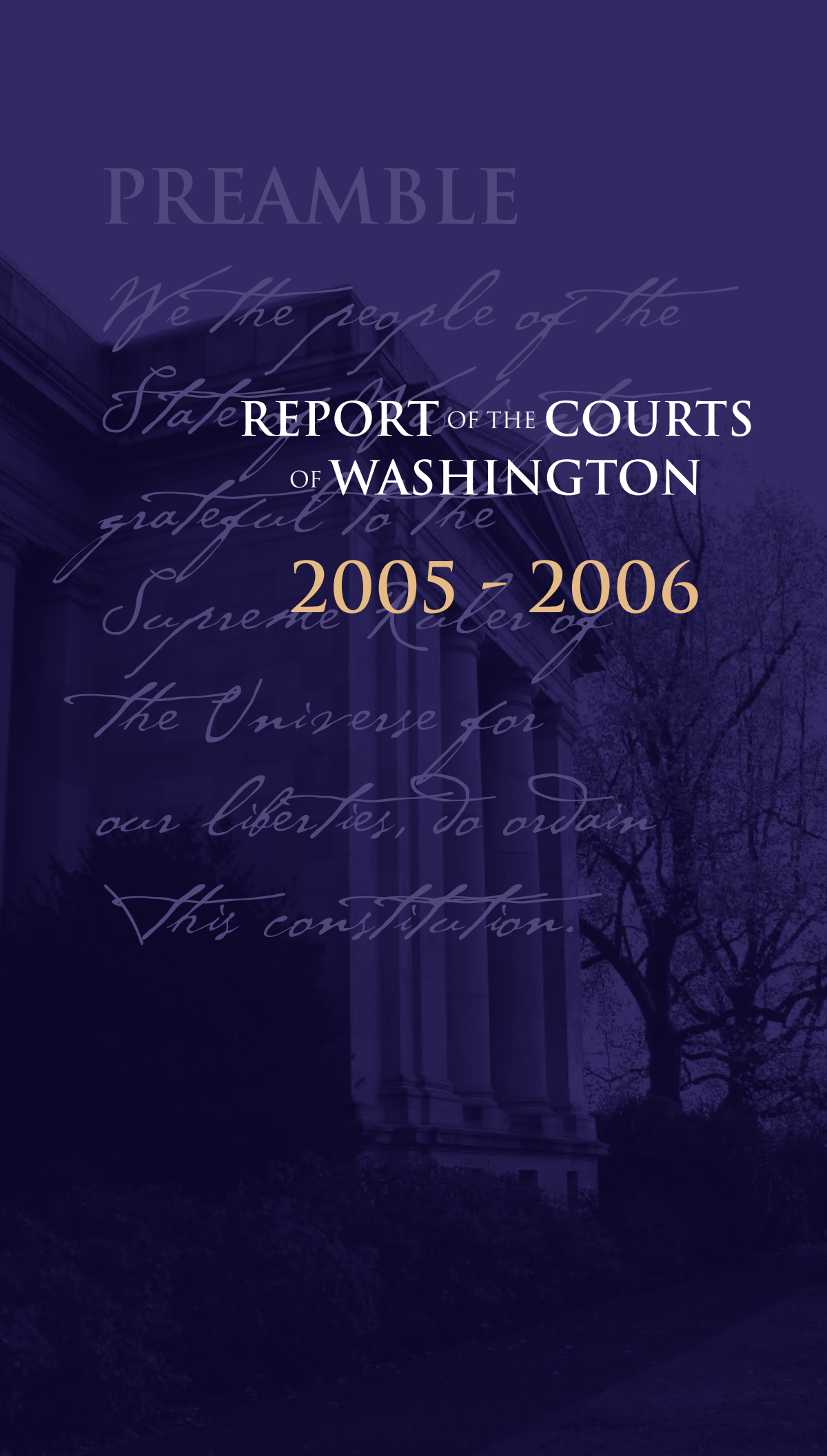

REPORT OF THE COURTS OF WASHINGTON

2005 - 2006

INDEX OF ARTICLES

LETTER FROM WASHINGTON SUPREME COURT CHIEF JUSTICE

On behalf of our state's judiciary it is my pleasure to present the 2005 - 2006 Report of the Courts of Washington.

As you will find throughout this report Washington courts are undergoing great change. From advances in trial court operations to our plans for modernizing our statewide court information system, our courts continue to evolve and modernize in the quest to better provide equal justice for all.

This report offers a glimpse into the major initiatives and achievements of the judicial branch of government in the past two years. Comprehensive caseload information on the work of the courts is also available online at www.courts.wa.gov.

While we face many challenges, I am proud to serve with the more than 400 judges throughout our great state. I thank all of these women and men and their dedicated staff who work hard each day to improve the public's level of trust and confidence in our state's court system.

"If we do not maintain justice, justice will not maintain us."

- Sir Francis Bacon

FUNDING SYSTEM ESTABLISHED IN 1889 NO LONGER ENSURES JUSTICE FOR WASHINGTON RESIDENTS

The words of Sir Francis Bacon go to the very heart of our democracy, of the reason we possess pride in our nation and system of government. We revere justice and maintaining a strong, fair system is of highest concern to Americans.

However, it is a stark reality that many Washington citizens are not served by justice because we have not maintained our system of funding it. Established at statehood in 1889, our funding structures rely almost entirely on local governments and have remained static while the world has changed around them.

> *A 15-year-old boy was removed from his home by police after an alleged assault at home. He was placed in custody and then foster care, where he languished due to lack of resources for juveniles, a custody battle between his parents, and repeated continuances caused by lack of courtrooms. His case was finally tried almost two years later in 2003, two months before his 18th birthday. He is now estranged from his mother and siblings. Delay caused by lack of court resources halted this family's chance at a resolution while the boy was still maturing.*
>
> *- Pierce County Superior Court Judge*

The Washington State Constitution promises residents, in Article I, Section X, that, "Justice in all cases shall be administered openly, and without unnecessary delay." But delay and serious consequences happen because of crowded court calendars, lack of court interpreters, defense attorneys with excessive caseloads, unequal representation in family proceedings, and Washington residents struggling through serious civil legal problems on their own because they cannot afford legal aid.

Today, budget-strapped local governments bear more than 80 percent of the costs of our courts. State government funds the rest - which means less than one percent of the state budget goes to maintain justice and to fulfill the constitutional promise of equal justice without unnecessary delay.

Important steps were taken by state legislators in 2005 and 2006 to begin repairing the foundation of Washington's justice system; however, a long road lays ahead as court officials, community groups and state lawmakers continue to work on problems that have taken decades to develop.

As the consequences of inadequate and unequal justice, funding grew more serious across Washington, the statewide Court Funding Task Force was created in 2002 to study the specific areas in which Washington's justice system was beginning to fail, and to quantify what was needed to halt the downward spiral and repair the system.

"After days of wrenching testimony in a Yakima court, a man was convicted of assaulting his 11-year-old son in front of a younger brother. He appealed, but because the court's recording equipment had failed, the appeal forced a re-trial. The expense would be enormous and the children and mother could not face another trial, so the prosecutor was forced to strike a weak plea agreement."

- Former Prosecutor, Yakima County

The Task Force, formed by the Board for Judicial Administration (BJA), included members from across the state and from all backgrounds - judges, attorneys, legislators, local government officials, citizens, business persons, and more.

The effort became known as the "Justice in Jeopardy" campaign. The Task Force's recommendations were endorsed across the political spectrum by businesses, community organizations, local governments and the media.

