

## *STATE OF THE JUDICIARY ADDRESS*

January 12, 2011

11:30 a.m.

Thank you President Owen, Speaker Pro-Tem Moeller, Governor Gregoire, elected officials, members of the House and Senate, fellow judges, ladies and gentlemen.

I am here today on behalf of the judicial branch of this state—to present the State of the Judiciary address.

I particularly want to thank two very special people for being here with me today. First, I want to thank my husband, Don Madsen. He is the long suffering man who listens to my speeches—over and over and over. The second is Father Coughlin.

Father Coughlin doesn't travel very much anymore, but he agreed to be here to give the benediction. Father Coughlin became the President of Gonzaga University the year I began law school. He, and Gonzaga, have been there for me at the most important times of my career and I thank Father Coughlin and my entire Gonzaga family.

The strength of our democracy is that our institutions of government are made up of our neighbors and friends—people who live among us and who, themselves depend on the same institutions they serve.

After listening to Speaker Chopp and Representative DeBolt on Monday and yesterday to Governor Gregoire, I just want share this observation—in my view the people who have been chosen to lead at this very difficult time are people of good will—they want to do the very best they can for the neighbors and friends and the communities they serve.

No one can envy the job facing our elected leaders this session. This is a year of unprecedented challenges, but from where I stand—I am confident that all of you in this room have brought the “right stuff” to do the job.

Because we know how much work lies ahead, my colleagues in the judicial branch and I are grateful for the opportunity to speak to you—as well as to our state's elected officials and the people of Washington.

### **State of the judiciary**

One of the hallmarks of a democracy is a right of access to courts. It is really the fact that a country has a democracy that drives the need for courts. Democracies rely on the rule of law and the protection of individual liberties. That is because in a democracy we have rights that must be vindicated and protected—this is the role we assign to the courts.

The hallmark of our justice system is captured in the words etched in stone on our courthouse walls: Equal Justice Under Law—and in our Pledge of Allegiance: With Liberty and Justice for all.

- Our courts are here to ensure the basic rights and protections guaranteed by the Constitution and the laws of our nation and our state;
- We are charged with interpreting the laws that you create in these chambers;
- And we are directed by the State Constitution to provide open, just and timely resolution of all matters before the courts.

This is the core of what we do, and how we fit into our democratic form of government.

The true meaning of the judicial branch can be seen every day as a thousand pictures making up a larger mosaic-- with millions of life stories of our neighbors who use the courts.

On this level, I can report that the state of Washington's judiciary remains strong—but stretched thin.

While the legislative branch deals with issues on a macro level, the judicial branch affects the lives and futures, hopes and dreams, of people on an individual basis. These stories that pull at the heartstrings play out in every county in our state.

From the San Juans to Spokane, issues that come before our courts have life-changing consequences. A typical day in a courthouse could include:

- A victim of domestic violence seeking protection;
- A civil dispute between small business owners trying to end a partnership and keep their business afloat;
- Or parents, hoping to adopt a child from the foster care system.

Collectively our courts handle more than two million filings each year—more than *one filing for every three citizens of our state*.

The vast majority of these cases – more than one and a half million— are handled at limited jurisdiction courts. I started my judicial career as a municipal court judge, and I remember once the fire department came in and cleared my courtroom because we were over courtroom capacity.

In our limited jurisdiction courts judges handle misdemeanor and gross misdemeanor cases, traffic infractions, small claims cases and various civil actions. These are often referred to as the “people’s” courts.

At the superior court, judges decide everything from child custody issues, dissolutions, felony criminal cases, land use disputes, recall petitions, contract claims, and many other civil disputes.

At the appellate level, we have our three divisions of the Court of Appeals which in total receive an average of more than 4,000 new filings annually. Under our Constitution every one of those cases must be heard. In the Supreme Court we are asked to review more than 1,500 cases each year. Over the last two years we have worked hard to reduce the time that parties have to wait to find out if the court will accept the case—down from 14 months to 4 months on average.

As my colleagues can tell you, being a judge is a tremendous honor, but it also carries heavy responsibility.

I have had a chance in the past several weeks to meet with many of you—and I have explained that our court system is a decentralized, non-unified court system.

So, in addition to hearing and deciding cases and managing their local courts, our judges also work at the state level to coordinate statewide policy and practice through their participation in judicial associations, boards, commissions, committees and taskforces.

