Improvements Past, Present and to Come: Washington State's Justice System
Chief Justice Robert F. Utter, Washington Supreme Court
Message to the Washington State Bar Association
1980

As trustees of our state's justice system, we recognize that while it has many strengths, it also has many flaws. National leaders of our profession have emphasized delivery of justice is still too slow, too expensive, and too uncertain. While recognizing these flaws, we as a profession have made significant progress and the judges, lawyers, and legislators who have worked to provide a better system have reason to be proud of the progress made in the last two years.

In 1978 a commission established by the Washington State Bar sought to accomplish a number of goals to improve the delivery of justice. Among these were: increase the jurisdiction of district courts and make them courts of record; one trial and one appeal as a matter of right; compulsory arbitration; settlement conferences; trial guidelines for superior courts; expanded use of court commissioners and retired judges; special master proceedings; and increase in small claims jurisdiction.

At the same time, a two year plan was established for the judiciary by our Court Planning Council which stressed improving efficiency and effectiveness in the court system, evaluating the impact of crime upon citizens in courts, reducing impediments to justice unnecessarily resulting from the separation of powers doctrine and establishing an improved research mechanism for the Washington State Judiciary. Key portions of this plan paralleled the proposals of the bar leaders. Stressed in addition to the bar proposals were development of legislation for judicial removal and discipline and legislative alternatives for court funding which would provide for a broader and more neutral source of funding. The court plan also sought to provide methods to increase professional competence of judicial and support personnel and to promote utilization of modern management techniques. It, in addition, sought to encourage and promote citizen participation in the courts; to develop more efficient case management procedures; to encourage and promote more efficient criminal procedures; and improve efficiency in appellate, juvenile and trial courts.

Much progress has been made toward achieving these goals. With the assistance of the Bar and legislature, jurisdiction of district courts has been increased and they will become courts of record with an appeal on the record only. A constitutional amendment will be before the voters in November to determine whether this state will have a judicial performance and discipline commission. If passed, Washington will join the other 49 states in providing for an effective means of discipline and removal for judges who become either physically or mentally unable to perform their duties. In cooperation with the Washington Association of Counties, studies are also underway to establish a basis upon which to seek full state funding for courts.

Compulsory arbitration is now a reality and court rules have been enacted to implement that legislation. Washington courts have completed a personnel study inventorying all non-judicial personnel in state and local courts. A new board on judicial education has been established to analyze and provide the most effective education possible for the judiciary and their support personnel in the state. Management techniques have been improved with a broad integration of

sophisticated data processing equipment and techniques into juvenile, district, trial and appellate courts. Record management has been stressed in the court, rules for security and privacy of court records have been developed and pattern forms have been developed for various court proceedings.

Communication has been improved between court levels. Court coordinators now exist for each court level. Improved techniques for jury management and utilization have been established in some counties.

Professional case management techniques have been established. Mandatory arbitration is only one of many innovative methods established to improve the speed and efficiency of delivery of justice.

The Seattle-King County Bar Association and King County Medical Society have worked jointly to establish a medical-legal committee. It meets monthly to consider and dispose of complaints lodged by individual lawyers and doctors. Some of these complaints relate to fees. An additional function of the medical-legal committee is to maintain professional liability panels to hear and decide medical malpractice matters. Submission of matters for panel consideration is voluntary and with agreement of both patient and physician. The proceedings are privileged and the panel's opinion is not binding. However, it is hoped the panel's opinion will discourage lawsuits without merit and encourage settlement of meritorious claims without litigation.

The superior court judges and their association have pioneered the establishment of sentencing guidelines in an effort to more fairly and efficiently deal with defendants who appear in their courts.

How were these changes accomplished? The most important ingredient has been close cooperation between the bench and bar. Representatives of our courts meet regularly with the Board of Governors of the bar association and a spirit of cooperation and mutual assistance exists. Great progress has been made in the legislature. The bar association's employment of Mr. William Gissberg, a respected former legislator, to assist the courts and bar association, has been a major factor in the progress achieved.

Excellent cooperation has been obtained from the legislative leadership in both the House and Senate. In the House, Chairman Irv Newhouse and Co-Chairman Rick Smith have been of significant assistance, as have all members of the House Judiciary Committee. In the Senate, Chairman Dan Marsh of the Senate Judiciary Committee, Senator Jeannette Hayner and the entire membership of the Senate Judiciary Committee have been of great help.

