

State of the Judiciary
Chief Justice Gordon R. Hall, Utah Supreme Court
Message to the Utah State Bar
June 28, 1990, in Beaver Creek, Colorado

President Chamberlain, distinguished members of the Bar, and special guests:

I have looked forward to the presentation of this report with much greater anticipation than in prior years. This is so by reason of the fact that a number of years of careful planning have culminated in making our judicial system more efficient and accessible than ever before. During 1989, we substantially achieved the goals contemplated by the 1985 revision of the judicial article of the Utah Constitution.

To the extent that a strong, independent judiciary exemplifies our commitment to liberty, no state has demonstrated more of a commitment to this ideal than has Utah. Our courts have enjoyed strong direction and support from the Legislature and from the governor. Bar members and lay citizens have volunteered thousands of hours to strengthen our court system, and individual judges have assumed direct responsibility for implementing needed improvements.

COURT DELAY

A brief review of a few areas reflects our progress. By 1986, despite the fact that the Utah Supreme Court was one of the four most productive courts in the nation, appellate delay had reached intolerable levels. Some cases were taking nearly four years to resolve on appeal. Projections indicated that by 1990, appellate delay in Utah would exceed seven years. In response to this crisis, legislation was sought to permit the establishment of a court of appeals. The admittedly optimistic goal was to ensure that by the end of 1990, all cases could be resolved on appeal in an average of one year instead of the projected seven years.

The pressing question was, could the Supreme Court and the court of appeals in just three years work through an oppressive appellate backlog and be on track with a one-year case resolution schedule?

I am most pleased to report that both courts have met this goal. In the face of an extremely heavy caseload, the court of appeals schedules cases for oral argument within four months of readiness, and final decisions are published within three or four months of argument. In addition to the speed of handling appeals, this new court's scholarly opinions are providing clarification of many disputed areas of Utah common law.

Consistent with the court of appeals' excellent work, the Supreme Court has nearly eliminated its accrued backlog.

- The January 1987 total of 210 cases under advisement has been trimmed to just 80 today.
- The 477 cases awaiting oral argument in 1987 have been cut to only 52, now at issue.

Because of the efforts of all parties, Utah has turned the corner on appellate delay. This progress will be maintained.

At the trial court level, Utah's record continues to be impressive. The trial court work load has grown at projected levels, but improved calendaring practices continue to allow the district courts to hear cases within 90 days of readiness for trial. No Utah trial court suffers from the delays of one or two years that many states experience.

In two areas, caseload growth has been so rapid that the efficiency of the system has been jeopardized. The juvenile court has experienced a 50 percent increase in filings in the last several years. The increase reflects the same growth seen in the teenage population generally. But no juvenile Judges have been added in the past four years. Of all areas, court delay in dealing with our children is the least acceptable. An audit by the National Center for State Courts confirmed the need for an additional judge in the Weber, Davis and Morgan County areas, and in the Legislative session just passed, the Legislature did indeed authorize a new judgeship. We expect to fill the position in September.

Circuit court filing have also grown substantially. The primary impact has been felt in the Clerk's offices. The judicial council is proposing both staffing level changes and changes in the qualifications for clerks.

In our courts not-of-record, the justice courts, changes are also being made to improve public access.

JUDICIAL ADMINISTRATION

Modernization of judicial administration was a key objective in the revision of the judicial article. Courts and judges tend to have strong allegiance to tradition and a conservative approach to change the qualities help ensure continuity and predictability in our justice system. But we all recognize the need for the courts to keep pace with a quickly changing society by establishing effective and efficient means of administering the judiciary.

Under the judicial council's leadership, many important initiatives are being pursued. I would like to discuss several of these initiatives with you.

- As recently as 1985, automation almost unheard of in the courts.
- Today, our juvenile court is nationally recognized for its information system.
- 99 percent of the circuit court caseload is automated, and only
- Six months after the transfer from the county, 90 percent of the district court caseload became automated.
- The two appellate courts will automate their operations beginning next month.

