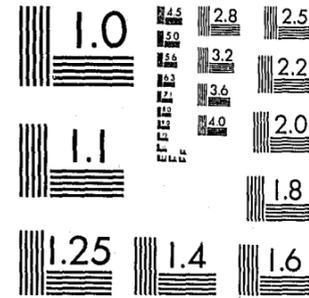


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~~X~~ RESEARCH REPORT
ON
~~X~~ THE UTAH SUPREME COURT

Problem: The amounts of time, research, and judicial thought available for each case filed with the Court have been steadily declining.

Solution: The establishment of an intermediate appellate court at an annual estimated cost of \$800,000 is recommended.

76538

Planning and Evaluation Section
Utah Council on Criminal Justice Administration

September 1979

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U.S. Department of Justice
National Institute of Justice

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Planning and Evaluation Section
Utah Council on Criminal Justice Administration

September 1979

NCJRS

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ACQUISITIONS

RESEARCH REPORT ON THE UTAH SUPREME COURT

Introduction

This report was conducted at the request of the Utah State Budget Office and examines the operations of the Utah Supreme Court.

Topics are:

Current Court Workload

Recent Innovations in Operations

Future Alternatives

Analysis of Alternatives

The authors of this report are Mr. Steve Vojtecky and Mrs. Dorothea Stirling; Planning and Evaluation Unit, Utah Council on Criminal Justice Administration; 255 South Third East, Salt Lake City, UT 84111; 801-533-4543.

Information for this report was obtained from: a) materials provided by the Supreme Court, the State Budget Office, and the Legislative Analyst; b) three other independent research studies;* c) news articles; and d) 18 interviews* with local judges and prosecutors. A significant part of the information on current workload and recent innovations was prepared by Mr. Geoffrey Butler, clerk of the Utah Supreme Court.

Current Court Workload

Cases filed with the Utah Supreme Court have increased 63 percent in the last five years. In 1974, 389 cases were filed (excluding law and motion

* The titles of the studies and the names of the interviewees are listed in the appendix.

matters). In 1979, 318 cases were filed in the first six months; doubling this amount to 636 (to estimate the one year workload) yields the 63 percent increase. Although in 1977, 1978, and 1979 caseloads were about the same (634, 625, 636, respectively), analysis of twenty years of data shows caseloads have fluctuated greatly, but still consistently climbed higher. The number of cases filed has in the past and will continue to climb at from 7 percent to 10 percent per year. Justice Richard J. Maughan attributes the new cases to increases in legislation, population, and the numbers of district court judges and lawyers, and a more complex and technological orientation of society.

The five justices of the Supreme Court issued 399 opinions in Fiscal Year 1979. This amount represents almost 80 written opinions issued for each Supreme Court justice. Certainly length of opinions vary and much assistance is provided to the justices in preparing opinions. But, statistically speaking, each justice issues one opinion every three work days. One research study*, using 1975 data, noted Utah justices wrote almost twice as many opinions as the average for 17 other courts of last resort.

The rising caseload and subsequent increased opinion preparation have not created a large backlog of waiting cases. Computing backlog statistics is quite challenging since most delays are not created by the Court. None of the attorneys and judges interviewed felt cases took too long to be processed by the Court. Without any intervention by attorneys, a case can be expected to be heard within two and a half months of filing.

With only one exception, judges and attorneys were extremely taciturn in

* Karrenberg and Watkiss. 17-courts average was 31.1 opinions per judge; Utah justices average was 54.2 per judge.

making any criticism of Supreme Court operations. However, there was a general feeling that the high workload had begun to affect the amount of research and analysis that goes into Supreme Court opinions. Opinions were felt to be shorter and fewer precedents were being cited. Exhaustive research is not possible on every case. Nor should each case receive such research. The 63 percent increase in filings and the 80 opinions per judge average have made the amount of time available for judicial deliberation less now than at any time in the past.

With more cases, Court staff and budget have also been increased. In 1974, there were 14 staff members. In September 1979, the five justices of the Court had a support staff of 23 people: three personal secretaries, two pre-disposition staff, eleven research attorneys, four administrative staff, two additional secretaries, and the Court clerk. In Fiscal Year 1974, \$284,700 were spent. Expenditures for Court operations in Fiscal Year 1979 were \$818,602. Anticipated expenses for Fiscal Year 1980 are \$868,512.*

Recent Innovations in Operations

In the last two years the Court has enthusiastically undertaken significant changes in its operations. These changes have all contributed to developing a more efficient Court, and therefore, lessened the impact of the rising caseload.

