

State of the Judiciary  
Chief Justice Richard C. Howe, Utah Supreme Court  
Message to the Legislature  
January 17, 2000, in Salt Lake City, Utah

President Beattie / Speaker Stephens, Senators / Representatives, guests. This is my second opportunity to address this body, and I very much appreciate the chance to appear on behalf of the dedicated judges and staff of our courts and report on the state of Utah's Judiciary. With me today are the other members of the Supreme Court, Associate Chief Justice Durham, Justices Stewart, Zimmerman and Russon. I would also like to recognize Judge Russell Bench, of the Court of Appeals, who serves as Vice-Chairman of the Utah Judicial Council, of which I am chairman, and Dan Becker, our State Court Administrator.

If you will allow me a moment of personal privilege, I would like to recognize two gentlemen who I am proud to call both colleague and friend. This is actually the last time this Supreme Court will formally be together. Justice Stewart is officially retiring as of today, and Justice Zimmerman's last day on this Court will be the 31st of this month.

Together these two men account for over thirty-five years of service to the people of this state as Justices of the Utah Supreme Court. They have authored and participated in hundreds of decisions that will affect the lives of the citizens of Utah for decades to come. They have always approached their work with the seriousness and scholarship due the matters which fall to us to decide. They have also shown leadership for administering the Court and molding our court system into the model it is today; Justice Zimmerman through his service as Chief Justice from 1994 through 1998, and Justice Stewart, by his tenure as Associate Chief Justice during three different terms.

Personally, I will miss their wisdom, intellect, and wit. We have been very fortunate to have individuals of this caliber serve on this court. I know you join me in wishing them the very best for the future.

With two of the five members of the Supreme Court leaving, and two members of the court beginning anew, our court is in a transition. Transitions like these can be healthy; an organization in transition is an organization that is re-evaluating old ways of doing business, and looking for new consensus. The organization is given the opportunity to redefine itself, and to grow.

As the Court is in transition, so too is our judiciary as a whole, although it is not as apparent, and it is not as sudden. But now, looking back over the last four or five years, the passage of time has made more evident a gentle shift in philosophy, and new growth. Around the nation, as well as in Utah, a subtle change has begun in the way in which many judges define not what they do, but how they do it.

In the past, courts have been primarily concerned with providing a fair process, and the outcome has usually been secondary. In retrospect, this apparent focus on process rather than outcome has understandably led to some of the uneasiness the public has had with some of the results of

judicial proceedings. Judges may have been perceived as technocrats, slavishly following rules at the expense of justice, while in reality they have been trying to enforce the concepts of fairness and the laws of the land as written by our constitutional framers and by lawmakers. While judges will continue to carefully apply the laws as you write them, with your concurrence we will also be a little more creative in reaching the goals that we all want to achieve, and along the way we hope to reinvigorate the confidence of the public in their judiciary.

I talked with you last year about some of those creative approaches, including drug courts, domestic violence calendars, and targeted mediation. These are a few examples of the areas in which we have begun to focus on solving the problem as well as providing a fair process for the resolution of disputes. And that is the balance: directing the solution to the problem, while also ensuring that the rules are followed and rights are protected. As we are learning, that can be a difficult balance to achieve. But as we have gained experience in these approaches, we have also gained confidence that in the right cases we can successfully do both.

One example of the right kind of case is a drug prosecution where the defendant is also addicted to drugs. Drug courts can be extremely successful at both enforcing compliance with treatment and rewarding the attainment of treatment goals, and at the same time assuring legal due process. While we foremost provide punishment for the crime the drug addict has committed, we also use the powers of the court to solve the problem that led to the crime, so that when the punishment ends, so will the "need" to commit future crimes. Less than one out of ten graduates from Utah drug courts have gone back to drug use and crime, while offenders who are only punished, and do not have the opportunity to participate in drug court, re-offend in at least seven out of every ten cases.

Numbers like these have led Representative Swallow, Senator Montgomery, Governor Leavitt and others to propose that several million dollars be allocated to expanding the number and capacity of our drug courts throughout Utah, and the Judicial Council heartily supports that proposal.

