

State of the Judiciary
Chief Justice James W. Hardesty, Nevada Supreme Court
Message to the Legislature
March 24, 2009

Thank you for the warm reception for the Judicial Branch of Nevada's government. Governor Gibbons, Lt. Governor Krolicki, Speaker Buckley, Senator Horsford, Senator Raggio, Assemblywoman Gansert, distinguished members of the Senate and the Assembly, honorable constitutional officers and honored guests.

I have been looking forward to today with great anticipation. I would like to thank you for the opportunity to spend the next four or five hours talking about the State of the Judiciary in Nevada. No, I will try to keep my remarks shorter as admonished earlier by the Governor.

It is my privilege to speak on behalf of my friends and colleagues on the State Supreme Court—Associate Chief Justice Ron Parraguirre, Justice Michael Douglas, Justice Michael Cherry, Justice Nancy Saitta, Justice Mark Gibbons, and Justice Kris Pickering. I am also privileged to speak for our 72 District Court Judges, our 65 Justices of the Peace, our 21 Municipal Court Judges, and the nearly 2,000 court staff throughout the state that serve in Nevada's Judiciary. Together we work to provide fair and accessible justice, protect the rights of individuals, and preserve community welfare and safety. I am proud to serve with these dedicated public servants and I offer my profound thanks for their service to all Nevadans and those who visit and do business in our state.

With us today are several of the state's judges including the Chief Judges from our two urban Judicial District Courts – Chief Judge Arthur Ritchie and Chief Judge Connie Steinheimer, and Las Vegas Justice Court Chief Judge Ann Zimmerman. I also want to take this opportunity to recognize and thank Supreme Court Clerk Tracie Lindeman, State Court Administrator Ron Titus, the staff of the Administrative Office of the Courts, and the Supreme Court's legal staff for their tireless work on behalf of the Judicial Branch of this State.

I would particularly like to thank the Legislature for your recognition today of former Justice Bill Maupin. As you noted in the proceedings this morning, he has made a lasting contribution to the rule of law and to the remarkable progress the Judiciary has experienced during his years on the bench. I spoke with Bill prior to today's ceremonies. He was so excited to receive this recognition that he offered to buy all of the legislator's lunch if you would stay for my speech.

Today, I will offer a vision for the future of Nevada's Judiciary, describe a handful of the many accomplishments of Nevada's courts, and conclude by commenting on the impact that decisions made in this 75th Session of the Nevada Legislature might have on the face of justice in Nevada.

The core function of the Judiciary is to resolve cases brought before the courts in a fair, impartial, and timely fashion – simple dispute resolution. But the Judiciary is now being called upon to do so much more.

A judge's duty is to do the right thing for the right reasons. That is the hallmark of justice. As Mark Twain commented in 1868, "...judges have the Constitution for their guidance. They have

no right to any politics save the politics of rigid right and justice when they are sitting in judgment upon the great matters that come before them.”

Of course, a few years later Twain would say with a wry wit, “Do right. This will gratify some people and astonish the rest.”

In today’s environment, though, what is the right role for Nevada’s Judiciary? Over the years, and more so in recent times, the responsibilities of the Judiciary have increased in ways we would not have imagined just two decades ago. Increasingly, our citizens are turning to the courts to secure assistance in a variety of complex civil and even social problems. The population growth in Nevada certainly has added pressure to our judicial system, as it has to state and local governments. Who among us could have seen 15 years ago, that the courts would be inundated with construction defect cases that can tie up judges for months at a time? Or envisioned a single medical malpractice case that can affect the lives of thousands of our citizens in Clark County? During that same period, we have witnessed family court dockets grow to nearly 50 percent of all civil filings in District Court. In 65 percent of those cases, both parties are self-represented, inevitably requiring more hearings and more judicial time. Our criminal courts are seeing a growing number of defendants who are committing increasingly serious crimes. The result is that during the past 13 years, our prison population grew almost 60 percent, adding 5,000 inmates to Nevada’s prisons.

To paraphrase the Chief Judge for the State of New York, “Whether we like it or not, the state courts are in the eye of the storm; we have become the emergency room for society’s worst ailments—substance abuse, family violence, mental illness, mortgage foreclosures, and so many more.” This reality has forced the courts to approach cases in entirely new ways.

For many citizens, the only contact they have with government is through the courts. They may get a traffic ticket, be asked to serve as a juror, be called as a witness, or get a divorce. The courts should always remember, though, that each case involves someone’s rights, someone’s children, someone’s property, or in some cases, someone’s freedom. In criminal cases, the Judicial Branch protects a defendant’s constitutional right to a fair trial and preserves the victim’s interest in the outcome of the case.

