State of the Judiciary
Chief Justice Michael D. Zimmerman, Utah Supreme Court
Message to the Legislature
January 19, 1998, in Salt Lake City, Utah

Governor Leavitt, President Beattie, Speaker Brown, legislators, and members of the public. On behalf of the Utah Judicial Council, the Utah Supreme Court, and all the judges and staff in the third branch of government, I thank you for this opportunity to report on the state of the Utah judiciary.

As the Chief Justice of the Utah Supreme Court, one of my primary duties is to chair the Utah Judicial Council and to see that the policies set by the Council are implemented by the State Court Administrator. In performing these duties, I do not act as a judge, a decider of cases. Rather, I fulfill an administrative role assigned me by the Constitution. I am here today in that capacity to report to you on the state of the third branch from an operational perspective.

We in the judiciary face a number of challenges as we head into the next century. Some of these are recurring challenges and are the inevitable consequence of Utah's growth. Others are unanticipated and raise fundamental questions about the way we have always done business. But in either case, the Utah judiciary is positioned to meet those challenges. We are well organized, innovative, and efficient. And our excellent working relationship with the executive and legislative branches assures that we can communicate openly and candidly about how to best address these challenges with a minimum of mutual suspicion and posturing.

Before I start into the body of my report, I want to take this opportunity to introduce several people to you. First, all of you know my colleagues on the Utah Supreme Court. Justices Stewart, Howe, Durham and Russon. But today I would like to ask Associate Chief Justice Richard C. Howe to stand. As of April 1, I will be stepping down as Chief Justice and he will be assuming the post. He will do an excellent job. Justice Howe has been a member of our court since 1980. Before that, he served for nearly two decades in this legislature, first in the House, where he was speaker in 1971 and 1972, and then in the Senate, where he served from 1973 to 1978. He understands your institution and will maintain our excellent working relationship. Justices Stewart, Durham and Russon are also here today.

I would also like to introduce you to the members of the Utah Judicial Council. The Supreme Court is the top of the judicial decision-making pyramid in Utah. And the Constitution also gives it some administrative responsibilities over the system, such as setting rules of evidence and procedure, overseeing the Bar, and managing the appellate process. But the role of administering the courts as a whole is assigned by the Constitution not to the Supreme Court, but to the elected representatives of the legal system who constitute the Utah Judicial Council. I thought this would be a good opportunity for you to put faces to that institution.

The Council has 14 members, 12 judges elected from their respective court levels, including one Supreme Court justice, one court of appeals judge, five district court judges, three justice court judges, and two juvenile court judges. There is also a bar representative on the Council, elected

by the Bar Commission. And the final members is the Chief Justice, who is the chair and votes only to break ties. I would like the members of the Council to stand as I introduce them.

Supreme Court Justice Leonard H. Russon
Court of Appeals Judge, and vice chair of the Council, Pamela T. Greenwood
Judge Anne M. Stirba of the 3rd District Court, Salt Lake County
Judge Michael Glasmann of the 2nd District Court, Weber County
Judge Robert T. Braithwaite of the 5th District Court, Iron County
Judge Michael Burton of the 3rd District Court, Salt Lake County
Judge Anthony W. Schofield of the 4th District Court, Utah County
Judge Kay A. Lindsay of the 4th Juvenile Court, Utah County
Judge Stephen A. van Dyke of the 2nd Juvenile Court in Davis County
Judge Kent Nielsen of the Sevier County Justice Court
Judge Stan Truman of the Emery County Justice Court
Judge John Sandberg of the Municipal Justice Courts of Clearfield, Clinton, Riverdale and Sunset. (That is four different courts John handles. I have not merged these municipalities into one.)
James Jenkins, a member of the bar from Logan.

That is the Utah Judicial Council. These are the people who set the administrative policies by which the judicial branch is run, and also set the budget and legislative priorities for the system. Of course, we depend heavily on our able State Court Administrator, Dan Becker, his staff, and all the other court employees working across the state to carry out those policies. Dan, would you please stand, too.

I want to take one moment to congratulate all who had a hand in the 1984 revision of the Judicial Article of the Constitution that established the Council. You provided us with one of the soundest judicial administrative structures in the United States. It assures that all levels of court, and both urban and rural areas of the state, have their perspectives considered. Yet because no court level dominates the council, all must work out their differences and make common cause for anything to be accomplished. This has the effect of taking people who may have fairly parochial perspectives at the start and bringing them to see the needs of the judiciary as a whole, people capable of placing the needs of the system ahead of the needs of their own court level and geographical area. Largely because of this need for consensus, the Council has proven itself capable of developing and refining sound initiatives, and of mounting support for them to see that they are implemented. And because the terms of members are staggered, we have continuity in direction despite changes in membership.

My diversion onto the subject of the strengths of the Council system is not irrelevant to the theme of my speech today. One of the Council's strengths is that it enables the judiciary to formulate coherent positions internally, and then present them to others with one voice.

