State of the Judiciary
Chief Justice Noel E. Manoukian, Nevada Supreme Court
Address to the Legislature
1983

INTRODUCTIONS:

Salutes: Governor Bryan, Mr. President, Mr. Speaker, Senators, Assemblymen, Distinguished Guests, My Mother, Fellow Nevadans:

My fellow Justices and I appreciate this opportunity to report on the State of the Judiciary. It is well understood that our three great Branches are separate and independent, and that the powers of government are constitutionally divided among them. No branch is to reign supreme; we are equal partners. Although this system has proved effective for over 118 years in this state, every two years, for some inexplicable reason, the Legislative Branch seems just a little more equal than its other partners!

Synopsis:

This occasion, of course, has a rich heritage. In February of 1979, then Chief Justice John Mowbray reminded this august body that the unique responsibility of the Judicial Branch "is to insure (with impartiality and without intimidation) that our individual rights under the constitution are protected and that legislation remains within the confines of our State and Federal Constitutions."

As vital as this responsibility is to the continued success of our "checks-and-balances" system of government, the increasing case loads which the state judiciary is presently experiencing forces judges to expend more resources in purely administrative remedies designed to stem the tide of litigation. In short, judges no longer have the luxury of the time and the freshness of mind which are indispensable to reflective, unhurried decision making. For the most part, this report addresses the burgeoning case loads and the Judiciary's response to this challenge.

CASELOADS

Supreme Court:

The Supreme Court caseload has increased steadily. In 1982 alone, 746 cases were filed. Filings for the first two months of 1983 are nearly 30% higher than the same period for 1982. If this trend continues, the Supreme Court will be confronted with approximately 900 new appeals in 1983.

Many reasons exist for this appellate "litigation explosion." Presently, there are more than 2,200 attorneys in this state. With the addition of 8 new district court judgeships, the state boasts of 35 district judges. New legislation continues to renew incentives, both in the criminal and civil arenas, for lawsuits.

The 1981 tax package and the Drug Paraphernalia Act are two of the many examples of legislation which has engendered litigation. The growth of the administrative arm of the Executive Branch has expanded the Judiciary's duties of administrative review. As civil cases have become more complex, discovery and motion practice have escalated.

We are struggling, with limited success, to keep abreast of the dramatic increase in caseload. In 1982, of the 746 criminal and civil filings, the Court disposed of more than 700 cases. Unfortunately, at the end of the year there remained a backlog of 708 cases. This disposition rate will be difficult to maintain. Many of

the cases disposed of last year involved less substantial issues. Unhappily, this practice effectively deferred consideration of the more significant and difficult cases until 1983. I feel compelled to modify that trend at the probable expense of production statistics.

As indicated to your finance committees, we desperately need a minimum of two additional Central Staff attorneys and salary appropriations for our lawyers and other personnel which are commensurate with salaries of similar personnel in the two other Branches. We have an excellent staff. However, because of substantial disparities in salaries, the Supreme Court is not competitive and we often lose our seasoned personnel to the other Branches of Government or to the private sector.

If granted, this request will enable the Justices and their clerks to promptly address and dispose of the more substantive cases, including those involving the public interest. Because of the dim fiscal picture, I have not renewed the call for an Intermediate Court of Appeals. Although this proposal was defeated at the polls in November 1980, it would significantly reduce the caseload we face at the Supreme Court.

Nevertheless, we request a modest budgetary increase to enhance our professional staff and their components, even though most state agencies are accepting budget reductions. On the other hand, we have informed your Finance and Ways and Means Committees that some of the Court's personnel and other budget proposals should be reduced. Moreover, SB 206, now on its way to the Assembly, will generate more revenue and greatly defray any added budgetary expense by increasing filing fees and the cost for Advance Opinions. Several other revenue producing proposals have our full support. AB 339 imposes an additional filing fee in civil actions to support legal aid programs for the elderly. Part of the increased revenues from SB 235, which increases fees for filing civil actions, will go to the State General Fund. In addition, AB 44 requires judges and justices to add to a fine imposed in any criminal case, $10 for costs. These funds would be used primarily to defray operational and improvement costs at the lower court level, with the remainder for juvenile services and Peace Officers' Standards and Training programs.

If the number of filings continues at its present rate, the Supreme Court will be overwhelmed. Although we have adopted internal procedures to expedite case disposition and will continue to study alternatives to relieve the increasing case load, a solution is not in sight.

