State of the Judiciary
Chief Justice Robert F. Utter, Washington Supreme Court
Message to the Washington State Bar Association
September 14, 1979, in Vancouver, British Columbia

It is a great honor to be a member of this profession- serving with a fine bar association and dedicated, conscientious judges. I spent the first three days of this week at the Judicial Conference where judges from all court levels examined the problems of court costs and delay, reviewed the rapidly changing laws of products liability, and discussed ways to make effective use of court staff and procedures.

It is only appropriate that the last part of the week be spent with the lawyers of our state learning with you the ways in which our professional skills and procedures can be used to better serve the public.

"A Meaningful Trust"

Why do we spend so much time and effort to improve ourselves and our legal system? As I view it, we have been given a meaningful trust. We have the obligation to be the formal instruments of our society in assuring that all who seek justice under the law, find it. This is the essence of our claim to be a profession, and the reason why whatever efforts we undertake must be measured against the absolute standard of justice for all.

A national survey conducted in 1977 by Yankelovich, Skelly, and White, Inc., provides a wealth of data on the attitudes of the public and of judges, lawyers, and community leaders, as well as toward the administration of justice in this country. The report was prepared for discussion at the 1978 National Conference On The Judiciary, and raised a number of issues that warrant close examination.

Four major conclusions emerge from the study and should be discussed:

1. The general public's knowledge of, and experience with the courts, is limited.
2. Unfortunately, those with the most knowledge and experience with the courts are the most vocal in their dissatisfaction and criticism.
3. The general public and community leaders are dissatisfied with the performance of courts and rank the judiciary lower than many other major American institutions.
4. Even though the general public has limited knowledge and is disappointed with the judicial system, their interest in a better justice system is high, and impressive support exists for reform and improvement.

These conclusions are supported by the president of the American Bar Association, Leonard Janofsky. As you may recall, he commented yesterday that those using the legal system all too often face intolerable delays and crushing costs.

Challenge to Bench and Bar

The challenge to the bar and judiciary is twofold. We must provide the best; and we can. We have the tools available to assure justice for those seeking it through the legal system. We must also restore and preserve public confidence that justice is possible in our state's legal system. To meet these goals requires continuing self-examination, improvement and growth. Attention must be given to the role of the courts and bar in the administration of justice. Attention must also be given to the internal organization and procedures of the courts.

While the judicial system is an integral part of our government, a gulf exists between that system and the communities it serves. Bridging that gulf requires the recognition of many legitimate public concerns.

Several basic needs are apparent. Effective and affordable access to the dispute resolution process is essential for all who need it. Adequate representation is necessary for all who need it. Careful attention must be given to the system to assure that courts are not used unfairly as establishments of oppression.

The existence of language, geographical, technological and procedural barriers to justice must be recognized and corrected. Court processes must be designed to meet the needs of particular cases. Problems that do not involve real disputes requiring the exercise of judicial discretion should not receive the same treatment as those that do.

The judiciary and the bar should ensure that those we involuntarily involve in our judicial processes are treated with courtesy, sensitivity, and fairness. Our procedures must be designed for their convenience, as much as ours. Consider the difficult ordeal that a witness to a DWI offense is subjected to. There is first an appearance in district court, with, perhaps, one or two continuances. Then the witness is subjected to another appearance during the inevitable appeal to the superior court. This is an unjustifiable waste of community time and resources. We should assure that all victims, especially the elderly, the very young, and those subjected to violent treatment, be treated with special care and concern.

Innovative Solutions

We should examine whether witnesses should be compelled to make more than one court appearance. The use of videotaped testimony, after proper opportunity for cross-examination and confrontation has been provided, to substitute for court appearances for witnesses may relieve this burden. This new trial technique should be explored, expanded, and encouraged.

In addition, jury service should be spread widely among community members, and the burdens of such service should be minimized as much as possible.

There is a need for our present court system to evolve into a more comprehensive justice system by incorporating non-judicial methods of dispute resolution as they prove successful. The new legislation allowing arbitration is to be applauded. Other methods involving mediation and conciliation need to be explored.