A recent example of how this has served all the branches, and the public, is in the area of juvenile justice. In my state of the judiciary address four years ago, I first began calling your attention to the inability of the juvenile justice system to deal with the large increase in youth crime that has paralleled growth in this segment of the population. A lack of necessary probation

staff, of programs, and of secure detention beds produced long delays and an inability to match swift and appropriate sanctions to youthful offenders.

Competing visions between the juvenile court and various executive agencies as to how the problem should be addressed and by whom, and the threat that any remedy would have a large price tag, made the prospects of corrective actions dim. But after extensive conversations we initiated among leadership of the Senate and House, the Governor's office, the courts, and affected executive agencies, an agreement was reached to put together the Juvenile Justice Task Force, now in its second year. This legislative task force was carefully structured to include all the key players and to put all the tough issues on the table.

It is a testament to how well that task force process worked that last year, you passed without reduction its proposed $22 million package of increases for juvenile justice. The courts received $6 million of this money. One half of that $6 million was used to establish programs developed in the local juvenile court districts to provide services that previously did not exist. The other half of the money was used to hire 60 new probation officers to make sure that youth go to those newly available programs and do what ever else the court has ordered them to do. The rest of the $22 million is being used by other agencies to provide other much needed juvenile facilities and services.

I think we can look back on this whole matter with some pride. You, the legislature, and the governor have shown real leadership. The problem was identified, a process for addressing it was created, a consensus solution emerged, and you found the means to implement that solution. This is a model of effective problem solving by all three branches of government.

While this example illustrates the capacity of the courts, as an entity, to play an important role in working with the other two branches of government, another strength of our structure is that its coherent statewide administration is combined with a sensitivity to the needs of each part of the system. That has allowed us to be innovative and flexible in meeting the public's needs. We are constantly planning, setting goals, and trying new approaches to reach them efficiently. These new approaches are often done on a pilot basis, with little or no additional funding. If these approaches are successful, we attempt to implement them statewide, coming to you when necessary for additional funding or legislation.

The juvenile victim-offender mediation program is an example of a program that we developed and later came to you for support to expand it after it showed promise. This was initiated on an experimental basis in the 3rd District Juvenile Court in 1996. Under that program, mediation is offered to the victim and the offender, generally before a judge is ever involved. The objective is to give the victim an opportunity to meet the juvenile offender and impress upon them how the crime has affected their lives. It also gives the victim a chance to play an active role in determining the restitution required and any community services to be performed.

That program proved very successful. Victims are vastly more pleased with the process than when cases are handled in the traditional manner. Surveys tell us that more than 90% of the victims participating in the program felt good about the process, a remarkable figure given that they are victims of crime. In addition, the process makes a strong, positive impact on offenders.

They must sit down with their victims and understand the result of their actions in very personal terms. That has changed their subsequent behavior.

From our records, we find that when mediation is used, the offending youth is 20% less likely to reoffend than those who have not gone through mediation. And when mediation has been used to set the amount and terms of restitution to be paid, the offenders pay a higher percentage of the amount ordered, and on time.

These startlingly, good results, led us last year to ask for funding from one staff person to expand the program. You gave us that funding, and with that support staff person, we have been able to secure the services of volunteer mediators, allowing the program to be taken statewide. Obviously, if these results hold up over time, this program has real potential for getting youth out of the juvenile system sooner, and keeping them out. It also has the added advantage of giving victims a much greater sense that the system cares about them, and that they are an integral part of the process.

The Alternative Dispute Resolution program I have just described is only one of six ADR programs that we are presently conducting in the appellate, district and juvenile courts, all of which show considerable promise. The bulk of these programs have been initiated without additional funding through the use of existing staff and volunteers.

Innovative programs that provide better solutions for the parties and the public are not without their challenges, both for the judiciary and for the legislature. We have undertaken several intensive judge-centered programs in the district and juvenile courts to respond to obvious needs. These programs show that better results for the parties and the public are often available, but that they come at the cost of much increased judge time and attention per case. The very success of these programs raises serious questions about how much we are willing to pay to improve the quality of justice the courts can provide.

In January of 1997, Judge Sheila McCleve of the 3rd District Court established a separate domestic violence calendar. In addition to her normal caseload, she took on responsibility for a calendar composed exclusively of domestic violence matters. The effect of concentrating the matters, instead of scattering them among all the judges' calendars, and of devoting additional judge time to each case, was to assure consistent treatment of offenders, to dramatically shorten the time between an offense and a court appearance, and to greatly increase the likelihood that those not complying with the terms of the court's orders would be punished.

As a result of her program, a far higher percentage of abusers are now complying with orders to get treatment, and compliance with other aspects of court orders is also up sharply. But the cost was far more judge time per case. By year's end, after having personally conducted over 5,000 cases, seeing the average defendant four times as often as would have been the case otherwise, Judge McCleve has returned to a more traditional calendar. The draining nature of the caseload and the sheer volume of the work was too demanding for one judge. But the lesson of her experience is that sustained attention by one judge to a defendant produces positive results that are hard to achieve otherwise. The other lesson is that increased judge time per case sharply increases workload and cannot be maintained without additional judicial and clerical resources.

