

STATE OF THE JUDICIARY

CHIEF JUSTICE G. RICHARD BEVAN

January 18, 2023

*** 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.**

Introductory Remarks

Have you ever considered that Idaho's courtrooms are the only places in the state where our citizens can witness all three branches of government in action at the same time? From the application of the laws passed by you, to the enforcement of our state's laws by the executive branch, to the courts' administration and interpretation of the laws, these proceedings affect Idaho's people in profound ways.

I am so grateful for how Idaho's judges manage these important moments in people's lives. They, together with the attorneys and staff who labor there, ensure that the promise of justice for people is not merely a slogan, but a reality.

There may be some here who have never visited an Idaho courtroom. I also recognize that a few of you are attorneys. Some of you may have served as jurors or had cases before the courts yourselves. As the people's representatives, I invite and encourage you to visit the courthouses in your own districts, to see the amazing work that takes place in these government buildings every day.

Idaho's Judicial Branch fulfills specific duties secured by Idaho's Constitution, most prominently Article I, Section 18: "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay, or prejudice." Our courts fulfill these responsibilities in a variety of circumstances: hearing prosecutions for crimes from petit theft to murder, giving children new hope through adoptions, resolving multimillion-dollar business or probate disputes, and managing contentious breakups of families. Many of these are very demanding and stress-filled events.

A participant in Idaho's constitutional convention in 1889 observed: "[I]f there is any place in our whole system where politics should be left out of an office, it is in that of the supreme court of the state." For this system to work correctly, our judges cannot make decisions based on politics, popularity or the public's wishes, no matter how forceful the drumbeat of the populist band. We construe the law as written. As Chief Justice Roberts has said, the role of a judge is to call balls and strikes; we are not to pitch or bat. Judges simply must follow the rule of law — which applies to us in the Judicial Branch the same as to anyone else in this state. Sometimes this means we reach unpopular conclusions that raise questions. But this is what our Constitution demands and what our judges provide: justice based on the rule of law, no matter the judge's personal views of the legal principle being applied.

The Idaho Supreme Court's rulings sometimes draw the most attention, but nearly all the courts' work is done in Idaho's local courtrooms — in places like Bonners Ferry, Soda Springs, Driggs, and Weiser. Our 150 magistrate and district judges toil across more than 120 courtrooms in Idaho, rendering decisions based on an evenhanded application of the law. Each of them makes sacrifices for a career in public service.

A judge and court staff must keep the thousands of cases moving while treating all parties without favoritism. And their work does not stop at the courtroom door: Judges volunteer to lead treatment courts and provide education in their communities.

For judges to deliver on all that I have described is no simple task. The job of a judge has become increasingly fraught. The need to remain impartial means it can be isolating work. And personal safety is a topic increasingly on our minds.

President Dwight D. Eisenhower said, "The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law." Unfortunately, we live in an age when those who object to the balance in our fair and democratic republic seem increasingly disposed to tearing it down. You see it in your own communities. This climate affects the judiciary in increasingly direct and dangerous ways.

We judges understand that disagreement with our decisions is part of the landscape in which we operate. But when disagreement becomes personal, to the point of threats against personal safety and security, with individuals publishing our private information online, or coming to our homes for face-to-face confrontation, which I and other Idaho judges have experienced, a line has been crossed that must be reinforced — and reinforced convincingly.

We now see protests at judges' homes meant to, I suppose, disturb their peace, to scare them into submission or to sway their rulings. Some may see this as a means to undermine the core of the rule of law. In some circles the hue and cry has escalated to threats against the lives of

judges, including justices on our nation's highest court. In Idaho, we see veiled threats made online against the courts.

The judges to whom these threats are directed are simply doing their difficult job of making decisions within an established framework of law, regardless of their personal feelings about those laws. These interactions at their homes, at their places of respite and peace, are not just an affront to the rule of law, but also a danger that we ask you to address. Indeed, we have become sadly aware in the recent past of a judge in Wisconsin who was murdered, and judge's family members in New Jersey and Illinois being killed.

These circumstances deter otherwise talented individuals from becoming judges. Last spring, we surveyed members of the Idaho State Bar about judicial service as a career. Among their most common concerns about becoming a judge was our increasingly polarized political environment. Among all the bills you consider this session, please support any legislation that says two things: (1) the independence of the judiciary must remain inviolable, and (2) judges' safety is paramount.

Judicial work goes beyond hearings and trials. The job description is about resolving people's disagreements, while also supporting growth in the people we serve, and developing healthier communities.

One of our deputy trial court administrators recently picked up a lunch order. The manager at the restaurant identified herself as a former drug court participant and said how grateful she was for our judges who gave her a second chance. Her life change wasn't from a one-and-done hearing before a busy judge. It involved attention and investment by a judge who volunteered to work extended hours, in addition to her or his standard caseload, toiling in early mornings or late nights, to intervene directly in that person's life and improve her outcomes.

