

PATRICIA D. CAFFERATA'S
CORRECTIONS TO THE RECORD OF
BOARD OF INDIGENT DEFENSE SERVICES (BIDS) MEETING
ON OCTOBER 17, 2024

On October 17, 2024, the Board of Indigent Defense Services (BIDS) held a meeting that included an agenda item to review my qualifications and performance. I am submitting this written documentation to set the record straight and to correct the numerous inaccurate statements made during this public meeting. There were many defamatory comments made at the meeting, resulting in baseless damage to my reputation. I request that this statement be included as a part of BIDS public record. I also request a public statement from BIDS fully correcting the record of the October 17, 2024 meeting.

Disclosure

I have resigned as the State Public Defender due to the hostile, unprofessional, and untenable work environment created by Chair Laura Fitzsimmons, at least one member of the BIDS Board, and certain DIDS staff as outlined in this document.

My Position Regarding Public Criminal Defense

For the record, I believe criminal defense work, whether by retained lawyers or by appointed criminal defense attorneys, is vital to the defendants, the courts, and society as a whole. No matter what a person's economic status is, the constitution

entitles them to a lawyer to protect their rights. In Nevada, improving indigent defense has been a priority the entire 30 years I've practiced law in the rural counties. A variety of legislative proposals have been adopted over the years to address this issue.

The ongoing challenge was and is that in many of the rural counties there are no lawyers, except for the district attorney. Nevada is a large state and the distances from county to county are great. To assist rural counties, the State Legislature established the office of the State Public Defender in 1971. Nevada Revised Statutes (NRS) 180.010 through 180.110 governs the Nevada State Public Defender (NSPD).

In 2019, the State Legislature created the Department of Indigent Defense (DIDS) and established the Board of Indigent Defense Services (BIDS) to oversee DIDS in 2019. NRS 180.300 through 180.320 cover the Board of Indigent Defense Services (BIDS), while NRS 180.400 through 180.460 applies to the Department of Indigent Defense Services (DIDS).

It is important to note that when DIDS was created, the State Public Defender's office was included in DIDS' organization for purposes of administration (bill paying, payroll, etc.). However, the person selected to serve as the State Public Defender is appointed by the Governor.

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BIDS' Agenda Improperly Included Item to Review the Qualifications and Performance of the Nevada State Public Defender

According to NRS 180.300 through 180.320 (BIDS), the BIDS Board has no oversight authority, nor the right to discipline the Nevada State Public Defender. This fact was confirmed in email correspondence with Deputy Attorney Todd Weiss, regarding the agenda item on October 17th. NRS 180.300-180.310 provides BIDS duties and responsibilities. There is no mention of the Nevada State Public Defender within these laws. When questioned about the Board's authority under the law to discipline the NSPD, Weiss agreed that the Board had no authority over the NSPD's performance. His opinion was that only the DIDS Executive Director, not BIDS, could discipline the NSPD. Weiss believed, however, since the NSPD reports to the executive director of DIDS, and since BIDS oversees DIDS, the board members could discuss the NSPD in a public meeting. He conveyed his opinion to BIDS Board Chair Fitzsimmons that the Board had no legal authority to discipline the NSPD. During the meeting Fitzsimmons repeated his advice several times.

The Board could not discipline or evaluate me, and they conceded this fact. However, they did discuss my work at length, sharing personal opinions and erroneous information in public. The state has rules and regulations in place to ensure state employees are treated fairly. This conduct violated both the spirit and the plain language of the law relating to the State Public Defender. When they could not vote to discipline or remove me, BIDS purposely created a hostile, unprofessional

and untenable work environment, essentially getting around the law by ensuring my resignation.

**BIDS' Agenda Improperly Included a Review of the
Qualifications and Performance of the NSPD
As an Action Item**

In the original notice of the meeting, the item read, “Discussion of Oversight Concerns, including specific concerns about the qualifications and performance of the Nevada State Public Defender. (For discussion only.)” Later, the posted agenda was amended to read: “(For discussion only and possible action.)”

At the meeting when the Board discussed taking a vote on this agenda item, my attorney Mr. Rew Goodenow reminded the Board they had no authority to discipline me, so no vote was taken. They did, however, discuss how to get around the law.

