

BATTLE BORN: CHALLENGES FACING THE NEVADA JUDICIARY

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Adversity has fueled the Nevada Supreme Court's constant change and growth. With high unemployment rates, one of the highest foreclosure rates in the country, and in an economic climate marked by shrinking judicial resources,¹ Nevada's courts at every level continue to deal with an ever growing caseload and with a growing percent of the parties needing self-help services. Embracing the wise words of Viktor Frankl that "[w]hen we are no longer able to change a situation . . . we are challenged to change ourselves,"² the Nevada Supreme Court has embraced its "Battle Born" nature and has worked to identify new possibilities for growth. I am proud to serve as a justice of Nevada's highest court and work at an institution that is relentlessly trying to change itself to meet the needs of the people of the state.

The Nevada Supreme Court is one of the busiest appellate courts in the country. As the only appellate court in the state, and with no discretionary review, the Nevada Supreme Court is required to hear all filed appeals.³ During fiscal year 2012, 2500 cases were filed,

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¹ See SUPREME COURT OF NEV., ANNUAL REPORT OF THE NEVADA JUDICIARY 2 (2012) [hereinafter 2012 ANNUAL REPORT], available at <http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/10091>; *Unemployment Rates for States*, BUREAU LAB. STAT. (Mar. 18, 2013), <http://www.bls.gov/web/laus/laumstrk.htm> (reporting that Nevada had the highest unemployment rate nationwide in April 2013); *U.S. Bank Repossessions Drop to 65-Month Low in February as Foreclosure Starts Rebound 10 Percent From January*, REALTYTRAC (Mar. 12, 2013), <http://www.realtytrac.com/content/foreclosure-market-report/february-2013-foreclosure-market-report-7638> (reporting that Nevada had the second highest foreclosure rate nationwide in February 2013).

² VIKTOR E. FRANKL, *MAN'S SEARCH FOR MEANING* 112 (Viktor E. Frankl, trans., 5th ed. 2006).

³ See 2012 ANNUAL REPORT, *supra* note 1, at 6.

giving Nevada the distinction of having the highest ratio of cases per justice of the states without an intermediate court of appeals.⁴ Last year, my six colleagues and I disposed of 2270 cases, an increase in the number of dispositions reached in the year before.⁵ This increase is due in large part to innovative programs aimed at resolving cases at earlier stages in order to dispense justice in a timely manner. These innovations, along with the hard work of our judges and staff, are the only way that we are able to fulfill our duties and responsibilities. Without the Alternative Dispute Resolution Programs, Foreclosure Mediation Program, Senior Justice and Judge Program, and Specialty Courts, our judiciary would be choked with cases, causing undue delay, and would not be able to adequately assist those with no legal counsel.

In 1992, the Nevada Judiciary implemented the Alternative Dispute Resolution Programs in Washoe and Clark Counties (Reno/Sparks and Las Vegas, respectively).⁶ Due to its success, other districts followed suit by voluntarily adopting the program. The program diverts less complicated cases through arbitration or short trials for resolution in a more-timely and less financially burdensome manner.⁷ The short trial program condenses a trial down to six hours of presentation with a decision that must be agreed upon by three of the four jurors.⁸ Arbitration and short trials have been highly successful and popular, with settlement rates well above each district's long-term program averages,⁹ demonstrating an effective means of addressing high caseloads.

The Nevada Supreme Court also runs the nationally-recognized Foreclosure Mediation Program aimed at easing the foreclosure crisis in Nevada. The program connects eligible homeowners with their lenders for discussions on foreclosure alternatives.¹⁰ Homeowners of owner-occupied residential property in Nevada are afforded the opportunity to discuss alternatives to foreclosure—such as new payment plans, interest rate reductions, cash for keys, and short sales with their lenders and a neutral mediator.¹¹ Since the

⁴ *See id.* at 27.

⁵ *Id.*

⁶ *Id.* at 37.

⁷ *Id.*

⁸ *Id.* at 38.

⁹ *Id.* at 38 tbl.11.

¹⁰ *See id.* at 11.