But I wish to remind everyone our duty to hear and resolve all of these cases is not optional. The courts are required by our constitution and statutes to decide such matters, often within legally mandated deadlines – and always timely, fairly, and efficiently.

Therefore, in my view, the vision for Nevada’s Judicial Branch, today, is to be proactive in the management of its cases, innovative in its approach to dispute resolution, creative in its efforts to provide access to our courts, sensitive to the needs of people who come before us, accountable for our behavior and our decisions, fiscally responsible and transparent in all that we do. If we can meet these goals, modern day courts will continue to earn the public’s trust and confidence.

Despite our challenges, I would maintain that the State of the Judiciary in Nevada is sound. Let me report on some of the many accomplishments of Nevada’s courts since you last convened.

Our courts continue to labor under escalating caseloads, but for the first time in some years, District Court criminal case filings have declined marginally. However, we have seen an increase

in civil case filings in District and Justice Courts. These civil filings and the criminal case filings in Justice Courts and most urban Municipal Courts continue to overwhelm the system. And at the Supreme Court, filings set new records every year. The most recent Annual Report of the Nevada Judiciary adequately summarizes these statistics. But what do these statistics mean to the lives of real people and Nevada businesses? Let me give you one example. If you have an average civil case in the District Court in Clark County, you will have to wait 3 years and 6 months for your case to come to trial. Is that acceptable? The answer is a resounding “no.” Nevertheless, you should know, and I am very impressed, that our District Courts disposed of over 103,000 cases. The Justice Courts resolved 235,000 non-traffic cases. The Municipal Courts concluded 60,000 non-traffic misdemeanor cases, and the Supreme Court decided nearly 2,000 matters. That is a total of more than 400,000 cases resolved by Nevada’s Judiciary in the last fiscal year.

Throughout the state, judges are using technology and innovative case management techniques to keep our most complex cases from being lost in a sea of uncertainty and expense. At the Complex Litigation Center in the Eighth Judicial District, Judges Allan Earl, Susan Johnson, and Timothy Williams supervise 291 construction defect cases affecting thousands of Clark County residents and hundreds of construction companies and developers. The work of these judges brings order to chaos, has promoted settlements in many cases, and assured the parties that an ultimate resolution of their case will occur.

The Judiciary is facing another case management crisis in Clark County – the well publicized endoscopy litigation. Through February of this year, 446 cases involving thousands of individuals have been led, presenting a significant challenge to the judicial system. Proactively, the Judges of the Eighth Judicial District have consolidated these cases for management purposes under the able supervision of Judge Allan Earl. I feel it is important for the Legislature to understand exactly what the court is dealing with here. Millions of pages of documents are being led with the court, hundreds of motions are being presented, and weekly tracking is necessary to keep the cases progressing. Like the construction defect cases, all of these matters involve Nevadans – their lives, their families, their businesses, and their futures. We cannot afford to delay justice in these cases – or any other case.

And while we are on the subject of medical malpractice cases, you should also know that more than 400 such cases are pending today in Clark County. While the courts would like to have taken these cases to trial within the timeframes established by the Supreme Court and the Legislature, that simply could not be accomplished in nearly a quarter of these cases because there are not enough judges or courtrooms to do so. One of my favorite success stories are business courts. These courts are there to expedite the resolution of legal disputes that might increase the cost of doing business in Nevada or force a business to close. In short, business courts keep companies in business and Nevadans working. Two years ago, the Supreme Court made a number of changes governing business court. Through the very capable efforts of Judges Elizabeth Gonzalez, Mark Denton, and Brent Adams, the business courts in Nevada are no longer an experiment. We can all be truly proud of their success. Clark County’s business court docket has grown from 226 cases on June 30, 2006, to 543 cases on June 30, 2008. Recently, a Las Vegas attorney told me about a complex corporate and insurance regulatory issue she handled last year. The Nevada Insurance Commissioner ordered the parties to resolve the dispute by a date certain, and through the stewardship of Judge Gonzalez, the parties were able to settle the case well before the Commissioner’s deadline. Your Legislative Commission subcommittee

found that Nevada's business courts are preferable to the creation of a chancery court. The subcommittee also recommended some additional improvements in the business court. Assuming adequate resources can be provided, the Nevada Supreme Court is prepared to enact rules addressing the recommendations of your subcommittee.