With all this in mind, one of the most important requests I bring you this year is for a salary increase for our judges. Judicial compensation by law is set separately from that of other state employees, and thus requires both substantive legislation and an allocation from the General Fund. Money for a judicial salary increase was appropriated last year, but the substantive statute was not updated to allow it to be paid. This left judges the only state employees not to receive a change in salary in 2022.

Only attorneys who have held a license to practice law for at least five years can seek to become judges in this state — the requirement is at least 10 years to become a district or appellate judge. In all cases, they must have also been a legal resident of Idaho and a member of the Idaho Bar for at least two years. This means our pool of potential new judges comes exclusively from Idaho.

Compensation — particularly, compensation that is more competitive with what an *experienced* Idaho attorney can earn in today’s market — was also among the important concerns raised in our survey of the Bar. For district court openings in 2022 we averaged just five attorneys per opening. With no disrespect to those who applied, this is simply inadequate. Indeed, our neighbor Utah’s judicial compensation commission is recommending a 10% pay raise for Utah judges based on the limited number of lawyers applying for judgeships, where the applicant pool has shrunk by more than half since 2011.

Further complicating the situation is the economic backdrop. After the workforce uncertainties of the past three years, our branch is not the only part of government grappling with how to keep positions competitive. In some counties that have granted pay increases, certain attorneys are paid as much as or more than the district judge in whose courtroom they appear. This discrepancy affects our ability to recruit highly qualified attorneys to the judiciary.

I ask that this session you consider legislation on judicial compensation that helps maintain a highly qualified and experienced judiciary.

As the third branch of government, Idaho’s judges must be independent, but we believe strongly in collaboration to serve the public. One example is the work of the Idaho Behavioral Health Council, which I will speak to later. Another example is our partnership with each of Idaho’s 44 county governments to conduct the day-to-day work of the courts. Behind each of our access to justice services, you will find dedicated court staff who process filings, develop the record, offer translation, provide security, and perform too many other duties for me to list. Increasingly, we see challenges in filling court positions, and in keeping experienced staff who find less stressful, more lucrative opportunities elsewhere.

Though our courts are a “unified and integrated judicial system for administration and supervision by the Supreme Court” (Idaho Const. art. V, § 2), we strive daily to support our county partners who have to provide court facilities. For example, when counties upgrade or renovate courtrooms, the Supreme Court provides certain equipment to ensure all courtrooms have consistent and appropriate technology to preserve the official court record, to present evidence and to manage remote proceedings when needed.

Included in these technological advances is a new system we are offering to counties that will allow courts to oversee the summoning and managing of juries more efficiently. Historically, counties have selected, purchased, and managed their own jury systems. The result is that Idaho’s citizens who are summoned to be on juries have disparate experiences and services depending on what their county can fund. Some counties have been able to provide simpler online and phone systems for jurors; others have not. Some counties have been able to text status updates to jurors; most have not. The Court’s jury management system, offered to all counties, can provide efficiencies, and simplify the process for all Idahoans called as jurors.

Many counties are now interested in using our solution as their own systems are being decommissioned, and we are offering this solution to the counties at no charge. You have a request before you this session to fund added services that will improve the options available to our counties through this advancement.

Smooth trial management helps us continue to address our case backlog. In calendar year 2022, we held over 20% more jury trials than in 2021, and over 30% more jury trials than in 2020. We have made particular headway on felony criminal cases. Statewide, we closed 12,700 felony criminal cases in 2022, more than 1,000 more than we closed in 2020.

I advised when I last spoke to you that it could take a couple of years to fully address the effects of the pandemic. I'm pleased to share that our courts are diligently addressing these circumstances. Our courthouses hosted as many trials in 2022 as they could arrange with the resources available. Mediation has been in high demand to resolve both civil and criminal cases. Some courts have found more success than others, and some had little backlog, putting them in a better place to start with. All are making noble efforts to resolve these pending cases.

Modern technology helps us move cases along, and it brings continued benefits for court users. "Access to justice" means three things for every person facing a legal issue. First, they are able to secure their rights under the law; second, they can be part of a fair process to resolve claims; and third, they receive a timely and impartial resolution of their case.

In the past, when we've talked about access to justice we've talked often about actions at a physical courthouse: ADA accommodations, language services, and on-site assistance for people representing themselves in court. Technology now offers more ways to make court access easier and less disruptive — and the people of Idaho expect us to use it.

A quick example are remote hearings done over video. Consider a single parent who may need to secure a babysitter or miss work for a 15-minute hearing — or a farmer in the field whose day is interrupted by that short court appearance. In both cases, thoughtful use of videoconferencing makes court more convenient while maintaining each person's rights and options.

With video, interpreters can now help litigants from afar. Self-represented people get help from our court assistance offices who review their legal documents over email. And our Guide & File service helps those self-represented parties understand and submit certain filings without ever having to enter a courthouse.

