State of the Judiciary
January 16, 2009 11:30 a.m.

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

Let me first extend my thanks to the members of the legislature for the warm welcome you have accorded me and my fellow justices of the Washington Supreme Court on this and other occasions. We are very honored to be here for the purpose of allowing me to present, on behalf of our court and Washington's judiciary, the biennial State of the Judiciary address. This is the fifth time I have been accorded the privilege of presenting such an address since I was first elected chief justice in January 2001.

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

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

Before I speak to you about the state of the judiciary as a whole, allow me to say a word about the court on which I now sit, the State Supreme Court. I can tell you that I

am very proud of all of my colleagues and very honored to have been elected by them as chief justice for the third time. All of us on our court are unified in our desire to work with our judicial colleagues around the state to deliver equal and quality justice to all in a system that is administered, in the words of our state constitution, "openly." Our court is currently very experienced. Each of us practiced public or private law in this state earlier in our careers and collectively we have over 135 years of judicial service. I am pleased to say also that the relationship between all of the justices is collegial. At the same time, though, we are all free thinking individuals who come from a variety of backgrounds. Thus, it is not surprising that we are not unanimous on every issue that comes before us.

Although most of you are somewhat familiar with the veteran members of the Supreme Court, I would like to say a word about our newest member, Justice Debra Stephens. Justice Stephens was appointed to our court by Governor Gregoire in December 2007 and she was sworn in at a ceremony at our court on the 7th of January 2008. Justice Stephens, of course, had to stand for election to that position in the fall of 2008, and, happily, she was unopposed. Justice Stephens is a Spokane native, who obtained her B.A. degree from Gonzaga University, magna cum laude, and then went on to law school at the same university as a Thomas More Scholar, graduating summa cum laude. Following graduation, she practiced law in Spokane with primary emphasis on appellate practice. She appeared before our court over 125 times, which is remarkable, and she did all of this while also serving as an adjunct member of the law school faculty at Gonzaga. Justice Stephens' judicial career actually began earlier in 2007 when Governor Gregoire appointed her to the Court of Appeals, Division Three, in

Spokane. When Justice Stephens came to our court early in 2008, she obtained the double distinction of being the first judge of Division Three and the first woman from Eastern Washington to serve on the Washington Supreme Court. We are delighted to have Justice Stephens as a colleague and look forward to working with her in the years to come.

Let me now, in my capacity as chief justice, speak to you more directly about our state's justice system. As you all know, Washington's justice system is present in every county in our state as well as in most of our cities and towns. The system is presided over by nine justices of the Supreme Court, 22 judges of the state court of appeals, 188 superior court judges, and 204 full and part-time judges of our district and municipal courts. These justices and judges can't, of course, manage the system alone and, fortunately, they have the assistance of dedicated court commissioners, county clerks, and court staff that work hard managing caseloads that collectively total more than two million filings each year—more than one filing for every three citizens of our state. I can tell you that from my perspective, as one who has served as a judge in this state for over 35 years, that our judiciary and its staff has never been more skilled and hardworking than it is right now.

I wish I could have invited every judicial officer in the state to be here today, but, as you can tell from my remarks, they have plenty work to do at home. I did, though, ask a few judges to be present in the gallery—allow me to introduce them to you. Representing the district and municipal court judges of our state is Judge Marilyn Paja of the Kitsap County District Court. Judge Paja is a veteran judge and is currently president of the District and Municipal Court Judges' Association. Representing the

superior courts, we have the very able Richard McDermott, president of the Superior Court Judges' Association. Judge McDermott sits on our state's largest court, the King County Superior Court. Representing the 22 judges of our Court of Appeals, we have Judge C.C. Bridgewater. Judge Bridgewater, who hails from Castle Rock in Cowlitz County, is the chief presiding judge of the Court of Appeals. We also have other judges in the audience who are here to attend this afternoon's monthly meeting of the Board for Judicial Administration. These judges represent Washington's judiciary and I am immensely proud of them all.

