

State of the Judiciary  
Chief Justice Richard C. Howe, Utah Supreme Court  
Message to the Legislature  
January 25, 2002, in Salt Lake City, Utah

President Mansell / Speaker Stephens, Senators / Representatives, guests. Thank you for the opportunity to join you today, and to discuss the state of Utah's judiciary. Thank you also for accommodating my schedule this week. Ordinarily this address is earlier in the session, but the Conference of Chief Justices held their winter meetings at the same time, and I wanted to be with them one last time. I say last time because my term as Chief Justice of the Utah Supreme Court ends in just a few months. So, this will be my last State of the Judiciary address as well.

Since it is my last, I hope you will forgive me if I indulge in a little nostalgia. 22 years ago, when I was sworn in as a member of the Supreme Court, things were a little bit different, and a little bit the same as now, both in the legislature and in the judiciary. The legislative issues of 1980 included these:

The compensation of legislators was raised from \$15 to \$40 per day.

There were only 99 House bills and 85 Senate bills introduced that year. Of course this was when the even numbered years were supposedly just "budget sessions."

H.C.R. 1 welcomed the Utah Jazz Basketball Club to the state, and wished them success.

H.J.R. 18 approved the appointment of Jon Memmott as the Legislative Research Director. Of course Jon Memmott is now a District Judge in Davis County, and has been for nine years.

S.R. 1 called on President Carter to reconsider the decision to deploy the MX missile in the Utah desert.

The Olympics were on the agenda then, too. H.J.R. 27 urged the boycott of the 1980 summer games in Moscow, because "the loss of medals by Olympic athletes would be a far smaller sacrifice than is the loss of life, liberty, and property now being suffered by the citizens of Afghanistan."

Jim Hansen was the Speaker of the House, Carl Saunders was finishing his term as the Representative from District 48 in Weber County, and Mike Dmitrich was in the House of Representatives representing Carbon County.

The courts were a bit different, and a bit the same, in 1980 as well.

There were 57 trial judges in the state then, now there are 70.

However, in 1980 there were just under 2,800 felonies charged statewide, and last year there were well over 17,000 - six times as many.

Then, clerks recorded most actions of the courts by hand in large docket books, while court reporters keyed in the testimony of witnesses, later to be transcribed. Now, clerks enter orders into statewide networked computer systems, and digital audio recordings of the proceedings are automatically stored onto electronically indexed and searchable CDs.

During the intervening years the structure of the courts has changed, too. Two levels of court, the Circuit Court and the District Court were consolidated into one; the Court of Appeals was created; and we have gone from 210 justice courts down to 136.

In some ways the role of the judge has changed, as well. Recently we have created drug courts and mental health courts, where judges become part of a team focused on solving the problems that cause offenders to commit crimes. This is different than the traditional approach, where judges focus on the procedure and the law, but not on the background factors that cause the defendant to commit crime. But times change, our communities change, and we have to adapt to those changes.

We have also worked hard to change old perceptions of the judiciary held by the public. There are notions about courts that have been around for decades, and some of them persist even in the face of these changes. Three such views of the judiciary that I would like to mention are:

1. That courts are an insular and secretive institution.
2. That courts operate like an exclusive fraternity for the law-trained.
3. That courts are steeped in tradition and therefore slow to change.

None of these perceptions are accurate anymore. I suspect most of you realize that I am the most senior member of our court, maybe the most senior member of the judiciary, but I can report to you that over the last four years as Chief Justice, the oldest player has embraced change, and I am proud of the steps we have taken to challenge the perceptions I have just mentioned.

To those who would say that we are an insular organization, I point to our many community involvement programs. Programs like Juvenile Court Adoption Day, when our Juvenile Court judges schedule dozens of adoptions for the same time, and then celebrate together with punch, cookies, and teddy bears for all the children. I point to the 27 community hearings we recently held across the state seeking public perceptions about racial and ethnic fairness in the justice system. I point to our customer service programs, such as our bi-lingual 1-800 court information line, and our pay-by-phone system for traffic tickets. And I point proudly to the courts' effort to work with the State Board of Education to get basic civics and government process classes reinstated as part of our public school curriculum; and to judges who have created a high school lecture series in Cache and Box Elder Counties on the Declaration of Independence; who created a presentation on drugs to middle school students in Utah County; and who participate in dozens of career day programs, speakers groups, mock trials and mentor programs across the state every year.

Our efforts to seek not only the input of citizens into our policy making, but also their meaningful involvement in our processes have been deliberate, for the old saying is true: Tell

me, and I will forget. Show me, and I will remember. Involve me, and I will understand. With the involvement of citizens and legislators alike, we hope to foster a tangible understanding of Utah's courts, and of the role we all play in assuring a fair and effective judicial system.

The second perception that we are seeking to change is that the courts are an exclusive fraternity for the law-trained. Recent years have seen Utah's courts focus a great deal of energy on helping court users that are not represented by attorneys. Our Online Court Assistance Program has been nationally recognized as the most advanced interactive court application of its kind. Users fill in the answers to basic questions at their home computers, and the program generates the appropriate legal pleadings, complete and ready to file.

We have also supported efforts like Waine's Clinic, a free workshop offered to unrepresented litigants, where questions on almost any legal topic are addressed and then followed up with individual help. Started in Salt Lake City just one night per week, this help has been expanded, not just in Salt Lake but to several other Utah cities as well. The founder of that effort, attorney Waine Riches, was the recipient of our Amicus Curiae, or friend of the court award last year, in recognition of the hundreds and hundreds of hours he has devoted to helping unrepresented litigants protect their legal rights.