Nevada's drug courts and other specialty courts continue their incredible journey, begun in 1992 when Nevada launched the nation's fifth drug court. It is a journey that saves lives and families and even the futures of unborn babies. The Legislature's continued support of these courts has enabled dedicated Specialty Court Judges and staff to achieve successes that no one thought possible. The efforts of you in this room today have now extended the benefits of specialty courts to our rural communities.

Last fiscal year, the Specialty Court Judges around the state served more than 2,200 participants and witnessed 1,235 graduates. Seventy-six drug-free babies were born to participants – that is 76 babies who now have a chance to grow up without the limitations imposed on them prenatally by drug-addicted mothers. The success of these courts is illustrated by two stories, one out of Elko and one out of White Pine County. In Elko, Judge Andrew Puccinelli supervised a young woman I shall call Samantha. An abusive relationship followed by the death of her husband left Samantha alone with three children. She turned to drugs and lost her three children to the system. Ultimately and predictably, she ended up in the criminal justice system. After 32 months in drug court, Samantha is a changed woman with a vibrant and exuberant life. She is an employed, taxpaying, productive member of society and has regained her custody rights. The second story demonstrates the imagination and dedication of Judges Steve Dobrescu and Dan Papez in White Pine County. The story involves a young couple whose two children were taken away by the Division of Child and Family Services because the parents could not overcome their frequent use of marijuana and methamphetamine. The parents loved their children but repeatedly violated the case plans for reunification with their children because of their continuing drug addictions. Even though no criminal charges were pending, Judges Dobrescu and Papez ordered the parents to participate in drug court as part of the most recent case plan. Last June, the children were returned to their parents, and in December, mom and dad both graduated from drug court. Now, I must emphasize that these are but two of the hundreds of similar stories made possible by the specialty courts of our state. And I must also emphasize that were it not for the drug courts, many of these success stories would otherwise be passing through that revolving door in and out of prison at a considerable cost to society.

And then there is District Judge Jackie Glass, who supervises Clark County's Mental Health Court and the relatively new Competency Court. The Competency Court manages cases pretrial of defendants who may lack competency to go to trial. The expense and delay to the system caused by such cases is enormous.

The success of Judge Glass's efforts is underscored by the case of former NFL football player Cole Ford. He came to the District Court after being on the streets for some time, was talking nonsense, uncooperative, and clearly mentally ill. Through the concerted efforts of Judge Glass, doctors at Lake's Crossing, and both attorneys in the criminal case, Mr. Ford regained competency and was reunited with his family as a productive member of society.

In Las Vegas Municipal Court, Judges Bert Brown and Cedric Kerns and their colleagues continue to make history. Judge Brown supervised the Court's Women in Need, or WIN, program. A 21-year-old woman I shall call Laura had a history of arrests for solicitation, two felony convictions, and a drug abuse problem. She came to Las Vegas and for 2 years walked the streets selling herself to pay for her drugs. She was brutally beaten and frequently fell into abusive relationships.

At age 23, Laura was arrested for solicitation and placed into the WIN court program, which requires that participants abstain from drugs and alcohol, get drug tested regularly, and stay out of legal trouble. Under Judge Brown's supervision, Laura graduated from the program, is employed, and attending school where she is maintaining a 4.0 GPA. Judge Kerns supervises the HOPE Court, which deals with those who – because of homelessness or for other personal problems – find themselves repeatedly in the criminal justice system. HOPE stands for Habitual Offender Prevention and Education. Bernard is a 52-year-old man with an extensive criminal history who has served three prison terms. From 1998 to 2007, he was arrested 65 times and served a total of 656 days in jail. He was doing a life sentence on the installment plan. He had no hope. When he entered the HOPE Court as a result of yet another misdemeanor arrest, he had been homeless for over 10 years. Under Judge Kerns' supervision, Bernard graduated from HOPE Court on January 15, 2009. By that time, he had been clean and sober and off the streets for two-and-a-half years with no arrests.

I thought this Legislature would be particularly interested in the results of your efforts to codify the DUI Court program. This specialty court deals with serious and chronic DUI offenders who have failed to appreciate their actions after prior jail or prison terms. These are the offenders I would expect will eventually kill or injure themselves or someone else while driving drunk. The DUI Court has been remarkably successful in breaking the destructive cycle of these offenders. As you know, the Nevada Supreme Court recently upheld the constitutionality of the legislation creating these courts. We also ordered that the opportunities of DUI Courts be extended to our rural communities. Because of your legislation and the Judiciary's implementation of DUI Courts, we can all be proud that we are making a difference in this troubling area.

