

State of Judiciary Address to Senate and House

2020 Legislative Session

Chief Justice Matthew Durrant

January 27, 2020

Thank you, Speaker and President. It is a lot better for me to give one speech. And I very much appreciate the willingness of you to do this. I count it a real privilege to be able to speak to you. It's one of the great privileges and responsibilities I have as chief justice, and it is a chance to thank you for your dedication to Utah's citizens. I know that you are here at considerable sacrifice of time and purse. And just so you know, you are appreciated; your work is appreciated, certainly by the judiciary. We are also grateful for how supportive you have been to us over the years.

I am joined here on the floor by my colleagues. They have already been introduced. I can tell you they are good and decent people who also happen to be extraordinary jurists. I am also joined by our judicial council. They are sitting right up there. These are judges. We have one bar representative as well. These are judges who have been elected by their peers to make policy decisions on behalf of the judiciary and develop a budget for the judiciary. They do all this in addition to their day jobs, and they do it very well. We have never had such an invested and energetic council. I am also pleased to be joined on the floor by Judge Mary Noonan and Cathy Dupont. Judge Noonan is our state court administrator. She has been in the position about a year now, and she has already demonstrated ten times over that she is a leader of exceptional

vision and gifts. Cathy Dupont is cut from the same cloth. I think many of you know her personally from her almost 20 years of service in the Office of Legislative Research and General Counsel. I can say that, as to our administrative leadership, the state of the judiciary is strong. I have never been more thrilled with our top administrators.

I would like to begin my remarks by telling you about my favorite ancestor, William Durrant. He's my great-grandfather on my father's side. He lived in American Fork. We call it "American Fark." I get to say that. Those are my people. He was a slight man, a quiet man, and he had a bit of a drinking problem. The truth is he was likely an alcoholic. He was not a churchgoer, but he always made it a point, whenever there was a rain storm on a Sunday, to go out early to the muddy road between his neighborhood and the church so that he could carry the neighborhood kids across. That way they wouldn't dirty their Sunday best shoes. Now that may seem like a very small thing, but to me it seemed like a very big thing.

In researching William's life, I came across his obituary. It was a classic. I learned that they spared no punches in those days when it came to obituaries. It said something like this: "William Durrant died this past Saturday. He was survived by his wife, Eliza." And then it listed his children. It next listed his job as "willow thrasher." I didn't know that was a thing. He supported his family somehow. And then there was the line that really struck me and I remember it exactly. The obituary read, "William Durrant was prominent in neither the church, nor the community." Okay. But you know what? He was prominent to me. And he was prominent to all those kids. He was prominent to Eliza. He was prominent enough to me that, if not for him, you would be listening to

someone else giving a much better speech right now. I wonder if perhaps that is something we should all keep in mind as leaders: everybody is prominent to somebody, and as leaders, they ought to be prominent to us. Every person matters.

I am reminded of this every time I have a chance to speak at a drug court graduation. These are events like no other. If you ever have a chance to go to one, please do. When I speak it is in the Matheson Courthouse in the supreme court courtroom. Let me paint the picture for you. It's always packed to the rafters. It's a big courtroom. Standing room only. Up front sit the graduates, maybe 10 to 15 individuals. On the other side, facing the audience, are the judges who have worked with them. And as I wait to speak, I like to look out at the audience, I am always struck by what a varied and rich cross section of humanity they are. And I am struck by how different they are in so many ways. They are different in how they dress for this event. For some, it's very formal, all dressed up. For others, it's jeans and t-shirts. And that is okay. They're different ages. Always a number of grandparents represented. Moms, dads, teenagers. We usually can count on maybe two or three babies. Sometimes quiet, sometimes not. That is okay too. They come from different socioeconomic backgrounds. They no doubt have had dramatically different life experiences. And they no doubt have had widely differing world views. But they share one common experience, one common bond. They know what it's like to love an addict. They know what an emotional roller coaster that is. They know what it's like to have their hopes rise at the slightest sign of progress only to have them dashed by a relapse or some kind of setback. They know how their loved one, their special someone's addiction seems to fully occupy their lives. They

know what it's like to hope and pray that somehow, something will happen before it is too late.

So because I understand all of this, my main goal when I speak to them is to be very short. They don't care what I have to say. I am just the guy standing between them and the event they have been waiting for – their loved one's, their prominent one's graduation. And it is a big deal. Drug court is a rigorous program that requires perseverance and patience. Will some ultimately relapse? Sadly, yes. But many will not. For many this will mark a permanent changing point. So I sit down, their names are called, they come across the courtroom, and their certificates are awarded. They often receive them through tears. They often want to, and they do, hug their judge. Apart from this event, there's not a whole lot of hugging that goes on in our supreme court courtroom. But it is great.