With adequate support, Utah is now within two years of being able to provide automated access to court calendars and files for law firms, the press, and other businesses, such as title companies. Judges will be able to access criminal and driver's license files during court hearings, avoiding weeks of delay.

This year, the courts will implement a pilot audio-video arraignment program. This offers the potential of significantly reducing transportation costs while improving court security.

In an effort to better utilize facilities and staff, Utah has adopted a policy of co-locating courts. Historically, we have built individual facilities for each level of court, which has resulted in duplication of expensive support space, higher staff overhead, and specialized courtrooms which have prohibited shared use by several court levels. The results of initial efforts to consolidate some court facilities in various districts have been encouraging. More important than the initial savings in capital costs has been the increased efficiency in the utilization of judges and staff.

Last year, a study was completed of the feasibility of co-locating appellate and trial courts in Salt Lake City. This study was overseen by lay citizens, building board representatives, legislators, lawyers, judges, and city officials.

It indicates that co-location will result:

- In a savings of 40,000 square feet of space.
- In reduced staffing costs.
- In improved access for the public.
- And in improved ability to manage future growth and existing resources.

Funding is, of course, the key to such a project. and hopefully the Legislature will see fit to include it in its building plan in the not too distant future.

The judicial council is engaged in a study of the organization of the circuit court and the allocation of jurisdiction in all trial courts. This study was prompted by the concern that the current circuit court structure may result in a proliferation of one- or two-judge court facilities which are expensive to build and operate. Concern had also been voiced about the projected need for additional trial judges. The council intends to present a detailed analysis of these issues and recommendations by the fall of this year.

Current studies on the highly important role of court clerks are also in process. Proposed modifications will recognize the impact of automation and the need for shared services between all levels of court. There is also progress in the reclassification of court clerks with a view toward proper recognition of their professional status.

JUDICIAL PERFORMANCE

Utah is recognized as a national leader in the establishment of judicial performance evaluation programs. Judges will now receive subjective and objective feedback on their performance every two years. The primary purpose of this program is the self-improvement of judges individually and the judiciary as a whole. A secondary purpose is to increase the level of information available to the public at the time of judicial elections.

Judges undergo an extensive screening process prior to appointment and confirmation. Their decisions are continually scrutinized through appellate review. Additionally, Utah has an

independent conduct commission to review any complaints of violations of the code of judicial conduct. Because of this rigorous process established by our constitution, some have expressed concern that additional performance review may jeopardize judicial independence. This concern is well-founded.

Judicial independence is the heart of our justice system. If a judge is placed in the position of requiring popular approval for decisions or needing the approval of an individual or small groups for continued service, the constitutional framework of our system will be lost. Recognizing this, the council feels that the proper balance can be preserved by providing individual judges with valuable and confidential feedback. Ongoing evaluations of the program will be maintained to ensure that judicial independence is not sacrificed.

GENDER AND JUSTICE

For the past two years, a diversified citizens committee has been examining the impact of gender on justice. They have examined the entire scope of our justice system. This subtle but significant [...] is probably present in every institution of government. But the judicial council feels that it is especially critical that the courts be sensitive to any issue, however subtle or unintentional which may affect the fair administration of justice. Therefore, the council chose to undertake this critical self-examination with a commitment to address all issues identified. This report was released in April and is now in the process of review and implementation.

FUTURE OF THE COURTS

The judicial council, with the support of the state justice institute, is undertaking an extensive strategic planning effort on the future of Utah courts. It is hoped that this important endeavor will be modeled after and coordinated with the strategic planning process established by this Legislature.

A task force is in place, chaired by Roy Simmons and composed of members from all segments of society, including members of the judiciary.

CONCLUSION

The progress and initiatives I have outlined have not occurred by accident. They are the product of purposeful design of all members of the judiciary. The foundation of this design is a recognition that our personal freedoms are directly tied to making constitutionalism work. Our government requires three strong and separate but interdependent branches—three branches which respect the need for tension and cooperation and the fact that the vitality of one branch is dependent on the strength and vitality of the other branches.

On behalf of the judiciary, I extend my appreciation to each of you for ensuring that Utah has such an independent judicial process.