State of the Judiciary
Chief Justice Mary E. Fairhurst, Washington Supreme Court
Message to the Washington Legislature
January 16, 2019, in Olympia, Washington

Chief Justice Mary Fairhurst: "Thank you President Habib, Speaker Chopp, Governor Inslee, members of the Washington State Legislature, judges, elected officials and residents of Washington.

Today, we renew the tradition of the Chief Justice of the Supreme Court every other year delivering a State of the Judiciary address to a joint session of the Washington State Legislature.

Thank you for reestablishing this tradition so that I may present this report to you, our lawmakers and executive and the people of the state of Washington, so you can gauge the health of the judicial branch, one of the three key components of our government.

I am very pleased to report that Washington's judicial branch is strong, managing hundreds of thousands of cases every year – cases impacting the lives of all the people of Washington.

In addition to our casework, judges, judicial branch staff and justice partners devote significant time and energy to improving the justice system so that it can continue to deliver justice. Later, I will detail the challenges before us as well as some recent innovations to meet those challenges.

Before I do, I want to thank you again for opening your doors and the lines of communications between our respective branches. Right now, our nation needs to see that their government leaders – those in the legislative, the executive and the judicial branches – are working together.

Genuine partnership, good will and civility are not only possible – they are essential.

Your invitation marks the beginning of a renewed partnership, founded on principles of comity and respect for our shared values and goals.

Each year brings new challenges – and continued challenges – that need to be addressed. We can meet these challenges, knowing that the legislative, executive and judicial branches are each responsible in different ways for promoting and upholding the rule of law.

The rule of law is comprised of four principles: A system of self-government in which all persons, including the government, are accountable under the law; a system based on fair, publicized, broadly understood and stable laws; a legal process that is fair, robust and accessible, in which rights and responsibilities based in law are evenly enforced; and a judiciary that is diverse, competent and independent.

The rule of law by itself is not moral or ethical. It is we – the makers, enforcers and guardians of the law – who must uphold a quality that is moral and ethical in nature. As human beings, we bring a human understanding to the rule of law. Each of us has the skills, the knowledge and

experience to do our jobs, but it is the extra dedication, honesty, integrity and trust that brings us truly together for the betterment of our society.

An oft told fable, oft told by me, anyway, illustrates how we can make a difference.

There had been a big storm and a man headed to the beach to see what had washed up. Standing on the bluff in the early morning, he could see a lone person walking on the beach, taking a few steps, leaning over, picking something up, and throwing it into the water, over and over again.

When he got down on the shore, he could see hundreds of starfish. Reaching the man on the beach, he asked, 'What are you doing?' He said, 'Why, I am throwing the starfish into to the sea, if I don't they will die.' He then asked: 'Why are you doing that? There are hundreds of starfish, you can't possibly make any difference.' As the man picked up the starfish and threw it into the sea, he said, 'Well, I made a difference to that one.'

We do make a difference every day, individually, collectively. We make a difference . . . by what we do, and what we don't do. And we make a difference by how we do it. Every day . . . every moment of every day, we get to decide the difference we make.

I often ask people, 'What would you attempt to do if you knew you could not fail?' 'What would you attempt to do if you knew you could not fail?' I think that is what you should be doing. To understand that we hold in our hands the power to change a circumstance, a mind or a life today – right now – is incredible. And we each have that power.

The judicial branch is responsible for the delivery of justice. We who work in the branch – justices, judges, administrators, clerks and professional staff, at the Administrative Office of the Courts and all court levels: municipal, district, superior, intermediate appellate and supreme – are stewards of justice.

As stewards of justice, it is our duty to see that the judicial branch carries out its responsibilities and achieves its goals.

I see those as being: A justice system that works hard to address the challenges it is facing; a justice system that recognizes the role it plays in people's lives and society's fabric; a justice system where all who come to the court and all who work in the court feel they are, and actually are, treated fairly and with dignity and respect; a justice system where parties feel they are, and actually are, welcome and safe, regardless of income, age, ability or any status; a justice system that has the necessary infrastructure and information systems to handle cases effectively and efficiently; and a justice system that the public deserves to, and does, have trust and confidence in.

Bringing fair, efficient, effective justice to the people of Washington in an era of uncertain funding and contentious times is an enormous challenge. We, in the justice system, are committed to continually improving justice by seeking new knowledge and better methods while not allowing the circumstances to overwhelm us – believing that each individual, each committee, and each court can make a difference and that every improvement, no matter the size,

adds to the better whole.

Washington is fortunate to have a judicial branch filled with people who will never give up trying to make a difference and improving justice, in ways big and small.

My goal as Chief Justice is to encourage and support those efforts, and today, I applaud and report to you the work being done in our justice system.

