State of the Judiciary
Chief Justice Robert E. Rose, Nevada Supreme Court
Message to the Legislature
February 1999

Senator Raggio, Speaker Dini, Senators, Assemblymen and Assemblywomen, my old friend Lawrence Jacobsen, our special guests, ladies and gentlemen.

Tonight, it is my pleasure to report on the state of the Judiciary in the State of Nevada, a branch of the government that receives less than one percent of the state's General Fund budget. When we are important, we are very, very important. I am happy to say that the picture I am to paint is positive, from top to bottom. That is not to say that the courts of Nevada do not have their problems, especially with the problems presented by the unprecedented population growth we have experienced. But it is not the problems that you have in life, but rather how you deal with those problems that really counts; and your Nevada courts are handling the problems very well.

Before I proceed further, I would like to introduce to all of you my colleagues who have come today to share with me the state of the Judiciary. First is Justice Cliff Young and his wife Jane, second is Justice Bill Maupin, third is Justice Miriam Shearing, next Justice Deborah Agosti, then Justice Myron Leavitt, and finally Justice Nancy Becker and my wife Joline.

Myron and I were each Lieutenant Governor and have served in state service a number of times for over 20 years. We finally arrived today. I'm glad I have an opportunity to give the State of the Judiciary; I hope Myron gets to give this address in the coming years of the Supreme Court.

I would also like to remind you of the reception we are holding in your honor immediately following this special session.

The mission of the judiciary is to provide the public with a system for dispute resolution – a system that decides each dispute with the appropriate result in a fair, user friendly process, and in a reasonable amount of time. However, our judicial system has some features that were in it from the beginning that now present some challenges.

The judicial system in America was developed from the English model that was adversarial in nature; dependent on attorneys and judges to resolve cases; and placed great reliance on judgment by one's peers, the use of juries – a wonderful, but cumbersome process. It probably is the best system of justice in the world, but also one of the most time-consuming and expensive ever devised.

As we review the state of the Judiciary, we see our courts attempting to make the system more user-friendly, less expensive to the parties and taxpayers, and more expeditious. The two tools our courts are using are mediation and arbitration, to resolve controversies, and technology in the operation of the courts.

Mediation and, to a lesser degree, arbitration have many benefits over confrontational litigation. First, it is the parties exploring a settlement with a neutral third party – a more friendly process that often achieves good results. Second, the cost is almost always much less than litigation with

attorneys. Third, the time taken to mediate is much less than having your case heard on a busy court calendar. Fourth, since both parties must agree to the settlement, there is usually much less anger or disappointment than when a court declares a winner and a loser.

We have seen mediation used effectively as an adjunct settlement process to our justice and municipal courts which are the courts that handle all traffic and misdemeanor violations and small claims up to $7500. The mediation process assisting these courts is called the Neighborhood Justice Center in Clark County. The initial funding was provided by the 1991 Legislature. The center provides community mediation in all its forms, and people who seem destined for small claims court are informed of this process. Lower court judges also refer certain cases to the center. This program is a welcome addition to the dispute resolution process, helping relieve the caseload in our lower courts, and hopefully it will spread to a process throughout the State of Nevada.

In the family court division of district court, the services of social workers and family counselors have long been used to evaluate children and their parents and make recommendations to the family court about child custody and visitation. The family courts in Washoe and Clark counties have now instituted a mandatory mediation program that resolves child custody cases in an attempt to resolve the disputes through mediation. This was mandated by your legislation in 1997 and implemented by court rules. Since beginning in October 1997, 1435 families have been referred to the service in Clark County and 1133, or 70 percent, have resulted in mediated custody agreements. This program is working.

In many family law disputes, one or both of the adult parties are not represented by an attorney. In Clark County, 44 percent of the parties who appear in family court do not have legal representation. This means that one or both parties are disadvantaged because they do not have assistance from an attorney or know the law or the court procedures to follow. By having a process that informs people who cannot afford an attorney of their legal rights and procedures, the parties and the family court are better served. This process exists in the Washoe County family court. On average, this program assists 380 pro per litigants each month.

The same type of program is planned for family court in Clark County and will be called the Self Help Center. Part of the staffing will be provided by students at the Nevada Boyd School of Law. This is a good example of the legal profession's effort to help those who cannot afford an attorney and to make the court system as user-friendly as possible. It is interesting to note that this project has had the full support of the state bar association, the family court, and legal aid organizations. This is in stark contrast to some states where this proposal has been vigorously opposed by the legal profession on the grounds that it could amount to the illegal practice of law or be in direct competition with attorneys.

