

Chief Justice Nancy Rice's State of the Judiciary Address to the Colorado General Assembly

Friday, January 16, 2015

President Cadman, Speaker Hullinghorst, Members of the General Assembly, thank you for having me. General Coffman, and honored guests, thank you so much for coming.

I am delighted to have received the invitation to give the State of the Judiciary speech. It is truly a pleasure to be here to talk to you about one of my favorite things: the Judicial Branch. I'm going to tell you how we've been doing in the past two years since you heard from my predecessor, Chief Justice Bender. Then, I will tell you of our plans for the next few years.

But before I do that, I want to introduce some people to you. Particularly, I want to introduce my colleagues on the Colorado Supreme Court. Unfortunately, Greg Hobbs is not able to be with us today. He's teaching and, not surprisingly, he is teaching water law.

I want you to meet Justice Ben Coats. Ben, if you could stand up. (Applause.) Justice Coats has a background as a District Attorney and also worked in the Attorney General's office. All of the Justices have important administrative jobs. Justice Coats is responsible for criminal rules, criminal jury instructions, and attorney regulation.

Seated next to him – and we always go in order – is Justice Allison Eid. (Applause.) Allison is the former Solicitor and also a professor at CU. We're very glad to have Allison because she helps us with civil rules and appellate rules. She's kind of a rules geek. It is really nice to have her working with us.

Next to her is Justice Monica Márquez. (Applause.) Monica comes from the Attorney General's office as well. With us, she helps Justice Coats with attorney regulation and also deals with what we call public access; that is, how the public gets information from the Judicial Branch. Justice Márquez was retained in our most recent election. Thank you, Monica.

Next to her is Justice Brian Boatright. (Applause.) Justice Boatright was a trial judge before coming to the Supreme Court. He is one of three former trial judges currently on our court. He comes to us from Jefferson County and was also retained in the last election. We're very proud of him for that. Justice Boatright is instrumental to our judicial education efforts and in juvenile and family matters. Thank you, Brian.

Next to him is Will Hood. (Applause.) Justice Hood comes to us from the Denver District Court. He's only been with us for about a year. He's been very involved in access to justice initiatives. We thank him for that.

Jerry Marroney, our State Court Administrator, is not able to be here today because of a family emergency. He used to be a judge in Pueblo. We are so happy to have him helping us on the administrative side of our branch.

As you know, I am Nancy E. Rice. (Laughter.) I was born in Boulder, Colorado, but grew up in Cheyenne, Wyoming. I worked in the U.S. Attorney's Office and was a Denver District Court judge like my colleague, Will Hood. I have been on the Colorado Supreme Court for about 16 years. My colleagues elected me to be their Chief Justice last year.

I have invited some other guests today because I think sometimes it's unclear to everyone how we organize our branch. It's odd actually. It's not a vertical organization, although it seems like it might be. Rather, we are what we call a group of "loosely coupled" organizations. This is what the MBA types would call us. While I am the head of this branch of government, we have 22 judicial districts and a Court of Appeals that all manage themselves.

I would like to introduce you to Dan Taubman who is here on behalf of the Court of Appeals. (Applause.) Dan is very involved with access to justice concerns. We also have what we call "chief judges" in the districts. The chiefs are my primary advisers. They keep me in touch with what's going on in the courts across the state. The chief judges of the 22 judicial districts select among themselves what they call the "chiefs of chiefs." I invited the chiefs of chiefs to be here today. Jim Hartmann is here. Jim is the chief judge in Greeley. He is also the water judge up there. I also invited Mick O'Hara. Chief Judge O'Hara is from Steamboat. He is also a water judge. And then Mike Martinez. Mike is from the Denver District Court, my old court and Justice Hood's old court. Thank you all for being here today.

What's interesting about the Judicial Branch's organization is that we judges get appointed generally because we are decent lawyers. Then we are made chief judges because we are pretty good judges. We don't know anything about management. We don't know about budgeting, we don't know about human resources, we don't know about much, except about the law and about being good judges. As a result, we cling to each other and teach each other how to be good managers. With your help, we have been able to improve our management skills over the last couple of years. You have

given us funds for leadership training. Everybody I have introduced today has gone through that training. It has been extremely helpful. Thank you for that.

