

STATE OF THE JUDICIARY (1/13/17)

Chief Justice Nancy E. Rice

Welcome, everybody. I want to thank you, President Grantham and Speaker Duran, for your kindness in being here and inviting me over to speak. And I certainly want to thank my escort committee. I don't think I could find my way without an escort committee. So, Senator Gardner, Senator Guzman and Representatives Kennedy, Benavidez, and Wist, thank you so much for doing that.

May it please all of you -- and I suppose that's the way I always start, since I'm sort of a judge-like person -- may it please all of you, I'm just delighted to be here. Every couple of years, I get to come and talk to you about my favorite topic, which is the judiciary, and I'm really looking forward to doing so today.

Before I do that, I'd like to introduce a couple of people. We have our State Court Administrator here, Jerry Marroney, and seated next to him is his number two person, Mindy Masias.

We also have some honored guests here. My

partner, Holly Russell. Seated next to her is our very good friend, Laurie Steenrod, noted best for having a "three" golf handicap, which we tell everybody about. And next to her are Tom and Pat Gallagher, very old friends of mine from way, way back.

Now, because I'm totally incapable of writing out a speech and because you need a written version of my speech today, we tried to figure out how we could do this, so I have a court reporter, just like the old days. It actually makes me feel very comfortable; I hardly would know how to talk without a court reporter taking down my every word.

So, Tammy, thank you for being here, and you can see actually what court reporting looks like -- in this particular instance, what the real-time court reporting looks like, which means, as I talk it comes right out on the screen. So, if you miss any of my jokes, you can get them about 10 seconds later.

Ladies and gentlemen and members, what I want to do is spend a little time talking about the Court; that is, the Supreme Court, and try to let you know the breadth of what we do. I'm not going to be here today to talk to you about the number

of cases we try and how many cases go to trial and this kind of thing. Rather, what I want to do is share with you really what, in my mind, is the brilliance of the judicial system and how we organize ourselves. I think probably the most interesting thing about the judicial system is that we are not a linear organization. Everybody keeps wanting me to be the boss. I am not the boss. I am the Chief Justice. The bosses are those people right there, including me - the supreme court. So when you talk about the authority of the court, the authority of the judicial branch, it always comes from the supreme court, and that's the seven of us. My power derives from them. And something that's really, really interesting in Colorado that's different than you probably hear of other places is that, in Colorado, the supreme court elects the chief. You know, federally, John Roberts, for example, was appointed by the president, and even in Denver County Court -- I know some of you were interested in that -- the mayor appoints the chief. But, in Colorado, the justices themselves elect the chief. We have this little tiny election, as you can imagine, just the seven of us, and we choose somebody to be a chief. Now, if they don't want me to be the chief anymore, they can vote me out tomorrow.

I serve at their pleasure. It's an interesting role, and it works extraordinarily well.

Because of that process and because I am the public face of the judicial branch, sometimes the tremendous achievements of my colleagues get overlooked, and so I want to talk about those today. In talking about them, I think you'll get a good sense of just what kinds of things our court does and what, in fact, the judicial branch does.

Now, the first person I want to talk about is Justice Ben Coats.

As I always say, Justice Coats and I have having a little contest for best hair on the supreme court. I think I'm winning, but sometimes he thinks he is, but in any event, the two of us do have that contest going.

Now, let me tell you about something really, really interesting that Justice Coats has done in the last few years along with Court of Appeals Judge John Daily.

You're going to think this is boring, but it's not. What I'm going to tell you about is criminal

jury instructions. So don't sit back in your seats. The General Assembly, of course, makes the laws; you come up with the crimes, and I don't know whether you know this or not, but at this particular point there are 870 crimes in Colorado. Now, some of those are duplicates. In other words, you can commit murder a number of different ways, and those all count as different crimes, but there are 870 different ways that crimes can be committed.

What happens after General Assembly decides that something is a crime? Somebody gets charged and it goes to trial. At the end of the trial, the judge has to do what we call "instruct" on that crime. So, at that point, we have to tell the juries who are listening to these cases what you meant when you passed this statute or when you created a crime.

You will probably not find it surprising to hear that sometimes it is difficult to figure out what you all meant when you passed a statute, when you use certain words, when you use commas in one place or a semicolon in another.

