

STATE OF THE JUDICIARY

January 16, 2024

Chief Justice Matthew B. Durrant

INTRODUCTION OF COLLEAGUES

Mr. President, Mr. Speaker, thank you for your invitation to share my thoughts on the state of our judiciary. I am pleased to be joined by my four colleagues on the supreme court, Associate Chief Justice John Pearce, and Justices Paige Petersen, Diana Hagen, and Jill Pohlman. The opportunity to work closely with four jurists of such extraordinary intellect and with such passionate commitment to the rule of law is the greatest privilege of my professional life.

JUDICIAL COUNCIL REQUESTS

I'll get straightaway to the business portion of my speech. As is the case every year, our judicial council has established a list of the judiciary's funding priorities. As a branch of government, we have year in and year out demonstrated that we are conscientious stewards of the people's money. That you may share this view was certainly suggested by your generosity this past year in funding all our priorities. Thank you. I urge you to do the same this year.

I won't go into the details of our requests here. That job will be done by our very able court administrator and others. I will take a moment to mention our budget requests in four important areas: (1) funding to help address a critical shortage of qualified interpreters; (2) funding to add new judicial officers across the state to help meet growing calendars; (3) funding to make certain that we can continue to recruit and retain the best candidates for judicial office (in this regard, I urge you to accept the recommendation of the Elected Official and Judicial Compensation Commission); and (4) funding to help recruit and retain employees in our branch.

IN UTAH GOVERNMENT WORKS

Over the past several months, I've travelled throughout our beautiful state to meet with legislators and judges in our various judicial districts. I wish to again thank the legislators who took time from their busy schedules to attend these meetings. The conversations were very productive, and we learned a lot. I hope that was your experience as well.

These visits caused me to reflect on a number of things that I'd like to share with you today. The first concerns the public perception of institutions. In recent years, we've seen distrust in all institutions, especially governmental ones, grow exponentially. And this distrust extends to those who work in those institutions.

But during these visits, I met with legislators and judges clearly deserving of the public's trust. I was struck by their sincere dedication to serving the people of Utah. And I was reminded that, whatever we may see elsewhere, in Utah government works.

WE IN THE JUDICIARY RESPECT THE LEGISLATURE

Certainly, there is much room for disagreement on how to best serve the people. That is the beauty of democracy. And I am not here to comment on the relative merits of the competing policies espoused by those on the left, the right, or in the middle. My only point here goes to the good faith of those public servants with whom I met and those who sit before me today. I believe that this body, our state's legislature, is composed of dedicated public servants who are genuinely striving to do what they consider to be best for our people and our state.

From the way you conduct yourselves it is clear that you are not here to engage in performative politics or to inflame divisions. You are here to legislate. You are here to govern. You are here to serve.

It takes courage to put oneself forward in a political election. You risk a very public rejection. And you do it at considerable financial sacrifice. That is a commitment to be respected regardless of whether one agrees or disagrees with your views. As the governor has suggested, I believe we could have more productive and substantive debates about the pressing issues of our day if we were willing to grant each other, where possible, an assumption of good faith. The product of your dedication and sincere commitment to governing well is that Utah is consistently recognized as one of the best managed states in the country. We in the judiciary have great respect for you, our state's legislators, and for your constitutional role.

THE BRANCHES' DIFFERENT ROLES

That brings me to my next point. I was reminded by my visits of the different roles legislators and judges play in our system of government. And I was reminded of the genius in those differences and of how vital independence is to each branch's function.

You make policy for our state. In doing so, you exercise your own judgment while also seeking to reflect the views of those who elected you. Judges, on the other hand, are called upon to interpret the statutes through which you set policy. In doing so, our north star is your intent. If you read our cases, you will see that time and time again, we emphasize that it is our job to interpret the statutes as you have written them. And that is what we endeavor to do.

We are also, at times, asked to perform the role the Utah Constitution assigns us to ensure that a statute is consistent with our state and federal constitutions. When we review the constitutionality of legislation, we don't weigh the popularity of our decision, nor do we enact the policies we might personally prefer. Instead, we carefully assess the wording of the constitutional provision at issue and seek to understand what was intended by those who wrote

it and what was understood by those citizens who ratified it. It is critical that courts be free from political pressure and outside influences as they work to protect those rights guaranteed by the constitution.

We owe an enormous debt to our country's founders. In a clear-eyed way, they saw the critical importance of a three-branch system of government, with each branch playing a very different and distinct role, and with each branch serving as an important check upon and balance to the others. They assigned great importance to a fair, impartial, and independent judiciary.

JUDICIAL INDEPENDENCE

Many states have departed from the vision of the founders in how they have structured their own governments, especially with respect to their judiciaries. These states have contested elections for judgeships, some partisan, some nonpartisan, and in those elections, we've seen candidates raising more and more money.

I've spoken on judicial independence for many years, and I remember a time when I would say that if I wanted to run for chief justice in some states, I'd need to raise 3, 4, maybe even 5 million dollars. At the time, those numbers seemed impossibly high. Well now that's chump change; those were the good old days. In a recent election, the two candidates for a single seat on the Wisconsin Supreme Court raised and spent a combined \$52 million. So now if I want to run for Chief Justice of Wisconsin, I've got to come up with \$26 million. I haven't checked my bank balance recently, but I'm pretty confident I'm a bit short of that.

So where does that money come from? Well, it comes from special interest groups, some of them from out-of-state, and from corporations and attorneys who might appear before the court.

Now I have great respect for those chief justices I have met from states with contested elections, and I've found them to be honorable jurists committed to fairness and impartiality.

