

State of the Judiciary
Chief Justice Richard P Guy, Washington Supreme Court
Message to the Washington Legislature
January 16, 2001, in Olympia, Washington

Governor Locke, Lieutenant Governor Owen, Co-Speakers Chopp and Ballard, state elected officials, members of the House and Senate, fellow justices and judges, ladies and gentlemen.

Good morning. Let me first thank all of you for the warm welcome that you have accorded me and my fellow justices on this and other occasions. As you have undoubtedly observed we have been frequent guests in this building of late, what with various oath taking sessions, a ceremony for departing statewide elected officials, a State of the State message, and the inaugural ball. The truth is that we really enjoy being a part of those occasions, but we promise you now that the traditional opening rituals of this session of the Legislature are behind us, we will recede into the Temple of Justice across the way and be far less ubiquitous.

That, I suppose, is as it should be under our doctrine of separation of powers, one of the crown jewels of our form of government. I would venture the opinion, though, that it is a good thing for the branches of government to have contact such as we have had this past week or so, because our government functions better, it seems to me, if the elected members of the three branches know each other and gain a better appreciation of the other's role.

Let me also thank the members of the Legislature for inviting me to deliver this message on behalf of the judiciary. We know that time is precious to all of you during a legislative session. We know also that you need not accord me this privilege. The state constitution, as you know, does require the governor to deliver a message to you at every session. That same constitution requires the judges of the Supreme Court to report to the governor in writing in January of each year on defects and omissions in the law. It does not, however, require the courts to report to the Legislature nor does it require you to provide us that opportunity. But by a custom that has developed over the last decade the chief justice has been invited to speak to the Legislature every other year, on the state of our justice system, and we are most grateful for that opportunity.

Relevant to that subject I would like to say a brief word about the court on which I sit-the State Supreme Court. I am here to tell you that we have a fine court. I am proud of my colleagues and I am very honored that they have elected me to serve as chief justice for a four-year term. As some of you know, I was raised in Olympia. My father was a state employee during much of my childhood and I went to high school just across Capitol Way at the old Olympia High School. It was common for students then, particularly during legislative sessions, to roam the halls of this building and soak up the atmosphere. Consequently, I have a special place in my heart for this building, our state government, and the work that you do as citizen legislators. So I am deeply honored to be able to address you.

As I indicated, we have a fine court. I can tell you that we are absolutely unified in our desire to work with our judicial colleagues at all levels of court to deliver on the promise of equal and quality justice for all. The current Supreme Court is very experienced. All of us practiced law in

this state early in our careers and collectively we have 124 years of judicial service, including our tenure at the Supreme Court. At the same time we are all free thinking individuals. We come from different places and backgrounds, reflecting to some extent the diversity of our state's population.

I think that most of you are familiar somewhat with the returning members of the court. But let me, if I may, briefly say a word about our two newest members, Justices Chambers and Owens. Tom Chambers was raised in the Yakima Valley, at Wapato, but he chose to practice law in the big city-Seattle-where he had a remarkable career. Notably, he is a past president of the Washington Trial Lawyers Association and the Washington State Bar Association. Interestingly, he is the first former State Bar president to serve on the Supreme Court since Thomas Grady of Yakima served on the court in the 1940s and '50s.

Susan Owens is a North Carolinian who chose Forks, Washington, out on our coast as her home. She never regretted that decision even though Forks is said to be the city with the greatest annual rainfall in the lower 48 states. In Forks she has served as a Clallam County District Court judge and as a judge of the Quileute and Lower Elwha Tribal Courts. She is the first person from Clallam County to ever serve on our court in our 111 years as a state and the first to ever have prior service as a tribal court judge. I am proud to say that upon her inauguration the Washington Supreme Court now has more women among its members than any Supreme Court in the union, including the United States Supreme Court.

Before I move to my main topic, let me say a word about a recently retired member of the Washington Supreme Court. Our court and the entire judiciary of our state is more unified than I have ever seen it during my almost 28 years as a judge. That is so for a number of reasons, not the least of which was the leadership and personality of my predecessor as chief justice, Richard Guy. Justice Guy is present here today and I would like to ask him to stand and be recognized for his many and significant contributions to the administration of justice in the state of Washington.

Let me now, in my capacity as the state's 52nd chief justice, speak to you about the state of Washington's justice system. I can tell you that it is in good shape despite the many demands that have been placed upon it. I know that there are reputable persons who would suggest otherwise, claiming that our justice system is in crisis. I disagree with that and so do the many judges I have talked to in recent months. The crisis, if any, is not in how the courts handle current caseloads. Rather, it is not meeting the needs of our many citizens who cannot afford to avail themselves of the justice system. But for the cases that come to us, the system's 215 full- and part-time judges of our municipal and district courts efficiently manage caseloads made heavy with annual filings of over two million matters. Our 174 superior court judges do the same with the over a quarter of a million cases being filed each year in those courts that are located in every county of our state. Collectively these trial courts entertain one case filing for every 2 ½ citizens every year-cases that run the gamut from parking citations to aggravated first degree murder, and from small claims to cases that involve millions, and in some cases, billions, of dollars.