This transition to a judicial system that looks to outcomes beyond the judicial process is not limited to drug courts, and it is not limited to criminal cases. In all levels of court and in all parts of the state you will find judges and staff who have thought outside the box, and innovated in ways that are not easier for themselves, but better for their communities. They have created a mentoring program where adults work one on one with troubled youth in Salt Lake; an outreach program in Utah County where a district judge and a team of criminal justice professionals visit area junior high schools to talk about violence, crime, and the pressures of being a teen; in Salina we have a pumpkin patch maintained by juveniles under the court's jurisdiction where the proceeds fund crime victim restitution; and a judge in Salt Lake makes lawyers donate a toy if they are late to court, and the judge donates those toys to area charities.

In Davis County there is a community garden, maintained by juvenile delinquents supervised by court staff, and the fruits of that garden are donated to food banks across the state. Last year that garden produced 1,000 pounds of string beans, 100 bushels of tomatoes, 10,000 ears of corn, and, I'm told lots of zucchini! Those juveniles also planted and tended a variety of beautiful

flowers that they cut and personally delivered to individuals in area nursing homes. Imagine what a young person takes away from an experience like that.

In several counties there are volunteer mediators trained and supervised by the courts that work with crime victims and perpetrators to try to resolve restitution issues and deter future crimes by putting a face on the victims of crime; a work restitution crew in Washington County maintains state park trails; and in Jordan School District court sponsored mediators are mediating between parents and schools in truancy cases.

At the state level, a number of judges participated in the production of a video entitled "Parent to Parent," which is being used to encourage parent-child communication; and hundreds of volunteers around the state are part of the CASA program, where court trained members of the community assist Guardians ad litem and the courts in child welfare cases.

Each of these initiatives is an effort to make communities better, and the common thread they all share is that the staff and judges designing and running these programs are going beyond their traditional roles. Instead of processing cases, they are looking beyond the cases to the causes of the disputes and the causes of the conduct that they are seeing. Judges are becoming more involved in the outcomes of their decisions, and more invested in the people that appear before them.

Now, some people may see this as dangerous business, for courts to become concerned with the causes of crime and conflict, instead of just sticking to applying the law to the facts of the case, and in some instances those critics would be right. Most of the time the role of the court is simply to provide a fair forum for the resolution of disputes, and that remains the core mission of our judiciary, but for some types of issues, going beyond our core mission is appropriate.

For example, when a truancy referral comes to a juvenile court, it is perfectly appropriate for the court to determine if the juvenile violated state truancy laws, and if so, impose a fine on the student, order him to attend school regularly, and move on to the next case. But in the recent case of a junior high school girl who was missing two classes on a regular basis, a juvenile court tried a different approach. A volunteer mediator was assigned to meet with the girl, her parents, and the school, and together they tried to find out not if she violated truancy statutes, but why she did.

As it turned out, the girl was a very poor speller, and she was receiving resource help for a learning disability. The mediator helped the student to share that in two of her classes the teachers' practice was to have the students swap papers with each other for correction. When her papers were corrected, the other students made fun of her work, and she was terribly embarrassed. This student felt so humiliated by this practice that she would either intentionally turn her work in late, so the teacher would have to grade it, or she would simply skip those two classes.

The mediator asked the resource teacher, who was part of the mediation team from the school, if she would relate the problem to the teachers of the two classes. The student was relieved, and agreed to be more committed to attending those classes if she wasn't going to have to be

embarrassed in them. The two teachers later agreed to grade her papers privately, and the girl has attended class faithfully ever since.

The solution to that problem was not a difficult one, and it usually isn't. The difference is that the court chose to go beyond being a process provider; here it was a problem solver. It didn't take a lot of new resources or special training. It just took a commitment to look beyond the case to the causes behind it.

This new commitment is a part of the transition I mentioned earlier, from a process oriented approach to an outcome emphasis. Another example of this shift in emphasis is apparent in the Judicial Council's recommendations to look at the issues surrounding divorce cases and other cases involving children. The year long study concluded that while a structural change to our courts in this area is not advised, a new approach to resolving family law issues is appropriate.

