State of the Judiciary
Chief Justice Gerry L. Alexander, Washington Supreme Court
Message to the Washington Legislature
January 18, 2005, in Olympia, Washington

President Owen, Speaker Chopp, Governor Gregoire, state elected officials, members of the House and Senate, fellow justices, ladies and gentlemen. Good afternoon.

Let me first extend thanks to all of the members of the legislature for the warm welcome you have accorded me and my fellow justices on this and other occasions. I must tell you at the outset that I am delighted to be back with you in this grand old legislative building where I delivered my first state of the judiciary address four years ago.

As some of you may know, I was raised in Olympia and I have spent almost all of my adult life in this city. Having lived within sight of this building for all of these years has led me to have great affection for this magnificent building and the other buildings on this campus, including, of course, the Temple of Justice. I am so pleased that the Washington Legislature took the steps that it did to restore this building to its former glory. The Legislative Building is truly the centerpiece of the most beautiful state capitol campus in the land and it looks great. As a proud Washingtonian and Olympian, I thank you.

As you have undoubtedly observed, members of our court have been frequent guests in this building of late, what with various oath taking sessions, a State of the State message by former Governor Locke, and, of course, an inauguration and inaugural ball. The truth is that we enjoy being a part of these events, but we promise you now that the traditional opening rituals of this legislative session are behind us, we will recede into the Temple of Justice across the way and try to be less noticeable.

That, I suppose, is as it should be under the doctrine of separation of powers, one of the crown jewels of our form of government. I think, 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 if the elected members of the three branches get acquainted with one another and gain a better appreciation of the role that each performs in our democracy.

Let me also thank the members of the legislature for inviting me to deliver this message on behalf of Washington's judiciary. We know that time is precious to all of you during a legislative session. We are also aware that you need not accord me this privilege. The state constitution requires only that the judges of the Supreme Court report to the governor in writing in January of each year on defects and omissions in the law. It does not require the Supreme Court to report to the legislature nor does it require you to provide us with that opportunity. But by a custom that has developed in recent years, the chief justice of the Washington Supreme Court has been invited to speak to the legislature every other year, on the state of our justice system. 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. We have, in my view, a very fine court and I am extremely proud of all of my colleagues and am very honored to have been elected by them to serve a second four-year term as chief justice.

I can tell you that all of us on our court are unified in our desire to work with our judicial colleagues around the state to deliver equal and quality justice to all in a system that is administered, in the words of our state constitution, "openly and without unnecessary delay." Our court is currently very experienced. All of us practiced law in this state early in our careers and collectively we have 117 years of judicial service. I am pleased to say also that the relationship between the justices is very collegial. At the same time, though, we are all free thinking individuals who come from a variety of backgrounds. Thus, it is not surprising that we are not unanimous on every issue that comes before us.

Although most of you are somewhat familiar with the veteran members of the Supreme Court, I would like to say a word about our newest member, Justice James Johnson. He was sworn in at a ceremony at our court a mere eight days ago. Justice James Johnson is a native Washingtonian who obtained his B.A. degree from Harvard. He then went on to law school at the University of Washington. Following law school Justice Johnson served a two-year stint as an officer in the United States Army. For the next 20 years he served with distinction as an assistant attorney general of the state of Washington. Since 1993 he has engaged in the private practice of law in Olympia. We welcome Justice James Johnson to our court and look forward to working with him in succeeding years.

Whenever a new person comes to the court it is a happy occasion, but it is always accompanied by a tinge of sadness. That is because when someone new comes on the court that means that a valued colleague has left to create an opening. So as delighted as we are to welcome Justice James Johnson, we will still miss our friend, Justice Faith Ireland, at our conference table. I have asked Justice Ireland to be here today and I would like her to stand so that you can join me in thanking her for her twenty-plus years of devoted service to the people of the state of Washington, as a superior court judge, Supreme Court justice, and nationally recognized leader in the area of judicial education—Justice Ireland.

Let me now, in my capacity as chief justice, speak to you more directly about the state of Washington's justice system. I can tell you right up front that the judicial branch of government is managing to keep its head above water, despite the many and increasing demands that have been placed upon it. This would not be true, of course, without the hard work and ingenuity of the many judicial officers of this state as well as the splendid employees of the judicial branch, including the excellent county clerks in each of our counties. I can honestly say that in my 32 years as a judge in this state, the judiciary has never been more skilled and hard working than it is right now.

