

# STATE OF THE JUDICIARY

CHIEF JUSTICE ROGER S. BURDICK

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

\*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.

I would first like to thank the Supreme Court Justices for electing me Chief Justice and giving me an opportunity to address this body. Don't worry, I'll get even with them later.

The last time I stood at the podium in these chambers was in 1965 when I was in Boys State – I ran for Governor and lost. It took me a change to the judicial branch and 45 years, until 2010, to win a hotly contested election and here I am.

Since becoming Chief Justice I have traveled to each of the judicial districts and met with judges, county clerks, commissioners as well as sheriffs and others throughout the state. I would like to share my observations with you about the State of the Judiciary.

Partnerships are being established to implement efficiencies and meet citizens' changing needs at every level. This creativity has led to remarkable success in meeting the judiciary's mission of equal access to the timely, impartial and fair resolution of cases. I am struck by the commitment, compassion and competence of Idaho's trial judges and county officials in developing local solutions to unique problems despite severe fiscal restraints.

Let me share some of these accomplishments, emphasizing that without the cooperation of all three branches of state government and the counties' support and resources; it doesn't get done.

Idaho's judiciary has been working with the Legislature and the counties to craft a county-based statewide misdemeanor probation system. We now have 32 officers who have graduated from POST Academy with 21 now enrolled. The court's goal is that all officers will be certified by January, 2014. By monitoring misdemeanor offenders, we protect our citizens as well as save incarceration costs.

Kootenai County has opened their Juvenile Justice Center, with one courtroom dedicated to juvenile justice cases and child protection matters and another for felonies. A child-friendly waiting room has been opened to give a safe and peaceful waiting area for the children involved in child protection cases. Canyon County has also built a children's room for the same purpose.

We thank Justice Dan Eismann for his many accomplishments while Chief Justice, but his most beloved legacy came to fruition last year.

Idaho's first Veteran's Court was started in Ada County in March, 2011.

These courts have a special camaraderie based upon the “Warrior Ethos.” It is embodied in the Soldier’s Creed which reads in part:

*I will always place the mission first.*

*I will never accept defeat.*

*I will never quit.*

*I will never leave a fallen comrade.*

Words for all to live by; but they carry a special meaning to our veterans. By hearing from their own, and relying on shared experiences, the rehabilitation message gains credibility and helps to turn lives around. Two additional veterans courts will be starting in Canyon and Bannock counties. We owe it to our veterans to help them lead productive lives, as part of our national debt of gratitude.

Domestic Violence courts now exist in seven counties and supervised almost 1600 offenders in 2011. The Domestic Violence court could be our most complex problem-solving court. The model starts with a judge who is cross-trained to handle all matters relating to a single family. A Domestic Violence Court team provides treatment which teaches positive, responsible behavior. The mix of court monitoring, counseling, treatment, and education focuses on improving behavioral skills free of violence and promoting healthy relationships.

Although new to these courts, Idaho’s judiciary is already a national leader. After a presentation by Idaho judges to a national conference, representatives from New York and Minnesota will be arriving shortly to observe our system.

Last year, Idaho’s 59 problem-solving courts supervised almost 2,250 felony, misdemeanor and juvenile offenders. 594 offenders graduated from our drug and mental health courts. Thank you for entrusting us with last year’s substance abuse treatment appropriation for use in our problem solving courts. Research continues to show recidivism rates for graduates are lower than other alternatives for rehabilitation and sentencing.

Idaho’s Child Protection Drug courts are another innovative approach to keep families together and to nurture and protect children. These courts address the parent’s drug use while marshaling services to change family dynamics, thus saving the family unit. Because parenting skills are taught to us by our parents, these courts will influence not only the participating parents, but generations to come.

I would like to recognize the retirement of our statewide Drug Court coordinator, Norma Jaeger. She is a moving force not only in Child Protection Drug Courts but problem-solving courts throughout the state. We will miss her non-stop energy, her warming smile, and her ability to move people in the right direction. She starts a new chapter in her life and we thank her.

Speaking of new starts – Idaho’s drug and mental health courts helped 20 babies to be born to clean and sober mothers, bringing the total to 248 drug-free births since the beginning of Idaho’s problem solving courts. There can be no greater legacy than having these kids start out in a sober, safe home with parents who will teach them the rewards of sobriety and accountability.

We are not just focused on youth; we are energizing the entire system of guardianships and conservatorships to help our aged and disabled citizens achieve their potential. Working with judges and county clerks statewide, over \$212 million dollars are being managed by conservators and reviewed by existing trained court staff.

