

State of the Judiciary
Chief Justice Christine M. Durham, Utah Supreme Court
Message to the Legislature
January 24, 2011, in Salt Lake City, Utah

It is a pleasure to participate in Utah's tradition of an annual invitation to the judiciary- the third branch-to report to the legislature on our circumstances, accomplishments and challenges. I appreciate the courtesy of the leadership of this body and the gracious attendance of its members.

I am joined this afternoon by the members of the Supreme Court: Associate Chief Justice Matthew Durrant, and associate justices Ronald Nehring, Jill Parrish and Thomas Lee. This is Justice Lee's first opportunity to participate in this occasion and I would like to express publicly the court's appreciation for the work of the Governor and the Senate in bringing us up to a full complement and sending us such an able colleague. Justice Lee has already contributed to the efficiency and quality of our work and has become a friend as well as a colleague.

Also present today are the members of Utah's Judicial Council, the governing body for the judicial branch, which had its regular monthly meeting this morning in Salt Lake City. The Council has constitutional authority for the Rules of Judicial Administration, the preparation and monitoring of the budget, and the development of policy for the judiciary, while the Supreme Court is responsible for rules of evidence and procedure and regulation of the practice of law. The Council members are elected by each of the trial and appellate court levels in the state, along with one lawyer appointed by the State Bar, and dedicate a great deal of their time and talent to the oversight of Utah's judiciary. I would also like to publicly recognize the work of the Council over the last two years in responding boldly to our fiscal challenges and charting a course that has been both responsible and innovative, as I will share with you in these remarks. The Administrative Office of the Courts, headed by the extremely able Dan Becker, serves as staff to the Judicial Council and is responsible for implementing Council policy throughout the state courts. The Justice Courts are locally operated and funded, but the Administrative Office provides technical and educational support to them and they participate in the work of the Council.

I would like to use my time today to say a few words about the context in which state courts in general are functioning, and then to focus on our situation in Utah. I would be remiss, however, if I did not begin by emphasizing the degree to which we in the judiciary understand and appreciate the history of collaboration and support between our branch and yours in recent years. We know that you have faced unprecedented pressures in funding state government, and we are grateful for the fact that you and your staff have listened to our ideas, understood our mission and its import to the citizens of Utah, and been creative and extraordinarily helpful in finding ways to keep the courts open and functioning at the highest levels possible. We thank you.

In the last several decades, the almost exclusive focus in this country on study of the federal courts, which began in the middle of the last century, has shifted. It is increasingly understood that the state courts are the foundational institutions of our system of justice. This is true for two reasons: first, it is in the state courts that the legal problems of everyday American citizens are resolved, and second, the vast majority of all legal problems of any kind are dealt with in state

courts. To illustrate the second point, there is a striking set of numbers I would like to share with you. For the most recent year for which we have final estimates, the total filings in all of the federal courts in the country (trial and appellate, including the U.S. Supreme Court), excluding bankruptcy cases, was approximately 385,000. For the same year filings in state courts, not including traffic cases, were over 47 million. What these numbers mean is that something over 95 percent of the cases filed in the United States are handled in the state courts. To bring this closer to home, every business day in Utah we have 4,500 new filings, or over 950,000 new cases every year. That's about 1 case for every 2.8 citizens. Our annual filings in Utah are nearly three times the number of federal cases filed in all federal courts in the entire country.

Of even more significance, however, is the kind of cases these filings represent. State courts decide where children will live after divorce and how much is due for their support, whether a tenant is evicted, whether a small business can collect its unpaid accounts, whether a property owner gets a zoning variance. It is in state courts that vulnerable citizens like children and the disabled can be protected from exploitation and abuse, that troubled families seek final resolution and fair disposition of their disputes, that persons who disrupt the social order by criminal behavior are held accountable, that property owners end disputes without violence, that commercial and business transactions gone awry get resolved, and that citizens can seek redress from government over-reaching when it occurs. This list could go on for pages-it is the merest summary of the kinds of human problems that depend on a fair and impartial forum, open to all, for their solutions.

Courts are not perfect; they are human institutions subject to the frailties of all such institutions. But in our constitutional democracy Americans have placed in them our best hopes for preserving a system of justice and the rule of law. One needs only to try to imagine life in their absence---or study places in the world where there are no fair and impartial courts-to understand how much we depend on them to preserve peace, order, safety, and the rights our constitutions and laws guarantee. That is the core mission of state courts; it requires constant vigilance to shore them up, preserve and protect them, and demand from them the highest standards of fairness, impartiality, and performance. Anything less risks the erosion of the quality of our civic life.