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BIDS Chair Laura Fitzsimmons Failed to Fulfill her Duty to Maintain Neutrality Nor To Ensure a Fair and Orderly Meeting

*According to the Nevada Board and Commission Manual, published by the Attorney General:*¹

DUTIES OF PRESIDENT OR CHAIR

The president or chair of the board or commission is not the primary decisionmaker. Instead, he or she is the group leader.

... A good president or chair should have the following characteristics...

- Impartiality while sitting as the president or chair with exercise of common sense and good judgment.
- The president or chair should keep facial expressions neutral and not appear to favor any one board or commission member or any one party in a hearing setting.
- Prepared for the topics on the agenda.
- Knowledgeable about the statutes and regulations the board or commission is charged with enforcing.
[Emphasis added]

¹ Nevada Board and Commission Manual, January 2015
[https://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/Boards%20and%20Commissions%20Manual%20\(With%20Edits\)X.pdf](https://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/Boards%20and%20Commissions%20Manual%20(With%20Edits)X.pdf)

- (1) Chair Fitzsimmons denied my request that this agenda item be discussed at a meeting where I could be present.

When I first received notice of the meeting from Deputy Attorney General Todd Weiss, I responded I would be out of town, and I could not attend. He replied he had no authority to change the meeting and discussion. I later asked DIDS Acting Director Peter Handy for a continuance. He said he had no authority to grant one, only Chair of BIDS Laura Fitzsimmons could do so. She denied my request. Since I could not attend the meeting in person, I asked Rew Goodenow, Esq., to represent me and he appeared on my behalf.

- (2) Chair Fitzsimmons allowed the Board to exceed its authority by discussing the qualifications of an employee over which it had no authority. The Chair allowed the discussion to continue even after it was brought to her attention that I do in fact meet the qualifications for the position.

As the Board discussed my qualifications, Board member Joni Eastly, former Nye County Commissioner and Assistant County Manager, pointed out that in the NRS, the only qualification listed for the Nevada State Public Defender is to be a licensed lawyer to practice in the State of Nevada. (NRS 180.010) The BIDS board cannot require or impose more requirements on the State Public Defender than are in the law.

To be clear, I was and am a lawyer licensed to practice in the State of Nevada.

- (3) Chair Fitzsimmons allowed staff to share false and misleading information with Board members at the meeting.

Brenda Roberts, Deputy Director DIDS, spoke at the meeting. She reported I had not filled out the employment application she recently sent me, requesting information about my jury trials.

My response: In March 2023, upon reading the posting for a state Deputy Public Defender position, I submitted my cover letter, resume, and three letters of recommendation (the application requirements at the time) to Chris Arabia, who was then the Nevada State Public Defender. NSPD Arabia hired me and then notified DIDS Executive Director Marcie Ryba. She never asked me to complete the employment application to which Roberts referred. At all times, Ryba was aware of all my cases because she had access to the NSPD's case management files. Additionally, she never questioned my legal qualifications nor asked me about my jury trial experience. At no time did she try to remove me from defending any case. Ryba's opinion of me is contained in her Annual Report of the Department of Indigent Defense Services, One Nevada, July 1, 2024, page 18. A copy of her opinion is attached below.

On Friday, October 4, 2024, I received the first email from Roberts to complete an employment application. Since I had been employed for more than a year, the urgent demand I immediately complete an employment application seemed out of the ordinary.

The application required many details about my jury trial experience. I explained to Roberts that I could supply the case names and dates of the trials soon; to obtain the added detail, I needed to contact the county clerks in Lincoln, Lander and Esmeralda counties. Contacting them would take time, so I could not “immediately” reply. It should be noted that for most of my tenure as NSPD, I drove to Ely once a week to represent clients in court.

The day I received the application, I was able to spend about two hours filling in the form and I sent what I had to her. I explained I would provide the information on my ten jury trials when I could collect it. That afternoon, I spent time calling some of my parole board clients. The following days I spent in the following:

- Driving to Ely (on Sunday) for Court the next day. It takes a little over six hours to drive to Ely from Reno.
- Driving back to Reno from hearings in district court on Monday.
- Making calls to my Parole Board clients on Tuesday for their hearings the next day.
- Driving to the prison on Wednesday for the hearings with my clients.
- Making calls to my White Pine clients on Thursday.

