

State of the Judiciary

Chief Justice Gerry L. Alexander, Washington Supreme Court

Message to the Washington Legislature

January 17, 2007, in Olympia, Washington

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

Let me first extend thanks to the members of the legislature for the warm welcome you have accorded me and my fellow justices. We are very honored to be here for the purpose of allowing me to present, on behalf of our court and the judiciary of this state, the biennial State of the Judiciary address, the fourth I have had the privilege of delivering since I first became chief justice.

My colleagues and I are aware that time is precious to legislators during legislative sessions, and we are grateful for the opportunity to speak to you as well as to our state's elected officials and the people of Washington.

While the halls of this legislature are in close proximity to the offices of our state elected officials and the Temple of Justice, our respective branches of government have very different functions and we do not have many opportunities like this to gather together. While some may feel that this is as it should be under the doctrine of separation of powers, it is my view that occasions like this and the governor's State of the State message, can lead us all to better appreciate the important role that each branch performs in our democracy.

As you know, our state's justice system is present in every county in our state as well as in most of our cities and towns. It functions in courthouses and municipal court buildings, and is presided over by nine justices of the Supreme Court, 23 judges of our court of appeals, 182 superior court judges and 204 full and part-time judges of our district and municipal courts. These justices and judges can't, of course, manage the system alone and, fortunately, they have the assistance of dedicated court commissioners, county clerks, and staff that work hard managing caseloads that collectively total more than two million filings each year—more than one filing for every three citizens of our state.

I wish I could have every judicial officer in the state here today, but as you will be able to tell from my remarks they have plenty to do at home. I did, though, ask a few judges to be here to represent the judiciary of our state. Representing our hardworking court of appeals is its presiding chief judge, Steve Brown of Yakima. Judge Brown, would you please stand. Also present are the presidents of our two excellent trial court associations, Kittitas County Superior Court Judge Michael Cooper, president of the Superior Court Judges' Association of Washington and Grant County District Court Judge Richard Fitterer, president of the District and Municipal Court Judges' Association. I would like them to stand as well and be recognized. Sitting with these judges are members of the Board for Judicial Administration, the policy setting board for the entire judiciary, which had its monthly meeting here in Olympia earlier today. Would they please stand.

I am immensely proud of these judges and the judicial officers that they represent at the four levels of our court system. I have been fortunate to serve at three of those levels during my judicial career—the superior court, the Court of Appeals, and for the last 12 years at the Supreme Court—and I can tell you from my almost 34 years of experience in our justice system, that we have one of the hardest working and innovative collection of judges in the nation. In my view, the quality of Washington’s judiciary has never been better than it is at this moment.

At every level, our courts have a direct effect on the lives of individuals. This is particularly true of our trial courts. At the superior court, judges determine child custody issues, protect victims of domestic violence from harm, preside over felony criminal cases and all manner of significant civil disputes. At the limited jurisdiction level, judges handle misdemeanor and gross misdemeanor cases, traffic infractions, and a myriad of other matters, including, at the district court, small claims cases and civil actions where \$50,000 or less is sought. Our limited jurisdiction trial court judges see huge numbers of persons in their courts each year and these courts can truly be called our “people’s courts.”

When reflecting upon the important work of each level of court in our state, and the challenges they face, I am reminded of the old saying that, “If we do not maintain justice, justice will not maintain us.” These words go to the very essence of our great republic and contribute to the pride we feel about our nation, our state, and our system of government. As Americans and Washingtonians, we revere justice, and we show that by periodically facing our nation’s flag and reciting these words: “liberty and justice for all.” Maintaining a strong and fair justice system is, I believe, of great concern to all of our citizens.

Unfortunately, we have not done the best job as a state government in maintaining our justice system at the trial level. Allow me to elaborate. Since we first became a state in 1889, our trial courts have been funded almost entirely by local governments—our counties and cities. This means of funding our trial courts was not problematic in earlier times because our court system was relatively small and local governments did not have huge demands placed on their resources. But as the years have gone by the number of cases flowing into our courts rose dramatically as our population increased and a variety of new laws and regulations were enacted at the state and local level. At the same time local governments have assumed financial obligations that were unknown to their predecessors. As a consequence of all of this, our trial courts have been severely challenged as they have endeavored to keep up with increasing caseloads. In some jurisdictions, particularly in our metropolitan areas, we have seen delays in getting cases to trial due to crowded court calendars, difficulties in obtaining qualified interpreters for non-English speakers, criminal defense attorneys with caseloads that are too large, and large numbers of persons going without representation in civil cases, particularly in family court matters.