After all of the certificates are awarded, they are given a chance to speak should they so wish. They all, always, so wish, because they want to thank all the people who have helped them get to this point. They want to thank their judge. They call her, "My judge." They say she was tough when she needed to be, but patient when she needed to be. Sometimes they will say, "My judge was the first person in authority to ever say a kind word to me. The first person in authority to ever believe in me." They want to thank the court clerk. They want to thank the whole drug court team. Their therapist, their social worker, their defense lawyer, sometimes even the prosecutor. It is a team effort. But most of all they want to thank those people in that audience. Those people whom they caused such pain but who did not give up on them. It moves me every time.

And it is a powerful reminder to me that everyone is prominent, that treatment can work to improve lives, and that treatment plays an absolutely vital role in our criminal justice system, in our efforts to reduce recidivism, and in our efforts to reduce crime.

This is the core principle on which you have founded your various criminal-justice reform efforts over the past several years. I know at times it has been difficult, a bit of a rocky road for sure, but I think you have shown real vision and foresight in what you have done.

Now, I would like to shift gears to another area where treatment is critical – mental health. Our jails and prisons are our state’s and our country’s new de facto mental institutions. They house more people suffering from mental illness, or mental conditions, than do our state-funded mental hospitals. That presents enormous challenges for the court system, for everyone in our communities. There is a great deal of work being done, starting with these two bodies. With the efforts I mentioned, with the funding you’ve provided, with your various decisions relative to Medicaid expansion, with the funding you provided for outpatient treatment, mobile crisis response teams, and student health programs. You have been very sensitive to this issue.

There is a lot of great work going on in the counties as well. I will give you just a couple of quick examples. Davis County has a brand-spanking new receiving center. This is a facility to provide temporary crisis treatment to those experiencing a drug or mental health crisis. They are able to go there, receive much needed treatment, be stabilized, and be connected with other resources in the community. Davis County has

also created mobile crisis response teams. That's a group of mental health professionals who go directly to the home of a person who is experiencing a drug or mental health crisis. This is a remarkable thing to me. Sometimes they will go with a police officer. On some occasions, an individual may have committed a crime . If it is a non-violent, low-level offense, that police officer might, if the individual so elects, take him to the receiving center instead of arresting him. It is a wonderful way to keep people suffering from mental illness out of our criminal justice system altogether. It is a great example of collaboration. A joint effort of Davis County law enforcement, mental health professionals, and judges, as well as defense lawyers and prosecutors.

Another example is Washington County. There, they have a relatively new program to help people who suffer from drug dependency or mental health conditions transition from jail back to the community. Offer them a warmer transition. Help them find jobs. Help them find transportation, housing, medical, dental assistance, ongoing treatment for their particular problem, or even insurance coverage. This, too, is a joint effort. Corrections was involved, as was the CCJJ (the Commission on Criminal and Juvenile Justice) and Washington County Court Support Services. These are the kinds of wonderful things happening across our state.

We are proposing as a court system to serve as a convener for all of these stakeholders. We would like to bring them together in local communities. We have the infrastructure in place. We have the judges in place. We are only one of the many stakeholders in this process, but we are a significant stakeholder – we have about 17 mental health courts right now. But we think we are uniquely positioned to bring the

other stakeholders in the community together so that they can share their ideas, map what is being done, and identify gaps where the needs of those afflicted by a mental illness are not being met. I have very high hopes for this initiative. We are going to kick it off with a statewide conference this August. You are all invited. I had the opportunity to share this with President Adams and Speaker Wilson and they have very graciously indicated their support. I hope we will have your support as well.

I want to quickly touch on just a couple of other things. One concerns access to justice. There is a crisis in this respect – an enormous gap between those who need legal help and the availability of services. People simply cannot afford a lawyer. I am not talking about big corporate lawsuits, high stakes litigation. I am talking about the kinds of legal problems you and I have. They are an inevitable part of our everyday lives. Whether it is a property question, a contract question, an insurance claim, wills, taxes, child support. The list goes on and on. People, certainly lower income people, but also middle income people, cannot afford to get the help that would be so useful to them in addressing these problems. We have tried a number of things to address this as a court system. We have tried to provide additional tools for self-represented parties and, over the past decade, that number of self-represented parties has skyrocketed. We have an online court assistance program and hundreds and hundreds of forms. This allows people, in a guided way, to address their legal issues. We also have our self-help center, which is a group of lawyers housed in Matheson. They receive calls and texts from your constituents all over the state. It is another tool to help people navigate their way through the judicial system. We have also created an online dispute resolution program.

