drug court expansion to additional counties throughout the state. This legislature has been our partner in fighting the plague of drug abuse. All areas of the state, north and south, cities and small pueblitos, should be able to share in the overwhelming success we have experienced with drug courts. We ask for your help, again, in doing so.

I also want to note that our AOC budget includes an appropriation for a new magistrate court facility in Las Cruces. Please pay close attention to this. The present facility is not just inadequate, it is a health and safety hazard. It is only through the grace of God that we have not had serious injury or loss of life in that place. I have given my word that the people of that community will not have to tolerate it any longer. Please help us make good on that promise.

The Unified Budget also touches on other needs of the judiciary, but time does not allow me to elaborate. We have made great progress in streamlining water law adjudications with the hiring of a special master and creating new case management

procedures and rules. Our base budget reflects an expanded need to meet the increased activity of the adjudication team.

And I cannot overlook the 1% for Children efforts of our Lt. Governor, spearheaded for the judiciary by Justice Maes. This is primarily for court services that affect New Mexico's children, mostly those children who are the victims of abuse and neglect.

Finally, as one of most pressing priorities, I want to emphasize how much we need additional judgeships throughout the state. We have identified close to 23 additional judgeships - magistrate, metropolitan, and district- that we sorely need. But we have narrowed our priorities in a disciplined manner. We have identified six judgeships that are absolutely critical: one metropolitan judgeship in Albuquerque; one district judge in Farmington/Gallup, one district judge each in Clovis and Albuquerque; one magistrate judge each in Farmington and Santa Fe. There are six other judges that are truly needed if you can help: a magistrate judge in Bernalillo and Gallup, another district judge in Farmington, another metropolitan judge in Albuquerque, and district judges in Sandoval and Bernalillo counties.

Sometimes those judicial districts really need and can justify statistically, not just one but two and even three new judgeships, our need is so great. But we have held the line at one per district, regardless of the need, and in some cases there has been hell to pay. I told you that after the Budget Committee got through with their work there was blood on the floor. The judgeship requests we present to you this session are the bottom floor, the bare minimum we need to survive.

Among other things, we need these additional judgeships for the mounting pressure on our courts from DWI cases. There are many reasons for the DWI problem which is far too complex to explore on this occasion. But much of the problem comes down to resources: money. Money for the courts, money for additional prosecutors and public defenders, and money for enough staff to process these cases. This legislature in its wisdom has ratcheted up the consequences of DWI, which means that DWI cases are now more complex, more contested, and more costly than ever before. We will do our part. We will address the problems that we can correct. But to really succeed, we need your help.

Before I close, I am going to take somewhat of a detour and address the needs of the Public Defender Department, which are critical. You may well ask why, since the Public Defender is administratively attached to the executive branch, not the judiciary. Here is why: There are three essential parts of the criminal justice system, the courts, the prosecutor, and the defender. I have been quoted in the newspaper as characterizing the criminal justice system as like a three-legged stool. I don't know how I thought up that metaphor, but it stuck, and so I will use it again. When one leg is weakened, you know what happens. You end up on the floor. Well, we are not on the floor yet, but we are not far off.

The fiscal needs of the Public Defender are so dire, their situation seems so hopeless, that many times prosecutions cannot go forward due to lack of sufficient personnel. We in the Supreme Court grant extensions in criminal prosecutions every week, by the dozen, most of the time because the Public Defender is so far behind. I ask for your help, not because we favor criminal

defendants over the prosecution, but because without your help, the system will collapse. When that happens, when delay becomes so pervasive, those who suffer the most are the victims of crime, twice victimized if you will, their hope of justice a mere illusion. Please do what you can, dig deep for the Public Defender, dig deep for the District Attorneys throughout the state. They need your help.

I am now at the end. That is the good news. But the really good news is that we are all in this thing together. We all want the same thing. We all want courts that are open and accessible to all. We all want courts that are fair, impartial, and accountable. We all want courts that work as hard at the job of judging, as people work every day to make a living. I have lived in countries where the opposite is true: courts that are corrupt, courts that are beholden to powerful interests, courts that are closed to the people, to the plebe. In New Mexico none of that is true. Our dream of what our courts can be, is within our grasp. With your help, we have a great future before us. Thank you.