Faced with all of this, the state’s Board for Judicial Administration addressed, what it concluded was the crisis facing our trial courts, in the “Justice in Jeopardy Initiative,” first presented to you in 2005.

This initiative flowed out of the hard work of the Court Funding Task Force and its workgroups, a body that was formed in 2002. It was comprised of more than 100 persons from across the state and from all backgrounds, including members of the legislature: Representatives Ruth Kagi and Pat Lantz and Senators Adam Kline, Mike Hewitt and Jim Kastama.

You may recall that when we first spoke to you about the Justice in Jeopardy initiative, we relayed a startling statistic from the task force's report—that Washington State ranked last among the states of the union, in terms of state government participation in the funding of trial courts, indigent defense and prosecution.

Today, despite the advent of additional state funding in the last two years, budget-strapped local governments still bear more than 80 percent of the costs of maintaining our trial courts. Although state government funds the rest, less than 1 percent of the state budget goes to maintain our justice system and the courts, which compose the key component of that system, courts that are provided for in our state constitution—a constitution that says that justice is to be administered “without unnecessary delay.”

The report of the Court Funding Task Force and the other studies that have been done over the years have recommended that eventually, the State should pay 50 percent of the cost of trial court operations and indigent criminal defense, and assume a substantially greater role in funding civil legal aid services for Washington's low-income residents. We think that this partnership approach between state and local government makes more sense than a complete state takeover of the cost of our trial courts, the path that California and Oregon have followed. We say this because we believe that local jurisdictions should have a stake in how the courts operate in their jurisdictions.

We recognized, however, that obtaining an increase in state funding of the magnitude we envision is a major change, and, thus, we have opted for recommending to you an incremental approach. The more we reflect on the Task Force recommendations, the more we are convinced that we have developed the best approach in the nation, a shared responsibility between state and local government.

The judiciary has been immensely gratified by the support that the legislature has given since we first approached you with the Justice in Jeopardy initiative. In the sessions of 2005 and 2006 you recognized that state government had a responsibility to pay a higher proportion of the costs of the state's justice system. In those sessions, you appropriated significant funds, much of which was derived from higher user fees, and applied it to the support of our trial courts, public defense and civil legal aid.

More specifically, in 2005, in Senate Bill 5454, the Office of Civil Legal Aid bill, and House Bill 1542, you provided for state funding of a portion of district and municipal court judges' salaries, and for trial court improvement accounts, as well as for legal representation for indigent parents in termination and dependency cases; civil legal aid programs; and indigent criminal defense.

In 2006, you appropriated additional funds for a pilot jury project, expansion of the parents' representation program and provided additional funds for civil legal aid programs.

While much more remains to be done, I am pleased to highlight the positive changes that have been made as a consequence of what this legislature has done in the two previous sessions.

CIVIL EQUAL JUSTICE

Let me first talk about civil equal justice. In 2005, the new Office of Civil Legal Aid, OCLA for short, got underway and began to administer state-funded legal aid services to the poor, monitor the use of state funds, and report on the status of access to the civil justice system for low-income people.

OCLA, headed by Jim Bamberger, a long-time legal aid attorney, and watched over by the Civil Legal Aid Oversight Committee has worked with the Supreme Court's Access to Justice Board to establish delivery objectives and accountability systems to close the gap documented in the landmark 2003 Civil Legal Needs Study.

The civil legal needs of Washington's low income people run the gamut from employment and housing issues to problems such as those faced by Dawn Seljestad, a low income mother of two children from Shelton, who endured years of controlling and abusive behavior by her husband. With the assistance of a lawyer from the Northwest Justice Project Dawn was able to get a protective order, a decree of dissolution, and an order requiring her abuser to enter into treatment to deal with his conduct. I am pleased to say that Dawn Seljestad is with us—would you please join me in recognizing this courageous woman.

Despite recent gains, biennial funding for civil legal aid still falls \$33 million short of the level necessary to fully address the needs chronicled in the landmark 2003 Civil Legal Needs Study. One gaping hole is the lack of any meaningful legal aid services in the rural areas of our state. We encourage the legislature to provide additional funding so that legal services offices can be re-established to serve low income citizens in Colville, Pullman, Port Angeles, Aberdeen, Omak, Moses Lake, Longview, and Pasco.

