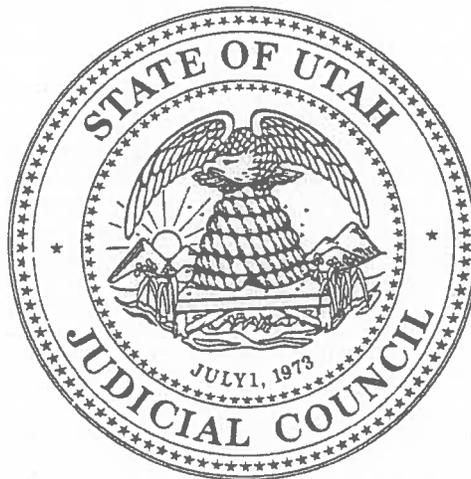


Utah State Courts

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2015  
*STATE OF THE JUDICIARY  
ADDRESS*

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*Honorable Matthew B. Durrant  
Chief Justice, Utah Supreme Court  
January 26, 2015*

## State of the Judiciary 2015

Thank you Speaker Hughes/President Niederhouser for the privilege of addressing this distinguished body. I am pleased to be joined by Justices Durham, Parrish, and Lee. Justice Nehring is unable to be here. It is one of the great privileges and pleasures of my life to work with four colleagues who are not just exemplary jurists, but also extraordinary people. I would like to make particular note of Justice Nehring's upcoming retirement. He has served this state with distinction both on the trial bench and on our court.

I would also like to take this opportunity to note the tragic passing of Speaker Lockhart. Along with you, we mourn her loss, and wish comfort to her family, her friends, and to you, her colleagues.

Now, in this annual report on the state of Utah's judiciary, I customarily do a good deal of unapologetic bragging about the accomplishments of the judicial branch of government. You see, when you work every day with dedicated, hardworking judges and staff, it's normal to want to share our collective accomplishments. But on this occasion, I thought I would take a different tack and, instead, praise the accomplishments of this, the legislative branch.

This is the thirty-year anniversary of the Utah Constitution's present Judicial Article, an extraordinary legislative achievement. The 1985 amendments to Article VIII of our constitution changed the way judges are selected, retained, disciplined, and governed. It required vision, insight, and the courage to change. We all know

that change is not easy. I remember as a young man worrying about the changes an LDS mission might bring to my life, so I approached my father.

“Dad,” I said, “I’m just not sure I can go for two years without a date.”

“Son,” he replied, “You’ve gone the last two years without one.”

Well, things worked out for me, and the revised Judicial Article has worked out for the citizens of Utah in enormously beneficial ways.

It was passed by the house and the senate, and ratified by the people, in 1984. It became effective on July 1, 1985. If I’m not mistaken, there is only one member of this Legislature who was serving when the revised Judicial Article was debated and adopted- Senator Lyle Hillyard. Thirty four years of service to the people of this state certainly warrants special recognition and attention. (Thank you Senator.)

The revised Judicial Article was the product of more than four years’ work by the Legislature’s Constitutional Revision Commission. In the 1970s, consensus was building that fundamental changes to our state judicial system were needed. The system was fragmented by geography and by court level, and there was no cohesive direction - no rudder, so to speak. The immediate issue was the workload of the Supreme Court, which was among the highest in the country, and the obvious solution to that problem was the creation of an intermediate level appellate court. Yet as this study group looked at the whole judiciary, it was apparent that broader reform was needed. The creation of the Court of Appeals would fix the biggest hole

in the ship, but there were others. In hindsight, the vision, creativity and courage to think big shown by the Legislature and the Commission were truly remarkable.

The new Judicial Article, together with its implementing legislation and the subsequent refinements it made possible, effected three basic changes that have enabled our judiciary to become a national model.

First, it created a system for the selection of judges that excises politics from the process and ensures that Utah's judges are picked based exclusively on merit. The amendments to the Judicial Article led to the creation of a non-partisan commission made up of lawyers and non-lawyers that certifies a list of qualified applicants to the governor. The commission does so based upon its own evaluation of the accomplishments of the applicants and upon anonymous critiques of them—by lawyers with whom they have had cases, and judges before whom they have appeared. The governor must choose a nominee from this list of applicants, and that person must be confirmed by the senate. This process serves as a referendum on the applicants' professional reputation. If they have not distinguished themselves in their career, if they have not developed a reputation for hard work, excellence, and integrity, they will not become a judge in Utah. It is a judicial selection process that is as rigorous as can be found in any state in the nation.

Because of this body's foresight in creating this system, our state has now enjoyed a judiciary of uniformly high quality for the last thirty years. The effect has been far-reaching. Not only because a strong judiciary ensures that individuals receive a fair forum for the resolution of their disputes, not only because it ensures

that those rights guaranteed by our State and Federal Constitutions will be protected for all, but because a predictable, thoughtful, and stable judiciary is critical to our state's economic success now and in the future.