For instance, the editorial board of the *Seattle Post-Intelligencer* wrote on January 23, 2005:

"We are short changing justice in Washington State, and any one of us could pay a terrible price… With the exception of the constitutionally mandated 'paramount duty' to provide for public education, there is no function closer to the core of government or of greater priority for government than the assurance of justice to its citizens."

"Therefore, the Legislature intends to create a dedicated revenue source for the purposes of meeting the state's commitment to improving the trial courts in the state, providing adequate representation to criminal indigent defendants, providing for civil legal services for indigent persons, and ensuring equal justice for all citizens of the state."

- 2ESSB 5454, signed into Washington State law on May 13, 2005

Task Force members took their message to state legislators in 2005 and lawmakers listened.

Washington State lawmakers in 2005 and 2006 appropriated an additional $42.1 million per biennium for trial courts, public defense and civil legal aid, as well as some relief for burdened county budgets. More importantly, lawmakers agreed that the state has a duty to become more of a partner with local governments in funding the state court system.

"This legislation is an important first step in achieving adequate and stable long-term funding for our state's trial courts," said Washington Supreme Court Chief Justice Gerry Alexander. "As important as the financial commitments are, we are even more encouraged by the policy statement in which the state recognizes its responsibility to partner with local government in funding our justice system."

In 2002, a man convicted of attempted rape in Pierce County walked out of prison after serving only four years of a 10-year sentence. Crowded court calendars had delayed his trial one week past the speedy-trial deadline set by law. Pierce County courts were jammed with about 6,000 felonies a year in addition to civil cases, and judges were hearing about 70 cases a day.

- News reports on speedy trial violations

The Court Funding Task Force and other studies over the years have recommended that eventually, for stable and balanced court funding, the state 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 recognized that this would require a long-term, incremental approach, and that we have a long road ahead," Alexander said. "The more we reflect on the Task Force recommendations,

TRIAL COURT IMPROVEMENT ACCOUNTS

In 2005, state legislators adopted the Court Funding Task Force's recommendation to create Trial Court Improvement Accounts in each jurisdiction equal to the new state funds being paid for elected district and elected municipal court judges' salaries.

Though the money was just beginning to flow in by mid-2006, some jurisdictions across the state listed their plans for the initial funds:

- **Adams County:** Installation of digital recording systems and assistive listening devices in two courtrooms, and a new sound system in another courtroom.
- **Benton County:** Upgrade of the recording system in district courtrooms and purchase of office equipment to increase efficiencies.
- **Clallam County:** Creation of a courthouse security officer position.
- **Cowlitz County:** Purchase of software that allows for creating and signing forms electronically.
- **City of Everett:** Installation of new video arraignment equipment connecting the Everett Municipal Court to the Snohomish County Jail.
- **Ferry County:** Upgrade of a remote video appearance system.
- **Kitsap County:** Partial funding of new district court judge position and associated staff.
- **Klickitat County:** Funding part of a new probation officer position to assist drug court.
- **Lewis County:** Partial funding of new assistant court administrator for district court.
- **Lincoln County:** Purchase of a new digital audio recording system in district court.
- **Okanogan County:** Purchase of imaging software interface to link imaged documents to docket entries on district court docket.
- **Pacific County:** Increase in part-time district court judge position.
- **Pierce County:** Assist with funding an additional judge position.
- **Yakima County:** Operating expenses of new district court satellite facility in Grandview serving southeastern region of county.

the more firmly convinced we are that we have developed the best approach in the nation, that a shared responsibility between state and local government is imperative."

Before 2005, Washington State funded only about 15 percent of the cost of the trial court system - spending less than half of one percent of the state budget on courts - the lowest percentage of all states in the U.S.

Court funding in Washington has been a train wreck in the making for decades - partly because funding systems were set up in the first years of Washington's existence to rely heavily on local governments - and court officials acknowledge that repairing that foundation will not happen in a legislative session or two.

The problem reached true crisis level in the early 2000's as counties struggled with their individual budgets. At that time, the serious disparity in county budgets around the state showed clearly how vulnerable court funding was to local budget problems, and revealed how unequally justice could be administered between counties.

Courts in some counties were beginning to close for certain times during the weekdays, probation oversight of released felons was being cut or eliminated, crowded court calendars were forcing prisoners to be released because of violation of speedy trial deadlines, and some civil trials had to wait for more than a year to be heard. Public defenders in some counties were carrying caseloads several times the recommended limits, and Washington's low-income residents often failed to find help with serious civil legal problems, depending on where they lived.

"Our trial judges have obviously known of the problems they face in their own jurisdictions, but the scope of the problem statewide was not fully catalogued," Chief Justice Alexander told legislators in his 2005 State of the Judiciary address.

"Washington judges will steadfastly continue their efforts to ensure the promise of equal justice for all Washington citizens. In large part, the cornerstone of this commitment rests upon adequate and stable funding for the trial courts and we pledge to stay the course in achieving this long-term goal. The action of legislative leaders and the Governor in 2005 represents an important first step in the right direction for Washington's courts. We are deeply grateful for your support."

- Washington Supreme Court Chief Justice Gerry Alexander in January 2006 letter to Governor Christine Gregoire and state legislative leaders.

John W. "Cabbie" Jackson was convicted of a drug charge in Grant County despite the fact that the primary witness against him was mentally ill, and the only other witness testified to a view of the crime that was physically impossible. He served the entire five-year sentence before his conviction was reversed. He died one year after leaving prison.

- Seattle Times report on indigent defense

The Task Force's recommendations were focused on three critical areas - trial court operations, indigent criminal defense, and civil legal aid.

Among its recommendations for trial court operations: That the state assume 50 percent of the cost of jury fees and mileage; that the state adopt the Jury Commission recommendation of $10 for the first day of jury duty and higher reimbursement on subsequent days; that the state assume 50 percent of the cost of district court judge's and elected municipal court judge's salaries; and that Trial Court Improvement Accounts be established in each jurisdiction with savings realized from the state paying half of judges' salaries and jury fees.

Among its recommendations for indigent criminal defense: That the state pay 100 percent of the cost of representing parents in dependency hearings; that an extended training program be created for new public defense attorneys; that new positions be created within the Washington State Office of Public Defense to provide technical support to jurisdictions on public defense contracts and services; and that the state provide direct fiscal support to local jurisdictions for increased public defense services and to halt impending service cuts.

Among its recommendations for civil legal aid: That the state make a significant and meaningful increase in civil legal aid funding, with the objective of closing the $36 million biennial funding gap chronicled by the Supreme Court's Task Force on Civil Equal Justice Funding; that the administration and oversight of civil legal aid funding be shifted to the judicial branch in an Office of Civil Legal Aid; and that the capacity of the Northwest Justice Project and other state-funded legal aid providers to respond to critical legal needs of seniors, domestic violence victims, developmentally disabled and other low-income people be expanded.

The 2005 Washington Legislature responded to recommendations by approving 2ESSB 5454, which agreed that the state has a responsibility to pay a higher portion of the costs of the state justice system. The bill raised court user fees, and gave approximately $32.5 million per biennium to the courts and to counties and cities.