Cooperation of the media is essential and has been willingly offered. The public is interested in court reform and when required, major newspapers and other media have actively supported specific projects for court reform.

What does the future hold? The American and Washington Bar Associations and the judiciary of this state are committed to reduce court costs and delay. High costs and delay are avoidable if the bench and bar continue to work together.

The standards of the American Bar Association call for trials within 6 months of filing and completion of appellate review in 9 months. These goals are achievable. To realize them, several principles recognized by the American Bar Association Commission to Reduce Court Costs and Delay must continue to be stressed. Procedures must be simplified, cases differing in complexity must not be treated the same, lawyers and courts must be willing to initiate large scale reforms to attempt the needed dramatic reduction in cost and delay, cooperation in case management between the bench and bar must continue, and non-judicial adjudication stressing mediation, conciliation, arbitration, and the use of special masters should continue to be expanded.

The Commission has been involved in a number of experiments to diminish delay and costs.

Simplified civil procedures used for cases under $25,000 are being developed in California, Kentucky and Maine. These emphasize combining simplified procedures with limited discovery and strong case management. The goal is for a trial within 7 months from filing of the complaint. In addition to limited discovery, a mandatory exchange of settlement offers and pretrial conference is involved.

In Colorado, a state-wide rule change has been recommended limiting discovery. If the opposing party does not object within 30 days, limited discovery rules apply.

The Commission is also examining a proposal requiring mandatory exchange of settlement offers and possible mediation by a third party. The payment of court costs, attorney fees or some other compensation is pro- vided for in the event a party goes to trial and their offer proves unreasonable. Also of concern to the Commission is the general reluctance among lawyers to ask for sanctions when they believe discovery has been abused and a corresponding reluctance of courts to grant sanctions.

The appellate process has not been neglected by the Commission. They seek a combination of procedures which could reduce time of hearing in deciding some appeals to as few as 120 days from the filing of notice of appeal. Essential components of this effort are a fast trial record using computer aided transcription or a stipulation of facts. In lieu of extensive briefs, a short statement of arguments and authorities of no more than 10 pages is provided. A conference type argument and an oral decision from the bench close to the conclusion of argument with a memorandum issued within a few days is also urged at the intermediate appellate level.

Use of lawyers, retired judges and others has been explored with particular attention given to the Special Master rule in Rule 56 of the Federal Rules of Civil Procedure. These proposals closely parallel the earlier recommendations of the Jones Committee.

It is necessary that the judiciary, lawyers, and citizens work together to achieve our goal of effective courts. This state has had a long history of involvement by lawyers, judges and citizen committees to effectuate judicial reform. Our Court of Appeals, the elimination of trials de novo in superior court from district court judgments, and the establishment of a commission on judicial discipline and removal are but three examples of this effective cooperation. The excellent cooperation given by the staff and members of the Washington Judicial Council has

been essential to court reform in Washing- ton, and the Council continues to provide an ideal forum for discussion and implementation of many reforms.

I agree with the American Bar Association Commission that for courts to function more efficiently and justice to be more accessible to our citizens, three areas of focus must exist: (1) resources necessary to run the courts must be provided, (2) court procedures must be reformed on a continuing basis, and (3) the entire legal climate which governs much of the pace of litigation must be examined and changed for the benefit of our profession and the public we serve.

To assure adequate resources for courts, judges and lawyers must work together. Judges have traditionally borne the burden of convincing appropriate authorities that their budget requests are necessary and should be granted. The bar and media are, and should be, welcome partners in the struggle.

Reform is a continuing process. State and local bar associations must inform the judiciary when the judicial process needs improvement and work together with judges for that improvement. Public complaints about the inadequacy of our legal system need to be taken to heart, as well. They are, after all, the users of the system. We are simply the technicians.

Last, and certainly far from least, judges and lawyers must work together to establish an attitude that encourages handling litigation at reasonable cost and with all possible speed. Too often delay has been considered an acceptable tactic in litigation. With inequitable prejudgment interest rates and mounting inflation, those owing money should not be able to adopt delay as an acceptable tactic.

It is with great pride that I serve as Chief Justice of a state with the finest lawyers and judges in the nation. Our citizens deserve the best justice system available and our continuing efforts are necessary to provide that.