On Friday, October 11, 2024, Roberts sent me another email demanding the information. Despite my initial response, she apparently incorrectly concluded since I had not sent the full detail, I didn’t have any trial experience. She may have framed

her comments to BIDS board members in a way that they could conclude that I lacked trial experience, or she may have told them her incorrect assessment of my experience. In either case, at the BIDS meeting, the board members began their comments and questions based on the inaccurate assumption that I had no jury trial experience.

My response: I agree I initially provided only some of the information the employment application demanded. I chose to prioritize my time representing my clients. I would make the same decision today and every other day I had clients to represent.

I think anyone in this situation would question why Roberts suddenly required this paperwork, when the legal appointing authority (Governor Lombardo) had already acted.

To correct the record, since I submitted my resignation, I have spent two days contacting the county/court clerks and obtaining most of the information requested. My list of jury trials and other criminal work experience has been submitted to BIDS and is also attached.

(4) Chair Fitzsimmons allowed board members to engage in baseless speculation.

At the meeting, Chris Giunchigliani, former Clark County Commissioner, questioned the fact of whether I was a lawyer.

My response: I was a lawyer licensed to practice in the State of Nevada when I was appointed as the NSPD. And I still am.

- (5) Although Chair Fitzsimmons is an attorney and should be “knowledgeable about the statutes and regulations the board or commission is charged with enforcing,” she mislead the board about the NSPD’s duties.

Chair Fitzsimmons stated I didn’t want to pay contracted lawyers’ bills, and that it was my duty to do so.

This is false. There is nothing in NRS 180.010-180.110 that gives the NSPD a duty to process lawyers’ bills (also known as claims). In fact, there is no accounting position in the NSPD office. On all financial matters, DIDS processes all claims and payroll and handles other financial matters on behalf of the office.

**Contracted Outreach and Compliance Advisor Attorney
David Schieck Failed to Use Due Diligence
To Verify the Accuracy in his Reporting**

Because I was not in attendance, contracted Outreach and Compliance Advisor attorney David Schieck was allowed to misrepresent my work without correction.

At the meeting, Schieck brought up my jury trial that was set to begin the Tuesday following the Thursday BIDS meeting.

Schieck falsely stated the “facts” about this trial. He reported that my client had been incarcerated for a long time. And, he stated the State had made a nice offer to settle the case in exchange for my client’s guilty plea.

It is unclear why Schieck misreported my client’s custody status. My client was released after he was arrested. Since then, he has been living at home in Utah.

Schieck’s comments on my inability to get my client to accept the State’s offer are an example of his superficial investigation of my cases.

The State actually made several offers to settle the case if my client pled guilty to a reduced charge. I conveyed all the offers to my client. He was and is adamant that he is not guilty of the charge against him. Therefore, he was not going to take any deal, however good it might seem to me or others. I think it is not “effective assistance of counsel” to force a client to plead guilty, especially when he fully understands the charges and the options before him.

Schieck also claimed I lost a “Motion to Dismiss” in the case having missed two legal deadlines.

In fact, after I saw the video of the BIDS meeting, I filed an “Application to Withdraw as Counsel” in this case pursuant to Nevada Supreme Court Rule 46.² Judge Gary Fairman held a

² Rule 46 - Withdrawal or Change of Attorney, in relevant parts provides:

The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

2. Upon the order of the court or judge thereof on the application of the attorney or the client.

hearing on my Application. During the hearing, I brought up Schieck's comments on the Order denying the "Motion to Dismiss" with the references to the deadlines I had allegedly missed. When I mentioned this to the judge, he said, "Well, anyone who read his file would know you weren't his attorney then." Apparently, Schieck had not read my client's court file before he reported that I missed deadlines; either that, or he deliberately lied in a public meeting.

In fact, it seems all his comments about me were made based on incomplete review of the facts on his part.

As a public defender, I usually put in more than 40 hours a week on criminal defense work. I talk with clients, negotiate with the State – generally either the deputy district attorney or deputy attorney general - to get my client the best deal I could. As part of each case, I also spent hours researching the law and procedures as well as drafting pleadings. Schieck reviewed none of this work. He observed me for less than an hour in court and from that, drew erroneous conclusions about my work. A small percentage of legal work is actually performed in the courtroom. Most cases do not go to trial but are settled. Again, either Schieck failed to fully investigate before reporting, or he lied on the record.