¹¹ *Id.*

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program's inception in July 2009, forty percent of the 16,350 completed mediations have resulted in agreement between the homeowner and the lender or beneficiary to either retain or relinquish the property.¹²

Another program necessary to the timely resolution of our unbending caseload is the Senior Justice and Judge Program. Senior judges and justices—any former justice or district court judge who qualifies for retirement and was not removed, retired-for-cause, or defeated in an election—are generally called upon to provide relief in cases where judges are disqualified, occupied with trials or hearings, or are otherwise unavailable to sit.¹³ This program cost-effectively allows this court system to keep up with its increasingly challenging caseloads. The senior judges and justices provide the equivalent service of eight full-time judges at less than one-quarter of the cost.¹⁴ The public ultimately benefits from this program as it has saved millions of dollars and allows for the timely resolution of cases that otherwise would have had to wait.¹⁵ The success of the program has resulted in a large growth of its use.

We are also very proud of our Specialty Courts in Nevada. Specialty Courts offer non-violent offenders an alternative to incarceration. Specialty Courts are coordinated efforts by the judiciary, counsel, probation, law enforcement, treatment, mental health, social services, and child protection services that are aimed at reducing recidivism by providing support to participants to help address the root causes of criminal activity.¹⁶ These courts engage in problem-solving functions designed to halt the use of drugs and/or alcohol through long-term treatment and training of the participants. The rigorous programs require frequent drug testing and court appearances, along with treatment regimens and recovery services.¹⁷ Tackling addiction and mental health issues correlates with a significant reduction in criminal recidivism, criminal activity or delinquent behavior, abuse and/or neglect of children, and provides for healthier communities.¹⁸ This intervention benefits the

¹² *Id.*

¹³ *See id.* at 22.

¹⁴ *See id.*

¹⁵ *Id.*

¹⁶ *Specialty Court Program Overview*, NEV. JUDICIARY, <http://www.nevadajudiciary.us/index.php/specialitycourts> (last updated Dec. 8, 2011).

¹⁷ *Id.*

¹⁸ *Id.*

public by reducing taxpayer-funded prison time, allowing the individual to once more become a contributing member of society, and reducing the number of drug-afflicted births. Just as importantly, such intervention has unquantifiable positive impacts on the participants, their families, and the community. The graduation rate from the program is very high—in fiscal year 2012, Nevada’s Specialty Courts served more than 2600 individuals and 1500 of those graduated during the year.¹⁹

Nevada’s Drug Court, which was the fifth drug court in the United States, pioneered the development of focusing the court system on rehabilitating addicts involved in the criminal justice system.²⁰ By allowing criminal defendants to enroll in the program as part of their sentence and rehabilitation, or as a diversion from a serious criminal conviction upon successful completion, Nevada’s court system is able to address the needs of the addicts by combining drug treatment and early release. The program has reduced recidivism and transitioned participants involved in the criminal justice system from inmates to productive members of society.²¹

While the majority of the Specialty Courts are drug courts, other Specialty Courts utilize the same principles to address cases involving mental illness, alcohol abuse, homelessness, veterans’ issues, prison re-entry, prostitution prevention, habitual offender, and family-related matters. Nevada operates forty-six Specialty Court programs in both urban and rural settings.²²

Mental Health Courts were the next to emerge. A great percentage of those incarcerated have mental health disorders requiring treatment and consideration.²³ A lack of community-based mental health care compounded by historical de-institutionalization of the mentally ill has led to a largely underserved population of those who could greatly benefit from treatment. The Mental Health Court was created to ascertain those repeat-offenders who are mentally ill and “divert them into treatment [programs] instead of incarceration.”²⁴ This multi-agency

¹⁹ 2012 ANNUAL REPORT, *supra* note 1, at 23.

²⁰ *See id.*

²¹ *See id.*

²² *See id.*

²³ *Id.* at 50.

