

State of the Judiciary  
Chief Justice Christine M. Durham, Utah Supreme Court  
Message to the Legislature  
January 17, 2005, in Salt Lake City, Utah

President Valentine, speaker Curtis, members of the Utah Senate and the Utah House of Representatives, thank you for the invitation to speak to you about Utah's judicial branch of government. May I first offer congratulations and best wishes to those newly elected to serve in this body, and particularly to those recently selected for leadership in the Legislature. With the inauguration of a new governor and the accompanying changes in department and agency leadership, Utah's government is experiencing great change and many transitions, a phenomenon quite common in American democracy. In contrast to the legislative and executive branches, however, I am struck by the relative continuity and stability of the judicial branch of government.

Certainly we have had judges retire, and we have replaced them in due course, but no one expects dramatic policy changes or a new and different "judicial agenda." Our approach to our work, especially in the adjudication context, is (and is intended to be) steady, sure, and slow to change course. If government can be thought of as a ship, the judiciary's function most closely resembles that of the rudder.

As political and social winds move and change direction, first representatives, then senators and the executive branch are required, under our democratic system, to adjust if they are to keep moving forward. The judiciary, on the other hand, is anchored to the law, precedent, and ultimately to the constitution, and so our movement is restricted and slow. Some may think we are too slow to follow emerging currents, but I think this predictability and steadiness is more often a source of security and public confidence in government.

We know that the confidence and trust the people have in their governments have been tested in recent times. It is no accident that as democracies emerge in other parts of the world, one of their first tasks is to establish courts and judicial functions that can bring stability, predictability, and a mechanism for instituting the rule of law, so that the fundamental issues that arise in these nascent countries can be resolved without violence. One of our own, former Justice Court judge and now Chief Warrant Officer-IV Kim Adamson, is currently an active duty Marine on assignment in Falluja, Iraq. Her responsibility, amidst car bombings and gunfire, is to put together the nuts and bolts of a judicial system, and not just any system, but one that will have the trust and support of the populace. We wish her well and pray for her safe return.

In another part of the world, Ukraine, with a democracy somewhat farther along than Iraq's, has recently survived a significant potential threat to the rule of law. Imagine you are a judge in Ukraine, and the Russian-backed candidate for president has apparently won election, then a second election is ordered and he loses. Do you have the institutional strength, the public trust, and the political independence to stand by your new constitution and the result it requires? In Ukraine, the high court judges did have those things, but it is worth noting that the court's determination of the law in that case coincided with a popular outcome.

One wonders if the foundation of that court system is yet firm enough, the rudder deep and strong enough, to withstand the winds that blow in the wake of an unpopular decision, even if it is right.

The metaphor of the judicial branch as rudder works well when considering our decision-making or adjudicative role, but there is of course another dimension to the work of the courts, and that is the administrative function. In that function we must operate much more like the rest of government and the private sector; we require agility and the ability to change in the face of new challenges and technological developments. One of my colleagues on the Supreme Court tells me that hockey player Wayne Gretzky is widely acknowledged to have revolutionized the sport, and once observed that his success was attributable to his ability to “skate to where the puck is going to be, not to where it is.” Our goal is the same. The needs of court users are constantly changing, and we are constantly trying to be there first. As the legal community becomes increasingly interested in electronic filing, we need to have already worked out how to do it—and we have; as the public becomes more adept at using automatic, interactive telephonic payment systems in the commercial context, we need to apply the technology to, for example, traffic tickets—and we have; and as more and more people expect to interact effectively with government on the Internet, we need to be sure that our website exceeds their expectations—and we have. Just this past year, our court website had over one million users and won a third national award for web design. On our site you can, for example, check court calendars, identify recently-entered civil judgments, use current guidelines to calculate child support payments, and even produce documents ready for court filing. We have also begun using contemporaneous Internet audio streaming for arguments in the Supreme Court, which are archived for informational and educational purposes.

There are many other examples of our efforts in the courts to be responsive, collaborative, and focused on outcomes for litigants and the community. As many of you know, Utah is a national leader in the use of problem-solving courts—drug courts, mental health courts, domestic violence courts, and so on. We have learned from our experience with these models that judges, in cooperation with treatment specialists and law enforcement resources, can enlarge on their traditional roles as neutral arbiters to become effective coaches and motivators.

They can help many defendants to recover from addiction and move on to productive, crime-free lives. They say “seeing is believing,” and I invite each of you to visit one of our problem-solving courts and see the work they do. It is a powerful experience—not one you will soon forget.

You will be addressing the problem-solving approach in criminal cases this session as you consider Senator Butters’ proposal in Senate Bill 22, the Drug Offender Reform Act (DORA). We strongly support this legislation’s goal of providing more information to sentencing judges and more resources for treatment efforts, particularly in the form of drug courts.

Other flexible responses to challenges facing the courts have served us well. Opening Juvenile Court hearings has, I believe, increased public access to and understanding of the work of this most important part of our system. Public access to information in court records is also an issue. We, like most of government and the private sector, are struggling with the implications of electronic communications and record keeping for questions of personal privacy and public

security. The Judicial Council currently has these issues on its agenda for study and policy setting. Another challenge—three years of budget cuts—has been used by the judiciary to think hard about the highest and best use of our resources. Prior to the Judicial Council’s last annual budget process, we asked the entire judiciary to examine all court programs closely and to report to the Council on ways to ensure that our most important priorities are being met. That exercise both greatly enhanced the Council’s budget planning and also allowed us to adjust our fiscal commitments in ways consistent with our highest values. We believe that the end result is better service to the people who need it. One final example, perhaps a somewhat personal one as it involves the Supreme Court, of flexibility in the face of challenge, comes from the recent election. Faced with a highly time-sensitive challenge to the contents of a ballot in a local election, our court was able to conduct a public hearing, deliberate, and issue a decision in 24 hours, sufficient time for ballots to be prepared before the election. Many of you may have watched the court’s hearing in a live broadcast that permitted citizens an unprecedented opportunity to see the court at work. This kind of speed on our part is not always possible, indeed not usually desirable, but in this case our effort was, I believe, in the best interest of the community.