I wish that I had the time to tell you about all of the innovative things our judges are doing, often on a shoestring, to make the system more efficient and more responsive to the public while still maintaining the goal of fundamental fairness. A few examples: Pend Oreille District Court Judge

Phillip J. Van de Veer offers the citizens that enter the courthouse in Newport an information map that tells them, most of whom are not represented by counsel, how to navigate the court. Similarly, Chelan County District Court Judge Thomas Warren has reached out to the Hispanic community in his area by creating brochures in Spanish, as well as English, that describe how one uses the court system. King County Superior Court Judge Patricia Clark, working with our state's Gender and Justice and Minority and Justice Commissions, is dedicated to erasing the bias that is sometimes felt by women of color in our courts-with a program entitled "When Bias Compounds."

Many of our judges are doing pioneer work in the relatively new concept of restorative justice. Spokane County District Court Judge Vance Peterson has a program that is designed to let people reinstate their suspended driver's license by making monthly payments on outstanding court-ordered financial obligations. In Mason County District Court, Judge Victoria Meadows utilizes the services of a restorative justice panel, composed of citizen volunteers, who recommend to her alternatives to jail for nonviolent offenders.

The problem of domestic violence has, of course, captured the attention of the judiciary-just as it has captured the attention of the legislative and executive branches. In 1995, Governor Lowry, the Supreme Court, and Attorney General Gregoire co-sponsored the first ever statewide Domestic Violence Summit. It was an important step in bringing leaders of each branch of government together with professionals in the field to discuss this cycle of violence, which affects many families directly and all of us indirectly. Since that first summit we have made much progress. Under the leadership of my colleague Justice Barbara Madsen, local domestic violence summits are held each year in many counties to bring people together to discuss better coordination and delivery of services to victims of domestic violence.

The Clark County Superior and District Court benches have been innovative in this field, consolidating their domestic violence calendars under one judge. Judge Robert Harris, the presiding judge of that superior court and president-elect of the Superior Court Judges' Association is present here today. Last year also saw the debut of King County's specialized Domestic Violence Court. At three locations in that county dedicated judges of the district court, prosecutors, and defense counsel work solely on these cases each day to provide more effective and consistent justice.

Kitsap County District Court Judge James Riehl, a national leader in this field, is training Washington judges on the means by which domestic violence orders of courts of other states and of tribal courts can be enforced in our courts. Judge Riehl is also here.

In several of our counties, Unified Family Courts have been established to better serve families and children who find themselves in the system. These have been established under the theory that the 'one-judge/one family' approach improves court proceedings for families by allowing one judge to fully deal with the legal problems that members of a family may face.

You may be aware through press reports of some of the innovative work that our courts are doing in dealing with drug offenders. Currently 12 superior courts in this state have a drug court for adult offenders and this past year, Snohomish County Superior Court Judge Joe Thibodeau

designed a drug court specifically for juveniles. Island County Superior Court judges Vickie Churchill and Alan Hancock have started a similar program in that county. Participants in these programs commit to a stringent drug-treatment regimen and have weekly meetings to make sure they keep on track with their recovery.

Despite the many innovative programs that have been launched in recent years, I am not telling you that our justice system is perfect and cannot be improved. There is no institution that has been created by humans that cannot be improved. The judiciary and our many fine employees know that and we are dedicated to making the justice system better.

In accomplishing that goal we will benefit from one of the many legacies left by former Chief Justice Guy. His vision was that the judiciary would be united in seeking improvements and would speak to the executive and legislative branches in one voice. That vision led to a reorganization and revitalization of our state's Board for Judicial Administration (the BJA). Its membership has been broadened to provide for increased representation of all levels of court, as well as the non-voting bar members. In addition a new position of "member-chair" was added. That person co-chairs the Board along with the chief justice. Spokane County Superior Court Judge James M. Murphy, who is here, has shown tremendous leadership as the first member-chair, in addition to his duties as president of the Superior Court Judges' Association. The BJA is meeting in Olympia today. In fact, we started at 8:00 a.m. today and adjourned for this session.

These changes have been significant. Within the past two years, the BJA formed two committees to explore major issues of concern to the courts. Out of those committees came various proposals to the BJA. The BJA, in turn, approved many of the proposals. I would like to discuss them with you-particularly those that require legislation in order to be implemented.

