



JUSTICE'S SAILOR

ROBERT F. UTTER

LEGACY PROJECT
History through the people who lived it

THE WASHINGTON STATE
HERITAGE CENTER

Robert F. Utter

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Hughes: Today The Legacy Project is with former Washington Supreme Court Justice Robert F. Utter at his home on Cooper Point in Olympia. Justice Utter served on the high court from Dec. 20, 1971, until his resignation on April 24, 1995, to protest the death penalty. Besides his half-century career in the law and his international activism for peace and justice, Justice Utter has written widely about his spiritual journey. Judge, I understand that Willi



Justice Utter on the Washington Supreme Court bench, 1972

Unsoeld, the legendary mountain climber, was one of your heroes.

Utter: Willi was a neighbor. He always told me he had more sacred encounters in the mountains than in any church. And he said there were “only two illicit questions in philosophy – ‘What if?’ and ‘Why?’ He said they’re illicit because there’s no answer, and to dwell on them only leads to madness!” There have been two gurus in my life – Willi was one, and Jim Houston was the other. Houston is a remarkable man. He taught with C.S. Lewis at Oxford.

Hughes: Speaking of heroes: C.S. Lewis. What a writer!

Utter: There is a beautiful piece that Dr. Houston wrote — “Living in a Suffering World.” It’s in the book called *I Believe in the Creator*.

Hughes: It’s pronounced “whose-ton”?

Utter: Yes. He has a doctorate in geography from Oxford and because he taught with C.S. Lewis and others of that group, he developed a strong interest in theology. He was one of

the founders of Regent College up in Vancouver, B.C. It is now part of the University of British Columbia. Jim Houston wrote the only thing that ever made sense to me on human suffering. And as a person who tries to find spiritual answers, the only reason it makes sense is that the only answer is that there is no answer. Essentially he says it's for God to know ... and that "to live in a meaningful world" you need to have the right attitude, rather than just go looking for simple answers. "Relating to God is more profound than knowing about God," he emphasized. I just love all the things that I've seen in Houston's book.



James Houston the Oxford don whose theological writing so impressed Justice Utter.

Hughes: How to make sense of suffering? Sounds like Houston is putting a twist on Camus, who wrote about making the fundamental choice to live. And someone once suggested that "Suicide is a permanent solution to a temporary problem."

Utter: Exactly. And then this is something I wrote for the Washington Bar. It still pretty much expresses my feelings on the resiliency of the human spirit and the need for a rule of law.

Hughes: You and your friend (former justice) Charles Z. Smith have had some absolute parallel tracks evolving from the Baptist Church and the rule of law and international understanding, haven't you?

Utter: Yes. I've been so fortunate, John, I just really have ... As a kid who *never* thought that these things, these opportunities, would be present in his life.

Hughes: Where did you meet James Houston?

Utter: Well, that's kind of a long story. He lives in Vancouver. But he was very active with a group called the Fellowship Foundation that I got involved with back in the 1960s. It was a group that got (Watergate conspirator) Chuck Colson turned around. It started actually in Seattle when Abram Vereide, who was a spiritual adviser to Gov. Arthur Langlie, put together a program.

Hughes: Well, you and I ought to stop here and get started at the beginning of your eventful life. For the record, I too grew up in the First Baptist Church.

Utter: Yes!

Hughes: But my mother didn't get mad when I fell in love with a Catholic girl, with predictable results. I want you to know that from what I've read about your spiritual life, I think you would make a wonderful Jesuit. I could talk to Father Steve Sundborg at Seattle U and Father Spitzer at Gonzaga and we could get you converted overnight!

Utter: (Laughs)

Hughes: A lot of people don't understand that there are Baptists and then there are Baptists.

Utter: We're from the liberal branch of the Baptist faith. I say we have no sawdust on our floors. But people so readily stereotype it.

Hughes: I hate stereotyping.

Utter: I do too. It's a substitute for thinking, is what it is.