I can't begin to convey to you the depth of my admiration for the outstanding work of the 208 full- and part-time judges of our district and municipal courts who hold forth in the towns, cities, and counties of our state and who manage caseloads made heavy with over two million new filings each year. Our state's 179 superior court judges are equally as dedicated and energetic,

managing to stay on top of caseloads that are enriched each year by approximately a quarter million new filings. Collectively, our two levels of trial court entertain approximately one case filing for every 2.5 citizens each year—cases that run the gamut from a dispute over a parking or speeding citation to cases where the charge is aggravated murder in the first degree. On the civil side, they entertain small claims to cases that involve millions and, in some cases, billions of dollars and significant public issues.

I am also very proud of our appellate courts. I have already made reference to the court on which I sit, the Supreme Court. Let me say a word about our State Court of Appeals, which sits in divisions that are located in Seattle, Spokane, and Tacoma. This is a workhorse court which doesn't get near the credit that it deserves. Unlike the Supreme Court, it is without discretion to decline an appeal and it must take on all cases that are ripe for review. In 2004, that court managed to maintain its tradition of staying current despite an influx of approximately 4,400 appeals, personal restraint petitions, and other petitions.

I wish I could have invited every judicial officer in the state to be here today, but, as you can tell from my remarks, they have plenty work to do at home. I did, though, ask a few judges to be here to represent all of our state's judges—allow me to introduce them to you. Representing the district and municipal court judges of our state is Judge Eileen Kato, of the King County District Court. Judge Kato is a very fine judge and is president of the District and Municipal Court Judges' Association. Judge Kato. Representing the superior courts, we have the very able Leonard Costello, president of the Superior Court Judges' Association. Judge Costello is a judge of the Kitsap County Superior Court. Judge Costello. Representing the 22 judges of our Court of Appeals, we have a veteran judge, Ken Kato of Division Three in Spokane. Judge Kato is standing in for Judge Elaine Houghton of Division Two in Tacoma, who is the chief presiding judge of the entire Court of Appeals. Judge Kato.

In past addresses to you, I have taken a few minutes to describe some of the really positive things that have taken place in the judicial branch over the last couple of years. I'm not going to do that today, not because there isn't much to talk about—there is. I could tell you, for instance, about court rules we have adopted to make our courts even more open to cameras and broadcast equipment and our court records more accessible to the public by electronic means. I could tell you also about the great work that some of our trial courts are doing, often on a shoestring, in developing and maintaining Unified Family Courts, and problem solving courts like drug courts and mental health courts. I could go on and on but I'm passing up that opportunity because I want to spend the remainder of my time talking to you about a serious problem that Washington's trial courts face, a problem that seriously inhibits the ability of those courts to deliver timely and quality justice to all of the persons who come before them—a problem that truly places justice in Washington in jeopardy.

The problem I am speaking about, in a nutshell, is the way we fund our trial courts and the extent to which we fund them. And, by the way, when I speak of trial courts I am talking about our superior courts, trial courts of general jurisdiction, and our district and municipal courts, trial courts of limited jurisdiction. There is, as you know, one or more superior court and district court in every county in our state and a municipal court in many, if not most, of our cities and towns.

As you probably know, since statehood our trial courts have largely been funded by local government, the counties and cities. Frankly, this funding mechanism worked well in the early days when courts had much less business and local government had fewer obligations. But as the work of courts has grown dramatically and counties have, at the same time, experienced greater budget challenges, the budgets of our state's trial courts have suffered—in some places more than others. While time does not permit me to recite at length all of the ill effects of this inadequate funding, I can tell you that some of our trial courts are no longer able to provide probation services, and many, if not most, are unable to offer programs that have proven effective elsewhere like adult and juvenile drug courts, mental health courts, and unified family courts. Furthermore, too many of our trial court jurisdictions are experiencing crowded court dockets which frequently results in the postponement of trials, particularly civil trials. In three of our four largest counties, the time to trial in civil cases is over twelve months. That, ladies and gentlemen, is too long for people to wait to have their disputes resolved. This may seem trivial, but I have to tell you that the funding situation has become so bad in many counties, including our largest and wealthiest county, King, that our trial courts do not have sufficient funds to even provide box lunches for jurors when the jury is deliberating on its verdict. This means that trial judges have to permit sequestered jurors to separate at mealtimes and then return to the jury room after they have obtained a meal at their own expense.

