

State of the Judiciary
Chief Justice Deborah A. Agosti, Nevada Supreme Court
Message to the Legislature
February 26, 2003

Lieutenant Governor, Mr. Speaker, Mr. Speaker pro Tempore, Attorney General Sandoval, Controller Augustine, Treasurer Krolicki, Chief Secretary of State Parker, my colleagues at the Supreme Court of Nevada, colleagues, the judges present here tonight from all levels of the courts of Nevada, invited guests and friends, good afternoon. My name is Deborah Agosti. I am here today on behalf of the Supreme Court of Nevada. Just a few short weeks ago I assumed the duties of Chief Justice and so it is my privilege and my responsibility to speak to you today about the state of Nevada's Judiciary. I particularly want to thank you for permitting me this opportunity to inform you of some of the major substantive developments within the Judicial Branch of government in Nevada.

I would like to introduce my colleagues who are here with me today: Justice Robert Rose, Justice Bill Maupin, Justice Myron E. Leavitt, Justice Nancy Becker, and our most recently invested colleague, Justice Mark Gibbons. Also present is the President of the Nevada Judges Association (NJA), Judge Dan Ward, Justice of the Peace in New River Township, Fallon. The NJA's membership includes Nevada's justices of the peace and municipal court judges and he is here tonight representing that organization. Judge Jim Hardesty, vice-president of the Nevada District Judges Association, is standing in for President Dan Papez who lives in Ely and was unable to be here. There are many judges here today from all levels of the courts in Nevada. They are eager to meet with you, the legislators, at the reception following my remarks, to tell you about challenges for them today and the solutions they are attempting. Would the judges please stand.

I've invited a number of guests to be here because of their close association with the courts of Nevada and their contributions to the strength of the judiciary. I would like to introduce the President of the State Bar of Nevada, Gloria Sturman, and Alan Kimbrough, the Executive Director of the State Bar. The bench and the bar have enjoyed an excellent working relationship as we've addressed matters of mutual concern. I would like to introduce the Dean of the Boyd School of Law at UNLV, Richard Morgan. Please join me in congratulating Dean Morgan for accomplishing so much at Boyd Law School in such record-breaking time. We learned just several days ago that the school has been awarded full accreditation by the American Bar Association. That is a credit not only to Dean Morgan, his students, and his faculty, but also to you, the legislature, and the many interested and involved individuals, across the state, which made the school possible. I also want to introduce to you the President of the National Judicial College, William Dressel. The college, which is situated in Reno, as you know, plays a fundamental role in providing education to all levels of the state court trial judges in the country. The Nevada judiciary has been particularly blessed by its close association with the college and has benefited from the many educational opportunities it presents. This is a special year for the National Judicial College, which is celebrating 40 years of service to judges and to justice. Next, I would like to introduce to you two people who haven't directly contributed anything, not one tin nickel, to the judicial system in Nevada. But they make my day every day. These are two of the finest young men I've ever met, my sons, Anthony and Austen Walsh.

I also wish to acknowledge the presence of our state court administrator, Ron Titus, and our clerk of the Supreme Court, Janette Bloom. Mr. Titus and Ms. Bloom are joined tonight by several members of their very capable staff. Rather than introduce all the court's personnel to you now, I would instead remind you of the Supreme Court's invitation for all of you to join us after the conclusion of my remarks for a reception at the Supreme Court building next door. It's a short walk, neighbors! I hope you will have the opportunity there to visit informally with me, the justices, the many judges from across the state that are here this evening, the staff of the court, and the staff of the Administrative Office of the Courts. Finally, I want to acknowledge and thank my judicial assistant, Jeannette Miller, for all her hard work in connection with this address.

I want to just very briefly tell you a little bit about myself because I realize that for many of you, I am a new face. I have just begun my twenty-first year as a judge, and people have long since stopped calling me "that young lady on the bench." I served for 2 years as a justice of the peace in Reno Township and for 14 years as a judge in the Second Judicial Court in Washoe County. I am in my fifth year of service as a member of the Supreme Court.