TRIAL COURT OPERATIONS

Regarding trial court operations, important steps forward were taken in 2005 and 2006 when this legislature recognized the state's duty to partner with local jurisdictions in funding our trial courts.

As a result of your actions, local governments across the state have obtained funds that have enabled them to pay a portion of the salaries of district court judges and elected municipal court judges. Thanks to you, Trial Court Improvement Accounts have also been established, which have enabled jurisdictions to improve and enhance a range of trial court operations.

Although the money was just beginning to flow into these accounts by mid-2006, let me give you a few examples of what is going on in jurisdictions across the state as a consequence of the creation of Trial Court Improvement Accounts:

Benton County is upgrading the recording system in its district court courtrooms.
Clallam County is adding a court security office position.

The City of Everett is installing new video equipment that will connect its municipal court with the Snohomish County Jail so that arraignments can be conducted while the defendant remains in jail, thereby making it unnecessary to transport the defendant to the municipal court.

Lewis County is partially funding an assistant court administrator for its district court.
Yakima County is using the funds to operate a district court satellite facility in Grandview to better serve the southeast part of that county.

Your creation of trial court improvement accounts recognized that each jurisdiction has different needs. These accounts allow trial courts to tailor improvements to best serve the citizens of their judicial district. We anticipate that these accounts will have a very beneficial effect in coming years, and we will continue to update you on how the funds are being utilized.

Next year, we will also provide you with the results of the study you authorized on the effect of increasing the daily attendance fee for jurors in three jurisdictions: Des Moines Municipal Court, Franklin County Superior Court, and Clark County Superior Court. We believe that is the first time a project like this has been undertaken anywhere in the United States and we look forward to sharing the results of the study with you.

COURT INTERPRETERS

Let me now direct my comments to what we are proposing to you this year as a part of our continuing Justice in Jeopardy Initiative. In the area of trial court improvements we are asking for an additional \$8 million dollars in the biennium to carry out the promise of a statute that was enacted by this legislature in 1989. I refer to RCW 2.43.010, which says that it is the policy of this state to secure the constitutional rights of persons who are unable to readily understand or communicate in English and cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

When I was a superior court judge years ago, we rarely needed interpreters in court. But our society has changed and has become more diverse. Indeed, you passed the statute that I just referred to after you took note of an audit that showed that thousands of non-English speakers were routinely unable to understand what was being said in court. Unfortunately, although we have probably the best system in the nation for certifying court interpreters, many jurisdictions are not able to follow the letter or the spirit of the law because of a lack of funds. The result is that far too often uncertified court interpreters are being utilized because of low pay and/or an inability to obtain a certified interpreter. This, of course, can result in testimony and evidence not being accurately presented to the trier of fact, thereby increasing the possibility that a wrong decision may result.

Although this is not a cost that the State has heretofore underwritten, we fear that the problems I have just described will not be eliminated unless there is an investment of dollars from state government to assist our hard pressed local jurisdictions meet their statutory obligations.

PUBLIC DEFENSE

Let me next talk about public defense in criminal cases. A vital element of our Justice in Jeopardy Initiative relates to the necessity of meeting the constitutional mandate that in all criminal prosecutions the accused shall have the assistance of effective counsel for his or her defense. We can be proud that Washington recognized this right long before the U.S. Supreme Court ruled in 1963 in the famous case of *Gideon v. Wainwright* that states must provide such legal assistance. Indeed, Washington's then attorney general, John J. O'Connell, rejected a request from Florida's attorney general to present a friend of the court brief in support of Florida's position that Gideon, although indigent, was not entitled to a publicly funded defense. Instead, our attorney general presented an amicus curiae brief on behalf of Gideon.

Despite this history, it is fair to say that we have not fully heeded *Gideon's* trumpet. I say that because too often in our state, indigent defendants are represented in criminal cases by lawyers who lack the training and experience to be considered effective or who are overburdened with caseloads that are so large that they are unable to devote adequate time to the defense. This is not, of course, true in every case. We have many dedicated public defenders in this state who do a fine job, often for inadequate compensation. But the systems we have in the state for providing public defense vary greatly and, consequently, we have a "crazy quilt" of public defender systems with no two systems being exactly the same.