The Supreme Court has also agreed to lead an inquiry into the delivery of legal services in Utah. Five legislators, two Supreme Court Justices, several state Bar representatives and others are studying ways to improve access to legal services for all citizens. Technology solutions, court forms, alternatives to traditional litigation, and para-professionals are all being looked at as mechanisms for enhancing the ability of non-lawyers to obtain legal remedies. That committee plans on reporting its findings to you next fall.

The final image I would like to challenge is that of a slow-moving, unresponsive court system. In the four years of my tenure as Chief Justice, I have witnessed remarkable changes in our courts. For example, the first drug court started in Utah began operating in 1994, but in the past four years we have increased from two drug courts to 18.

Technology advances have not only made those heavy docket books relics of the past, but have allowed our citizens to check on the status of their case and pay fines via the touch pad on their telephone, prepare their own pleadings with the assistance of a computer, and court users can already, with some cases, file court documents with the stroke of a key, rather than a trip to the courthouse.

Alternative dispute resolution programs were first formally recognized in Utah in 1994, and the courts have gone from one such program just four years ago to eight, now. We have created truancy mediation, parent-time mediation, appellate mediation, victim-offender mediation and child welfare mediation programs that are as innovative and effective as any in the country.

By my reckoning, and I have a pretty good frame of reference, change in court programs in Utah has been anything but slow. I believe the public has been well served by these developments, and I compliment our dedicated judges and staff for their ability to accept change, adapt and improve.

All the advances that have been made, and will continue to be made, are aimed at enhancing public confidence in the institution of the courts. As public leaders, you and I have many responsibilities, but none is more important than building trust in and support for our form of government, and for the rule of law. More than ever, our society needs the reassurance that comes with a reliable, fair judicial system grounded in the predictability of that rule of law. Our judges must be respected as caretakers of the laws and of the legal system, preserving it for future generations.

By the same token, the public is entitled to assurances that we have well qualified and accountable judges occupying these positions of trust. I am proud of the fine women and men who make up our state's judiciary. They are as fine as any in the country, and the legislature can take a great deal of credit for that. Let me explain why.

As I meet with the chief justices of the other states and territories, I find that much of their time and the time of judges in their states is taken up with focusing on the next election, and with raising money to finance their campaigns. Years ago, a supreme court judge in one state told me that for one year before the next election, he spends his weekends contacting law firms for contributions. He had to raise over a million dollars. I am sure that it is now several million dollars. Often, these contested elections become bitter, and large amounts are raised to elect a judge or to defeat a judge who really can only make one promise, and that is to be fair. After the election is over, the problem does not go away. Litigants and attorneys who have contributed to the judge's campaign then may appear in the judge's court. The judge then should advise the opposing side of the contribution and let them decide whether to request the disqualification of the judge from hearing the case. The problem is so acute in other states that national conferences are held to discuss how to limit campaign contributions to judges and what judges can do and not do in their campaigning.

I am always happy and proud to point out that in Utah, we have none of these judicial campaigning problems. Nearly seventy years ago, the legislature in 1943 adopted a joint resolution proposing an amendment to the Utah Constitution to provide for the selection of judges "based solely upon consideration of fitness for office without regard to any partisan political considerations and free from influence of any person whomsoever, or in other words, judges shall be selected on their merit alone. The voters approved the amendment at the general election in 1944. Mind you, this was done while our country was engaged in World War II. Following this constitutional direction, judges are now appointed by the Governor based on merit, and confirmed by the Senate. The judge then takes office and runs in a retention election at the end of each term of office. Information about a judge's record is given to the voters so they can decide whether to keep the judge in office for another term. This process works without a judge generally having to raise any money at all and allows the judge to focus his or her time on running a court and deciding cases instead of raising money and focusing on the next election. The system we have in Utah is undoubtedly the best in the nation, and I want this legislature to know that I consider the constitutional amendment proposed by the legislature in 1943 and adopted in 1944 as the most significant event affecting the Utah Judiciary since Utah became a state in 1896.

I wanted to highlight this particular reform and thank this body for its foresight. Our system for selecting and retaining judges is an excellent illustration of the understanding this body has of the role of the judiciary and the importance of having well qualified and accountable judges. This step, as well as the many others I have reflected on today are the product of many collaborations between the representatives of the three branches of government here in Utah. We have constantly worked together in the interest of our mutual constituents, the people of this great state, and they have been very well served by that cooperation, and I thank you for it.

I have looked forward to each of the four times I have now delivered this address to you. Not because what I had to say was so important, but because the annual State of the Judiciary address is a tangible symbol of our mutual respect and understanding of our constitutional roles. And while I have said before that those roles are more important and enduring than the people who play them, that doesn't mean that the people are unimportant. In fact they are. And if you would allow me the indulgence of gratitude as well as nostalgia, I would like to thank a few important people for their help in shaping and implementing the profound advancements that we have all shared in for Utah's judiciary over the years.

To the thousands of dedicated lawyers I have associated with since I was admitted to the Bar in 1949, thank you. To the hundreds of caring and capable judges with whom I have worked, thank you. To the dozens of proficient court administrators and staff who have supported me, thank you. To the 10 other justices of the Supreme Court who have been my colleagues, and who have allowed me the honor of this position, thank you. To my family, thank you very much.

In that this is the last time I will have the opportunity to address this body, I want to tell you what an honor and a privilege it has been to serve the people of this state. First, as a member and then Speaker of the House of Representatives, as a member of the Senate, and then as a Justice and Chief Justice of our Supreme Court. I hope I have made the kind of contribution that should be expected of one given such wonderful opportunities and lofty responsibilities. I have enjoyed the aid and support of many truly gifted public servants, and I thank each and every one of you. Thank you for allowing me and my fellow justices to appear before you.