At the district court, there is a mandatory arbitration process that you have set forth in law and we have mandated by rule for all civil disputes having a reasonable settlement value of under $40,000. This process has the parties appear before an experienced attorney and present the facts and claimed damages in a hearing. The arbitrator makes his decision and either party can request a jury trial before a district court judge, but face penalties if not bettering their position. The attorney-arbitrator is paid on an hourly basis up to $500 per case. In Clark County, about 65 percent of the civil, non-family-law, cases are diverted to this program and only 15 to 20 percent

go on to a full district court trial. This means that 50 percent of the civil cases before the general jurisdiction courts in Clark County are settled by this program. Similar results are reported from Washoe County. This court-annexed arbitration program is a major settlement tool and one reason why neither Clark nor Washoe counties will be asking for additional general jurisdiction district court judges this session. There is no doubt that mediation and arbitration has helped the Nevada court system resolve controversies and is now an integral part of our justice court system.

The second trend we see in the Nevada courts is the use of court technology in processing cases and producing reliable court records as a by-product. This is the coupling of technology with modern court management principles. It is usually done by developing a system of computers and software that tracks the process of each case through the court system. These systems are usually called "case management systems," and when designed and installed, help the court to more effectively process its caseload and keep reliable records. Most of the larger court systems have their own case management system. Boulder City Municipal Court just installed such a system, and the family court in Clark County is presently designing its own system and hopes it will be operative next year. We are taking every step to ensure that the technology installed is compatible throughout the state.

I reported to the Senate Finance and Assembly Ways and Means Committees earlier last month, the Nevada Supreme Court finally signed off on its own fully operational case management system which we began eight years ago. We have entered the twentieth century in regards to technology just in time. I would like to thank our Court Clerk, Janette Bloom, for spearheading this project, and sticking with it for eight long years. This demonstrates that the courts at all levels are committed to use technology and court management practices in their operation, and that their funding agencies see the wisdom in such use of technology. But the fact that each court keeps its own records with the use of technology does not mean we have a uniform statewide system for keeping judicial records. We have had a hodgepodge of judicial record keeping. Some courts keep them, some do not. Some courts keep statistics one way, others another way. Some send their statistics to the Administrative Office of the Courts, some do not. In 1995, your legislative auditors, in dismay, lamented in an audit report concerning the Court that a system for collecting uniform, reliable court records was nonexistent and would probably not be achieved. It stated as follows:

Because the AOC has not properly planned the development and implementation of the uniform system for judicial records, little uniformity exists, accurate and reliable information cannot be easily assembled, and there is no assurance that a uniform system will ever be achieved.

However, the situation was not quite as bleak as your auditors might have thought, and the push for reliable court records now amounts to a quiet revolution in the Nevada court system. In 1993, the Urban Court Workload Assessment Commission was formed to study the operation of the courts in Clark and Washoe counties. Since I had pushed this idea when I was chief justice, I served as chairman, and the commission took on the shorthand name of the "Rose Commission." One of the major concerns of the commission was that reliable court records were not kept on a statewide basis. The commission was made up of mostly lay people from throughout the state and was a group of 50. There was great input throughout the state and mostly from those who were not lawyers. The commission report recommended that the Nevada Supreme Court create

the Division of Planning and Analysis to develop a system for collecting reliable court statistics and use modern court administration practices and technology to plan for the future. You responded to our request by creating the division with three positions.

Some people might ask why the emphasis on reliable court statistics. To them, I give three reasons. Reliable court records are an excellent management tool. Can you imagine a grocery store or a restaurant not keeping track of its inventory or not knowing what was sold on any given day? The courts must know the number and type of pending cases, the degree of difficulty presented, the need for expeditious handling and the probable length of time to disposition. All those facts help a judge or court administrator handle the case load in the most efficient way. Reliable court records give a judge or court system the ability to evaluate its performance from year to year and compare it with other states and national standards. It is an excellent tool for self-evaluation. It is a tool for public accountability by the courts. Reliable court statistics show what the courts have been doing—the work that has been accomplished with the taxpayers' money. I know this legislative body looks to performance indicators to evaluate the operation of an entity, and you have many times asked us for certain statistics about our operation or that of other courts. Some we could provide you—a lot we could not. We hope to have all that information in the future.

When Karen Kavanau came aboard last year, the Court and Karen made the establishment of a Uniform System of Judicial Records a priority for the Administrative Office of the Courts. To establish such a statewide system, you have to do four things: determine the technology and know-how that each of the 91 Nevada court systems presently have; establish a uniform method for keeping court records and statistics. An example is the counting of each case; provide all courts with the minimum technology and training needed to keep reliable records; and collect those records from throughout the state and publish them each year.