Many of the leaders of our most visible associations are with us today. Earlier President Owen introduced...

- Judge Steven Warning, President of the Superior Court Judges' Association of Washington;
- Judge Stephen Brown, President of the District and Municipal Court Judges' Association; and
- and Judge Michael Lambo, Member-Chair of the Board for Judicial Administration

I would like to take a moment, though, to recognize the other members of the Board for Judicial Administration who are here today—please stand. The board is the policy-setting body for the entire judiciary, which we meet here in Olympia this afternoon. I am very proud of these judges and the judicial officers that they represent at the four levels of our court system.

### **Ensuring quality justice**

A central area of focus for the BJA is maintaining fair and impartial courts throughout our state—staffed by well trained, professional judges.

Independent judges are vital in a democracy. At the Supreme Court we are often visited by judges from other countries. A few years ago, one judge who was touring our conference room expressed surprise that we did not have a telephone in the room. He couldn't understand how we could get our directions from the Governor without a phone.

In Washington State, we have a long history of nonpartisan election of judges. Yet, curiously, in some of our municipal courts—the so-called “people’s courts”—we give the city executive or legislative branches the exclusive right to decide who to appoint as a judge—and how long to keep them.

We will be asking the Legislature again this year to assure that judges from all levels of court are elected by, and accountable to, the people they serve.

Last year, when we were talking with you about this proposal we provided sample questions that were asked to judicial candidates.

In one example, candidates were asked whether they “understood” that sentencing offenders to jail would have a direct effect on the city budget. Another question asked whether they understood that appointing attorneys for indigent clients also had budgetary implications for the city.

As the Olympian editorial board so cogently stated last year—“the message sent to those seeking the judicial appointment was clear: dollars are more important than the fair administration of justice.”

Where judges are not elected, there are troubling examples—judges with legitimate disagreements with the city council, mayor, city manager, police chief or prosecutor who have found themselves kicked out of office at the end of their term.

Judges once served at the pleasure of the Crown and lost their positions with the defeat or death of a ruler. But, in a democracy judges are unique because they are given the license to sit in judgment of the government itself.

Because democracies rely on the rule of law and the protection of individual liberties, democracies require judges to make rulings that are often unpopular. Fair and impartial courts—free from undue influence and control by the legislative and executive branches—are a fundamental part of our democracy.

Our proposal is not an indictment of our municipal court judges—nor is it an indictment of the many council members and mayors who work appropriately with their court and judges. But, we must change this system that makes them answerable to the city and not the people.

I urge your support on this proposal in 2011.

### **Eliminating bias**

Another major initiative of the judiciary—is working to eliminate bias in our courts.

In the 1980s, this legislature and judiciary became national leaders in examining and responding to bias in the judicial system. You provided funding for the Gender and Justice Commission and the Minority and Justice Commission. Through these commissions we continue an aggressive and research-based focus on eliminating bias and barriers to justice.

While it is impossible to report on all their work and accomplishments to date, here are a few highlights:

Our Minority and Justice Commission received complaints that African Americans were required to post bail to secure release from jail far more often than white defendants.

The Commission partnered with the University of Washington to conduct a study of judges' release practices. We learned that the release criteria in our court rules were inherently biased. The Commission recommended a new court rule changing the criteria—which the Supreme Court adopted.

Just this past session, we worked with community groups and key legislators to pass legislation banning the practice of shackling women prisoners during labor and delivery.

Our courts have spent enormous energy addressing bias and meaningful access to justice—but we recognize the need to reassess our progress.

Shortly after becoming Chief Justice, I convened the Supreme Court Commissions, Boards and Task Forces Assessment Work Group to take a hard look at existing efforts and make recommendations for modernizing and strengthening the justice system's ability to ensure fair treatment for all.

We have learned a great deal during our years of work on bias in the courts. We have learned that it's an extremely complex and nuanced issue.

We, as a branch, remain profoundly committed to discovering and eliminating all barriers to equal justice.

To that end, the Court will host a Racial Bias Roundtable on March 2<sup>nd</sup> with leaders from the Washington State Bar Association, minority bar associations from across the state, prosecutors, public defenders, legal educators and other stakeholders to discuss needed reforms.

### **JIS**

The core of what brings our hundreds of courts together every day is the Judicial Information System (JIS).