Hughes: That's a wonderful way of putting it. ... Well, you were chief justice of the Washington Supreme Court from 1979-1981, and overall you served on the court for 23 years and five months. Does that make you one of the longest serving judges in the history of the Washington Supreme Court?

Utter: I think I was the second-longest serving. I was the youngest chief justice at that time.

Hughes: How old were you?

Utter: I was 49.

Hughes: And how about to just be on the court?

Utter: I was 41. I think there was one other judge in state history – at that time, at least – who came on the Supreme Court younger. He was in his thirties.

Hughes: Some wag once observed, "If I'd known I was going to live this long I would have taken better care of myself." And then Bette Davis chimed in with the immortal line that "Getting old is not for sissies." You've got some maladies, but you look great, and what are you – almost 80?

Utter: Pretty close. 79 this June.

Hughes: So, no real regrets?

Utter: Just that I haven't got another 79 years to go. That's a very deep regret. I've tried to live not being afraid of things. And my ocean sailing is what really got me started there. I was *deathly* afraid the first time I raced to Hawaii, just of what I'd find out there and the responsibilities I'd have as captain. And once that was over my life was never the same.

Hughes: What year was that?

Utter: It was 1976. I'd been on the court for five years.

Hughes: So that was your first ocean voyage on a sailboat?

Utter: Of that length. The year before that we sailed to Cobb Seamount, a dormant volcano off the mouth of the Columbia River. It's under water so it was a crazy race. You had to find it by celestial navigation and prove you were there by a photograph of your depth finder.

Hughes: Tell us how you got interested in sailing. Did you grow up sailing as a boy?

Utter: I think I have to believe in reincarnation because somewhere back there I held some sailors before I ever knew them. My parents both came from Boise, Idaho.

Hughes: (Jokingly) There's a lot of sailing there in Boise!

Utter: The romance of the sea was not in my genetic code from them. Dear people, but we went through some very impoverished times during the Depression. I sat in a home in West Seattle that overlooked the sea, the Sound, up on a high bluff. Watching these boats sailing out there, something in it really reached something deep inside me. So I always said, "Well, when I can, I'll get a sailboat." And a friend of mine in high school lived on the beach and had a small sailboat. On occasions he would invite me to go with him, which was a great delight. We'd sail this little boat over to Blake Island.

Hughes: How big was that? –the boat that is.

Utter: Oh, gosh, it couldn't have been over 15 feet. Like (the nursery rhyme of) Wynken, Blynken, and Nod sailing out seaward. But that started it. And Betty always says, "When I agreed to marry you I knew we were going to get a sailboat soon."

Hughes: Was Betty a reluctant sailor?

Utter: She had never sailed at all. I think it had to be out of pure love and affection. We bought a sailboat before we bought a house.



Justice Utter smoking a pipe at the tiller of *Tondelayo*.

Hughes: What was it about that first race to Hawaii that meant so much to you in terms of confidence as a sailor and something you learned about life in general?

Utter: It was something I always had an inborn anxiety about. I guess “anxiety” is the best word, because you have a *lot* of responsibility as a captain on a race with crew safety and preparation. You only

read about storms at sea. You never read of the beauty of the experience. So I had a deep, deep inborn concern about what I’d find out there and my ability to deal with it. And I had the benefit of sailing with seven other *dear* friends, really as close as family, but only one of them had ocean sailing experience before. So here were six of us with no ocean sailing experience sailing off on this voyage.

Hughes: Was your wife on this trip?

Utter: Oh no. That’s part of the reason our marriage has stayed intact for 55 years now!

After that test sail to Cobb Seamount, the (crew) all stuck with us, so the next year we set out on this almost 3,000-mile trip to Hawaii.

Hughes: How long does something like that take?

Utter: It took two and a half to three weeks. It was a remarkable experience.

Hughes: How large was that vessel?

Utter: Well, the one we took for the first two races to Hawaii – I did four in all – was 41 feet long. It was the *Nerita*, a boat that I owned in partnership with a number of other friends.



The *Nerita*, with Utter onboard, nears the finish line in the Victoria/Maui sailboat race.