Research Attorneys. In the past the justices have employed law students as part-time research clerks. At the present time each justice has two full-time research attorneys; the chief justice has one additional

* This amount reflects the four percent reduction requested by Governor Matheson and includes about \$11,000 for unpaid 1979 expenses.

research attorney.

Secretarial Staff. Three of the five justices now have full-time personal secretaries.

Pre-hearing Memorandum. Digests of briefs and the points of law raised in each case are now prepared and distributed to the members of the Court prior to the compilation of each monthly calendar.

Settlement Conferences. Retired Chief Justice, A. H. Ellett, conducts these conferences after appeals have been filed, but before they are placed on a calendar. In March, April, and May of 1979, 28 cases were settled in this manner. The number is less than that now, because he handles cases as they are filed. Initially he took cases from a waiting list.

Other court improvements have been made in the use of reproduction equipment, memory typewriters, and looseleaf docket books.

All of the judges and prosecutors interviewed felt the Court was making good efforts to improve its operation. Adding more secretaries, using attorneys to do research, and conducting settlement conferences were frequently cited as positive improvements.

Future Alternatives

Three alternatives to meet the Court's increasing caseload were suggested in the 18 interviews:* establishment of an intermediate appellate court (ten interviewees favored this approach), expansion of the Court to

* Responses add to more than 18 because one person gave no suggestions, and two people each gave two suggestions.

seven justices (five), and increasing Court staff (five).

Appellate Court. The appellate court concept is by far the most popular alternative. There are a number of cases that need no exhaustive research, serve no basis for answering constitutional questions, or clarifying points of law. In fact, often many of these cases are cited by the court as being published only for the benefit of the parties involved. All cases certainly are important, but a good many do not need five supreme court justices to decide them. An appellate court using the new proposed constitutional ammendment allowing the appellate court to be the first appeals court would reduce cases to the Supreme Court. The specific cost to establish and operate a new court level would depend on how the court was structured. A reasonable estimate (based on six judges with one research attorney each and other support staff and including rent cost) is the system would cost about the same per year as the present Supreme Court spends -- \$800,000 to \$900,000.

Objections to the new appellate court are: it won't really limit the volume of cases to the Supreme Court, it is expensive, and not really necessary. It is felt that the new court would be just another step in the appeal process -- most cases would still have to be settled by the Supreme Court. A constitutional amendment is proposed to limit cases appealed directly to the Supreme Court. The amendment does not prohibit a case from being appealed from the district court to the appellate court, and then appealed from the appellate court to the Supreme Court. Also it is argued that seven Supreme Court justices, meeting in panels of three, could easily handle the expanding caseload and be much less expensive (\$200,000 to \$250,000 per year).

Expansion to Seven Justices. This approach adds two justices to the Court. Two panels of three judges then review separate cases; the chief justice coordinates the two panels. In this manner, twice as many cases could be heard.

There are two primary criticisms of this approach. The chief justice has a tremendous workload in overseeing the work of both panels and in maintaining consistent decision (from the two separate panels). Opinion writing per judge is not cut in half -- it is only reduced by 29 percent; each judge would be writing 57 opinions per year instead of 80 (based on 400 opinions per year for seven justices); this rate of production is still extremely high.

Analysis of Alternatives

A major difficulty in analyzing the impact of the alternatives is that each approach has valid merits and valid objections. Examination of each approach, its merits, its objections, and the counter arguments for and against each merit and each objection does not result in one perfect solution. Another great difficulty is it is possible to become entangled in legal arguments over the worth of the different approaches. But, the Court has no legal problem; it has an administrative problem.

A precise identification of what the Court's problem is, allows a much clearer analysis of each approach. The problem is:

The amounts of time, research, and judicial thought available for each case filed with the Utah Supreme Court are steadily declining.

More court staff would increase the amount of research available. Such improvements are needed in research capabilities and should occur, but additional staff would not improve the availability of time and judicial thought.

Seven justices meeting in panels of three would increase the amount of judicial thought by two judges (even though the chief justice would spend a good part of his time coordinating the panels). The panels would also increase the amount of time available for each case. The panels would only directly affect the research to the extent the two new justices did their own research. Reasonable expectation would be that additional staff would be added for the new justices. The added staff would increase the amount of research. This alternative favorably impacts on time, research, judicial deliberation, and is less expensive (than establishing an appellate court), and does not create a new layer of courts.