They all have some problems, though, and I believe this has been borne out by the investigative series that ran in the *Seattle Times* in 2004, the recent litigation in Grant County, and the report of the Blue Ribbon Task Force on Public Defense of the Washington State Bar Association.

While state law dictates that counties adopt standards for administering public defense systems, using Washington State Bar Association standards as guidelines, I am told by our state's director of the Office of Public Defense, Joanne Moore, that presently no county public defense system is compliant.

Fortunately, positive steps are being taken to reverse this trend. As I have already observed, in 2005 this legislature adopted HB 1542, which provides that state funding will be progressively distributed to counties for the purpose of improving public defense.

We believe that with additional state funding our state's defender systems can become compliant with WSBA standards. Last year, \$3 million was distributed to counties pursuant to HB 1542 and I can report to you that 38 of the state's 39 counties are now participating in the application process, administered by the Office of Public Defense. We need, though, to make a substantial leap forward in 2007-2009 toward closing what the *Spokesman Review* called an "embarrassing funding gap" so that our systems of public defense can deliver on our constitutional duty to provide adequate representation to all indigent criminal defendants.

The Office of Public Defense has also made incredible strides since I last addressed you in expanding to 18 counties the program that provides representation of indigent parents in dependency and termination actions. Studies show that with better representation, parents are better able to access court services and work through their problems, thus increasing their ability to be reunited with their children. We are asking that you expand the Parents Representation Program to every county.

CASA

Let me say a word about CASA, Court Appointed Special Advocates. This is a terrific program that trains volunteers to be advocates in dependency cases for abused and neglected children. As a part of our Justice in Jeopardy Initiative we are requesting additional funding for CASA to accomplish essentially two things: first, to provide stability for CASA programs in rural areas and, second, to allow CASA to serve a minimum of 10,000 children statewide each year, up from the approximately 7,000 who are benefiting now. CASA is a huge bargain to the State because the public money only goes to provide supervision and training. The service to the children is provided by unpaid volunteers like Patricia Scott of Jefferson County who has contributed over 2,200 hours of service as a CASA volunteer. Ms. Scott, who was recently named CASA Volunteer of the Year, is here with a group of CASA volunteers, and I would like them to stand and be recognized for their service.

TECHNOLOGY IN THE COURTS

Allow me to take a brief moment to discuss positive developments in technology in the judicial branch. We have decided to pursue purchase of a case management system for statewide implementation to replace our 20-plus year old systems. This approach will greatly mitigate risks and accelerate the time to full implementation.

We will be seeking your authorization to expend funds from the dedicated JIS account toward this end and are developing a court rule change to increase revenues generated from traffic infraction penalties to pay for this project.

Although I am not a technical whiz, it is my vision that by the time my service on the Supreme Court comes to an end, the foundation will have been laid so that the work of all of the courts of this state will find support in a common case management system.

JUDICIAL ELECTIONS

Before I close, I would like to say something about the subject of judicial elections, a subject that was of considerable interest to me in 2006. I recognize that a number of proposals are now before the legislature that are aimed at reforming the process by which we elect judges. Some of these relate to the public financing of judicial campaigns and others endeavor to reign in the influence of independent expenditures by special interests. You may even be presented with proposals to amend the constitution to provide for an entirely different way to select judges. At this point, the judiciary as a whole has not taken a position in response to any of these specific proposals but I can assure you that we are intensely interested in the subject and we may take a

position on all or some of these proposals, provided we can do so without compromising our ethical obligations. I do feel comfortable, though, in restating the long-standing position of the judiciary favoring a publicly financed voters' pamphlet in the primary election. As you know, many judicial elections are decided in the primary so we support the proposals for creation of a statewide primary voters' pamphlet that would be mailed to every household. The judiciary is also of the view that as long as we continue to elect judges in the manner set forth in our state constitution, we should elect *all* judges including municipal court judges. We believe that this is necessary to assure independence of the judicial branch.

Let me close by saying that we know that this legislature will be presented with a myriad of requests to increase funding for a variety of governmental functions—for common schools and universities, for public employee salaries, for projects to improve the physical environment, and for corrections, and so 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 placed 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 came into being was a county courthouse. This reflects the fact that provision of justice has always been 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 that you will give these reasonable requests favorable consideration. Thank you for listening to me so courteously and for inviting me to present this address.