

2021 STATE OF THE JUDICIARY

INTRODUCTION

I'm pleased to join you virtually with my colleagues Associate Chief Justice Thomas Lee, and Justices Deno Himonas, John Pearce, and Paige Petersen. They are good and honorable people, and it is a great privilege to serve with them.

In the course of the past year, our world has changed in ways we could not have imagined. We've moved much of our lives from the real world to the virtual world. Small things that we took for granted--a warm embrace, a casual meal with friends, a family vacation, and so many more--have been made much more precious to us, things to be longed for, dreamed about.

We've all been witness to the terrible toll this virus has taken in lives, health, and treasure. But amid the devastation wrought by the pandemic, heroes have emerged--health workers, first responders, police officers, delivery people, and many others who risk their health to see that basic needs are met.

The virus has presented an unprecedented challenge to businesses of all sizes, but small business owners have borne the brunt of its effects. Our hearts go out to all who've lost businesses, lost jobs, and, of course, especially to those who have lost family members or friends.

The public sector, too, has been presented with unprecedented and unimagined challenges. Our Utah state government plays a critical role in the lives of every Utah citizen. Each of our three branches of government has faced the daunting challenge of how to continue to deliver essential services to the people of Utah without unduly endangering the lives of those who serve in government or the lives of the citizens they serve.

You, our legislature, under the strong leadership of President Adams and Speaker Wilson, acted with alacrity and foresight in scaling back our state budget and in allocating the federal funds that have been made available to our state. You have played a critical role in leading our state through this crisis.

Our executive branch, too, has provided much-needed leadership. Governor Herbert and now Governor Cox have faced daunting and difficult decisions, the kinds of decisions that will never leave everyone happy, but I'm confident they have made each of them with the state's best interests at heart.

THE JUDICIARY HAS LARGELY KEPT PACE WITH PRE-PANDEMIC STANDARDS

We in the judiciary have faced our own set of daunting and difficult decisions. Any report on the state of our judiciary in the year of the pandemic will, of course, be primarily about how we as a branch have responded to this earthshaking event. So I will begin

with this--I am deeply and unreservedly proud of how our judges and staff have acquitted themselves during this turbulent time. They have risen to the challenge and more. I am especially grateful for the yeoman work done by our judicial council, our supreme court, and our state court administrator, Judge Mary Noonan, in leading us through this crisis.

By mid-April, we were able to move almost all of the court system online, with all of our courts holding virtual hearings and trials, a herculean task accomplished with breakneck speed by our IT department under the able leadership of Heidi Anderson. To give you some sense of the scope of this effort, these virtual hearings and trials have involved over 400,000 individual participants¹.

And even more remarkably, we have been able to largely keep pace, at all court levels, with our pre-pandemic caseload. The appellate courts haven't missed a step. And our juvenile courts are functioning at near 100% of our pre-pandemic standard. We've also seen our district courts largely keep pace with pre-pandemic metrics, with two significant exceptions: the age of pending cases and the conducting of jury trials. While we continue to see the vast majority of cases resolve within established case processing timelines, those cases are still taking longer to resolve and we are setting dates that extend further into the future than was typical of our pre-pandemic calendaring practices. And more significantly, the inability to safely conduct jury trials—especially in criminal and tort cases—is creating a considerable backlog. This is a source of great concern to me and to all our judges.

We have held trials to the bench throughout the pandemic. But jury trials pose significant challenges not attendant to judge trials. On the one hand, individuals are constitutionally entitled to jury trials, and, in criminal trials, their very freedom may be at stake. On the other hand, we as a court system, have an obligation to ensure that the public and our employees are not put at undue risk. This obligation is heightened by the fact that we as judges have the power to force potential jurors to come to our courthouses, potentially putting themselves at risk of illness or even death. To provide some sense of the number of individuals involved, in fiscal year 2019, more than 42,000 people reported to courthouses across the state to be considered for jury service in the district courts. Sitting shoulder-to-shoulder for several hours during the jury selection process, over 2,900 of those individuals were ultimately selected and deliberated as jurors. Many of these people were members of vulnerable demographic groups. As an additional complicating factor, holding jury trials virtually presents technical and constitutional problems that are not presented by judge trials.