It was named after the daughters of Poseidon, the god of the sea. For me, the most graphic moment was as we left Cape Flattery behind us. You see it disappear over the horizon and know it's going to be two to three weeks before you see land again. It was a storm-tossed race. About six out of 30-some boats that started were disabled on their way to Hawaii and had to be put into shore either for repair or just simply drop out of the race. But for me it was a process of confronting fear, and overcoming it. While it didn't leave me with the feeling I can conquer anything, it was a life-changing experience. I was never really afraid of anything after that.

Hughes: That's a remarkable story. Were you in real danger on this trip?

Utter: Oh yes. Oh yes. We hit storms.

Hughes: Although most of the crew members were also inexperienced, were they real competent sailors?



The *Charisma* in Lahaina, Hawaii in 1984. Utter was a partner in the sailboat.

Utter: They were *very* good sailors. But again, with the exception of one, they had no ocean experience. And another lesson learned is that you never do anything by yourself. These were really people without whom the voyage would not have been possible. They did the steering. They did the sail setting, the sail changes. So we were all in it together.

Hughes: And you didn't have cell phones at that time!

Utter: No, there were no cell phones! (laughs)

Hughes: But you had radios, of course.

Utter: We had radios, but it was all celestial navigation. We had a navigator, a dear friend who became *violently* seasick every day we were at sea. And God bless him, he still loves sailing so much he'd go out on these ocean races. For years after that, he'd be down there pouring over his charts and depositing his lunch in the bucket at the same time. He was navigating and smiling up saying, "Isn't this fun?"

Hughes: How did you do in the race?

Utter: I think we took third in our class on the first race in '76. The second race we won



"Here come da Judge, again!" The Blue Max Club sponsored the welcoming committee in Lahaina, Hawaii

our division, and we were second overall, which was remarkable because the boat we were sailing on had been out-designed by that point. And I would categorize us as feather merchants. We didn't really have two nickels between us to rub together.

Hughes: This is yachting on a budget.

Utter: That's right. It's a sport, but for many people it's a high-budget sport, and ours was minimal budget.

Hughes: Well, they always say if you want an excuse to blow through a lot of money, buy a wooden boat!

Utter: And "if you want to make a small fortune in yachting, start with a large fortune."

Hughes: I noticed that the great old gal of the lumber trade, the *Wawona*, is heading for dry dock on Puget Sound. I did my bit to try to save her all those years ago, but that was a lost cause, I fear.

Utter: Well, it was too bad that they couldn't do the same thing with her that they did with the lumber schooner *C.A. Thayer* (a National Historic Landmark at the San Francisco Maritime Park).

Hughes: What a magnificent ship that is.

Utter: By the way, the second race to Hawaii was the one that I didn't skipper. Among friends we drew straws to see who skippered the second race because I did the first one. A dear friend, Carter Kerr, was the skipper on that one. It was just so wonderful that he had skippered that because he's passed away now.

Hughes: Did you have some hair-raising experiences on later trips, or was it just a close call in 1976?

Utter: You're living on the edge when you're racing because if you're not pushing your boat like 60, as the saying goes, you're not keeping up with the rest.

Hughes: What kind of top speed would you get?

Utter: Well, you have to understand that there's a saying that "going 10 knots on a sailboat is like going a hundred miles an hour on a bicycle."

Hughes: That's a great line!

Utter: It pretty well describes it because everything is humming and a lot of forces are involved. We had no life-threatening events (the second time), but it was on the ragged edge the whole way. And that's the way it's happening if you're racing. The last race we did in a larger boat was probably the most tranquil one. It was still rough but nothing happened. The only injury that occurred in all the four races was to me in our 41-foot boat. I was down below attending to a crewman who was sick, and all of a sudden they put the boat on its side, which happens often. I wasn't hanging on to anything at that point and I was thrown across the cabin and hit my chin on a protruding piece of wood and hit my kidney on another protruding piece. I was knocked absolutely unconscious.