But the problem is that, even though they themselves are honorable, a system that requires them to raise campaign funds creates a perception of bias. It undermines trust in the courts. For instance, one survey found that in Texas, 83% of the people felt that requiring judges to raise funds for their campaigns affected their decisions. The number was 88% in Illinois and 90% in Ohio. I'm not saying that any decision of these courts was in any way affected by campaign contributions. My point is that the system creates a perception of bias that undermines confidence in the judiciary.

So how did we get here in our country? Well, it's a bit complicated. We, of course, all revere our nation's founders. And we know that one of the things they cared most deeply about was judicial independence. In fact, one of the injuries and usurpations Thomas Jefferson listed in the Declaration of Independence as having been committed by King George III was that he would fire judges at his whim, and they felt strongly enough about this that they created a process whereby federal judges are appointed and given life tenure. After our country's independence, states followed suit. Throughout the country, state supreme court justices were appointed and given life tenure.

That was the case until Andrew Jackson was swept into power in 1829 on a wave of populism, and he advocated for elected judges. Thereafter, almost all the states who entered the union adopted a system of electing rather than appointing judges.

Over time many became dissatisfied with this approach. People were concerned that state judiciaries had become too politicized and needed to be restored to their former dignity and impartiality. As a result, there were a number of reform movements nationally, and we in Utah were the beneficiary of one of those movements, adopting what is called “the Missouri Plan.” About ten other states have adopted some version of that plan.

THE STRENGTH OF UTAH’S JUDICIARY

So we are very, very fortunate here in Utah. We have a constitution that mandates that judicial selection be nonpartisan. And our selection process is as thorough and rigorous as any in the country. It is one that, when it operates as it should, helps ensure that judges will be selected not based on how much money they can raise or how well they can campaign, but on whether they've developed a reputation for integrity, intellectual strength, hard work, and fairness. That system has given us a truly extraordinary judiciary, one that is widely viewed as the best or one of the best in the country. I’m fortunate to have been elected to serve, beginning in August of this year, as president of the National Conference of Chief Justices. I attribute this more to the Utah judiciary’s sterling national reputation than to anything I have done. In that role, I hope to continue to emphasize the critical importance of a fair and impartial judiciary.

We also have an effective system in Utah, through the Judicial Performance Evaluation Commission and retention elections, for holding judges accountable after their appointments. JPEC ensures voter access to detailed information about how attorneys and the public perceive judges. The result is a system that preserves the vision of our country’s founders but adds accountability. We have something very precious in our Utah judiciary, and we must do all we can to preserve it.

MANTI GROUNDBREAKING

In my travels across the state, the visit that moved me most deeply was when we broke ground on the new 6th District courthouse in Manti. Judges and legislators began the day by meeting in the historic Manti courthouse, and we then walked together as public servants to the spot chosen for that beautiful city's new courthouse. I had the privilege of speaking at that groundbreaking alongside Governor Cox and others. On that occasion I shared my thoughts about the special place courthouses play in our governmental system. I would like to conclude by sharing those thoughts with you.

A COURTHOUSE IS A SANCTUARY

As I think about the building that will stand on this ground, many adjectives seem appropriate: welcoming, secure, efficient, beautiful. But these descriptors tell only a small part of the story. The word that comes most powerfully to my mind is "sanctuary." This courthouse will be a sanctuary. Each courthouse is a sanctuary, a refuge, a fortress.

What do I mean by this? Perhaps you, like me, are discouraged, even saddened by the deterioration in our national discourse. We see it in the way people treat each other online. We see it in the way they treat each other on television or other media. And we see it in our national political debate. The sides have become increasingly polarized. Each views the other as not just wrong, but evil. Some view those with whom they disagree, their fellow Americans, as the enemy. Compromise has become a dirty word. Insults, name-calling, demeaning invective, and violent rhetoric have replaced reasoned and principled argument. Truth has become relative. Facts are manipulated, even manufactured. Each side blames the other for this state of affairs.

My point is not to assign blame. It would be inappropriate for me to do so. My point is to say that I don't think what we see on our screens, both large and small, is reflective of the values that govern the vast majority of people in their day-to-day lives. I think that in the real world, the one outside the media and political bubble, the values that still matter to people are those such as character, honesty, integrity, fairness, and basic human decency. And those are the values you will find within the walls of this new courthouse, and you will find them in each courthouse in Utah.

Within the walls of a courthouse, facts are not causal things. Accusations are not causal things. Truth is not relative but respected for its inherent value. Facts must be proven in a disciplined process governed by rule and law, overseen by a judge dedicated to fairness. Name calling, insults, and demeaning language are not tolerated in our courts.

Those who come to court bring with them their most precious and painful problems. For some, their livelihood is at stake. For others, their family relationships are at risk. For some, their very freedom hangs in the balance. For many, those minutes, those hours they spend within the walls of a courthouse will be among the most important of their lives.

So what can people expect to find when they come within the walls of a courthouse? What are they entitled to find? A judge who will listen to them carefully and respectfully and treat them with dignity. A judge who has taken an oath to decide their case based on facts that can be established, the law that has been developed, and reasoned argument. They will find a judge who doesn't care about who they know, how much they earn, who they voted for, or what their race,

gender, religion, or sexual orientation may be. They will find a judge who is committed to deciding their case in a fair and impartial way.

Will that judge always get it right? No. Will the system always function perfectly? Regrettably, no, but it will not be for a lack of trying. For those who come within the walls of a courthouse will find a judge who is committed to protecting their rights. And that is why a courthouse is a sanctuary. Within its walls, the rule of law reigns supreme. Within its walls, no one is above the law, and no one is beneath its protections. I am proud and grateful to be a part of a court system whose lifeblood is truth, fairness, and justice. A courthouse is a sanctuary, may we all work together to keep it that way.

Thank you for your own dedication to truth, fairness, and justice, and for your selfless commitment to the people of Utah.