The first step has been accomplished. The AOC has evaluated the equipment and technical competence of the staff of every court in Nevada. The second step has almost been accomplished. Meetings have been held throughout the state with judges, court administrators, and court clerks, and general agreement has been reached on what statistics should be kept and how they should be counted. The final draft has been prepared and sent to all the courts in the state for comment. It is expected that the Nevada Supreme Court will approve this agreement later this year.

The third phase, providing the necessary technology and training to our courts, will be the longest and most difficult part of the process. This is why we have asked for two additional technical positions for the Planning and Analysis Division. Many courts have adequate technology as is evidenced by the courts that already have case management systems. The additional necessary technology will be funded by local entities and the use of administrative assessment fees. Two hundred fifty thousand dollars of these AA (administrative assessment) fees that go to the Supreme Court every year are earmarked for this technology and training, but it will not be nearly enough money to do the project statewide in five years without substantial, additional local funding. This is why we guard this account jealously and resist the suggestion to spend this money for other purposes.

The fourth phase is the collection and publication of these statistics. Within five years, we should have a complete set of statistics on the operation of all court systems in the State of Nevada; and by doing this, we will go from the state having the worst statewide court statistics to one of the very best—thanks to all the courts' good efforts and your help! This is real progress and very exciting. As an aside, you know you are in your middle years when you think judicial records are really exciting.

By emphasizing reliable court records collected in a uniform manner and management by the numbers, I do not mean to say that they are the end all and be all of the justice system. That still takes a competent judge having sufficient time to hear and consider the parties' claims. But good records help the judge get that time and use it most effectively so that he or she can reach the appropriate result in a reasonable amount of time. Good court management and good records enhance justice rather than detract from it.

At the Nevada Supreme Court, the obvious change is from five to seven justices and the fact that we are breaking into panels to decide the vast majority of cases. We had our first full court hearings two weeks ago, and some of you stopped in to see this historic event. The seven-justice Court will hear only the major cases and do that two or three times a year. The panels will rotate every six months on a random basis, and the two panels have now swung into full action and will continue for six months. This will give us the first indication of the number of cases a panel can dispose of in a six-month period. Although you will probably be out of session in July when the first panels end, we will send each of you the results of their operation.

But even before the Court expansion, we took steps to keep up with our ever increasing caseload. We began two programs with your help during the last few years that have been very successful. The first is the fast track criminal case program, which attempts to resolve most of our criminal cases within six months of appeal to our Court. The rules require an abbreviated record and 10-page briefs by the defendant and the state. The four-person fast track team analyzes the case and proposes a speedy disposition for about 80 percent of the cases. The remaining 20 percent of the cases go on to a full briefing. This program makes a quick disposition of most criminal cases and prevents them from becoming part of the backlog. The second program is the civil settlement program which requires all civil cases, except the termination of parental rights, to go to an experienced attorney who acts as a settlement judge. Shortly after the appeal of a civil case, the parties are required to write a five-page settlement statement and meet with the settlement judge in an attempt to settle the case. When Justice Cliff Young was encouraging us to come to you and ask to implement this program, we all thought that if we could settle 25 to 30 percent of our civil cases, it would be worthwhile. However, we are settling anywhere from 55 to 60 percent of our cases. Last year, 372 were settled. The program is a roaring success and is helping us stay even with the caseload. In fact, last year was the first time in 10 years that we have decided more cases than were filed. Both programs are excellent and will continue under the newly expanded Court, and the cases will be processed by the panels when settled.

What does the future hold? In a few weeks, the Buckley Report on family courts and its recommendations will be enacted into law. I applaud Barbara Buckley and her committee and this legislature in their willingness to address a serious problem and for being willing to go where judicial angels feared to tread. We at the Court will review the legislation and issue the necessary orders and rules to effectuate the purpose of the report and legislation. This should

prevent any problem concerning the issue of separation of powers that might arise. One of the recommendations of the Buckley Report and the proposed legislation is that a strong chief judge be created in family court, and that she or he have sufficient authority to see that all judges are pulling their load and to coordinate the operation of family court. The problem arises in multi-judge districts when some judges leave early, take excessive vacation time, do not take overflow trials from other departments or when judges do not cooperate to run the court system in the most effective manner. It is simply not fair to most of the hard-working judges when one or two judges are not putting in the same work hours or effort as the others. Without a chief judge, the situation goes on without a remedy.

The Buckley Report is not the first time this concept has surfaced. In the Rose Commission Report of 1994, one major section was entitled, "Who's In Charge," and the commission went on to conclude that in the Washoe and Clark County district courts, no one was. The recommendation was that a strong chief judge be selected for a four-year period with sufficient authority to ensure that all judges were working full time and the court's rules and policies for processing cases were enforced.