The formal mission of Utah's state courts is "[t]o provide the people an open, fair, efficient, and independent system for the advancement of justice under the law." Although Article VIII of the Utah constitution establishes the authority and structure of the judicial "department" of state government, Article I, Utah's Declaration of Rights, contains a significant part of our constitutional charge, directed specifically to civil justice, in Section 11: "All courts shall be open, and every person for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay " This mission and this charge have informed our decision-making in response to needed budget cuts in 2002, 2009 and 2010. We have attempted in our reductions and restructuring to honor our core constitutional functions, to maintain access to the courts with no "denial or delay."

I do not want today to talk about our budget; instead I want to talk with you about our management of the public's resources. The Utah Constitution informs our resource allocation, as do state statutes, but what do our citizens want and expect from us? What is good government when it comes to the operation of the courts? Our view is that good government implies, and the

public demands, that we organize ourselves efficiently, that we focus our resources on functions that directly benefit the public, that we take advantage of the best research, information and technology to change and adapt our system to best practices, that we measure our productivity, and that we hold ourselves accountable to these principles. We believe that we have done all of these things, that we are an example of good government.

As I have often mentioned, Utah's court system is viewed nationally as a model for its governance structure, its development of performance standards and public reporting, and its innovation in using technology to improve efficiency and reduce costs. We are currently engaged in a major re-structuring of our "business model," if I may use that term, and I would like to share some of the details with you today. We have in the past two to three years made the significant permanent cuts necessary to balance our budget, and we have identified a strategy to use what remains so as to achieve the greatest possible system efficiencies. In fact, we are in the process of making fundamental changes in almost every part of our court system. We have used the opportunity presented by the economic crisis to advance structural changes that might otherwise not have been possible or palatable and we have advanced innovative strategies at a pace that almost certainly would not have been feasible in normal times. We are changing how cases are filed, how clerks process them, how judges view them, how we communicate about them, and how they are litigated, heard and resolved.

As we make these fundamental changes, we are also very fortunate to be able to constantly measure the impact of the changes. We have a comprehensive set of performance measures that we use as a "dashboard" to indicate our speed, direction and productivity. These measures have been in place for several years now, and they allow us to quantify, rather than speculate about, the impact of recent resource cuts, resource allocation, and system restructuring. We believe these measures show that while our reduced resources and increased caseloads have negatively impacted court users, the restructuring and innovations that we are in the middle of are having the desired effect of mitigating that impact. For example, last year I talked about our clerical restructuring project, which replaced traditional hierarchical management structure with teams of "generalists" on the clerical staff. We also did away with the archaic practice of compensating clerks based on simple longevity, and instead now pay them based on demonstrated competency and skill acquisition. This has enabled us to provide the same service to more court users with fewer people. This year I want to mention two other major reform efforts, electronic access and civil practice reform.

As of today, our non-judicial workforce has been downsized permanently by nine percent, while our case filings-for the third straight year-are 16 percent above their pre-recession 2008 levels. Everyone is concerned these days about having to do more with less; in the courts we are worried about doing far more with much less. So what are we doing? It would be extremely difficult, I think, to find any operation more paper intensive than courts; tens of millions of pieces of paper are handled multiple times by multiple people in Utah's courts annually. This is about to change radically and rapidly as we move to what we are calling "e-everything." Plans for this shift have been underway for some time, but our budget losses and personnel cuts have persuaded us to accelerate the process dramatically. We are moving to the use of an electronic record for all court business at all court levels-something that has yet to be done in any state court system. As you can imagine this is stressful for our judges, our court clerks, and particularly our information technology staff, but I am very proud of the dedication and

innovation being shown throughout our system.

The electronic record project, amazing as it is, is only part of "e-everything." The courts have already launched e-filing of civil cases, e-payment of fees, fines and restitution, e-documents, e-warrants and e-citations. All of these systems have been initiated statewide, so that even when a case is not filed electronically, its documents are being scanned for the creation of an electronic record. The courts have also completed development of a system for e-filing of criminal cases and we will be ready to implement it as soon as the Prosecutors Information Management System (PIMS) is available for testing.