- **Approximately $16.1 million** was allocated directly to county general funds to provide relief for their burdens in funding the court system;
- **Approximately $2.1 million** to municipal general funds;
- **Approximately $2.4 million** to pay a portion of district and municipal court judges' salaries - municipal court judges must be elected to qualify - increasing to $6.8 million in the 2007-2009 biennium;
- **Creation of Trial Court Improvement Accounts** by jurisdictions in amounts equal to the money they receive for judicial salaries, to be used to improve and enhance a range of trial court systems and operations;
- **$5 million** to increase legal representation of indigent parents in dependency hearings;
- **$3 million** for civil legal aid to the poor, to be funded through a newly established judicial branch agency – the Office of Civil Legal Aid;
- **$2.3 million** for indigent criminal defense, including $1.3 million to increase training and technical assistance to jurisdictions, and $1 million for a public defense demonstration project;
- **Approximately $1.6 million** for county law libraries;

PUBLIC DEFENSE

"(Public) defense shortcomings are the 'elephant in the room' to the justice imperative - if defense breaks down, the whole justice system breaks down." - Report of the Washington State Bar Association (WSBA) Blue Ribbon Panel on Criminal Defense, May 15, 2004

The crisis: Before 2005, Washington State paid nothing toward indigent criminal defense except for appeals, leaving budget-strapped counties to handle the cost on their own. No mandated public defense standards existed; many public defenders had caseloads of over 500 cases in a year, far in excess of recommended caseload limits; little or no training was provided for new public defenders; and counties struggled to create public defense systems and contracts they could afford.

Public defenders were quitting in frustration; newspapers and task forces were beginning to examine and enumerate the failings of Washington's public defense system; and the American Civil Liberties Union filed a lawsuit in one county over the inadequacy of its defense system.

"The quality of public defense services in Washington varies greatly. Some defender organizations are among the best in the nation… At the same time…defendants in some Washington jurisdictions are poorly served, even victimized, by those entrusted with protecting their civil rights," said the WSBA Blue Ribbon Panel on Criminal Defense. Inadequate public defense leads to injustice and wrongful convictions, expensive appeals and reversals, civil rights lawsuits, and loss of respect for the courts, the panel concluded.

Steps taken: In 2005 and 2006, state lawmakers allocated $5.3 million for public defense services, including funds for technical support of counties creating contracts for public defense, training of new defenders, and funds for counties that commit to working on improving their public defense systems. This was the first time in state history that state legislators allocated funds for trial-level public defense. The Office of Public Defense (OPD) hired staff members and established programs to train and support jurisdictions and attorneys, and to work with jurisdictions wanting to improve their systems. Lawmakers also provided $9.5 million for improved representation of parents in court actions and hearings to determine how and whether they can retain custody of their children. Studies showed that improved representation significantly reduces the time frame for such dependency processes and increases parents' ability to access services and reunite with their children. OPD's parent's representation program was expanded from three counties to 17 counties.

The road ahead: The WSBA Blue Ribbon Panel on Criminal Defense recommends that the state work toward paying 50 percent of the cost of public defense across the state, while counties work toward improving their systems and adopting minimum caseloads and other standards. In order to achieve adopted defense standards, in its 2004 report, the Court Funding Task Force estimated the unmet needs in indigent defense to be about $130 million per year. The Office of Public Defense is working toward expanding the successful parent's representation program to all counties in the state.

- **$200,000** for the Access to Justice Board.

State lawmakers continued to support the Justice in Jeopardy effort in the 2006 interim budget year, approving an additional $8.6 million for the following:

- **$4.5 million** to expand the Office of Public Defense's successful parent's representation program to 17 counties;
- **$3 million** for indigent criminal defense, to be distributed to counties that commit to working on meeting public defense standards;
- **$600,000** to the Office of Civil Legal Aid to support emergency civil representation of domestic violence victims throughout the state; and
- **$569,000** for a pilot project to increase juror pay in three pilot sites and study the pay increase's effect on juror participation. Juror pay statewide remains at the $10 per day level set in 1959.

CIVIL LEGAL AID

"The findings are very troubling and have significant implications for our state's justice system. Many thousands of our state's most vulnerable residents have serious legal problems and cannot get any help in resolving them." - Washington State Civil Legal Needs Study, September, 2003

The crisis: A groundbreaking study on the civil legal needs of Washington's low-income residents found that they have about one million legal problems each year, mostly involving basic human needs such as housing, employment, health care and family safety. Of those, only about 15 percent of residents were receiving any kind of legal aid. For instance, one elderly woman injured herself and could not walk the stairs in her apartment complex, but the landlord would not fix the elevator. She spent months without ever leaving her apartment, once making it to a doctor appointment only because her sons carried her down the stairs. Legal aid could have helped her work through the courts to ensure the landlord met housing requirements. The study found that women and children were most strongly affected by unmet civil legal needs, and that populations such as the elderly and disabled were more vulnerable than others. Legal aid funding from the federal and state governments had been under budget attack for years. In 1980, Washington had 140 legal aid attorneys for approximately 500,000 low-income residents. By 2005, the state had just over 100 legal aid attorneys for a low-income population of approximately 1.1 million.

Steps taken: State lawmakers in 2005 and 2006 allocated $3.6 million toward civil legal aid services, which halted another drastic cut in legal aid attorneys that would have taken place in 2005. They created the new Office of Civil Legal Aid (OCLA) and the Civil Legal Aid Oversight Committee, the first state entities established to watch over the provision of state-funded civil legal aid in Washington. OCLA's job is to contract with qualified legal aid providers for the efficient and effective delivery of civil legal aid services in areas authorized by the Legislature; to oversee and ensure accountability of state-funded legal aid providers; to develop and submit biennial budgets designed to close the legal aid funding gap; and to report biennially to legislators, the Supreme Court and the Supreme Court's Access to Justice Board on gaps and needed services. Most importantly, state lawmakers in their language agreed that civil legal aid is an important component of the justice system, rather than a charitable service provided to low-income residents.

The road ahead: Despite recent gains, biennial funding for civil legal aid still falls $33 million short of the level necessary to address the needs chronicled in the landmark 2003 Civil Legal Needs Study. One gaping hole in services is the lack of any meaningful legal aid services in rural areas. Other challenges for legal aid attorneys include the increasing number of immigrants and legal problems complicated by cultural and language differences. The effort to secure sufficient funding for civil legal aid will be an ongoing effort.

Since 2005, trial courts and justice agencies have been putting the new funding to good use. Task Force members, judges and members of the court system across the state expressed sincere appreciation to legislators for their support, adding that they are determined to continue working toward full implementation of the Task Force's recommendations.

"In many ways, our work is just beginning," said Court Funding Task Force Chairman M. Wayne Blair, former president of the Washington State Bar Association, and now vice-chair of the Implementation Committee.

"We found that the lack of adequate, stable funding places our system of justice in jeopardy, and undermines the public's trust and confidence in the courts," he said. "Equal justice is not simply a goal to strive for; rather it is the basic foundation of a just and democratic society." ■

AMNESTY PROGRAMS HELP COURTS AND RESIDENTS GET BACK ON TRACK

Amnesty programs have become fixtures in Washington State courts as the programs have shown to be effective in clearing away millions of dollars in unpaid fines, while also helping residents take care of old financial and legal burdens.

In 2005 alone, amnesty programs in district and municipal courts in Spokane, Yakima, Kittitas and Snohomish Counties helped settle thousands of dollars in fines for hundreds of residents, many of whom could also then work out driver licensing and other legal problems caused by their unpaid fines.

In 2006, King County Superior Court officials held a walk-in amnesty clinic for parents who were delinquent in child support payments, and therefore had warrants for their arrest.

Amnesty programs have occurred in courts occasionally for several years, but became more popular after a statewide amnesty event in 2002 brought in more than $2 million in unpaid fines for more than 100 courts and helped nearly 10,000 drivers remove holds on their driver licenses.

During that event, for instance, Skagit County District Court cleared 375 old cases from their delinquent files and brought in $75,000 in fines. Tacoma Municipal Court cleared 957 accounts and collected $135,000. Marysville Municipal Court took in nearly $25,000 in delinquent traffic fines and cleared 82 old cases.

