

## STATE OF THE JUDICIARY

CHIEF JUSTICE G. RICHARD BEVAN

January 17, 2024

**\* Mr. 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.**

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I am honored to stand here before you for a fourth time as chief justice. And really, I don't stand here on my own. Also standing here are our 159 trial and appellate judges — including newly appointed Justice Cynthia K.C. Meyer, who I hope you all get a chance to meet. Welcome, Justice Meyer!

I also represent, as the face of the judiciary, our hundreds of court clerks, our various court administrators, law clerks, court reporters, court assistance officers and all the many others who help us to accomplish the important work of Idaho's Judicial Branch of government.

And I stand here on the foundation built by those who came before us — including our recently retired Justice John Stegner. I was honored to work closely with Justice Stegner for his years on the Supreme Court, and I wish him the best in the next stage of his career.

### *The Rule of Law*

A couple of months ago I spent an evening in Twin Falls sharing with an audience why I do what I do. These were everyday folks out on a Monday evening on a college campus, eager to learn. This represented the kind of opportunity I always enjoy as a judge — to help people see how Idaho's judges advance our grand civics experiment as part of Idaho's state government.

But there is a gap in the public's understanding, as I suspect you'd tell me of a gap in public understanding of the legislative branch and the executive. People are aware of courts, but they don't necessarily think of what courts *mean*. And they certainly don't think of what would happen without us.

What is our Judicial Branch? It is fairly simple: Courts provide a fair and peaceful way to resolve disputes, impartially and under an equal rule of law. The law comes from the people in the

form of the state and federal constitutions. It comes from those of you in this room, in the form of the laws you write, as well as local ordinances and regulations. Judges apply this wide array of laws to family matters — like adoptions and divorces — to business disputes and property disagreements, to cases for personal injury as well as criminal proceedings. We resolve these cases *based* on this body of law, together with the facts developed through a trial or discovery process.

That last part is essential to the work we perform. John Adams said that the “very definition of a Republic is ‘an Empire of Laws and not of men.’” Our branch is the embodiment of the American ideal that everyone answers to the law and answers equally. The rule of law is a fundamental cornerstone without which our society would flounder.

There are several ways to describe the rule of law. I have heard it put as the reason we will stop at a red light late in the evening, with no one around. Why do we stop? Because the rule of law is so entrenched in most of us that we don’t give it a second thought. The rule of law doesn’t mean that the police are in charge; it means that we all answer to the same laws.

The rule of law is visible when we pay our taxes on time or when divorced parents throughout this state shuttle their children across town to fulfill custody arrangements. The people who follow judges’ orders in these cases may not agree with them. But they follow those orders anyway because they respect the laws and the courts that enforce them. As Dwight D. Eisenhower said, “[T]he rule of law does more than ensure freedom from high-handed action by rulers. It ensures justice between man and man however humble the one and however powerful the other.” Really, the rule of law is the glue that keeps us all functioning as one, that helps us navigate life with our neighbors.

In the Judicial Branch, our patriotic purpose in coming to work each day is to build on the centuries of solid evidence that an independent court system is best equipped to impartially decide questions of law — and then equally apply the law “without sale, denial, delay, or prejudice,” to quote Article I, Section 18 of the Idaho Constitution.

We have seen elsewhere in the world what happens if the rule of law is subverted. U.S. Supreme Court Justice Felix Frankfurter once wrote that “[t]here can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny.”

Each year that I come here, it is to partner with you to uphold and sustain this rule of law. Truly, the fates of our public duties are tied together. If the rule of law falters in our courts, it also falters in this statehouse.

But nothing is simple these days, is it? The people whom we serve and the society in which we operate have become more fractured. People have forgotten the nature of the broad social contract that allowed us to form this state, this nation.

The issues that become high-profile wedges in our society have successfully distracted us from the many things we agree on. My hope, then, is to focus today on our joint obligation to maintain our rule of law.

### *Supporting the Rule of Law in Our Courts*

It is an eventful time to work in the judiciary, for many reasons. Just the sheer volume of work can be a challenge to convey.

We've been frank with you in recent years about our case filing trends — both here and nationally, the overall trend is a small decline in civil cases. But we still handle more than 140,000 new court cases a year across one of the most geographically spread-out states in the Union. Those cases are often more complex, and they are drawing more attention — look, for example, at the national followings for some of our recent criminal proceedings.

Even everyday cases require more focus than before. In Idaho, we maintain audio recordings of all court hearings as part of the official court record — the record my colleagues and I rely on when reviewing a case on appeal. That audio is kept in a dedicated system devoted to this purpose. In 2023, that system received nearly 62,000 hours of court audio. That's a nearly 10% increase from the same time period four years before. While Idaho has gained judges in that time, we are also seeing more court filings involving arguments that require more courtroom time to resolve.

Our courts perform this work amid a backdrop of increased agitation toward government institutions. I spoke to you at length last year about the security threats our judges and court staff face. That situation has not improved.