In Schieck's September 23, 2024 Onsite Visit Report, he reported that at the initial court appearance of one defendant from prison was heard without a lawyer from our office present. The defendant was arraigned, and a preliminary hearing was set.

Schieck accused me of not knowing about the “workings of defending indigent cases.” He said he pointed this out in an earlier email report and that we had not changed our procedures on initial appearances.

My response: It is true, we have not changed our procedures on initial appearances. However, Schieck is not familiar with White Pine County Justice of Peace Steve Bishop’s court procedures, nor has he researched them. If he had, he would know that when Judge Bishop holds initial appearances, he asks the defendant if they can afford a lawyer or if they want a lawyer appointed. This includes prison cases. If they fill out the proper paperwork, then, the judge appoints a lawyer and sets an arraignment/preliminary hearing at a date within the 15-day rule limit. He arraigns those charged with misdemeanors and holds a preliminary hearing if the charge is a gross misdemeanor or felony.

After the initial hearing, the NSPD receives notice of the appointment along with the criminal complaint and the hearing date. Perhaps it is done differently in Clark County, but this is the standard court procedure in White Pine County and many other rural counties.

One of the documents posted with the agenda also contained Schieck’s comments on another White Pine case claiming I had not appeared to represent our client in a justice court case.

My response: I appeared via Zoom and in fact spoke on the record. When I pointed out my appearance to Schieck, he replied

he was on Zoom and could not see the Zoom feed. It seems unwise to make claims of this nature without full information, which further calls into question the veracity and motive of Schieck's testimony, as well as his overall ability to fulfill the duties of his DIDS contract.

Conclusion

Two aspects of the October 17, 2024 meeting are especially egregious and should be of concern to all Nevadans.

First, by using a public meeting to attack my qualifications and performance, without any statutory authority, BIDS has created a precedent for evaluating lawyers in public. The Chair allowed board members and some staff to go to great lengths to misrepresent facts. Anyone who is familiar with public defense knows that the state already has difficulty hiring lawyers, especially in rural Nevada. The unprofessional conduct of this meeting may have a chilling effect and will certainly make it difficult to recruit and hire lawyers in the future.

Second, contracting with a Clark County lawyer with no actual experience or understanding of the practice of law in the rural counties has created a situation where lawyers are being held to jurisdictional standards which simply do not apply in small rural settings.

It is clear Schieck's conclusions about my work are not based on a full reading of court dockets or pleadings. His evaluations then are based on the scant few minutes he has watched lawyers in court and on Zoom. This cursory review,

which has led to reports filled with inaccurate criticisms which may then be publicly discussed, will also hinder the state's ability to hire lawyers for this work.

As previously noted, I believe effective criminal defense, whether by retained lawyers or by appointed criminal defense attorneys, is vital to the defendants, the courts, and the state as a whole. No matter what a person's economic status is, the constitution entitles them to a lawyer to protect their rights. This entire unfortunate affair can only be damaging to the state's efforts to provide adequate public defense for the accused in Nevada.

I again want to thank Governor Joe Lombardo for appointing me as the Nevada State Public Defender. Until recent events, my work in DIDS has been rewarding. I have appeared in the Seventh Judicial District Court (in Ely, White Pine County) for decades. I have made and have many friends in Ely and enjoyed my time serving there again. It is unfortunate that the Board Chair, certain members, and a handful of staff worked so hard to misrepresent my work. Because they could not vote to discipline or remove me, BIDS purposely created a hostile, unprofessional and untenable work environment, damaging my reputation in the final days of my tenure.

Patricia D. Cafferata, Esq.