The Supreme Court is rescinding the last of our emergency orders from the pandemic, but remote proceedings as a courtroom tool are here to stay. Earlier this month, we issued an order

extending our current directives on remote proceedings while we study long-term rules and procedures. I look forward to updating you on what those become.

With these technological innovations, security for the courts' digital court records is a constant concern. Cybersecurity requires vigilance to protect the courts from threats both local and international, as conflict in other parts of the world can lead to an increase in cyberattacks against governments within the U.S. Online tools to impersonate people, to steal their identities and cause chaos are only becoming more refined and accessible.

Our Information Technology Division stays hard at work installing better protections for our computer-dependent court system and its electronic records. Our digital security applications have successfully rejected the threats so far, maintaining the steady operation of the courts and the safety of our data. But cybersecurity risks are ever-changing, and the resources required to fight them are ongoing.

The primary way we pay for all our technology needs, including the advances just mentioned, is through the Court Technology Fund. It is financed through fees this body has imposed in criminal and civil court cases. But as the evidence now shows, and as my predecessors have noted through the years, running a court department with a user-funded system is unworkable. As a result, the Court Technology Fund now faces unprecedented challenges. Technology costs in the past five years have risen an average of 9% each year. That's nearly 50%. Meanwhile, in the last three years in particular, the court fines and fees that support this fund have declined an average of 5% each year. That's over 15%.

These increased expenses are not limited to those associated with holding court remotely. They include cybersecurity protection and computer equipment for our local clerks and judges, not to mention cost increases of as much as 30% in software licenses and credit card processing fees. The technology fund also pays the salaries for our court technology employees, which have increased in the recent past as well.

The Idaho Supreme Court is working with a third-party consultant to reassess our technology costs and develop a stable, efficient method to fund them. I look forward to when I can bring you that long-term plan. Until then, we seek your help to provide short-term support for the Court Technology Fund and its important essentials. This includes a request for one-time dollars to supplement our current technology needs, and a request to move three key information technology positions from the Court Technology Fund to the General Fund.

One other funding change is already in the making: When parties submit documents for filing, our e-filing software provider charges a fee for processing each civil filing through what are called "electronic envelopes." We have covered the charges for these envelope fees through the

Court Technology Fund. Now, the fund cannot continue to pay for these expenses as a subsidy for civil litigants. Last year the Legislature provided one-time funding for these fees while we determined a solution. Beginning in July this year, civil filers will pay this fee at a cost of no more than \$5 per envelope. This fee will be a recoverable cost of litigation through court rules, and there will be no such fee associated with criminal filings.

While I have focused on our challenges thus far, I am also pleased to report on our successes.

Treatment courts provide support, supervision and accountability for people in the justice system with significant substance abuse and mental health issues. Beyond just imposing consequences, these courts help participants achieve stability, sobriety, and become valuable members of their communities.

Idaho is a national leader in the treatment court space. In what is now our twenty-fifth year since our first treatment court was launched in Kootenai County, we continue to evolve and improve them.

Various drug, veterans, DUI and mental health courts are now available in 86% of Idaho's local courthouses. Lives change and continue to change, as nearly 500 people graduated from treatment courts in the 2022 fiscal year, and 36 drug-free babies were born to mothers participating in those treatment courts — statistics that I find delight in reporting. The ripple effect of these transformations goes well beyond the literal cost savings in corrections or to our societies from reduced drugs and crime. These benefits are profound and immeasurable for these graduates, their families, friends and communities. I invite you to attend a graduation in one of these courts to witness for yourselves the impact these courts have.

This past year, the Supreme Court adopted rules to support these courts. The rules provide uniformity for our adult treatment courts while still allowing for local variations in practice. This exercise was truly a community effort, with input from judges, our Treatment Court Committee, local stakeholders and members of the public. We hope the rules will lead to even greater success in these courts – providing good options to avoid incarceration when feasible.

In addition, the judiciary continues to support the mission of the Idaho Behavioral Health Council, our collaboration across the three branches of government focused on better solutions for those in this state who live with mental illness and addiction.

One piece of the Council's work that the Judicial Branch directs is an exercise that brings together stakeholders from across a community's behavioral health and justice systems to better

understand how those systems overlap. These discussions lead to solutions that address gaps in behavioral health services.

We have previously relied on national facilitators to lead these exercises. In an important development, we now have skilled Idaho facilitators who can conduct this work, leaving us more flexible and capable of deeper conversations on potential gaps. As this continues, we'll be able to see the overlap in what communities need for behavioral health training and resources — data that I hope will also aid your own decisions on funding and policy.

As you've seen, the work of the courts is wide-ranging and weighty. President Andrew Jackson once expressed: "All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous judiciary." I wholeheartedly agree and ask your support of that objective. I hope today I have helped each of you better understand the work of our branch. With your support, we will continue to accomplish our duty of delivering fair and reasoned justice every day.

Thank you.