

State of the Judiciary
Chief Justice Roger S. Burdick, Idaho Supreme Court
Message to the Legislature
January 24, 2018

* 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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Thank you for inviting me to report on the state of the Idaho judiciary. It is an honor to be invited into this historic chamber to do so.

I would like to start by thanking you for the support you have shown the judiciary over the last year. The Idaho courts remain dedicated to the core constitutional mission of providing Idahoans access to fair processes with timely and impartial resolution of cases. With your commitment and support, the judiciary was able to achieve many of its goals to those ends.

Since I spoke to you last, your willingness to provide resources in support of those Idahoans under guardianship and conservatorship protections is providing concrete results. The Census Bureau estimates indicate that the number of Idaho residents over the age of 65 grew by 30% from 2010 to 2016. This aging of Idaho's population is reflected in the increase in the number of guardianship and conservatorship petitions filed in Idaho courts with an increase in petitions of 6% from fiscal year 2016 to 2017 alone.

Your Idaho judiciary has been preparing for this trend by strengthening protections for vulnerable populations. Guardians and conservators are required to submit annual reports to Idaho's courts on the status of wards and the actions taken throughout the year. Last year you supported the courts' efforts to develop an effective, state-wide program to ensure both that these reports are filed and that they are meaningfully reviewed. We now have a dedicated Guardianship and Conservatorship Monitor in every judicial district in Idaho. These monitors act as a point of contact for parties and members of the public to answer questions for Idahoans navigating the legal system, provide a professional review of the reports, identify cases in which reports have not been filed, and follow up on any concerns. With your on-going help, the Idaho courts will continue to support the well-being, safety, and proper asset management for Idaho's most vulnerable people.

Perhaps the largest initiative the Idaho courts have undertaken this year is the continued work towards statewide implementation of iCourt and the Odyssey system throughout the state. As we enter the fifth year of the implementation, I thank you for your continued commitment to this project. In 2017 the Court restructured the timing of parts of the project delaying the go-live efforts in some counties. This gave us time to consider lessons learned in prior implementations, to address on-going impacts on Twin Falls and Ada counties, and to refine our strategies for the efforts of taking multiple counties on-line. In the end, we improved the systems in place in live counties and still brought an additional 12 counties online. We now have Odyssey operating in all of the Fourth Judicial District, all of the Fifth Judicial district, as well as Owyhee and Canyon

counties. Preparations are now taking place to bring the final thirty counties onto Odyssey in 2018. This has not been an easy transition, yet I am happy to report that with each go-live event the implementation has been smoother, fewer issues have arisen, and where issues have come up we have been able to address them efficiently and effectively.

I would be remiss if I reported on the iCourt project, but did not recognize the importance of our counties and district court personnel in doing so. The Idaho courts always work in partnership with the counties to plan, fund, maintain, and run our state court system. Just as the state has committed resources necessary for the implementation of iCourt, so too have our counties. They have answered the need for personnel who work tirelessly on preparations such as configuration of each county's system, conversion of existing files and data, and the necessary training of court personnel. I'm going to tell you about just two of Idaho's county clerks. They represent hundreds of the dedicated county clerks who work hand-in-hand/side-by-side with our judges every day. Ms. Raena Bull is an outstanding member of Canyon County's district court personnel and is here with us today. Ms. Bull has been involved with the iCourt project from the beginning. She has capably served on the Court Technology Committee since its inception in 2014. She consistently provides important insight into the needs of clerks who will use the system daily. In addition, Ms. Bull led the implementation of Odyssey in Canyon County, one of the busiest county courts in our state. For over a year, Ms. Bull organized every step of the transition from the scanning of paper files, to review of data, to training for court personnel and judges. She even went above and beyond by overseeing the creation of a training lab in the county so that her coworkers could get hands on experience to prepare for the change. Ms. Bull showed leadership and creativity in her work and in the end she ensured that Canyon County was successful in its transition. For all of this hard work would you please stand so we can thank you!

