

State of the Judiciary
Chief Justice Christine M. Durham, Utah Supreme Court
Message to the Legislature
January 23, 2012, in Salt Lake City, Utah

Good afternoon. I offer thanks to the members and leaders of the Utah Legislature, particularly President Michael Waddoups and Speaker Becky Lockhart, for the invitation to speak to you today. I am, as in past years, accompanied by my colleagues on the Utah Supreme Court, and by the members of the Utah Judicial Council, the policy-making body responsible for the administration of Utah's courts, which has been conducting its regular monthly meeting this morning. We appreciate this opportunity to report to you and to the public on the circumstances of Utah's court system.

In short, we are doing remarkably well. I'm pleased to tell you that the judicial branch is delivering timely and high quality work, making responsible use of the funds entrusted to us, and working hard to ensure that everyone in our state has access to justice. That said, there is some important detail I would like to share.

This marks the tenth occasion I have made such a report, and a great deal has transpired during the past decade. In preparation for these remarks I looked through my previous addresses and noted that, particularly in recent years, I have talked a good deal about risks and challenges to the courts. But what really struck me was the collective number of accomplishments and achievements contained in those reports. I would like to share just a few, many of which couldn't have been achieved without your support:

- Justice Court reform initiatives, including changes in selection and retention practices and compensation structures, operational standards, and the implementation of a statewide automated case management and records system. The changes have dramatically improved the ability of these courts to ensure fairness, accountability and public safety.
- The implementation and publication of performance measures and results. Last month an article in the prestigious National Law Journal noted that Utah's courts have the strongest program for performance transparency in the nation (Anna and Udell, "We Need a National Justice Index," The National Law Journal, December 5,2011).
- The expansion of problem-solving courts statewide. We now have forty-six drug courts in our district and juvenile courts and mental health courts in four of eight judicial districts. Most importantly, we have developed and implemented certification requirements and review processes designed to ensure that we are using the best, evidence-based, practices.
- The enhancement of services to self-represented litigants with our on-line court assistance program, a self-help center, and on-line forms. Although we have done a good deal, we have much more to do, a point I will address later.

- Expansion of alternative dispute resolution programs, which now include mediation services for civil cases, child welfare matters, crime victims and offenders, and co-parenting, divorce and truancy cases.
- Dramatic improvements in access to interpreter services for those who need them in order to understand court proceedings.
- The transition from reliance on paper formats to an Electronic Record, which includes e-filing, e-warrants, e-payments, e-citations, e-documents and e-transcripts.
- The development and implementation of an entirely new state-wide juvenile information system, called CARE, one of the few comprehensive systems in the country.
- The Initiative on Utah Children in Foster Care, which has brought together leaders from all three branches of government, education, child welfare services, roster parent and kinship care organizations, medical and mental health providers, and the business and faith-based communities to address the critical needs of thousands of Utah's children endangered by distressed family situations. Its acronym is IOU, because we owe these children and their care-givers; we owe them access to appropriate education, adequate health care, and the support that every child requires to grow into productive adulthood; and finally,
- An examination of and substantive changes in how the courts deal with incapacitated adults in guardianship and conservatorship cases.

While we can be proud of such accomplishments, they mean little if they fail to produce results for the people we serve. This past July we conducted the third periodic Access and Fairness survey of people leaving all Utah courthouses to determine how they felt about their court experience. They were asked thirty-three questions, ranging from whether they felt safe in the courthouse to whether they were treated with courtesy and respect. On nearly all questions the favorable responses were in the 90% range, with many in the high 90s. (I invite you to visit the courts' web site and look at the detailed results for the courts in your communities.) I take away from this recent survey not only that our judges and staff are doing remarkable work despite having fewer resources to work with, but also that the programs we have put in place are producing measurable results.

In my very first state of the judiciary address I stated that "the single most significant challenge facing Utah's court system, like all of state government, lies in maintaining the trust and confidence of the public we serve." And, that "it is no longer sufficient merely to do our work; increasingly we must find ways to make the courts more accessible, more responsive, and more understandable, while at the same time preserving the core values and tasks that are our constitutional responsibility." We have worked hard to do just that, and while much remains to be done, we have made considerable strides in addressing all these objectives.