Second, the revised Judicial Article created a unified system of governance for the judiciary. It established a judicial council that is chaired by the chief justice and consists of representatives of each of the different kinds of courts – appellate, district, juvenile, and justice. It includes representatives who are elected by their colleagues in those courts. It also includes a representative from the bar. In this way, all judges participate in the governance of the judiciary. All have a voice. This is very different from the way in which the judiciary was governed before the Judicial Article was passed. Governance power resided, in a patchwork way, in various district court judges throughout the state. Let me pause to recognize members of the council who are with us today in the gallery.

Our governance process is also very different from that in place in almost every other state and appears to have been created by the commission and the legislature largely out of whole cloth. The fact that our judiciary is governed by a judicial council allows us to speak with one voice. It allows us to move with alacrity in addressing problems as they arise. For instance, in the recent financial crisis we were able to quickly modify our organizational structure and expedite our adoption of e-filing. By doing so we did not just survive the downturn, we flourished, increasing our efficiency and improving our performance during that time. And this while reducing the size of our workforce.

Our unified, state-wide court management system has not only made for a better judiciary. It has also been enormously beneficial to the citizens of our great state. Not every state is so fortunate. There are state judiciaries that have struggled to introduce modern technology, some spending in the hundreds of millions on efforts that ended up being abandoned. One state recently abandoned a one billion-dollar, decade-long initiative to develop an electronic court management system, with nothing to show for it. We on the other hand, have long had a highly efficient, self-designed state-wide case management system. And without any additional appropriation, we have successfully transitioned to an entirely electronic operation in our district and justice courts. Our juvenile and appellate courts will soon be all electronic as well. At present, no other state can make these claims. The difference, I believe, is the ability our judicial council form of governance has given us to plan, prioritize, make difficult decisions, and implement them as a system.

Third, the legislature's foresight in passing the revised Judicial Article was important in one additional respect—it created a balance between judicial independence and judicial accountability. If judges are made too subject to popular sentiment, the people are denied an unbiased arbiter. To the extent that judges are encouraged to have their finger to the wind of popular sentiment, their independence is undermined. And when a judge's independence is undermined, that precious right of all citizens, the right to a neutral forum in which their case can be adjudicated, is threatened. One of our most valued assets is the rule of law. Our judges need the independence necessary to uphold it. Our citizens are entitled to have the law fairly

applied to the facts in their case, without regard to how much money they have, the color of their skin, their gender, or any other irrelevant factor.

The Judicial Article, together with its implementing legislation, struck a sensible balance between judicial independence and accountability. The vision of the commission and the legislature included several accountability mechanisms. Complaints against judges in our state can be filed with the Judicial Conduct Commission. This is an independent body created under the Judicial Article. The commission is required to be politically balanced and also to include lawyers and non-lawyers. It investigates every complaint made against a judge and, where warranted, makes recommendations for discipline to the supreme court. These recommendations range from informal reprimands up to removal from the bench.

In addition, as a result of the Judicial Article and subsequent legislation it made possible, judges are evaluated by another commission, the Judicial Performance Evaluation Commission. This, again, is bipartisan and includes lawyers and non-lawyers. This commission surveys lawyers who have appeared before judges. It also surveys staff, jurors, and others. Then, based on these anonymous responses and other information, the commission evaluates judges prior to each retention election. These evaluations are published and disseminated in a variety of ways, including social media, so that voters can make informed decisions in voting for judges.

So in Utah, even though judges periodically stand for retention elections, they are not subject to partisan political elections. In other states where judges do run in

political elections, some supreme court candidates raise millions of campaign dollars. This money is often contributed to judges by the very corporations that will have cases before them and by the very lawyers and law firms that will be appearing before them. This kind of a system is inimical to the fair administration of justice and to a healthy business environment. In providing for the evaluation of judges by a nonpartisan commission, and making them subject to retention elections, rather than to political elections, Utah's legislature has done the public a great service.

For all of these reasons, I want to thank you, the legislative branch, for the revised Judicial Article and for the many other wise and forward-thinking decisions you have made.

Now finally, I would like to address three issues you will have before you in this legislative session that I believe could have a profound effect on the administration of justice in our great state. First, the Justice Reinvestment Initiative. At the request of Governor Herbert, then Speaker Lockhart, President Niederhouser, Attorney General Reyes, and myself, the Commission on Criminal and Juvenile Justice conducted a comprehensive study of our criminal justice system. The Commission's report details a variety of evidenced-based recommendations designed to make Utah a safer place through reducing recidivism. Ninety-eight percent of those who are sent by our courts either to jail or prison will at some point get out. When they then become productive, contributing, law-abiding members of society, our state is a better and safer place. On the other hand, when, upon their release, they return to their criminal ways, our state is diminished and our citizens made less safe.