The first proposals came from the Washington Jury Commission which was chaired by Thurston County Superior Court Judge Daniel Berschauer. That commission was composed of citizens, former jurors, judges, lawyers, court personnel, business persons, and three members of the legislature, Senator Adam Kline, Representative Mike Carrell, and then Representative and now Senator Dow Constantine. The commission's charge was to look at our state's jury system from top to bottom and recommend ways that it could be improved. This was important work because the right to trial by jury is one of the cornerstones of our democracy. The commission found that despite the importance we attach to juries, the trial courts of our state were experiencing difficulty in finding jurors. Indeed in some jurisdictions less than 15 percent of the persons summoned for jury service actually made it on to the jury panel. Most troubling was that about 20 percent of persons who were summoned did not even bother to respond to the summons.

The commission quickly discovered that there were many reasons for this underwhelming response to what we generally consider an obligation of citizenship, but that certainly a general belief among citizens that jury service is somewhat unpleasant, definitely contributed to the problem. The commission, therefore, made nearly 40 recommendations to the BJA for improving jury administration and for making jury service more palatable. The BJA approved most of these proposals and many can and will be accomplished within the court system without the necessity of legislation. A few, though, will require legislative action in order to be realized.

Chief among these is a fee increase for jurors. The statutory minimum was set in 1959 at \$10 a day. We are now at the year 2001 and most counties, including all of our metropolitan counties, still pay the minimum \$10. I recall thinking, when I was a young superior court judge in the 1970s, that \$10 was an inadequate amount to pay our jurors. Well if I was right then, and I think that I was, it is woefully inadequate now.

To bring home the inadequacy of the \$10 fee, if that is necessary, I should tell you that I recently attended a meeting at the King County Courthouse. It was a rainy day and prior to the meeting we parked about a block away from the courthouse in an open parking lot. The charge for parking for several hours was \$13, but I was told that it would be \$18 for the entire workday. Obviously the jurors' fee would not even cover that cost.

We are asking you to correct this inequality by passing legislation that maintains the fee at \$10 per day for the first day of jury service, on the theory that every citizen should be willing to devote one day at little or no cost to being a juror, but increasing it to \$45 for every succeeding day of jury service. We are asking you to provide that the additional \$35 be underwritten by the State of Washington with the local jurisdictions remaining responsible for \$10 of the fee.

We are also asking that you approve legislation shortening jury service to two days or one trial.

The other major committee formed by the BJA was Project 2001. This committee was chaired by retired Judge Tom Swayze and former WSBA President Paul Steere. It was also a broad-based committee and included state legislators--Representative Luke Esser, and Senators Jeanine Long, Pam Roach, and Adam Kline. The committee was asked to thoroughly review the judicial system, the way that it operates, its funding system, and more important, it was to make recommendations as to how it may be made more efficient. The project got started in the spring of 2000. It worked hard and submitted its report to the BJA, which has approved many of its recommendations. Those have been reported to you and are contained in a final recommendation to the Legislature. Again, many of those approved recommendations, like mandatory judicial education for all judges and a strengthening of the role of trial court presiding judges, can be adopted by the courts internally by court rule. A few of the recommendations, though, require legislation to implement them and I will just briefly touch on one of them.

The most significant recommendation is for a constitutional amendment providing for what we call transportability of judges. In a nutshell, this would allow a previously elected judge, active or retired, to sit in any trial court at the request of the presiding judge of that trial court. Currently, active or retired judges or even lawyers can serve as pro tem judges but only on the agreement of counsel on both sides of the case. It is that veto right of attorneys that the constitutional amendment would eliminate. Although this may not seem, at first blush, to be a significant step, it really is. This would give the presiding judges of our trial courts greater flexibility in managing their dockets and would allow the trial courts of our states to have the advantages that might be realized from a formal merger of our two levels of trial court without the attendant cost of doing so and without eliminating our courts of limited jurisdiction which are designed to handle matters within their jurisdictional limits in a less formal way than the superior court. To me this is a sensible recommendation and one that will allow the courts to use existing judicial personnel more efficiently.

Finally, and somewhat related to these proposals I wish to advise you that we are seeking an appropriation to maintain, update, and modernize the state's judicial information system. Our state's court system has been blessed by having one of the most established and efficient judicial information systems in the nation-one to which all of our trial and appellate courts are tied.

The bad news that goes with that is that the system's hardware and software are old, at least as we measure age in the fast moving technological world. Our Judicial Information System Committee, which is chaired by my colleague, Justice Bobbe Bridge, has compared our current system to an eight-track tape system. We think it is time to get a CD player. With this funding, greater efficiencies can be realized, all to the benefit of our courts in every part of the state. We think this would be a prudent investment in an established and proven system.

Let me close where I began by thanking you for your time and your willingness to listen to this report on the state of the judiciary. As I indicated, I think our judges and the employees of our courts are doing a magnificent job providing justice. We can and want to do even better, though, and we believe these modest proposals for legislation, coupled with changes we can make without the necessity of legislation, will allow us to do even a better job. Thank you.