Our judicial council continually monitors the state of the virus on a county by county basis. We have been working for some time in conjunction with the chief medical officer and the chief epidemiologist at the University of Utah to find ways that we can safely resume jury trials. I want to publicly thank them for their assistance. I also want to thank the professionals at our state Department of Health, and those working at local

¹ The updated number is now almost 800,000 participants. This includes parties, attorneys, witness, court staff, and interested members of the public.

health departments all across Utah, for providing us invaluable data and guidance. We are committed to resuming trials in a way that takes every precaution to protect the health of jurors, and all other participants in the trial process.

BUDGET REQUESTS

As you might expect in the year of the virus, the bulk of our budget requests are for investment in technology. As difficult as it has been to move a state-wide court system from a real to a virtual environment, that transition will no doubt have long-term benefits for both the court and the public. During the last legislative session, you funded our IT requests. This funding was understandably reversed as part of the June special session budget reductions. We are now renewing our request for funds to hire additional IT developers, as well as funds to enhance our online court assistance program. We also seek funds to firm up our cybersecurity infrastructure and increase the network bandwidth in our rural courthouses.

In addition to these technology funding requests, we are asking for funding for our new Public Outreach Coordinator (something I'll speak about shortly), funding to enable our judges to receive and consider information regarding out-of-state criminal history when making their bail decisions, funding to assist us in retaining and recruiting court commissioners, and funding to educate our employees so they can take on leadership roles in the court system. Our requests amount to \$1,935,000 in ongoing funding and \$10,000 in one-time funding. We are always careful as a branch not to overreach in our budget requests. This is why we have limited our requests to only those that we believe truly justify the expenditure of sacred tax-payer funds. I hope you will see fit to fund these requests.

FAIRNESS AND ACCOUNTABILITY

During this past year, we have all had occasion to think deeply about the critical need for fairness in our society. I commend those responsible for preparing and supporting the Utah Compact on Racial Equity, Diversity, and Inclusion, which has been endorsed by many government and community leaders. The judiciary shares this commitment. We are devoted to ensuring that all who seek justice in our judicial system are treated with respect, fairness, and impartiality. We recognize that many Utahans are intimidated by the judicial process. In fact, many feel they have been left behind by government generally. And they lack confidence in governmental institutions. This is especially true of those from marginalized communities. Many worry they will be disadvantaged in the court system by their race, gender, socioeconomic status, or some combination of these or other inappropriate factors. We feel a compelling need to communicate to those who feel they have been left behind by society that they will not be left behind by our court system. We want them to know that a court is a sanctuary, a place where they can go to seek remedy for wrongs done them, to seek vindication of their rights, and to seek justice; a place where they will be on equal footing with every other Utah citizen; a place where they will find a judge who is committed to treating them with dignity and respect, and to ensuring that their basic rights are protected.

And those are the kinds of judges we have in Utah's judiciary. I believe that all of our judges are committed to discharging their duties in a fair and impartial way devoid of bias. But we have come to understand as judges that bias can work its way into our decision-making even at a subconscious level. We are, after all, the product of our own lived experiences and environments. We must have the humility as judges to acknowledge this and endeavor to identify any potential biases, even subliminal or implicit ones, so that we might root them out of our judgment process. The same is true for all employees of the judicial branch, from judicial assistants, to juvenile probation officers, to administrators. Each of us, no matter our position with the courts, must recognize the need to eliminate potential bias as we strive, consistent with our mission statement, to deliver "an open, fair, efficient, and independent system for the advancement of justice under the law."

As a result of our deeply-held desire to ensure that our judges and employees are as impartial as is humanly possible and to assure the public, especially marginalized communities, that this is the case, we have created a new office in the judiciary—an Office of Fairness and Accountability and, within that office, the position of Public Outreach Coordinator. We, as a judicial branch, are committed to holding ourselves accountable, and to reaching out to the public with a message that in Utah's court system everyone will be treated with the respect and dignity that is owed them as citizens and as human beings. Public trust is the currency of the judiciary. We are committed to being worthy of that trust.

CONCLUSION

At this difficult time, many of our public institutions are viewed with suspicion and skepticism. But when I look around me, I see public servants, whether in your branch, the executive branch, or the judicial branch, who are hard-working and committed to serving the public. We are now, more than ever, all in this together. It is my hope and my prayer that we can work together to honor the sacred trust placed in us by the citizens of our great state. I wish you the very best in the important work you will do this session. Thank you for your dedicated service.