



Remarks by
Chief Justice Barbara Madsen
Washington State Supreme Court

Legal Services Corporation Pro Bono Reception
Davis Wright Tremaine
Seattle, Washington
July 20, 2011

Thank you. I wasn't sure exactly who would be here tonight. Listening to the introductions by the board chairman I must say, this is indeed an august gathering. I have only been chief justice for a year and a half, but one of the perks of the office is to meet such amazing people as those of you in this room.

I did come up here from Olympia this evening. I thought I would share with you what I was doing there today—in addition to all the meetings. The Women's Leadership Institute, funded by the U.S. State Department, asked me to address a group of young women, most of whom are in their junior year in college. They were part of a leadership program aimed at growing young women leaders. They were from Afghanistan, Pakistan, Egypt, and Sudan. One of the young women asked, "How do you keep corruption out of the courts?" I told the young women, "We don't have a corruption problem; we have a problem funding our courts."

Listening to these young women and knowing I would be speaking to you today, I thought that even in tough times we are lucky to live in a democracy and to have a court system that people still believe will give them justice.

As chief justice I belong to the Conference of Chief Justices. On July 28, 2010 the Conference of Chief Justices reaffirmed one of its highest priorities: promoting the expansion of funding for civil legal assistance and access to civil justice and advocating publicly for increased funding for legal services. So it is right that as Chief Justice I should be speaking at a meeting of the Legal Services Board.

I really am so proud that I was invited to address this award ceremony. To see such a broad cross-section of lawyers who are being recognized—from the east side and the west—large firms—small firms, and sole practitioners—new lawyers (Brendan Donkers was a law clerk at the Supreme Court and I had the privilege to work with him on several projects) and seniors—I won't call you out, being a senior myself. And so many of you who are my friends.

I think we can safely say: we truly have an Alliance for Equal Justice!

These award winners represent the coordinated legal-aid delivery system that we enjoy here in Washington. Northwest Justice Project and a network of 19 independent volunteer county bar programs provide the lion's share of the pro-bono services for the poor and low-income people in our state.

Our State bar and our law schools also make remarkable contributions.

Without our volunteers, thousands of low-income people would receive no help for their legal problems—problems that affect the most basic needs – family safety and security, housing and access to essential services and support.

In 2003, our Supreme Court convened the Task Force on Civil Equal Justice Funding. Our study found that, “[i]n the aggregate, low-income people face more than 85 percent of their legal problems without help from an attorney.” In 2003, over one million people (or 13.2 percent) of Washington citizens were low-income.

And, in 2010, the Census Bureau reported that approximately one out of every seven families in the United States lives in poverty with twenty one percent of children living in poverty.

Given our current fiscal crisis, the need for legal services has increased tremendously. We are seeing many of our 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. I imagine the board has heard this message in every location where you have met.

Here in Washington State, we have seen a 200 percent increase in demand for legal help in matters of family law and domestic violence. In the area of mortgage foreclosures we have see a 500 percent increase in demand, and in other areas, such as legal problems relating to governmental assistance and unemployment insurance, the increase is around 1500 percent.

Our laws guarantee basic rights and protections for 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.

Does having a lawyer matter? You might be surprised, but there are many who would debate the answer. For me, the answer is a resounding yes!

According to a 2003 report from the University of Baltimore, women seeking restraining orders against abusive partners were successful 83 percent of the time when they had legal representation, compared with 32 percent without an attorney.

Here in Washington, studies also show that in abuse and neglect cases, providing representation to parents, results in children spending less time in foster care and more time in family reunifications.

Judges see the disparate results daily in their courtrooms. As one judge in a recent case said after a divorce trial: “[C]andidly I agree that [the plaintiff] was not well served because she was pro se. I think the record will bear that out.” Indeed, it did!

Our judges report that people without counsel are routinely evicted, denied domestic violence protections orders, assessed large judgments they can't pay, and foreclosed out of their homes.

We are here to honor pro-bono heroes who answer the need.

The highest calling of a professional is to give service to those who need it most. In fact it is part of our Oath of Attorney.