It is clear that the single most important thing we can do to break this cycle, to reduce recidivism, to ensure that when offenders are released they stay released, is to provide them with appropriate treatment, whether substance abuse or mental health treatment. And for many, treatment, rather than prison, is the better alternative in the first instance. In fact, for some, prison may do more harm than good. And it is important that valuable prison beds be available for those, especially violent offenders, for whom prison is the appropriate sanction.

As a district court judge I was amazed at how often the defendant appearing before me had some underlying drug or alcohol problem. The effect of drug and alcohol abuse on crime in our state and throughout the country cannot be overstated. The consensus estimate is that eighty percent of all crimes involve some underlying drug or alcohol problem. Based on my own experience, that number seems about right.

We have seen great success with our drug courts. We design these courts for high-risk, high-need offenders. This means they have a high risk of re-offending and have a high need for treatment. Our drug courts are not designed for first-time offenders. But we have a troubling problem – we don't have enough treatment slots available to admit every defendant who qualifies. We estimate that more than fifty percent of those who would otherwise qualify for drug court cannot be admitted because, without our being able to provide them with treatment, there is no point to the drug court process. We also routinely include treatment as a part of sentences in many cases outside the drug court context as well, but how effective is that sentence

if treatment is not available? One area in which we do have ample treatment resources concerns those who have given so much to defend our freedom—our veterans. Fortunately, the treatment services available through the Veteran’s Administration are available to all veterans, and we have seized on this opportunity to create two Veteran’s Treatment Courts in Utah. Just three weeks ago, Judge Royal Hanson in Salt Lake and Judge Sam McVey in Provo began presiding over these courts, and as we speak, service members involved in the criminal justice system in these communities are getting the combination of supervision, treatment, and respect that research tells us works, and that befits those who have put their lives on the line for us. They deserve no less.

This is why I urge this legislature to provide adequate resources to ensure that all offenders who need drug or alcohol treatment, or mental health treatment, can receive it. If this is done, as the Justice Reinvestment Initiative recommends, Utah will not only be a better place, but a safer place.

It is not my place to address the political aspects of the Governor's proposals with respect to funding in general, but the link between our role as sentencing judges, the reforms recommended by the Justice Reinvestment Initiative, and Healthy Utah, or something like it, are clear. From the courts’ perspective, the most important thing we can do to reduce recidivism and increase public safety is to provide necessary drug and alcohol treatment. And to do that we need treatment resources.

Second, you will be considering legislation sponsored by Senator Bramble that would add a juvenile court judge to the fourth district (Utah, Wasatch, Juab, and Millard counties) and a bill sponsored by Senator Urquhart that would add a district court judge to the fifth district (Washington, Iron, and Beaver counties). Workloads have reached a point in these districts where our ability to resolve cases on a timely basis for the citizens of these counties is threatened. I would urge you to pass the necessary legislation to create these two judgeships.

Now finally, your Elected Officials and Judicial Compensation Commission has put before you another resource issue—that of judicial compensation. The Commission has recommended a salary increase for judges to be implemented over the next two years. This legislative commission studied the issue extensively over the summer, and I commend their report and their recommendations to you. Now it obviously has the air of self-interest for me to stand before you and say “amen” to the committee’s recommendations. But I genuinely believe it is in the best interests of the citizens of this state as well. You see, we have been very fortunate since the passage of the Judicial Article to have been able to attract high-quality, talented, and thoughtful judges. But we are seeing dwindling applicant pools. Fortunately, to date, the Governor has been able to find at least one qualified applicant for each position that has come open. But to have the best judiciary, the kind of judiciary that the citizens of this state deserve, he needs a broader array of qualified applicants from which to choose.

Those who seek to become judges do so to serve the public, to give something back. For these reasons, they are willing to serve at a financial sacrifice. But compensation remains important to attracting the best people. Because our criminal cases have decreased and our civil cases have increased in recent years, it is especially important that we be able to attract successful practitioners from the private sector who have experience in commercial and business law. The commission's compensation goal is to maintain the kind of judiciary that will not only continue to protect the rights of individuals and provide them a neutral forum, but will also be stable, predictable, and sophisticated in a way that creates an attractive business environment. I am proud that we in the judiciary have been responsible stewards of the public's money. I hope you will agree and give careful consideration to the Commission's recommendations and the other request I have discussed.

In conclusion, allow me to return to my original observation that change is not easy, and to again acknowledge and thank this body for its foresight and courage 30 years ago in advancing to the voters a model judicial article. And in that spirit, I encourage you to again think expansively as you consider the proposals for criminal justice reform before you.

Finally, as chief justice and as a citizen of this state, I would like to sincerely thank you for your dedicated service. We as a judiciary are proud to participate with you and with the governor in serving those who call Utah home.

***The mission of the Utah State Courts is to provide an open, fair,  
efficient, and independent system for the advancement of  
justice under the law.***



**Administrative Office of the Courts  
450 South State Street  
Salt Lake City, UT 84114  
(801) 578-3800  
[www.utcourts.gov](http://www.utcourts.gov)**