We expect much when we speak of justice and the judicial system. We want fairness, equal treatment under the law for all, accessibility regardless of wealth, opportunity to be heard, swift determinations, harmony, and happy endings. Yet when we speak of justice and the judicial system in America, we hear the words overcrowded, unresponsive, expensive, slow, cumbersome, and inaccessible. Albert Einstein described a fundamental law of Physics that applies to modern institutions as well. He said,

"Nothing happens until something moves." I am proud to tell you that the Nevada courts are on the move.

In preparation for my report to you today concerning the state of the judiciary, I corresponded with judges at every level: the District Court, the Justices' Court, the Municipal Court, and I asked the representatives of these courts to describe for me, so I could describe for you, some of the more substantial developments that have taken place in the 2 years that have passed since the last time this address was delivered. The responses I received were so overwhelming that it is literally not possible for me to tell you about all or even a good portion of the programs, experiments, services, projects, and innovations taking place in the courts across Nevada. I have assembled a binder, which contains the many letters I received from the courts. The binder will be at the reception and I invite you to peruse it there. This binder documents a phenomenon that has taken place in the judiciary in Nevada. That is the very real change that have taken place in the way judges think about justice and in the way they view their mission to the communities they serve. That change in thinking is now reflected in the way the courts of this state do business.

From my vantage point, observing the courts on a daily basis from within for over 20 years, I believe the changes in approach and performance by the courts represents a very real and substantive shift in the way we dispense justice in this state. We are witnessing the coming of age within the courts of a new approach which is an active management style with respect to cases; a proactive address of societal problems like poverty, drug and alcohol abuse, domestic violence; a problem-solving philosophy, and community oriented in nature. No longer is the

judicial role limited to dispute resolution through the traditional adversarial mechanism of trial. Our judges no longer perceive their function as solely and slowly to decide the cases that come to them. The courts are now addressing broader societal problems in a systematic way and attempting to improve the delivery of justice and to do their part in partnership with other entities to improve their communities and the delivery of justice. I am so proud to be here today representing a vital, proactive, socially responsive, problem-solving judiciary, and conscientious men and women who have dedicated themselves and given of themselves for the cause of the improvement of the quality of justice in Nevada. We observe this phenomenon of physics and institutions as described by Einstein, this movement that creates and foments change, in specific, identifiable areas of law. And again, I will describe some of the highlights, but there is no way I can talk about all the work of all the courts in the time I have.

First, in the area of families and children: this year we celebrate the tenth anniversary of creation of the family court as a specialty area within the district court. It isn't just about hearing divorce cases anymore. Both the Second Judicial District, Washoe County, and the Eighth Judicial District, Clark County, offer self-help centers where self-represented individuals, primarily indigent persons, can obtain information and reliable forms to assist them in preparing themselves for court in such matters as divorce, custody, visitation, support and domestic violence cases.

If you can, I encourage you to visit Clark County's self-help center. It is a beehive of constant activity, and it hums.

Washoe County has acquired some grant funds and used the funds to hire for its self-help center a part-time Spanish speaking paralegal to assist Spanish-speaking victims of domestic violence. Also, under the domain of the family court jurisdiction, are guardianship proceedings. These can be very difficult cases, where the court wants to protect the ward's person and property, but may have no way to independently assess whether a guardian's actions are truly in the ward's best interests. Washoe County, the Special Advocates for Elders this past year, began (SAFE) program, which is the first of its kind in the nation. The SAFE program functions much like the Court Appointed Special Advocates (CASA) program does in the area of children. SAFE trains and assigns volunteers to assist elderly wards in guardianship cases and to provide the court with valuable information to help guide the court to humane and appropriate decisions affecting the lives of our elderly who as the result of infirmity can no longer make these decisions for themselves.

