

State of the Judiciary
Chief Justice G. Richard Bevan, Idaho Supreme Court
Message to the Legislature
January 27, 2021

* Madam President, Mr. President Pro Tem, Mr. Speaker and distinguished members of the Idaho Senate and the House of Representatives, my colleagues on the Supreme Court and Court of Appeals, and fellow Idahoans.

Thank you for the opportunity to speak with you today about the state of the Idaho judiciary. I come to you from the courtroom in the Idaho Supreme Court building. In that sense this is an historic moment. This is the first time this speech has been given from any venue other than in our remarkable capitol building, where we certainly hope to be back with you in 2022. Even so, it is fitting that a conversation on the state of the judiciary emanate from this place this year.

This building was dedicated in 1970. In the intervening 50 years, this courtroom has been the venue of many historical events. From the traditional hearing of thousands of cases, to formal ceremonies as we welcome new attorneys to the practice of law in Idaho, to the place where new Justices of the Supreme Court take their oath to uphold the Idaho and United States Constitutions.

In adopting the Idaho constitution, the people of the state of Idaho have created three co- equal branches of government, but they tasked us with a common interest - securing the blessings of freedom and promoting the common welfare of the people. Your continued interest in hearing from the third branch of government each session, and your support for our efforts to fulfill the responsibilities placed upon the judiciary by the Constitution and the people of Idaho, is very much appreciated.

I would like to begin by taking a moment to reflect on the longstanding dedication to, and stewardship of, the Idaho judiciary by my predecessor Justice Roger Burdick. Those who have had the honor to meet him know he is an approachable, jovial person who can find the humor in nearly any situation. Those of us blessed with the opportunity to work with him also know the seriousness with which he has devoted his career to the betterment of our state and our judiciary.

In November 1981, Justice Burdick took the bench for the first time as a magistrate judge. Through the 39 years since, he has not only been a judge or justice in a courtroom, but also a leader among his peers. He was the first magistrate judge to serve on the Idaho Judicial Council and was President of the Idaho Magistrate Judges Association. In 1993, he was appointed as a District Judge in Twin Falls, and in 2001 undertook the additional and significant responsibility of presiding over the Snake River Basin Adjudication. Justice Burdick continued leading the judiciary, becoming President of the District Judge's Association and again serving as a member of the Idaho Judicial Council. In 2003, Judge Burdick became Justice Burdick when he was appointed as the fifty-first justice of the Idaho Supreme Court. During his tenure on the Court, his colleagues have twice elected him to the position of Chief Justice.

I wanted to take this opportunity to offer a public thank you to Justice Burdick, from myself, my colleagues on the Court, and all of our court and administrative staff. Justice, your tireless

dedication, and continuous leadership have strengthened and improved the Idaho judiciary. The rule of law has been protected and enhanced by your service. As I reflect today on some of the successes of the Idaho judiciary, we recognize that your leadership over the last 39 years was essential to those achievements. We are all very grateful.

With all of that, I believe it becomes clear how much I have to live up to as the person elected by my fellow Justices to now become the 43rd Chief Justice of the State of Idaho.

As I begin my service as Chief Justice, I recognize that some of you know me well, while others of you do not know me at all. In the few minutes I have to speak with you today I hope that you leave knowing a little more about me personally and about my vision for Idaho's courts.

I was born and raised in Twin Falls. After obtaining a bachelor's degree in finance, I went to law school, not with any grand aspirations of becoming a judge, or even a trial lawyer. I went to get a graduate degree that I could use simply to augment my undergraduate degree. But fate had other plans. I began to study criminal law, civil procedure, and other core legal classes and I had an epiphany of sorts, realizing that I loved the law, and that I wanted to make my way of life in the trial courts.

Upon graduation I returned to my home town, taking a job with the largest firm in Twin Falls. I spent most of my first four years as a lawyer in the basement researching and writing briefs. My desire to be a trial lawyer did not appear likely in that setting, so I left that firm and went to work in 1991 with a small firm that had a contract with the cities of Kimberly and Hansen to prosecute misdemeanors and do their civil work. The chance to get into the courtroom appealed to me and I was in the courtroom the first week.

