

State of the Judiciary
Chief Justice Christine M. Durham, Utah Supreme Court
Message to the Legislature
January 15, 2007, in Salt Lake City, Utah

President Valentine, Speaker Curtis, distinguished members of the Senate and House of Representatives, I thank you for the invitation to deliver these remarks on behalf of our dedicated judges and staff from across this wonderful state of ours. I am pleased to have my colleagues, Associate Chief Justice Michael Wilkins, Justices Durrant, Parrish, and Nehring, and our state court administrator, Dan Becker, with me this afternoon.

My remarks today will focus on the importance of the learning process for organizations like the judiciary and for those of us who do the public's business. I am now midway through my 29th year as a Utah state judge. People often ask me what my job is like, and why I love it. My response has not changed since my days on the trial court: learning and public service. Being a judge is a little like being a permanent student; every case requires you to master facts, human histories and legal principles necessary to fashion a just and correct resolution. As Chief Justice, I preside over a system that can be described as a "learning organization," namely an organization that depends on information responsiveness and constant adaptation to change. For me as an individual, and the judiciary as a public institution, there is something new to learn every day.

I would like to share two recent examples that illustrate that learning is a daily and essential part of what we in the courts do. Last year I talked with you about IOU, the Initiative on Utah Children in Foster Care. I convened this group of community leaders to focus on the needs of children in foster care. One of IOU's goals has been to teach more people about the realities and challenges of the child welfare system by providing opportunities to observe real cases. As part of our "immersion" program (which we invite each of you to experience), I recently spent a day with caseworkers and client families at the Division of Child and Family Services and a morning in juvenile court. Even after nearly three decades on the bench, I learned a lot. In one hearing I watched, I counted over fifteen people directly concerned with one case: six children, including a 16-year-old with her own baby, several guardians ad litem speaking on the children's behalf, parents, step parents, foster parents, interested relatives, parents' lawyers, lawyers for the State, language interpreters, and social service caseworkers. I never quite figured it out, but there seemed to be more fathers (or those who claimed to be fathers) in the courtroom than there were children, including one father in federal custody awaiting deportation proceedings. The judge, one of our most dedicated and hardworking, knew everyone there, waited patiently for frequent translation and the presentation of last minute reports, and was courteous and kind while efficiently sorting through human problems of almost unimaginable complexity. As I say, I learned a lot; it is difficult in the abstract to understand how complicated and tragic some people's lives can be. Putting human faces on court statistics is very important.

I have also learned a lot in meetings around the state in recent weeks with legislators and judges, which so many of you have been kind enough to attend. In the Fourth District (Utah, Wasatch, Juab and Millard counties) we heard a description of the morning's work from the presiding

judge of the Fourth District juvenile court. Her morning included dealing with three teenagers, all of whom have been in state custody for two-and-one-half years. The first, a 17-year-old girl, was placed in custody for serious abuse of multiple drugs, including methamphetamine, criminal behavior, ungovernable behavior and mental health issues. She is now clean from drugs (after residential and outpatient treatment), on track to graduate from high school this spring, holding down a job and enjoying a renewed relationship with her parents and family. The other two, boys of 16 and 17, were both placed in custody for child sexual abuse. One has finished residential treatment and is working toward returning home in March. He has been successfully engaged with his treatment, is succeeding in school, and has completed community service hours and paid his fines. The second is well on his way to finishing treatment. Also on the judge's docket: several children in court for the first time on charges of assault, disorderly conduct, marijuana use and possession of drug paraphernalia; two middle school children for truancy: one has missed 67 classes this school year, the other 47 classes; and charges of rape and sexual abuse of a child against a 16-year-old boy. Last on the judge's busy docket, a new petition for child abuse and neglect of two children, ages two and four. The allegations included methamphetamine abuse by both parents and severe neglect. The judge concluded by suggesting that her morning was typical of every juvenile court in the state and saying, "It's hard work. But I wouldn't want to be doing anything else." In response to a legislator's question at our local meeting, she emphasized the degree to which substance abuse and illegal drugs contribute to the presence of children and families in court. The presiding judge of the District Court in Provo estimated that 75-80 percent of his judges' workload has a direct or indirect connection to substance abuse. Last week a district judge from Ogden suggested a 90 percent correlation. The tragedy of drug and alcohol addiction, with its manifestations in criminal activity, poverty, neglected and abused children, destroyed families, and huge burdens on our economy and public institutions, continues to challenge all of our aspirations for better, safer communities. We in the courts are constantly learning as much as we can to respond effectively.

In that respect, let me make a brief report on our efforts to respond to this and other issues you have brought to us. One topic of discussion in every single district, as we have met with legislators, has been drug use and drug courts. Most of you know about and have been supportive of drug courts, one of the most hopeful approaches to substance abuse to emerge for many years. The Judicial Council has created new standards for the creation and operation of drug courts to build on best practices, and I am happy to report that every judicial district in the state now has at least one drug court. However, we need resources to expand our efforts, which the Governor has supported in his proposed budget this year. I hope you can support a funding increase as well.

