

State of the Judiciary
Chief Justice Roger S. Burdick, Idaho Supreme Court
Message to the Legislature
January 18, 2017

* 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.

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To start, I want to personally thank you for this opportunity to come here and present the State of the Judiciary address. I know your time is precious. As I have talked to Chief Justices from throughout the United States, most are amazed Idaho has this tradition. It is just another example to our citizens and the nation that Idaho has respect for the concept of three co-equal branches of government working together for the long range best interests of its citizens.

First, a welcome to Idaho's newest members of the Idaho Legislature. Idaho's court system welcomes the fourteen new Representatives and four new Senators to the "people's house." We are sorry to say goodbye to old friends we have worked with throughout the years, but new faces with new ideas help keep our government in touch with our citizens. You will find the Court's Administrative office very helpful with timely responses to all of your questions at any time. Please don't be bashful, hear it from us.

Also, I would like to introduce the Court's newest member, Robyn Brody. Justice Brody will bring a fresh perspective from nineteen years of private practice in the Magic Valley. She comes to the bench after two very tough election campaigns, first in the primary and then in the general election. I like her phrase that she had a small town practice with big-city problems. She has been very busy in acquiring a Boise residence, working on logistics with the Court, enrolling her boys in school, and preparing for January's arguments.

The theme for the State of the Judiciary over the past year seems to have been "steady as she goes." Over the last five years the State and its judiciary have seen major legislative, administrative and demographic changes which the Court faced during a time when our Administrative leadership was in flux.

The retirement of Patti Tobias led to a remarkable transition team of Retired Chief Justice Linda Cople Trout and Senior Judge Barry Wood. After a nationwide multi-year search, the Supreme Court hired a known Idaho leader – Sara Thomas – as our new Administrative Director. She is known to many of you as a result of her service as chair of the Governor's Idaho Criminal Justice Commission as well as the Director of the State Appellate Public Defenders Office. She fills a position in which the last two permanent Administrative Directors were awarded the Warren E. Berger Award, uniformly known as the nation's highest, most prestigious award for court administration. Sara has not disappointed, as she has shown great energy, knowledge, and a willingness to listen and learn from all court participants and judges.

Our next major initiative, iCourt, continues. This is a transformative technology system aimed at enhancing and replacing our old “end of life” system, ISTARs. There have been significant challenges

as we have had to implement this new web-based system while running our existing ISTARs system.

To meet these challenges we have had to “surge” personnel to ensure our counties and information partners are properly supported. To date we have gone live in our pilot county of Twin Falls and more recently Ada County. E-filing has also been made mandatory in those two counties. iCourt has scheduled other rollouts culminating in 2019. It is a massive project which must succeed and we, with your help, are committed to doing so.

Another major force in Idaho’s judiciary for 2016 was the continued work on the Justice Reinvestment Initiative. It was a significant over-hauling of Idaho’s approach to dealing with criminal defendants and their cases. The root reasons for that change still exist both nationally and in Idaho and, therefore, we need to continue these reforms. Idaho’s judges continue to work with the Idaho Department of Correction to institute both the letter and spirit of this enlightened legislation. The Department of Correction has worked tirelessly to change and to hold that change up for the world to see. They have lost a tremendous leader in Kevin Kempf, but the Board of Correction chose wisely in picking Henry Atencio to continue the Department’s improvements. Again, after the legislative changes, the important concept is REINVESTMENT! Reinvestment this year is embodied in the Department’s request for twenty-four new probation officers. Idaho’s judges support better community supervision by highly trained probation officers committed to the success of their clients. One word of caution – there is no business, corporation, or large organization that manages by exception. They plan the best they can for eventualities and problems, as well as success. They realize reaction to a small number of exceptions interferes with eventual success and weakens evidence-based practices and policies.

Throughout the years myself and other Chief Justices have touched on the many national awards and honors bestowed on the Idaho courts. As we focus on a systemic approach to excellence, we thank the Idaho Legislature for funding of our Judicial Performance programs. This program planning started in 2014 with a federal grant which paid national consultants to work with a large number of Idaho judges in formulating a new program outline, as well as new surveys to obtain information on how an individual judge is professionally perceived. Last year you funded the program to institute the new program and survey. The program started January 1 of this year. We hope to have three to five judges evaluated each month by the survey tool. The emphasis will then be to identify areas of education for the individual judges, as well as educational needs for all of Idaho’s judges.