I still remember my first jury trial that came a few weeks later. It was a misdemeanor case, alleging cruelty to animals, based on a little dog that was left tied-up with bailing twine around its neck for so long that its flesh grew around the twine. I lost the case, because as some jurors told me later, it was just a dog and the defendant's freedom was on the line. Even so, I learned some things in that so-called simple case. As the verdict was read, the defendant was crying, and a juror was crying. That day taught me what I had never really grasped about the law in all my education, researching and writing for 4 years in the basement – that is that the law really affects people. And the law is personal for individuals who have involvement with the justice system, whether as defendants, plaintiffs, jurors, or witnesses.

My history with the law after that, both as an elected prosecutor and as a private attorney, reinforced my view that the judicial system and individuals' interactions with the courts can be profound – and the law can truly make a difference in people's lives.

Fast forward to 2003. I once again felt the draw to the courtroom, but this time as a decider, an arbiter and hopefully an impartial judge for all kinds of cases. I served for more than 14 years as a district judge – vicariously experiencing a lot of highs and lows in people's lives from that side of the courtroom. Once again, I saw the law as the means to bring some order to the chaos that otherwise prevailed in some people's lives. I again managed to participate in trying to make a difference – especially as I presided in the mental health and veterans' courts. I saw people change; I saw moms get their kids back; I saw individuals on the brink of death realize the

potential of their lives and make the necessary changes to receive the promised blessings of life, liberty and the pursuit of happiness. All of this brought to light again my belief and my vision that the law as applied in the lives of our citizens can truly make a difference.

And so now, as Chief Justice, I continue to hold that vision of the importance of the judicial branch and the courts in the lives of many – and of our ability to make a real difference through our service. I serve with incredibly capable people, and it is our goal, to serve the cause of justice and to continue to make a difference with the work that we do every day.

Thus, it is my vision and hope that in coming years we will continue to see our citizens' ability to access the courts increase. I also am optimistic that the transparency of what we do can be enhanced through better access to data and evaluations of that data so we know how and where to improve.

I also hope to enhance the public's understanding of what the courts do. Several friends or acquaintances who are otherwise well informed have no idea who the judges in their community are – and they largely have no idea what we do. Where the blame for this might lie is debatable – but I have a vision of the court system – that judges, lawyers and the Bar play a greater role in educating our citizens about the rule of law and about the third branch of government.

What's more, as you can well imagine, my appreciation for the role of treatment courts motivates me to see that those courts continue to grow and prosper. I recognize that this takes resources, both at the county and state levels, and the goodwill of volunteer judges to preside over these important courts. But I hope that we will not retreat from the progress Idaho has made, thus maintaining the place we hold in the United States as a benchmark for other states to follow in this important work.

The people of the State of Idaho, through our state constitution, have placed great expectations and responsibilities on the Idaho judiciary. Article V, section 2 provides that “[t]he courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court.” Section 6 further holds, “The chief justice shall be the executive head of the judicial system.” All this to what end? So that, as the people required in art. I, sec. 18, and I quote, “Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, [that] right and justice shall be administered without sale, denial, delay, or prejudice.” The Idaho courts provide services essential to a thriving Idaho. The wellbeing of our state comes, in part, from the dependable and predictable application of the law. Through the rule of law the courts enable the settlement of disputes, not with violence or by chance, but by addressing grievances with debate, advocacy, reason, and yes – even compromise.

Right now, we are living in an extraordinary time and fulfilling the constitutional responsibilities placed upon the judiciary can be difficult, but I am proud to tell you that with your support, the Idaho judiciary is rising to the challenge. The novel coronavirus has changed the way many of Idaho's people live and the way we work. Whether going to the grocery store or going to court, many have had a different experience in 2020. However, as providence would have it, your investment in the Idaho Supreme Court's recent efforts to upgrade and modernize Idaho's court system and other technology helped ensure that even when the physical doors of the courthouses

could not remain open for all to freely enter, the courts themselves remained open to any person filing a claim and seeking a remedy.

I need to take a moment here to acknowledge and thank Idaho's steadfast court clerks. Their investment of time and talent in managing cases and running the technology ensured the courts continued to accept filings, process cases, and hold hearings throughout the challenges of 2020. Despite some reduction in court operations at different times, emergency filings could always be made and processed in every county. Idaho's court clerks worked together to ensure that even when one county's courthouse could not be staffed, and even if it required a neighboring county's clerk to drive to another courthouse and collect documents, each of Idaho's courts remained open to anyone wishing to make or defend a claim.

