

State of the Judiciary  
Chief Justice Richard C. Howe, Utah Supreme Court  
Message to the Legislature  
January 16, 2001, in Salt Lake City, Utah

Speaker Stephens, Representatives, and guests; President Mansell, Senators, and guests; thank you for this opportunity to report to you, and to the citizens of our state, on the state of Utah's judiciary.

Please allow me to begin by introducing to you two of my colleagues who are new to the Supreme Court since I spoke with you last year. Justice Michael Wilkins, formerly of the Utah Court of Appeals, was appointed to the Supreme Court last January; and Justice Matthew Durrant, formerly of the Third District Court, who was also appointed to the Court in January.

They are joined by Associate Chief Justice Leonard Russon and Justice Christine Durham.

While we surely miss former Chief Justice Zimmerman and Associate Chief Justice Stewart and their combined 35 years of experience on the Supreme Court bench, Justice Wilkins and Justice Durrant because of their past experience both acclimated to their new responsibilities quickly, and the work of the Court hasn't missed a beat.

Changes such as that are never easy, but the smoothness of the transition reminds us that we are but small figures in a much larger picture. While the names on the door may change, the roles remain the same. We are individual judges, on a court charged with upholding the Constitution of the United States and the Constitution of the State of Utah. The institution of the Utah Supreme Court will outlast us all as individuals, as will the institution of the Utah Legislature. Each of us is given a role by those constitutions, and that role is more important than any individual who happens to hold that office at any one time. The permanency of the institutions gives society a sense of confidence that allows our system of governance to work. Judges may change, legislative members may change, but our responsibilities to the citizens and to the oaths we all took, endure.

The relationship between the courts and the legislature here in Utah has been a very fruitful and effective one over the years. Together we have tackled some serious issues, and come up with far-sighted solutions. For example, the Juvenile Justice system was in dire condition just five or six years ago, and now, through your infusion of resources to the juvenile courts and to Youth Corrections, and because of a revision of our sentencing laws and processes, our system is the envy of other states.

Our statewide commitment to faster, but more importantly better resolution of legal disputes through the use of mediation is a direct result of the collaboration between the legislature and the courts. We have victim offender mediation programs, child welfare mediation programs and truancy mediation programs that are national models of innovative and effective solutions to the most difficult of problems.

Another recent joint venture is the Online Court Assistance Program. Through the internet, landlords, tenants and divorcing parties prepare their own documents for filing with the court. The result is easier, direct access to the courts for remedies to common problems, and better documents for the legal process. The idea was the product of a joint legislative/courts committee, with legislative members Senators Waddoups and Hull, and Representatives Sheryl Allen and Patrice Arent. This project is now up and running, and hundreds of people have already used this new technology in only a dozen weeks time. Again, courts around the country are looking for ways to replicate this very successful product that we, together, created.

These efforts of collaboration have served our courts and our citizens very well, and I want to express to you the appreciation of the judiciary for your support in these mutual accomplishments.

Ordinarily the State of the Judiciary address has been used to brief you on what challenges our court system is addressing, and to tell you about programs and activities we are engaged in to address those challenges. We usually discuss the courts from an operational or business perspective. There is indeed a great deal to report to you on this front. There are many important programs that are making a difference that I could, and should talk about, but let me just briefly mention a few.

Drug courts, both in the adult and juvenile settings, have continued to prove to be an amazingly successful way to break the cycle of addiction and crime, and they continue to expand.

Automation advances like electronic filing, video arraignment and telephonic case information and payment systems are making court processes much more accessible and efficient for the public. This last system allows members of the public to check the status of their case, or pay a traffic ticket automatically, using a telephone, any time of the day or night.

Each of our eight judicial districts is experimenting with at least one new way of managing cases - for example, in Davis, Weber and Morgan counties, we have shifted resources to create a case manager position, someone who reviews all divorce filings, meets with the parties, and assesses which track the case should be put on - trial, mediation, or uncontested, for example. This has proved to save the parties and the court a great deal of time and money compared to a traditional process.

