

State of the Judiciary  
Chief Justice Jim Jones, Idaho Supreme Court  
Message to the Legislature  
January 20, 2016

\* Mr. President, President Pro Tem Hill, distinguished members of the Idaho Senate, my colleagues on the Supreme Court and Court of Appeals, fellow Idahoans

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

It is a privilege and pleasure to appear before you today to report on the state of the Idaho judiciary.

I must admit to having a warm spot in my heart for this august body, because I served as legal counsel for the Idaho Legislature for 8 years in the 1980s. You were never, well let's say rarely, a difficult client. But, be that as it may, I can tell you that the Idaho judiciary is doing well and looking forward to continuing improvement in the future.

### Odyssey into the Future

One of the exciting developments since my good friend Roger Burdick addressed you last year, is the implementation of the Odyssey case management system. As you will recall, in 2014 the Court presented you with a comprehensive five-year business plan to replace the existing and outmoded ISTARs case management system with a state of the art system from Tyler Technologies. With legislative approval and funding, the Court has been working with Tyler on a pilot project to implement the system in Twin Falls County.

The system went live in Twin Falls on June 22. It was a massive undertaking because it not only required transition of the entire computerized management system, but also entailed a tremendous amount of extra work in scanning existing and incoming records. According to Tyler, the Twin Falls County pilot implementation was one of the smoothest in the company's history. Twin Falls County now has a modern 24/7 web-based case management system for use by judges, court clerks, and numerous governmental agencies, such as the adult misdemeanor probation office, the State Police, and juvenile corrections.

In addition, a portal was deployed with the system to replace the Supreme Court's data repository, which will allow users to make case, party and hearing searches, as well as electronic payments.

Starting on November 9, voluntary electronic filing was made available to all attorneys in Twin Falls County. That allows parties to submit electronic documents to the court at any time, from any place, resulting in significant efficiencies for attorneys, clerks and judges. Electronic filing was made mandatory for Twin Falls County on January 11 and it appears to be working very well.

Along with the transition to electronic filing, the courts will implement a service that simplifies the filing process for self-represented litigants. Idaho's Court Assistance Office has been

recognized nationally for its interactive forms and hands-on assistance to pro se litigants. The new service is being developed for pilot, and in conjunction with Odyssey, will guide the increasing number of self-represented individuals through the process of filing divorce, civil protection, small claims, child support and custody, and other common types of pro se cases.

The success of the Twin Falls pilot project was accomplished by a dedicated IT staff at the Supreme Court, led by Kevin Iwersen, as well as truly remarkable work by the Twin Falls County Clerk's office. This was all made possible by the action of this body in funding \$4.85 million in FY15 and \$2.18 million in FY16. This year, the Court is asking for an additional \$2 million, which will be the third of five one-time appropriations for Odyssey.

The other source of revenue you provided for the Odyssey transition was an increase of the court filing fees going into the technology fund. We are carefully monitoring the implementation and operational aspects of the project to make sure that the ongoing funding is adequate to meet the needs of the new system. That is because the FY15 revenue received by the technology fund from filing fees was 1.8% below projections and it appears projections will not be met in FY16.

The Court is preparing for the delivery of Odyssey to Ada County in the early summer of this year. Because of the lessons learned in Twin Falls County and the substantially greater scale and complexities involved with Ada County, deployment was extended by several months. Subsequent deployments throughout the rest of the State will greatly benefit from lessons learned in Twin Falls and Ada Counties.

### Problem-Solving Courts

Thanks to the support of the Legislature, Idaho's problem-solving courts are functioning well and have the capacity to expand. These courts are operated by magistrate and district judges, who dedicate after-hours service to assist defendants in addressing drug, alcohol, mental health, and domestic abuse issues. By treating the causes of these problems, research shows that we can reduce crime rates, and the attendant costs of recidivism on families and society.

I would like to share a typical problem-solving court intervention with you.

One graduate noted that she had entered Mental Health Court from jail several years ago. She said:

"I was a very bitter and angry person and set out to make everyone around me the same way. I was my own worst enemy. I was a hard case. . . . I hated everyone on the ACT team. They were all out to get me, all they wanted was to see me fail." She related that she eventually came around to an understanding that the various members of the team were actually concerned about her well-being and working to help her be successful. She said: "The most frightening thing was standing in front of the judge every week. . . . I never thought I would stand in front of a judge and know he actually cares about me and my well-being, know he is looking out for what is best for me as a person." She related how she completed the program, got back with her husband, kids and family, gained self-respect and got a good job that she enjoys. She said, "None of this would have been possible without each of the team member's dedication to my recovery."