I would also like to introduce the last part of my management team: Chris Ryan. Chris, if you don't mind standing up. (Applause.) I can see you hate this. Chris is the Clerk of the combined appellate courts. Seated next to him is my Counsel, Kristen Burke. (Applause.) I also have family and friends here today. I'm not going to introduce them because they have asked me not to; they don't want to be embarrassed, but they are here supporting me.

We have accomplished a number of things over the past couple of years. One of our largest areas of accomplishment is technology. We are almost at what they call the "last mile" in terms of getting our various courts plugged in completely. Civil e-filing is finished. That is to say, almost all civil filings occur online across the state. With the exception of pro se filings, we have become virtually paperless in civil cases. In terms of criminal e-filing, we are paperless in Pueblo as of October. The criminal e-filing rollout there is going very well. We are about to go paperless now in Fort Collins, then we'll continue to roll out criminal e-filing through the rest of the state over the next year or so. The e-filing initiative is going better than we thought it would. People are not upset. It is a very efficient thing for most attorneys and for the courts.

On the probation side of our branch, thanks to you, we have hired new case officers. As a result of having new case officers, we have been able to do much better in terms of probation. That reminds me. Sometimes, people have said, "You know, what really is the difference between probation and parole? And why is probation in the Judicial Branch?" At the risk of sounding condescending – and I don't mean to be at all – let me just refresh your recollection about the difference between probation and parole. When a judge sentences a defendant to probation, rather than to the Department of Corrections, the defendant either goes home or goes into some kind of supervision program that is less restrictive than prison. Probation keeps people out of prison.

Parole, on the other hand, occurs when a judge sentences a defendant to prison, then the DOC decides whether or not that person can leave the prison. The Judicial Branch is in charge of probation, but not parole. Probation makes up a large chunk of our funding. You might think of judicial as the courts; we're also probation.

And so, as a result of you giving us funding for new probation officers, we have been able to really go to town on what we call "evidence-based" programs. Evidence-based methods are those that give the courts and probation very clear factual ideas of who offenders are, what treatment they need, and how we as a system can best serve them.

In the old days, a judge might know a prior record, might know where the offender lived, or might know some other fairly basic information about the person. Then it would almost be a shot in the dark to correctly sentence that offender.

Now that we have 17 new evidence-based programs as a result of having new probation officers, our sentencing and treatment efforts have made huge strides. As a result of these efforts, we have avoided putting people in prison for violating probation. According to our information, these efforts have saved you all – saved the state – \$36.6 million. I think that is very significant. (Applause.)

We also very much appreciate the new judges gave us last year in the 18th Judicial District. The 18th is, of course, Douglas, Arapahoe, Elbert, and Lincoln Counties. You only need to open the paper once to know that there are special things going on in that particular district. They badly, badly, badly needed those new judges. Thank you so much for giving them to us. I don't know how we would have managed without them.

I also want to talk about another thing you did for us last year. You passed the Underfunded Facilities bill. You will recall that there are many courthouses in the state of Colorado that are really in very bad shape. One of the things I did as the new Chief Justice this past year was travel around the state, which was great fun, to visit 16 or 17 of our 22 judicial districts. I saw some of the underfunded courthouses myself. Some of them are really terrible, I have to tell you.

The worst are in Walsenburg, Pagosa Springs, and in Cortez. And when I say terrible, I mean truly terrible. In Walsenburg, for example – and I mean no disrespect – there was bat shit on the judges' chairs. (Laughter.) I guess I don't have to be all that respectful to the bat shit, but you know what I mean. (Laughter.)

So those courthouses are terrible. Thank you so much for passing the underfunded facilities grant program legislation. As a result of that program, we are now able to take a little bit of money, combine it with money from the Department of Local Affairs, and communicate very strongly with local county commissioners that they need to take care of these courthouses. In the case of our three worst courthouses in Walsenburg, Pagosa Springs, and Cortez, that money will make a huge difference. Thank you so much.