**List of Jury Trials and other experience
October 26, 2024**

I was the only lawyer on the following cases

LINCOLN COUNTY

1. State v. Radosovich –1-1-92LCR - Felony DUI -
November 3, 1992
2. State v. House - 98-12-92LC - Felony Robbery (+ other charges) – November 9, 1992

LANDER COUNTY

3. State v. Gunter - CR0008080- Felony DUI – October 4, 1995
4. State v. Phillips – CR0008075- Felony trafficking and possession –
March 6, 1996
5. State v. Carlson – _____-CR0008133 or CR0007606-
March 28, 1996

ESMERALDA COUNTY

6. State v William Kroenke -CR-010722 - ex felon in possession –
July 30, 2001
7. State v. Eduardo Trujillo- CR-01-731 -Involuntary manslaughter-
December 19, 2001 – mistrial
- 8, State v. Eduardo Trujillo –CR-01-731- Involuntary Manslaughter
May 14, 2002 - retrial
8. State v. Edward Lowe – CR-02-739– Involuntary Manslaughter
July 7, 2002

RENO-SPARKS INDIAN COLONY

9. RSIC v. Sharol Mc Dade. CRMD 2001– 0171 - Official Misconduct – August 19, 2002
(Court Administrator had several cases but was .not sure this was the correct one.)

PREIMINARY HEARINGS AND BENCH TRIALS

IN LAST 10 YEARS. – ONLY ATTORNEY

1. None.
2. Prosecuted 41 Preliminary Hearings – Eureka, Lincoln, Lander and Esmeralda counties before 10 years ago.
3. Prosecuted about 60 Bench trials in Justice Court - Eureka, Lincoln, Lander and Esmeralda counties before 10 years ago. Three additional cases were appealed and two were denied and result of one is unknown. I had bench trials in district court on civil matters. I appeared in the Nevada Supreme Court on several civil matters.

OTHER EXPERIENCES

1. Clerked for General Jurisdiction District Court Judge David Gamble in the Ninth Judicial District Court in 1989-1990.
2. Clerked for General Jurisdiction District Court Judge Connie Steinheimer in the Second Judicial District Court in 2003-2004.
3. Clerked for General Jurisdiction Judge Connie Steinheimer, the Family Court (during a judicial vacancy) and for the Court Administrator and Specialty Courts in the Second Judicial District in 2019.
4. I was appointed by Washoe Legal Services to serve as the “functional equivalent” of the Law Library at the Washoe County Detention Center. I met with clients and performed legal research for them. I successfully interacted with jail staff on inmate complaints about jail conditions.
5. As the Special Assistant Attorney General of Nevada, I arranged the annual Prosecutor Conferences for the district attorneys in Nevada. Training was a one-day event with 5-6 various topics on criminal law.

