



2018 STATE OF THE JUDICIARY

Chief Justice Matthew B. Durrant

Thank you Speaker Hughes/President Niederhauser for the invitation to report on the state of our judiciary. I am honored to be with you today.

I'm joined by Associate Chief Justice Thomas Lee, Justice Deno Himonas, Justice John Pearce, and our newest justice, Paige Petersen, whom we welcome enthusiastically to our court. It is a great personal and professional privilege to serve with such dedicated and principled jurists.

I am also joined by members of our judicial council, who are sitting in the gallery, as well as by our new court administrator, Richard Schwermer, someone you all know well.

As I introduce my colleagues, it strikes me that all have joined me on the supreme court within the last eight years. Not only have these four justices joined our ranks, but 77 district court and juvenile court judges have taken the bench during that same time. As you can tell, it is a time of great change for the judiciary. In addition to the many new judges who have joined us and the changes in our administrative office, we have implemented some of the most significant policy reforms—in criminal, civil, and juvenile justice—in our history.

One momentous change I have yet to mention is the retirement of Justice Christine Durham. I know you will be honoring her later in the session, but I'd like to say just a few words about her today. Much has been said of all she has done for women—the trails she has blazed, the doors she has opened, and the inspiration she has provided. But as important as her contributions have been in this regard, that only tells part of the story. She has inspired just as many men as she has women, and, in my view, she has done more for our state's judiciary than any other person who has served in it.

Now, I hate to put too much pressure on Justice Petersen, but that is one daunting legacy to live up to. I have to say, though, that if anyone is up to that task, it is Paige Petersen. In her very short tenure on our court, she has already shown herself to have a brilliant and incisive legal

mind. What's more, she has proven to be a delightful colleague. We are thrilled to have her join us.

We in the judiciary are dedicated to justice—and to increasing the public's access to it—as well as to fairness and accountability. Commitment to these principles is not unique to us. We know that you share that commitment. You, like us, have taken an oath to support, obey, and defend the Constitution of the United States and the Constitution of Utah, and to discharge the duties of your office with fidelity. It is a sacred oath, and cannot be honored without a heartfelt commitment to justice, fairness, and accountability.

I recently visited the U.S. Supreme Court building in our nation's capitol. It's an inspirational building that symbolizes the importance of the rule of law. Some of you may know that before the current and instantly recognizable building was constructed, the Supreme Court was hidden away in the basement of the U.S. Capitol. At that time, a lawmaker from New York famously stated: "A stranger might traverse the dark avenues of the capitol for a week, without finding the remote corner in which justice is administered to the American Republic."

As the judicial branch, that is, in fact, our specific role—to administer justice. But it is not one for which we have the exclusive right or responsibility. Our beautiful courtroom in this historic building is not hidden away in a remote corner. And justice is not revered only in that room, but by all the public servants who labor in this capitol. No one should wander these halls without stumbling upon sincere efforts to administer justice. This is our shared responsibility.

You, the legislature, discharge this responsibility by creating just and fair laws. The executive branch does so by faithfully enforcing the law. And we, the judiciary, do it by fairly and impartially interpreting the law.

We are proud to be part of a government here in Utah where justice is not hidden away, but is a bright beacon that guides all that we do as public servants. We each serve different roles in this grand enterprise of government, but we share the same objective. And we are all dedicated to upholding that majestic principle that has made America a shining city on a hill—the rule of law. We are a government not of men, or of women, but of law. We as public servants come and go, but the law remains.

I would like to highlight a few ways in which our different but complementary roles have helped us, through working together, to honor our shared commitment to justice, fairness, and

accountability. I'll start with our joint efforts to reform our criminal justice system, then move to examples where we worked together to improve civil justice, and conclude with our combined work to reform our juvenile justice system.

CRIMINAL JUSTICE REFORM

A fine example of what can be achieved through cooperation among the three branches of government is how we, in this past year, have together addressed the issue of homelessness and related criminal law questions. The coordinated response to this issue involved dozens of state and local entities, including the courts. As for our courts' contribution, while the Salt Lake City Justice Court bore the brunt of the immediate caseload increase, a longer-term solution was clearly required. Research tells us that a drug court is the most effective way to serve that part of the population with severe substance use disorder coupled with significant criminal history. So, through the combined effort of you, the legislature, Salt Lake County, The Division of Substance Abuse and Mental Health, and the Department of Health, a new drug court was formed, the fourth drug court in Salt Lake County. Judge Todd Shaughnessy has stepped up and volunteered to preside over this new court. This court increased our drug court capacity by 125 treatment slots, and we already have 95 participants in this new program.

