State of the Judiciary
Chief Justice Matthew B. Durrant, Utah Supreme Court
Message to the Legislature
January 28, 2013, in Salt Lake City, Utah

Thank you, Speaker Lockhart

Thank you, President Niederhauser

When I was an undergraduate at BYU, I was invited to a gathering at a professor's home. As an icebreaker, he had us sit in a circle and introduce the person to our left. When it got to me, my introducer said, "This is Matt Durrant. He is the son of George Durrant." My father was a BYU professor, and a well-known author and speaker.

Then he continued, "He is the brother of Devin Durrant." Devin was a star player on the BYU basketball team.

He continued, "He is the cousin of Stephen Durrant, a language professor on campus."

He then paused, looked a little embarrassed, and said, "He's never really done much himself, but he is related to a lot of important people"

I think that my chief credential remains the same today. I am related to or now serve with a lot of important people. I am privileged to serve on our Supreme Court with four superb jurists, who are here with us today, each committed to diligently honoring the oaths they have taken. I am also honored to serve with the other members of our state's judiciary, including the members of the Utah Judicial Council, who are also here in the gallery today, as well as our State Court Administrator, Dan Becker.

In Utah, we are fortunate to have judges of an extraordinarily high quality. Utah's judges are selected by a nonpartisan vetting process that may well be more thorough and rigorous than any state in the nation, one designed to ensure that only those applicants who have established a reputation for excellence and integrity are selected.

As Chief Justice I wear two hats: I preside over our Supreme Court and I chair our Judicial Council. The Judicial Council is the constitutional body by which we govern the judiciary and is composed of judges from different court categories who have been elected by their peers to serve. The council makes policy and administrative decisions for the judicial branch.

While as Chief Justice I now have many more administrative responsibilities, above all I am a judge like the other 210 judges in our state. I, like they, feel the weight of the decisions we are called upon to make. People come to us at critical junctures in their lives. Their business, their family, their financial future, even their freedom may be at stake. They deserve a judge who is fair, impartial, and committed to fairly applying the law to the facts. They deserve a judge who is uninfluenced by public opinion, position, power, race, gender, or anything beyond the law and

the facts.

A fair judiciary is also critical to our state's economic success. A recent World Bank study indicates that the most important ingredient to the economic success and strength of a country is the presence of a court system that applies the rule of law fairly and impartially. To have a judiciary committed to the rule of law, one dedicated to fair and impartial justice, not only benefits those who now do business in our state, but it plays a key role in decisions being made by those who are considering locating here. In a survey conducted by the US Chamber of Commerce, of the 1500 employer respondents, two-thirds agreed that the litigation environment in a state is an important factor that impacts decisions of where to locate or do business.

In this regard, I can report to you that Utah's court system is held in very high regard. This is something that I hadn't fully appreciated before becoming Chief Justice. Through my involvement with the National Conference of Chief Justices, I have come to see how highly regarded our court system is nationally. Our governance structure, the way in which we select and retain our judiciary, our innovative juvenile courts, our application of alternative dispute resolution, and our use of technology are often cited as models that others should emulate.

But even more important is the opinion of Utah's citizens. I am pleased to tell you that in an independent survey conducted last July and August, 81% of respondents indicated that they had confidence in Utah's courts, with 29% responding that they were very confident. In a separate recent survey given to court users as they were leaving courthouses throughout our state, 96% indicated they had been treated with courtesy and respect by our staff. Notably, this survey was conducted at a time of historically high filings and workload in our courts.

Fortunately, as our Utah economy has improved, our record high civil filings are now returning to more normal levels of growth. We've made the business adjustments necessary to continue to serve the public with fewer dollars and a downsized workforce and, importantly, we are not asking that any of the staff reductions taken over the past three years be restored. We commit to continue to provide excellent service to litigants, the bar, and the public with our new smaller, more tech-savvy, and better trained and educated staff.