Remarkably, Idaho's counties have also volunteered to support each other in this transition. We have learned one of the most important resources district court personnel have is each other. Twin Falls County clerks selflessly came to the courthouse and helped the Ada County clerks learn and navigate the system in those early and critical days. Court clerks with expertise and an understanding of how Odyssey works is an invaluable asset. This is a process of paying it forward. Clerks who have worked in the system reached out to new counties and helped support fellow clerks continued in October when twelve additional counties went live. Deputy court clerks from both Twin Falls and Ada counties went to these courthouses in the first wave of multiple counties around the state and helped manage a fundamental change to how the courts do business. This level of support was not expected or anticipated, but it is truly, truly appreciated. One of the Ada County deputy court clerks who has played an integral role in supporting her fellow clerks is here with us today, Ms. Margaret Molchan. Ms. Molchan has been a knowledgeable voice when others have had questions, she has provided honest and important feedback to improve the system and business process for all of the state, and she has worked exceptionally hard to help ensure that this project is successful for all courts of our state. I would ask her to stand so we can thank her.

However, as Odyssey goes live in our counties, the courts are also identifying difficult issues and local practices which must change to comport with the laws of the State of Idaho. Prior legislatures have determined that a person convicted of a crime is responsible for paying restitution to crime victims, as well as certain fines and fees. The fines and fees are used, in turn, to fund various programs throughout the state. Almost 100% of offenders are not able to pay the

total amount owed in a single payment. Rather, offenders enter into payment agreements with the courts and make monthly payments on their obligations. The courts are then responsible for distributing those payments to the various entities owed. I touched on this issue in the 2013 State of the Judiciary address.

The authority to impose and collect the fines and fees appears throughout the Idaho Code, but there is no clear statement regarding how partial payments should be distributed. Although five code sections indicate some level of priority for particular charges, the priority for most of the other 23 possible charges is not set by statute. Rather, for those charges without a set priority, the Supreme Court has had to use its discretion to determine how the remaining distributions would be prioritized.

The lack of clarity for distribution of partial payments has played out in various ways in Idaho's courts. As a result, counties have utilized inconsistent practices in distributing these funds, including bypassing the priority of payments entirely for some moneys collected. However, as counties implement Odyssey, the system distributes payments in a consistent way and in conformance with the priorities established by the legislature and the Court. Although this consistency is long overdue, it has not been a seamless transition. As a result, some counties are experiencing a temporary but distinct decline in funding for critical public safety services. Most apparent is a precipitous decline in funding for misdemeanor probation supervision services and county problem solving court funds.

County misdemeanor probation programs and problem solving courts each provide critical services to the people of Idaho. These programs ensure accountability and support for offenders including adherence to counseling, drug and alcohol testing, and financial obligation requirements. It is through the work of these programs that offenders are supervised and, hopefully, rehabilitated, all to the end of achieving a safer Idaho. Plainly stated, this is a public safety issue.

Idaho's courts depend daily upon the services provided by misdemeanor probation and problem solving courts. The charges assessed to offenders that pay for these programs have not been assigned a priority by the Idaho legislature. The Courts recognize that because these fees are set by the Idaho legislature, these are policy questions for the Idaho legislature. Therefore, this session the courts are asking the legislature to provide clear guidance on the appropriate priorities for the distribution of payments. We will be introducing legislation that would have all financial obligations collected by the courts listed in a single statute, by priority of distribution, to which judges, clerks, legislators and most important -- citizens can easily refer. In addition, this legislation seeks to ensure the viability of critical supervision programs by ensuring they are given sufficient priority to sustain the current systems. I ask that you consider this legislation carefully as well as the importance of adequately funding these critical programs.

As I have stated before, Odyssey is the most transformational project since court reorganization in the 1970s. The changes made will affect us for decades to come. Obviously, there is more work to do.

The court system in Idaho, with the support of our counties, continues to provide remarkable service to Idahoans. This has been made possible by the help we have received from the

legislature and Governor, and we are grateful to you. We are also committed to improving those services into the future and ask for your help in making that possible. This is never possible without a civil and mutually beneficial relationship with your court system.

Speaking of transformation, as I have previously noted in the State of the Judiciary speeches in 2013, 14 and 15, Idaho's demographic of the judiciary is remaking its face in a very short time. It reached its zenith in 2017. We obviously have a new Administrative Director. We have two new Supreme Court justices; I last year introduced Justice Robyn Brody, but would now like to introduce our newest Supreme Court Justice, Richard Bevan. Also seated in the gallery is Judge Jessica Lorello, our newest Court of Appeals judge. Could you both please stand. As you know, Justice Warren Jones retired in December and we wish him nothing but the best in his retirement. Interviews for his position have been scheduled for March 12 and 13 of this year.