Our courts in 2023 handled 60,000 newly filed criminal cases, 23,000 cases involving family law, 14,000 probate cases, 5,000 juvenile cases, plus those carried over from previous years. Many of these cases resolve quickly with little fanfare. Some become incredibly contentious. Underlying many of these cases are issues of mental health, substance abuse, homelessness, and neglect.

All it takes is one person making a bad choice in one of these situations for the unthinkable to occur. Thank goodness that we are not among states like Maryland or Wisconsin where judges or their family members were murdered in recent years, or Nevada where a judge was violently attacked in the courtroom just this month. But I still fear we are not far from that point.

Even so, we carry on undaunted. Enter one of our courts and you'll find a devoted workforce accomplishing feats I personally find incredible. Our judges must pivot from case to case and issue to issue while remaining fully present in each. Our clerks not only keep the whole system moving, they are our public face, helping users of the court system — and often managing interactions colored by those personal crises I just described.

Supporting these groups behind the scenes is another invaluable team. Here in Boise and across each of our judicial districts, Judicial Branch employees offer technological, financial and other administrative support to all of our individual courts. Their work isn't always easy to see — but it would be obvious if they were missing. I am endlessly grateful for their own contributions to maintaining our rule of law.

### *Supporting the Rule of Law with Our Partners*

By Constitution and statute, counties shoulder much of the burden of maintaining local courts. This constitutional partnership — done for budget savings in 1889 — is somewhat unique among courts nationwide. We take it seriously.

For example, we have relaunched a committee to provide elected clerks with more of a voice on court technology. As we work to better secure our digital systems, we are shaping our approach around the counties, acknowledging their unique processes and needs.

The bulk of our state-employed IT support is centralized in Boise while the counties themselves make their own arrangements for local IT. The counties' needs go beyond just the court system, of course. But starting in the last fiscal year, with your help, we placed an additional court-focused field technician in each judicial district to deploy new technology, solve technical issues and train both county and state employees who provide work for the courts. Feedback to this program across the board has been encouragingly positive and we are working to expand it — it's hard for a single tech to be both in Benewah and Boundary counties at the same time.

We also now offer a jury management system for counties. Again, managing jurors — summoning them, screening them, providing the information necessary for their work — largely happens at the county level. But through offering this state-funded system, we can provide jurors in any county that signs up with flexible, easy-to-use tools and timely information as they fulfill their own obligation to the rule of law: jury service.

We partner in other contexts — for example, to provide state agencies and even this Legislature with data needed to perform other work. Some of that data can be sensitive. Child protection cases, mental commitments, and even people's personal financial records require protection. Recently, we've worked to improve our data comprehension, both expanding the types and functionality of our reports and, in situations where law requires sensitive data be provided to an outside partner, creating a more secure way to deliver that data.

Our statewide IT team supports not only court operations, but also court users. That number encompasses about 2,900 people, including law enforcement and Idaho Department of Correction employees, who use our system daily to access court records they are entitled to as part of their jobs. Another example: our team helped the Nampa Police Department as that department migrated to using the statewide electronic ticketing system for electronic citations. Examples such as these

show the courts' willingness to partner with others across government for public service. We look forward to continuing these partnerships in 2024.

### ***Digital Access to Justice***

As you've heard in previous years, so much of the fundamental work of the courts now involves computerized records and digital tools — and Idahoans expect that. In the same way that computers allow anyone to watch the full proceedings of this Legislature, both the public and our many court partners expect and rely on the conveniences of our modern times.

Videoconferencing in the courts has been invaluable in terms of the public's access to justice and our ability to quickly coordinate court proceedings and court management across this state. Court hearings of public interest may be livestreamed, allowing anyone to observe them. Administrative meetings held over Zoom encourage statewide participation from court stakeholders. This improves the range of voices who are able to participate in determining how we operate while minimizing travel and related costs.

Electronic filing and digital court recordings create efficiencies for both our courts and those who use them. Right now, we are developing a new court records portal — offering access to public court documents right from your computer at home — without the need for a physical trip to a courthouse. This will increase transparency into the workings of our courts for the people of Idaho.

This brings me to my next topic — the sustainability of our systems.

### ***Preserving and Protecting Court Technology***

Judicial Branch technology, including many of the employees who help maintain it, has primarily been supported through the Court Technology Fund. Established by this Legislature, that fund gets its revenue through legislatively established fees imposed in both criminal and civil court cases.

I understand the logic of such a self-funding approach, but in practice this model falls short. Court fine and fee receipts for the fund declined an average of 2.1% per year in the past five years. Meanwhile, overall technology costs rose an average of 7% each year — a cumulative 35%. This ongoing disparity in funding makes our current system unsustainable.

The courts have been thrifty stewards of this resource, leveraging fund reserves to support ongoing operations and deferring expenditures over the past several years. As you'll read in the annual report we provided you, we are below the national average in our spending per user on technology.