Now our trial judges have obviously known of the problems that they face in their own jurisdictions, but the scope of the problem statewide was not fully catalogued. Consequently, the judiciary of the state determined in 2002 that a comprehensive analysis of the way our state's trial courts are funded and the sufficiency of that funding should be carried out. To conduct the study the Board for Judicial Administration, which is made up of the leadership of all four court levels in Washington, created a broad based task force. It consisted not only of judges and court administrators, but others with an interest in our state's justice system. The task force included six members of the legislature: Senators Adam Kline, Steve Johnson, Mike Hewitt, and Jim Kastama, and Representatives Pat Lantz, Lois McMahon and Ruth Kagi. We thank all of them for their service. The task force was chaired by a very distinguished attorney from Seattle, Wayne Blair, who is a past president of the Washington State Bar Association. Mr. Blair is here today and I would like him to stand and be recognized for the leadership he provided as chair of the task force. Mr. Blair. The task force was charged with focusing on trial court funding, both the structure of the funding and the amount necessary to adequately fund the trial courts and ensure long-term funding stability.

The task force completed its work in October 2004 when it issued its final report and executive summary—you have all been furnished with a copy of the report and you will receive the executive summary this week. While time will not permit me to summarize the report in great detail, I can tell you that the task force came to the conclusion, rather rapidly, that the way Washington's trial courts are funded is not very sound. As I have already indicated, these courts are largely locally funded with little financial support coming from state government. Because of a provision in the state constitution, the State is required to pay one-half of the salary of each superior court judge, but that is about it in the way of state funding. Currently Washington is 50th out of 50 states in terms of the percentage of state support for its trial courts if you include the cost of criminal prosecution and public defense.

A core finding of the task force is that there must be a rebalancing of responsibility for the funding of trial courts so that the state government, as opposed to local government, contributes in a more equitable way to the operations of the superior courts and the district and municipal courts. The report does not suggest, nor should it, that state government take over the entire responsibility for funding our trial courts, as our neighboring states of Oregon and California have done. Our state's populist traditions and a belief that government that is closest to the people is the best government, continues to suggest that counties and cities should share the cost of operating the trial courts within their jurisdiction. But it is also clear from the report that the state government should be contributing more toward the operations of its trial courts. I emphasize the words "its trial courts" because clearly the superior court is a state court, its judges being state elected officials with statewide jurisdiction. Our district courts, unlike the old justice of the peace courts, are also state courts. I am comfortable saying that because the legislature created these courts, you establish their number and location and their responsibilities and jurisdiction have been substantially increased in recent years.

The Board for Judicial Administration, after being presented with the task force report, spent considerable time reviewing its findings and recommendations. Eventually it developed a proposal for this, the 59th Legislature, to consider. Let me be clear—we understand that there are no quick fixes to the problems we see as a consequence of inadequate and unreliable funding for our trial courts. For over one hundred years, ever since statehood, our trial courts have been funded almost exclusively by local government and we know that this will not change overnight or even in one or two legislative sessions. It will take a long-term commitment from the judiciary and the legislature to rebalance the funding. We believe, though, that what we are proposing to you in this session is a reasonable first step.

Our first recommendations to you are in the area of trial court operations. We propose that state government undertake payment of one-half of the salary of our district court judges and elected municipal court judges. This would be consistent with what the state now provides for superior court judges and would be an important recognition of the increased stature of our important courts of limited jurisdiction which exist in every county of our state.

The other request in the area of trial court operations is that the State assume one-half of the costs for jurors. By that I mean one-half of the daily juror fee and mileage costs. I am sure you would agree with me that the right to trial by jury is one of the most sacred rights citizens of this nation possess. It is also a right that is guaranteed in civil and criminal cases by our state constitution. It seems only appropriate that the State should bear one-half of these costs that are now borne by counties and cities alone. In connection with this request, we are recommending that the minimum daily fee for jurors be increased from the present $10 to between $30 and $45 for the second or subsequent day of jury service. As I indicated in my first state of the judiciary address four years ago, the present minimum daily fee of $10, which was set in 1959, is woefully inadequate and, frankly, an embarrassment—it is not sufficient to reimburse jurors for the costs of parking in our larger cities, much less other out of pocket costs for things like child care that may be necessary. The argument I made four years ago for an increase in that fee is even more compelling today.

Now you may be asking yourself this question: if the State simply picks up costs already being borne by local government, how does that benefit our trial courts and allow them to deal with the problems caused by insufficient funding that have been identified in the task force report? That is a good question and one that is answered by our recommendation that one-half of the savings that counties realize as a consequence of the State's assumption of a portion of district court salaries and jury costs be set aside in local trial court improvement accounts. Decisions regarding expenditures from these accounts should be left to the sound discretion of the legislative body of the local government and should be available only for improvements to trial court operations.

