

Keeping our Porticos Accessible, Open, and Relevant:

A Frank Discussion by a Retired Judge Regarding the Remarkable Features of Nevada’s Justice System and a Couple of Challenges that Lie Ahead

BY HON. CHARLES M. MCGEE (RETIRED)¹ AND ANNA FINE, GRADUATE RESEARCH ASSISTANT, THE NATIONAL JUDICIAL COLLEGE



Allow me to explain the imagery in the title. As you may already know, porticos are structures consisting of a large roof supported by giant columns, typically constructed as an entrance to a church or public building, like a courthouse. Columns can be made of any material, but I am referring to Twentieth Century Corinthian columns, which continue to grace almost every courthouse built in Nevada during that century.

All of these courthouses were designed by Frederic Joseph DeLongchamps,² who was born in Reno, and attended school there, including Reno

High School. Then he earned a degree at the University of Nevada, Reno. He later became the state architect.

Our legal “houses,” in most ways, are in fine shape with a lot of assistance from others. The following is a summary of just some of the rich resources we enjoy.

Remarkable Features

We are blessed with judicial leaders all over the state, justice and municipal courts, district courts, and appellate and supreme courts. For example, the Nevada Supreme Court has convened countless forums to improve the justice system. There are state-of-the-art programs for access to justice in the north and south, rural and urban, including pro per assistance forms. All across the state, there are active legal aid programs.

Under the stewardship of former Nevada Supreme Court Chief Justice James Hardesty, guardianship jurisprudence has changed radically, and now rules are in place to require judicial monitoring, whether the “protected persons” (wards) are minors or adults, and scrutiny is given to money that is spent on behalf of wards. And

that is only one of Hardesty’s contributions. In my years as a judge, I have never seen another judge create initiatives for justice like this leader.

In populous counties and the rurals, judges have started successful drug courts, mental health courts, veteran’s courts and specialized DUI courts, and family drug courts, to name a few.

Also, with the help from the Nevada Supreme Court, the state Legislature has adequately funded its share of the cost of the judiciary in local jurisdictions. It has approved senior judges who are deployed all over the state, including assignments in the so-called “cow” counties.

As an example of a cutting-edge initiative, I urge anyone who doesn’t know about this program to look at former Assembly Speaker Barbara Buckley’s Legal Aid Center of Southern Nevada.

Federal law requires attorneys to be present for stakeholders in all dependency actions (child abuse and neglect cases). With the help of the National Council of Juvenile and Family Court Judges, I have been working in this area for more than 40 years. I can tell you with some confidence that Buckley’s program may be the best



in the nation, because funding for the cost of counsel for the parents (sometimes two attorneys) and the guardians ad litem representing the child would break the budget of most other court systems. Somehow, this distinguished attorney has cobbled together the resources and inspired passion in her attorneys who appear in the family court – the court serving people in poverty whose cases dominate the dependency calendar. It is a state-of-the-art program, and Buckley deserves this kudo.

In the north, but available to attorneys and agencies statewide, are the National Judicial College and the National College of Juvenile and Family Court Judges. Judges from all over the world receive training and assistance at the respective UNR campus locations both in general jurisdiction matters and in specialty courts. Education for Nevada judges in civil, criminal, and family matters is mandatory by statute. I believe every other judge in the state would join me in voicing how valuable this experience has been to their development and professional growth.

Back down south again, we have seen the emergence of the William S. Boyd School of Law. Before that, the McGeorge School of Law in Sacramento was the

“favorite” law school for many Nevada lawyers. The University of Denver College of Law, now called Sturm Law School, preceded McGeorge. But now we have our own school! And *Newsweek* magazine has charted the law school’s meteoric rise in national standings.

However praiseworthy are the initiatives discussed above, two factors threaten to undermine much of the excellent work that makes our system exemplary. The first involves attorneys’ fees and costs.