Hughes: You're lucky you didn't break your jaw.

Utter: Well, as I was gaining my senses again one of the crew members came down and I said to him, "Have we rounded Smith Island now?" I thought we were racing up in the Straits (of Juan de Fuca). They were saying, "What a shame. He had such a fine life!"
(laughing)

Hughes: (laughing) Alas, poor Bob. We knew him well!

Utter: That's it! They didn't know I could hear.

Hughes: You're a pilot and a sailor. Which do you prefer?

Utter: They're a different kind of experience. With sailing, you're working with the forces of nature. You're depending entirely on what you find out there – wind, sea state, currents, all the rest. Flying is a wonderful experience. I think gliding would be much like sailing, but I've never done that.

Hughes: It looks amazing.

Utter: I think it's got to be truly amazing. And for the younger people, the parasailing and the rest just are another dimension of being more and more like a bird. Somewhere along you still have to pay attention to hull speed and potential of what we call "sailing by the numbers." On a sailboat, there's still a lot of intuition and just feel to it. Particularly sailing



Utter's Cessna 182.

downwind at night with a spinnaker where you can't see the bow, it's so dark. With flying it's fairly mechanical. You know what your engine RPMs are. You know what the maximum altitude for the airplane should be. When you're landing you do a pretty specific curve, as you know.

Hughes: You're in charge. It's like Captain Sullenberger told his co-pilot before he decided his only viable option was to land in the Hudson River: "My airplane!" When you're at the controls, it's your airplane, and you better know your stuff.

Utter: Yeah, that's right. But it's a different experience from sailing. I love both, but if I had to choose – and I eventually did because you can't have all the toys you want – I gave up flying.

Hughes: I was in air traffic control in the Air Force and when I heard the tapes of the air traffic controller bidding "good luck" to Captain Sullenberger, I thanked my lucky stars I was never in that sort of situation, thinking I would be the last person to talk to someone before they died. I bet that controller expected they would be dispatching ambulances and picking up the remains rather than celebrating a miraculous happy ending.

Utter: And there's a sad story in the paper this morning. An airplane crashed in San Diego. Apparently the controllers tried to get them to land on Coronado and he stretched it out to get to (another airport) and lost both engines at that point.

Hughes: The one I heard about this morning was the follow-up on the 737 crash at Amsterdam that claimed three Boeing engineers. They found out the altimeter failed.

Utter: Oh, I heard that, too.

Hughes: They were on autopilot... The plane had been reported with a malfunctioning altimeter before.

Utter: Oh John, that's awful.

Hughes: I love airplanes. My uncle was a waist gunner with the "Bloody Hundredth" B-17 Squadron in England in World War II. I have his combat diary. That is *chilling* stuff. The losses those guys were taking were just horrendous.

Utter: They had the highest mortality rate of any branch of the service.

Hughes: Before they got the P-51 fighter escorts, they were just dropping like flies. And they'd go back and do it day after day.

Utter: One of my colleagues on the Supreme Court, Bill Williams, was a B-24 pilot in the Air Force. Bill served either 30 or 35 missions over Germany, where the cut-off used to be 30.

Hughes: That's "Catch-22." Every time you reached the appointed number to go home, they upped the ante!

Utter: That was exactly what happened. Bill went on to become a famous quarterback at Idaho. He turned out for intramural sports and the football coach was watching this kid who just returned from the service throw past the length of the football field. Bill Williams was a champion collegiate boxer as well. I never knew where he got that. Then I heard that the B-24 was a notorious airplane for having a veer to one side. The only way you could fly it was with a strong right arm. And anybody who survived the B-24 had the right arm of a gorilla.

Hughes: Actually it was a very sturdy airplane, but some say it was a bearcat to fly compared to the B-17.

Utter: Yeah. It veered. And that's a challenge. ...