A similar lesson is taught by our two existing drug court programs, and can be expected from other drug court programs that are being proposed around the state. Dramatic reductions in the rates at which defendants reoffend result from successful completion of the program, but the judge time per defendant is about 15 times what it would be in the routine criminal case.

We have had a similar experience in the juvenile court. The Child Welfare Reform Act of 1994 formalized proceedings and required more judge time per case in the hope of achieving better outcomes for children, parents, and society. The Act has had the desired consequences. However, at a high cost. Abuse and neglect matters constitute less than 5% of the case filings in the juvenile court, but now require almost 50% of the total available judge time to process.

These are only examples, but I suspect that in the future, we will see more programs, whether originated internally or from without, where particular types of cases will be earmarked for more intensive judge attention in the hope of producing better results. And if these programs are promising, I am sure that we will respond by seeking their expansion. But you can see that more judge-intensive calendars will only compound the problems of growth we face, and put in high relief the choice between cost and the quality of justice.

To help us meet the demands of current judge-intensive programs, and as well to meet the growth in our traditional district court caseload, we are asking for two additional judgeships this year, one for the juvenile court and one for the district court. They are not all we need, but they are a start.

Let me take a minute and reflect on another emerging issue which I think will eventually be of great importance to the judiciary and the legislature; not necessarily this year or next, but certainly in the foreseeable future.

This is the challenge posed by the sharp increase in pro se litigants: that is, people representing themselves in civil matters. These cases are of various types, from divorce, abuse protective orders, custody and visitation, to contract and torts. In Utah, currently one in every five civil cases is filed pro se, and the trend is upwards. This trend toward self-representation is nationwide and I think it will persist. For example, in Phoenix, Arizona, one-half of all divorce matters are now filed pro se. This trend is partly driven by economics - the cost of lawyers - and partly by a desire of people to handle their disputes by themselves. Direct participation gives them more understanding and more control over the process and the outcome. This same desire to participate directly is also one of the things that is fueling the growth in our ADR programs.

Direct participation presents problems, however. Courts are structured to operate with lawyers representing the parties, which permits the court personnel and judges to act as detached participants in the litigation process. In such a scenario, lawyers who understand the intricacies of the law and the procedures can be counted on to advise the clients, advocate their positions, and get them through the process. The presence of large numbers of pro se litigants is fundamentally inconsistent with this system. Their lack of understanding of procedure and the law raises the prospect of the pro se litigant losing not on the merits of their case, but on technical grounds. Also, their lack of knowledge also means that they make many missteps and

require help through the process from court employees.

I have no doubt that the judiciary has a clear responsibility to accommodate these people seeking to assert their legal rights.

We have made efforts. In 1995, we placed five QuickCourt kiosks around the state to permit people to prepare their own pleadings in some types of matters. The forms produced by these machines, after a simple question and answer session with a computer, comply fully with the requirements of our court rules, thus avoiding a source of technical problems for pro se litigants. Although we have only five machines in place, last year almost 12,000 people sought court information from these kiosks, and almost 4,000 people printed out forms for divorce and landlord-tenant issues. This represented a 50% increase in usage over the previous year.

This year, we are asking for legislation that will permit us to make these same services more widely available over the Internet. In addition, we are making ADR available in more forums, which should help meet the needs of these litigants for understandable, sound, and accessible dispute resolution processes. Finally, to make the system a bit less daunting, we are instituting a 1-800 number where the public can call and get information or register complaints.

You in the legislature have already addressed one small aspect of this pro se problem and seem to agree that the courts should help them navigate the judicial processes. In 1996, you required that court clerks essentially act as paralegals for those seeking domestic abuse protective orders. As a result, a large number of court clerks are devoting the bulk of their time to this work, and the demand continues to rise.

The long-range implications of this increase in pro se civil litigation is that it will bog the courts down, retarding the processing of all types of cases. Already, I hear judges complaining about how they have to act as lawyers for this pro se litigants and how this slows down their calendar. Some who have studied this problem have suggested that the courts will soon have to provide more clerks to act as paralegals for pro se litigants if court access is to be meaningful. This would not be greatly different from what we are already doing for those seeking protective orders.

Whatever steps are taken to accommodate this trend, it is sure to have substantial cost implications. And this is an area where there is no real options for the courts or the legislature. Referring back to my earlier remarks about more judge-intensive programs, there you can choose not to provide the judicial resources needed to permit judges to devote more time to each case in order to produce better results. But in the area of pro se litigation, regardless of what you do or do not do to facilitate access, the public will make its own demands on the court system.

As this is my last appearance before you as Chief Justice, I would like to take a moment to extend my warm thanks to members of the House and Senate and the executive branch with whom I have had the pleasure of working over these past four years. There are natural tensions between the branches of government that the founders wisely relied upon to keep each in its own sphere. But beyond our areas of necessary autonomy, we are all part of one government, trying to do the peoples' business. Governor Leavitt, President Beattie, and Speaker Brown all

understood that fact and made my task of representing the judiciary far easier than it might have been. I trust that understanding will also serve to ease the way for my successor.

In concluding, I would like to invite each of you to visit us in the new courthouse in March, after our move. The building is on time and on budget, no mean feat for a project of its size.

Thank you for your attention.