Soaring Attorneys’ Fees and Costs Are Pricing Us Out of Mid-Level Civil Litigation

A labyrinth of statutes, appellate decisions, rules, and regulations govern the award of fees and costs. They remind me of my grandmother’s sewn patchwork quilts – pretty to look at, but hard to discern any cohesive themes. My focus here is just one subsection of NRS 18.010:

“NRS 18.010(2) ...

In addition to the cases where an allowance is authorized by specific statute, the Court may make an allowance of attorney’s fees to a prevailing party:

- (a) when the prevailing party has not recovered more than \$20,000.00; or ... (emphasis supplied)

The assumption that seems to underly this subsection is that if a prevailing party achieves an award of greater than \$20,000, they, or it, can absorb the cost of litigation from the award. There are saving clauses in and outside of Chapter 18, but they do not reach far enough in given cases.

If the stake or amount in controversy is between \$20,000 and \$100,000, then the accomplishment probably meets the definition of a pyrrhic victory.³

In a decidedly unscientific poll, I asked four other judges and a handful of prominent lawyers around the state the hypothetical question, “Would you recommend raising the 20 grand threshold in NRS 18.010(2)(a)?”

They all said, “Yes.” One rural judge suggested \$60,000, another suggested \$80,000, and two others suggested \$100,000. The five lawyers were split with two at \$80,000 and three

at \$100,000. I question whether even \$100,000 does the trick.

If a property boundary dispute, a mid-level tort, or a good-faith partnership dissolution costs the winning party, who has not filed an offer in judgment, or a smaller medical malpractice action results in a verdict of that magnitude, and the fees to prosecute or defend the claims comes to, say, \$70,000, the clients’ eyes will roll into the back of their heads when you hand them a check for the net amount of \$30,000.

What Can Be Done?

Besides upping the ceiling under Nevada Revised Statutes 18.010(2)(a), etc., three other things come to mind. The first is to take that allegorical crazy quilt my grandma sewed and snip out all the pieces and shapes that say anything about awarding fees and costs.

Then, line up those rules and statutes on one side of a chart, and on the other side, create a list posing every kind of claim for relief. Then, ask yourself, “Under the existing scheme, can a claim or cause of action fairly compensate the prevailing party or parties for reasonable fees and costs incurred?” Put another way, look for the “holes” or “gaps” in coverage.

My second recommendation is to do a similar exhaustive search of the availability of short trials mediations and arbitrations, or other kinds of alternate dispute resolutions that may exist in your community, and by local court rule, funnel some of the cases to a more streamlined process.

The third recommendation is to have the judge or discovery commissioner monitor the case from the outset, looking at the parties’ financial means and limiting the case accordingly. I have seen dozens of custody battles in Family Court bankrupt one or both parties, even if they are middle-class citizens.

These tasks are complex, but I submit, doable.

Looming as the second major flaw in the entire system is the inevitable impact of lightning-fast, ever-changing technology and artificial intelligence.

Many Tech-Savvy Future Clients Are Simply Not Going to Put Up with the Snail’s Pace of Our Justice System

The advent of artificial intelligence (AI) is akin to the dramatic arrival of a

CONTINUED ON PAGE 24

Keeping our Porticos Accessible, Open, and Relevant

colossal steam engine in a small western town from a bygone era.⁴ As it rumbled and roared, screeching and whistling, it elicited amazement and fear among the townsfolk. Yet, they all stood in awe, realizing that, for better or worse, technology had made its presence known. Just like those earlier townspeople, we too find ourselves at a moment when we must adapt to the transformative power that AI brings.

As AI permeates various domains, the legal system is on the cusp of a technological revolution. AI's influence on courtroom procedures and practices is becoming increasingly evident, both directly and indirectly. From enhancing legal research to impacting decisions in autonomous vehicle cases⁵ and law enforcement,⁶ AI's potential in the legal world is undeniable. However, this transformative journey comes with its own set of challenges that demand careful consideration.