Both of our state's large urban courts have instituted specialty Drug Courts within the juvenile and family court systems. In Clark County, the ribbon was cut in 2002, opening Donna's House, a supervised visitation center and a supervised safe exchange point for parents in conflict. Once again, grant money was sought out to bring about this badly needed pilot program. Donna's House, by the way, was named for a woman who had worked in the clerk's office in Clark County. Her daughter witnessed Donna's violent death, which was the result of domestic violence. We hope Donna's house will prevent repetition elsewhere in Clark County of that tragedy. Mediation is encouraged and supported in the family courts, and indeed in every District Court that hears family matters in Nevada. Clark County's Family Mediation Center provided mediation services to well over 3,000 families in the last 2 years. In 2002, 88 percent of the families there successfully mediated their child custody issues. The savings are not just in the

time the courts might have spent hearing otherwise contested matters, but in the lives of the children whose parents are learning to resolve their differences in positive, meaningful, and nonadversarial ways.

In the Sixth Judicial District, which encompasses Humboldt, Lander and Pershing Counties, and in the Seventh Judicial District, which encompasses White Pine, Eureka and Lincoln Counties, the courts have focused attention on the prevention of juvenile delinquency. In the Seventh, the Juvenile Diversion Program was launched in 2002 in partnership with Ely State Prison. The program teaches children about choices through a tightly controlled visitation experience at the state prison. And unlike the controversial and ultimately unsuccessful Scared Straight programs of the past, this program is positive in nature, emphasizing responsible decision making.

In the Sixth Judicial District, the court has partnered in Lovelock and Winnemucca with the boards of county commissioners there and the school districts there to actually purchase or build and staff alternative education schools for at-risk youths. And negotiations are underway to do the same in Battle Mountain. Once again, the Sixth Judicial District has searched out grant money to bring these changes to these rural communities. In the Fourth Judicial District, which encompasses Elko County, the teen court has been operating very successfully for several years under that court's direction. Elko County's court has also instituted the Divided Family Workshop, at a modest cost to the participants, which again stresses to parents who are in dispute over custody and visitation issues the importance of working together, despite their personal differences. A mental health professional facilitates the workshop and helps the participants to learn communication skills and cooperation strategies.

In the area of criminal law, the courts have forged ahead with highly successful specialty therapeutic court programs. I would like to introduce Judges Archie Blake from the Third Judicial District, which includes Lyon and Churchill Counties, and Peter I. Breen of the Second Judicial District, which is Washoe County. Judge Breen is the longest sitting district judge in the state of Nevada, having taken the bench in January of 1974. I was privileged to work with him for 14 years in Washoe, and I can personally attest that he is the moving force behind Washoe County's highly successful Drug Court and Mental Health Court. Judge Blake, a 15-year veteran of the District Court bench, presides over one of the most important innovative programs in our judicial system, a regional Drug Court. This very unique Drug Court was created by the rural judges to address drug-driven criminal activities in their jurisdictions while also solving the chronic rural problem of scarce resources by sharing resources among the First, Third and Ninth Judicial Districts, the First being Carson City and Storey County and the Ninth being Douglas County. Again, the Third is Lyon and Churchill Counties. With grant money and with funds authorized by the legislature and the cooperative efforts of the district attorney's, law enforcement, public defenders, and local governmental bodies, offenders are treated in the Western Regional Drug Court at an extraordinarily successful rate. Since September of 2001, 140 offenders have entered the program and only 12 percent have washed out.

In civil law, the courts have searched, studied, experimented and found better ways to actively and successfully manage the growing case loads and the increasingly complex cases. Time doesn't permit me to provide the kind of detail their efforts truly deserve, but I do wish to highlight two significant innovations in Clark County. The first is a new tool to permit parties with cases that are not of substantial monetary value to access the court in a speedy and less

expensive way than through the traditional trial process. Called the Short Trial Program, juries and accelerates the actual trial it uses four-person presentation process with the goal of concluding the case in one day. Uncomplicated cases of modest monetary value are heard by attorneys who preside as pro-tem judges, thereby freeing up valuable time for the District Court. The potential for the short trial program is enormous. In 2002, 47 cases were resolved through trial or settlement in this very new program.