District Courts:

In our metropolitan judicial districts, civil cases are generally being tried within 4 to 9 months after the case is ready for trial; civil cases in most of the State's rural judicial districts are being heard within 3 to 6 months. Throughout the state, criminal cases receive a trial much more rapidly than civil litigation, attributable largely to the 60-day rule. I must say that this development is encouraging.

Part of the credit for this accomplishment belongs to the Legislature. The enactment of SB 129 in 1979 which repealed pre-trial review of district court denials of habeas corpus petitions eliminated an unnecessary and lengthy delay in criminal proceedings. The Judiciary also appreciates the Legislature's responsiveness in creating 8 new district court judgeships. Of the 35 district court judges, the Eighth District (Clark County) has 16; the Second District (Washoe County) has 9; the Sixth District (Pershing, Humboldt and Lander Counties) and the Ninth District (Douglas County) have 2; the remaining 5 Judicial Districts each have 1 apiece. Although these additional judgeships have expedited cases and increased dispositions at the district court level, they have also increased the number of appeals to the Supreme Court.

Innovations employed by several judicial districts have also contributed to the rate of disposition at the trial level. Several Judicial Districts utilize Special Masters in juvenile proceedings. In 1980, more than 20,000 decisions were made by Clark County Juvenile Masters. The Eighth Judicial District also

authorizes Masters to hear paternity, child support (URESA) and mental commitment proceedings. In 1982, Clark County URESA Masters collected approximately five million dollars, which went to the support of children. Additionally, Clark County has further accelerated the disposition of criminal cases. That district has implemented a track and team system, which reduces case backlog, assures availability of overflow judges and lessens continuances. This program has measurably reduced the time necessary to process a criminal case.

Juries - Clark County:

The right to a trial before one's peers is an indispensable constitutional right. Implementation of this right in our trial courts has proven to be costly and time consuming for the litigants, the prospective jurors and the court system. In 1980, however, this Legislature authorized the Eighth Judicial District to employ a Jury Commissioner and to utilize a computer to fully automate the jury selection service. Clark County's nationally renowned space age jury system has reduced the cost of a jury trial by $470. Jurors are no longer on duty for 60 days. Clark County employs the "one-day, one-trial" system whereby a juror must only appear on the date scheduled for the trials to commence that day. If not selected for one of these trials, the juror is permanently excused.

Juries - Washoe County:

Washoe County has benefitted from Clark County's experience. Like Clark County, Washoe County employs a "one-day, or one-trial" system. Prospective jurors in Washoe County need only pick up a telephone to determine whether or not they must report to the court. Additionally, prospective jurors no longer need to appear in court to determine whether they are qualified to serve. Instead, a questionnaire is mailed to each juror who then, if qualified, is encoded into a computer and randomly selected. Although no figures are presently available, savings similar to those experienced in Clark County are expected.

Justice and Municipal Courts:

Funded at the local level, these courts presently have sufficient personnel to administer Justice in a responsible manner. This is so, notwithstanding the 1979 Legislature, which increased the monetary jurisdiction of Justice Courts from $300 to $1,250.

The Nevada Judges Association, comprised of 75 Justices of the Peace and Municipal Court Judges, has fully participated in initial and continuing judicial education programs offered through the National Judicial College. They have also participated in biannual seminars, generally conducted by Nevada court and legal personnel. These programs have been organized and conducted through our Administrative Office of the Courts. Our educational programming has become the model for the National Judges Association.

The Municipal Courts in Las Vegas, comprised of four judges, with Chief Judge Seymore Brown presiding, have instituted a number of innovations which are cost-effective and much more convenient to those appearing before the court. Several instances include:

1. Video arraignments resulting in savings of thousands of dollars in the transportation of inmates.
2. Video taped instructions of defendant - traffic and other offenders' rights, immediately preceding their court appearances.
3. Twenty-four hour courts, with clerks available to accept payment of fines, posting of bail, etc.
4. The use of credit card payments for fines and bail bonds.

Clearly, the use of modern technology has helped the Municipal Courts in Las Vegas. There,

notwithstanding the case load, no backlog exists and trials occur within six weeks from the date of arrest.

EDUCATION

A well educated bench and bar, of course, will assist in expediting case disposition. The Judiciary has developed three areas of postgraduate education.

Mandatory Continuing Legal Education:

Effective February 1982, pursuant to a State Bar petition and with substantial support from the Nevada Trial Lawyers Association, the Supreme Court adopted mandatory continuing legal education requirements for our Bar and our Bench to insure that our court personnel were well briefed on the most current developments in the law. It is going smoothly. We are a national leader, being among a handful of states that have adopted mandatory continuing legal education. I am confident that these requirements will upgrade not only the quality of lawyers' work, but also the quality of judges' work.