The Promise of AI in the Criminal Justice System

AI holds the promise of revolutionizing the criminal justice system in several ways. It can automate time-consuming tasks such as data analysis, saving valuable time and resources.⁷ Moreover, AI algorithms can improve decision-making by processing vast data and identifying patterns that may elude human observers.⁸ When coupled with input from relevant stakeholders, AI has the potential to make data-driven decisions, potentially reducing bias and increasing fairness.⁹

The Dark Side of AI in Legal Proceedings

Despite its potential benefits, AI in the legal sphere presents many challenges. One of the most significant concerns is the opacity of AI algorithms, often called the "black box" problem.¹⁰ Understanding

how AI arrives at its decisions remains challenging, raising questions about transparency and accountability. Moreover, there is a real risk of errors, including bias and discrimination, which could adversely impact the justice system.¹¹

The collection of vast amounts of sensitive personal information and data, such as criminal history, for AI applications raises concerns about potential misuse and illegal surveillance.¹² Additionally, determining responsibility for decisions made with AI can be difficult, leading to accountability issues and complicating the appeals process.¹³

Striking a Balance: Tradition vs. Technology

The legal system, steeped in centuries of tradition, is grappling with rapid technological advancements. Legal professionals bring expertise in legal reasoning and ethical judgment, which are essential for ensuring justice. However, many administrative tasks within the system, such as record-keeping, scheduling, and communication, have historically

EXPERIENCE THE ARM ADVANTAGE

PEOPLE. PREPARATION. PERFORMANCE



ATKIN



BARKER



BECKER



HARDESTY



GIULIANI



GLASS



GONZALEZ



HAIRE



KUNIN



KUZEMKA



JONES



SAITTA



SILVER



TOGLIATTI



OFFERING IN-PERSON & VIRTUAL ADR
WWW.ARMADR.COM  855.777.4ARM

relied on manual processes and paper documents, contributing to inefficiency and environmental concerns.

The move toward technological integration aims to improve efficiency, accuracy, and accessibility. Computers and specialized legal software have already streamlined various judicial tasks, while digital communication platforms have reduced the need for physical mail and in-person meetings. Databases and online portals have centralized legal information, making resources more accessible.

Bridging the Gap: The Pace of Change

The traditional justice system's relatively slow pace starkly contrasts with the rapid development of AI. Litigation can span months or even years, dissuading major companies seeking swift and cost-effective dispute resolution. The higher costs associated with legal teams further discourage litigation, leading to a growing sentiment that the justice system may not meet the needs of the modern business world.

Integrating AI into the legal system represents promise and peril. While AI offers the potential to enhance efficiency, accuracy, and accessibility, it also introduces challenges related to transparency, bias, and accountability. Striking the right balance between tradition and technology is essential to harness AI's potential while preserving the principles of justice, fairness, and the rule of law that have guided the legal system for centuries. As we navigate this evolving landscape, the legal community must engage in a thoughtful and informed dialogue about AI's complexities and ethical implications in our courts.

In summary, in discrete areas like attorneys' fees and access to justice, constant oversight and tinkering are necessary. We lawyers, judges, and administrators need to appreciate that the impact of AI is inexorable, and imminent. Though silent, it is as revolutionary as that colossal steam engine from a bygone era. Owing to the efforts of the State Bar of Nevada, the cooperation up and down the ladder in our only partly integrated judicial hierarchy with leaders at all levels, and, up and down, talented administrative staffs that also cooperate regardless of affiliation, the porticos that welcome the public into Nevada courthouses remain as sturdy as ever.