How will the electronic record change the way we do business? Clerks will no longer have to create paper files and manually input data; the file will be created automatically as electronic documents are entered. Electronic payments eliminate the need for manual bookkeeping: processing receipts, disbursements and recording all occur through a banking transaction. Clerks will no longer have to locate and pull voluminous paper files for court hearings or information retrieval; instead, the electronic record can be accessed instantaneously by multiple parties at multiple locations at any time. Preparation of trial court records for appellate review, which used to be a time-consuming task for court clerks, can now be done automatically and instantaneously. Among other things, the electronic record will mean significant savings in supplies and records storage equipment and space. For the court user and the average citizen, electronic access to court records means no more trips to the courthouse to conduct business that doesn't require a hearing.

The next area I wanted to mention has to do with reforms in the arena of civil litigation. The Supreme Court's Advisory Committee on the Rules of Civil Procedure has been working for the past two years on a radical restructuring of the process and theory of discovery in civil lawsuits. Discovery is the process by which parties obtain from each other the information and evidence they need to settle or try their cases, and it has become in recent decades the major cause of expense and delay in civil courts throughout the country. Our existing discovery rules are based on the federal rules, which were conceived at a time when copy machines didn't even exist yet, let alone computers. Information looks very different now than it did then, so we are looking at major changes in the Rules of Civil Procedure that we hope will streamline the process dramatically, reducing delay and cost, and thereby improving access to and confidence in the courts.

As dramatic as the civil litigation reform may be, I understand that it probably sounds like "inside baseball" to most of you, so let me give one final example of how we are fine tuning even our most effective programs to be sure they are as effective as they can be. As we have traveled the state meeting with many of you in your districts, one topic that came up in every area is drug courts. Out of curiosity, by a show of hands, how many of you have attended a drug court or spoken at a drug court hearing or graduation? For those who haven't done so, you have an open invitation to attend one at any time. I promise you that you will feel your time was well spent.

Drug Courts, or in the broader description, Problem Solving Courts (which now include courts specializing in the needs of the mentally ill, veterans, the homeless and persons charged with DUI), are probably the biggest innovation in sentencing in the last hundred years. The idea is that sentencing needs to address the root cause of criminal behavior in order to affect recidivism. As

you know, we operate these courts at all court levels, and the research now is very clear on these courts; they have the most effect on high risk/high need offenders, in other words our most serious, drug addicted defendants. On the national level, those involved in Problem Solving Courts have agreed on 10 key components to drug court effectiveness.

By rule, courts must apply to the Judicial Council for initial approval to operate a Problem Solving Court. That process permits the Council to determine if the applicant is complying with the 10 key components. In addition to the front-end oversight, the Judicial Council has also developed an on-going certification process, involving one of our senior judges, who operated a drug court for many years, who is doing on-site observations of every drug court (we have 52 statewide) to determine if the court is operating as it should. Not only does this process provide oversight and assistance to these courts, but it also ensures that we are operating them in the most effective way possible.

Almost all of the state funding for drug courts comes through the Division of Substance Abuse and Mental Health, so we have worked very closely with them to be sure only the most effective drug court programs receive state support. I hope you agree that the process I described reflects the importance the Judicial Council places on program effectiveness and, while the funding doesn't come to the courts, I suggest that drug courts are exactly the kind of proven, effective program that warrants the strong continuing support of this body.

For all the good news about these innovations and changes, however, I don't want to minimize the pressures that they are exerting on all parts of our system, and on litigants, lawyers and other court users. Our greatest strength is our people-judges, clerks, probation officers, and administrative staff. Our system for selecting judges provides our state with an outstanding judiciary. They are being relied upon to handle more and more cases, and are working hard not to let the additional work result in delay. Our judges and staff have responded in a way we can all be proud of. The major transitions in progress would be challenging in the best of times, and these are not the best of times. The complete transition will take several years, but we are well underway, with all the major components in place.

The status of these major changes is, however, dependent on our ability to continue to design, test and implement sweeping solutions to complicated problems and is therefore somewhat fragile. Our budget structure in the judicial branch leaves us with limited options. Ninety-three percent of our General Fund budget is people, so any further resource reductions would have to come from our existing court staff-the very resource we are depending on to implement our solutions. We know you are well aware of these challenges and we look forward to the work of the legislative session as we address them together.

Last year I reported that the state of our judiciary was strong, but challenged. This year I would amend that assessment by reporting that we are responding to the challenge by relying on the strength of our people and on a willingness to critique and change how we conduct court business. With your help, we will emerge from this difficult transition in a position to continue protecting access to our courts and delivering timely justice, while at the same time improving services with significantly fewer resources. We think that is our fundamental constitutional mission, and, perhaps more importantly, that is good government.

Thank you and our best wishes as you conduct the important work of our state for the next 45 days.