It is worth emphasizing that much of this work has been done in the midst of challenging times; more than half of the years of my service as Chief Justice have seen major economic downturns

and recession. I am inclined to think that, on occasion, a bad crisis is a terrible thing to waste - and Utah's court system has used the stress of recent years as a catalyst for solving problems creatively and perhaps more quickly than we might have been able to do otherwise. Although we are twenty percent leaner in terms of personnel than we were ten years ago, our planning has allowed us to position ourselves for continuing excellence in the future.

While the national news is full of reports of grave risks to the capacity of state court systems to fulfill their basic functions, Utah courts have not closed or reduced hours, have not eliminated services, and have not permitted delay to betray the promise of access to justice. Three years ago, we set an entirely different course in our business model, seeking to ensure not only that we would not let budget losses impair access, but also that we could provide better service, better access, less delay and better performance. We completely re-tooled our business plan by 1) replacing a record-keeping system that has relied historically on processing tens of millions of pieces of paper filed every year with an electronic record; 2) increasing our attention to case-management performance and delay reduction measures, through innovative training and performance measurements, and 3) amending the rules governing litigation in civil cases in ways that promise to reduce cost and delay. Our new rule is receiving national attention as a possible blueprint for other states and even for the federal courts. We have also implemented ways to make better use of existing resources, such as senior judges and court interpreters. In our juvenile courts we have measured our programs against the evidence of their effectiveness; where such evidence has been lacking we have replaced them with programs that have been evaluated and proven to work. We reorganized our clerks' offices, moving to team management and competency-based advancement, and have adapted their work to the new electronic environment. In short, the way in which we do our day-to-day business has fundamentally changed.

I must admit that the pace of all this change has been daunting and challenging to the entire court family. However, given the economic and workload challenges we faced, changing how we do business was the only responsible option if we were going to protect access and ensure timely justice.

To quote Will Rogers, a master at stating the obvious:

"Even if you are on the right track, if you don't keep moving, you'll still get run over."

The credit for all of the foregoing goes to the leadership, innovation and courage shown by the members of the Judicial Council, to our hard-working staff and judges throughout the state, and to the extraordinary professionalism and creativity of our Administrative Office of the Courts under the leadership of Dan Becker. Utah's system is routinely held out as a model for other states in the national conversation about court reform and judicial administration, and this phenomenon has extended to our re-engineering efforts. The National Center for State Courts, which is the equivalent in the courts community of the National Conference of State Legislators, sent a team to Utah several months ago to study what we have done and how we have done it, so that our advancements can be shared with other court systems nationally.

Looking forward, and focusing for a moment on the approaching budget discussions, I am cautiously optimistic. The courts are not seeking any restoration of lost resources; we are

prepared for the time being to function in what many describe as the "new normal." With one modest exception, we are also not asking for any new resources. That exception is embodied in legislation to define and expand our self-help center. This will build on our extremely successful pilot program to support the tens of thousands of Utah's who find themselves in court with no access to legal services. This part of our workload in the courts has grown exponentially during the recession, as you might imagine.

If we sustain no further reductions, we are poised to complete the ambitious changes on which we have embarked, and we are grateful to you for the care and attention you have given to our fundamental needs over these difficult years. Our new business model is dependent on our current level of resources. It will permit us to manage growth and remain effective for many years to come.

As I have mentioned to you before, the state courts as opposed to the federal courts are responsible for more than 95% of all litigation in this country. In Utah alone, we have nearly three times the number of cases filed in one year than are filed in all of the nation's federal courts combined. Thus, when we speak of the rule of law as the core premise of our American system of government, we must understand that, for the average citizen, the protection of the rule of law translates directly to fair and efficient state and local courts.

While criminal cases grab headlines, the bulk of our work affects regular people - our neighbors, their children, and all the people working and doing business in our communities. To illustrate, those filing cases in Utah's courts last year included: more than 129,000 businesses large and small; 53,500 cases affecting families and children, including divorce, custody and support, child welfare and juvenile delinquency, and adoption; 461,000 plus people charged with traffic offenses; 76,600 cases brought by governmental agencies or people affected by them, including for example the Tax Commission, the Public Service Commission, the Office of Recovery Services, and Workforce Services; 215,200 private citizens seeking compensations for injuries and other civil wrongs, and; 117,300 criminal defendants, many with drug addiction and mental health problems.