As you know, our state's justice system is present in every corner of our state. It functions in state, county and municipal courthouses, and is presided over by nine Supreme Court justices, twenty-two Court of Appeals judges, one-hundred ninety-three superior court judges and two-hundred six full and part-time district and municipal court judges.

At every level, our courts have a direct impact on the lives of individuals and businesses. This is particularly true of our trial courts.

At the limited jurisdiction court level, our municipal court and district court judges handle misdemeanor and gross misdemeanor crimes. District courts also handle small claims cases and civil actions when less than $100,000 are sought in small claims cases. Our limited jurisdiction trial court judges see huge numbers of persons in their courts each year and can truly be called our 'people's courts.'

At the superior court level, which is our general jurisdiction trial court level, judges hear cases on all matter of issues including civil matters over $100,000, felony crimes, family law issues and juvenile matters.

At the trial courts is also where our therapeutic courts may be—drug court, mental health court, veterans' court, community court, etc. These therapeutic courts are problem solving courts.

The Court of Appeals and the Supreme Court review cases that have been decided in the trial courts.

Important work is being done at each level of court and throughout the judicial branch. We are working hard to have and maintain a strong and fair justice system because justice matters. 'If we do not maintain justice, justice will not maintain us.'

While the state of the judiciary is strong, it cannot remain so unless we continue to examine and address issues that confront us now, anticipate new issues on the horizon and prepare to meet them.

Leadership of a branch does not happen in a vacuum – it takes active listening, openness to understanding the problems, respect for different viewpoints, and enthusiasm for working with others. We are blessed with outstanding judges, court personnel and others who embrace that role and work tirelessly to maintain and move our justice system into the future.

Speaking of our justice system in the future – there is no greater way to preserve democracy than

to ensure that our youth respect and understand their rights and responsibilities.

With that goal, the Council on Public Legal Education developed an initiative to address gaps in meaningful civil learning by youth. The legislative, executive and judicial branches, with many community partners, then worked together to establish the Civic Learning Initiative, focusing on the policies, resources, and support necessary for successful civics education in K through 12 and youth development programs, with emphasized outreach to underserved youth.

Governor Inslee and I convened two summits. The Legislature passed and the Governor signed House Bill 1896, which requires every Washington high school, beginning with the 2020 - 2021 school year to provide a one- semester civics course.

Complementing that effort, last September 17, the anniversary of the adoption of the United States Constitution in 1787, we launched a new Constitution Day outreach event in classrooms across the state. More than one hundred judicial officers and attorneys engaged students in conversations about the constitution and what it means to them.

Judges and lawyers and partners in the justice system are working together on many other projects. For example, the Superior Court Judges' Association sponsors a 'Color of Justice' program, and the Supreme Court Minority and Justice Commission sponsors 'Youth and Justice Forums', which connect judicial mentors of color and attorneys of color to minority youth. In 2018, students ages 11 to 18 met with judge and attorney mentors in Thurston, Yakima and King Counties and in the Tri-Cities. These events give the young people the opportunity to talk with judges and attorneys who look like them, and have similar backgrounds. They get to learn about the judicial branch and careers in law, and are able to imagine themselves in those positions one day.

A 2016 nationwide study by the American Constitution Society found that the judicial branch does not reflect the country's diversity, with minorities only making up 20% of judges and women only making up 30%. Our judicial branch is working on changing that disparity, because we know that by valuing diversity in our workforce, we promote equity and justice for all.

The Supreme Court Gender and Justice Commission will be examining in depth the degree to which gender affects justice in Washington today. Their work is supported by a national grant provided to help fund the study.

The Commission will use an evidence-based research model to look at gender impacts on justice. One particular focus will be on how race and poverty impact women who access the courts. Recent public awareness regarding the extent to which gender bias and sexual harassment remain significant issues in the workplace make the timing of the study appropriate and necessary.

2018 marked the fourteenth year that courts statewide have celebrated National Adoption Day and hosted community events in order to celebrate adoptions and raise awareness of the many foster children who are legally free and waiting and wanting to join new families.

2018 was the first year that the Supreme Court Commission on Children in Foster Care

designated that June be Family Reunification Month. The Commission asked courts statewide to host public celebrations of families in dependency cases who worked hard and completed reunification with their children.

The legislature and the courts have also worked together the last couple of years to examine legal financial obligations. Legal financial obligations are those fines and costs that our laws and court orders impose on people who are convicted of infractions and crimes.

More and more, we are realizing that failure to pay in many instances is due to a person's inability to pay or indigency, rather than a willful failure to pay. The Legal Financial Obligations Consortium has been and is gathering data and developing strategies for collection of legal financial obligations that support, rather than undermine, accountability and rehabilitation for those who struggle to afford court fines and fees.