Like you, I enlisted in the Air Force. When the Korean War started, I wanted to fly jets. I enlisted with three other friends of mine from college – a couple of them from Linfield College, where I attended first, and one from the UW. All three were killed in training accidents. It was the early days of the jets. As for me, what they found out is that I have a really bad shoulder from an early football injury. So I tell people, the bad news was the shoulder was too bad for the Air Force. The good news was it was too bad for the Army as well. So I didn't serve in the military. ... But I always wanted to fly. And when I reached 50, I thought, "Well, I'm not going to get any younger." I joke with friends that I was too fat to fit into a sports car; I was happily married so I couldn't get a divorce. The only thing left was to learn to fly. So I did, and loved it for about 15 years.

Hughes: Well, we've digressed, regressed and progressed about a half-dozen times! Let's



John and Besse Utter with sons Fred and Bob, in the spiffy overcoat.

try to begin at the beginning. Please tell us your full name and date and place of birth.

Utter: Robert French Utter, born in Seattle, Washington, on June 19, 1930, to John M. and Besse A. Utter.

Hughes: Is there an interesting story behind "French" as a middle name?

Utter: It's a family name – my mother's maiden name. It goes a long ways back.

Hughes: Professor Sheldon's biography of you in *The Washington High Bench* notes that your maternal grandparents were long-time residents of New Plymouth, Idaho. Where is that?

Utter: New Plymouth is on the Snake River. It's about 50 miles north of Boise on your way to Walla Walla. They homesteaded there.

Hughes: What were their names?

Utter: Fred French was my maternal grandfather.

Hughes: And your maternal grandmother was?

Utter: Hazel Hoyt French.

Hughes: And what did they do there?

Utter: Well, they just were farmers for a while. But they had a wonderful story. She was the daughter of a fairly well-to-do family from Chicago, and he was the son of a storekeeper who had a small store on "The Loop" in Chicago. He traded with his brother the store they had on The Loop for 40 acres of sagebrush in New Plymouth, Idaho.

Hughes: What a deal!

Utter: Which follows our family motto of "Buy retail and sell wholesale," which I've kept alive, I must say. My grandmother was a wonderful woman. I don't think she ever reached five feet. She had polio when she was a girl and so she had a rather withered left side. She could walk, but it was sort of a lurching walk with her left leg and with her left arm. She bore seven children, just stuck it out. They lived in a boxcar for a while and then finally built their home there – a modest home. Her family would come out in these big cars to visit in the summer. It had to be love, I'll tell you that. ... But my grandparents were remarkable people. My grandfather carried out the same tradition later on, with a number of ventures that were not financially successful.

Hughes: What did he farm?

Utter: Orchards, whatever. He said he had one good investment – a confectionery store in Boise. He always said, "It was the best investment I ever made. My three daughters each found their husbands there."

Hughes: And your father's parents owned a small farm and grocery store near Boise?

Utter: That's right.

Hughes: What were their names?

Utter: John Madison Utter and Gertrude Swertfager Utter.

Hughes: Were you close to them as well?

Utter: Yes, they were *marvelous* people.

Hughes: So you saw both sets?

Utter: I did, as a boy. Eventually I spent a lot of time in Boise. My mother died when I was five. My aunt and uncle from the French side had married at the same time my parents married in Boise. Their names were Paul and Eleanor Tate. Eleanor was my mother's sister. And so I would spend summers until I was about 16 on their dairy farm in Boise. It was a life-saving type of thing.

Hughes: Life saving in what sense?

Utter: Oh, in terms of different settings.

Hughes: So here you are, a kid growing up in Seattle, and you're going back to work on the farm.

Utter: Not a lot of work, John. (chuckling) If they paid me anything, I wouldn't have been worth it. But it was a good experience.

Hughes: What nationality is Utter?

Utter: It's interesting. I tell people I always assumed it was either Dutch or German because I thought they were the most stubborn characters in the world. But I married a Swede, and I began to suspect I might be Swedish! (laughing) Utter is a Swedish name. It came to the United States very early, about 1654. And in the first settlements in Delaware, there was a Swedish colony of Uppers.

Hughes: What did the Uppers do during the formative years of the future United States?