So Justice Coats and Judge Daily have created a committee on criminal jury instructions over the last two years and have looked at

each one of these 870 crimes. The committee has drafted jury instructions explaining what the elements of the crimes are and what it takes to prove them in court, so that there is a consistency of understanding among everyone in criminal law as to what a crime is and how it should be defined. This has been a very, very big job. Nothing has been done in this area since 1983, and Justice Coats and Judge Daily took this on, and the instructions take up about 3,320 pages. What's really, really cool, however, is that it's online, and it's free. We're giving this work product away. Nobody has to pay for it. The development of criminal jury instructions is a big accomplishment for the branch, and lots of thanks are due to Justice Coats and Judge Daily.

Next, I want to talk about Justice Eid. Now, do you know why some of us are justices and some are judges? I know everybody stumbles over that. Well, the reason is that if you sit on the highest court of a jurisdiction, you're a justice. No other reason, that's it. If you're on less than the highest court of a jurisdiction, you're a judge. So the only justices in Colorado are on the supreme court; the only justices in The federal system are on the U.S. supreme court. Everybody else is a judge.

I wanted to give a quick explanation on how that works. So I'm now going to talk about Justice -- someone who sits on the highest court -- Justice Eid.

Justice Eid is what we call the "rules czar," the "rules wonk" or the "rules nerd," if we're not being quite so nice, but she is the person who actually deals with these hundreds of rules that we have in our system. Let me explain rules to you. Rules have the effect of law. We, in the branch, have the constitutional authority to make rules, and we're supposed to promulgate and make rules governing all of the procedures that happen. The rules committees deal with everything that happens inside and outside of the court, so for example: Civil rules, probate rules, juvenile rules, evidence rules, appellate rules, water rules, magistrate rules, small-claim rules, county court rules. If it happens, there are rules. And Allison Eid is basically the liaison for all of our rules. It's a very big job.

So what do these rules do? How do they make a difference? Well, for example, some of you are familiar with the problems in civil cases.

Some complain about those cases being too expensive; that people can't get in and they can't try cases. They think the experts are too expensive, discovery is too expensive. Lots of the cases with smaller damages can't be heard. Basically, we're blocking folks out.

So, recently, we had a big initiative, which we called the "Civil Access Pilot Project," where we would rewrite the rules so litigation would be more efficient and user friendly. That took two or three years. Justice Eid was very much on top of that, and she had help from Judge Mike Berger, who is from the Court of Appeals.

These rules committees are incredible. They're made up of judges, they're made up of lawyers, they're often made of court clerks. People who actually know what's going on. We have a system set up where judges on the Court of Appeals chair of all these committees, and the Justices act as liaisons between the supreme court and the committees. So, we have rules having to do with juveniles. Judge Karen Ashby is the person who helps us with all of that.

We also have appellate rules, and Chief Judge Alan Loeb is in charge of that. We have evidence rules, meaning what evidence gets in and what stays out. What's hearsay, what isn't? Judge Gale Miller assists with that.

And Judge Diana Terry, who's not here, is in charge of probate rules. Probate is an issue that you all have taken up in past years and might take up this year.

It's a tough issue, one that's ripe to have some attention. The probate rules committee is doing that. They're going over all of the rules and trying to see how things can be made better.

Which brings me to a larger point: How is a rule made? It's almost like your process. Somebody proposes a rule, it goes through a committee, it comes to the full court, the court will then have a hearing. We have people come in and testify. Lots of times after the testimony we will send it back to the committee. I don't know that the General Assembly does that very often, but we do that pretty often. We'll get more information, and then we'll decide whether to adopt the rule. Once a rule is passed by the supreme court, which, as I say, is a pretty burdensome process, it has the effect of law.

Let me talk now about Justice Monica

Marquez.

Monica came to us from the Attorney General's Office, as did Justice Eid. Both of them, I think, were also in private practice and brought all of that Attorney General and private practice experience with them. One of the things that we've asked Justice Marquez to do, and Justice Coats helps out with this as well, is assist with attorney regulation.

Now, let me talk to you about attorney regulation; and this, I think, is something else that people don't really understand. Those of you who are attorneys do, but everybody else doesn't really know. Is it the bar association? How are attorneys really organized? In fact, the supreme court is responsible for all attorneys, literally from their cradle to their grave. So, for example, of the 40,000 lawyers -- yes, we have 40,000 lawyers in Colorado -- we are responsible for admitting them, making sure that they stay competent, making sure that they do their continuing legal education, those kinds of things. But then also -- and this is really very interesting -- if they die and they leave a bunch of clients, we're responsible for making sure that those clients are taken care of.

