

# Justice Seasoned with Mercy



**WSBA President  
Mark Johnson**

## *The Washington Lawyers' Fund for Civil Justice and Other Proposals to Help Solve the Civil Legal Aid Catastrophe*

**S**hakespeare's *The Merchant of Venice* has a courtroom scene in which mercy, in the context of justice, is discussed:

The quality of mercy is not strained.  
It droppeth as the gentle rain from  
heaven upon the place beneath. It is  
twice blessed; it blesseth him that gives  
and him that takes.

Shakespeare actually considers a merciful justice system to be godlike:

And earthly power then doth show  
liketh God's, when mercy seasons  
justice.<sup>1</sup>

**The Reality.** Hundreds of thousands of jobs are vanishing every month. Evictions are epidemic, cars are becoming homes, and families are dissolving. More people are indigent, and more indigent people need the assistance of lawyers on issues of housing and personal safety. In addition, IOLTA revenues have been halved and the Federal Reserve has cut interest rates on IOLTA accounts (and others) to essentially zero. As a result of substantially increased need and significantly diminishing revenues, the ability of the civil legal aid system to deliver services has been decimated at the worst possible time.

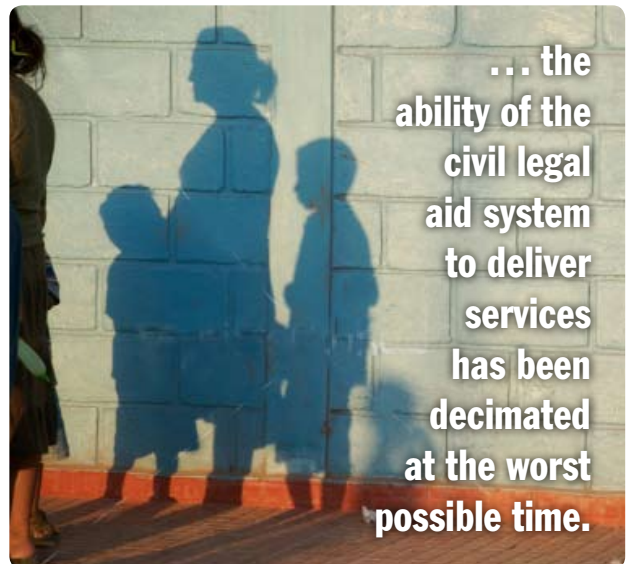
**The Need.** In 2003, the Task Force on Civil Equal Justice Funding, created by our Supreme Court, published the Washington State Civil Legal Needs Study, the results of a research project which was intended to identify the nature and extent of unmet civil legal needs in Washington. The study found that more than 75 percent of low-income households in Washington face at least one civil legal problem *annually* and

the problem often involved an issue of "basic need," including housing and personal safety. The study also found that 85 percent of the problems were faced without assistance, that women and children were disproportionately impacted, and that the need was most acute in rural areas.

**The System.** Our civil legal aid system consists of statewide service providers such as Northwest Justice Project, Northwest Immigrant Rights Project, TeamChild, and Columbia Legal Services, and more than 20 county bar-sponsored voluntary legal aid programs. The Access to Justice (ATJ) Board, together with the Office of Civil Legal Aid and the Legal Foundation of Washington, are working to implement strategies to provide services to those with the most critical needs. The ATJ Board was created by the Supreme Court and is funded by the WSBA pursuant to the Court's directive. The ATJ Board budget does not include funds to directly provide legal services. Pro bono legal services, including those provided by WSBA members holding Emeritus licenses, are also an integral part of the civil legal aid system. To date for the calendar year 2008, 3,017 lawyers, or about nine percent of our members, reported pro bono hours of direct services to low-income clients or organizations that serve low-income clients.