The second innovation, one you can actually touch, walk into and observe, is the Complex Litigation Center, space leased in Clark County and converted for use in extremely complicated multiple party cases, primarily the construction defect cases. This courtroom accommodates up to 50 counsels, along with their clients, and has a public seating gallery of 100. It is done inexpensively. The chairs for the lawyers and the public and counsel tables are all collapsible and movable for maximum flexibility and functionality. If the size of the case is larger, bring in more chairs and more tables. If smaller, move them out. It is wired for visual aids, computer access, PowerPoint, slides, and the like. When I visited the Center with Justice Gibbons, I had the opportunity to watch Judge Alan Earl, an incredibly hard working and competent judge in Clark County, conduct a construction defect case. We didn't mean to interrupt the proceedings, but to my embarrassment, Judge Earl halted the proceedings and introduced Justice Gibbons and me to the jury and the litigants and the attorneys. The jurors actually expressed to us their satisfaction with the facility.

A combination of programs and policies in Washoe County, including its no-bump (no continuance for little reason) policy of civil cases set for trial, pre-trial conferencing of every case within 60 days of its being filed, comprehensive case settlement mediated by a sitting judge, and the institution of business court has resulted in significant delay reduction and enhanced case disposition there despite a 23+ percentage increase last year in case filings.

All the District Courts and significant numbers of the Justices' and Municipal Courts are using technology to increase their efficiency. The Eighth, Clark County, has very recently implemented an impressive e-filing system for complex litigation cases. Several courts at all levels and the Administrative Office of the Courts (AOC), on behalf of the rural courts, have adopted software known as *CourtView*, which will permit them to communicate electronically with less possibility of error and increase standardization which is always desirable.

The Sparks Justices' Court, in a pilot program, is the first court in the state to actually receive traffic citations from the Washoe County Sheriff's Department electronically. The deputies use hand-held computers to issue the citations; the citations are downloaded to the sheriff's main computer. From there, clerks at Sparks Justices' Court retrieve and print all the citations meant for their court. By passing citations electronically, data entry by court clerks is virtually eliminated, in turn eliminating delay and waste, reducing staff time and the possibility of error when the same data is entered again and again. Once the case is concluded, the Sparks court can forward the dispositions immediately to the Department of Motor Vehicles (DMV) once they are in a position to retrieve them. And that is expected in the near future.

The Eighth Judicial District's website in Clark County makes self-help legal forms available over the Internet. Even the Fourth, in Elko, makes court forms in domestic relation cases available on the Internet.

The MC-IJIS project – the Multi-County Integrated Justice Information System – which is also known as the Griffin Project – because it is the brainchild of District Judge Mike Griffin here in Carson City – began as an electronic information sharing system for all the criminal justice entities in Carson City, Storey, Churchill and Lyon Counties. It has grown. It is nearing completion. When it becomes operational, it will permit the sharing of data in criminal cases among the courts, law enforcement entities, as well as the State Criminal History Repository. What began as a rural project soon demonstrated its potential for statewide application. It should be on-line this year.

And not to be outdone, the Henderson Municipal Court expects this year to provide real-time video/audio streaming access via the Internet to all its court proceedings. You can watch your spouse take their speeding ticket to Henderson Municipal Court and you don't have to leave home.

At the Supreme Court level, we have been busy both administratively and in addressing the caseload. We commenced and completed the Jury Improvement Commission; the results of which we hope will benefit the courts and the public we serve in terms of cost savings and improvement in the procedures of trial, which we hope will advance the cause of justice. We look forward to working with the legislature as you consider statutory changes in exemptions and the method of juror compensation that we will request as a result of the commission's recommendations. We have worked closely with the State Bar Association on the multi-jurisdictional practice of lawmaking Nevada the first state in the union to adopt comprehensive rules regulating multi-state practice. We have revised our own bar admission rules and will begin offering the bar examination two times a year in 2004.