Another area in which the courts have responded to legislative concerns this past year is divorce mediation. Because of Representative Ferry's bill, passed in last year's session, mediation in divorce cases is now mandatory throughout the state. Mediation brings parties together with a skilled professional who assists them in identifying ways they can resolve their own disputes. Not only does this process relieve the courts of the burden of trying their cases, an expensive and painful process, but our questionnaires tell us that the parties feel more satisfied with the results and emerge better prepared to move on with their lives. A recent report to the Judicial Council revealed an encouraging level of success and user satisfaction in the program. Since the mediation program went statewide last May, of the 746 cases mediated, 64 percent were completely resolved by the parties. We are also continuing our efforts to deal responsibly and

effectively with people who represent themselves in court, and we are advancing a budget request to operate a pilot program that will further our use of best practices in this area. In a recent court survey, court users reported information on self representation as being the fourth most important service the court offers.

If an organization is going to be able to learn about itself and respond to needed change, good information is essential. This past year, the courts undertook a significant effort to find out how people think we're doing. With assistance from a federal grant, we surveyed Utah citizens to measure public opinion of the courts generally, court user views on access and fairness, and what people who come to court representing themselves think about their experiences. The survey results showed a high level of public trust and confidence in Utah's state courts. The majority of respondents had a positive perception about the judiciary; they felt Utah's courts were accessible and that court employees were respectful and responsive. We are encouraged by the results, and challenged to better our efforts and performance. It takes some courage to ask people how you are doing, but more important is the commitment to act on what you learn.

One of the things we learned from our survey is that the public believes the courts can do a better job of informing them about our work. We are committed to continuing and enhancing our efforts in this regard. Efforts include adding to the wealth of information found on our prize-winning website and supporting the Council's Committee on Judicial Outreach in its efforts to engage judges with the community. We continue to support the Coalition for Civic, Character and Academic Service Learning and its Dialogue for Democracy Program, and I am enjoying my service on behalf of the courts on the Commission on Civic Education that you created last year under the leadership of the Lt. Governor.

Another important source of information about our progress has become available through the Judicial Council's adoption and implementation of a series of performance measures for the courts known as CourTools. These performance measures, which we have developed based on work done by the National Center for State Courts, are helping us to assess eight performance areas. They are providing the Council with data on everything from caseload allocations and timeliness to employee training and morale. The CourTools are posted on our website at www.utcourts.gov and I invite you to review that site.

The Council is also working to strengthen trial court operations and performance by enhancing the role of presiding judges throughout the state. Presiding judges are selected by their peers in each judicial district in the state. They work with the local trial court administrators and oversee case assignments, resource planning, communication, and judicial support. Senator Greg Bell and other legislators have asked us to increase our efforts to reduce the cost of litigation through the use of more case management techniques, and we think that strengthening judicial leadership at the local level is one way to address that issue. The Council is currently reviewing the rules governing the responsibilities and authority of presiding judges, and has conducted two workshops that focus on leadership skills.

My remarks thus far have focused on our efforts to respond to issues you have raised, and one some of our own initiatives. Now I would like to speak to some pressing issues on which we need your help. The efforts I have just described – to make the courts more responsive,

accountable and effective—are, I believe, the hallmarks of a mature court system. Thirty years ago, Utah judges functioned in the equivalent of individualized, fragmented “fiefdoms,” with disparate funding sources and little capacity for planning and self-governance. The environment today is vastly different. For over twenty years now, since the amendments to the Judicial Article of the Utah Constitution in 1985, we have been building a strong culture of responsibility for efficient operations and, more importantly, for appropriate outcomes. In other words, we try to focus not just on how good our processes are, but also on whether our processes succeed in doing the jobs they are designed for. The courts are committed to securing reliable information about our performance and acting on it. Our judges see themselves as part of an institutional enterprise, a fully equal and self-managed branch of government, with an enhanced obligation to do the public’s work in the broad sense, as well as case-by-case in the courtroom. We are proud of the work we have done and the performance-based values that drive our system.