Utter: Well, one was a soldier for the Dutch garrison in New Hampshire. He was the first ancestor that I know of. He went from Delaware to New Amsterdam and then eventually went up on the Hudson River to Poughkeepsie. During the Civil War he had a barge business on the Hudson and took barges down to Florida.

Hughes: Were there Uppers in the Revolutionary War?

Utter: There were.

Hughes: I'm in the Sons of the American Revolution, which is a little bit hoity-toity but fun nevertheless because when all the guys get done playing with their muskets and their

cocked hats, they do some marvelous genealogy and they're true patriots. We'd love to induct you. Have you tracked down the patriot Utters?

Utter: I have not tracked that down. But I'm sure there were. My grandmother Utter's father was a newspaper man who fought in the Civil War. That was Swertfager. The son of a German immigrant, he survived the battles of Little Round Top, (South of Gettysburg) and Antietam, (the bloodiest one-day battle in American history, with 23,000 casualties on September 17, 1862). He was at Wilderness, too, and commanded Negro troops in the campaign against the seacoast forts in Carolina. Reminiscent of current times, his paper went broke and his proudest moment was that he paid off all his debts before he died. I told you we have lived up to our family motto on both sides. Remember – "Buy retail and sell wholesale!"

Hughes: Great stuff. So you've done the genealogy there.

Utter: Some.

Hughes: There's an Utter family genealogy site on the Internet. It's very interesting. You should check it out. ... And how about the Frenchs? What nationality is that?



The Utter family at the French family reunion in 1975. Back row: Kirk, Aunt Fencie, and Bob. Front row: Kim, Betty, and John.

Utter: English. And they came over quite early too. They were here before the Revolutionary War. My mother's name was Besse Alden French. And it goes back to the Aldens in the *Mayflower* times.

You need to know that Wild Bill Hickok was buried in "Colorado Charlie" Utter's Camp in Deadwood, South Dakota, in 1876. I always say he was just plain Bill Hickok before he met C.H. Utter.

(Editor's Note: According to contemporary accounts, "Almost the entire town attended the funeral, and Utter had Hickok buried with a wooden grave marker reading: 'Wild Bill, J.B.

Hickok killed by the assassin Jack McCall in Deadwood, Black Hills, August 2, 1876. Pard, we will meet again in the happy hunting ground to part no more. Good bye, Colorado Charlie, C. H. Utter.' ”)

Hughes: When you start digging into the roots of the family tree, you better be prepared for all the horse thieves, adulterers and slave owners you'll find!

Utter: You bet.

Hughes: Let's go back to something terribly sad: Your mom died when you were five. Do you vividly remember that?

Utter: Not graphically. I remember my father telling me that. I was just five at that time.

Hughes: Had she been ill for a long time?

Utter: No, it was in childbirth. ... She should not have been lost. They then tried to save the baby. They couldn't. And my mother bled to death on the table.

Hughes: That's terrible.

Utter: It was difficult.

Hughes: Over the years, I've talked to psychologists about early childhood traumas – about people trying to conjure up their earliest sad memories and deal with them. Part of that is trying to figure out whether they really remember it or whether it's a confabulation of different things they've been told. Can you really recall the pain of losing your mother?

Utter: I can. *I can.*

Hughes: That must have been awful, and for your poor father as well, losing his wife and an infant.

Utter: It was a son. ... I marvel at him, left with myself and my younger brother. He wound up marrying the Sunday school superintendent at Seattle First Christian Church, where we attended church at that time. They had a son together.

Hughes: Which is your half brother – Tim or Fred?

Utter: Fred is my brother and Tim is my half brother.

Hughes: Although I'm sure you don't think of it that way. I have a "half sister" but I never think of her like that.

Utter: I don't either.

Hughes: She is my *sister*.

Utter: *Exactly*

Hughes: So there's your dad, a widower with two young boys.

Utter: I was actually almost six when she died and Fred was a year and a half younger than me.

Hughes: How old was Besse?

Utter: Oh she had to have been in her mid-20s at that time. (Editor's Note: She was 28.)