*Essentially, JIS equals justice*—without JIS calendars the courts do not operate, money from traffic fines and fees are not collected and delivered to the state, and judges do not have access to criminal history information.

Imagine for a moment serving as a judge and needing to make a critical bail decision without knowing the criminal history of the defendant standing before you. That is what the judiciary would face without the assistance of JIS.

Our JIS capabilities and benefits are far-reaching: protecting victims of domestic violence—ensuring that judges, police, prosecutors and community corrections and probation officers can get timely access to related court-orders—and increasing the court’s ability to keep records organized, accurate, and readily accessible.

It is a testament to the wisdom of this Legislature that you recognized this need and created a separate funding stream to maintain and improve this system—a system that also provides essential information to the Washington State Patrol, Department of Corrections, Office of the Secretary of State, Sentencing Guidelines Commission, Department of Licensing, local law enforcement agencies, prosecutors, and defense attorneys.

We are requesting \$10 million this biennium from the dedicated JIS Account to improve and enhance the information system, which currently serves 16,000 court customers and 8,000 other users. These funds are critical to allow the courts to streamline services and provide accurate and up-to-date information throughout the state.

We have already seen what advantages can be gained by modernization: specifically, the “Vehicle Related Violations Exchange” that is under development will eliminate the need to physically transfer paper tickets to the courts, which now have to be re-entered by hand.

I also have other good news to report on the technology front. This past year, members of the Washington State Bar Association and the Access to Justice Community worked to establish “JusticeNet.”

Justice Net is an effort to use technology and broadband capability throughout the state to deliver information and services.

With over 65 members, JusticeNet includes courts, libraries, community centers, legal aid and defender organizations, the prosecutors association, the WSBA and others.

In September, the U.S. Department of Commerce approved a grant submitted by JusticeNet. As a result, the state of Washington will receive \$4.1 million dollars to establish and support an interconnected system of public computing centers throughout the state in public libraries, community centers, non-profit organizations, courthouses, and low-income housing complexes. The computing centers will be connected to emerging networks of social services organizations, legal aid offices, courts, and government services.

Together, we will transform the justice system using our resources wisely to meet the needs and aspirations of all people to access justice.

### **Leadership in fiscal crisis**

As my predecessor Gerry Alexander has mentioned in past addresses to this body, the judicial branch has begun a far-reaching effort to address the state’s legal obligation to provide justice across all of Washington—in every courthouse—on an equal basis.

Historically this state has imposed a disproportionate responsibility for meeting essential law and justice responsibilities, including funding for courts—at the local level.

In fact, Washington continues its unfortunate ranking of last in the nation—50<sup>th</sup> out of 50 states for its percentage of state funding for the courts, prosecution and criminal indigent defense.

As a result, across the state, counties spend well in excess of two-thirds of their general revenues on law and justice functions; while at the state level the courts comprise less than seven-tenths of one percent of the state operating budget.

Since becoming Chief Justice, I have been talking to trial judges about the impacts of local budget cuts. Our survey of the judges paints a very bleak picture:

- Courts are losing line staff, cutting hours of operations and eliminating all “real person” phone services;
- Entire probation departments are being eliminated meaning there is no follow-up, of any kind, to ensure defendants meet their court-ordered obligations for treatment;
- Courthouse facilitator hours are being reduced—meaning more unrepresented litigants are unprepared for court;
- Couples are living with temporary orders in dissolution cases because they can’t get trial dates; and they can’t move forward;
- Serious juvenile offenders are being released from detention early;
- Court clerks struggle to update court records in a timely and accurate manner; and
- Some superior courts are experiencing significant and increasing delays in civil trials; in a stunning example of this, 23 attorneys in Yakima formed a panel last year to donate their time as pro se judges to help the superior court reduce an increasing backlog of cases.

Injustices are occurring and public safety is being jeopardized as this continues. With that in mind, the Board for Judicial Administration will seek legislation to extend the sunset provision on the filing fee surcharges added in 2009.

The judicial system is a core function of government and, as such, should be funded with general fund revenues and not user fees.

However, we also understand the dire consequences of today’s economy. So, we will ask you to extend those expiring surcharges and add the traditional state-local government split of those filing fees in order to help weather this fiscal storm at both the state and local level.

This upcoming legislative session will be especially trying for us all, as we strive to uphold the promise of our constitution: justice administered in all cases—civil and criminal—openly and without unnecessary delay.