But I have some concerns for the future. The demands on the time, talent and problem-solving skills of Utah’s judges are steadily increasing, and there is some reason to worry that the most able and experienced members of the bar do not aspire to serve on the bench to the degree they once did. This fall, when we sought to fill a judicial vacancy in the Seventh Judicial District (Carbon, San Juan, Grand, and Emery counties), we had to reopen the application process after the initial deadline because only five attorneys applied, four short of the statutorily required number. For an opening in the Third District currently in the process of being filled, the Nominating Commission received twenty-four applications from a potential pool of over 4,000 practicing lawyers. Last year we were requested by one of your committees to attempt to identify some of the reasons for numerical declines in the applicant pool. The Utah State Bar assisted us by electronically surveying all Utah lawyers about their attitudes toward applying for a judgeship. Of those who expressed an interest in applying for the bench, 40 percent ranked “increasing compensation” as the most important factor in attracting the highest caliber of applicants for judicial openings. Nearly as many (38 percent) of those not interested personally in applying agreed. Now, I know that no one becomes a judge to get rich, and I also have the highest confidence in the quality of the people who have received or will receive judicial appointments, but I am concerned about trends and morale. Eleven percent of the trial bench has turned over in the past two years, and 35 percent of our judges are eligible to retire in the next four years. Several of our very able, senior, well-respected judges have left the bench to return to private practice and better compensation. That’s a lot of experience, expertise and training that must be replaced. I want us all to be confident that we can attract and keep the best and the brightest. Scott Anderson, president of Zions Bank and a member of our Citizens Advisory Committee on Judicial Compensation, has pointed out the importance of a strong judiciary to the state’s economy and business climate: “Without the checks and balances provided by a strong judicial system, our state and nation cannot protect the rights and freedoms of its citizens. Utah’s courts are critical to the function of the state’s economy and banking system. Businesses and individuals can enter into transactions with confidence, knowing that Utah’s courts are there to fairly apply the law if other parties don’t live up to their promises.” The Citizen’s Committee recommended, and your Executive and Legislative Compensation Committee approved, requested compensation amounts intended to catch Utah judges up with their professional peers after the downturn of a few years ago. The Governor has concurred by fully funding this year’s figure of an 11 percent increase in his budget. We ask for your help and support. I am convinced that attention to judicial compensation is critical to the future quality and performance of Utah’s

courts.

One additional comment about resources. This point does not relate directly to judicial resources, but it does affect the representation in court of children who have been abused or neglected. Two years ago, an extensive legislative audit of the Guardian ad Litem's Office concluded that it was under funded to the point of being unable to fulfill all of its statutorily mandated duties. The audit also pointed out that the office was without hands-on policy oversight because the Judicial Council had traditionally maintained some distance from the office to prevent any appearance of control over lawyers who regularly appear before judges. The Council responded to that legitimate concern by creating an independent Oversight Committee, which for nearly two years has taken responsibility for directing policy and reviewing the operation and budget of the Guardian-ad-litem's Office. The Oversight Committee reports regularly to the Judicial Council and to your Child Welfare Legislative Oversight Committee. The funding request you will see this year from the Guardian ad Litem's Office is derived directly from the findings and suggestions of your helpful audit. Without a positive response it seems clear that services to children and the quality of their in-court representation will deteriorate as caseloads grows.

The courts have other, operational needs that we will address with the Appropriations Committee, but the two issues I have mentioned are, in my view, particularly urgent because they have such importance for the future. The first, judicial compensation, is critical for the next generation of Utah judges (who will these men and women be?; who will be there to serve as their role models and mentors?), and the second, adequate funding of the Guardian ad Litem's Office, is necessary to permit the office to perform its statutorily required duties to represent children in court.

Before I conclude, I would like to provide a brief preview of emerging issues. The Judicial Council is currently studying Utah's Justice Court system, re-examining both our own rules and the structure and operations of these courts. Also, we have undertaken, for the first time during my tenure, a study of probate and guardianship practices; we think we can and must improve our services in this area, which directly affects many elderly people, children, and persons with disabilities. Finally, I would like to mention the fact that one of Utah's juvenile courts has been designated as a national Model Court for the implementation of new guidelines for managing delinquency cases. These are cases in which children have been charged with acts, which, if they were adults, would constitute crimes. For ten years or so there has been a major focus in Utah and nationally on child welfare issues, and it is time to assess our performance on the delinquency side as well.

In conclusion, I would like to say a word about public perception. It is distressing to learn from recent surveys that nearly half of respondents identify television dramas as their major source of information about the courts and the justice system. I try to avoid these programs myself, but I've seen enough to know that Judge Judy and her cohorts bear no resemblance at all to the professional, dedicated judges and staff in Utah's courts. We handle over 800,000 cases every year, and the vast majority of those cases are resolved successfully—with impartiality, fairness, courtesy, and in a timely fashion. The work is often demanding and difficult, not at all glamorous, but our judges and employees see it as public service and worthy work, not just a job. That's the image I would like to leave with you: dedicated judges and staff, working hard to

resolve real disputes brought to the courts by real people, and committed to learning how to do it better every day.

As I indicated when I began, I believe that learning is essential to progress and to performance. Utah's judicial branch is committed to learning, to responsiveness, and to accountability. Let me end with an inspiring perspective on learning from John F. Kennedy, thirty-fifth President of the United States, who said, "Liberty without learning is always in peril; learning without liberty is always in vain."