A critical factor in our ability to achieve this success in our courts has been our relationship with this legislature. While there is, and should be, some tension between our branches, we are fortunate to live in a state where our legislators, while firmly committed to fiscal responsibility, are also committed to providing the resources necessary to ensure a fair and impartial judiciary of the highest quality. During these recent years of uncertainty, you have allowed us the flexibility to retool and right- size, and our exemplary performance is the result, and people are noticing - both our performance, and your contribution to it.

At a recent press conference held at the National Press Club in Washington DC, Utah was recognized as one of three states that had most successfully responded to budget reductions by changing its business model. Specifically, Utah was recognized for the positive and productive working relationship between our courts and this legislature. Representative Eric Hutchings, co-chair of our Appropriations Committee, was invited by the organizers of the event to participate in that press conference, which he did, and he represented all of you admirably. The cooperative

and effective institutional support we enjoy is unsurpassed anywhere in the country.

We not only weathered the recession, but came out better for it. Though we faced a 10% staff reduction at the same time we were experiencing record high case filings, we were able to improve our efficiency, reducing the age of our pending cases by 34%. In other words, cases moved along faster. In fact, the average age of pending cases has improved over that of 2008 in every case category and in every judicial district. How has this happened? One key factor in our ability to increase productivity during workforce reductions and increased workload has been our unwavering investment in E-solutions.

We are almost to the finish line of operating in a fully electronic environment. We are now paperless statewide for all civil cases filed after July 1, 2012. Shortly after the gavel falls on this legislative session, all civil cases filed by the bar will be done so entirely electronically, and criminal cases are next. The advantages to these electronic solutions are endless.

- Efficiency - we move data, instead of pieces of paper, so everything can be seen and worked on by everyone at once.

- Security - redundant electronic storage means records won't be lost in the case of fire, or, as we saw just a few days ago, a burst water pipe in our Farmington courthouse.

- Transparency - public records are much more accessible to the public. A visit to the courthouse is replaced by a visit to our website. Even court proceedings are more available without a trip to the courtroom, including digital audio recordings of justice court proceedings.

While we are already regarded as one of the most transparent court systems in the country--due both to our open, public governance meetings and to the way in which we report our performance-in detail, on our website--we have recently taken additional steps to enhance our openness and accountability. In November, the Judicial Council enacted a rule that allows the media to cover courtroom proceedings using audio and, now, video. While this represents a big change for our trial courts, the Judicial Council concluded that allowing this change makes Utah's courts even more transparent and accountable.

While we are proud of the success we've had, and always working to improve the quality of our court system, we do face a number of significant challenges. The nature of what I will call our customer base, those using the courts, is changing. Fifty-seven languages had to be interpreted in Utah courts last year. And there are, of course, drug addiction or mental health issues in the vast majority - some estimate over 80% - of our district court criminal cases, as well as in many of our juvenile court referrals.

The number of litigants coming to court without an attorney has also continued to rise. For example, this year, in 56% of domestic cases, neither party had a lawyer. In the public opinion survey I mentioned earlier, 70%, of respondents felt that the cost of hiring an attorney would be a barrier if they needed to access their courts. This should be troubling to all of us. And yet for many in today's You Tube society, do- it-yourself is always the first choice, even if cost is not

the barrier, and even for something as complex as a court proceeding.

To address this concern a number of resources, programs, and initiatives are in place. The court-run state-wide Self-Help Center you funded this past year is now serving people all across the state, and is on pace to assist 16,000 Utahns this year. Those 16,000 Utahns owe thanks to Senator Urquhart for his sponsorship of that legislation last year, and to all of you for its passage.

In addition to our Self-Help Center, we also have an online court assistance program, or OCAP, that helps self represented parties prepare court documents the way a TurboTax program might help prepare taxes, and our website has a great deal of information, including many simple, ready to file forms. Half of all divorce petitions last year used this OCAP program. But let me tell you a story of how it was used to bring a family together, as well.