Each level of court that these judges represent has a direct affect on the lives of individuals. This is particularly true of our trial courts (the superior courts, district courts, and municipal courts). At the superior court, judges determine child custody issues, protect victims of domestic violence from harm, preside over felony criminal cases and all manner of significant civil disputes. At the limited jurisdiction level, judges handle misdemeanor and gross misdemeanor cases, traffic infractions, and a myriad of other matters, including, at the district court, small claims cases and other civil actions where $75,000 or less is sought. Our limited jurisdiction trial court judges see huge numbers of persons in their courts each year and these courts can truly be called our "people's courts."

When reflecting upon the important work of each level of court in our state, and the challenges they face, I am reminded of the old saying that, "If we do not maintain justice, justice will not maintain us." These words go to the very essence of our great republic and contribute to the pride we feel about our nation, our state, and our system of government. Americans have always revered justice, and we demonstrate that when

we face our nation's flag and recite those well known words: "justice for all." Maintaining a strong and fair justice system is, I believe, of great concern to all of our citizens.

Unfortunately, we have not done the best job as a state government in maintaining our justice system at the trial level. Many of you have heard me say before that since we first became a state in 1889, our trial courts have been funded almost entirely by local governments—our counties and cities. This means of funding our trial courts was not problematic in earlier times because our state's court system was relatively small and local governments did not have huge demands placed on their resources. But as the years have gone by the number of cases flowing into our courts has risen dramatically as our population has increased and a variety of new laws and regulations have been enacted at the state and local level. At the same time local governments have assumed financial obligations that were unknown to their predecessors. As a consequence, our trial courts have been severely challenged as they have endeavored to keep up with their increasing and more complex caseloads. In some jurisdictions, particularly in our metropolitan areas, we have seen delays in getting cases to trial due to crowded court calendars, difficulties in obtaining qualified interpreters for non-English speakers, criminal defense attorneys and prosecutors with caseloads that are too large, and large numbers of persons going without representation in civil cases, particularly in family court matters. I must add that these problems always become more pronounced as the budgets of local government are affected adversely by an economic downturn, such as the one we are currently experiencing.

A few years ago, our the state's Board for Judicial Administration addressed the funding crisis facing our trial courts in what we called the Justice in Jeopardy Initiative. We first presented the initiative to you in 2005.

The initiative flowed out of the hard work of the Court Funding Task Force, a body that was formed in 2002 by the Board for Judicial Administration. This effort engaged more than 100 persons from across the state and from all backgrounds—significantly, it included five members of the legislature.

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

Today, despite the advent of additional and much needed state funding in the last four years, Washington is still in last place in the nation in terms of state funding, with budget-strapped local governments still bearing more than 80 percent of the costs of maintaining our trial courts. Although state government funds the rest, less than one percent of the state budget goes to maintain our justice system and our courts, which compose the key component of that system, courts that are provided for in our state constitution—a constitution that says that justice is to be administered "without unnecessary delay."

The report of the Court Funding Task Force and the other studies that have been done over the years have recommended that optimally, the State should pay 50 percent of the cost of trial court operations and indigent criminal defense, and it should assume a substantially greater role in funding civil legal aid services for Washington's low-

income residents. We think that this "partnership approach" between state and local government makes more sense than a complete state takeover of the cost of our trial courts, the path that states like California and Oregon have followed. We say this because we believe that local jurisdictions should have a stake in how the courts operate within their jurisdictions.

We recognized, however, that obtaining an increase in state funding of the magnitude we envisioned would be a major change, and, thus, we opted for recommending an incremental approach.

I must tell you that the judiciary has been immensely gratified by the support that the legislature has provided since we first approached you with the Justice in Jeopardy initiative. In the legislative sessions of 2005, 2006, and 2007, you recognized by your action that state government does have a responsibility to pay a higher proportion of the costs of the state's justice system that it has in the past. In those sessions, you appropriated significant funds, much of which were derived from higher user fees, and you applied it to the support of our trial courts, public defense and civil legal aid. We are most grateful for that show of support.

Let me be more specific about what you have done: In 2005, you provided, for the first time, state funding for a portion of the salaries of district court judges and elected municipal court judges, and for trial court improvement accounts. You also appropriated funds to provide legal representation for indigent parents in termination and dependency cases as well as funding for indigent criminal defense at the trial level. You also created the Office of Civil Legal Aid as an independent agency of the judicial

branch and increased the amount of dollars going to civil legal aid. This was truly historic action by the legislature.