While court officials said it was good to bring in the funds and get old cases taken care of, they were also interested in helping people get out of a downward spiral. It can happen when a driver can't pay a fine, has his or her license suspended, can't get car insurance, then either loses a job because of inability to drive or gets caught driving without a license. The legal and financial burdens multiply.

This kind of spiral affects both the offenders and the courts, which end up dealing with increasing caseloads from drivers who find themselves in these situations.

"I'm more interested in helping people get their lives back together," said Pierce County District Court Administrator Mike Kilborn in 2002, during the statewide program.

Amnesty programs are operated by individual courts, but generally work something like this: for one month, the court agrees to waive interest charges and much of the collection fees on unpaid traffic and misdemeanor fines. Waiving the interest and fees can significantly reduce what is owed. The court and/or its collection agency can then set up payment plans for the remainder owed, and work with individuals on legal problems caused by the unpaid fines.

In its amnesty clinic for parents delinquent in their child support payments, King County Superior Court agreed to quash ten percent of the bail amount listed on the warrants. Then parents could set-up payment plans to get back on track.

About 200 parents took advantage of the amnesty clinic.

Court officials said they don't plan to schedule amnesty programs frequently because they don't want offenders to wait for the programs before paying their fines. However, periodically it helps both courts and the communities to offer help when numerous collection cases pile up and cause significant problems for both. ■

CIVIL LEGAL AID IS NO LONGER A 'CHARITY' WITHIN THE JUSTICE SYSTEM

The study found that more than eighty-five percent of low-income adults and families have serious unmet civil legal needs.

A small step in the 2005 state budget translated into a large leap forward for legal aid to the state's poor, setting legal aid on a new track in Washington.

Legislators enacted a law (RCW 2.53.005) establishing the new Office of Civil Legal Aid (OCLA), as well as a budget for the office and the Civil Legal Aid Oversight Committee.

Most importantly, legislators included language in the law that accepted greater responsibility for providing legal help to the poor: "The Legislature finds that the provision of civil legal aid services to indigent persons is an important component of the state's responsibility to provide for the proper and effective administration of civil and criminal justice."

For the first time, state lawmakers changed their perception of legal aid "from that of a social charity to an expectation that it is a component of the justice system," said Jim Bamberger, a former long-time legal aid attorney.

Bamberger was named the first director of the OCLA in mid-2005 by the Washington State Supreme Court. In consultation with the Oversight Committee, Bamberger has worked to develop budgets, work plans and strategies to meet the requirements and mission of the new office - to secure and prudently administer sufficient levels of state funding to meet the needs of Washington State's more than one million low-income residents.

A long effort to make civil legal aid part of justice system

The creation of the Office of Civil Legal Aid found its genesis in the Supreme Court's year-long effort to ensure that essential civil legal aid services were available to the poor in Washington State. In 1994, the state Supreme Court established the Access to Justice Board to provide leadership and coordination of efforts in supplying civil legal aid to Washington's low-income residents.

"The Access to Justice Board adopted the first state plan for legal aid in 1995. Implementation of the plan resulted in a major reorganization of existing legal aid providers and the development of new systems – such as the Northwest Justice Project's statewide toll-free client intake, advice and referral system - that achieved new efficiencies in legal aid delivery in Washington.

"But despite all the efficiencies, the resources just weren't there," Bamberger said. "Year after year, the legal aid community and members of the judicial branch would ask for necessary funding for civil legal aid, but few if any resources were made available."

The landscape began to change in 1999 when the Board for Judicial Administration adopted a resolution recognizing civil legal aid as a core judicial branch responsibility. Following a request from the Access to Justice Board, the Supreme Court accepted the challenge of making the case for funding corresponding with the needs.

The Supreme Court established the Task Force on Civil Equal Justice Funding in late 2001 and directed the Task Force to oversee a comprehensive study of unmet civil legal needs of the poor, develop a rationale for sustained state funding of civil legal aid, identify an appropriate level of funding, and develop recommendations for securing and administering funds for civil legal services.

Released in late 2003, the Washington State Civil Legal Needs Study was performed by researchers affiliated with Washington State University and Portland State University. The Civil Equal Justice Task Force issued its final report in May 2004.

Wake up call

The study's findings were remarkable. The study found that more than 85 percent of low-income adults and families have serious unmet civil legal needs - issues affecting housing, employment, health care and family safety.

Only 15 percent of the state's poor were receiving any help with their civil legal struggles.

The Task Force recommended that funding for civil legal services be included in judicial budgets, that an independent office to oversee civil legal services be established within the judicial branch, that a joint legislative oversight committee be established for such an office, and that these changes be codified into state law.

The recommendations were taken to the 2005 Legislature by the Court Funding Task Force, which folded the findings and recommendations of Task Force on Civil Equal Justice Funding in with its own efforts to address a serious court funding crisis.

The effort was a success, with legislators approving many of the recommendations for increased funding and other changes, including creation of OCLA.

Credibility and accountability is the future of legal aid

OCLA will not provide direct legal aid services, but will oversee contracts with the Northwest Justice Project to ensure state funds are being used correctly. OCLA will also keep close watch over the needs, capacity and overall health of the legal aid system.

"Our job is to ensure that civil legal aid is meaningfully available to all who need it, and that such services are delivered efficiently, effectively and responsibly," Bamberger said. ■

RARE HISTORICAL COURT CONVENED TO EXAMINE CONVICTION AND HANGING

Washington judges proved there is no time limit on justice when a rare historical court was convened to review the 150-year-old murder conviction and execution of a Nisqually Indian Chief.

A panel of active and retired judges from across the state convened as the "Historical Court of Inquiry and Justice" on December 10, 2004 at the request of the Nisqually Indian Tribe. The tribe is located in Thurston and Pierce Counties along the Nisqually River in Western Washington.

Tribe members asked that the court examine whether Chief Leschi of the Nisqually Indian Tribe had been wrongfully convicted of murder in 1857, and wrongfully hanged on February 19, 1858.

It was Washington's first historical court, and possibly the first in the United States involving the fate of an American Indian Chief. Judges warned tribe members that they would impartially review all evidence and information, and would not guarantee that the historic leader would be exonerated in the inquiry.

The story was reported around the globe in newspapers as far away as Australia, and followed personally by journalists from the *New York Times*, the *Los Angeles Times*, and other national news media.

"It was incredibly emotionally and intellectually draining," said Cynthia Iyall, a descendent of Leschi's who worked for years to find justice for her tribe's chief.

Tribe members knew that the outcome of the hearing was not a foregone conclusion. They fidgeted and sweated during the inquiry as if a man's life truly hung in the balance, and perhaps it did - at least, the story of his life, the legacy left to his descendents and to his tribe.

"It was an astounding act of justice," said Melissa Parr, curator of exhibits for the Washington State Historical Society, who worked alongside Iyall for years in trying to clear Leschi's name. "It was the right thing to do, to have the historic court."

A dark cloud

The story of Leschi had been like a dark cloud following the Nisqually Indian Tribe for nearly 150 years. Their leader and protector had been hanged, labeled a murderer for a century and a half.

In the 1840s and 1850s, Leschi was a tribal leader with a reputation for intellect and an amazing ability for orating and communicating with settlers. He was named the tribe's chief by Washington Territorial Governor Isaac Stevens, on the eve of treaty negotiations in which Stevens would try to remove nearly all the land in Washington from the Northwest tribes.

For instance, the 13 fishing villages of the Nisqually Tribe located along 78 miles of the Nisqually River were offered 1,280 acres of rocky land far from any river. It could not sustain their people. Other tribes fared about the same in the original 1854 Medicine Creek Treaty.