Collectively these cases involve hundreds of millions of dollars in criminal and traffic fines and fees, and billions of dollars in controversy in our civil courts. How our courts handle the work brought to us not only impacts public safety, children and families, and government, but also has a considerable impact on the state's business climate and economy.

If you or anyone you know has ever needed a court to resolve a dispute, answer a legal question, adjudicate a criminal charge, or intervene in a family matter, you know how critical it is that justice be impartial, timely, and beholden only to the constitution and the law, and not to the weight of public or political opinion.

You probably know, as I do, how difficult it is to navigate the complexities of the law and the procedural requirements that govern dispute resolution in our courts. Think about trying to recover for a breach of contract or a sophisticated scam targeting vulnerable victims, defend against a foreclosure proceeding, figure out the consequences of a divorce settlement, get protection from an abusive partner, seek redress from a wrongfully discriminatory employment

termination or denial of disability benefits, or any of a hundred other legal problems - all without the services of a lawyer. Most citizens are about as knowledgeable about the laws and the rules as I am about the inner workings of my automobile. When my car breaks, I need an expert. When people's lives break in ways that implicate the law, they frequently need an expert too.

Because of the impact of the recession and high unemployment rates, thousands of vulnerable Utahns find themselves at risk for serious loss and personal disaster. Utah's legal services community has struggled valiantly with the growing flood of need, at the same time other sources of funding have been drastically cut and staff has been lost. You have steadily responded in the past with some basic support for this need, and I hope that some way will be found to increase that support so that too many more people will not fall into poverty, homelessness, and personal despair for lack of legal advice and representation. The State Bar is addressing ways to increase free legal services, and the courts are doing all we can to help self-represented litigants. But the existence of fair and impartial courts means little to people who cannot adequately represent themselves; access means more than just getting in the door of the legal system; it must mean having a fair shot at getting relief, and more often than not, that means having a trained and dedicated legal advocate on your side when you need one.

The significance of what fair and impartial courts really mean was profoundly impressed on me shortly after I joined the Supreme Court, when I, along with then Justice Dallin Oaks, had the opportunity in the early 1980s to meet with a diplomatic delegation from the Soviet Union. Through translators, the lawyers, judges and politicians in the group listened to our explanations of the importance of the separation of powers to the rule of law and the protection of citizens' rights. Then Justice Oaks asked how it worked in their system. To my surprise (because I was pretty sure some in the room were KGB) one of the lawyers replied - "We do not have the rule of law in our courts; we have telephone justice." I had not heard the phrase before; he explained that it meant that in any given case a Soviet judge waited for a telephone call from a Communist party official to dictate the result. Throughout the world there are still nations whose people cannot rely on the law and on impartial judges to implement it; they are subject to courts influenced by corruption, religious and political control, and in many cases a complete lack of adequate resources. I am deeply grateful to live in a nation and state whose constitutions ensure the separation of powers and the rule of law, and to work in a judiciary that is free from corruption and strives for the highest degree of professionalism, public service, and transparency.

It has been my honor and privilege to lead Utah's judiciary through a challenging and productive decade. I am extremely proud to look back at all that we have accomplished, and look forward to all that we are poised to accomplish. It is time, however, for new leadership. Although I have no plans to leave the court, I will be stepping down as Chief Justice at the end of March of this year. The Court has unanimously selected Associate Chief Justice Matthew B. Durrant to begin a term as Chief Justice beginning April 1st, which will give us ample time for an orderly transition. Justice Durrant is blessed with great ability, a great intellect, and a great sense of humor; I know that he will provide superb leadership in the years to come.

In conclusion, I thank you again for the opportunity to address you today and in the past. It has been an honor to work as Chief Justice with three governors, the very capable leadership of the Utah House and the Senate, and with so many fine, dedicated legislators.

Thank you for the difficult work you do on behalf of our state and for your support of our courts.