Significant steps have already been taken based on this work. The legislature passed and the governor signed House Bill 1783. We launched the legal financial obligations calculator prototype, designed to help Washington judges set appropriate levels of fines and fees based on current laws and statutes, and a defendant's ability to pay. The consortium has more than 50 members from different sectors across the state.

Another area where a wide group of people have come together to discuss, and hopefully solve a problem, is the area of pretrial reform. Every day across Washington, trial judges make decisions regarding pretrial release or detention that have consequences for our communities and for people accused of crimes. The Pretrial Reform Task Force is composed of judges, prosecutors, public defenders, bail business owners, legal aid attorneys, court administrators and officials, researchers and more.

The task force will assess the information judges need to make these pretrial decisions and gather data to formulate recommendations for expanding pretrial release. They will also evaluate ways to minimize the impact of pretrial detention of low risk offenders by exploring safe and cost-effective alternatives to full incarceration.

I have spent some time discussing our policy work. Let me talk now about the practical aspect of delivering justice.

In Washington, we are a decentralized judicial system, meaning we are not a unified system. Court funding comes from the state, county and cities. Judges in Washington are elected in statewide, county and sometimes municipal elections. The Supreme Court and superior courts are created by the State Constitution. The Court of Appeals and the district and municipal courts are created by legislation, either state or local.

The one area that we do have a mainly unified system is in the area of information technology. The Judicial Information System Committee, created by state legislation, is responsible for information technology decisions implemented by the Administrative Office of the Courts. Our funding comes from a dedicated Judicial Information System account and recently also from the general fund as there is not enough dedicated money for the information technology work that

needs to be done.

For many years, we have worked hard to replace antiquated systems at all levels of court. We are still working. However, I am happy to report there has been major progress.

At the end of 2018, five years after beginning implementation, we successfully completed statewide implementation of the Superior Court Case Management System, known as Odyssey, in thirty-seven of the thirty-nine counties. King and Pierce Counties chose not to come on the state system and were allowed by the legislature to develop or keep their own systems. The Odyssey system replaces a case processing system from the 1970s that was used by superior courts and county clerks.

The new system provides much more case management functionality and modern information, and document sharing abilities. A new Judges' Edition enhances tools for judges in the courtroom and in their offices. A new public portal provides the public with free access to case information. I am very proud to report that the Superior Court Case Management System project was successfully completed, on time and within budget.

In 2017, the Supreme Court and the three divisions of the Court of Appeals began using their new Appellate Court Enterprise Content Management System.

Because of this system, the appellate courts are using the same document management system and have automated many of their workflows and business processes. Our plan for the future includes having fully electronic appellate court records.

Our district and municipal courts cannot efficiently serve the public with their current system based on 1980s technology. We must acquire a modern case management system for Washington courts of limited jurisdiction. We had earnestly begun this work, but, when faced with a solution that did not meet our needs or subjected the state to unreasonable risk, we took a pause to regroup and re-evaluate our options. The Courts of Limited Jurisdiction Case Management Project Steering Committee has developed guiding principles and key features of a case management system, and is now working with a consulting firm that is assisting us to determine a solution or solutions that best meets the needs of our courts of limited jurisdiction and probation departments. Although we made a wise and prudent choice to delay acquiring a new case management system for our courts of limited jurisdiction, the need is great and the work continues.

One final major project we are working on is an information networking hub, which is a statewide enterprise data repository system and data exchange. This is necessary for at least two reasons – first to make sure courts across Washington have access to the same case information, and second to exchange data with state agencies. Since Washington has a nonunified court system and some courts are implementing their own case management systems, we are developing a statewide data repository and establishing standard methods for local court systems to share data with that central repository. When complete, this will maintain a statewide view of case information for judicial decision- making. This exchange is in the works and will be piloted with King County.

While working on these significant statewide judicial information technology projects, the Administrative Office of the Courts is also working on information technology projects with other state agencies that impact the delivery of justice.

For example, in September 2018, the Supreme Court and Division III of the Court of Appeals, in conjunction with the Washington State Penitentiary and the Department of Corrections, launched a pilot project to assess the benefits of allowing inmates to file legal documents electronically, because a large number of prisoner petitions are filed in the appellate courts.

Also in 2018, the Administrative Office of the Courts supported the Department of Licensing's major modernization of driver licensing systems by replacing or modifying key interfaces between the two agencies. Because there are over 800,000 licensing-related filings in the courts per year, it is critical that the courts and the Department of Licensing are able to share and retrieve accurate information.

And now for what we are focusing on specifically in this legislative session – interpreter funding and court system education.

It is fundamental to justice that all individuals, including those with limited English proficiency or who are deaf or hard of hearing, are able to understand and meaningfully participate in courtroom proceedings.

A recent survey revealed that 59% of courts experienced delays in proceedings when interpreter services were unavailable. Small and rural courts report particular difficulties in providing qualified interpreters. Delays impose extra costs on the public and on the participants in the proceedings.

