

State of the Judiciary
Chief Justice James W. Hardesty, Nevada Supreme Court
Message to the Legislature
April 15, 2015

Governor Sandoval, Lt. Gov. Hutchison, Speaker Hambrick, Senator Roberson, Senator Ford, Assemblywoman Kirkpatrick, distinguished members of the Senate and the Assembly, honorable constitutional officers, and honored guests. Thank you for the honor of speaking to the Nevada Legislature on behalf of our state's judicial system.

A week ago Monday, Senator Dean Heller began his remarks by noting that he was speaking just before the Men's National Championship basketball game. As you all know, today is tax day, the day the Titanic sank, and the day President Lincoln died. At first blush, I thought I'd trade days with the Senator until I also remembered that on April 15, 1947, Jackie Robinson became the first African-American player in Major League Baseball when he stepped onto Ebbets Field to compete for the Brooklyn Dodgers. I could not help but notice the historical coincidence of President Lincoln's death and Jackie Robinson's entrance into Major League Baseball as its first African-American player. I am proud to be able to speak to you on this day.

I'd like to introduce my friends and colleagues on the Nevada Supreme Court – Associate Chief Justice Ron Parraguirre, Justice Michael Douglas, Justice Michael Cherry, Justice Nancy Saitta, Justice Mark Gibbons and Justice Kristina Pickering. It is my privilege to serve with these distinguished jurists, and I thank them for their support during my service as Chief Justice. I would also like to recognize and thank the Clerk of the Supreme Court, Tracie Lindeman; the Clerk of the Court of Appeals, Tom Harris; Legal counsel, Phaedra Kalicki; the Reporter of Decisions, Brandee Mooneyhan; the Supreme Court's extraordinary legal staff; the Director of the Administrative Office of the Courts, Robin Sweet; and the dedicated, hardworking staff of the AOC.

I am also privileged to speak on behalf of our 3 Court of Appeals Judges, 82 District Court Judges, 67 Justices of the Peace, 30 Municipal Court Judges, and the nearly 2,000 court employees throughout the state. A number of Judges have joined us tonight including the Chief Judges of the Second and Eighth Judicial District Courts – Chief Judge David Hardy and Chief Judge David Barker. I would also like to recognize the President of the State Bar of Nevada, Elana Graham.

Nevada's judicial officers and court employees are committed to the administration of fair and impartial justice in criminal, civil, family, and juvenile disputes according to the rule of law. In fulfilling our constitutional duties, we are mindful of the importance of providing timely access to the court system and resolving cases as efficiently as budgets and caseloads permit. I am proud to serve with these dedicated public servants and offer my profound thanks to all of them for their service to all Nevadans.

My purpose this evening is to discuss the state of the Judicial Branch of Nevada's government. In doing so, I would like to share with you some of the many accomplishments of Nevada's courts and offer a vision for the future of Nevada's Judiciary.

As you know, the resolution of disputes represents the core function of the Court system. 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 could not have imagined just two decades ago. Not only do our citizens and the state turn to the courts to resolve criminal, civil, family, and juvenile cases, they also seek the courts’ assistance to resolve many of society’s social issues as well.

To paraphrase the former Chief Judge for the state of New York: Whether we like it or not, the state courts of this country 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 much more. This reality has forced the courts to approach cases with innovation and collaboration with all involved. And these pressures underscore the need for a public judicial system that is timely and efficient in its management of a case while treating each person with respect and dignity.

I have been looking forward to this evening for a long time. For the first time in 44 years, the Nevada Supreme Court and the Nevada Legislature are not engaged in a discussion about the need for a court of appeals. Tonight, thanks to the Legislature, our distinguished Governor, and the people of the State of Nevada, I can report that last November Nevadans voted to amend the Nevada Constitution to create a Court of Appeals. No doubt the active participation of past and present members of the Nevada Legislature was a major factor in the educational effort to adopt Question 1. You helped make history for Nevada’s judicial system, and the Supreme Court would like to take this opportunity to thank each of you for your support.