Some like to call it “pajama court.” It is not unlikely you might use it one day. I think I might use it one day. It is for matters under \$11,000. You can resolve your whole case online, try to settle it or, if that fails, have a judge decide it online.

We have also created a new profession, licensed paralegal practitioners. Think nurse practitioner for the legal profession. It is a way to get legal advice to people in a more affordable way. We have also, with the bar, emphasized the importance of pro bono service. And lawyers have been extraordinarily generous with their time.

But even with all of these efforts, and they have been significant steps forward, a real gap remains – an access to justice gap. It is for this reason that our supreme court, at the request of bar leadership, created a work group in August of 2018. It was chaired by Justice Himonas, as well as John Lund, then immediate past president of the Bar. It included Dickson Burton, the then-president of the bar, Gordon Smith, the dean of the J. Reuben Clark Law School, as well as national and international experts. They worked hard for a year and in August of 2019, they presented their report to us. It included a number of recommendations. I won’t go through them all, because your time is precious. But I want to give you a sense of it and ensure it’s on your radar.

The work group recommended reforms that would allow lawyers more freedom in how they structure their business relationships, potentially even partnering with non-legal professionals; more freedom in how they market their services to the people who need them; more freedom in structuring fee-splitting and referral-fee contracts; and, perhaps most importantly, it would allow lawyers more freedom to develop new and innovative products and ways of delivering legal services. These things are not

permitted under our current regulatory structure. The idea here is that we would like to reform our regulations for the administration of the legal profession in such a way as to provide more room for the free market to work. And we would like to invite more of a spirit of entrepreneurship into the legal profession, to explore new ways to get services to people not presently being served. We are going to do this in a thoughtful, data driven way. And where individuals, lawyers, and non-lawyers come to us with an idea and can provide adequate assurance of consumer protection, they will have the opportunity to market that idea. This is something I am very excited about.

Now, to conclude, I need to touch on our budget requests. It is time for me to ask you for money. Each year, we try to be responsible and modest in our requests because, like you, we respect the fact that this is the people's money. This year is no different. We are asking for just under \$1.2 million in on-going funds and \$450,000 in one-time funds. Most of this is for investment in technology. We need to fix the failing sound system in our West Jordan courthouse. We need to hire new IT professionals, a couple to maintain the online court assistance program that I have mentioned, and we need six additional people for our central office. We have almost doubled the number of applications we use to serve the public. Technology has greatly assisted us in meeting that responsibility. But our IT department is overwhelmed. I am told there is up to a 10-year backlog. So any funds you can allocate in that respect would be much appreciated. We are also asking for additional funds to move our self-help center service from four days a week to five. A lot of people across the state use this service, but we are able to respond to only about 30% of the calls we receive. Moving to five days a week will at

least make a dent in that. And we are asking for additional funds for salary increases for our court commissioners so that we can attract and retain quality people. Finally, we are asking for on-going funds for a half-time child welfare mediator. This is a very important program that helps families in crisis resolve their dispute without having to take it to a courtroom.

On the topic of budget, let me thank you for what you allocated last year for our judicial assistants. That was deeply appreciated. We have wonderful employees in the court system. I know sometimes it is popular to criticize government workers as bureaucrats who are unresponsive or uncaring. That may be easy to do as long as they are viewed as an abstract group. But it is very different when they are viewed as individuals. When I look at the individuals working in our court system, I see dedicated, hardworking people. There are exceptions. There always are. But, overwhelmingly, I see people who want to be a part of something bigger than themselves, who care about ensuring justice for Utah's citizens. I am proud of our employees. And I'm guessing that when it comes down to individuals, you feel the same way about your employees in this branch. I am also proud of our judges.

I am sure I brag way too much about them. But you know what? It is more than hometown cheerleading. We have a system, a constitutional system – and in my view we are deeply fortunate as a state to have this system – that is designed to pick judges based on merit. It is a selection process as rigorous as any in the country. It includes confidential evaluations by the various people lawyers have dealt with over the course of their careers. It is designed to ensure that only those lawyers who have developed a

reputation for honesty, hard work, and integrity are selected as judges. So, yes, I am proud. And yes, the state of the judiciary is strong. You can see that I am a big fan of the judiciary. But we hope to get even better. And I hope I can report to you next year that we are. Our judicial council has voted to retain outside consultants to come in and tell us what we are doing right and what we are doing wrong, and how we can improve and be more responsive to our employees and to Utah's citizens. We are now in the middle of that evaluation.

That concludes my remarks but let me once again say how appreciative I am, and how appreciative my colleagues are, for how well you do your jobs. Just as President Adams said, you are recognized nationally for how well you do your work. And I am proud to say the same is true of the judiciary. We are viewed as a national model. Thank you so much for your time and for your accommodation.