Leschi and his brother, Quiemuth, stormed out of the treaty negotiations and several months later, the 1855-56 Puget Sound Indian War broke out with Leschi as the war chief. The war made Stevens reluctantly reconsider his reservation plan, and he offered much better acreage and locations to the Western Washington tribes.

When the war ended, however, Quiemuth and Leschi were arrested. Quiemuth was stabbed to death in custody, and Leschi was charged with murdering a militiaman during the war.

Despite strong hostilities between Indians and white settlers at the time, Leschi's first trial ended in a hung jury - jurors had been instructed that if Leschi was an enemy combatant during a war, he could not be convicted of murder.

In his second trial, the jurors received no such instructions. He was found guilty and sentenced to hang. The death sentence was reviewed by the Washington Territorial Supreme Court - the two judges from his trials both served on the Court, in essence reviewing their own courts' actions - and his conviction was affirmed. However, the United States Army refused to hang Leschi because it considered him a war combatant, so a civilian posse from Pierce County removed the chief to a spot near present-day Lakewood and hung him with a large crowd of white settlers watching.

About 142 years later in 2000, Iyall sat with the last Nisqually tribal member bearing Leschi's name - Sherman Leschi - and heard herself promising to find a way to clear their ancestor's name. It had been talked about for decades around the tribe.

Sherman Leschi died shortly after she made the promise.

Iyall's efforts got the attention of Parr and Tina Kuckkhan, a Native American attorney and director of the Longhouse at The Evergreen State College, and a small movement was born. Pierce County Executive John Ladenburg became actively involved and asked for the help of Washington Supreme Court Chief Justice Gerry Alexander.

The group went to the state Legislature, which in 2004 passed a resolution asking the Washington State Supreme Court to reverse Leschi's conviction.

That was not possible, however, because it was the federal Territorial Court which had upheld the conviction, and the state had no authority to reverse the conviction. There were other legal barriers to officially erasing Leschi's conviction, and the committee was not enthusiastic about seeking a pardon, which suggested that Leschi was guilty of murder.

Then the idea of requesting a historical court emerged. There had been a handful of historical courts around the country that had examined such questions as whether John Wilkes Booth assassinated Abraham Lincoln, whether a cow really started the Chicago Fire of 1871 and whether five women put to death in colonial Massachusetts had really been guilty of witchcraft (they were exonerated).

"We'd been working with the committee for about a year to find something that would allow us to re-examine the evidence," Chief Justice Alexander said, and the historical court offered such an opportunity.

He warned the exoneration committee that the inquiry could have no legal standing, and there was no guarantee what the historical court would find.

The court convened in late December 2004, in the Washington State History Museum in Tacoma to such a crowd that an overflow room had to be set up with television monitors. In addition to Alexander, who chose the rest of the panel, judges included Washington State Supreme Court Justice Susan Owens, Court of Appeals Division One Chief Judge Ronald Cox, retired Court of Appeals Division Two Judge Karen Seinfeld, Thurston County Superior Court Judge Daniel Berschauer, retired Pierce County Superior Court Judge Donald Thompson and Tribal Judge Theresa M. Pouley. Prosecution and defense attorneys called witnesses and presented evidence for more than four hours.

"It was fascinating to me to hear witnesses testifying on things that had happened almost 150 years ago," Alexander said. "It felt like I was peering back into history."

And possibly making it - few historic inquiries have been convened in the United States, and most of those have not involved panels of active judges in a trial format.

"I had never seen or heard of anything like that before," said Judge Berschauer of the trial. "I found it fascinating. It was like an appellate hearing, only we took testimony, and they were testifying on historical information."

Though evidence was presented questioning whether Leschi was ever near the militiaman who was shot and killed, and whether he received a fair trial or fair appeal, the judicial panel could not weigh in on those issues with so little direct evidence to go by, Berschauer said.

In the end, however, the decision was not hard to reach. Leschi was clearly considered an enemy combatant during a declared war even by the federal authorities of the time, and could not be guilty of murder.

The feeling was beyond one of satisfaction, Parr said. "It was very spiritual. There were so many people affected by this… I'm proud of our state, that we did this. I'm proud of our judicial system and our state government."

Now the Washington State Historical Society is working on a school curriculum that tells the final chapter of the Leschi story, one that presents him as a hero of his people, not a murderer. Members hope that teachers and schools will help them tell the full story.

Iyall would like that very much. "For me right now, I feel really satisfied. It's going to take an ongoing effort to educate people," she said. But one thing is certain - the historic court has already had an impact.

"The most satisfying thing to see is how the kids' attitudes have changed on the (Nisqually) Reservation," Iyall said. "They have new energy. They come up and give you a hug and walk on. You could tell it made a difference in their lives. They were proud to be Indian." ■

JURY VIDEO UPDATED AFTER 18 YEARS OF 'PERRY MASON'

Though his face and voice are distinctive and memorable, actor Raymond Burr finished his 18-year run as the purveyor of information to Washington jurors in 2005, when an updated jury video was created for use statewide.

Burr starred in the video, "Welcome to Jury Duty," in 1987 for the state court system, introducing thousands of Washington residents to jury duty over the years. The "Perry Mason" and "Ironside" actor died in 1993.

In the fall of 2005, Burr's long-running jury video was replaced by one updated for the 21st century - "Making a Difference: Jury Duty in Washington State." It was distributed to every courthouse in the state.

The video was taped at the Snohomish County Courthouse with 40 volunteers, one paid actor, and a film crew from the Washington State Department of Information Services.

"I think it's great. The whole focus is different from the old video," said Ann Howard, Manager of Superior Court Operations for Snohomish County. "It really is oriented toward jurors and what happens to them during their service."

Howard and Snohomish County court officials initiated the update about two years earlier, when Howard was the county jury supervisor. "We were re-evaluating our jury program, making it more juror friendly," said Howard. "We had had a number of comments about the datedness of the video."

The Burr video featured more history, less diversity and less practicality than users wanted to see. Its old script also appeared more negative - focusing on the hardships of jury service - than seemed necessary. Snohomish County staff members decided they would be willing to take the lead on getting the video updated, Howard said.

The court applied for and received a small grant from the Foundation for Washington State Courts, then Howard made a pitch to the Washington State Supreme Court's Pattern Jury Instructions Committee for the additional funding needed.

The video cost about $19,000 to make. The venture became a joint project between the Snohomish County Superior Court and the Washington State Administrative Office of the Courts (AOC). Both organizations worked hard to make sure the new video would be suitable for courts small and large across the state.

An updated script was developed by a committee that included Howard, Snohomish County Superior Court Judge James Allendoerfer, King County District Court Judge Eileen Kato, Moxee City Municipal Court Judge Susan Arb, Snohomish County Deputy Prosecutor Mark Roe, defense attorney Susan Gaer and AOC Legal Analyst Rick Neidhardt.

The Superior Court Judges' Association and the District and Municipal Court Judges' Association each approved the script after making some changes.

Changes in the video include:

- A new introduction that links jury service to the values of a democratic society and expresses appreciation for jurors.
- More representation of the full diversity of the court community.
- Changes in language describing courtroom procedures and attorneys' roles.
- Discussion of new procedures such as the struck-jury method, motor-voter law and video courtrooms.
- More description and examples of jurors' roles, such as the importance of remembering testimony, the option of taking notes, voir dire, avoiding outside influences, asking for help, deliberation and presenting a verdict.
- Removal of outdated terminology such as gender-specific language and unnecessarily technical descriptions (for instance, the new script defines "voir dire" but uses "jury selection" as it describes court processes).

The new video is available in both DVD and VHS format. Howard is excited that the finished product will help jurors.