Establishing an intermediate appellate court is the most expensive alternative. Also, to be effective, limits would have to be placed on the cases that could be appealed to the Supreme Court or initially filed with the Supreme Court. Such limits would end "the right of appeal to the Supreme Court on every case." But, we feel the establishment of an intermediate appellate court is justified even considering the increased cost because:

1. The additional staff and judges would have the most substantial effect on the time, research, and judicial thought for each case.
2. A screening process would be adopted so that all cases would receive proper and adequate review. Appellate judges would resolve most matters; Supreme Court justices could focus on those cases requiring

lengthy deliberation regarding points of law and judicial correctness.

3. In general, all cases could be heard and resolved more quickly.

4. This approach represents a permanent solution to the problems of rising caseloads. Seven justices, each writing 80 opinions per year, would be only a short-term solution.

The establishment of an intermediate appellate court is recommended as the best solution to solving the problem of declining time, research, and judicial thought available for deciding cases filed with the Utah Supreme Court.

APPENDIX

1. Research Reports:

Robert Steiner and Edward S. Sweeney, "Central Staff Bolsters Supreme Court", Utah Barrister, Spring 1979; Volume 2, Number 1.

Thomas R. Karrenberg and Daniel Watkiss, "An Intermediate Appellate Court--Does Utah Need One?", Utah Law Review, 1979, Number 1, pp. 107-131.

National Center for State Courts, Utah Supreme Court Project Report, November 1977.

2. Judges and Prosecutors Interviewed:

Third District Court Judge Bryant H. Croft
Fifth Circuit Court Judge Paul G. Grant
Fourth District Court Judge David Sam
Weber County Attorney Robert Newey
Circuit Court Judge Phillip H. Browning
Davis County Attorney Rodney Page
Salt Lake County Attorney Ted Cannon
Woods Cross Justice of the Peace Robert Matheson
Roy City Attorney Roger Dutson
Fourth Circuit Court Judge Cornell M. Jensen
Centerville Justice of the Peace James Parrish
South Jordan Justice of the Peace David Brown
Attorney General Robert Hansen
Salt Lake City Attorney Roger Cutler
Third District Court Judge Jay E. Banks
Fifth Circuit Court Judge Larry R. Keller
Fourth District Court Judge Allen B. Sorenson
Fifth Circuit Court Judge Maurice D. Jones

These confidential interviews were conducted between May 10, 1979 and September 4, 1979. All interviews were informal and used open-ended questions. Persons interviewed were randomly selected from judges and prosecutors in Utah, Salt Lake, Davis, and Weber counties.

PROPOSED EVALUATION STRATEGY
for
A STUDY
of
THE UTAH SUPREME COURT

Utah Council on Criminal Justice Administration

June 1979

Introduction

This proposal outlines an evaluation strategy to answer questions regarding the operation of Utah's Supreme Court. Five areas of concern are to be addressed: changes made since 1977, caseload and processing time, quality of decisions, comparisons with other states, and future options.

The study would be jointly conducted by Supreme Court staff and by an evaluator from the Utah Council on Criminal Justice Administration.

The study would be completed by August 1, 1979, and copies of the final report would be given to the Supreme Court and to the Governor's Budget Office.

Additional details on the proposed study are outlined in the following sections:

Background
Comments from Judges, Attorneys, and Police
Questions to be Answered
Methods to be Used in the Study

The study will not identify the very best solution to the court's workload problem. It will, however, accomplish two purposes:

1. To analyze the various alternatives.
2. To provide documentation on how thoroughly the alternatives were considered. Legislators (especially when asked to appropriate additional funds) will want to know why a particular alternative was chosen and what its possible impact will be.

Background

Utah's Supreme Court is in transition. Administrative changes are being made to handle a rapidly increasing workload. Also under consideration are a constitutional amendment limiting the types of cases the entire court must review and the creation of an intermediate appellate court.

Comments from Judges, Prosecutors and Police

Utah's entire criminal justice system spends about \$91 million each year. The Supreme Court budget is about six-tenths of one percent of the total expenditures. But court activities have a great effect on the entire system.