An area of expanding coverage for problem-solving courts is providing help to veterans. There are now Veterans Treatment Courts in six of Idaho's seven judicial districts. With our all-volunteer military, many people do not realize the serious problems faced by some returning veterans. When I was attending a public meeting during my tenure as Attorney General, I was approached by a young man who looked like he had been through really tough times. He said he had seen me on television, saying something to the effect that I was proud to be a Vietnam veteran. He had served in Vietnam but it never occurred to him that it was anything to be proud of. He said that he never told people about having served in Vietnam because he was ashamed of it. He told me he finally understood that he should take pride in having served his country. It brought home the alienation and despair experienced by some of my fellow vets.

Returning veterans of each war have their own sets of experiences and problems. However, they generally involve drug or alcohol abuse, abuse of family members, suicidal thoughts or actions, and the like. Veterans Treatment Courts are addressing these issues and there has been an increasing need for those courts. They don't condone criminal conduct by veterans, but give them the guidance and support they need to get their lives back on track.

Problem-solving courts have made an impact. From 1998 through the end of FY15, problem-solving courts have graduated sixty-six hundred individuals. During that same timeframe, 344 drug-free babies were born to female participants.

### Senior Judge Funding

There is one thing that the Court would like to have addressed in the current session regarding drug court funding. The drug court fund is a dedicated fund that was established in 2003 as an ongoing source of funding for the problem-solving courts. During the height of the financial crisis several years ago, the judiciary participated in funding reductions, which included shifting some other court services to this fund to reduce the burden on the State budget. One such expense was the shift of \$865,000 for senior judge costs to the drug court fund.

Now that State finances have stabilized, it is prudent to transfer the funding responsibility for senior judges back out of the drug court fund, and we are asking that you do so. That will stop the drain on the fund for functions not related to drug and mental health courts and assure a stable source of revenue to operate the senior judge program.

During FY15, senior judges worked a total of 3,040 days, which is the equivalent of approximately 14 additional judgeships. Utilization of senior judges allows the court system to call on experienced and talented judges to fill in in areas where they are needed. This gives the Court flexibility and it saves the taxpayers a great deal of money. Senior judges are compensated only for the days that they actual serve and they receive 85% of the daily salary of an active judge. Continuation of the program with a sound funding base is essential to the administration of justice through the court system.

### Judicial Recruitment

In 2014, the Legislature increased judicial salaries, particularly for district judges. This was in response to a relatively small salary differential between magistrate judges and district judges and difficulty in recruiting candidates for district judge positions. Within the next five years,

more than half of our district judges will be eligible to retire. That will require a significant number of new judicial appointments, so we will need to continue aggressive recruitment efforts.

When a vacancy occurs in a district judgeship, the Idaho Judicial Council considers applications from those seeking the position and submits a list of 2 to 4 names of qualified candidates to the Governor for appointment. From 2000 to 2013, the Judicial Council acted on 43 vacancies, sending a list of 4 names to the Governor for 13 of the vacancies, 3 names for 19 vacancies, and 2 names for 11 vacancies. Those numbers indicated a rather lukewarm interest in district judgeships. Survey information disclosed that experienced lawyers were reluctant to apply for district judgeships because of the low salary and grueling workload. District judges are often required to work nights and weekends to keep up with their caseload and to perform additional functions such as operating problem-solving courts.

From July 1, 2014, the effective date of the salary increase, to January 7, 2016, the Judicial Council has acted on 6 district judgeships. That produced 4 names for 3 vacancies and 3 names for the other 3. As Chief Justice, I participated in the last 2 interview sessions and I can tell you that we had a number of good candidates for both. In fact, there were more qualified candidates than we could submit to the Governor for a vacancy in Canyon County. I can't say that this increased interest in district judge positions can be attributed entirely to the salary increase, but I do believe it played a large part.