I have tried to direct these remarks not just to the challenges faced by Utah’s courts but also to the solutions we have developed and are developing. Let me try to quantify the challenges for a moment. Last year, 833,719 cases were filed in Utah’s courts. That works out to 3,350 every business day. It is not just the volume of these 3,350 new cases each day that presents the challenge. It is the fact that we are becoming an increasingly diverse state, and a growing number of those appearing in court require various kinds of assistance. For example: foreign language interpreters are necessary for all court-related events in a growing number of criminal cases; 30 percent of the cases filed in District Court have parties representing themselves, most of whom have little familiarity with the procedural rules and the law that govern their cases; 55 percent of felony cases involve defendants who are indigent and must be represented by public defenders whose resources are being constantly stretched by expanding demand; and finally, an estimated 70 percent of defendants in criminal cases and parents in child welfare cases have some form of substance abuse or addiction problems. Each of these numbers reflects one or more of the challenges I have already mentioned today, these issues and to think creatively, in cooperation with others, about responses.

Thus, this business of trying to “skate to where the puck is going to be” is strenuous and demanding. Our capacity to do it derives, in my view, from two things: the quality of our governance system and the quality of our judges. Under Utah’s constitutional scheme, the Supreme Court is ultimately responsible for the careful articulation of what the law is, and the Judicial Council—made up of judges from each court level and a representative from the State Bar—is charged with setting administrative policy. This separate but coordinated leadership of Utah’s judicial branch permits focus, expertise and vision by the Court on the one hand and the Council on the other, each in exercising its distinct role. I believe that the recognition that Utah’s governance system enjoys from our judicial peers nation-wide is a tribute to its successful design and the support it has received from the other branches of government.

I also believe that Utah’s judges, individually and collectively, are among the finest in the nation. A comparison with any of our sister states reveals that the incidence of problems with Utah’s

judges is very low and relatively minor. I regularly review judicial misconduct reports from around the country, and of course our Court reviews the work of the Judicial Conduct Commission, whose composition and functioning the Legislature controls. As I review the national reports, I am struck repeatedly by the kinds of problems we don't have in Utah, a perception I hope would be borne out by your colleagues who sit on the Judicial Conduct Commission. With remarkably few exceptions, Utah's judges are men and women of integrity, competence, and commitment, and I am deeply proud to serve with them.

I referred earlier to the importance of courts in maintaining the rule of law, and we are wise to remember that our courts will never be more able or more visionary than the judges who staff them. Utah's system of selection, retention, education and professional support of judges is strong, but we must always be mindful of what it takes to maintain higher standards. For example, our highest priority building block request this year is for five additional law clerks to assist our (70) district judges in the complex civil and criminal cases they handle. Ideally every trial judge in the state will someday have a law clerk to assist with research, writing, and the organization and management of discovery, evidence, and trial in difficult cases; for the time being, we will be happy to reduce our ratio to five to one. Additionally, you will be reviewing a judicial compensation recommendation from your Executive and Judicial Compensation Commission, which former Governor Walker and Governor Huntsman have funded in their proposed budgets.

It is designed to address problems developing in our capacity to attract to the judiciary those with the intelligence, the character, the competence, the work ethic, the experience, and the commitment to decide the questions and solve the problems the future will inevitably bring. Governor Huntsman has expressed to me his concern for this part of the legacy he will leave from his service—judges worthy of the task of preserving the rule of law and earning the trust and confidence of the people.

Finally, for the past two years I have spoken on this occasion about the work the courts, in cooperation with the other branches of government, have been doing in the area of child welfare, and I would like to share recent developments with you. Last summer, a national commission supported by the Pew Charitable Trusts issued the report of a year-long study entitled "Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care." The report targeted two areas: (1) improving federal funding mechanisms for state services; and (2) "improving court oversight of child welfare cases to facilitate better and more timely decisions related to children's safety, permanence and well-being." Two of the report's specific recommendations bear mention: first, the Pew Commission believes that "to protect children and promote their well-being, courts and public agencies should be required to demonstrate effective collaboration on behalf of children," and recommends that states should establish broad-based commissions for that purpose under the leadership of the Chief Justice and child welfare agency heads; second, the report recommends that "Chief Justices and state court leadership must take the lead, acting as the foremost champions for children in their court systems and making sure the recommendations here are enacted in their states." In response to that call, I am working on the organization of a Utah version of the Pew Commission, where top leaders from the three branches of government, and the business, faith-based, and child-advocacy communities, can work collaboratively to ensure that Utah's policies and practices consistently place the safety,

permanency and well-being of children first. I hope that President Valentine and Speaker Curtis, along with Governor Huntsman and other leaders from government and the larger community, will be part of the unique opportunity Utah has to develop a system that will be a model for other states.

In conclusion, I would like to share with you the mission of the Utah judiciary, as articulated by the Judicial Council: it is “to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.” I look forward to working with you this session in pursuing that mission and the goal we in government all share—that of earning the respect and trust of the people we serve.