"It has been wonderful to see it made from beginning to end," she said. "It really is a service to the state." ■

NEW SUPREME COURT COMMISSION WORKS TO HELP CHILDREN IN FOSTER CARE

"In essence, court leaders should be the foremost champions of children in their states."

- Washington Supreme Court Justice, Bobbe J. Bridge, Chair of the Washington Supreme Court Commission on Children in Foster Care

Washington Supreme Court's new Commission on Children in Foster Care, launched in early 2005 at the Temple of Justice in Olympia, is one of the first such state commissions formed in the United States to improve the lives of foster children.

In 2004, the national Pew Commission on Children in Foster Care found that court processes (along with federal funding mechanisms) can unintentionally impede the placement of children into permanent homes. The Pew Commission recommended that state court leaders establish state commissions to examine their court processes and act to remove barriers for children.

While individual court processes in Washington have been studied as part of other efforts to improve the foster system, the court system itself has never been the focus of a statewide effort to help foster children.

"Washington has been a leader in this. We tinker, and courts have made good progress in training of judges and reducing continuances," said Washington Supreme Court Justice Bobbe Bridge, who pressed for the Commission to be created and serves as co-chair. "But what we failed to notice was that when we reformed one area of the court system, another part of the system popped up that couldn't adjust to that reform."

Bridge, who followed the Pew Commission's work and is active in other child welfare efforts, was immediately enthusiastic about a foster commission that focused on the courts.

But she also had a model in mind - a small commission of top decision makers who would take action rather than just study the issues facing Washington's Foster Care System.

Members of the Commission include the head of the Children's Administration within the state Department of Social and Health Services, who co-chairs the Commission; the State Attorney General; the state superintendent of public instruction; the Superior Court Judges' Association president; the executive director of the Washington State Court Appointed Special Advocates (CASA); state legislators; representatives of foster parents; a member of the Northwest Intertribal Court System; and the director of the Office of Public Defense.

The Commission is designed to be ongoing, so any newcomers to these leadership roles will automatically become members of the Commission.

"The last thing I want to do is reinvent the wheel," Bridge told members at the first meeting. "But pushing recommendations forward would be a goal we can work on."

Court structures can become barriers

The Pew Commission found that nationwide, "longstanding structural issues in the judicial system limit the ability of the courts to fulfill their shared obligation to protect children from harm and move children safely and appropriately through the system to safe, permanent homes."

Its recommendations included establishment of performance measures by dependency courts, incentives and requirements for collaboration between courts and child welfare agencies, better representation for parents and children in courts, and leadership from the country's Chief Justices and court leaders in organizing court systems to better serve children.

In essence, court leaders "should be the foremost champions of children in their states," Bridge told Commission members.

Although that makes sense, Bridge said, "it's not a historical role for judges." Typically, judicial officers have kept themselves separate from people and issues that they may find in their courtrooms out of fear of ex parte communications.

However, "we now have all of these problem-solving courts, drug courts, mental health courts, domestic violence courts. Judges have now come to know that while we can't discuss specific cases or talk to the litigants outside of court about their individual case, we can discuss overall problems, the huge systemic issues. In fact, if we don't, we're not doing the most effective job – we're not solving the problems these courts are designed to address. Judges need to hear this."

The additional focus and planning are critical both because dependency cases are so crucial and touch so many lives, and because they vary significantly from other cases.

"I have terminated parents' rights and I remember all of them," said King County Superior Court Presiding Judge Michael Trickey. "I don't remember the last drug possession trial I had, but I remember the termination trials," Trickey said. "These are not easy for judges."

Moving the wheel

Commission members were asked to consider areas for special attention - court performance standards and best practices, legislation, technology, funding, permanency planning, public awareness and judicial education, a clearinghouse and resource center, and whether changes are needed in court rules for expedited appeals of dependency cases.

Because of its nature and make-up, the Commission meets quarterly, though workgroups have been formed to meet as needed on specific topics.

"The strength of this Commission is its ability to implement. We want to build and enhance on what's being done already," Bridge told members.

The Commission's workgroups include those focusing on National Adoption Day, Expedited Rules, Judicial Training Academy, Child Representation, and Experts' Evaluation Standards.

Additional Commission-sponsored projects include an expansion analysis of Unified Family Court, an automated audit report and data collection tool for dependency case files, coordination of a Foster Youth and Leadership Summit, and research into court performance measures.

One of the Commission's early actions was to co-sponsor the first statewide National Adoption Day (NAD) celebration in courts across Washington.

More than 50 foster children were adopted into new families when National Adoption Day was celebrated in nearly a dozen Washington courts and communities on November 17-19, 2005. While the purpose was to celebrate adoptive families, the goal was to raise awareness around the state of the many foster children who are legally free and waiting for new families.

The Foster Commission sponsored the statewide celebration with support from the Superior Court Judges' Association, the Department of Social and Health Services' Children's Administration, Northwest Adoption Exchange, and the Washington State Bar Association.

In 2005, Washington had more than 9,500 children in foster care, and more than 1,000 had been legally separated from their birth parents and were waiting for new families. "These children are in the state's care. The state owes them a special responsibility," Bridge said. "We know that permanent, loving homes can save children from years of educational struggles, stress and uncertainty."

Courts and community groups in Chelan, Clallam, Clark, King, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom and Yakima Counties participated in planning for NAD events. Playing children, happy parents, local mascots, judges, community officials and some celebrities could be found in many courts across the state on celebration days.

NAD was founded in 2000 by a coalition of nationwide organizations and businesses dedicated to improving the lives of children.

The state NAD Steering Committee was chaired by King County Superior Court Judge Dean Lum, and included representatives from the Children's Administration, Washington State Bar Association, Northwest Adoption Exchange and the Administrative Office of the Courts.
"You are all part of a growing movement," Bridge told an overflowing courtroom of parents and children at the Thurston County celebration - the county's first. It included dozens of children and adoptive families, local judges and commissioners, teddy bears, balloons, crafts, story-telling, snacks, and the happy adoption of 2-year-old Jordan James into his new family in open court, at the permission of his new parents. Bridge and fellow Supreme Court Justices Susan Owens, Tom Chambers and Chief Justice Gerry Alexander attended the event and handed out teddy bears to the children.

"Have you ever seen so many smiling faces in a courtroom?" Bridge said.

Both Lum and Bridge said they hope the NAD celebration will expand and become an annual statewide event - one that has the potential to help more foster children find families to belong to.

"I thought it was terrific. The energy was palpable," Bridge said. "Hopefully next year, we'll have twice as many courts participating." ■

OPEN ACCESS TO COURT RECORDS CLARIFIED IN NEW AND REVISED COURT RULES

Access to court records for the public, media and others was clarified by the Washington Supreme Court through a series of court rules emphasizing that whenever possible, justice in Washington State will be conducted openly.

Justices adopted or revamped three general rules, beginning in late 2004 through early 2006, which outline access to court records in Washington.

- General Rule 31 (GR 31) - Access to Court Records: GR 31 was adopted in late 2004 as Washington's comprehensive rule defining public access to court records in both hard-copy and electronic formats. The rules state that the public shall have access to all court records regardless of format except as restricted by federal or state law, court rule or case law; that access will be consistent with reasonable expectations of personal privacy and not unduly burden court business.

- General Rule 22 - Access to Family Law Records: This rule was revamped in mid-2006 to reflect changes in family law and to be consistent with GR 31. Changes included adding guardianship cases to rules governing family law records, adding requirements for personal health records and additional financial records, and more.

- General Rule 15 - Destruction and Sealing of Court Records: This rule was also revamped in 2006 to clarify the process for sealing records, and to include a requirement that judges identify in writing the "compelling privacy or safety concern that outweighs the public interest" when determining if records are to be sealed.