But as I explained last year, we have had to make tradeoffs. Last month we passed down to civil court filers a \$5 fee on electronic filing required by our software vendor. We hope that the benefits of having digital court documents sent to you and of filing from the comfort of one's home or office — without the need to run between county courthouses — balances the financial demand of the fee.

In speaking to you about these issues before, I have shared our efforts to build a sustainable future for our modern courts. As I promised last year, after extensive work with an independent consultant who evaluated our systems and staffing, I am pleased to present our solution based on their recommendation.

These steps are twofold. First, technology has substantially changed since we first implemented digital court records, giving us more options to host and secure our systems. The Judicial Branch has begun work to establish a statewide court computer network and to transition most services to a cloud-based network structure rather than traditional, local information hosting.

This move will alter both our costs and staffing needs throughout the state. And so, the second step will be a request to you to close the gap between our current technology funding and what the courts need for long-term success. I ask that you please give this funding your full support — it will make the difference in what services we can keep available to your constituents.

For these systems are not nice bonuses. They're not bells and whistles. They are what technologically running a third branch of government requires — and what the public expects from a modern court system.

This funding includes recognizing the burgeoning demands of cybersecurity — and what a time we live in for that. In just the month of December, our systems blocked 209,000 attacks on our court websites and 57,000 critical and high-security threats to our network firewalls. They also turned aside 124,000 copies of spam emails and messages with malicious intent.

These figures are not unusual. They are the status quo. They are evidence of coordinated efforts calculated to disrupt American governments. In the Judicial Branch, we stay vigilant to prevent their success. But vigilance and protecting the people's records is not an inexpensive endeavor.

### ***Support for Idaho's Judges***

We come to you this year also hoping to renew the conversation about fair compensation for our judges. This is not just a conversation about pay, it's about retention and recruitment.

I just passed my 20<sup>th</sup> year as a judge. I'm among a handful of our active judges who have served that long or longer. But our average judge has been on the bench for much less time — roughly 7 ½ years — and our experienced judges are increasingly choosing alternate employment or retirement over staying in the judiciary.

A former magistrate judge gave a news interview last month about her departure from the bench that I feel is particularly illuminating. Judge Michelle Mallard gave exemplary service to the state of Idaho for 12 years.

Her comments in the interview reflect concerns we also hear from attorneys. For an experienced attorney in their prime, service as a judge comes with a significant financial sacrifice by way of a pay cut. And judges are never off the clock. A judge must limit friendships, and the job includes a growing amount of harassment and threats directed not just at the judge, but at her family and children.

Former Judge Mallard said her husband would sleep with a gun by their bed following certain cases. No one should have to do this as a result of public service. And it's not an environment conducive to recruiting the best and the brightest to serve as judges.

These concerns reflect even more notably on our district judges, where we especially see recruitment challenges. District judges handle felony criminal cases and high-value civil cases. In 2022, we averaged just five applicants for each of our district court openings, a number I previously described to you as "inadequate" and one which is almost a 50% decrease from just seven years ago.

Last year, that average dropped below five — and for openings in our First and Sixth Judicial Districts, only three attorneys applied, the minimum number the Idaho Judicial Council is now required to provide the Governor for his selection. Once again, with no disrespect to those who applied, this trend is heading in an alarming direction.

Idahoans deserve judges who are at the prime of their careers and at the top of their game. But we don't get there by making judicial service painful and undercompensated. At the very least, let's pay our judges a fairer wage, something that reflects the market value of their education and expertise.

For a full branch of government — one of only three branches — our full budget proposal still only touches a little more than 1% of the general fund. Thank you for giving it your consideration.

### ***Serving the People of Idaho***

By necessity I must focus my remarks on the challenges before us. But make no mistake, Idaho has a strong and accomplished judiciary.

Our work with treatment courts, restoring people to being productive members of society, continues to set national standards. This is deeply meaningful work for our branch. 2,800 people participated in Idaho treatment court programs in fiscal year 2023. Twenty-one drug-free babies were born to the participants — as a father and grandfather, that is a number that makes me proud.

The Judicial Branch worked this past year to improve our approach to domestic violence courts, which connect victims with advocacy and other services while holding offenders accountable. We maintained a focus on mediation — resolving custody disputes, producing criminal plea deals, and making more courtroom time for the truly intractable disputes that require a judge’s in-court focus and management.

In November, courts across our state celebrated the many foster child adoptions that take place year-round in our courtrooms. Adoption hearings are among the most personally meaningful events our judges participate in. These are yet another reminder of the many ways our courts touch people’s lives.

And again, in each of these situations we are, piece by piece, keeping the rule of law present in Idahoans’ lives.

So, it is with a sense of optimism that I leave you today. Each year during these remarks, I have shared my strong belief that working together, our branches can truly improve life for the people of this state. The power to keep Idaho exceptional lies with us — the people our voters have entrusted with our most sacred government systems.

This is a unique state, a state I was born and raised in, a state where I have raised my five children, and a state where I have been proud to serve as a judge for two decades. I am proud of and respect all who labor in Idaho’s judiciary. I thank you for working with us to keep it that way.