Something like this happened a few

weeks ago. An attorney died very unexpectedly. He was a solo practitioner and died in his office. We, the Court, through the people who work for us, the attorney regulation people, went into this gentleman's office and started looking at his files. There was really nobody else to take care of these particular client files. They were basically abandoned. While they were looking through these files and this gentleman's drawers and whatnot, they came upon \$18,500 in cash, taped underneath the drawer. I don't know who that money belonged to. It was not the state's money. We have to make sure that it gets back to somebody, the heirs or the attorneys or someone else. But, in any event, that's the kind of strange thing that we, the supreme court, through the many people who work for us, are responsible for. No one spends much time thinking about that, but that's the way it works in Colorado.

Now, in some states, the bar association is the same as attorney regulation, but not in Colorado. Everybody has to be licensed by the supreme court, and that's why we're ultimately responsible. It's a very big part of

what we do, and that's why we have two justices, both Justice Marquez and Justice Coats, handling that.

Another very important thing that Justice Marquez does is she deals with what we call "public access," which is how people on the outside get information from our branch, and that has become an active area of interest. Justice Marquez, along with a Court of Appeals Judge by the name of Jerry Jones, who isn't with us here today, have enhanced the public access discussion by bringing in people broader than just the courts. We now have press groups who are who are members. So I think we are doing a good job with our public access.

Let's move on to Justice Boatright, Justice Brian Boatright.

Justice Boatright is a busy guy. I give him a lot of jobs, in part, he and I, along with Justice Hood, are the only ones on the Court who were previously trial judges. Sometimes I think that we, as trial judges, have a bigger insight into what's going on in the trial courts. That certainly is correct with respect to

Justice Boatright. One of the most important things he does is he deals with all family and juvenile issues, along with Judge Ashby who I already introduced you to.

The General Assembly has dealt with two issues in the last couple of years related to family and juvenile issues that have come to our attention. One is truancy and whether or not there should be any detentions with respect to truancy, and the other is shackling of juveniles in the courtroom. Let's talk about shackling first. Many people feel that juveniles should not be shackled, period, and there is nobody who disagrees with that. Juveniles should not be shackled. It's hard on them; it's bad for the system.

But the devil's always in the details, isn't it? So how are we going to handle all of our different courthouses? We have 22 judicial districts, and we have courthouses in every county. Some of which are tiny, some of which have very little, if any, security, some of which have windy, difficult halls. And let's remember that some of these juveniles are almost 18, big guys, and sometimes very dangerous. So how are we going to handle these different situations without doing a little

bit of shackling? What I've done, along with Justice Boatright, is put together a statewide task force. All 22 districts, run by their Chief Judges, along with their sheriffs, along with their DAs, along with their public defenders, have gotten together and tried to figure out a plan. This is the way things really ought to work. We should try to figure out solutions on the lowest level possible. If we don't need a statewide solution, we shouldn't go there. So, on the lowest level possible, we tried to figure out how we can have less juvenile shackling. I think every single judicial district has a plan, and I'm really proud to say that we have much less shackling of juveniles, by far, now, than we did two to three years ago. And thanks to you for bringing this to the forefront.

The same thing with truancy. The issue with truancy is these kids don't go to school, the schools call the courts, and the courts file a truancy petition. The courts then are in the position of trying to get these kids to go to school. The issue then is, once you're put in the position of trying to get these kids to go to school, one option is to put them in some kind of a detention. A lot of people

believe that detention is absolutely not appropriate. We have, once again through a statewide task force, greatly, greatly, by hundreds of percent, reduced the number of children who are put on some kind of detention as a result of truancy. We've been very successful in this area. We're really pleased with how this is working out, and that's primarily because of Justice Boatright literally going around, talking to the judges, talking to the sheriffs, and talking to the schools.

Another thing Justice Boatright does is judicial education. Yes, we do have a lot of education; and no, we don't know everything there is from the minute we get appointed. We have what we call a "baby judge school." It's a week long and intense. This is followed by a teenage judge school. The teenage judge school a little less intense. It's harder to control those teenagers, don't you know?

We also have what we call "performance plans," if there are judges having some troubles, people go out trying to help them and give them personalized attention. Finally, we have our judicial conference to provide education to our judges.

We're working constantly on

judicial education. Justice Boatright recently had a very great idea of creating videos, which he called "So You're Going to Be": So you're going to be a probate judge, so you're going to be a juvenile judge, so you're going to be a criminal judge, so you're going to be a civil judge, where you can go in and find out the latest information. He's just done an excellent job with that, and I really appreciate the time and attention that it's taken.