In appreciation of the 2014 salary adjustment, the Court did not request a change in compensation last year. This year, we have included a 1% salary increase placeholder in our budget for calculation purposes, and are requesting an increase commensurate with the percentage level of CEC other state employees receive, both for judges and court personnel.

### Public Defense Reform

In 2013 the Legislature began consideration of means to fulfill the State's responsibility to provide an adequate defense for indigent persons accused of crime. As Justice Burdick noted in his address to this Chamber last year, the Idaho Supreme Court ruled in 1923 that indigent defendants in Idaho are entitled to adequate counsel to defend them from criminal charges at public expense.

You have established a Public Defense Reform Interim Committee to consider means to fulfill this responsibility, as well as providing for a Public Defense Commission. Both the Interim Committee and the Commission have devoted efforts to arriving at an appropriate answer to this serious problem.

The design of the system and the means for funding it are within the discretion of the Legislature. I was pleased last week to hear Governor Otter propose that the State commit significant financial resources to providing an appropriate answer. The Court stands ready to assist in any reasonable manner. We do not want to appear to be advocating how public defenders should be selected and managed, since they are persons who necessarily appear before the courts on a frequent basis. Therefore, the Court's role must be advisory in nature.

And, I can provide some advice based on my experience as Attorney General in the 1980s. Then, as now, the Attorney General's office handled virtually all criminal appeals for the State. Unlike

now, when virtually all appeals by indigent criminal defendants are handled by the State Appellate Public Defender, in the 1980s such appeals were handled by contracted county public defenders or in some areas by private attorneys appointed by the judiciary. I can tell you it was less than ideal. Some defendants received an adequate defense at trial, and on appeal, while others clearly did not. The Appellate Public Defender has remedied the problem at the appellate level, but the problems still exist in places at the trial court level. Consequently, a number of cases come before the appellate courts where errors have occurred in the trial court, issues were missed, the defense was inadequate, and deficiencies must be remedied by sending cases back for further proceedings. This is an unnecessary drain on the criminal justice system. In order to ensure uniformity and a consistent level of competence at the trial court level, it appears to me that a regional or statewide approach is prudent. The appellate defender system works well in that regard and it should be considered as a model at the trial court level. However, this is a matter within the purview of the Legislature and I wish you well in providing an appropriate response.

### Guardianship and Conservator

The Idaho Courts continue to make strides in enhancing protections for some of Idaho's most vulnerable—those under court-ordered guardianship or conservatorship. These are cases in which the court grants an individual or entity the authority and obligation to make personal or financial decisions for a minor child or incapacitated adult. In FY15, more than 2,600 financial reports, reflecting over \$367 million in assets under the care of a conservator, were reviewed for signs of fraud or mismanagement. In addition, this past year the judiciary launched a pilot guardianship monitoring program to develop effective practices for court monitoring of guardianship cases. These efforts have already resulted in a 20% increase in the number of annual guardianship reports filed with the courts in participating districts, greatly improving the courts' ability to monitor and protect minor children and incapacitated adults.

### Statewide Language Access

The Idaho Constitution and other laws require that courts be open and accessible to every person. As part of this obligation, Idaho courts have to provide language access services for non-English speakers. Additionally, the state, and local governments, must communicate effectively with people who have communication disabilities.

In order to comply with the law, the Court is seeking funding for a state-wide language access manager to provide language access services to all Idaho courts. The Court is also asking for funding to supplement certified court interpreter services in the Third and Fourth Districts, as well as funding for video remote interpreting services to provide interpretation by laptop computer, thereby avoiding the cost of having to have interpreters appear in person in court proceedings.

### Thanks for Your Support

The court system in Idaho has provided remarkable service to Idaho citizens in the past and is looking forward to continually improving those services into the future. That has been made possible by the help we have received from the Legislature and I would particularly like to thank

Senator Patti Anne Lodge and Representative Rich Wills, and their committees, for their dedicated help. I also extend great thanks to interim Administrative Director of the Courts, senior Justice Linda Copple Trout, and her deputy director, senior judge Barry Wood, for their tireless efforts. I should tell you that the Court is in the process of commencing a nation-wide search for a replacement for Justice Trout, as we have no intention of confining her to involuntary servitude long into the future, although we appreciate the fine work she has been doing for the courts. Thanks to all of you for maintaining a good and mutually beneficial relationship with your court system.