I am also thankful for the focused efforts of our judges and court staff to ensure that parties and their representatives could safely appear in cases. Using the technology system built throughout the state, and over just a few weeks in March, they helped our courts transition to holding court hearings remotely for most proceedings. They were flexible and creative in developing virtual courtrooms as well as processes to ensure people could appear, whether from their own phone, using borrowed technology, or even from a socially distanced kiosk at their local county fairgrounds.

These changes helped ensure those whose liberty was restrained continued to have a timely initial appearance in front of a judge, and that most issues could be resolved as promptly as possible. In addition, when a courtroom cannot accommodate sufficient in-person public viewing, courts are using live streaming on the internet and internal simulcasting. As I said, it has been a different experience in 2020, and brick and mortar no longer confines the courts, but the fundamental tradition of access continues.

Unfortunately, the Idaho courts have been unable to eliminate all negative impacts caused by the pandemic. There are some proceedings which can only occur in person. For those proceedings, courts have had to weigh competing interests and make very difficult decisions. There are now considerations of risk when bringing groups of people together, whether a smaller group for an evidentiary hearing or over a hundred people for jury selection. Courts now must consider the specifics of spaces available for proceedings, including the size, shape, and ventilation of each courtroom in courthouses throughout forty-four counties. They must consider the local incidence rate of COVID-19, and the specific risks of prolonged and close contact among participants. They must be mindful of the reality that many who attend court do not do so voluntarily. They are compelled to appear, sometimes as the only way to seek a remedy and sometimes subject to serious penalty if they do not. And the courts must consider the effect of any delay on the rights of the parties seeking a resolution to the cases. These decisions must be made while navigating an ever-changing understanding of the dangers and the impact on available healthcare and all while the landscape of community spread rises and ebbs. The result has been that critical court proceedings have been delayed, including perhaps most prominently jury trials.

The Idaho judiciary is working hard to assess the impact of delays caused by the pandemic and there are some sobering things I can share today. Statewide, the number of case filings, whether civil or criminal, has decreased by ten percent since April. In that same time, case closures have decreased by 21 percent. The number of pending criminal cases has increased by 22 percent

since January a year ago, and there are currently over 40,000 cases awaiting disposition. Finally, the average number of jury trials held throughout the state per month before the pandemic was about 197, while the average number now scheduled per month is 350.

We are not only working to recognize the scope of what faces us, we are conscientiously developing strategies to address this backlog. Already we are utilizing senior and active judges to mediate cases in an effort to reduce the number of pending cases and trials. When possible, we have provided technology to judges and court staff, so that they can work remotely when they are prevented from working in the office or traveling to another courthouse. We have also purchased and distributed additional hardware to each county to ensure that jury trials can be held as soon as possible, even if that includes using locations much different than a traditional courthouse.

A request from the Idaho Supreme Court to you in the legislature this year is for new judges for the Third Judicial District. To be clear, this request is not made solely as a reaction to the backlog of cases caused by the pandemic. However the need is significantly heightened by it. The request is for one new District Judge and requisite court reporter, and two magistrate judges, all to be chambered in Canyon County. In state fiscal year 2019, although the average filing per district judge in the state was 331, in the Third District it was 373. Additionally, at an average of 1,817, Canyon County had the highest average number of filings per magistrate judge in the state. Simply put, even before there was a backlog of cases, there was a shortage of judicial resources in the Third Judicial District. It is now even more essential that we provide adequate judicial resources to the district so that cases can be tried when necessary and resolved as quickly as possible.

Together with seeking additional judges, the Idaho Supreme Court intends to continue its efforts and investment in innovative ways of performing traditional court work. Technology has changed the way many people interact with the world. Just as people now apply for jobs and do their banking using personal computers and smart phones, people are increasingly interested in how to address their legal needs and responsibilities, not by taking time off work and coming to a building, but by using on-demand technology often from the phone in their hand. As we are required to reimagine how courts work to address our heavy workload, we also find opportunity.