There are also encouraging statistics to report - juvenile delinquency referrals, for instance, are generally down, and we have all heard the media reports about the overall decreases in crime. This is being reflected in a modest decline in criminal filings with the courts, as well.

There are also troubling numbers, such as the dramatic increases in child welfare filings in the last year. We have several responses to this rise in workload, and we will share those with you. But there will be ample time over the next 44 days for the court's representatives to acquaint you with these issues, and for our court administrator to discuss with your appropriations committees any fiscal implications.

As important as these operational matters are, they are secondary to the matter that I would like to address today, and that is public understanding of, and confidence in, the institution of the courts.

Like you, I spent a great deal of time during the months of November and early December watching the events following the presidential election unfold.

In the end, an orderly transition of presidents has occurred, but the events, comments, and opinions that played out over the thousands of hours of television coverage and thousands of pages of print coverage, have, I suspect, made some a bit uneasy.

We heard commentators and pundits speaking of partisan politics within the judiciary as if it were a given. Certainly nothing is wrong with politics, it is the engine that drives our democracy, but the framers of the US Constitution crafted a government with the third branch, the courts, intentionally apart from politics, intentionally a place where only the rule of law prevails.

I have been participating in and observing the role of our courts in government and our society for 50 years. In fact, it was 50 years ago this week that I took the oath as a member of the Utah House of Representatives. In that time, that judicial role has not changed; the principles of the institution remain the same. What has changed, in my opinion, is the extent to which the public understands the role, the purpose, and the mission of the courts. A lack of understanding of and appreciation for the importance of fundamental principles, principles such as neutrality, can lead to an erosion of the people's confidence in the courts. This is something both you and I must protect against, because respect for the rule of law is the reason we had an orderly and peaceful presidential transition, and it is what differentiates our democracy from so many other forms of government.

As I compare our court system with others around the country, I feel good about where we in Utah stand with respect to public confidence today. In too many other states, courts are struggling with chronic delay problems, court is too often held in inadequate facilities, and judges are frequently engaged in contested political elections that require them to raise huge amounts of money from the very parties appearing before them.

In Utah our courts sit on a much stronger foundation. For example, this legislature had the foresight in 1943 to put before the voters of this state a constitutional amendment that ensured that partisan politics would not determine who serves as a judge. Instead, judges are selected on the basis of merit and not put in the awkward position of having to raise funds to finance a campaign. and They are retained in office based on their performance alone. Ours is a strong, well administered court system; one in which the public should have confidence.

I say should, because I believe there are signs that suggest that we cannot take this confidence for granted in the future. There are three areas that I believe warrant particular attention, and I want to share with you what our courts are doing to address each area. First, the minority community, next, those whose access to the courts is being limited by cost, and finally, our future generations.

Unfortunately, our minority communities do not have the kind of confidence in our justice system that we would like. The Racial and Ethnic Fairness Task Force completed a three year study last fall, and submitted its final report this year, and while overall there are many things of which to be proud, some of the findings are a bit troubling. In public fact-finding hearings held across our state, a far too large segment of minority participants told us that they do not believe that our law enforcement, courts and corrections systems afford racial and ethnic minorities the same level of respect and fairness that is given to non-minorities.

Whether that disparity of treatment is real or not isn't the issue, because if people don't believe that they will be treated fairly by our criminal justice system, then they don't have much confidence in the impartiality of the system, and they certainly can't be expected to have much respect for the rule of law that is so fundamental to our form of government. As our minority communities continue to grow, this lack of confidence will become more and more pervasive, unless we do something to again have their trust. To that end, the Task Force debated and unanimously recommended over 75 proposals for changes in our law enforcement, courts and corrections systems.