All of us recognize that crime prevention starts with our young people. I would like to highlight three efforts in this area. Judge Ken Howard operates Kids Court in the Reno Municipal Court. Every month 30 fifth graders and their parents visit his court to see how justice is done at that level. There is a mock trial in the case of "BB Wolf vs. Curly Pig." There is an "Ask the Inmate" program and a discussion on issues from drug or alcohol abuse, to peer pressure, to choices young people must make, and of course, the value of staying in school. I also want to commend Judge William Voy's efforts to create the Nevada Safe House for Sexually Exploited Children. Judge Voy sees 150 girls each year come through the juvenile detention center in Clark County who are victims of sexual exploitation. Judge Voy's vision will work to intercept these girls and restore their lives.

Over the last 4 years, the Judiciary has improved juvenile justice court practices and services for youth while protecting public safety through the application of the Juvenile Detention Alternatives Initiative (JDAI) funded by the Annie E. Casey Foundation. Judge William Voy in Clark County and Judge Frances Doherty in Washoe County have, along with many others, developed alternatives to the over reliance on secure detention facilities for many juvenile

offenders. Instead, healthy alternatives targeting the needs of individual children and families have been created. Using these alternatives, in Clark County the average daily population of detained juveniles has decreased by 31 percent. In Washoe County, the average daily detention population has decreased by 28 percent. Judge David Gamble in Douglas County and Judge Puccinelli in Elko County, operating with limited resources, have also applied JDAI principles and practices to create detention alternatives in their jurisdictions. Together, these collective efforts have taken the pressure off the need to construct new juvenile detention centers throughout the state.

The family mediation programs in Clark and Washoe Counties have provided an alternative avenue for families to resolve their domestic disputes. These families get an opportunity to work out their own differences and take control of their own lives with the assistance of trained mediators. In the process, families can avoid the expense, delays, and animosity that often accompany prolonged litigation in Family Courts. Since 2003, over 21,000 cases went through Clark County's Family Mediation Center. During the same time, Washoe County's Family Mediation Program accepted over 3,400 cases. More than three-quarters of all of these mediation cases were resolved to the mutual benefit of mothers, fathers, and their children.

I am particularly proud of the Supreme Court's continuing efforts to open the doors of the justice system to the eyes and ears of all Nevadans. The Nevada Supreme Court recently enacted rules prohibiting the sealing of files in civil cases. We have made our oral arguments available to the entire state via webcasts and podcasts. We have also successfully implemented electronic filing in all criminal cases, which will allow easier access to those records. On March 1, 2009, a Supreme Court rule went into effect that I believe will have a profound impact on the ability of litigants and lawyers to access our courts. The rule, which allows parties to appear in court telephonically or via video connections, should have its most dramatic impact on the civil legal needs of litigants in our rural communities. On March 29, the Court will launch a redesigned and expanded user-friendly website offering increased information about the court, its committees and commissions, its schedule, arguments, and decisions.

One of the roles of the Supreme Court is to establish commissions to study the justice system and make recommendations about how we can do our jobs better. The work of three commissions stands out. The Indigent Defense Commission chaired by Justice Cherry has been recognized nationally for its sweeping recommendations to improve indigent defense in criminal cases in Nevada. The Article 6 Commission, co-chaired by William Dressel and Paula Gentile, has made substantial recommendations to improve the judicial discipline system and the speed with which the Commission on Judicial Discipline processes complaints against judges. And finally, the Access to Justice Commission, which I co-chair with Justice Douglas, has recently issued a report concluding that the serious civil legal needs of the underprivileged in Nevada are not being met. We were stunned to learn that there is only one legal aid attorney for every 5,000 eligible persons in Nevada with civil legal needs. The Access to Justice Commission is pursuing increased funding and a statewide approach to address this serious crisis. I would like to take this opportunity to thank the 15 banking institutions in this state that, in the past 5 months, have increased their interest rates that they pay on lawyer trust accounts, which help fund legal aid services in Nevada.

And I cannot conclude a discussion of the Judiciary's accomplishments without mentioning the efforts of the courts to offer some help in the state's budgetary struggles. On this subject, two areas are particularly noteworthy. The Las Vegas Township Justice Court has completed a Traffic Amnesty Program, which gave individuals the opportunity to resolve their unpaid traffic citations and avoid late fees and penalties. When the program ended on February 13, 2009, nearly 10,000 individuals had paid outstanding fines, bringing in \$5.4 million for Clark County and the State of Nevada. An additional 9,600 individuals established payment plans to pay \$5.8 million in outstanding fees and fines. Another 10,000 individuals, apparently fearing the Justice Court was headed their way, have requested traffic court dates to deal with their outstanding tickets.