All right. I'm going to move now to Justice Will Hood.

Will comes to us from private practice and also from Denver District Court. Will has been primarily responsible for this huge area called "access to justice."

I talk about access to justice all the time, and so often that I forget that people don't really immediately understand what it is, so I'm going to give you an example.

When I was a trial judge, a long time ago in Denver District Court, probably 28 or 29 years ago, I was trying a case. It was a divorce case, and the husband was represented by kind of a big law firm, and the woman was not represented by an attorney at all.

We now call a person like this an unrepresented litigant or a *pro se* litigant, but the bottom line is that she didn't have a lawyer. The issue was maintenance, which is how much money she gets from her husband after this divorce.

I tried my best, and I made a pretty good decision, I thought, but it evidently was a decision that she didn't like very well. At the end of my decision, this woman, who I still can see and remember very, very clearly, started yelling and screaming. You know, I'm afraid to demonstrate, but just really yelling and screaming. I was sitting on the bench, and I tried to tell her, "Let's have some order in the court." She starts yelling and screaming more, and then she starts taking off her clothes. She took off her shirt. She took off her pants. She starts throwing them around. I'll let you imagine. At this point, I am scared and don't know what to do. I ran off the bench and locked myself in the bathroom. I'm thinking, "This is a little crazy. I just became a judge; I don't need this, thank you very much. Is this really what the rest of my life is going to be like?"

She ran out of the courtroom and into the halls, clothing trailing behind her. It must have been a horrible decision on my part, that's all I can tell you, because she was not at all happy.

The marshals came, and she went to a detention facility for about an hour and calmed down, and that was that, but it was such a lesson to me about how difficult it is for people who don't have lawyers to come into the courts. I mean, that's a funny example -- kind of -- but it's a very, very true example. It is just terrifying.

And that, remember, that problem I'm describing to you is something that happened a long time ago. Now, we have a much more difficult situation. The problem got so bad that two or three years ago we came up with a brand new position, that we call a "Sherlock."

"Sherlock" is a made-up name for a self-represented litigant coordinator; in other words, someone to assist an individual that doesn't have a lawyer. The Sherlock is supposed to go out and search out answers, and we have these people at every single courthouse. That's a really good thing. You might think, well, that probably will help a few people. It doesn't help just a few people. In

2014, we had about 100,000 people coming in wanting this kind of help. In 2015, we had 125,000 people coming in wanting this kind of help. And last year, we had 137,000 people coming in and wanting this kind of help. Providing adequate help for unrepresented individuals is a problem that is not going away, and it's not a problem which is necessarily related to people who can't afford attorneys. Of these 137,000 people, many of them can afford a reasonably priced attorney. Many of these people think they can represent themselves or they just don't want to pay for an attorney. Even with our Sherlocks, this issue is coming very much to a head in the courts.

Poor Justice Hood is the guy who has to deal with this; he has to figure out the solutions. He does this through all sorts of committees. The bar association is working with us. We have a website which is about to start very shortly where people can go online for help. They can even do it on their telephones and what not to get some information. So he's working very hard to try to figure out how to handle this problem of 137,000 people last year who came to the court to ask for help.

Another thing that we're trying to do is not make people come down to courts but to go to the

library. You have to just drive down Broadway to know how many people are outside the big central library. Those people probably need legal help. If they can go to the library and have access to someone who can help them navigate the system -- not be their attorneys -- but help them navigate the system, that's what we're trying to do. We and the bar association are working very hard on this, and Justice Hood is doing a great job in this area.

Another thing that goes hand in hand with access to justice is interpreters. This is one of the few things we're asking for this year in our budget. We're asking for more interpreters, and we're asking for the interpreters to be paid a little bit better. In 2016, 71,500 people needed interpreting services.

Now, that's a lot, and it's all sorts of languages, because Colorado and Denver has become such a melting pot. When I was a trial judge, I remember trying a case where it was all Russians in the courtroom; Russian-speaking parties, Russian-speaking lawyers, The only person who couldn't speak Russian in the entire courtroom was me. If I didn't have interpreters, I would not have been able to

do that case.

We are asking for slightly more pay for these people who are doing just yeoman's service. Once again, that's something that the courts are very much having to deal with. So, Will, thank you. You are doing a great job in that area.

Let's move on to Justice Rich Gabriel.