In the 60 days following the election, the Supreme Court enacted rules to govern the jurisdiction and transfer of cases to the Court of Appeals; the Judicial Selection Commission and the Governor appointed the new Judges in record time; and the Board of Examiners and the Interim Finance Committee implemented the budget to fund the Court of Appeals. By January 5, 2015, the Supreme Court’s staff set up offices, installed computers, established internal procedures, and completed many other tasks needed to start a brand new Court. I want to thank and recognize our Clerk Tracie Lindeman, Reporter of Decisions Brandee Mooneyhan, legal counsel Phaedra Kalicki and Sarah Moore, clerk Amanda Ingersoll, and IT personnel Brian Pettijohn, Ted Xie, Fred Aker, Kathryn Burns, Karen Peterson, Jeff Sabo, and Alyssa Bland for the many hours they devoted during the Thanksgiving and Christmas holidays to assist the Court with the numerous rule drafts, install the case management system, and implement the various procedures necessary to convert the dream of a Court of Appeals into a reality. I also want to thank and recognize the members of the AOC staff John McCormick, Hans Jessup, Vale Trujillo, Myrna Byrd, and Deborah Crews for all their help in setting up offices north and south to make the Court of Appeals functional by January 5, 2015.

As with any endeavor, though, the success of the Court of Appeals will ultimately depend on the Judges who serve. Allow me to introduce the inaugural Judges of the Court of Appeals – Chief Judge Michael Gibbons, Judge Abbi Silver, and Judge Jerome Tao. These Judges were nominated by the Judicial Selection Commission from 36 highly qualified applicants and selected by the Governor. They have committed their intellect, hard work, and talent to the success of the Court of Appeals and the contribution it can make to Nevada’s judicial system and Nevada law.

As you know, the Supreme Court has always maintained that a Court of Appeals would improve justice in our state by reducing the Supreme Court’s caseload, shortening the time to decide appellate cases, increasing the number of published opinions on Nevada law, and operating within a fiscally responsible framework. From what I have witnessed during the first three and a half months of operation, I can state with confidence that the Supreme Court and the Court of Appeals have a very bright future.

As 2015 began, the Supreme Court faced a pending caseload of 1,819 cases. As of March 31, 2015, 300 cases have been assigned to the Court of Appeals under the rules adopted by the Supreme Court. In the first 3 months, the Court of Appeals has decided 166 cases, conducted its first oral arguments in 4 cases, and published its first opinion. With the continued hard work of my colleagues on existing cases and the contributing work of the Court of Appeals, the Supreme Court saw its first significant drop in pending cases in years to 1,568. And one more point. Of the \$444,250 in funding provided by the Legislature to operate the Court of Appeals for the first 6 months, we currently project a reversion or return to the State General Fund of over \$56,000, or 12.6% of the original budget.

I believe the Court of Appeals is one of many examples of the Nevada Judiciary’s achievements. I would like to update you on a few others.

- In 2001, the Supreme Court created the Business Court in the Second and Eighth Judicial Districts. Patterned loosely after Delaware’s Chancery Courts, the Business Courts in Nevada are designed to resolve the most complex, lengthy, and expensive business disputes in a timely, cost efficient manner. Prior to establishing Nevada’s business court system, these cases lacked case management and in most instances took more than 4 years to complete. A lot of progress has been made in the business court experience. As of the end of the fiscal year, there were 91 pending cases in the Second Judicial District Court and 508 in the Eighth Judicial District Court. I was impressed, as I believe you will be, to learn that the average time to disposition today for a Business Court case in the Eighth District is 23 months and that takes into account cases like the Harmon Tower dispute. And in the Second District, the Business Court Judges have reduced the average time to disposition in the last 2 years from 16 months to 10 months. These statistics make Nevada very competitive with Delaware and send a clear message to local businesses and those outside Nevada’s borders that Nevada’s judicial system is fully prepared to address the legal needs of Nevada’s businesses in a timely, cost effective way. I would like to thank Eighth Judicial District Court Judges Elizabeth Gonzalez, Mark Denton, Nancy Allf, Kathleen Delaney, and Susan Scann and Second Judicial District Court Judges Patrick Flanagan and Scott Freeman for their extraordinary work in making our Business Courts the success we envisioned 14 years ago. As a result of the creation of the Court of

Appeals, I believe the Supreme Court can complete the Business Court plan by publishing more opinions expanding our jurisprudence on business law cases.