In the 2006 session, you maintained the momentum established in the pervious session by funding a pilot jury pay research project and expanding the parents' representation program. Again you provided additional funds for civil legal aid programs.

In 2007, you appropriated supplemental funds to complete the jury pay research project in addition to providing funds for court interpreters at the trial level. At the same time you provided additional funds for CASA representatives, civil legal aid, criminal indigent defense, and parental representation.

Although we didn't ask for any new funding in 2008, a supplemental budget year, it was our intention to ask you to continue the march toward implementation of the goals of the Justice in Jeopardy Initiative in this session. Specifically, we anticipated requesting additional state funding to assist local governments in covering the ever burgeoning costs of providing court interpreters at the trial level. We also planned to seek additional funding for civil legal aid, public defense, parental representation, the Commission on Children in Foster Care, and the Washington Family and Juvenile Plan—an ambitious agenda.

We have since decided to shelve these requests for time being. We took this action because we recognized the problems you face in the legislature this year as a consequence of the current economic crisis that faces our state and the nation. Bottom line, we concluded that this is not a propitious time to seek enlargement of the budget of the judicial branch. That does not mean that we have lost our zeal for the goals we set

forth in the Justice in Jeopardy Initiative. It simply means that we have taken a time out. We want you to know, though, that we strongly urge you to not dismantle the progress we have made since 2005. I can also promise you that we will be back seeking your support for the goals of the initiative when the economic situation in our state and nation is rosier. Relevant to the current fiscal situation, I wish to point out that we have endeavored in the last several months to cut back our spending in the remaining months of the current biennium and it appears that we have done so to the tune of about $672,000. Because of this effort we will be able to leave a much greater amount of money in the treasury at the end of the biennium than we otherwise would have.

Since we are not asking for any funding of new programs, I suppose I could stand down now and head back across the street. But I don't want to do that without addressing a familiar issue that we believe deserves attention by this legislature. It is an issue that I have highlighted in each of the previous State of the Judiciary addresses I have presented to you. It concerns Washington's low rate of pay for our jurors. Let me quickly add that we have not set forth any amount in our proposed budget to fund an increase in the attendance fee for the reasons I have already given. We will, though, seek introduction of a bill that would provide for an increase in the fee.

To refresh your memory, the daily attendance fee for jury service is set by statute at no less that $10 per day and no more than $25. Significantly, almost every jurisdiction in the state pays the minimum of $10. That fee was established in 1958, a time when $10 was roughly equivalent to the minimum wage for a day's work. It is clear that today the fee is woefully inadequate and its meagerness is evidenced by the fact

that for a five-day trial, Washington ranks 45th out of 50 states in terms of jury compensation.

To the legislature's great credit, you did fund the pilot project that allowed us to raise the fee in three jurisdictions to an amount akin to the current minimum wage. You also underwrote the cost of a study of the effect of the fee increase on the response to the jury summons by persons called for jury duty, juror satisfaction, and the diversity of our jury panels. While the study, a copy of which you should have received this week, does reveal greater juror satisfaction on the part of those who received the higher fee, it was not entirely clear what effect the increase had on responses to the jury summons—that may have been due, in part, to the fact that many, if not most, prospective jurors were not entirely aware of the fact that the attendance fee had been increased.

But regardless of whether an increase in the fee will get more citizens to fulfill this important responsibility of American citizenship, the fee should be increased as a matter of equity. Even though we are getting jurors to serve, we believe that it is simply not fair to pay them such a low fee, particularly those who devote more than one day to jury service.

In light of the current economic situation, the proposed legislation, which will be before you, is much more modest than what we were initially inclined to propose. Basically, we are suggesting that the fee stay at $10 for the first day of jury service, on the theory that everyone should be willing to give one day of service at little or no cost to the government, but that it should increase on the second and subsequent days of jury service and that the State, as opposed to local government, should bear the cost of the

increase. Again, with a view toward the current economic situation, we are asking that the proposed increase be phased in over a period of about four years.