Surely, lawyers and judges, like other professionals, should be required to maintain their skills, not only through routine practice, but through programs of continuing education. With the growth of our State Bar, the Judiciary has a responsibility to implement such measures to insure that Nevadans are represented and judged by the most qualified and best educated bar and bench in the nation. To this end, in December 1982 our Central Staff, in conjunction with the State Bar, with we Justices participating, conducted two most worthwhile courses on Nevada appellate practice in Las Vegas and Carson City. This provided education to many attorneys who are, for the most part, unfamiliar with appellate practice.

The National Judicial College:

Presently, there are several appropriation requests for the National Judicial College in Reno. Unfortunately, this institution can no longer rely on the approximate one-half million dollar annual contribution from the Max C. Fleischmann Foundation. The Foundation, which provided approximately 25% of the College's operating expenses, has, of course terminated. I have been informed that an appropriation of $250,000 annually for four years would grant the College sufficient "breathing space" to develop alternative Nevada funding sources. The College anticipates that at the end of the four years a substantial Nevada funding package would be assembled which would permit the College to remain permanently in Nevada without further legislative appropriation.

The College is the Mecca of fundamental and advanced judicial education for our State's and Nation's appellate, trial, administrative and other specialty judges. In the words of Griffin Bell, the College "has done more to improve the administration of Justice in our state courts than any other institute in the country."

In addition to its effectiveness in the training of and providing of continuing education to our judges, the College has a very favorable impact on our state's economy. Annually, 1,500 judges from across the country attend seminars at the College. Frequently, their families accompany them to Reno for programs that run from one to five weeks. During the first 18 years that the National Judicial College has been located in the state, it has had an economic impact of nearly $170 million dollars.

With the loss of Fleischmann funds, a real and constant threat exists that the College might be taken from our state. The College is too complementary to our State's image, too helpful to our economy and too convenient to our Judiciary to risk losing.

If the College moves to another state, it will be much more expensive and impractical to provide the same

quality education to our judges as they now receive. The cost of a single judicial error could be considerably more costly than the funding request now before your finance committees. I urge your support of any appropriation measures for the College.

Judicial Education Council:

Since 1977, the Judicial Education Council has provided the sole judicial forum in the state where all levels of the Nevada Judiciary can meet for constructive exchange. This forum has resulted in several significant developments:

1. A uniform traffic citation was developed and is in the process of being implemented.
2. Data collection on a statewide basis has been initiated through our Administrative Office of the Courts, with computer experimentation underway in the counties of Douglas and Lander.
3. With a view of further standardization, the Council is currently studying forms of development, including pattern civil and criminal jury instructions. Adoption of uniform instructions would help avoid error at the trial court level.
4. The Council is a clearinghouse for legislative matters which emanate from and concern the Judiciary. In this manner, the Council can assess the soundness of a proposal, and determine how it would affect the Judiciary. Added district judgeships, increases in monetary limits for Justice Courts and the making of Justice Courts courts of records, are essentially Council initiatives, with the aid of our Administrative Office of the Courts. In this session, although the Council has submitted several legislative proposals, one of the most significant is AB 44, which seeks to add a $10 administrative assessment fee in all criminal cases. If this passes, it will allow court improvements at the expense of those contributing to the caseloads.

THE SUPREME COURT

Supreme Court Philosophy:

I have noticed an unhealthy and unjustified development in our criminal justice system. Too many appeals are brought before the Supreme Court on the basis of "technicalities" previously unknown in American criminal law. In general, my fellow Justices agree with this observation. We are also in accord with the belief that the courts must restore a degree of deterrence. To accomplish this, we must communicate to the offenders and would-be offenders that the consequences of criminal conduct are swift and certain. Presently, the consequences are too drawn out through the trial and appellate process. Finality is imperative! Without it, deterrence is an illusion.

Of course, constitutional rights must be preserved; but we cannot forget that the basic function of a civilized society is protection of all of its members. In this vein, I applaud the proposal made by Governor Bryan in his biennial message to this Legislature that a good faith exception to the Exclusionary Rule be created by statute. Presently, the United States Supreme Court is considering just such an exception in Gates v. Illinois, which was argued on March 1st.

Modernization:

Like our brethren on the district courts, we Justices, with the Central Staff, have adopted new internal procedures with an eye on time and cost-effectiveness. Some examples are:

1. Screening of all appeals as soon as the trial transcript and all pertinent exhibits are filed to insure that all jurisdictional requirements have been met. This eliminates improper appeals at the earliest stage possible.