²⁴ *Id.*

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effort has greatly reduced recidivism rates as treating the mental illness increases the chances of successful rehabilitation.²⁵

In 2009, Nevada established much needed Veteran Treatment Courts.²⁶ Veterans often suffer trauma that leads to or exacerbates depression, substance abuse, or mental illness.²⁷ When they return home to their communities, there are often inadequate resources available to them to help with resulting health problems that carry on after their service.²⁸ Untreated mental health conditions can inhibit responsible social functioning and can lead to an amalgam of issues including unemployment, homelessness, suicide, substance abuse, divorce, child abuse, and repeated involvement in the justice system.²⁹ Because research has revealed that traditional services do not always meet veterans' needs, the Veterans Treatment Courts are tailored to the needs of the veterans who appear before them "for charges relating to substance abuse or mental illness."³⁰ The courts facilitate the connection of the veterans to all available benefits that they are entitled to in order to decrease recidivism and increase the functioning of those who have served our country.

In addition to the programs that ultimately reduce caseloads or cut expenses, the Nevada Supreme Court has also undertaken programs to affect the quality of our service to the state and its people. For example, our Judicial Education Unit develops new programs and provides comprehensive continuing education and conferences to the judges and court staff throughout the state to stimulate competency and professionalism.³¹

One of the smaller, but also impactful, programs that we conduct at the Nevada Supreme Court is our educational and outreach program aimed at Nevada high school students. Our court takes justice on the road and holds oral arguments for pending cases in both urban and rural Nevada high schools to provide an opportunity for students and the public to watch the reality of the appellate process in action and to meet the justices.³² With the consent of the parties, this court brings a combination of criminal and civil cases to

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See id.*

²⁸ *See id.*

²⁹ *See id.*

³⁰ *Id.*

³¹ *Id.* at 23.

³² *Id.* at 17.

the high schools to be heard. While webcasts of cases are available online,³³ the live, in-person visits provide an opportunity for students and the public to see how the appellate process functions, meet the justices, and ask questions.

Additionally, our Indigent Defense Commission was formed in 2007 to examine and make recommendations concerning indigent defense services and resources in Nevada.³⁴ This court first issued performance standards for attorneys, resulting in the formulation and implementation of plans for the removal of judges from the process of appointment for conflict counsel and reformation of contract attorney systems.³⁵ Since those changes have been made, the new challenge has been ensuring the protection of defendants' due process rights across Nevada while also cost-effectively processing cases with limited public dollars. Responding to diminished funding, the Commission has been working to resolve cases expeditiously.³⁶ It is now considering potentially establishing caseload standards for public defenders and others who represent indigent criminal defendants.³⁷ To accomplish this, the Commission has begun focusing on the collection of data regarding indigent defense in Nevada, including developing caseload standards.³⁸

Finally, the Court Improvement Program for the Protection and Permanency of Dependent Children, chaired by my colleague Justice Nancy M. Saitta, continuously works to improve the child welfare system at the local level.³⁹ The program focuses on the barriers facing the protection of children from abuse and neglect and the achievement of safety and permanency for children and their families in a fair and timely manner.⁴⁰ It is committed to progressing constant and meaningful collaboration within the judicial and child welfare systems to significantly improve the

³³ *Id.*

³⁴ *Id.* at 12.

³⁵ *See Commission on Indigent Defense*, NEV. JUDICIARY, <http://www.nevadajudiciary.us/index.php/indigentdefensecommission> (last updated Dec. 8, 2011).

³⁶ *See* 2012 ANNUAL REPORT, *supra* note 1, at 12; *Nevada Indigent Defense Commission report paints grim Picture of indigent defense services in rural counties*, NEV. JUDICIARY (Mar. 22, 2013), <http://www.nevadajudiciary.us/index.php/supnews/1856-nevada-indigent-defense-commission-report-paints-grim-picture-of-indigent-defense-services-in-rural-counties>.

³⁷ 2012 ANNUAL REPORT, *supra* note 1, at 12.

³⁸ *See id.*

³⁹ *Id.* at 15.

⁴⁰ *See id.*

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handling of child welfare cases.

In sum, I am very proud to be a part of a system that constantly strives to improve and to do more with less. The Nevada Supreme Court perseveres and successfully serves the people of the state with little resources and an overabundance of cases. I look forward to continuing this momentum and working on future changes to the system to further reduce the pending caseload and to provide timely justice for all people in the State of Nevada.