The Justice Court has contracted with a collection agency and has issued arrest warrants in pursuit of millions of additional dollars that are owed. I want to congratulate and recognize Chief Judge Zimmerman, her colleagues, and Court Administrator Ed Friedland. They deserve recognition for this effort.

At the state level, the Nevada Supreme Court reverted almost \$2 million to the General Fund for fiscal year 2008. That was 23 percent of the general fund appropriation to the Court excluding statutorily set judicial compensation. We are projecting that we could revert another \$2.2 million for fiscal year 2009. That would amount to 24 percent of the Court's general fund.

The list of these accomplishments is by no means exhaustive and cannot include our many other achievements. I believe, however, that it provides a substantial illustration of the invaluable work being performed every day by judges and staff throughout Nevada.

In all of these programs, I see an important partnership among the Judicial, Legislative, and Executive Branches. The Judiciary's ability to carry these programs forward is dependent, of course, upon the resources this Legislature can provide.

I would like, therefore, to discuss the impact that decisions of the 75th Legislature may have on the future of the Judicial Branch and our ability to meet the growing needs of our citizens.

As you know, the Judiciary has proposed a plan to help address the crucial need for additional judicial resources in Nevada. The complexity and volume of the caseload clearly demonstrates the need for new judges in Clark and Washoe Counties. In our rural courts, the need for technology, support staff, facilities, and other judicial resources cannot be questioned. This is why we have urged you to consider increasing the fees on civil case filings in District Court. Nevada has not revised many of these fees since 1993, and in these harsh economic times, this is a logical alternative. Those who use the courts should rightfully take a greater role in funding those courts. We have taken great care to calibrate the increases in the filing fees to distribute the burdens as fairly as possible. The fees, as proposed, would be comparable to or below those charged by surrounding states. This measure has received broad-based support from county officials, trial lawyers, and members of the State Bar, all of whom recognize the pressing need for increased judicial services in civil cases. The sad reality, as I noted earlier, is that the Judicial Branch cannot effectively and timely respond to the needs of citizens and businesses without the added resources our plan will provide. Neither can we adopt the legislative recommendations for

rule changes to our business courts without your help. I urge your support for measures pending in the Legislature to implement this plan.

The Senior Judge Program has become essential to the delivery of judicial services in Nevada. During fiscal year 2008, our Senior Judges spent more than 12,000 hours conducting settlement conferences, running specialty courts, and handling the calendars of District Judges so that trials could proceed unabated. I would like to introduce two of our Senior District Judges—Peter Breen and Archie Blake. These two judges continue to manage the drug and mental health courts in Washoe County and ride the circuit to bring the benefits of the drug courts to the rural communities in Western Nevada. We could not do it without them. I would urge your continued funding of the Senior Judge Program.

I would like to thank the Legislature for its continued support of SJR9, which hopefully will result in the creation of an Intermediate Appellate Court to meet the growing needs of litigants in our state.

The State Senate has passed SJR9 for a second time, and I would urge the Assembly to follow suit. The Supreme Court currently is responsible for all appellate matters, and we are one of the busiest appellate courts in the country. Nevada is by far the largest of the 11 states without an Intermediate Appellate Court.

I believe it is time for this state to take this step.

We are all concerned about the financial health of our state. I would urge the Legislature to consider two proposals that could have a significant impact on our fiscal needs. First, as many of you know, I have asked United States Senators Harry Reid and John Ensign to support federal legislation that would allow Nevada to intercept federal tax refunds of people who have not paid their financial obligations ordered by the courts. The State of Oregon estimated that a federal tax intercept program in that state would generate up to \$61 million. I submit that we are not far off with that number in our state. I ask you to adopt a resolution calling upon our federal delegation to support the federal tax intercept bill proposed during the 110th Congress. Second, the Advisory Commission on the Administration of Justice has suggested that the responsibility for the collection of court-ordered fees, fines, and victim restitution be centralized under the Administrative Office of the Courts. In this plan, the courts would partner with State Controller Kim Wallin, who has increased her efforts to collect much of the debt owed to our state. These initiatives would not only pay for themselves, but provide badly needed resources to the entire state. Ladies and gentlemen of the Legislature, I am excited about the future of the Judicial Branch in Nevada. I am proud that our courts continue to meet the challenges placed before us and are providing real solutions for today's problems. Nevada's judges and court staff are motivated, enthusiastic, innovative, and engaged in making this branch of government the best that it can be.

Our duty as Judges is to deliver fair, impartial, principled, scholastic justice, and to do so with character and integrity. Our citizens should expect nothing less. But we in the Judiciary can, and should, expect of ourselves much more.

Thank you.