

THE STATE OF IDAHO
SUPREME COURT

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STATE OF
THE JUDICIARY

Chief Justice Roger S. Burdick
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*** Madam President, Mr. President Pro Tem, and distinguished members of the Idaho Senate, my colleagues on the Supreme Court and Court of Appeals, and fellow Idahoans.**

***Mr. Speaker and distinguished members of the Idaho House of Representatives, my colleagues on the Supreme Court and Court of Appeals, and fellow Idahoans.**

Again thank you for the honor of appearing in front of you to discuss Idaho's judiciary, a group made up of not only judges and state administrative staff, but also hundreds of dedicated county clerks, probation officers and other county employees without which we could never do our jobs as judges. We can never forget the debt of gratitude judges owe to county commissioners and elected county clerks.

I'd like to now welcome the new members of Idaho's legislative and executive branch officers. A hardy welcome to twenty-five new legislators as well as a dozen or so new department directors. A special welcome to our new lieutenant governor, Janice McGeachin who will grow to love these State of Judiciary speeches as much as I have!

Because of so many new faces I thought I would like to highlight a few of our past accomplishments and then quickly touch on future issues affecting the "State of the Judiciary."

A national survey conducted by the Conference of Chief Justices has found that confidence in state court systems is at the highest level since polling was started in 2012. Idaho does share in that good news as a result of your support for new ideas to solve old or new problems as well as the hard work of our judges and county partners.

THE PAST

In 2014 I had reported that since 2000, 43 district judges had been appointed. Now since 2014 another 7 appellate judges and justices, 16 district judges and 22 magistrate judges have retired. This has resulted in a whole new generation of judges and justices. As you can see the legislature and executive branches are not alone in change.

As I did last year, I must acknowledge and congratulate the members of Idaho Judicial Council and their executive director for a frantic schedule of judicial applicant interviews as well as their usual review of disciplinary complaints against judges. Not only have they worked hard in preparing for these interviews, they have always acted in good faith without outside influences.

We continue to monitor what is needed to recruit and retain judicial applicants by preparing and disseminating a new survey of the Idaho State Bar about barriers to judicial careers. This is an improved survey which mirrors our original groundbreaking survey of and the resulting report published in June of 2010. I think that survey directly led to greater participation of women in our judiciary. Women members of the Idaho judiciary have grown to 23% which largely reflects the 28% of women members in the Idaho Bar. We are again seeing recruiting challenges for district judges. Just last week only five applications were received for a district judge position in Canyon County. For the most recent magistrate judge vacancy in that same county, we had 17 applicants.

Our continued hope is that you believe with us, that the attraction of our best and brightest lawyers to the judiciary is vital to the continued rule of law for all in Idaho.

TECHNOLOGY:

Also in the 2014 State of the Judiciary, I introduced you to our new request for the largest cultural change in the Idaho judiciary's history – Odyssey. Your support as well as initial financing and an ongoing fee structure has supported a herculean effort of technology change from the old ISTARS system to Odyssey.

This roll out was completed in 3 phases or “waves”. We started with our pilot program in Twin Falls County and then the 1st wave of the 5th District and 4th District counties; the 2nd Wave of central Idaho's 14 counties, and finally southeastern Idaho's 10 counties. Our staff with the help of county clerks transferred old records, pre-tested and installed new software, squashed countless bugs in the system and supported all of that in the extensive training for all clerks in every county and we continue to support and educate every day.

Now that the base product has been installed we will be working on a great many large and small hacks, projects, or fixes to make sure this basic implementation continues to meet the needs of our citizens, lawyers, justice partners, counties and judges. There is also a need for the usual hardware upkeep and replacement that we furnish to our counties and judges. As you can see, we have more work to accomplish. Many more features are to come.

As part of our new attorney management program we are working with prosecutors and public defenders in two counties for a truly integrated case management system. Additionally a new statewide jury system will help counties who opt-in handle jury management. For your constituents as a part of the jury management module, a citizen would be updated and notified of their schedule to appear for jury duty by up-to-date text messaging.

Lastly, Odyssey has now converted all court filings in the trial and appellate courts to e-filing. We have heard positive feedback on this change and we will continue to upgrade as time goes on.

This entire time slot could be taken with the past work, present impact and future work to be done with Odyssey but I need to move on. Again I thank the legislature for your continued commitment to Odyssey.