The next proposal we make to you is not in the area of trial court operations. It is in the important area of public defense in criminal cases. Although the provision of public defense is, technically, a function of the executive branch, it is our trial courts that are in the best position to observe the work of our public defenders and, ultimately, it is courts that must determine if the state is meeting its constitutional obligation to provide effective counsel to indigent defendants in criminal cases. Unfortunately, our public defender systems in this state are not in good shape—I wish I could say otherwise, but I can't. Because almost the entire financial responsibility for providing counsel is being borne by local government, we have a situation where no two defender systems in Washington are the same. The result is that we have a crazy quilt of systems. Although the systems in some counties are better than in others, the most common feature that these systems share is public defender caseloads that are too large, a lack of training, and proper supervision for public defenders, and, almost always, a lack of adequate support services. The system, in other words, is broken and in crisis. What I am saying to you is borne out by the findings of the Washington State Bar Association's Blue Ribbon Panel on Public Defense and the investigative series that was recently carried in the Seattle Times. That series of articles showed that while many dedicated persons work in our public defender offices, in too many of our jurisdictions defendants are poorly served by the system.

Without assistance from the State, our cash strapped counties and cities are unable to correct the problems that have been identified in the bar study and the Times' articles. That is why we are recommending to the legislature that the State invest $12,500,000 in the state's public defender systems in each year of the coming biennium. This money, we propose, should be distributed to the counties and cities on a formula, based largely on population and criminal filings. We recommend, though, that funding in the second year be contingent upon a showing by the jurisdiction that progress has been made in improving their system consistent with the long-ignored standards for public defense service that counties have been directed to develop pursuant to legislation passed by this body in 1989.

One might well ask at this point, why with all of the meritorious requests that are made to the legislature for funding should we be concerned about providing counsel to indigent defendants in criminal cases, when many of them will be found guilty of the crime with which they are charged or some lesser offense? The short answer is that the constitution we are all sworn to uphold guarantees the effective assistance of counsel to each defendant who is charged with a crime that carries with it a potential loss of liberty, regardless of the defendant's financial circumstances. Long before the famous United States Supreme Court case of Gideon v. Wainwright made that right binding on all of the states, as a matter of constitutional law, the legislature of this state recognized that responsibility. The year was 1909 when the 11th Legislature passed a statute,

which said: Whenever a defendant shall be charged with a felony and "shall request the court to appoint counsel to assist in his defense" because "he is unable by reason of poverty to procure counsel, the court shall appoint counsel" to be paid at public expense.

Finally, we are also recommending to you that the state government phase in full funding of the cost of attorneys for the parents of children in termination proceedings. As you know, this legislature previously funded a four-year pilot project in which the State did ensure payment of these costs in the three pilot counties. This project has been immensely successful in moving these kinds of cases through the system more expeditiously than elsewhere and it has resulted in reducing the amount of time that the children, who are the subjects of these actions, spend in foster care. We also recommend that the State continue its efforts to improve the level of funding for civil legal services, consistent with the recommendations of the civil legal needs study that were approved by the Supreme Court's Task Force on Civil Equal Justice.

We recognize that what we are proposing will cost real money that the State is not now paying out. I wish, therefore, that we as judges could bring some money to the table so to speak. But, alas, as the judicial branch, we do not have the power to generate additional revenue. We do, however, collect a wide variety of fees at our trial courts. We believe that those fees, which have not been increased for some time, should be increased across the board and that other fees should be imposed for some services for which no fee is now imposed. If our recommendation in this regard is adopted by you, it will generate a substantial sum of money for the State that could assist in underwriting the costs of what we have proposed. We make this recommendation with a degree of reluctance because any increase in fees can, if it is too great, inhibit access to justice. We don't want to do that and we are satisfied that the increases we are proposing will not have that effect.

Let me close by saying that we know that this legislature will receive a myriad of requests to increase funding for a variety of governmental functions—for our common schools and universities for public employee salaries, for corrections and for public assistance, and on and on. All of these proponents, I am sure, will have a legitimate case to make. I don't mean to tell you how to sort out all of these competing requests, other than to say that the provision of justice, on both the criminal and civil side, is a core function of government that should be adequately supported by all taxpayers, not just users of the system. The first building that was built on this campus, courtesy of a long ago appropriation from the legislature, was called the Temple of Justice and the first building that every county built after this state was organized was a county courthouse. This reflects the fact that provision of justice has been and always will be a priority for Washingtonians. In order for our state's judiciary to continue to provide the quality of justice that our citizens expect us to provide, we must make the recommendations I have outlined. We hope you will give these reasonable requests favorable consideration. Thank you for listening to me so courteously and for inviting me to present this address.