Changes, efficiencies, ideas, and designs borne of necessity will be incorporated into our permanent operations. For example, in the initial response to reducing in-person court operations, one focus was how to ensure those who needed an emergency civil protection order could apply for one without having to come to the courthouse. Within two weeks of the first COVID19 case in Idaho, the Idaho Supreme Court deployed an on-line, guided questionnaire system that allows a person to complete and file a petition for a civil protection order remotely on the internet. This capability has made the courts more accessible to the people of Idaho and will continue.

It is our hope that as the judicial branch seeks solutions to address the impact of the pandemic, to remediate the delays, and to build upon the things we have learned, that our fellow branches of government will continue to support us. Your previous support of the implementation of Odyssey, our electronic case management system, was the cornerstone of our ability to ensure that the Idaho courts remained open to every person who wished to file or defend a claim this

year. With the backlog we face, we may yet again need to seek your support in updating and improving our infrastructure or in recruiting necessary human resources. Should that time come, we will be grateful for your support.

Although the news this year may be dominated by the pandemic, it is not all the Idaho judiciary has focused on. There are other things that we are pleased to have accomplished in service to the people of Idaho this year.

First, the Idaho Supreme Court adopted the Idaho Treatment Court Best Practice Standards and a quality assurance plan that will be applied to all Idaho adult treatment courts beginning in the spring of 2021. These procedures set appropriate levels of treatment and accountability to provide the best chance at positive results for court participants. The quality assurance standards also provide a baseline for evaluation and analysis of these courts' results, using observation and feedback from both peers and Supreme Court staff – with the goal to foster and ensure these courts' alignment with best practices.

Second, the Administrative Office of Courts' Data and Evaluation team has been developing its reporting and analysis capabilities, throughout the year. Work includes a review of available data, evaluation of accuracy and consistency in input, focused educational opportunities to improve data collection, and an effort to augment the information available both internally and externally. This undertaking is critical to the Supreme Court's efforts to utilize data-based decision making in the administration of Idaho's courts.

Third, the judiciary and administrative staff have also participated broadly in the efforts of the Idaho Behavioral Health Council. As you likely know, this is a unique collaboration of all three branches of government, working together to improve Idaho's mental health system. Its mission is to create a coordinated, statewide strategic plan to meet these objectives – to develop services for people when they need it and to improve behavioral health outcomes for the people of Idaho. The Commission is co-chaired by Sara Omundson, Administrative Director of Courts, and Director Dave Jeppesen of the Idaho Department of Health and Welfare. A district and magistrate judge serve as council members or advisory members, providing valuable service and court perspectives into subjects such as behavioral health issues in the criminal justice system and the state's civil commitment process. The Council continues to work and is scheduled to deliver its strategic plan in June of 2021.

Finally, there is an additional thing we in the Idaho judiciary look forward to in 2021. This year marks a very special milestone as the 50th anniversary of the creation of the magistrate division of our district courts. From 1864 to January 1971, our lower court system was composed of justices of the peace, probate judges, and municipal judges. Thanks to the efforts of the Idaho State Bar, the Supreme Court, the Legislature, the Governor, and the people of Idaho, it became clear in the 1960's that Idaho's judiciary needed to adjust to meet the changing times occasioned by the passing century.

First, a constitutional amendment was adopted in 1962, and seven years later, in 1969, the necessary legislation was completed to pave the way for implementation. On January 11, 1971, all functions of the justices of the peace, probate judges, and municipal judges were assigned to

Idaho's first Magistrate Judges, sixty of them to be exact. Of those sixty, forty were laymen and only twenty were attorneys.

As your Chief Justice, I am proud to report that with the strong support of the Idaho Legislature and the Governor, a half a century later, we now have ninety-seven attorneys serving as magistrate judges throughout the state with at least one in every county. These judges are assigned a variety of cases from small claims, to family law, to serving as treatment court judges. They perform a vital function and our Magistrate Judges make a difference in the lives of the people of Idaho every single day. We are proud of them, and we thank them. We hope that throughout this next year you will find the time and take the opportunity to learn more about your local magistrate judges and the service they provide, and that you will celebrate them and this anniversary with the Idaho judiciary.

Thank you again for the opportunity to present this summary of the state of Idaho's judiciary. In closing, may we remember the words of that legendary coach, Vince Lombardi, "Perfection is not attainable, but if we chase perfection we can catch excellence." I look forward to working with you as we chase perfection and thereby reach excellence in our common interest: to secure the blessings of freedom and to promote the common welfare of the people of Idaho.