How can this be accomplished? In two ways: a majority of the judges in a district can amend their court rules to provide for a strong chief judge and ask the Supreme Court to approve it or the Supreme Court can order that a chief judge be installed in all multi-judge districts of three or more. We have never exercised this authority before, but I have little doubt that the *Nevada Constitution* gave the Court that authority when it provided in Article 6, Section 19, that "The chief justice is the administrative head of the court system." You, the legislature, and the legislative auditors have had no doubt that the Supreme Court is the administrative head of the Nevada court system. Just read the laws and audit reports that require us to discharge that role. A clear majority of the Court believes that we are the administrative head of the court system, and we have the authority to issue appropriate and necessary orders to the lower court system. What is stopping us from acting? The answer is nothing, except judicial deference to the district courts. But the failure to use properly vested authority is just as bad, and sometimes worse, than the misuse of power.

Therefore, I predict that a strong chief judge system will be enacted, where needed throughout the state one way or the other. This will ensure that the full measure of judicial firepower is being used to serve the people, that the taxpayers are getting the most bang for their buck and the most efficient methods are used by all judges to process the cases.

Too often, a death penalty has been unnecessarily delayed by a glitch in the system or mix up in court calendaring. We have a vested interest to see that all cases move expeditiously through the court system, and that certainly includes major cases like death penalty cases. To do that, the Nevada Supreme Court has begun to track all death penalty cases from the time the death sentence is pronounced until the case leaves the state court system. Our new rules provide that the district court clerk notify us when a death penalty verdict is returned. Once we receive this notice, we will track the case through the state court system to conclusion. We believe that this will prevent glitches or unnecessary delays in these important cases.

Legal aid and attorney pro bono programs – these programs will continue to assist those in our society who need legal services but cannot afford them. In 1998, 9374 cases were closed

statewide by legal aid, and pro bono attorneys closed 13,425 cases, for a combined total of 22,799. As impressive as this legal effort is, the Nevada Legal Services estimates that only 20 percent of the citizens who could not afford help but had requested it, got it. This need for legal services will continue to go unmet in the future, and communities and the legal profession must redouble their efforts to try to ensure that all Nevadans have the necessary legal services and access to our court system.

Drug court was begun in Clark County in 1992 and established in Reno a few years later. Their sole mission is to break the cycle of crime, violence, and child abuse caused by drug addiction. I will share some statistics on the drug court in Clark County because it is the longest running. The drug court celebrated its 1000th graduate in December 1998. To date, the recidivism rate for all graduates is 14 percent. That is amazing and means that 86 percent of the graduates have gone on to live law-abiding, drug-free lives. Thirty-one drug-free babies were born to participants of the program. If a child is born to a drug-addicted mother, care for the infant usually runs around $81,000 a year for three years. By any measure, the drug courts in Las Vegas and Reno are a great success and must continue.

Last legislative session, we asked you to pass the first leg of the joint resolution to establish an intermediate appellate court in Nevada. This was done in conjunction with expanding our court to seven members. Our concern has been that our caseload has expanded at an alarming rate and may overwhelm us. Ten years ago, the number of appeals to this Court was just under 1000; today our caseload is just under 2000. That is a 100 percent increase in 10 years. In 1996, the cases appealed to our court jumped more than 650. If this trend continues, this means that our case load will double in 10 years to 4000. At that time, I doubt that the present court of seven justices could possibly handle that workload.

However, since we have embarked on the seven-justice court and are sitting in panels to decide most of the cases, we should give this system a chance to operate before submitting the question to the voters. Accordingly, our court has requested that the joint resolution passed in 1997 be jettisoned and the amendment process for an intermediate appellate court begin anew. This will mean that there will be two, full years of panel operation before you consider the second leg of the amendment process in 2001. If we need it, we can proceed. If not, we can proceed no further. But I can tell you, if these six judicial sharpshooters cannot gun down the backlog and the incoming cases, we will know that there is no alternative than to give us more firepower. I think this is a prudent, cost-conscious way for us to proceed, and I hope you will agree.

As you see the Nevada Supreme Court before you, it is an enthusiastic group that is working well together both in panels and as a full court. I would be amazed if you see any public bickering or criticism similar to what unfortunately happened in the past. We at the Court have struggled for years in a “winter of discontent.” But this grim period has given way to today—a spring of hope and promise—and I truly believe that this optimistic time will give way to a summer of fulfillment and achievement. It may be difficult for some to believe that solid accomplishment can be had on the heels of such dissension on the Supreme Court, but in years to come, I believe people will come, to understand that, during this period, the Court enacted innovative programs to meet the booming case load, expanded the Court to decide more cases and took the necessary steps to provide uniform, reliable records showing the operation of every court in the State of

Nevada. In the end, when people look back at the judiciary during this period of time, they will say that these were very good years for the Nevada Supreme Court.