**The Funding.** The federal Legal Services Corporation, which provides one source

of funding for the Northwest Justice Project, has not increased its contribution appreciably since 2003.<sup>2</sup> The Legal Foundation of Washington (LFW), a nonprofit corporation created at the direction of the Supreme Court, is responsible for administering IOLTA revenues. Grants from the LFW provide direct support to 32 county and community pro bono and legal services clinics. Because of the petrified real estate market, IOLTA



revenues were demolished last year. **The tough facts: IOLTA revenues in 2007 were \$9,179,877; in 2008, they were \$4,691,500. In addition, LAW Fund's Campaign for Equal Justice raised \$439,000 less in 2008 than in 2007.** Understandably, a \$5 million reduction in funds for an organization that distributed \$8.3 million in civil legal aid grants in 2007 is devastating, and the LFW recently made the difficult decision to reduce grants for 2009 by 18 percent. According to Caitlin Davis Carlson, executive director of LFW,

the lawyer donation rate to the Campaign for Equal Justice varies from 5 to 20 percent per county.

Washington state also provides funds for civil legal aid. The civil legal aid money provided by the state is administered by the Office of Civil Legal Aid (OCLA). OCLA has a biennial budget of \$22.5 million and is headed by legal aid stalwart Jim Bamberger. The Northwest Justice Project (NJP) essentially gets the entirety of the OCLA budget, save administrative expenses. NJP, in turn, subcontracts approximately \$1.9 million of its budget annually to other legal service providers. Given Washington state's enormous budget deficit, predicted to be \$8.3 billion at the time this article was submitted for publication, it is highly unlikely that the Legislature will increase funding

this year and, in fact, it is more likely that funding will be cut. In addition, our county bars pursue fundraising activities (the King County Bar has a foundation) for their pro bono clinics, usually at their bar dinners or at special fundraising events.

At the time this article went to press, one of the budget proposals circulating in Olympia was a 20 percent across-the-board funding cut. According to Northwest Justice Project's service reduction scenarios, if the OCLA budget were to be cut 20 percent, the results would be, *inter alia*: (1) the Northwest Justice Project would need to close four rural offices — three of which opened only in 2007–2008; (2) “between 5,800 and 6,000 families facing domestic violence threats and threats to the safety of children” would not receive any legal assistance from NJP; (3) “between 2,500 and 3,000 families facing eviction” would not receive any help from NJP; and (4) “between 12,000 and 15,000 families” would not receive “limited assistance from volunteer attorneys and/or representation by specialty providers” such as TeamChild to help meet basic human needs.<sup>3</sup>

**Our Regulated Monopoly and Access to Justice.** With a few exceptions, our licenses to practice law give us a representational monopoly on access to the courts.

The policy basis of the monopoly, which is intended to benefit the public, is that, given the expanse and complexity of the law and legal problems, well-educated, rigorously examined, and highly regulated lawyers are the best way to protect the public and en-

sure competent, effective representation. The most effective argument against maintaining the legal profession's regulated monopoly is that justice is available only to those who can pay — an argument that is reinforced when people are unable to get the services of a lawyer, even when the matter in-

volves personal safety or other basic need. The Supreme Court is currently considering the Family Law Legal Technician Program (FLLTP) proposed by the Practice of Law Board. I am opposed to the FLLTP and I am solidly in support of maintaining the current legal structure, but that will not occur if we do not step forward to take leadership on, and ownership of, this issue now and show the court that we are serious about solving the problem.

**The Washington Lawyers' Fund for Civil Justice.** At the Board of Governors Meeting in Richland on April 24 and 25, I intend to ask the Board to support, and to submit to our Supreme Court for its approval, a proposal creating the Washington Lawyers' Fund for Civil Justice and to require every lawyer with an active license to practice law in Washington State to support civil legal aid by paying an additional \$70 per year (\$5.84 per month), beginning with the 2010–2011 licensing cycle. I know this will make many of you very unhappy.