Finally, I would like to talk about the Carr Center, our new building, which of course was built as a result of you all being so very kind and helping us with the funding. We have been in the Carr Center – we still call it the “new building” – for two years. It is still fantastic. If you haven't visited yet, please come.

A couple of things have happened, though, with respect to that building that we did not anticipate. It has become a meeting place. It has become a place for people to gather on this side of town. We did not realize there was even the lack of such a place, but as soon as we built this building, people started coming. Over the last two years, for example, we have had 75 receptions in our atrium alone. It's just really quite amazing.

Our learning center, which we like to brag about (and is wonderful, if you haven't been over to see it), has seen fifteen thousand kids visit in the past year and a half. Fifteen thousand kids. I think we are making a difference as a result of that building in so many ways. It has truly become a public resource. The Attorney General is housed in the building and I think General Coffman would agree with me that we are really putting the building to good use. We thank you for it very much.

By all estimates, the Judicial Branch has been doing a good job over the last couple of years. We have what we call "performance measures." These help us evaluate ourselves by asking court users whether they agree or disagree with a series of statements after they finish a court proceeding. These statements include things like, "The way my case was handled was fair," "The Judge listened to my side of the case," and "I knew what I was supposed to do next as I left the courthouse."

We are routinely in the high 60 to low 70 percent range in terms of people who are agreeing with those statements. I wish we were higher; I wish we were in the 80 or 90 percent range. But, you have to remember, half of these people have lost. They're not exactly happy when they're walking out of the courthouse and taking this survey. So I figure anything over 50 percent is pretty good. We are in the high 60s and low 70s, so I think we are doing really very well. But here's the thing: We can do so much better.

We are a great branch of government. We have great people leading it. We can do so much better. I want to talk to you about the kinds of things that will help us do better going forward.

First, we would very much appreciate it if you all pass the bill that would create a new district judgeship for the San Luis Valley. Yesterday, the chief judge in that area, Pattie Swift, and I testified in front of the House Judiciary Committee about this bill. It was a very vigorous session. At the end, the House Judiciary Committee voted unanimously to pass the bill. We are pleased with this result. If there are any questions that I can answer with respect to that bill as it continues through the legislative process, I would very much like to do that. We need one new judge in the San Luis Valley.

The other thing I would like to talk to you about with respect to the future of our branch is a little bit more philosophical. The question is: What are we as the courts going to be? When I come back and talk to you in two years, what am I really going to be talking to you about? These questions have to do with the growing issue of how the courts should respond to the influx of people coming to court who are not represented by lawyers.

I've been a judge for about 25, 26 years. The difference between when I started and where we are now in terms of the number of unrepresented people, we call them "pro se" parties, and the courts' response to those people is amazing. When I started as a judge, the attitude was that people would come in, they would have lawyers, I would talk to the lawyers, they would present their evidence, I would decide the case, and that would be it.

It's quite different now. People come in without lawyers more and more. In fact, about 60 to 70 percent of all parties in domestic cases proceed without representation. What's even more interesting, and what I think requires a paradigm shift within our branch, is that many of these unrepresented people are not poor people. They are not people who cannot afford attorneys. They are people who, for whatever reason, think that they can represent themselves. They do not want to pay for attorneys.

And they cause all kinds of problems in the courts, frankly, because the system is best dealt with using attorneys. The fact of the matter is, however, that the judiciary has to meet these people where they are due to the unique nature of our business. We in the judiciary have a monopoly on certain services. Nobody else can give you a divorce. You can't go to Target and buy a divorce. You can't go to Target and buy a restraining order, can you? So, if you want that, you have to go to court, and, therefore, we are the governmental entity that has the power. And as Spiderman's grandfather said, "With great power comes great responsibility." We have to respond to that responsibility.

