

State of the Judiciary
Chief Justice Roger S. Burdick
Message to the Legislature
January 21, 2014

* 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.

2013 was a remarkable year for the Idaho's courts. As I prepared these remarks my biggest challenge was organizing succinctly the work of our judges, county clerks, court personnel, and our thirty-plus committees made up of citizens, lawyers, judges, and others with specialized expertise.

LEGISLATIVE INTERIM COMMITTEES

I start with congratulations to the Legislature, for wisely identifying two of the chronic problems that impact Idahoans and the judicial system. Thank you for the interim committee on public defender reform as well as the hard work undertaken by your criminal justice reinvestment interim committee in concert with the Council of State Governments Justice Center.

Earlier this year, it was my privilege to address the public defender reform interim committee. I shared insights not only on the demanding and complex work performed by public defenders, but more importantly showcased Idaho's early and strong commitment to criminal defense of indigents – a full forty years before the 1963 landmark United States Supreme Court case of *Gideon v. Wainwright*.

In *State v. Montroy*, 37 Idaho 684 (1923) Idaho emphatically said:

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.

It has been the law of this state for 90 years – yes 90 years – that every person is entitled to a fair and impartial trial with time to prepare their defense. The court must assign counsel at public expense for indigents.

This was not a case foisted on Idaho by federal mandate of the United States Supreme Court or Congress, but our own court interpreting our own constitution and statutes – statutes dating back to territorial days.

Idaho's public defender system today has significant deficiencies; it is a patchwork of offices and contracts paid for by our already cash starved counties. I congratulate the Public Defender

Interim Committee for recommending legislation that will provide a solid first step in meeting our constitutional requirements.

The appointment of a state Public Defense Commission with significant duties and responsibilities under your oversight will further this important work.

Eliminating single fixed fee contracts, providing training funds for defending attorneys, and authorizing the counties to establish public defender offices or contracts

that best meet the needs of their communities are positive developments. For the future, we must maintain our commitment to Idaho's constitution and history.

The Council of State Government Justice Reinvestment Initiative has been an exciting and illuminating experience. The analysis of Idaho's criminal justice system has identified many areas of strength and others that need work.

A few observations: I applaud the energy, cooperation and good faith of all three branches of government to contribute to this analysis. I especially want to thank our district judges for their candor, interest and insights in providing substance to the skeleton of data.

The final report provides an excellent road map to guide your budget and policy decisions; to keep our communities safe, use evidence based practices to reduce recidivism, and hold offenders accountable, yet provide them the tools to succeed. I have long advocated for community based alternatives, strong probation services, and necessary treatment. The combination of these policies keeps families together, persons on the job, and protects citizens.

2013 ACCOMPLISHMENTS

It seems like every year I have been before you, the Idaho Courts have been acknowledged nationally by awards to its members or to the judiciary as a whole. 2013 was no different.

Recently, Idaho was recognized nationally for expertise in our domestic violence courts. The Ada County domestic violence court was one of only three courts in the nation chosen for a new mentor court initiative. It will serve as a role model and disseminate proven strategies to other courts across the nation. In 2013, Domestic Violence Courts statewide assisted over 1100 victims in both criminal and civil cases and monitored over 1400 offenders; holding them accountable and keeping our communities and victims safe.

Many of these difficult cases involving victims of domestic violence require the assistance of legal counsel in related civil cases. I am pleased to report that the new director of Idaho Legal Aid has worked closely with the Supreme Court to develop a new and much needed proposal to provide legal representation to those victims as well as to abused and neglected children and senior citizens.

Secondly, the Foundation for Government Accountability ranked Idaho's child welfare system number one in the nation. They measured the cycle of abuse and neglect, how quickly children returned home safely, and whether children returned to a permanent family within twenty-four

months from removal from their home. This recognition is a result of focused efforts by the Idaho Courts, and other key child protection agencies over the last decade. These efforts pay big dividends now and in the future -- for children, families, schools, communities -- all of us benefit.

Family child protective proceedings are only one portion of the larger area of family court services. The magistrate division and Family Court Services offices responded to over 70,000 requests for information and services – a 41% increase since 2010. Our Court Assistance Offices responded to an additional 50,000 requests for forms and services, and family law continued to be the primary area of need. Our court assistance website received approximately 5.75 million hits in 2013.

I'd like to report on our problem solving courts. To date Idaho has 67 problem solving Courts addressing drug, alcohol and mental health issues for adults, veterans and minors. In 2013, almost 600 graduates joined the over 5,000 graduates who have successfully completed the rigorous requirements of problem solving courts since 1998. The majority were felony offenders, and if not for this criminal sentencing alternative, they would have been sentenced to the penitentiary or county jail. Today we proudly announce eighteen new babies born drug-free to drug court mothers this past year bringing the total to over 300.

ADVANCING JUSTICE FOR ALL IDAHOANS.