The result of this collaboration can be seen every Thursday afternoon in the successes being achieved and the progress being made by those participants, most of whom are well on their way to sobriety and a crime-free life. We are deeply appreciative of the funds you have allocated for criminal justice related treatment. They have made a real difference. I understand that this session you will be considering accessing additional treatment funds through some form of Medicaid expansion, and I wholeheartedly encourage such efforts. There is simply no better investment that can be made to improve public safety than an investment in treatment.

Another example of how we have worked together to improve our criminal justice system is the way in which we have addressed the problem of inadequate representation of indigent defendants. The judiciary conducted a study of this issue that served as the basis for your creation of the Indigent Defense Commission, a commission charged with developing attorney representation standards and with monitoring 6th Amendment compliance. The committee also allocates money to underfunded local defense systems—money that you appropriated. This commission plays a vital role in improving access to justice.

In addition, as you have sought to reform the criminal justice system by making the law more proportional and rehabilitative, we have worked with you to ensure that those reforms are administered in a fair and just way. Your work has been groundbreaking. You have focused on individualized evaluations and treatment. We have built upon that effort by looking for ways to provide more information to judges so that they can make better sentencing decisions. Like you, the more information we have, the better the decisions we are able to make.

The same is true of judges' pre-trial decisions. We have worked hard to provide judges with more information so that they might make these decisions in a way that is both more fair and better focused on public safety. We are doing this through a tool that will apprise judges of critical facts about a defendant's criminal history, facts that, remarkable as it may seem, are currently unavailable to judges. This includes information such as the defendant's history of past arrests, convictions, convictions for violent crimes, and failures to appear in court. You have raised important questions about these changes, and we have met with many of you to address them. We are hopeful that your concerns have been allayed, and we look forward to implementing this important reform.

And in this regard, I want to thank the senators and representatives who have served on our Pre-trial Study Committee, as well as on our Standing Committee on Pre-trial Release and Supervision. The Commission on Criminal and Juvenile Justice and the Sentencing Commission have also provided invaluable support to our pre-trial reform effort, and I want to thank the legislators who serve on those commissions.

CIVIL JUSTICE REFORM

Next, a couple of examples of how we have worked together to improve civil justice in our state. We worked closely with a number of you and the Utah State Bar to create the Licensed Paralegal Practitioner Program. In developing this new initiative, we changed the definition of the practice of law to allow a market-driven solution for one aspect of our access-to-justice problem. These LPPs will provide services that traditionally have been provided only by lawyers. They will serve those who, because they can't afford lawyer fees, have historically been unrepresented.

Also, as you have sought to find legislative ways in which to serve the aged and disabled, we have endeavored to enhance your efforts through our Court Visitor Program, in which selfless volunteers devote many hours, under court direction, visiting the homes of vulnerable individuals

to ensure that they are well cared for and not taken advantage of. We call this program the Guardianship Review and Monitoring Program, affectionately known as GRAMP. You will see a request for the continued funding of this program, and I'm sure you will give it careful consideration.

JUVENILE JUSTICE REFORM

Finally, two examples of our joint effort to improve juvenile justice. We are grateful to Representative Snow and others who have been so thoughtful and inclusive in their approach. As you know, this has not been an easy process. Significant change is uncomfortable, and we judges are not immune to those feelings. But I want to assure you that we understand our role, which is to interpret and enforce the law that you write, as you write it.

In this respect, please know that we care deeply about what you do here. We focus on every word you choose in the legislation you pass. It is often remarkable just how much difference a particular word choice can make. It is our responsibility to carefully determine what those words mean, and we take that responsibility very seriously.

In conclusion, while I have touched upon some of the joint efforts of your branch and ours to better serve the people of Utah, overarching all of this is, as I have discussed, our shared devotion to justice, fairness, and accountability. I am proud of our judges and their commitment to these principles, as I am of those dedicated public servants who work alongside those judges in our courts. And despite the fact that few people who come to court really want to, and many of those who do come walk away disappointed with their result, court participants consistently recognize that they have been treated with respect and fairness. Our most recent survey showed that 93% of those who visit our courts are satisfied with their experience. 96% percent felt that they were treated with courtesy and respect, and 91% felt that their hearing was fair. I take pride in these results not only because they reflect the dedication of our judges and their staff, but because they demonstrate our deep commitment to finding ways to do our jobs better.

Thank you for the sacrifices you make to serve our state's citizens, and I wish you the best of luck this session. Thank you.

###