- In 2009, the Supreme Court presented and the Legislature approved a business plan to add 10 District Court Judges with new courtrooms, facilities, and technology expenses paid by an increase in filing fees. Under this plan, 7 civil jurisdiction Judges and 2 Family Court Judges were added in Clark County and 1 general jurisdiction Judge was added in Washoe County. This was a bold move at the time as the recession was becoming more realistic and the state's budget was in real trouble. But consider that in 2009 the number of cases filed per District Court Judge in Clark County was 2,422, and the average time to resolve a case exceeded three and one half years. In Washoe County, the number of cases filed per District Court Judge was 1,597, and a new general jurisdiction Judge had not been added to that district in 20 years. Today, the number of cases filed per District Judge in Clark County is 1,846, the average time for closure in all civil cases is 14.7 months, and the 2 additional Family Court Judges provided the opportunity to add judicial resources to cases involving the abuse and neglect of children. In Washoe County, the number of cases filed per District Judge is 1,370, and the average time to resolution is under one year. But consider this, the funds generated by the Supreme Court's business plan fully paid for the 8 new courtrooms in Clark County and the courtroom in Washoe County without any cost to the general funds of the counties or the state. Since then, Clark County's District Court has utilized these funds to, among other items, upgrade its audio/visual systems, create a disaster recovery project to protect its old and new e-filing records, and archive over 4,000,000 pages of court files. The Washoe District Court was able to renovate its probate/commissioners' courtroom. And in Elko, Judge Nancy Porter, with the support of her colleague Judge Al Kacin, led a collaborative effort with the Elko County Sheriff and Commissioners to establish, for the first time, a security system for the courthouse including the installation of video equipment inside and out. They also replaced an audio/visual system in the small courtroom in the jail. In Carson City, the District Court constructed a new specialty courtroom, a new juvenile courtroom, and provided computers and technology to that court's clerks and staff at no cost to Carson City. To quote District Court Judge Todd Russell, "None of this would have been possible without the business plan proposed by the Supreme Court and enacted by the Legislature."
- Nevada's Drug Courts and other specialty courts continue the incredible journey that began in 1992 when Nevada launched the nation's fifth Drug Court. It is a journey that saves lives, families, and the futures of unborn babies. It is also a journey that reduces recidivism and the need for more prisons and jails. The Legislature's continued support of these courts has enabled dedicated specialty court Judges and staff to achieve successes that no one thought possible. Over the past three years, the 41 drug, mental health, and DUI courts throughout the state served an average of 3,800 clients per year and witnessed an average of 1,470 graduates per year. This past fiscal year, 74 drug free babies were born to participants in these and other specialty courts – that is 74 babies who now have a chance to grow up without the limitations imposed on them prenatally by drug addicted mothers. But the success of these and many of the specialty courts in the state is now in jeopardy. As some of you know from my presentation to the Subcommittee hearing the Supreme Court's budget, the funding for specialty courts in

Nevada depends largely on a share of the administrative assessments paid on traffic citations. This funding source has always been a bit unstable, but it has never declined to the extent we have witnessed in the last 6 months. As a result, the specialty court programs are facing a shortfall in their budgets of 15%, or decline in revenue of just over \$1,400,000 in the next biennium. The impact to budgets is already being felt this fiscal year resulting in the delay of assistance to or exclusion of participants in programs in Clark County and the 6 counties that make up the Western Regional Drug Court. The consequences are clear. Our state will see increases in jail and prison costs. I would urge this Legislature to follow the unanimous recommendation of the Legislature's Advisory Commission on the Administration of Justice and the Governor's recommended budget and restore the shortfall in funding and add \$3,000,000 of new revenue to expand the capabilities of Nevada's specialty courts to save lives and reduce jail and prison costs in the process.

- As part of this discussion, I thought you would be interested in an update on the success of the felony 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. The DUI Court has been remarkably successful in breaking the destructive cycle of these offenders. Last year 290 clients graduated from felony DUI Court. While not all courts have experienced this type of success, I wanted to share the results of the DUI Court in Elko supervised by Judge Nancy Porter. Since 2010, not one graduate of that program has recidivated. As you know, the Legislature added funding for DUI Courts during the 2013 session but that funding sunsets on June 30, 2015. I urge you to terminate the sunset and allow this funding source to continue to help mitigate the reductions in all of the specialty court budgets I have mentioned tonight.
- I also want to mention the Foreclosure Mediation Program. In 2009, the Legislature, with the consent of the lending industry, asked the Supreme Court to supervise a new program that would create a platform for loan mediation and mitigate the effects of the growing number of foreclosures. The program has been funded, not by the general fund, but by fees paid by lenders when seeking relief from a default. There can be little question that the program has helped thousands of Nevadans remain in their homes or work out arrangements with lenders to reduce the impact of a foreclosure. As we have noted in budget hearings, the continuation of the program is a policy decision for the Legislature and the Court has offered some options for you to consider. But tonight I would like to recognize and thank someone who has been with the program from the beginning - Verise Campbell, the Director of the Foreclosure Mediation Program for the Supreme Court. Her service has been extraordinary and we thank her for all that she has done for the citizens of Nevada.

These initiatives are a few of the many achievements of the judicial branch. But all of them illustrate the dedication of the Judges and court employees who work very hard every day to make the courts responsive to the needs of Nevada's citizens.