Judges must be able to exercise independent judgment in reaching decisions: as much as possible, they should remain free from community pressure. On the other hand, non-lawyer members of the community provide a valuable insight into many areas where our professional training is incomplete. Their assistance in some forms of dispute resolution, facility planning, financial planning, and word processing should be sought and encouraged.

Judicial Discipline Legislation Needed

One area where lay and lawyer concerns join is that of judicial discipline. Washington is now the only state in the nation without an effective plan either in operation, or before the voters for approval, that would allow the discipline or disability retirement of judges who are improperly performing or incapable of performing their duties. We are fortunate to have a fine judiciary in this state, and it is, perhaps, for this reason, that there has not been a great cry for better processes. Our state, however, deserves the best of procedures, and there is no reason why we should delay any longer in this critical area.

The occasional case, however, of a dramatic human failing by a judge which impacts on that judge's ability to function, must be dealt with by something more effective than simply removal by the electorate years after the confidence of the public and bar have been lost.

Of equal importance is the need for an effective process to deal with the all too human, but justice-destroying problem of procrastination that flaws the otherwise fine performance of a judge. I am urging passage of legislation to set up a judicial body, representative of the legal community as well as the public, to investigate and act on complaints alleging judicial misconduct, failure to perform duties, intemperance or incapacitation.

Judicial Salaries

We appreciate the support of the bar and the public to obtain compensation that will be adequate to attract the best to all judicial positions. I am extremely concerned, however, about a serious problem that developed during the last session of the Legislature. As you may be aware, the Legislature authorized a 7% increase in all judicial salaries except that of the district court judge-even though the district court jurisdiction has been legislatively increased, and its work is of vital importance. In fact, even more increases in responsibility and authority should be given. The salary level established for the district court is clearly not in keeping with the demands of that position.

Sentencing Guidelines

In acknowledgment of the public's concerns about disparity in sentencing, the judiciary initiated a project to develop sentencing guidelines for use by judges of trial courts of general and limited jurisdiction. The anticipated results of the project are the reduction of unjustified variations in sentencing, the achievement of equitable sentences and a more open and visible process.

Guidelines have become the most popular means of improving the sentencing process and are currently in use in New Jersey, Colorado, Illinois, Arizona, and our own state and elsewhere. The

Superior Court Judges' Association, at its 1979 Spring Conference, adopted a resolution that strongly recommends each of its members consider the guidelines in all sentencing procedures.

Increased Funds Needed For Courts and Support Services

I am concerned about the considerable variation in the ability and willingness of the counties and municipalities to shoulder the reasonable costs of their courts. This inevitably results in a wide variation in facilities, personnel, and services-differences that can effect the caliber of justice. Unless a substantial degree of judicial independence is possible, in fiscal and personnel matters, the effective administration of justice will be considerably hampered. This failure adequately to finance the courts has already resulted in deficient facilities, inadequate libraries, and understaffed courts. As a matter of fact, some courts have requested federal assistance for libraries, microfilm viewers, and other required equipment and programs that clearly should be a county obligation. One county court, which has had a new courthouse constructed, found it necessary to apply for funds from the U.S. Marshal's Office to provide a secure means of transporting prisoners from the jail to the courtroom.

The possibility of state funding or mandatory minimum standards for facilities, support services, and supplies must become a priority in the near future. Crowded, antiquated facilities and obsolete research tools do not contribute to the public's image of the Court, nor do they provide an adequate base for the efficient resolution of disputes.

Improving Judicial Efficiency

The courts too have a responsibility to provide a more efficient court system and numerous projects have been undertaken. Considerable time and effort have been expended by the State Court Administrator's Office in this regard. Our State Judicial Information System is one of the finest in the country. The implementation process has been carefully developed and is responsible to local peculiarities as it serves the seventeen major judicial jurisdictions. The initial system was created to improve indexing capability, and from this base, has expanded into docketing, case tracking, calendaring, and eighteen other important automated innovations that assist in the compilation of statistics. By the end of 1980, over half of the superior courts' caseload will be in this system, thus showing the support of the judiciary.

The Court Administrator and his staff are working on many other projects and programs designed to improve the efficiency of justice in our state, while being careful to maintain its quality. We are blessed with one of the most capable administrative offices in the nation.