The “silver tsunami” I spoke of in the 2014 State of the Judiciary continues throughout Idaho and the nation. Because of your support, we have been aggressively reviewing Idaho’s statutes and practices to better deal with the increase of guardianship and conservatorships that will be needed. As a large portion of Idahoans age this will be an area of further statutory and resource analysis. Statutorily mandated reports on these have steadily increased. It is now apparent from 2,752 annual financial reports that approximately \$336 million dollars are under the care of third-parties. The CPA’s in our Administrative office have reviewed these reports and are

requesting 295 further investigations to make sure mismanagement is not taking place. Our pilot projects for the district coordinators in the Third and Fifth District have shown that additional local scrutiny of these conservatorships is needed. To meet some of these challenges, Idaho Legal Aid Services are helping lawyers in the Third and Fifth Districts and in Kootenai County to monitor care of the wards and their assets.

The Judiciary continues to address the numerous facets and challenges of timely case resolution. With Idaho's tremendous growth, the judiciary has responded with parsimonious requests for new judicial positions, but also with our senior judge program. These measures have, for the most part, filled Idaho's needs, but population pressure continues to build not only for judges and support staff but also courtrooms and buildings.

Chief among these challenges is that Idaho's population continues to condense around Ada, Canyon, Kootenai, Bonneville, Bannock and Twin Falls counties. In 1969 Idaho enacted a policy of at least one magistrate judge in each county. Under the current statutory scheme, and to match the resources to caseloads, this necessarily translates to the Court requiring a relatively small number of magistrate judges to travel a great deal at a significant cost in both dollars and lost time; for instance, some judges have spent more than 100 nights per year away from their home stations. As an anecdotal example of this, Bonneville County has only 30% of the judges in the Seventh Judicial District, but has 70% of the caseload. Traveling judges balance this caseload.

The Court thinks it is time to bring this issue to the attention of the Idaho Legislature and ask you to either reaffirm this policy which will require the Court to continue to ask for additional new judgeships and attendant travel costs, or allow the Court to relocate some of these positions under very limited circumstances. We welcome a dialogue with you on this subject. While Idaho continues to be one of America's fastest growing states, our judiciary continues to face demographic change by retirement. Since 2014, 28 district and magistrate judges have retired, as well as our good friend and jurist, Justice Jim Jones.

For those of you who have observed our courts or even participated in your own cases, you know just how important recruitment of the best and brightest for judgeships is to Idaho's citizens. Not only must one attract these candidates with salary and benefits, but the need to educate new members becomes increasingly important. This need is filled by our education committee and primarily done at our judicial conferences. These educational opportunities are very important for training and mentoring of our newest members.

A continuing issue for the courts in Idaho and the nation is the proper mix of funding for courts. Historically Idaho courts have been made to rely heavily on court costs, fines, and fees to run some of its programs. Present day trends nationally and in Idaho have seen a steady decline of civil court filings.

In order to address this downturn in civil cases, Idaho's judiciary has previously reviewed every case for inefficiencies or bottlenecks in its Advancing Justice Program. This work continues with the addition of the Civil Justice Reform initiative focused on ensuring access to justice for all Idahoans.

Additionally, we have completely revamped our accounting system for enhanced analytical capability, transparency and accountability, not only in the Supreme Court, but in each judicial district in the state. Consistent with this new emphasis on financial upgrades, we have recently hired a new Chief Financial Officer, Michelle Crist-Aguiar. She comes from the private sector with significant auditing experience.

A new long-running national survey by the National Center for State Courts shows only six percent of respondents gave the right answer to the question “If you had to guess, what percent of the state budget do you believe is spent on the State Court System?” The national average is less than 3%, and Idaho’s is 1.3% of the state budget. At some point a discussion on funding sources needs to be reviewed in light of the courts present day mission and activities.

In conclusion, you as legislators can be proud of an Idaho Judiciary that is by any measurement among the nation’s best. As I’ve indicated, we are working very hard to complete needed tasks to remain that way. We look forward to continued support from the Governor and yourselves to help us manage these tasks. We thank you.