The process to revamp rules on access to court records took several years and many public meetings, to assure that government and justice would be conducted openly, while also balancing citizen's right to privacy. Advocates for privacy and advocates for openness stayed active in the debate as committees and the justices worked on the issue.

"The adoption of GR 31 provides the citizens of Washington State an assurance that they will have open access to the workings of the judicial system," said Justice Bobbe Bridge, Chair of the Judicial Information System Committee (JISC), which oversaw development of GR 31 and changes to GRs 22 and 15.

"Our state constitution mandates that government shall be administered openly, and we strived to develop a rule that would accomplish this, while still protecting a citizen's reasonable expectation of privacy," Bridge said.

The court rule was prompted by increasing use of - and expectations for - technology by courts and court users, as well as a need for standardizing access to court records across the state.

However, what was simple in concept was discovered to be potentially profound in impact. Development of the rule became a debate between the right of citizens to access the workings of the court and the right of citizens to privacy when often filing personal documents with the courts.

Then and now

Last century - as late as 1999 - data and documents were two different things. One was electronic and one was paper.

"You had no policy on statewide access to court records," said Court of Appeals Division One Judge C. Kenneth Grosse, who serves on both the JISC and its Data Dissemination Committee.

"As a result, you could have 39 different answers to questions of access. There is a tendency to say 'no' more often than saying 'yes,' and it's the Supreme Court's policy to say 'yes,'" Grosse said.

Court leaders such as former Justice Philip Talmadge and JISC members recognized two things: Washington's court system needed a statewide policy on access to court records, and the distinction between electronic data and documents was disappearing. Courts both in and outside of Washington were already beginning to scan and electronically store records.

A policy or rule on access would have to bring data and documents together, dealing with access no matter what form the information took.

Because Washington's history, its constitution and its courts have strongly supported open access to government, the committee did not try to restrict access to electronic records. It drafted a rule using a "one tier" approach - court records would be treated the same whether in paper or electronic form.

Adjustments were made to help ease the concern of privacy advocates, including a list of personal information that should be redacted from court records (social security numbers, financial account numbers, and driver license numbers), a statement that citizens' reasonable expectations for privacy are considered in access questions, and the promise of a one-year review to be followed by continued monitoring.

Those assurances were necessary because of the impact that electronic access to records was likely to have on privacy, committee members said. Paper records have a certain amount of "practical obscurity" - to access them, a person would have to visit a courthouse to read through or copy them, or pay to have county clerks copy and mail them.

In electronic form, the records would be easier to access by either paying a subscription to a county for access to its online records, paying a fee online for certain documents and then being able to download or copy them, or in some cases accessing records at no cost from court web sites.

Public already expecting electronic access

A large number of county clerks were happy with the passage of GR 31. Though the rule does not require courts to make records electronically accessible, several counties had already started offering court records electronically, and many were making plans for the future.

"The courts are moving into this century - finally," said Chelan County Clerk Siri Woods. "The county clerks were very happy that the rule passed. The public has an expectation that a document should be as easily accessible as are items on the Internet or money transfers in their accounts. Clerks can more easily meet that expectation with this rule."

"It's not just about ease," Woods said.

"We have to remember that access and openness will improve respect for the process. The more people know, the less suspicious they are of the process and the people who operate the courts." Wood said.

GR 31 was necessary because the world changed and it wasn't going to change back, said county clerks and court officials.

"I think it's in the public interest that clerks make all public documents easily accessible," Woods said. "It is a game to say, 'Yes, you can have the document but you have to request it by mail or come to the courthouse to get it.' It's not a matter of whether or not a person can view a public document, just how conveniently and timely they will be permitted the view it. Better service makes for better perception of the clerks' offices and the courts." ■

IMPROVING PUBLIC TRUST IN THE COURTS TAKES ACTION

As missions go, this one could be considered daunting: Assess and then find ways to enhance public trust and confidence in Washington's court system.

It's something that could take years of study, planning, discussions and debate, but the Public Trust and Confidence (PT&C) Committee of the Board for Judicial Administration members just don't have the time. They have work to do.

"It's always fun to work on a committee when you feel like something is being accomplished," said Charles Benedict, a citizen member of the committee. "There are always four or five subcommittees active, and they each produce a result every year."

"It's wonderful to work on a committee that is dedicated to its mission and willing to work hard to make a difference," said Washington Supreme Court Justice Mary Fairhurst, who chairs the committee.

Products developed by the committee in 2004 - 2005 include:

- The Media Guide to Washington State Courts - A 76-page comprehensive guide to help journalists and the public better understand Washington courts and the justice system, including an overview of the court system at all levels and information on court procedures, trials, appeals, ethics, access to records, terminology, and more. It was created with significant input from journalists, judges and legal professionals. The guide is available as a pocket-sized hard-copy publication (sent to news organizations across the state) or as a printable online publication on the Washington Courts' web site at www.courts.wa.gov. The guide will be updated semi-annually.

- Model Speaking Points for Prospective Jurors - Developed as a way to help judges take advantage of their unique opportunity to educate jurors and potential jurors, these model speaking points provide information on the branches of government, the importance of an independent judiciary and of juries. The speaking points are meant to complement the new juror orientation video, "Making a Difference: Jury Duty in Washington State."

- Presiding Judge Outreach Toolkit - Created to help courts jump-start outreach efforts within their communities, this kit contains sample press releases and guest editorials, with information on working with local newspapers, guidelines for responding to media requests, information on handling high-profile trials, a sample plan for crisis communications, suggestions for responding to unjust criticism of judges, information on starting a youth court, a mock trial program and participating in Judges in the Classroom, the model speaking points for jurors, and a quick reference guide to speaking opportunities in the community.

- Key Confidence Interaction Points Handbook - Developed to help individual courts create more user-friendly environments for the public, this handbook provides recommendations for identifying the key issues affecting accessibility and public trust in a specific courthouse, and recommendations for creating a work group to address problems and barriers. The handbook includes information on two pilot locations where such work groups were formed.

- Navigating the Courts, Final Report - A set of observations and recommendations on making courts easier to navigate for visitors, many of whom "do not receive the information they need regarding location and availability of services in the courthouse. Ultimately, their impression of the court is that it is not a hospitable place." Topics include use of signage, establishing information desks, availability of information in different languages, use of brochures, establishing a volunteer docent program (similar to those used by hospitals and museums), courthouse tours and use of self-service centers and information kiosks, among other possibilities.

"I am very pleased with the committee's energy and the tools they have created," Fairhurst said. "The response to the committee's work has been very positive."

At the start of each new year, PT&C Committee members bring their project ideas to a strategic planning meeting. Each member votes for their top three projects. This process identifies the handful of projects that subcommittees will address. Because the project ideas come directly from committee members, they willingly volunteer to chair and work on the project subcommittees.

"There's plenty to do," Fairhurst said. "And anything we do is better than nothing. Our efforts are small streams that flow into and become part of the larger tributary."

The committee regularly partners with other groups working on public outreach such as the Access to Justice Board and the Council on Public Legal Education.

A survey conducted, a committee formed

After national and state surveys of public confidence in government institutions were conducted, the Board for Judicial Administration created the Public Trust and Confidence Committee in 1999 to enhance public understanding of and confidence in the judicial branch of government and the legal system. While public confidence in the courts was fairly high (70 percent nationally and 67 percent locally gave the courts a vote of confidence), the survey revealed public concerns on specific issues of access, timeliness, fairness, equality, independence and accountability.

Fairhurst became chair of the committee after her election to the Supreme Court in 2002. "I was very interested because I think the justice system won't survive unless the public has trust and confidence in it," she said.