Because changes in court process and structure significantly affect the entire criminal justice system of Utah, they should be made only after careful scrutiny of all alternatives. An emphasis of this study would be to identify the impact on the criminal justice system of the various changes that might be made in court operations. This identification of impact would be made through research and through interviews with criminal justice administrators.

To obtain general perceptions about the Supreme Court from criminal justice administrators, 18 interviews have already been conducted with three district court judges, four county and city attorneys, three circuit court judges, one justice of the peace, and seven chiefs of police. (Interviews were conducted between May 9, 1979, and June 7, 1979; the administrators were randomly selected.)

Based on this small sample (the proposed survey would interview a much larger sample) four general perceptions were identified:

1. Most respondents said they lacked a good knowledge of the court's operations.
2. There was some wondering about the accuracy of the court statistics.
3. Some of the respondents favored an appellate court system; some favored expansion to seven (or more) justices. The only other alternative mentioned was to increase court staff.
4. Administrators were generally comfortable with court decisions.

Some individual administrator comments were:

"Increasing the number of judges will have no effect. It's hard enough getting three judges to agree now; with seven members, four would have to agree." . . . Circuit Court Judge.

"Some judges move cases quickly (and competently), others are much too slow. All are paid the same. Faster judges should be paid more money." . . . Circuit Court Judge.

"If their figures are correct, they have a lot more cases. But an appellate court will only increase the number of appeals. Especially those from indigent defendants, the counties will have to pay the cost of the exhaustion of all those appeal remedies." . . . County Attorney.

"If you believe them (their figures), they are overworked. Seven-justice court is good. Except on an important matter (then) all judges should hear it. I have no strong feelings either way (seven-member or appellate). I read every opinion that comes out -- they're (the opinions) generally good. I don't feel they're working too hard." . . . District Court Judge.

"More judges would be better. More courts would be too expensive. Another battery of courts is not reasonable for the size of the state. (We) don't need another layer. Seven justices sitting in panels would be better." . . . District Court Judge.

"The Supreme Court says it's overworked and they have to hurry. But I'm not sure that they would be more efficient (if had seven members). (We) may need an appellate court. It would give district court judges somewhere to go. Maybe, it would help make better law; the appellate court would give more thought to some cases, and would act as a check on the Supreme Court. (The appellate court) would restrain them (Supreme Court justices) more." . . . County Attorney.

"(I) don't know if their case load is higher. (I feel) they can't handle much more. Eventually (we'll have) an appellate court. Adding another level will ensure that only the most technical and most serious cases get to the (Supreme) Court." . . . County Attorney.

"An intermediate court is not going (to) cut down (workload). (There will) always be appeals. If they're overworked, maybe (they can) go to seven (justices). But now you can't get five to agree. (But) the dissents are stronger worded anyhow. Better----more clerks. (They) can't be speeded up. Give circuit and district judges more power. You don't need Supreme Court justices to decide a traffic matter. (Another problem) is too many people just keep going to court." . . . Justice of the Peace.

"I don't know if they (the Supreme Court) are overworked or not." . . . Six Chiefs of Police.

"They're deciding a lot of cases by agreement now (settlements between litigants). That seems like a good thing." . . . Circuit Court Judge.

"My impression is (they are) in need of some help. An intermediate appeal court would be in order. An appellate court should help iron out differences in circuit court decisions and decrease the workload of the Supreme Court." . . . Circuit Court Judge.

"The justices are hard working but need substantially greater law clerk assistance. I'm not in favor of an appellate court; it would be an unjustified additional expense. I'd rather see more staff to handle (the cases)." . . . City Attorney.

"They generally make good decisions." . . . Four Chiefs of Police.

Questions to be Answered

These areas of concern would be addressed by the proposed study.

1. What operational changes have been made in the Supreme Court since the 1977 Utah Supreme Court Project Report was completed? What effect have the changes had? What additional changes are planned for the next year?
2. Has the larger caseload of the Supreme Court resulted in long delays? How long does it take to adjudicate the various types of cases?
3. Has the growing number of cases affected the quality of the Supreme Court's decisions?
4. What alternatives could the Supreme Court employ to effectively deal with this rising workload and the associated problems? What are the advantages and disadvantages and costs of the alternatives? What impact can be expected from the implementation of the various possible solutions?
5. How have other states solved the problem of rapidly increasing workloads? How does the Utah Supreme Court compare with other states in the number of cases, the length of case processing time, procedures, structure, budgets, and salaries?