The traditional adversarial legal process is designed to create winners and losers, and is ill-suited to creating solutions to family disputes that respect the ongoing nature of a family, and the relationships that comprise families. Our experience with pilot programs involving mediation of visitation disputes and other domestic issues has convinced the Judicial Council that we should no longer presume that litigation be the standard for these cases, and mediation the exception, but rather that judges should hear family law cases only when other methods of dispute resolution won't work. We should presume that all divorces, for example, should be mediated rather than litigated. Agreements reached by the parties rather than imposed on the parties are far more likely to last, and lasting resolutions are in everyone's best interest, especially the children.

How to implement that change in philosophy will be part of the charge to a new standing committee of the Judicial Council on Children and Family Law. We anticipate that two legislators will join other representatives of our communities on that important committee this spring.

As we respond in new ways to these old problems, members of our communities seem to respond in kind. Volunteerism in the courts has never been higher than now. Hundreds of volunteers give thousands of hours to court initiatives around the state, and as those citizens see the dedication and devotion of our staff and judges, and understand the real issues facing our system, we find that their confidence in our judicial system blossoms. We sincerely wish that everyone could spend the time necessary to see this part of our government work. To that end, I invite each of you to learn more about your courts by serving as a volunteer, perhaps as a CASA working with an abused or neglected child, or as a mentor with a troubled youth.

But we also understand that there are those that do not have the confidence in our system that we think it deserves. We have been doing a great deal of listening over the past two years to racial and ethnic minorities in our communities. What we have heard has been both discouraging and encouraging. As we asked about experiences with the entire criminal justice system, from law enforcement to the courts to corrections we have heard accounts of bigotry and unfairness that wound me to the heart. Whether each of these accounts is scrupulously accurate or not is not the most important issue. The most important concern is that any Utahns honestly believe they can not rely on the fairness and integrity of the criminal justice system. The Judicial Council's Task

Force on Racial and Ethnic Fairness will issue a series of recommendations on restoring the confidence of all of our citizens in our system of justice later this spring, some of which may find their way to you as legislative proposals next year.

I alluded to encouraging news coming from the Task Force inquiry as well. First, I was encouraged by the fact that minorities in Utah are not so disheartened that they have no hope for justice. I say this because over twelve hundred individuals came to the 27 public hearings we had around the state. Other states that have undertaken similar studies have not had anywhere near those numbers of participants. In other places, reports are that people have not shown up at these meetings because they didn't think anyone would really listen. In Utah, they had hope enough to come, and we listened. And that brings me to the other encouraging note: that we asked. It takes courage to ask others hard questions about yourself. I am proud that we did, and now we need to find the right answers, and earn again the trust and confidence of all those that come in contact with the criminal justice system.

Confidence in our justice system comes from confidence in our courts, and confidence in our courts comes from confidence in our judges. I believe that we have now a balance, between independence for our judges, so that they can protect the rights of the few against the many, and accountability for our judges, so that the public is assured of their fairness and ability. Recently some have questioned that balance, so the legislature's Constitutional Revision Commission was asked to revisit the system of checks and balances set forth in Utah's constitution and statutes as reflected in our process of selection, retention and discipline of judges.

The Commission spent many hours over several months objectively analyzing Utah's process for ensuring both independence and accountability, and their conclusion was that the system is working as it was designed and that no substantive changes to the process should be made. We concur in their conclusion, and we pledge to continue to earn and to affirm the trust and confidence placed in the judiciary by the citizens of Utah.

Having served in our courts for almost 20 years, I thought that I was pretty familiar with what was happening in our courts across the state. Then in April of 1998 I became Chief Justice, and I found that there was a great deal to learn about changes that were taking place in our courts. Many of the programs I have talked with you about today are very new, and they represent that transition I spoke of earlier in what courts are doing, and how they are doing it. I have come to more fully appreciate the benefits associated with the way we are doing business. And, I am very proud of the direction we are heading. I hope I have conveyed some of that pride in my remarks today, and I hope that you share that pride, and that you will continue to support our efforts, and challenge us to do even more. Our ability to advance is directly related to your support. That support is drawn in large measure from mutual respect and cooperation. As educator and author Booker T. Washington wrote: "In all things that are purely social, we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress."

Thank you for your attention. I wish you well in the important work before you.