Ensuring that a qualified interpreter is available at the beginning of a case, not only ensures that minor legal issues are resolved promptly, but can also help avoid legal issues from compounding, if not handled appropriately.

State funding for interpreters has been flat since 2008, yet a recent study of Washington courts found that the cost of providing interpreters is increasing. Also increasing are the number of languages spoken in courts – nearly 30% more languages are being spoken statewide, with one court reporting that nearly 165 languages are spoken.

Access to qualified interpreters can have life-altering consequences. Without access, victims of crimes or abuse often face negative impacts, delayed responses or no assistance. For those seeking resolutions in high-risk situations, such as when needing a protection order, a court interpreter can be a matter of life and death.

To address this, the Board for Judicial Administration, using a plan developed by the Interpreter Services Funding Task Force, are asking state lawmakers in 2019 for $2.1 million dollars in additional state funds for interpreter costs. Increased funding will help additional courts, especially rural and small courts, access the Interpreter Reimbursement Program and support

interpreter recruitment and testing to increase the number of qualified interpreters.

Another major priority for the judicial branch this year is proper training for judges and court staff across Washington. It is essential that all who work in the court system are well trained in substantive law, technical areas and societal issues. In the last three years, the legislature passed or amended more than 150 laws in a wide array of substantive policy areas, for example, relating to driving under the influence, family law and parentage, guardianship, mental health, public records, and juvenile justice.

Besides knowing the law, judges and court personnel must use and understand technical systems critical to criminal history information, sentencing, case management, and more. And judges and staff, especially in trial courts, see first-hand the impacts of changing societal factors like the crack and opioid epidemics and the exploding number of self-represented litigants. Judges and court personnel must be trained to effectively and efficiently insure that justice occurs in the cases that come before them.

One other thing to note is that the judicial branch is experiencing significant turnover of judges and court staff in staggering numbers due to the aging of our workforce and the lure of better paying jobs. We have a record sixty-nine brand new judicial officers since last January.

Funding for court training has remained the same for more than a decade, despite increasing needs. The Board for Judicial Administration, using a plan established by the Court System Education Funding Task Force, is seeking an increase of $1.4 million dollars for court training, recognizing that without necessary training in these critical areas the work of the courts will be ineffective and inefficient. Such funding will also ensure equal access for small and rural courts that struggle to afford training opportunities.

Another issue of great concern to the judicial branch, and what we will be dedicating our energy to next, is courthouse security. A safe courthouse environment is fundamental to the administration of justice.

To address court security, the Board for Judicial Administration is now convening a Court Security Task Force to assess security at all trial courts throughout Washington. The Court Security Task Force will develop recommendations for how we can ensure that every courthouse in Washington is safe for jurors, litigants, court employees and the public that we serve.

Finally, all of the work of the judicial branch is supported and enhanced by the Administrative Office of the Courts. In 2017, the Administrative Office of the Courts celebrated 60 years of serving Washington's judiciary. I want to publicly thank the staff of the Administrative Office of the Courts for their hard work, thoughtfulness and professionalism. Every day, the people who work for the Administrative Office of the Courts show their dedication to the people of Washington and their commitment to advancing the efficient and effective operation of the Washington judicial system.

We have a new State Court Administrator, Dawn Marie Rubio. She brings a depth of knowledge about court issues from her varied experience with multiple state court systems. We are thrilled

someone of her caliber will continue the strong leadership of the Administrative Office of the Courts.

Although we are not a unified court system, we are unified in many ways. I have the great pleasure, having been elected by my colleagues, to serve as the Chief Justice of the state of Washington. Because of that, every day I get to work with, and see the work of, court staff, judicial officers and judicial branch personnel across the state. I get to see the difference they are making every day.

As Chief Justice, I also get to work with you – our legislative and executive branch partners. I get to see the difference you are making every day.

I want to remind you that time is precious. For whatever reasons, this is our individual and collective time and place. It is when and where we are serving in the three branches of government. It is when we are deciding what government looks like in our Washington.

None of us know how many days we have to make a difference. This is again especially true for me. My stage four cancer that I survived eight years ago has returned, and I am currently undergoing treatment. I will continue working. I still believe in miracles. As Albert Einstein said, 'There are only two ways to live your life. One is as though nothing is a miracle. The other is as though everything is a miracle.'

Everything is a miracle. Every day is a miracle. Let's not waste the days we have. Working individually and together, on behalf of those that we faithfully serve, we can, and are, making a difference.

Together, we will not fail. We can change the world to be what we want it to be, and we must ensure that all who seek justice, find it.

I would like to close with what my family calls the 'joy' pose. This is what we often do when we are overwhelmed with happiness. Because I am overflowing with happiness, hope and gratitude for you, for me, for us, and for all of Washington."