While many judges and journalists learned about the PT&C Committee's products from the 2004-2005 work plan, the committee members themselves had already moved on to their new 2006 projects:

- Creation of a one-page handout for pro-se litigants to help ease interactions with the court system. It will be user-friendly and is meant to highlight the areas where pro-se litigants struggle the most often in their dealings with the courts.
- Creation of a flow-chart illustrating the independent branches of government, to be placed in juror rooms and other locations and used as a civics education tool.
- Revitalization of the "Judges in the Classroom" and "We the People" programs for more effective outreach into communities.
- Exploration of the concept of "restorative justice," and whether it provides a means to improve public trust and confidence in the court system. ■

OPEN JUSTICE: CAMERAS IN COURTROOMS GET NEEDED CLARITY

Cameras in courtrooms got a needed boost in Washington when the state Supreme Court and the Bench-Bar-Press Committee created clearer guidelines for judges and the media to follow when conflicts arise over news coverage of trials.

The Supreme Court approved changes to General Rule 16 (GR 16), "Courtroom Photography and Recording by News Media," which went into effect in January 2005.

Washington courts have long supported open news coverage and cameras in courtrooms, working to balance the rights of a free press with the guarantee of a fair trial. The Washington Supreme Court became one of the first in the nation to allow filming of Supreme Court cases when the statewide public access television station, TVW (initially named WashPAN), was launched in 1995.

Even before that, General Rule 16 was adopted in 1991 to make clear that cameras were fully accepted in Washington courtrooms, and that judges were vested with broad discretion to decide what, if any, limitations should be imposed.

Ten years later, however, both judges and news reporters felt there was a need for greater guidance as to how that judicial discretion should be exercised in a particular case.

Problems with GR 16 seemed to spring from lack of communication and lack of a specific process for judges to follow when they felt that media access needed to be limited.

"Far too often a news person would arrive at the courthouse with a camera or a crew and then lawyers and judge would retire to chambers. Word would come through a bailiff or a court clerk that, sorry, cameras are not allowed, without any further explanation from the judge," said King County Superior Court Judge William Downing, in a report to the Bench-Bar-Press Committee.

The Committee, chaired by Chief Justice Gerry Alexander, appointed a subcommittee to examine GR 16. The subcommittee identified four key elements needed to make the rule work more smoothly, and these changes were adopted:

- **Presumption of access** - Judges will begin with the presumption that cameras and recordings will be permitted in full, and the burden resides with any opposition to make a case for limiting access.

- **Opportunity to be heard** - Any media or entity being considered for restrictions will have an opportunity to state its objections.

- **Case-specific reasons** - Reasons for limiting access will be specific to the case, and not general in nature.

- **On the record** - Judges will state on the record the specific reasons for limiting access.

The commentary in the amended rule also contains more language on "illustrative guidelines" for media to follow. For instance:

- **News persons** should advise the bailiff prior to the start of a court session that they want to electronically record or broadcast live from within the courtroom.

- **Broadcast news persons** should make their own arrangements for pooling resources, since judges may direct that only one television camera be allowed in a courtroom.

- **Equipment** will be secured, such as taping wires to the floor, and handled as inconspicuously as possible, with no additional lighting permitted without the approval of the presiding judge.

- **Camera** operators should maintain decorum, not moving mounted cameras except during recesses, and making sure equipment is in place at least 15 minutes before court begins.

Downing explained that some states go into great detail in their rules, regulating even the shutter speed that photographers can use. The subcommittee preferred to allow for flexibility, he said, and the good judgment of the media and the judges involved. ■

MODERNIZATION OF COURT INFORMATION SYSTEM IS IMPROVING EFFICIENCY

When the modernization of the JIS is complete - the system will be more efficient, accessible, provide more information to the public and more tools needed by the courts...

Though it won't be complete for some time yet, modernization of the statewide court information system has already done much to improve efficiency in both court operations and how other agencies interact with the court system.

Improvements to the Judicial Information System (JIS) focus on reducing or eliminating multiple entries of the same data, providing for electronic filing of and access to court documents, establishing data exchange with other agencies, transforming cumbersome text-based systems to user-friendly systems, and more.

When the modernization of the JIS is complete - the long-range plan is called the "JIS Roadmap" - the system will be more efficient, more accessible, provide more information to the public and more tools needed by courts to do their work.

The JIS is a statewide court case management and information delivery system that was built beginning in the 1970s and into the 1980s with the technology available. Different programs were built to serve the different court levels. More than 1.7 million cases are filed each year in Washington courts, more than 400 judges and 205 courts use the JIS.

Technology and court needs have changed rapidly and, in 2001, the Judicial Information System Committee (JISC), which oversees the JIS, approved a plan to "migrate" the old text-based applications to current technology platforms.

This would provide for better data sharing and access to information. It would allow for easier enhancements, corrections and changes to business processes. The approximately $45 million project was expected to take about six years if funding kept pace. A number of important upgrades were completed, including:

- Replacement of the Appellate Court Records and Data System (ACORDS) with a more user-friendly system;
- Replacement of the old juvenile court information system with the Web-based Juvenile and Corrections System (JCS), which provides much more information and tools for juvenile court workers;
- Implementation of upgrade to the Judicial Receipting System (JRS), which improves stability and performance of court receipting systems across the state;
- Establishment of a data exchange system with the Secretary of State's office, so the courts and the Secretary's Office can exchange information about felons and voting rights;
- Establishment of new statewide standards for electronic filing of court documents (envision filing a document online as opposed to rushing to the courthouse to do so in person) and electronic access to court documents (viewing documents online rather than in person); and
- Development of an "e-Citation" program between courts and the Washington State Patrol which allows State Troopers to transmit infraction information (the information contained on paper "tickets") to law enforcement agencies and the courts, which reduces errors from transcribing hand-writing and multiple data entries.

As the overhaul was about to move into the next major phase in 2005 - an in-house rewrite of all case management systems - the JIS Committee requested an outside review of the project to ensure that the direction being taken was still valid.

The importance of the statewide system, changes in technology, the inherent risk in large technological projects, and the individualized nature of the different court levels across the state were all issues that called for a review.

The Gartner Group, an internationally known consulting firm with expertise in large technology projects, was chosen for the evaluation. After months of work, interviews at multiple levels of operations, and extensive review of the project's resources, goals, costs and risks, the Gartner Group found that the JIS project was crucial and current technology platforms were necessary to support the needs of the courts. However, the Gartner Group also found that the migration approach - construction of a single, fully integrated system - was not achievable.

Essentially, the goal to build a system that would be all things to all courts was putting the project at high risk.

In late 2005, the Gartner Group recommended that the overhaul be carved into distinct priority projects needed to support the courts - core case management, access to court information collected by JIS, and the ability to share information between courts and justice agencies.

The new direction would abandon the old plan to build a single monolithic management system for the whole state, focusing instead on JIS as a "data integrator," using component software solutions to enable disparate systems to exchange data.

The JIS Committee voted to approve the new direction, and in early 2006, the modernization plan became known as the "JIS Roadmap."

As part of the Roadmap plan, Washington State Administrative Office of the Courts (AOC) hired a new Director of Information Services; established steering committees to oversee the case management, data exchange and information access branches of the overhaul; and reorganized the Information Services Division to better serve the new direction.

New communication and JIS governance plans were also put into motion.

"We've come a long way in improving the JIS, and we have a lot of work left to do," said then Washington State Court Administrator Janet McLane.

McLane compared overhauling the JIS to changing an airplane engine in mid-flight, adding that, "the milestones we've reached remind us that we are making good progress in the challenging transition from old to new." ■


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