Methods to be Used in the Study

Mr. Geoffrey J. Butler will prepare a report answering the first two areas of concern (changes and processing time).

The remaining areas of concern will be addressed by the evaluator. The quality of decisions will be measured through interviews with district and circuit court judges, justices of the peace, and other criminal justice personnel. The specific questions to be asked will be reviewed by the Supreme Court justices before the interviews are conducted.

Identification and analysis of the alternatives will be made by examining cost and impacts in Utah and in other states and by interviewing judges and other criminal justice administrators.

July 25, 1979

The Honorable J. Allan Crockett
Chief Justice
Supreme Court of Utah
332 State Capitol
Salt Lake City, Utah 84114

Dear Justice Crockett:

I appreciated the opportunity to discuss with you the proposal to review Supreme Court operations and evaluate future alternatives. I agree with you that if answering the questions outlined in the proposal will not aid the Court, no study should be done.

If you or the other Justices feel it would be useful to answer those questions or any other similar research questions, please let me know. I'll be contacting you in about a month to discuss the possible research that could be beneficial to the Supreme Court.

Sincerely,

Steve Vojtecky
Planning and Evaluation Manager

cc: Geoffrey J. Butler
Dorothy Owen
James Kee

July 25, 1979

Mr. James Kee
State Budget Director
121 State Capitol
Salt Lake City, Utah 84114

Dear Mr. Kee:

In April 1979, Dorothy Owen and I agreed CCJA would conduct a study of the Utah Supreme Court's case load and evaluate future alternatives for the Court. One of the conditions I had for conducting the study was that the Court had to ask for the study. My intent was that the I would be doing a study for the Supreme Court that would also benefit the Budget Office and the Legislature.

Mrs. Owen spent a great amount of time working with the Justices and the Court staff to get them to accept the study. She also provided me with much background information. In short, she spent a lot of effort getting the process going.

While I feel the study would be beneficial to you (and the Legislature and the Supreme Court), I am very reluctant to conduct the study without the Court's request. So far I have not been requested by the Court to do the study.

Therefore I will not be doing the study at this time. I hope ultimately to do the study, probably with a few modifications. But to be really effective, the study must be done at the request of the Court or of one of the Justices.

Sincerely,

Steve Vojtecky
Planning and Evaluation Manager



SCOTT M. MATHESON
Governor

STATE OF UTAH
DEPARTMENT OF FINANCE
STATE BUDGET OFFICE
121 STATE CAPITOL
SALT LAKE CITY, UTAH 84114
PHONE (801) 533-4264

D. DALE WILLIAMS
Director of Finance

JAMES EDWIN KEE
State Budget Director

March 27, 1979

MEMORANDUM

TO: Steve Vojtecky
FROM: Dorothy Owen *DO*
SUBJECT: UCCJA Involvement in Budget Reviews

I am enthusiastic about the possibility of UCCJA evaluations impacting the Governor's process. I believe such an approach will provide the Governor with valuable information and give the UCCJA evaluation effort the visibility it deserves. As you suggested, I have included an outline of the policy questions in which you expressed an interest. The questions are listed in order of our priorities. I realize your own evaluation schedule is tight and your resources limited, but I believe the effort devoted to these issues will be fruitful. In order for your work to influence the Budget Office recommendation, the reports will need to be completed by August 1st. If this is not possible, the report could still impact the Governor's hearings if received by September 1st.

Thank you for your time and consideration. I will be looking forward to working with you.

DO:jh

cc: Bob Andersen
James Edwin Kee

REVIEW PROPOSALS

March 29, 1979

- like this one*
- I. Should the Attorney General's Anti-Trust Unit be continued after federal funding ceases, and if so, how can it be funded? The proposed review would answer this question and could also address the following:
 - A. How is the unit meeting the objectives outlined in their grant?
 - B. What are the advantages and possible disadvantages of having the State prosecute anti-trust cases rather than the federal government? Does any duplication of effort exist between State (including other states), county and federal prosecutors efforts? How do agencies coordinate their efforts?
 - C. How does this unit coordinate with the rest of the Attorney General's Office? What are the advantages and disadvantages of being independent? If closer coordination is desired, how can this be accomplished?
 - D. What is the current workload of this office, and what is the projected workload for the next five years? Is the staff adequate for current and future needs? Is this an area where the resources assigned generate a greater workload? If so, how can we decide on a level of litigation?
 - E. What is the impact of the recently passed "Utah Anti-Trust Act" (S.B. 93) on the future operation, and most importantly, the future funding of this unit? Will the anti-trust revolving account established in this act provide sufficient funds for the future operation?
 - F. What is the experience in other states? What other states have anti-trust units? How do they operate, and how are they financed?