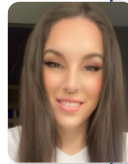
HON. CHARLES M. MCGEE

(Ret.) served a tour in Vietnam with the 101st Airborne Division. He was the division's chief of military justice and attained the rank of captain. He worked as an attorney in Reno from 1970 through 1984. He was a Second Judicial District Court Master from 1980 to 1985, and he was first elected a judge of the Second Judicial District Court in 1984. He started the Court Appointed Special Advocate program in Washoe County, and he also founded and presided over Washoe County's highly successful Family Drug Treatment Court, which was one of the first in the nation to be established. McGee presided over Department Two of the court until 2005, when he retired to senior status.



ANNA FINE, M.S.,

graduated from Arizona State University with a Master of Science in psychology. She is a Ph.D. student working with Dr. Shawn Marsh in the Interdisciplinary Social Psychology Ph.D. Program at the University of Nevada, Reno. Her research interests include how judges and the general public perceive artificial intelligence and its implementation within society, especially within the court system.



ENDNOTES:

1. I submitted my resignation as a senior judge last August after 45 years on the bench (counting a stint as juvenile master). I believe that I have had the privilege of sitting in every courthouse in the state. My reference to "our" and my repeated use of other pronouns such as "I," "you," and "we" is to emphasize that I am talking to every member of the State Bar of Nevada as an individual or as a member of a select group of lawyers such as a bar committee.
2. Delongchamps designed the courthouses in Washoe, Pershing (after their courthouse succumbed to fire in 1917), Lyon, Clark, Douglas, and Humboldt counties. All these courthouses have porticos and Corinthian columns.
3. In 279 BCE, a King of Epirus named Pyrrhus laid siege to Rome. In the ensuing battles, his army lost hundreds and hundreds of troops to death and casualties – more by far than those sustained by the Romans. Ever since that time, this kind of "can't-win-for-losing" conflict has been called "pyrrhic" victory.
4. In drafting and revising this section of the article, we used ChatGPT-4, a large language model trained by OpenAI that has exemplified natural language processing capabilities and generation. ChatGPT was used for assistance in rephrasing and improving the clarity of the writing. The use of ChatGPT enhanced the readability of the paper but did not influence academic integrity.
5. Gless, S. (2019). AI in the Courtroom: A comparative analysis of machine evidence in criminal trials. *Georgetown Journal of International Law*, 51, 195–254. <https://ssrn.com/abstract=3602038>
6. Hamann, K., & Smith, R. (2019). Facial recognition technology: Where will it take us? *Criminal Justice*, 34, 9. <https://pceinc.org/wp-content/uploads/2019/11/20190528-Facial-Recognition-Article-3.pdf>
7. Rigano, C. (2019). Using artificial intelligence to address criminal justice needs. *National Institute of Justice Journal*, 280(1-10), 17. <https://www.ojp.gov/pdffiles1/nij/252038.pdf>
8. Walch, K. (2020, May 10). How AI is finding patterns and anomalies in your data. *Forbes*. <https://www.forbes.com/sites/cognitiveworld/2020/05/10/finding-patterns-and-anomalies-in-your-data/?sh=660bddee158e>
9. Gow, G. (2022, July 17). How to use AI to eliminate bias. *Forbes*. <https://www.forbes.com/sites/glenngow/2022/07/17/how-to-use-ai-to-eliminate-bias/?sh=6be7605711f1>
10. Berk, R. A. (2021). Artificial intelligence, predictive policing, and risk assessment for law enforcement. *Annual Review of Criminology*, 4, 209–237. <https://doi.org/10.1146/annurev-criminol-051520-012342>
11. Malek, M.A. (2022) Criminal courts' artificial intelligence: The way it reinforces bias and discrimination. *AI Ethics* 2, 233–245. <https://doi.org/10.1007/s43681-022-00137-9>
12. Mühlhoff, R. (2021). Predictive privacy: towards an applied ethics of data analytics. *Ethics and Information Technology*, 23(4), 675–690. <https://doi.org/10.1007/s10676-021-09606-x>
13. Anderson, L. (2019). Artificial intelligence is in international development: Avoiding ethical pitfalls. *Journal of Public & International Affairs*.