We revised our rules governing the limited admission to practice in Nevada under circumstances that will benefit the work of legal services corporations and public service with the district attorney and the public defender, primarily in rural areas. In capital cases we have adopted rules governing the appointment of panels. Many other projects were undertaken to address such areas as the management of construction defect cases, expansion of drug courts and the expansion of alternative dispute resolution programs, including the short jury trial program and mandatory arbitration. We have worked closely with the District, Justices', and Municipal Courts to revitalize the state and regional judicial councils. At the Supreme Court, we have extensively revised our internal operating procedures as we continue our efforts to expedite justice in our case dispositions. On that point, 1,711 cases were filed in 2002. We have not experienced an increase in our annual filings over the last 5 or 6 years. We have continued to attack the backlog, with further case reductions in the past 2 years of 341 cases. Our total case inventory is currently at 1,363 cases. We can't properly call this a backlog anymore, as many of these cases are not yet at issue; they are still in the pipeline awaiting full briefing, or records from the trial court, or argument, or disposition discussion.

The panel system has been very helpful in addressing the backlog, but as we gain experience with the panel process, so do the attorneys. As a result we are seeing the same case several additional times in the form of motions for rehearing by the panel and reconsideration by the en banc court and rehearing by the en banc court. When a motion for rehearing or reconsideration is made, by its nature it activates a complete review of the case and the record by the court. These motions require then a great deal of time and resources to be handled responsibly.

We have given a great deal of thought to our aspirations for the institution of an Intermediate Appellate Court (IAC) in Nevada. We consider the eventual creation of such a court an indispensable feature of the court system in Nevada, in its future. However, we are cognizant of several realities. First, filings in the Supreme Court have not increased. In graphing out the development of our caseload you can actually see that the court's filings seem to increase and then level off, increase and level off, each time at a higher level. But while we are in a period of level filings and while we have done so much to decrease the backlog and expedite cases, we recognize that during this time of financial uncertainty and fragility, the citizens of Nevada may be hard pressed to agree to spend tax dollars to fund a new appellate court. They would have the final say because they would vote. As Justice Bob Rose has said so many times in the past, in reference to the expected increase in Supreme Court's caseload, "We know the train is on the track, we just don't know when it will get here." So, after much reflection and discussion as a court and with somber hearts, we will ask you to enact legislation authorizing the creation of an IAC as a first time process. We will also seek to change the language of the proposed constitutional amendment from the mandatory language used in the past, "the legislature must create an IAC," to permissive language, "the legislature may create an IAC." We would then leave it to you to decide when the time is right and the money is available for the implementation of this court.

The settlement program at the Supreme Court continues to support our efforts with the caseload as well. We could not deal effectively and expeditiously with the current incoming cases without that program. The money appropriated for the settlement program is money well spent. Of the cases referred to the settlement program, we continue to experience a successful settlement rate of around 54 percent.

What is the Supreme Court's direction, and the future direction of the courts of this state? In a word, technology. The heart of our proposed budget is technology. As I speak today, the Supreme Court is in poor shape technologically. With the institution of an in-house Information Technology committee, comprised of representatives of the AOC, the staff of the court, and justices of the court we have identified our areas of deficiencies and extended our existing resources as best we can to address the deficiencies. We are possibly the last state Supreme Court in the United States to go online with a website. That happened just a couple of months ago. It is a small website and it is not an interactive website. It is static. The site does not allow for E-filing, access to the court's calendar, docket, schedule, documents, or records of cases, or for any case status. We were the last state in the union to put our published opinions on-line, and they are only on-line now due to the largesse of the Legislative Counsel Bureau which maintains them for us on their website.

We have no imaged documents in the Supreme Court. I have no ability to electronically access briefs or pleadings filed by the parties. Because of inadequate storage space, we do not require the parties to file seven copies of every document. So, if I want to see a brief in a case, because of a question that I have, I need to order the briefs from the clerk's office. Aside from the stress this puts on the clerk's office to locate, pull and deliver the material requested, by the time it gets to me, some time has passed, I may be on to the next case, and I've forgotten my question. In the daily use of our computers, we have no one readily available on staff to assist any of the Supreme Court's 84 staff members and justices in answering questions concerning the software we utilize much less to provide needed training in the software we all use daily like Word, or

could use if we knew how to use it. We have it; we just don't know how to use it, which is why I am not up here with PowerPoint. It is things like PowerPoint and Excel that we have not yet learned. I admit it.