As we look to the future, I see a lengthy agenda for Nevada's judicial system. I'd like to highlight just a few items on that list. First, we must continue our efforts to make the public judicial system responsive to the needs of people in civil cases. Access to justice in Nevada

cannot be a goal, it must be a reality. Families and children in crisis and unrepresented litigants have every right to expect their judicial system to work equally for them. Too often, parties turn away from the public judicial system because it is just too expensive and takes too long. This issue is not unique to Nevada. For the past two years, a committee of the Conference of Chief Justices has been studying two fundamental reasons for cost and delay in the public judicial system – case management by judges and the rules of civil procedure, particularly those relating to discovery, that add cost and time to an already challenging process. The committee’s report is due this summer, and this fall I will ask all courts in Nevada to study and implement the committee’s recommendations that are relevant to our state.

Second, I urge the Legislature to pass Assembly Bill 435 – a measure that creates a new judicial district consisting of Pershing, Lander, and Mineral Counties. For the past 45 days, Judges Jim Shirley and Michael Montero and the County Commissioners in those counties and in Humboldt County have studied the benefits of this realignment and all have voted to support this effort. This “out-of-the-box” plan helps smooth out caseloads in the Fifth, Sixth, and new Eleventh Judicial Districts; reduces travel time for Judges serving in these districts; significantly postpones the need for additional Judges, particularly in the Fifth Judicial District and in Nye County; and increases the availability of judicial resources for all parties at little or no fiscal impact to the counties or the state.

Third, we must study and adopt evidence-based risk assessment in setting pretrial release conditions of those accused of a crime. Pretrial judicial decisions about the release or detention of a defendant has a significant impact on thousands of defendants and adds great financial stress to publicly funded jails holding defendants who are unable to meet financial conditions of release. As our jails swell, particularly in Clark County, it is time for Nevada’s Judges to follow the lead of the District of Columbia, Kentucky, New York, Arizona, and the Conference of State Court Administrators and adopt pretrial release assessment tools that better assess whether a defendant will fail to appear or will present a risk of safety to others. As the Conference report notes, “Imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety.”

I am proud to report that 33 of Nevada’s Limited Jurisdiction Judges and 10 of our District Court Judges have already agreed to join me in the study of this issue. And I hope the Legislature will adopt Senate Bill 452 requiring the use of pretrial risk assessment tools according to rules approved by the Supreme Court. Doing so will add Nevada to the list of states leading the country in the use of evidenced-based decisions in pretrial releases for those accused of a crime.

And the last issue I will mention is that of Judicial Education. Over the last 4 years, we have witnessed a dramatic change in the make-up of the District Court bench in Nevada. 38 of the 82 District Court Judges in Nevada joined the bench since 2010. These Judges bring new energy, innovation, and creativity to Nevada’s judicial system. Their addition provides many opportunities including a reexamination of our approach to judicial education. It has been 16 years since District Judges attended mandatory education on cases involving the death penalty. And not since 2007 have the Judges been required to attend classes on domestic violence. While many of our Judges obtain education on these and other areas of the law on their own, we do not have an organized system for mandatory judicial education. No matter what you may think, the

work of a Judge is very difficult. And I assure you, the perspective of a Judge is much different than that of an experienced advocate. Anyone who has served as a judge will tell you that it takes considerable training, education, work, and time to develop a sense of confidence in the art of judging. If we are to do our best for the people that appear in Nevada's courtrooms, we must become and stay conversant in core legal and judicial subjects. We want to collaborate on the development of required subjects with varied curriculum that must be attended or taught by all Judges, both old and new. With the help of the National Judicial College, the Boyd School of Law, and our own resources, we can build a foundation for future judicial excellence.

As you may have witnessed, I am excited about the future of Nevada's judicial system. I can't think of a better time to practice law in our state. We have a top 100 law school, an active State Bar, a new Court of Appeals, and Judges and court employees who are motivated, enthusiastic, innovative, and engaged working every day to make our public judicial system the best that it can be. I am proud to serve with these outstanding public servants. But as Justice Breyer noted in his book "Making Our Democracy Work" we cannot take the public's confidence in the Court for granted. I agree and believe that Nevada's courts will continue to earn the public's trust and confidence if we adhere to the rule of law, are proactive in the management of our cases, creative in our efforts to provide access to the courts, sensitive to the needs of people who come before us, innovative in our resolution of disputes, accountable for our behavior and decisions, and fiscally responsible and transparent in all that we do.

Again, thank you for the opportunity to visit with you this evening.