

State of the Judiciary  
Chief Justice Roger S. Burdick, Idaho Supreme Court  
Message to the Legislature  
January 24, 2013

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

\*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.

I bring greetings from Idaho's judiciary who handled over 436,000 filed cases and 655 filed appeals in 2012.

I am proud to report to you on the performance and continued accountability of Idaho's third branch of government. Like many of you in this body, we rely heavily on evidence-based practices supported by quantifiable research. My remarks today will describe how the judiciary uses those in furtherance of its mission to provide justice through the timely, fair and impartial resolution of cases.

First are the efforts of our problem solving courts. This is not business as usual. The problem solving court model starts with intense supervision by a judge of a criminal or civil case. This supervision is supported by a multidisciplinary team whose members have significant experience in the field. The problem-solving team monitors, educates and recommends needed action until the participant complies with the necessary requirements. This work necessitates increased analysis, resources, and time, that by all quantifiable research works. The fact that it works can be seen in the expansion from drug courts to mental health courts, to domestic violence courts, to child protection courts and now to veteran's courts. All three branches of government have found this type of problem-solving team approach works and saves counties and state correctional dollars, keeps our communities safe, and holds offenders accountable.

Our goal of quantifiable results is also seen in our Advancing Justice Initiative. The Advancing Justice Initiative was begun to provide assurance that we do our business as efficiently as possible. In that regard, a court committee headed by Senior Judge Barry Wood has been analyzing Idaho's court system. That work includes contacts with Idaho Department of Correction, law enforcement, attorneys, judges, and clerks and analyzes each and every case type which is filed in Idaho. This analysis has helped to identify inefficiencies and to see what processes can be reformed to speed resolution of our citizens' problems. This is not an analysis that is aimed only at speed; it is also an analysis of quality. As a result of the data demands of this initiative, as well as the critical need to upgrade our statewide case management system that you have supported since the 1980's, Idaho's courts have adopted a new vision for court technology.

Our vision includes real-time data from every court in the state immediately available to every other court and to all individuals who require access to court information. This real-time data transfer allows enforcement of court orders for the protection of victims and communities. This

capability will extend to every courthouse in Idaho. We are now working diligently on getting that infrastructure in place.

We also envision an expanded statewide telepresence for litigants, attorneys, judges and the public. Our magistrate and district judges travelled over 309,000 miles last year to preside over hearings in courthouses across the state. By the use of advanced technology, mileage costs and travel time will be significantly reduced and attendant cost savings to law enforcement will be realized. Just as private enterprise relies on telepresence to conduct business in the new economy, we will embrace this new technology and look for the efficiencies it will provide. As part of our technology analysis, we are examining how better to collect those fines, fees and other obligations on a coordinated statewide basis. We know there will be significant efficiencies achieved if that can be done.

Our technology plans were started by an in-depth analysis and assessment of our existing systems by three of the nation's foremost experts on court technology. That assessment is available on our website for all of you to examine and read. Following that assessment, a committee was formed to chart dynamic and broad policy decisions for the coming years concerning our use of technology for Idaho's citizens. When I use the word "dynamic," it is actually an understatement. In the thirty-one years that I have been a judge in the Idaho court system, I can't remember a time when the Idaho courts have been as responsive to our citizens' needs and accountable for our performance. Efforts are underway which will affect Idaho's judiciary for decades. We anticipate coming to you next session with a more complete analysis of revenue options as our plans evolve for the electronic filing of all court papers. As we move to "paperless courthouses," we anticipate some of these improvements can be funded by court users, and significant savings realized by counties and courts.

As I reported last year, we have continued with our recruitment efforts to make sure that we are attracting the most qualified judges available. We now hold open discussion groups in those counties where district judges are being replaced concerning the benefits of starting a career in the judiciary and to answer any and all questions concerning that career and application process. During judicial council interviews, we have heard numerous times from applicants who were encouraged by this opportunity to step forward and consider applying for a district judge position.

Despite these and other efforts we have a significant problem in recruiting district judges. The Judicial Council can rarely send a full slate of four names to the governor for appointment. In our surveys, and interviews with bar members and judges, it has become apparent that the district judgeship is no longer a highly sought-after judicial position. The reasons are many -- the overwhelming workload that many district judges face in terms of numbers, as well as complexity; the prospect of contested election; as well as the inadequate compensation of that position.

You might ask why are potential applicants so concerned with the prospect of contested elections? The Legislature has wisely placed practice and age requirements on judicial candidates and applicants. The chosen attorney has built a clientele and other professional relationships that must be completely terminated to take a judicial position. If the judge loses a contested election, those clients are gone. The judge must start from scratch, replicating that

prior book of business. When you factor in the ethical constraints on a judge's conduct, fund raising, and time away from a full judicial caseload to run an election, you begin to understand the high stakes to a potential applicant and his or her family.

While we have a judiciary that is nationally recognized for its commitment to excellence, performance, and accountability, Idaho ranks 46th in compensation for its general jurisdiction judges. We have recognized for many years there is a need to improve the salary of district judges so we can attract highly qualified private attorneys to that position. We can do better. We will be presenting a comprehensive analysis this session of the need to recruit the most qualified district judges.