We continue to review our basic procedures in all court cases through our *Advancing Justice Initiative*. The goals of this effort have been to conduct a critical review of Idaho's time standards for case processing, to develop a state-wide case management plan, to assist with the development of case management plans for each judicial district. We continue to review all court rules and statutes to identify potential barriers to timely case processing.

Advancing Justice is not about speed for the sake of speed, nor does it take away an individual judge's discretion to allow further time in cases involving significant issues. We are not trying to pound square pegs into round holes. We are, however, addressing a much needed analysis of our case management time standard expectations in light of advances in other areas of the court system.

NEW TECHNOLOGY WILL PROVIDE GREATER EFFICIENCIES

A significant requirement of our *Advancing Justice Initiative* will be the implementation of our new technology solution. You have long supported statewide court technology and we thank you. Our existing twenty-five year old system is at "end-of-life" and we must plan to move to a new one. 2013 was a foundational year in which we prepared for the transformation of technology throughout our courts. This new technology strategy will improve access to court data, enhance integrations with the court's justice partners, and maximize the efficiency and effectiveness of our court business practices.

Our business plan will modernize the case management system for trial courts and appellate courts, helping both our efficiency as well as agencies and citizens who use our website and repository daily.

We will be transitioning to electronic filing of all court records as well as electronic storage of court records. Envision a paperless file that can immediately move seamlessly among the Idaho trial courts and to the appellate courts. We are also leveraging a statewide network infrastructure in partnership with other branches of Idaho government and we need to maximize the use of video conferencing as a goal of the business plan. This new technology will provide cost savings to taxpayers, optimize the use of court personnel at the state and county level, free up limited physical space from paper records in our county courthouses and storage facilities, and greatly improve the court's ability to serve justice throughout the state.

It is now time to come to you and the Governor for the funding of that business plan. It can be financed with a combination of multiple, one time general funds and increased technology court costs. We stand ready to provide all financial options.

THE "SILVER TSUNAMI"

The "silver tsunami" is another significant internal analysis of what we are doing and how we are doing it. I have reported for the last two years about our efforts to get ahead of the "graying" of America. Now others throughout the nation are analyzing this "silver tsunami" in terms of health care, social networks, and changes in all walks of life and levels of government concerning systems and infrastructure.

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 this past year. Once a guardian has been appointed the monitoring will often continue for years.

These cases must be actively managed and monitored by our courts. It is vital that we have mechanisms to insure monitoring on a qualitative and quantitative basis, that newly appointed guardians or conservators understand their responsibilities, and that we determine the future direction and statutes necessary to protect the citizens of Idaho.

This is not a small undertaking. Just on the financial side, in 2013, clerks of the courts submitted over 2400 annual reports for court review and those reports reflect almost \$375 million dollars of assets under the care of another person, an increase of 15 percent over the prior year.

The judiciary's commitment to our elderly Idahoans is commensurate to our dedicated efforts on behalf of Idaho's children.

JUDICIAL RECRUITMENT CHALLENGES PERSIST

Like the rest of America, the face of the judiciary is changing. In 2013, 5 district and magistrate judges retired. Sixty percent of district judges statewide and eight of the nine appellate judges will be eligible to retire within the next five years.

To meet this demographic inevitability, the Supreme Court and the Judicial Council have worked to encourage and streamline the recruitment of judges. The Judicial Council has instituted pre-interview panels of local district judges, human resource officers, the judicial council executive director, and others. These panels inform lawyers in a specific judicial district not only of

vacancies but also of the rewards and challenges of becoming a district judge. In 2013, I invited each legislator in a judicial district to attend the public interviews, so you could see exactly who the candidates are and the interview process. I have continued this practice in 2014 for the upcoming Ada and Nez Perce county vacancies.

Even with these improvements, we are facing a vexing problem in attracting the highest caliber applicants for each vacant position. Since 2000, there have been 43 district judges appointed. The Governor has only received a full slate of four candidates 30% of the time. In the State of the State address, Governor Otter touched on the needed ability to attract highly qualified Idahoans from the “cabinet to the courts.” Through state bar surveys, anecdotal exit interviews, and informal discussions with lawyers and judges throughout the state, the key barrier to recruiting and retaining the highest caliber district judges is salary.

Throughout this session we will be discussing with you judicial recruitment and retention challenges. Some advancement must be made. Idahoans deserve, and businesses demand, a highly competent, experienced judiciary. It is vitally important for the future of Idahoans in the decades to come that we act now as this demographic change is upon us. As a court, we have tried to be proactive and creative in encouraging recruitment of district judges. It is now up to the legislature to place a value on the individuals who will be making the state’s most important legal decisions. Judges are vitally important: they keep our communities safe, protect our children, families, and elderly, and insure businesses have an experienced bench to resolve complex cases. We can, and must act now.

In closing I would like to say none of this gets done without the dedication of our judges in Idaho. They take the bench and sacrifice associations, activities as well as they restrict financial opportunities to act within their Code of Conduct. This report scratches just the surface of their accomplishments and doesn’t hint at the sacrifices. I want to personally thank them for their exceptional service.

I thank you for your time and God Bless.