SILVER TSUNAMI:

I previously mentioned the generational change of the judiciary, but this demographic reality exists throughout Idaho. In 2014 I referred to it this way

By 2030 Idaho's total population is projected to increase by 52 percent while the number of individuals over the age of 65 will grow by 147 percent. There were over 1200 new guardianship or conservatorships filed [in 2013]. Once a guardian has been appointed the monitoring will often continue for years.

A 2010 study found 47% of dementia patients were mistreated in some way and developmentally disabled individuals are 4 to 10 times more likely to be abused. Again with your support and working with our counties, I can report significant improvements in modernizing our procedures and safeguards for this growing and sometimes, vulnerable group of citizens.

These strides have been accomplished with the leadership of our Guardian/Conservator Committee composed of representatives not only from the courts but also practicing lawyers, state agencies and many other interest groups that have driven this systemic change.

The Committee has put processes in place to monitor the well-being of the protected person and the financial health of the estate, practices to ensure the protection ordered in a case is specific to the needs of the protected person, and created training to ensure all parties are aware of guardian and conservator responsibilities and duties.

You appropriated monies so we could fulfill our statutory duties to monitor guardianships and conservatorships with monitoring coordinators in all seven judicial districts. These persons have allowed a much more robust handling of these cases and have been a marvelous help not only to our busy magistrate judges but also, and most importantly, the protected persons.

In the future the courts face a daunting task of finding future guardians or conservators for increasing numbers of individuals left with no one else to step in to help. These are challenges we will undoubtedly seek your counsel in the future.

CRIMINAL JUSTICE

Again in 2014, I congratulated the legislature for “wisely” identifying two of the chronic problems that impact Idahoans and the judicial system – public defense and justice reinvestment. We as a judicial system have and continue to have a constitutional duty to assure due process and a legal duty to help protect society.

In 1923, our Supreme Court said in *State v. Montroy*:

It is the public policy of this state, disclosed by constitutional guarantees as well as by numerous provisions of the statutes, to accord to every person accused of a crime, not only a fair and impartial trial, but every reasonable opportunity to prepare his defense and to vindicate his innocence upon a trial. In a case of indigent persons accused of crime, the court must assign counsel to the defense at public expense.

This was a full 40 years before it became a federal requirement for public defense.

With your guidance and help, the Public Defense Commission continues to strengthen the counties’ ability to meet this expensive but necessary obligation. In reviewing the accomplishments of the Idaho State Public Defense Commission, I applaud the progress they have made.

The Commission has recommended and instituted procedural improvements, as well as started data collection of workload and other deficiencies for future analysis. They have instituted a vital training schedule, helped counties with grants to fund public defenders and also helped with extraordinary litigation costs to certain counties. These improvements are as a result of 175 meetings with county commissioners and clerks to define needs, explain best practices and monitor improvements. The Idaho judiciary supports this start but more work is needed.

Your Justice Reinvestment Initiative was again mentioned in 2014, as the courts, the Department of Corrections, and the legislature examined ways to approach criminal sentencing and corrections more efficiently. This significant change has had mixed results, but we in the courts realize there are better ways to handle criminality than building bigger jails and prisons. During this time of change and analysis the Idaho Prosecutors Association and Department of Corrections both agree our district judges are appropriately sentencing criminals and now the question remains what is the best method to protect society while rehabilitating those in the system. We must all remember 90% or more of these individuals will return to our neighborhoods. Our judges have always felt more support is needed in terms of probation officers, rehabilitation services and halfway houses so that defendants have a better chance at normalization before they are released by the courts or the Department of Corrections. We continue to support efforts for more local placement and resources. Our successful problem-solving courts are just one of many approaches. They are seen as an innovative body to balance risk and rehabilitation.

We applaud your bold initiative to reinvest in local support and options to incarceration. At the same time we continue to be acutely aware of our number one priority -- to protect the public.

SENIOR JUDGES:

Another vital program which you have found valuable and which we believe stretches state dollars and adds vital judicial manpower is the Senior Judge program. Our first senior judge program started in 2000.

The senior judge program pays retired judges at reduced rates to support personnel needs for sitting judges. Senior Judges are only paid for the days they work. These judges are the ones who fill in when vacancies appear due to disability, sickness or other excused absences. They are also a vital resource to cover when there is a gap or delay in replacing a retired judge. They handle overflows of cases or in areas where the caseload is too heavy, but there isn't enough need for a new judicial position to be filled. For instance in 2018 senior judges worked 1,110 days in the courtroom, an equivalent of 11.3 additional judges. Senior judges also worked with iCourt training mentoring or in other leadership roles. Without these Senior Judges there would be significant backlogs and or stoppages in case flow, which would be a disaster.