Court Rules

The enactment of court rules is the most important administrative function of the Supreme Court, for it is the rules that serve as guides to the practice of law. Judicial procedures, both pretrial and in the courtroom, are defined principally by rules adopted by the Court. The timely adoption of rules cannot be overlooked. At the present time, the Judicial Council is attempting to devise rules for the recent arbitration statute, as well as the juvenile code revision. Though the Council serves as a clearinghouse for proposals and offers a forum for discussion and debate by

representatives of the judiciary and the legal profession, the ultimate responsibility for the adoption of rules rests, as you know, with the court.

I have implemented an internal system to improve the efficiency of the Supreme Court Rules Committee. The Office of the Administrator for the Courts is responsible for tracking and monitoring all inquiries, comments, proposals or requests for court action on rules. This activity includes identifying the rule, its date of receipt, the action taken, contacting by letter the initiator with an explanation of the process and action taken and monitoring progress to final disposition. These measures are instituted to make sure that nothing falls between the boards and to provide prompt, thorough consideration of all rules. The Judicial Council will continue to advise the court about the need for new rules and amendments, and these new procedures will expedite the Supreme Court rules consideration.

Continuing Judicial Education

In most professional fields it is mandatory to keep abreast of new developments. As the bar has recognized, judges are no exception; yet, we are unable to provide the judiciary with meaningful training programs. The amount allocated by the Washington State Criminal Justice Training Commission has not been sufficient to meet the educational requirements of the judges.

I believe specific objectives can be achieved by an organization devoted to continuing judicial education. Some of these are judicial control of training standards, policies and long-range goals; professional services for developing, publishing and distributing procedure documents and publications; and the provision of essential judicial education to both court support personnel and jurists. To accomplish these objectives, I have proposed the development of a Washington State College for the Judiciary with the governing body appointed by the Supreme Court. The Administrator for the Courts' Office is drafting the feasibility plan for the judicial college. It is incumbent upon the Court to ensure the quality of its judicial personnel and to provide meaningful educational opportunities within the boundaries of the state.

Planning for the Judiciary

The need for strategic planning has long been recognized by the judiciary of Washington. In 1975, the Supreme Court approved the creation of a courts' planning unit to develop programs for improving court operations, the effort was assisted by a council. Since 1976, the Court Planning Council has provided a central forum for judges from all court levels to identify the common problems and goals of the state judiciary.

Today, that committee is an essential arm of the Supreme Court and assists the Court in determining where to allocate supplemental resources to the judiciary. Although the funding decisions of the Council are limited to law enforcement assistance administration monies, the problems, goals, and implementation scheme devised by the Council and staff encompass the entire system and are applicable to the issues I have raised in my speech today. For that matter, all the problems I have mentioned have been considered by the Council in its annual judicial plan. The goals, as specified by the Court Planning Council, include promoting efficiency and effectiveness in the court system; evaluating the impact of crime on citizens and the courts;

reducing impediments to justice; and establishing an improved research mechanism for the judiciary. The Council's continued involvement in this area and the expansion of its duties will institutionalize planning within the judiciary.

Of course, not all improvements require money. I believe the many branches of our criminal justice system can work more effectively together without compromising the traditional checks and balances found there. I will convene a Criminal Justice Multi-Disciplinary Commit- tee to see if there are adjustments and changes that can be made in procedures to make more efficient and effective use of the manpower and materials available. There is no effective method that will allow this type of interchange to take place at this time, and it should be exciting and productive to see what can be accomplished here.

Conclusion

I speak, not as one person working to be an agent for change and improvement, but as the representative of the nine justices of the Supreme Court, sixteen judges on the Court of Appeals, 120 judges of the Superior Court, and the 211 Judges of the district and municipal courts.

All these judges share our commitment to this profession and our hope for a better, more effective system of justice for the people of our state. Hugh Rosellini, Charles Stafford, and Charles Wright have preceded me on our court as chief justice. Bob Brachtenbach, Floyd Hicks, James Dolliver, and Bill Williams will follow. We all, working together with you, will be a part of the effort to be worthy of the high trust placed upon us by the citizens of our state.