I know it goes without saying, but all of the district and magistrate judges who preside over problem-solving courts do so in addition to a full case load and without further benefit; other than the life-changing expressions of hope on the faces of the participants.

The Snake River Basin Adjudication started in 1987 has progressed at unprecedented speed for an adjudication and as a result spread its procedural model throughout the nation. I can happily report that fewer than 1900 claims are left to be adjudicated, having already completed over 150,000 claims. Under the leadership of District Judge Eric Wildman, we are now starting to draft the final decree for the Snake River Basin's water resources. We thank past presiding District Judges Hurlbutt, Wood, Melanson and now Wildman for shepherding Idaho's most complex civil case to its end.

All judges in Idaho's courts have seen a substantial increase in certain types of cases. Since 2006, there has been a 30% increase in district court civil cases—including complex civil, medical, and business disputes that often take years to resolve. Divorce and child custody cases have risen by 10%. With the decline in availability of mental health treatment, we have seen an astounding 151% increase in mental health commitment proceedings. These trends—likely the direct result of the economic decline—are a reflection of the heightened stress levels that Idahoans, businesses and families are experiencing in this economy.

The challenge then is how to meet this upward trend with static resources.

*“Courts of justice shall be open to every person and a speedy remedy afforded to every injury . . . .”*

These are not my words, but those of Article I, Section 18 in Idaho's Constitution. They are unchanged from 1889 and we are re-pledging ourselves to their spirit by our Advancing Justice Initiative. Senior Judge Barry Wood, working with national and local groups, is making a critical examination of all court case types to find unnecessary delay, developing new procedures, and creating new expectations to minimize that delay. This is not speed for speed's sake. It is a search for efficiencies while preserving quality.

On the technology front we continue our march to “e-everything”; e-citations by law enforcement, e-payment of fines, fees, and court costs by the public, and now plans for e-filing of court documents and paperless courthouses. These efforts meld seamlessly into our Advancing Justice Initiative.

An increasing part of Idaho's judicial caseload involves persons representing themselves. Our court assistance offices responded to over 60,000 requests in 2011; an 11% increase over 2010, an increase of 64% in five years. In addition to our “on the ground” court assistance offices, we will be launching a new revised self-help center website.

For many years Justice Jim Jones has provided exemplary leadership to the cause of unrepresented litigants in Idaho. Through his efforts and the Idaho Pro Bono Commission, lawyers are now encouraged to provide a minimum of fifty hours of pro bono legal service

annually. He has fostered changes to the Idaho Civil Rules to make it easier for lawyers to provide pro bono assistance on a limited issue. He has worked tirelessly with Idaho Legal Aid and the State Bar to help explore funding alternatives. Some of these proposals will come to you in this session.

Even with the work of this Court, the State Bar and Idaho Law Foundation, we know there is further need. We support and encourage the Idaho Legislature to continue to explore funding for legal representation in civil cases for the many Idahoans who cannot afford legal services.

We also commend the work of the Criminal Justice Commission, which in addition to other important work, is developing recommendations to improve criminal public defender services throughout the State.

Idaho's judiciary decides our citizens' most important personal and business problems, ranging from the care and custody of our children to the most byzantine of business relationships. For this constitutional requirement, we need our most experienced and scholarly lawyers to become judges.

Since July 2000, Governors Kempthorne, Risch, and Otter have been given the full slate of four candidates to fill district judge positions only 26% of the time. Our magistrate judge openings during the same time period have had an ample list of qualified applicants. A more competitive compensation package is required to insure the third branch of government attracts highly qualified individuals for district judge and other positions. Idaho's trial judges have not had an increase in their compensation since July, 2008; we rank 47<sup>th</sup> lowest in the nation.

The Judge's Retirement Fund is the other significant part of the overall compensation package. By any estimation this fund is at or above the national performance standard for governmental pension funds. The Court has conferred with legislators, state pension experts, and PERSI's actuary to explore ways to strengthen the fund for the future. We hope reasonable consensus will be reached this session on ways to do so.

I will conclude my remarks by saying the state of the Judiciary is straining under increased caseloads, expanded duties, scarce resources, and stagnant compensation. We must begin a conversation with the Legislature, the Governor, and county clerks and commissioners about how best to address the pent up demand for judges, court facilities, and new resources needed to conduct safe, timely hearings on the vital issues facing everyday Idaho citizens.

These conversations will present new challenges for the future, but I'm convinced with the continued support of the Idaho Legislature, the Governor, and county officials we will solve them and present an even stronger judiciary to you next year, and the years thereafter.

Thank you and God Bless.