If the proposal is enacted, Washington will join the Bars of Illinois, Minnesota, Missouri, Ohio, Texas, West Virginia, and Wisconsin in using licensing fees to fund legal services.<sup>4</sup>

If the Fund for Civil Justice were ap-

proved and assuming that the Supreme Court approves the proposed \$450 active license fee for the 2009–2010 and 2010–2011 fiscal years for lawyers in practice three years and longer (50 percent of that for lawyers in practice up to three years) and the proposed Lawyers' Fund for Client Protection assessment of \$30 per lawyer per year, the total financial contribution of each active license lawyer in practice 3 years or more would be \$550. (Approximately 20 percent, or \$90, of the proposed annual licensing fee of \$450 is attributable to costs related to lawyer discipline — a mandatory function delegated to the WSBA by the Supreme Court). Given current membership numbers, the Washington Lawyers' Fund for Civil Justice would raise slightly over \$2 million annually for indigent civil legal aid.

**WSBA Donation to the Campaign for Equal Justice.** In addition, the WSBA has several segregated funds, one of which is the CLE reserve fund. Due to prudent business practices and accounting decisions whereby the CLE Department was not fully charged for “indirect costs” (in particular, staff time paid by general fund revenue), the fund has a balance of approximately \$2 million. The CLE Department needs a significant portion of that money for retooling for online CLEs and other technical improvements, but, in my opinion, the fund is too large, so I intend to propose to the Board that it authorize a substantial one-time donation to the LAW Fund's Campaign for Equal Justice.

**The Path Forward.** The current crisis will not resolve soon and we need to think creatively. I have asked King County Superior Court Judge Steve González and Seattle University law professor and former U.S. Attorney John McKay to serve as honorary chairs of this effort on finding solutions to the crisis, and they have kindly consented to do so. Judge González and Professor McKay's formidable task will begin on April 17, when the WSBA will host a civil legal aid crisis summit at Seattle University School of Law.

**Conclusion: Justice Seasoned with Mercy.** Civil legal aid for the indigent is not the only crisis that the justice system is facing; our courts and the public defense system are woefully underfunded. The Justice in Jeopardy Coalition (JIJC), led by the Board for Judicial Administration, is continuing to work for increased state

funding for public defense, court funding, and civil legal aid, and in 2005 and 2007, the JIJC was successful in obtaining increases from the Legislature for all three. Washington state still ranks last, however, in funding provided by the state to the counties for court funding; our counties fund approximately 80 percent of the budget of the trial courts. Ideally, our trial courts, criminal public defense system, and civil indigent legal aid should be fully and adequately funded by the state as a societal obligation of a democracy. That is not going to happen in the near term — the money is not there. If OCLA suffers a 20 percent budget cut, the gains made since in extending civil legal aid to the indigent will essentially be undone. Lawyers do not have the resources to personally fund the justice system, but for less than \$6 per month, we can make a significant differ-

ence in civil legal aid and show the Court and the Legislature that we are committed to assisting in solving the problem. The current economic situation, while difficult for us, has been devastating for the poor, and their legal problems are multiplying as a result. We know, although some may think otherwise, that lawyers are generous, kind, and genuinely concerned for the welfare of others. We work very hard at creating justice and it is time for us to seize this moment to show others that we can season our justice with mercy. ☺

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NOTES

1. *The Merchant of Venice* also contains, unfor-

tunately, Shakespeare's highly anti-Semitic character, Shylock, an undeniable blot on the Bard's work.

2. 2003 — 5.34 million; 2004 — 5.44 million; 2005 — 5.41 million; 2006 — 5.34 million; 2007 — 5.73 million; 2008 — 5.76 million.
3. Source: Northwest Justice Project Service Reduction Scenarios FY2010 and 2011, executive summary.
4. Illinois, Minnesota, and Ohio are voluntary bars; Missouri, Texas, West Virginia, and Wisconsin are unified (mandatory) bars. West Virginia's contribution is small — \$150,000; Illinois contributes about 2.6 million a year. Source: ABA Resource Center for Access to Justice Initiatives — "Using Attorney Registration Fees or Bar Dues to Fund Legal Services" — Updated February 19, 2009, by Meredith McBurney, ABA resource development consultant.