### **Partnering in this crisis**

For the past several months, all agencies of the judicial branch, in cooperation with the Governor’s Office, have reduced expenses and cut costs by more than \$4.3 million, in addition to cuts in the previous two legislative sessions totaling more than \$17.7 million between our state’s Administrative Office of the Courts, the Supreme Court, Court of Appeals, State Law Library, Office of Public Defense and Office of Civil Legal Aid.

These levels of cuts—particularly to AOC, which included a 19.3 percent reduction to its operating budget last biennium—has resulted in direct loss of services to the appellate and trial courts, as well as to all citizens throughout our state.

One program in particular that is in danger of being eliminated this year is the Office of Public Guardianship, which was established by the Legislature in 2007 to assist the estimated 4,500 state residents who are incapacitated and need the help of a guardian to live independently.

### **Compassion in time of need**

Finally, let me say that it is important to note that in times of economic turmoil and distress, we are working hard not to abandon our state's most vulnerable residents—children in foster care, victims of domestic violence, senior citizens, the poor and others vulnerable to crime.

Two agencies of the judicial branch that work to protect the liberty of our citizens every day have also agreed to withdraw their request for new critical funds this biennium and will do their best to work within their current budgets.

I am tremendously proud of the work of the Washington State Office of Public Defense (OPD), which is working to improve the standards of public defense in trial, juvenile, and appellate courts.

The overwhelming majority of criminal cases involve defendants who are indigent—more than 200,000 per year. Almost 50 years ago, the *Gideon v. Wainwright* case established that it is the state's constitutional obligation to ensure these people are provided with an attorney. It is one of our cornerstones of our promise of fairness, yet in many of our jurisdictions, poor defendants traditionally have not been appointed adequate counsel.

This is why, in 2006, the Legislature began funding a \$6 million program to improve the capability of public defenders in the counties and municipal courts. This critically important program is helping the state address its constitutional obligation under *Gideon*.

OPD has also made incredible strides in a program that provides representation of indigent parents in dependency and termination actions, another area where what is at stake is so fundamental that the parents' right to counsel is constitutionally mandated. Studies show that with OPD's program, parents are better able to access court services and work through their problems, thus increasing their ability to be reunited with their children, and the program has resulted in faster case resolution as well.

Similarly, the Office of Civil Legal Aid, is our state's lifeline for civil equal justice. When there is nowhere else to turn, civil legal aid steps in. All over Washington, civil legal aid attorneys and volunteers work together to provide critical legal help to those who cannot afford it on matters that affect the most basic needs – family safety and security, housing and access to essential services and support.

This need, given our current fiscal crisis has increased tremendously. We are seeing many more middle-class citizens who have been caught up in the recession. These people are unable to pay their rent or mortgage or bills as they used to be able to do. They come to court, embarrassed and distraught, usually without an attorney and with no idea how to proceed.

Our state's civil legal aid system is struggling to meet the urgent civil needs of the newly poor and vulnerable. In King County, requests for legal assistance over the past year have risen: claims for unemployment benefits are up (498 percent), mortgage foreclosures are up (291 percent), medical assistance claims are up (290 percent), we have seen a rise in public assistance claims (148 percent),

bankruptcy claims are up (145 percent), and domestic violence complaints have increased by (97 percent). The OCLA reports similar increases in demand across the state.

Our judges report that these people cannot bring effective appeals; much less revision motions, recover money owing to them, or win custody of their children when facing an opponent who is represented. They are routinely evicted, denied domestic violence orders, assessed large judgments they can't pay, and foreclosed out of their homes.

Our laws guarantee basic rights and protections to all of us, not just those who can afford a lawyer. But there is an overwhelming civil justice gap between the legal needs of the economically disadvantaged and the legal help they receive.

### **Closing**

In closing, on behalf of the dedicated judges of Washington State, I would like to reinforce our commitment to the rule of law in our democracy. Your 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. Together, we have made great strides in the right direction for Washington's courts, and we are deeply grateful for your support.

I would also like to express how honored I am to serve alongside all of you as a leader in our separate, yet equal branches of government. I am particularly grateful that Governor Gregoire and many leaders in the House and Senate have been so willing to listen to the concerns of our branch in these difficult times.

I thank you for the warm welcome for me and my colleagues. And I wish you all the best in the challenging year ahead.