- II. A program/budget Review of all Court Administrators' (State, District and Circuit).

During the last legislative session, concern was expressed by the appropriation committee that (1) duplication existed between the State and Trial Court Administrators, and (2) the District Trial Court Administrators were not effective. Therefore, a program review of this area could consider the following questions:

- A. What are the functions of the State, District, and Circuit Administrators? How do these functions differ depending on the geographic area, type of court, and administrative level (State vs. Trial Court). Perhaps Juvenile Court administration could also be included in the comparison.

REVIEW PROPOSALS

March 29, 1979

Page -2-

- B. Are there duplications of effort? Are Trial Court Administrators fully utilized by State administrators and vice versa?
- C. Do administrators, especially District Court administrators, have the authority to carry out their assigned functions? What is the overlap between District Court administrator's functions and those responsibilities the County Clerk has authority over?
- D. What has been the impact of the court administration program? What are the strengths and weaknesses? How can it be improved?

III. A follow-up report on the "Utah Supreme Court Project Report."

In 1977, JCCJA funded a study of the Utah Supreme Court to develop and implement "proposals for . . . restructuring new procedures and other alternatives as may be needed to assist the Supreme Court to meet the increasing demands of its workload." The principal recommendation of this report was the establishment of an intermediate appellate court. This has not been implemented but other changes have been. Such changes include establishing a "Pre-disposition Program", increasing research attorneys and providing personal secretaries for the justices. My basic questions are: (1) How are these programs operating, and (2) How well are they meeting the problems, and (3) What further actions are needed?

IV. What are the advantages and disadvantages and the political feasibility of having the Attorney General contract with large County Attorney offices which the Supreme Court appeals of their cases? Currently, the Constitution states that the Attorney General has responsibility for all appeal cases. This works out well for small cases since they do not have the expertise to appeal cases, however, in large counties (particularly in Salt Lake) where there is a large criminal staff and expertise exists (including an investigative staff), there is a possibility that we could contract with the County Attorney's Office to do the appeal work. This approach might save money and could possibly be more efficient since the Attorney General would not have to re-investigate and go over the facts which the County Attorney's Office has already done. Further, it would provide the County Attorney with financial assistance, however, the appeals cases are a special type of legal work and the Attorney General's Office has done well for developing the need for this type of appeal. Also, the Attorney General's Office has a special brief bank which they use readily and which has cut down their work. There seems to be two sides of this possibility. A review which looks into the advantages and disadvantages would be most helpful.

DO/jh
 reducing need to jail
 leave travel
 alter nothing developed

V. Juvenile Corrections to look at
 DFS
 Juvenile Court
 services to adjudicated youth
 John Billings - detention class standards
 DFS all or nothing approach

- get all out of DFS
 -
 item DFS stuff all
 juvenile related
 who does what:



STATE OF UTAH
 OFFICE OF THE GOVERNOR
 SALT LAKE CITY

SCOTT M. MATHESON
 GOVERNOR

84114

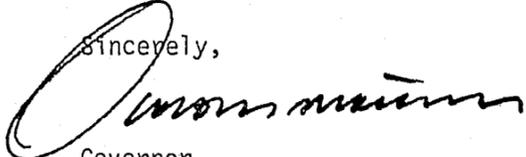
July 23, 1979

Mr. Steve Vojtecky
 Planning and Evaluation
 Utah Council on Criminal Justice
 255 South 3rd East
 Salt Lake City, Utah 84111

Dear Steve:

As Governor, I have found objective evaluation reports most useful in making decisions for the State of Utah. I look to the State Budget Office, and other State agencies, to provide this type of report when important policy decisions need to be made.

I am particularly interested in a comprehensive and objective evaluation of the Supreme Court's workload and the available options solving this problem. Your efforts in assisting the Budget Office in this regard will be appreciated.

Sincerely,

 Governor

SMM:jek

RECEIVED
 JUL 23 1979
 UTAH COUNCIL ON
 CRIMINAL JUSTICE ADMINISTRATION

END