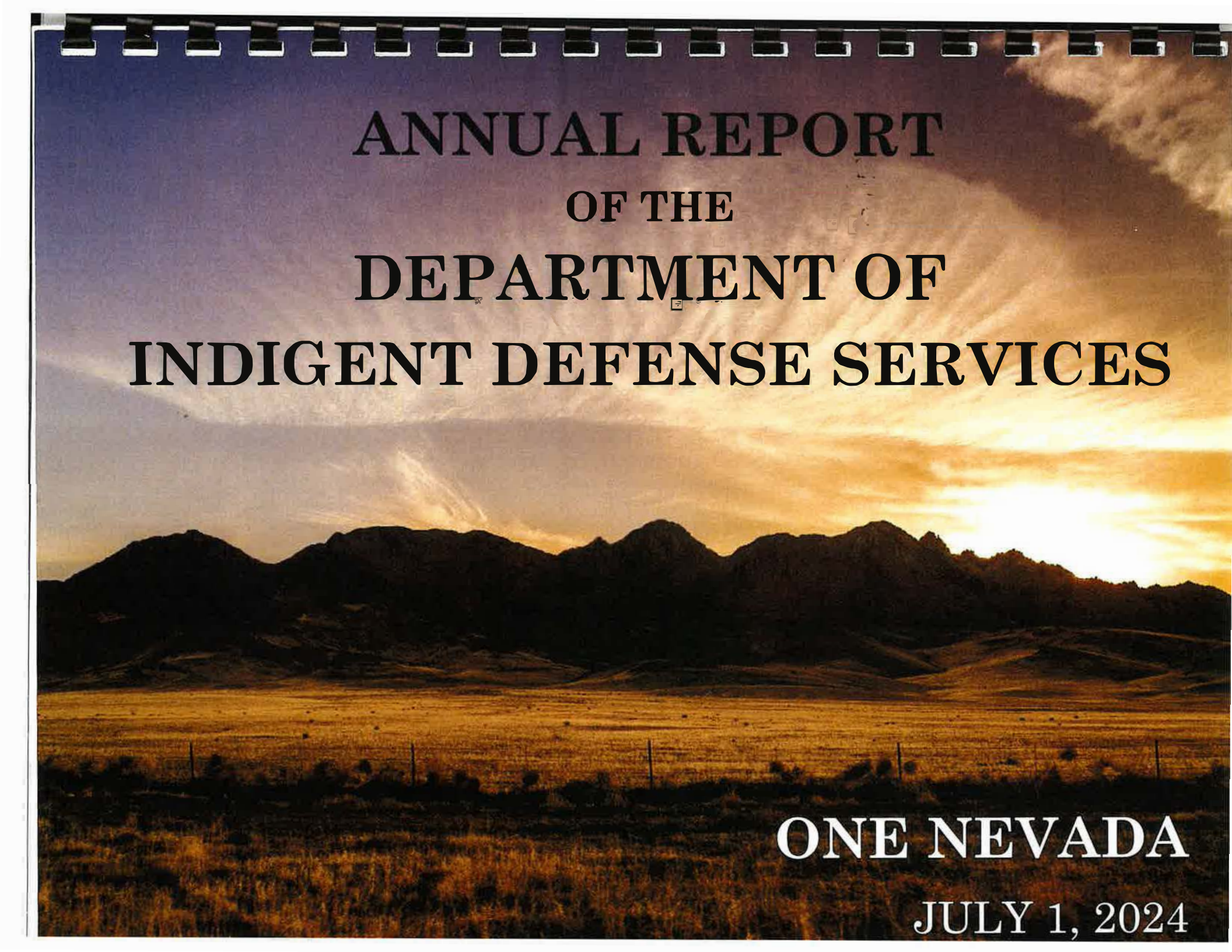
I oversaw the domestic violence programs, the substance abuse committee and the technological crimes board. I also planned the annual Law Enforcements for all the law enforcement agencies and officers in the State. Likewise, I coordinated the Substance Abuse Summit for the AG.

APPELLATE EXPERIENCE

While most of my appellate work was on civil matters, I represented seven clients on their post-conviction habeas petitions. My cases included representing a murderer housed at the Ely State Prison.

JUVENILE CASE MATTERS

I did not seek to be certified in Juvenile matters. However, as a district attorney, I prosecuted juveniles in criminal matters and filed NRS 432B cases in Lincoln, Lander and Esmeralda counties.



**ANNUAL REPORT
OF THE
DEPARTMENT OF
INDIGENT DEFENSE SERVICES**

ONE NEVADA

JULY 1, 2024

AB 518: Reimagining the NSPD

The Nevada State Public Defender saw some big changes in the last year. Not the least of those was the building of an office in White Pine County and Governor Joe Lombardo's appointment of Patricia (Patty) Cafferata as the new head of the office in March of 2024.

Ms. Cafferata is a bit of a legend in rural Nevada and beyond. She has more than 30 years of experience as an attorney and has a long history of public service in the Silver State, including as an attorney for Washoe Legal Services, a state assemblywoman and the State Treasurer. She also served as chief legal advisor for three district attorneys, communications director for Nevada's Attorney General, a judicial law clerk and an associate tribal judge for the Fallon Paiute-Shoshone Tribal Court.

Cafferata's appointment comes at a time when the role of the NSPD is being reimagined and expanded in the rural counties of this state. This includes the creation of a Complex Litigation Unit and the expansion of the appellate division that was allowed with the passage of AB 518 (2023). These changes have allowed the NSPD to relieve some of the caseload of the rural counties and to provide specialized litigation support for complex and sophisticated cases, including death penalty cases.

With the ongoing shortage of indigent defense attorneys in Nevada, and the requirements for most counties to increase their numbers of public defenders, the NSPD's expansion to assist in these areas is perfectly timed. The NSPD is continuing to explore new ways to provide more assistance to our rural counties in the future, including in the realm of post-conviction habeas practice.

The Department looks forward to working with Ms. Cafferata as we continue to reimagine the Nevada State Public Defender and its expanded role in our great state.



Patricia Cafferata, Nevada State Public Defender