Obviously I can't go over those recommendations now, but we have provided each of you with an executive summary of that report, and I encourage you to study it carefully. The full report can be found on our court web site. I also urge you to support the recommended creation of a new committee composed of the heads of all statewide criminal justice agencies, as well as community leaders, whose responsibility it will be to assist in the implementation of the proposals. This implementation phase is critical to maintaining the momentum that was started by this three year inquiry, and only continued attention to these issues will bring about the confidence in our justice system that we all want. As Nez Perce Chief Joseph said more than a hundred years ago, "Good words do not last long unless they amount to something."

I would also like to take this opportunity to thank the authors of these good words, Chairman of the Task Force former Chief Justice Michael Zimmerman, and co-chairs John T. Nielsen and Judge Tyrone Medley, as well as the subcommittee chairs and the Task Force staff for their years of hard work on this most important of endeavors. I also thank very much the fifteen hundred Utahns who took the time to come to 27 public hearings and tell us about their views and experiences. With the help of this legislature, all that hard work and time invested will result in meaningful changes that will re-earn the trust and confidence of all of our community members.

The second group of people whose confidence in our judicial system we cannot take for granted is the segment of our society who can't afford to access our courts, and with the ever increasing cost of legal advice, this segment is growing larger and larger. Many of these people don't have a choice about their involvement with the courts - courts are the only places one can go to get protection from an abusive spouse, or to get a divorce, so especially for these court users we feel an obligation to provide some assistance. Earlier I mentioned the Online Court Assistance Program, where people who either cannot afford an attorney or choose not to use an attorney can generate ready-to-file documents on the internet. This program already provides easy access to the courts for landlord-tenant disputes and divorces, and plans are underway to expand the service to other subject matter areas later this year.

We also run a program that provides a trained mediator for parents, usually fathers, who are trying to have court-ordered visitation with their children enforced by the courts. This non-adversarial mediation approach to an extremely emotional issue has proved to be very effective at resolving these disputes without directly involving judges or lawyers.

These and other efforts by the judiciary are an attempt to provide to the public more of what they want, and what would be the most helpful, rather than what courts traditionally have viewed as their role to provide. Hopefully, services like these will reinforce for the public that the courts as an institution are accountable, responsive and effective, and that other institutional attributes such as competence and fairness can be relied on.

As we do our best to develop, maintain and enhance the trust and confidence of these important parts of our society, we are also focusing on the future of our society, our children. If our youth have a strong, fundamental understanding of our system of governance, then your tasks as legislators and ours as judges will be so much easier in the future. One way we have begun to focus on this kind of education is by participating in the development of a new core curriculum for seventh through twelfth graders in Utah schools.

On behalf of the Judicial Council, Justice Christine Durham is leading a coalition that includes the Utah Law-Related Education Program, the Utah State Bar and members of the Utah judiciary and Administrative Office of the Courts in making a program called 'Education for Justice' a central part of the new curriculum. The State Board of Education is also participating, and this coalition of interested parties is prepared to develop course materials, provide presenters for in-service teacher training, and organize a speakers list of lawyers and judges to support teachers and school administrators. This is a very exciting development, and I want to thank everyone involved in promoting this partnership with our schools. My hope is that one day soon, this partnership will foster in our youth a deeper understanding of fundamental elements of our society, such as liberty, fairness and justice.

I hope that you have concluded, as I have, that public trust and confidence in the courts, and therefore in the rule of law, and therefore in our democratic government, is in the interest of each of the branches of government. But we cannot pursue this endeavor without your assent, nor is our mutual goal of public understanding and trust attainable without your participation.

As we have successfully collaborated on so many important projects in the past, so must we work together again. The public deserves our best efforts in this regard.

As John Jay, the first Chief Justice of the United States Supreme Court once said:

"Next to doing right, the great object in the administration of justice should be to give public satisfaction."

That is something to which the public is entitled. The endeavors I have mentioned here today are directed at providing that satisfaction and, in turn, the confidence, that is essential to the institution of the judiciary, and to the democracy that is our government.

Thank you for your support in the past, and for this opportunity to talk with you. Good luck in your deliberations.