This transformation is also taking place in our trial courts. Nine district judges and eight magistrate judges retired or will retire in 2016-17 or the near future. Recently we received very sad news that Magistrate Judge William Harrigfeld and District Judge Randy Stoker of Twin Falls passed away during their tenure on the bench.

As concerns the transformation with district judges and appellate judges, I would like to take a personal point of privilege to thank Governor Otter for his thoughtful and serious approach to appointing the most qualified appellate and district judges. In my 37 years of being a judge in Idaho, I can applaud Governors Andrus, Batt, Evans and Kempthorne and now Otter for taking very seriously the issue of appointment of the best and brightest lawyers as judges to the district courts and appellate courts. Governor Otter must be proud of his legacy in appointing 41 district judges, 3 Supreme Court justices, and 4 Court of Appeals judges during his 12 years as Governor. Thank you, Governor Otter for your thoughtful consideration in these endeavors.

In addition, the Court looks with trepidation to the future concerning the impact of the fiscal changes in the federal government as well as continued financial pressures on our cities and counties. These pressures will be exacerbated by Idaho's extraordinary growth in the last few years. We welcome our new Idaho citizens, but we must realize there will be impacts on our cities, counties, state agencies and the judiciary which must be faced. As I travel throughout the state, prosecutors, public defenders and judges have talked about near crippling increases in criminal cases -- some fueled by drug involvement, but not all. Most comment on the increase in violence also. We as a judiciary will keep you apprised of this change in the future and hope you continue to value a strong judiciary for public safety and timely resolution of all cases.

As our population increases our future will become more complex as a result of those increases and unforeseen developments. With this change, we look to our Constitution -- the bedrock of our State.

Article 1, section 18 provides: "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."

Another impact of the increased population that is sure to come is a challenge of access to the courts for all Idahoans and especially moderate and low income families. In addition to the

Court's attempts to meet this challenge through our nationally recognized court assistance offices, our guardian monitors, and the Civil Justice Reform initiative, Idaho Legal Aid has been very helpful in making sure low income citizens are represented in a very few limited areas. However, because of funding and federal government restrictions, this is not your father's legal aid. I would like to ask the opponents of any state funding for Idaho Legal Aid to start a thoughtful dialogue with the organization. Learn about their mission and minimal request. Idaho is only one of three states in the nation who give no support to this entity.

Lastly, I would like to address what we are seeing with Idaho's courthouses. In some places, our state courthouses are barely, if at all, meeting the needs of the counties, the judiciary, and other entities which share them. Access to justice, in its most basic form, means physical access to our courts. In some courthouses, in the absence of even a simple elevator, witnesses with physical challenges must be carried up stairs by bailiffs or judges, just to be able to testify. In addition, high population increases certainly mean new needs for judges, but we don't even have room to house them.

It is cavalier to say if the citizens want adequate facilities they will vote for them. Our state has one of the most restrictive constitutional provision regarding new public buildings. Our counties can't afford the large outlay for courthouses. There are severe restrictions on county budgets, especially in light of more explosive growth.

In view of our concerns, the Court has previously engaged an expert from the National Center for State Courts to talk to counties about the unique architectural requirements of courthouses. Last year the Court hired an expert in disability access issues, who has provided regional trainings for county leaders and counseled those counties that sought his expertise. This year we are seeking additional funding to support additional work with Idaho's counties that wish to ensure physical access for their citizens.

In light of what we have learned, in 2018, I hope to gather interested parties from state and local government, Building Fund personnel, entrepreneurs, and other experts in the field to review county needs for the judiciary and start a conversation on how can we tackle the looming courthouse issues. We will keep this body informed of our progress on these issues in the future.

In summary, the State of the Judiciary is in large part a function of the cooperation of the Legislative and Executive branches, as well as our county partners. Although an independent co-equal branch of government, we rise or fall based upon cooperation. We hope that cooperation continues so I can report a robust judiciary in 2019.