Washington State is honored to have a long and distinguished tradition and culture of pro bono service. Our state bar and local bar associations have, for decades, committed themselves to growing the ranks of those who give of their time. They provide support and infrastructure so that pro bono attorneys are well trained, supported, and able to focus their time on client services.

Pro bono attorneys and firms can be found in every corner of our state. The individuals and firms we recognize today, and many more in this room and across the state, deserve our praise. These attorneys, and in particular those receiving awards, have distinguished themselves and provide shining examples of what can happen when those in the profession live up to their professional duties and abide by a true culture of service. We are proud of them.

But, no amount of pro bono legal aid will ever substitute for the professional civil legal aid programs and attorneys that serve as the heart of our civil equal justice infrastructure.

These programs and their attorneys perform a number of important functions.

- They provide a deterrent against unjust treatment by unscrupulous actors.
- They identify and address practices that result in disparate denials of justice for low-income people.
- They provide a wealth of legal help and self-help materials and services.
- They are also the source of most of the support infrastructure that enables our pro bono attorneys to do their jobs efficiently and effectively.

Today, at both the national and state levels, we are faced with unprecedented fiscal challenges. State legislators and members of Congress are called to cut the wheat from the chaff—we are asked to determine “core functions of government” and how such functions are to be funded. Each of you on the board, regardless of party affiliation, understands that ensuring justice is a core function of government. That is why you serve on the LSC board.

In Washington State our Legislature has recognized the need to continue funding legal services, even in tough times. Over the past 24 months, our state has been forced to cut more than \$9.5 billion in expenditures from a general fund budget of \$37.5 billion.

Make no mistake, the opportunity existed to eliminate state funding for civil legal aid. But thanks in particular to Jim Bamberger, who worked tirelessly with the legislature, leadership on both sides of the aisle, in both the House and the Senate, demonstrated their commitment to equal justice under the law – and they protected the \$23.2 million biennial commitment that they make to civil legal aid.

Jim Bamberger and many others, including Cesar Torres, have shown us that this is the result we can achieve when the groundwork is done and the system demonstrates efficiency, accountability, and effective outcomes.

The fair and impartial administration of justice is not a partisan matter. Everyone, Republican and Democrat alike, is a real party in interest in efforts to ensure that our justice systems are fair, accessible and responsive to the needs of those who seek their protection.

We need to reaffirm the Federal consensus on Legal Services. Our success in establishing and sustaining bipartisan agreement about civil legal aid here in Washington State has mirrored the federal model. Born of the compromises and reforms of the 1990s and implemented by leaders such as former LSC Board President (and now Professor) John McKay, Congress forged a new bipartisan understanding and commitment to the Legal Services Corporation – one focused on meeting the individual needs of low-income people who face the most significant civil legal problems.

Recent stirrings in Congress suggest that the consensus achieved, and the bipartisan commitments made in the 1990s, and sustained until this day, may be lost, and that this Congress or a future Congress may walk away from its commitment to civil equal justice and to the Legal Services Corporation. This must not be allowed to happen, and surely not on our watch.

Justice is a paramount duty of government. It is the first order of business in our federal constitution. Ensuring civil equal justice is a joint federal-state responsibility. In recent years many states – like our state of Washington -- have invested substantially in the core civil legal aid infrastructure funded through the federal Legal Services Corporation. The reduction or withdrawal of federal funding would fundamentally undermine the vitality and effectiveness of these state-based legal aid delivery systems and adversely affect our civil judicial system.

Even with static funding we fall further and further behind in our efforts to close the justice gap identified in our 2003 Legal Needs Study and the more recent LSC studies.

Each member of the LSC board of directors is committed to delivering on our promise of equal justice. Each of you has a special duty to yourselves, your political party, those who appointed you, and most importantly, to the nation itself, to ensure that sufficient funding is appropriated today, tomorrow, and in the future.

Your colleague from Washington State, Harry Korrell, can tell you—bipartisan consensus can be achieved and non-partisan commitments can be made to ensure that funding for this essential justice function does not fall prey to partisan politics.

So, as we honor these fine individuals and firms for their pro bono services, let's do something more. Let us all pledge that we, like they, will do all we can do to protect the promise of our democracy. That we will work to ensure justice, and access to justice, for all and that we will work to ensure that this unique federal-state partnership for justice endures.