2. We are pre-screening cases for oral argument. This allows the Court's valuable oral argument time to be used only for the more substantive and complex cases.
3. Our Flexible Argument Calendar gives the litigants the opportunity to have their cases before the Court even though oral argument may not be helpful. This Flexible Calendar allows the Court to limit argument and conserve time. We are now setting more Flex cases. These cases are generally disposed of expeditiously.

I will return to the matter of Court innovations shortly.

Rules:

Along with the several innovations in internal procedure, the Supreme Court has enacted, pursuant to its rulemaking authority, several measures which will improve our State Judiciary.

1. Media in the Courtroom: Effective April 7, 1980, the Court, for an experimental period, inaugurated television and other media coverage of trial and appellate hearings, which has resulted in a greater media and public understanding of the judicial system.

On May 7, 1981, following its evaluation of the operation of our rules, the Nevada Advisory Commission on Cameras in the Courtroom filed its "Final Statistical Report."

In my view, the Commission's findings and recommendations are positive and indicate that cameras should remain in our courts.

Incidentally, on the subject of demystifying the judicial process, I would like to briefly reiterate my support for that part of AJR 16 that opens the proceedings of the Judicial Discipline Commission and the records of those proceedings to the public.

2. Clients' Interest-Bearing Trust Accounts:

On March 23, 1983, the Supreme Court authorized the State Bar of Nevada to establish a tax-exempt Bar foundation to utilize the accrued interest from clients' interest-bearing trust accounts to provide services and benefits to the public. Our order involves deposits of short-term or nominal client funds, moneys which previously did not generate interest.

The tax-exempt Bar foundation will provide legal aid to the poor, provide student loans and help improve the administration of Justice. Robert Sader, your Assembly Majority Whip, very ably chaired this Bar committee. Although this is presently a voluntary program, I find it gratifying to note that most attorneys in this state do not subscribe to the old saying that "Where there is a fee, there is a remedy."

Impending federal government funding reductions of legal services organizations has resulted in a need for alternative funding for legal aid to the economically disadvantaged. Bar foundation grants of substantial sums would be an important public service to the community to fill the void. Support for legal aid and similar programs from this particular source will be an excellent response from the legal community to the current call for more volunteerism in replacing the already eroded government funding for legal representation of Society's needy.

3. Law Library:

In the past biennium, the Law Library has improved its services through access to two legal research data bases and through completion of several long-term projects.

The book collection has been catalogued and arranged according to national standards, making access easier. Approximately half the titles have been added to a statewide data base, which will allow other libraries easy access to the collection for borrowing. Funding provided by the 1981 legislative session was used to replace back files of the 50 states' session laws with microfiche, providing the Library with much needed shelf space.

Nevertheless, the Library continues to suffer from lack of space, which can be alleviated only so far by the conversion of printed books to microfilm. The book budget, though adequate, is being eroded by undiminished inflation in law book prices. AB 312, which increases financial support for county law libraries, should augment materials which are available statewide.

JUDICIAL RETIREMENTS AND WIDOW BENEFITS

We request that you amend the judicial retirement law by providing for disability situations, consistent with the disability retirement provisions contained in the Public Employees' Retirement System.

We equally support any early retirement proposals which would place members of our Judiciary on a parity with other state employees. See NRS 286.510(4).

Naturally, we also request that any legislation that would place surviving spouses of judicial officers in a position of receiving benefits equivalent to those benefits provided to the spouse of a member of the State Employees' Retirement System be approved.

All of the foregoing would serve to improve the quality of the Judiciary, as well as benefit the judges, their loved ones and the public.

WHERE WE ARE HEADED IN THE 1980's

We must continue to seek appropriate means of becoming a more modern, productive Judiciary. We have made very good progress thus far, but there is more that can be done to better manage the resources that we have. I have set several goals over the next two years:

First, we must reduce the delays, especially in civil cases. As an attorney and a judge, I have observed numerous cases involving intolerable delays in dispositions - delays that held the parties in suspense from one to five years. The Supreme Court is not without fault and on occasion, some district courts have been very tardy in disposing of cases. The litigants are entitled to know where they stand without waiting inordinate periods of time for a resolution. Most judges, legislators, attorneys, parties and the public have reached a breaking point regarding case delay.

I shall submit a proposed rule to my fellow Justices that would require that following submission of a case, the responsible judge or justice must propose or file an opinion or decision within 90 to 120 days in the Supreme Court and 150 to 180 days in the district courts. Sanctions for non-compliance will also be proposed.