We recognize that obtaining an increase in the jury fee is a tough sell in this session. We believe, though, that this issue needs to be kept at the forefront and, thus, we will strongly advocate support for the proposal in this session.

I am about to close, but before I do I want you to know that we in the judiciary fully appreciate the immense challenges the 61st Legislature faces. As Governor Gregoire pointed out in her address on Wednesday, we are facing an economic upheaval of proportions unseen for many years. As a consequence, this legislature is going to have to make some tough and painful decisions about how the State's smaller revenue pie will be divided. I know that you will receive much advice on how to do that, and I am hesitant as the spokesperson for the judiciary to kibitz, other than to say just a couple of things.

First, I implore you to resist the temptation to reduce the appropriation for civil legal services for the poor and criminal public defense below current levels. I make this plea because it is our view that the demand for the services that our legal aid attorneys and public defenders provide is almost certainly going to increase in the hard economic times we are likely to experience in the coming biennium. The persons who benefit from these services, including the increasing numbers of our citizens who face foreclosure, eviction, or debt collection, are among the most vulnerable in our population and they are often without a voice in the halls of government—so we wish to speak for them.

The other thing I would say is that when you are looking for possible ways to reduce the cost of government spending in order to accommodate decreased revenues, you should take a look at Washington's current sentencing regime. I say that because even the most ardent fan of our current determinate sentencing scheme would have to concede that under this system, which is very rigid and inflexible and vests very little discretion in the sentencing judge, the number of persons in our state prisons and county jails has increased substantially and it would appear that this increase will continue for the foreseeable future.

As you know, the costs attendant to housing this large number of persons in our jails and prisons is huge. Let me just briefly give you some numbers. Right now, we have 18,000 inmates in Washington's prisons, state-supervised work release, or rented space in county jails or prisons outside the state. This compares to 16,000 in confinement just five years ago, and approximately 14,000 ten years ago. Those numbers are, of course, in addition to the thousands who are confined on any one day in our county and city jails. Significantly, the increase in our prison population, which exceeds the state's population growth during the same period, has occurred during a period in which Washington's overall crime rate and violent crime rate has declined substantially.

Although most of the persons who are confined within our prisons need and deserve to be there, most judges will tell you, if asked, that there are a significant number of persons in our prisons who could be treated outside of the prison walls at a cost much lower than the cost of imprisonment, and that this could be done without jeopardizing the public's safety and security.

Having said that, I hasten to add that we in the judiciary are not proposing at this time a wholesale revision of our state's determinate sentencing scheme for those convicted of felonies. We do think, though, that it is time for the legislature to take a close look at this system that came out of the so-called Sentencing Reform Act of 1981 to see if these massive costs of incarceration cannot be reduced. I want you to know that if you undertake such a long-term project, the judiciary stands ready to assist you in any way that we can.

In the short run, we ask you to give favorable consideration to some proposed legislation that is being advocated by our superior court judges, the persons who impose the sentences in felony cases and who know a bit about the subject. They propose that you increase the number of community-based DOSA beds. DOSA stands for the Drug Offender Sentencing Alternative, for defendants who would otherwise be sent to prison. Experience shows this alternative to imprisonment, like drug courts, works and has the effect of reducing crime and saving dollars.

The superior court judges will also propose that you restore to sentencing judges something we could do when I was a young superior court judge, and that is the ability to suspend, in appropriate cases, part or all of a felony sentence of a defendant facing a determinate jail sentence and no imprisonment. This would not apply to persons charged with a sex or violent offense. Such a step, we believe, would be of great value to fiscally strapped counties and would not impinge on public safety.

Although these are relatively modest proposals, they are ones that make sense. We hope, also, that confronting them in this session will serve as a catalyst to open dialogue which could lead to broader sentencing reform in the future. We are aware

that reform of our sentencing practices would not be popular with everyone, but these are challenging times and such times call for boldness and innovation.

Let me close where I began by thanking all of you for allowing me to speak to you today and for the graciousness with which you have received me and my colleagues. Please accept our very best wishes for a successful legislative session.