INTERNAL WORKINGS

In trying to keep a cutting edge judicial system for Idaho I'd like to quickly review changes in administration over the last few years. First, I'd like to introduce our new Court of Appeal Judge and Supreme Court Justices appointed in 2018.

First, the new Court of Appeals Judge; the Honorable Amanda K. Brailsford sworn in on January 2, 2019. Next our two new Supreme Court Justices; the Honorable John Stegner sworn in on June 29, 2018 and finally the Honorable Greg Moeller sworn in January 3, 2019. I'd like all three to stand and be recognized. Thank you.

In 2014 the court completely revamped its accounting system. This came as a result of one of Cathy Holland Smith's "gentle urgings" that we needed to get better immediately. Since then we have completely reorganized and modernized our budgeting procedures and financial reports. The budgeting improvements help us to gain better insight into the real needs of your local courts. Additionally we've received comments from budget analysts and others about the increased transparency and professional presentation our improvements have produced.

In order to educate as well as help judges receive real feedback on their performance, you saw fit in 2017 to start implementing a new and vastly improved Judicial Performance program. This program includes surveys taken by clerks, lawyers and others concerning a local judge's performance. These surveys were created and vetted by national experts from the National Center for State Courts. These are shared with the individual judge and mentor judges may be assigned to help with any improvements. To date 98 judges have gone through this examination

and new mentor judges are being trained by our education staff. Again this shows your support for an excellent judiciary and our commitment to continued improvement.

I have covered the most significant projects which have shaped the State of Idaho's judiciary in the near past. I'd like to project a few ideas for Idaho's judicial future.

Has anyone noticed the traffic in our hometowns or on our highways? Idaho has been discovered and we must stay vigilant to meet the needs of our new Idahoans. They bring new vitality, ideas, and expectations to Idaho. Just the sheer numbers will increase more judicial services which by constitution and statute must be met. The Courts must meet this need with new efficiencies and technology. As a result, our technology platform base is in place and we are working to make the changes or improvements to perfect it. We must look to new technologies to protect individual's private information, while making sure our court processes are transparent.

The courts are a main hub of information and data for a myriad of city, county, state and commercial interests. One of our main customers for data is the legislature – your need for strong, fair policy must be supported by data from the courts. We take this challenge seriously. We are piloting new technology called Socrata to help take the millions of data points in the court and streamline and collate them. Then we can give you the most up-to-date comprehensive reports available.

We are experiencing exaggerated growth patterns in our major urban areas. In these areas we will be watching closely as to when new magistrate or district judge positions are needed. The judiciary has a solid history of making sure all alternatives – senior judges and traveling judges are used fully before we request new judgeships. This conservative approach takes into consideration the financial impact on our county partners as well as the State's financial and safety concerns. Our fastest growing area is Ada County and we will be requesting new judges to meet this remarkable demand.

Our growth contains all age groups but a significant group will be retirees. As a result our emphasis on guardianships and conservatorships will have to continue and expand.

Some of our newest Idahoans are not welcome but they are a fact of life – criminals. Anecdotally, I hear from law enforcement and prosecutors of the increased violence and drug activities of their criminal caseload. This adds the necessity for high functioning trial judges as well as evidence based practices for pre-trial release or sentencing, as well as increased community services to meet safety and rehabilitation needs.

Another avenue to produce efficiencies is the work of the Civil Justice Reform Task Force started under Chief Justice Jim Jones and spearheaded by its chair – Court of Appeals Judge Molly Huskey. The report is due this month and includes recommendations for significant rule changes concerning discovery, fast tracking of cases as well as others. This report will be reviewed by the Supreme Court and portions or all of it will be adopted.

We as a court system will continue to struggle with access to justice issues. Translation costs continue to rise and cost of litigation may price all of us out of courts not just our working poor. Again we support the legislature's financial support of Idaho Legal Aid to help with some of these issues. We stand ready to work with the Legislature and Idaho Legal aid to craft a path going forward.

I hope I have acquainted you with our recent past and projected some issues for our near future.

I sum up with this observation. These items I've mentioned have been accomplished with just 1.3% of the general fund. The national average hovers around 3%. In closing I'd like to share a quote from the State of the Judiciary 2018:

In summary, the State of the judiciary is in large part a function of the cooperation of the Legislative and Executive branches, as well as our county partners. Although an independent co-equal branch of government, we rise or fall based upon cooperation.

The same holds true for this past year and I hope this cooperation continues so I can report a robust judiciary in 2020.