On March 4, 1983, our Judicial Education Council and its Legislative Committee unanimously endorsed such a rule. Admittedly, this proposal does not address the problem of unsubmitted cases which have not been set for trial or heard. The answer to that dilemma is more judges, more staff and innovations, including non-judicial routes, such as arbitration and bills like SB 192 (employment of referees in divorce cases) and SB 193 (summary proceedings in uncontested divorces).

Secondly, the Nevada Rules of Appellate Procedure require that appellants' counsel designate the Record

on Appeal. On the suggestion of District Judge Mike Griffin, we should consider adopting a Supreme Court Rule which will require that an attorney must demonstrate the materiality of the record to the issues on appeal. Too often we receive materials that have little or no bearing on the appeal. In the case of convicted indigent defendants, the record is supplied at public expense. By limiting the size of the transcript, we would conserve public funds, avoid unnecessary extensions presently sought for transcript preparation, save review time, thereby reducing case delay.

Third, we are closely reviewing requests made by both governmental, as well as private attorneys, for extensions of time for briefing cases on appeal. The Bar has already responded favorably. For example, the Washoe County District Attorney's office has added legal personnel to its Appellate Division to reduce the size of its backlog.

Fourth, although we like to think of our judicial system as providing an opportunity for every litigant to have his day in court before a judicial officer, the number and costs of hearings and trials has made this impractical. Therefore, I am proposing legislation that would require mandatory, non-binding arbitration for any civil action for monetary damages of less than $15,000. The measure relates to court congestion and the length of disposition of civil cases and would relieve the litigation burden experienced by judicial districts with more than five or more judges. Mandatory arbitration would not preclude a subsequent court trial; rather it would be a condition precedent to a trial. It is generally cheaper and speedier than a trial, is less devastating to the parties and will produce a satisfactory result.

Similar legislation and court rules both at the federal and state levels, have been most successful in minimizing court filings. Statistics from other jurisdictions indicate that a very low percentage of the arbitrated cases eventually go to trial. If it succeeds, this proposal would eliminate a significant portion of the civil claims for monetary damages under $15,000. Therefore, I commend it to you as a worthwhile endeavor.

Fifth, we have recently revised the rules for our Justice Courts. One revision limits discovery. This is a small step toward costs reduction at that level. The costs of discovery in a routine district court civil proceeding can, however, be overwhelming. We must experiment with procedures to streamline motions and discovery to reduce costs and delay.

Incidentally, I would like to indicate my support for SB 211, which would reduce the size of criminal trial juries and limit peremptory challenges in Justice Courts. This measure would not affect the fairness of a trial and would be both cost and time efficient.

Sixth, the Supreme Court, which comprises a work force of over 40 persons, is presently working on a set of personnel rules, patterned largely after the State Personnel Rules. The Legislature, in particular the finance committees, have for some time been anxious to have the Judicial Branch be more responsive and accountable regarding the adoption of such rules. I favor such adoption! The adoption of a meaningful set of rules will avoid problems that the Court has experienced in the past. I am confident that the Court, as presently constituted, will be receptive to adopting such rules.

Seventh, I have instructed the Court and staff to give priority to the following types of cases: child custody, cases involving suspension or revocation of professional licenses, grants or denials of restraining orders, death penalty cases, all juvenile proceedings, venue questions, pre-trial suppression appeals and others in which rights and liabilities are so dependent upon a speedy resolution. By expediting these types of cases, the public will be better protected and the parties can better adjust to the results.

Although none of the foregoing offer a panacea for our caseload problems, they would be of great assistance.

Finally, as Chairman of the Nevada Judicial Education Council, I will appoint a committee to study jury management. We need comprehensive statewide standards for juries to reduce expenses and utilize more efficiently the jurors' time.

CONCLUSION

In summary, the Nevada Judiciary is straining under an ever increasing caseload. This "litigation explosion" has slowed the rate of disposition and, in some cases, adversely affected the quality of decisions. Our judicial districts and the Supreme Court have partially met this challenge through innovations such as the jury system and the revised Flexible Argument Calendar. The proposed mandatory arbitration act shows great promise as an efficient "alternative dispute resolution mechanism." Although more improvements have been proposed, the Judicial Branch simply needs more personnel and competitive salary ranges for those personnel.

The loss of the National Judicial College would strike a tremendous blow to this state's stature as a center for judicial education. Coincidentally, the state would suffer both in the loss of tourism and in the loss of a readily available high quality resource for the education of our own judiciary.

In closing, we must not lose sight of the objective of making Justice more speedy, more effective and less costly for all.