I reported last year that we were re-energizing our guardianship and conservatorship work in reaction to the "graying" of America. Did you know the numbers of Idahoans sixty and older grew by 44% - from 2000 to 2010? From 2010 to 2030 it is estimated to increase by 65%. There are now over 6200 active guardianship and conservatorship cases in Idaho, with over 300 million dollars in assets monitored last year by court personnel. This will only increase. I am pleased to report that the guardianship and conservatorship committee headed by Judge Chris Bieter of Ada County has made significant progress. Idaho courts were singled out as a voting delegate to attend the 3rd National Guardianship Summit. We have fixed our vision for Idaho on evidence-based solutions. We look forward to our work with the legislative and executive branches to re-examine all statutes and court rules to make sure that Idaho meets its responsibilities to its oftentimes most vulnerable citizens.

We are also requesting the legislature repeal the sunset provision of House Bill 687, which added an emergency surcharge to felony, misdemeanor and traffic infraction cases. The general fund will not permit you to fill a funding gap over 4 million dollars if the surcharge sunsets. Since you enacted it in 2010, the emergency surcharge has kept the courthouse doors open in each of your counties and provided for such beneficial programs as drug courts, mental health court, and family courts. The repeal of the sunset provision is vital to the judiciary's constitutional role to solve people's disputes and keep our communities safe.

Even with the surcharge, the Court was unable to fill four magistrate judge positions. We have now been able to fill two of those positions. We wish to thank the county officials for their patience and ability to manage with senior retired judges until we could refill those positions. We plan to fill the two remaining vacancies in September, 2013 and early 2014. Numerous court employee positions, however, remain vacant statewide and significant reductions have been made in all court operations.

It is bedrock function of government to properly fund a justice system. A justice system largely based upon user fees cannot continue to provide the requisite funds to protect our communities nor timely resolve our complex civil disputes. At some point the debt load of offenders will not be able to fund that justice system or the attendant agencies that rely on these fees for revenue. This is a recognition which is being debated in statehouses throughout the nation and an area we, as a state need to monitor.

The word "court costs" quite frankly is misleading. Did you know 152 cities share \$6.9 million in "court costs" yearly? The 44 counties disburse \$16.3 million in 23 different ways. State

entities receive a total of \$26.3 million; the general fund, \$5 million; and other state entities \$21.3 million. These are in addition to restitution to victims. This basket is about full and Idaho must proceed carefully when adding to the court cost or fee basket. We hope that a statewide analysis through the Criminal Justice Commission will help you in this regard.

So how can you and other interested citizens follow a branch of government that is so dynamic -- so bent on improvement? We promote openness and accountability through the expanded use of the Idaho judiciary's web-site. You can look at all Supreme Court and Court of Appeals opinions on line, the minute they are published. You can follow us on Twitter for Supreme Court and Court of Appeals hearing dates and locations. Since August, 2012, the Supreme Court's Boise oral arguments are streamed on Idaho Public Television's website. I have heard many legislators say they use the district court and magistrate division case information available on-line through our data repository, but we also acknowledge it needs to be modernized. Court assistance, self-help information and forms are available online as a partial answer to the large increase in the number of Idahoans who are proceeding in court without attorneys. Lastly, we invite all legislators to attend interviews in your home counties when the Judicial Council or your Magistrate Commissions interview new judicial candidates.

You can also find on the website all of the rules of the Idaho courts and any impending amendments to those rules. I would like to recognize Judges Russell Comstock and David Day for their vision for specialized rules of procedure for family courts. They and a court committee worked for three years on those rules and we thank them. Their idea came to fruition when their committee's rules became a one-year pilot project in Ada County.

In the near future, this legislature will consider, for the first time in many decades, an analysis of improving the public defense system in each of our counties. It is a basic tenet of our judicial system to be fair to those persons brought before the court, accused by the state of crimes which may take their liberty, their reputation, and their purse.

It can be argued that our statewide system of public defense for those citizens who cannot afford their own private attorney is not balanced throughout the state nor within the courtrooms of Idaho. The Governor's Criminal Justice Commission has made progress in identifying some of the areas that you will need to consider on a public policy basis. We leave it to your solemn analysis as to how Idaho can approach this problem in the near future. The Idaho judiciary supports the appointment of an interim legislative committee to review these issues and we pledge to support that committee with information upon which you can make these important decisions. This is not an issue of guilty persons going free, but of Idaho's citizens sharing in a criminal system that is fair to all concerned.

As a final note, none of this work can be done without the numerous county clerks, bailiffs, attorneys and others who provide the administration arm of the courts. This statewide collection of professionals is guided by Patti Tobias, the Administrative Director of the Courts. Many of you know her as a true professional and friend. Now she has been appropriately awarded the nation's highest award. This month she was given the Warren E. Burger award for excellence in court administration by the National Center for State Courts. A formal presentation is set for early February and you are all invited. Please join me in a round of applause for this remarkable Idahoan.

In closing, I hope I have given you a glimpse of a judiciary which is dynamic. A judiciary whose members are constantly striving to improve its competency and efficiency, to fulfill its duty as an independent third branch of this great State's government. I hope I have perked your interest so you can contact us for more information.

Thank you