A fatal tragedy took a young mother from her child. The mother's devastated parents, grandparents to the little girl, sought help with how to take care of their granddaughter. They needed to become the legal guardians of their granddaughter, as the father is out of the picture. The grandparents are of meager means and cannot afford a lawyer. Fortunately, they found and called a Self-Help Center staffer, who then walked them, step by step, through the process of finding the correct online tool to help them. In this case they were able to answer questions in the OCAP program, and the result was a ready-to-file petition for guardianship of a minor, as well as instructions for what to expect in the court hearing. Within weeks, the grandparents became the court- appointed guardians of their grandchild and have the legal tools in place to care for that child for years to come.

There are thousands of stories similar to this one, and there are certainly other entities dedicated to assisting those with unmet legal needs. Utah Legal Services, to which you provide modest financial support, works mightily to address the demand for legal services, and the Utah State Bar has begun a state-wide pro bono initiative to provide legal help to those in the greatest need.

All of this and much more will be needed if we are to ensure that our courts are available to those without the financial means to seek representation from an attorney.

Once these court users--represented or not--do make it to court, we need to be sure there is a judge there to help them. In one part in our state that has become a critical issue.

I don't need to tell you about the growth in the Uintah basin in recent years, but you may not be aware that it has resulted in a sustained explosion in the workload for both our juvenile and district courts serving Duchesne, Uintah, and Daggett counties - the Eighth Judicial District. The need for additional judges has actually been apparent for over four years, but because of the recession, we have done what was necessary to delay coming to you for help. We have used judges from neighboring judicial districts, as well as retired senior judges, to fill in, but the citizens of the Eighth Judicial District are entitled to more than a fill-in patchwork of judges.

I wish to give special recognition to the district and juvenile judges from the Seventh District who, for the last three years, have been covering all of their own courts, from Price to Blanding, plus the courts in Duchesne, which has meant many white knuckle drives between Price and

Duchesne over Highway 191 during the winter months. They've done so willingly in order to ensure that the people of the Eighth District have access to court resources and timely justice. I should also note that the electronic record has allowed clerk offices in Price and Moab to provide case processing assistance to their colleagues in the Eighth District without leaving their offices. This is something new - being able to move work, rather than having to move people.

But I regard such assistance as a temporary emergency measure that has gone on too long and now needs to be addressed with permanent judges. The residents of Duchesne are entitled to have judges from their own community for whom they cast their retention vote. And, in juvenile court, the one judge/one family model that is in place everywhere else in the state, has had to be, in significant measure, sacrificed in the Eighth District because of the use of multiple visiting judges. In that district, our one judge juvenile court has the workload of two judges, and our two judge district court has the workload of three.

Senator Van Tassell has filed legislation that will address this long- standing need, and I hope you will give it your support.

So please know that the state of the Utah judiciary is strong, efficient, and forward looking. I am fortunate that Justice Durham and the Judicial Council put our courts on a constructive and innovative path. intend to continue on that path and to explore additional ways to improve our courts. But this can't be our journey alone. We need you to believe in and to continue to support our courts.

And we need the public's support as well. The courts don't belong to judges or to the Judicial Council, they belong to the people. And the people have every right to expect their courts to be fair, independent, timely, and accessible. Our judges and staff by their actions every day show their commitment to these principles, and I can assure you that the Judicial Council is working diligently to ensure that the confidence the public has in our work is not only maintained, but enhanced.

Our courts need to be welcoming to all. Legal problems are not limited to the wealthy, yet too often the services of lawyers are. The high cost of legal services has become a barrier not just to the poor, but the middle class as well.

So, I see a critical part of my job as making sure our courts are like a big tent, with its flaps wide open, with room for everyone, not like a walled fortress accessible only to the few. When the good people of Utah need our courts, we don't ask them whether they, like that fellow seemed to think I was, are "related to a lot of important people," we just welcome them and treat them as the important people they themselves are.

Let me conclude by thanking you, as Chief Justice, but more importantly, as a citizen, for your service. I know that you serve at great personal sacrifice and from a commitment to improve the lives of our state's citizens. We, as a judiciary, are proud to participate with you and with the governor in this great cause.

Thank you for the opportunity to talk with you today, and good luck with the session.