So how are we going to do that? Let me give you another anecdote from my past to help you understand what we have done to address this problem. When I was a brand new district court judge, I was probably 38, very young. I went out to a courtroom that was quite big. It was a domestic relations courtroom, my first day on the bench, and it was filled with 60 to 70 people.

I called the first case, *Smith v. Smith*. Two people come up and say, "We are not ready. We haven't had a chance to talk. We don't have lawyers. We don't have any idea what's going on." I say, "Okay, go over there." Next case, *Jones v. Jones*. Same thing. "Go over there." Next case, *Smith*. "Go over there." It was complete chaos, frankly.

Domestic relations was not working. It was taking an awfully long time for the Judicial Branch to come up with some basic fundamental services.

So what have we done over the years to address this problem? First, we came up with this concept of Family Court Facilitators in the late 1990s and early 2000s. Family Court Facilitators work solely in the domestic relations arena and work with the parties in domestic cases before the parties talk to the judge. A Family Court Facilitator will help the parties zero in on their issues. The parties might say, "I don't think we are going to have a problem with property division, but we really are going to have a problem with how we are going to do custody with respect to the children." The Family Court Facilitator helps determine what should happen next in a triage-like way. It's similar to triage in the medical profession in some ways.

After Family Court Facilitators began helping judges better manage domestic relations cases, we saw that many people coming to court had no idea what they wanted to do at all. Sometimes their problems had to do with domestic relations, and other times their problems were completely different. Problems range from serious money and safety issues to things as simple as getting a name change.

Recognizing the diversity of problems that were coming to our courthouses without the help of lawyers, we developed a new position called, very unfortunately, a self-represented litigant coordinator. That's a terrible name, and it's a terrible acronym, too, "SRLC." So we got away from that name and acronym and began calling these people "Sherlocks." They're chasing down answers. They're like Sherlock Holmes. You're going to hear more and more about Sherlocks. I think former Chief Justice Bender talked about them when he was here. We have a number of Sherlocks now around the courts in all of our judicial districts.

This is the most amazing thing to me about the Sherlock program: They have been in place, oh, I would say a couple of years, but in 2014 alone, the Sherlocks talked to a hundred thousand people who came to our courts with questions. Let me repeat that, because I think it is so stunning: A hundred thousand people. We have to respond to these folks. The Sherlocks are helping us do that.

We are also trying to change the way we do business. In addition to Sherlocks, we have a much better web presence and better web access that will continue to improve. We are rewriting our website so that people who go on the site to find out how to approach a court process will encounter plain language rather than a lot of legal jargon. There will be sections that say things like: "Were you sued? If so, go here," or "Do you want to sue somebody? If so, go there." We use straightforward language like that to meet

members of the public where they are. We rolled out portions of this website overhaul just a few months ago and will continue to work on our online presence going forward.

I don't want to take too much of your time and I know you have been doing a lot of ceremonial things this week. I just want to reiterate to you how strongly I feel about the Judicial Branch and how strongly I know my colleagues do as well.

When I was a kid, I grew up in Boulder and Cheyenne. I can be from lots of different places, mostly along I-25. My grandparents lived in Trinidad where my grandfather was a mechanic. His best friend was the judge in town. So, on the rare occasion there would be a trial, my grandfather would go down and be the bailiff in the courtroom. He would get all dressed up, wash his hands – I remember this so very clearly. I would get to go down and be the bailiff with him, of course, and put out the water and the pencils and the legal pads and what not.

I have to tell you, I loved that beyond words. Ever since then, I've always wanted to be in the legal system. People say to me, "Well, you always wanted to be a judge," and I think, in reality, I always wanted to be a bailiff, but you know, here I am. (Laughter.)

Things work out the way they work out. But I have to tell you, from the time I was about ten years old, the court, the Judicial Branch, has been my calling. I use that word, "calling," very advisedly. It's who I am. I could be nothing else. And I think that most of my colleagues feel the same way. We care so much about the Judicial Branch.

Thank you all so very much for helping us. We are a great branch of government and, with your help, I know we will continue to be great for the state of Colorado. I appreciate your time today. Thank you. (Applause.)