Rich is our newest justice. He comes to us from the Court of Appeals, which was great preparation for our court, and private practice before that. Rich has been thrown into the administrative hassle of being a justice. Rich deals with our problem-solving courts, also called specialty courts, and that's something I know that you all have interest in. I got some questions about it at the joint judiciary hearing.

We have a lot of problem-solving courts in Colorado -- 81, as a matter of fact. These problem-solving courts arise in the area of drugs, alcohol, mental health, DUI and most recently veterans affairs. They're organic, I would say. They come from the districts as opposed to a statewide approach. What usually happens is that there is be a judge and usually a probation officer who feel very strongly that they want to help people, and one of the best ways to help people and have a one-on-one impact

is through these problem-solving courts.

They're really very cool. People come in, they see the judge not just once every every six or eight months, but almost once a week. When participants graduate there are big elaborate celebrations, which are quite fun.

One problem with problem-solving courts is that they have grown so much, they've proliferated -- 81 in a state of our size - and it's really hard to not only keep track of them, but also to make sure that they're all effective. And so we have developed a committee, which will start accrediting these problem-solving courts, and Rich will be overseeing that. So, Rich, thank you very much. We appreciate your good work on that.

Another thing that all of the justices have to do, including myself, is nominating commissions. I want to talk about that for just a second, because the nominating commissions are really important to the way we are as justices and judges in this state.

I always think that everybody understands the process, but it bears repeating. When there is a judicial vacancy, there is immediately a commission

formed to fill that vacancy. It happens by statute. If I were to die tomorrow, God forbid, in 30 days you would have a replacement nominated for my job. Fifteen days after that replacement is nominated, the governor has to pick. So, in 45 days, you have a new justice. Sometimes it seems like the process goes too fast, but we get our judges replaced. It's a good system that way.

Now, the people who nominate the replacements for judges and justices are nominating commissions. The governor appoints all of the non-attorneys on these commissions. I and the governor and the Attorney General appoint the attorneys. There are 154 people throughout the state who do this, and 15 people at the supreme court level. There's not supposed to be a majority of a political party on any of these nominating commissions. Interestingly, every one of these nominating commissions is chaired by a justice of the supreme court who doesn't have a vote and frankly isn't supposed to say very much. Sometimes it feels like all we do is arrange for the coffee and doughnuts. The justices went to 16 of the 22 judicial districts last year. The most interesting place I went was Nucla, actually, which I never even knew

existed, but that was fun. We meet with these commissioners, and they pick three candidates for the vacancy.

The second most interesting thing about it is to watch the politics of it, because you would think, with democrats and republicans serving on the commissions, that somehow politics would show up. A couple of years into being on the court, I tried very hard to not know ahead of time who were the democrats and who were the republicans on the commissions.

I thought maybe I'll be able to sort it out just from listening to people. And the reality is, I never was.

And the reality is that what people are doing who are on these commissions is not playing politics in the least. They're trying to figure out who the best people are who they could nominate to be judges. It is so stunningly not political that it's almost hard to express, but if you talk to any of these commissioners, they'll tell you the same thing.

These nominating commissions work. We get great judges as a result. It's a wonderful system, followed up by the judicial performance system which is very intensive. I have been evaluated under judicial performance standards four times. Eachtime, I have to tell you it was miserable. I don't know

any other way to say it. It was just plain miserable. I see all my colleagues nodding. Through the evaluation process, you get lots and lots of comments, most of which are fair, some of which aren't, but they always make you be a better judge, and that's the whole point of the thing.

I've given you an awful lot of information, and I know most of you came here because you just wanted me to talk about the bats; is that right? I kind of thought so, and I saved that for the last, because most people see me and they think of that.

Well, thank you for asking. Sorry that I had to give you so much heavy information before we got to it. Yes, we have gotten rid of the bats in Walsenburg and their various byproducts. You'll recall that we were able to do that primarily because you helped us out so much with under-funded facilities program. Thank you. Our rural courthouses are doing much, much better.

We're not asking for more money for that program this year; we may next year. We, frankly, don't need any more money this year, so we're not asking for it. But I'm glad you heard me, even if I wasn't as

appropriate as I should have been a couple years ago.

Mostly then, in closing, I just want to tell you thank you for giving me and my court the opportunity to come and talk to you. Thank you all for being here on Friday before a three-day holiday. I absolutely love the judicial branch. I love to talk about it. I love being a judge. It's been a very meaningful life for me, so thank you so much. I appreciate all of the help you give us.