We have no one but the Clerk and her hardware-technical staff with sufficient knowledge of our Case Management System to provide training to the judges on that system. And the Clerk and the hardware technicians are stretched far too thin in their duties to do other than answer questions when posed. We rely upon the AOC staff, which we share with the rest of the courts in the state, to assist when we experience glitches.

With respect to the Internet and E-filing, the public and the legal community have come to expect and demand electronic services and electronic access to the courts. And yet no member of the public can access our records here at the court, nor as mentioned, our schedules, dockets, calendar or cases.

With respect to the future of the courts in Nevada, I will convene two commissions this year. Neither one is going to be front-page news but will help the court to operate with integrity in the future and will allow us to plan for the future needs of the courts.

First, I plan a commission to achieve consensus in the application of administrative assessments and in their collections. It is important to the integrity of the judicial system that people who are charged with infractions no matter how minor, be treated fairly and uniformly by the various courts. Right now there are differences in when administrative fees will be assessed and collected. I believe that if the lower courts can agree upon and then buy into a uniform process, the entire system will benefit and we will learn much about the volatility of this source of revenue and perhaps enhance its stability to some degree.

The second commission is to study the funding of every court in this state. The legislative audit of the courts of Nevada pointed up the need for courts at all levels to have uniform collection practices. And yet, we know that all the courts of this state are not funded at the same level. Each Municipal and Justices' and District Court must seek its own funding from its city council or county commission. As a result, some courts are treated more generously than others and some are better equipped than others to respond to requests to change and enhance local practices. But until we know more about the financial health of each court in this state we are not in a position to evaluate whether any possible changes are realistic to suggest to them. Also, because we anticipate that at some point there will be a discussion concerning whether Nevada should explore a unified court system, we must have this baseline data and some preliminary recommendations from the commission in order to intelligently evaluate the health of these courts and what position the courts might take.

It is one thing to talk about the Supreme Court of Nevada as the administrative head of all the courts, it is quite another for the Supreme Court to attempt to exercise close supervision of the lower courts when we have no say over and little knowledge of their financial health. For the courts to continue the great collegiality that has come to exist from working together, I believe we must respect the positions we might put the lower courts in if we tried to require them to do things they cannot afford to do. So, I hope this commission on court funding will benefit the courts and the legislature in evaluating future proposals for changes in the court structure.

As I close, I want to tell you about the Justice of the Peace in Austin, Nevada. Judge Jim Anderson runs a small court in a small rural community. When a member of his community comes in to file a small claims action, Judge Anderson calls to action his courtesy letter program. Before accepting the case for filing, the judge offers to send a letter to the proposed defendant, from the court, letting that person know that the plaintiff might take action. Knowing that people who can settle their differences are often happier than those who go to court, and knowing that in a small town, resorting to the court can lead to years of hard feelings and tension, this judge has taken it upon himself to give the parties a chance to work things out. Last year, out of 24 cases that might have been filed, only 11 actually needed to be filed. Now, true, this might not work in Las Vegas, but Judge Anderson's resourcefulness and concern for the well being of his community exemplifies to me, and I hope to you, the spirit that is moving within the judiciary of this state, a desire to be the something that moves to make things happen.

The principle upon which all the attributes of a well functioning judicial system rests is allegiance to the rule of law. Ours is a government and society of laws. Whether it be the Magna Carta, the Ten Commandments or the Justinian Code, faithfulness to the rule of law creates order, predictability and result; harmony provides for fairness and equal application, justice so that we do not descend into lawlessness. In knowing the boundaries, we respect them and one another. We protect the rule of law. We honor it. The many judicial programs, projects and innovations I've outlined for you today exist because judges want to assure that the judicial system continues to operate as it should, so that the rule of law might exist in a healthy fashion.

What does it take for the system to work? It takes you. It takes me. It takes everyone, all of us, supporting the system, behaving reasonably, agreeing to the broad principles upon which the system is based, even if there is disagreement as to the details.

Socrates (470-399 B.C.) said: "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially."

It is with pride that I represent to you, the lawmakers of Nevada, that the state of the judiciary here is good, sound, principled, and heading for the future. We look forward to a positive interaction with you through the days remaining in this legislative session.

I thank you.