Hughes: And what was your father doing then?

Utter: He followed our family motto, John – he was a life insurance salesman. They were difficult times. The Depression era.

Hughes: Where were you then?

Utter: We were in Seattle. He was a natural salesman. He felt that life insurance was something important – that he was doing people a favor by getting them to insure their lives. He looked at it as a calling almost. He worked for Equitable of Iowa. Part of the story there is that he was determined that I would be an insurance agent, following in his shoes. And God bless him, he was a wonderful man, *wonderful* man. John Madison Utter. He had me sign a contract when I was 10 or 12 years old that I would be a life insurance salesman. It was all mock and there was nothing binding, but I'd go into his office and he'd talk to me about life insurance. And he was very disappointed with me when I chose law school. He was very supportive, but had always envisioned that I would take over his business. Which by the time he died in his late fifties was finally seeing the light of day. He enjoyed his work and he was reasonably successful at it.

Hughes: Tough time to sell life insurance – the Depression.

Utter: Oh, John! Well, I told you my family history. It's a genetic code. ... But anyway, I do recall the Depression and I look at these coming times with some real anxiety because our generation now and your generation now has *no idea* how tough things can be financially. I read my mother's diary that we found a while ago and found that in the early days in the Depression the income was so sparse that our power was turned off three times in one month. You'd have to pay your light bill weekly. And if you couldn't make it one week

you'd have to do without power until the next week.

Hughes: Your father was lucky to have a job, wasn't he?

Utter: He was, John. I have strong memories – but not of suffering.

Hughes: So you didn't go without food, but you knew that times were tough all over?

Utter: Well yes, although I didn't dwell on it. I remember a family with lots of love and lots of affection and support. I remember stretching meatloaf with a lot of crackers, and having fried mush with maple syrup on it for dinner a number of times.

Hughes: That doesn't sound too bad now, does it?

Utter: I thought it was pretty good!

Hughes: Were you blessed like Abe Lincoln with a wonderful stepmother? Did she take you and love you like her own little boy?

Utter: It was a difficult time for her. *It was a difficult time for her.* I think it was because my brother and I were typical boys. We were pretty rambunctious.

Hughes: How old were you when your dad met and fell in love with your stepmother, Elizabeth?

Utter: He remarried when I was seven. It's just fair to say it was a difficult time for me.

Hughes: Had she been a single lady?

Utter: Yeah, she was single. She was a teacher, a Sunday school superintendent. She was a *good* person, but I think she had trouble adapting to boys.

Hughes: Then she had one of her own.

Utter: She had one of her own. Probably "adapting to me" would be a more accurate statement. There were times where I'm sure she became very frustrated.

Hughes: I had a stepfather, and it was no picnic. He had a difficult time adapting to having a 10-year-old stepson, and me to having a stubborn stepfather.

Utter: We share much in common.

Hughes: Its character building, isn't it?

Utter: I'm being circumspect at how I describe things: It was difficult. But the marvelous thing about it was that before she died we had completely reconciled.

Hughes: Did she live longer than your dad?

Utter: She died of cancer two years after my father did. They were very fond of each other. It was a good marriage for them. I just look at that (reconciliation) as one of the best things I ever did.

Hughes: When you graduated from law school in 1954 were your father and stepmother there – the whole family?

Utter: Yes, they were, and by the time I graduated from high school things were much better. It was just very difficult at grade-school level.

Hughes: And of course you can never forget that. That's the part where it sticks.

Utter: It was buried under there.

Hughes: What a wonderful story. But the worst times are the reconciliations that you never got the chance to make.

Utter: Oh, John, I so believe that.

Hughes: When did brother Tim arrive in your life?

Utter: Tim is about 11 years younger than me. ... There was enough separation in terms of age that there wasn't much jealousy. I was very happy to have him, but I'm sure it wasn't easy for him to come into a family where there are two older brothers who were close.



Bob, left, with his brother Fred.

Hughes: What's become of Fred Utter?

Utter: He's remarkable – by far the brightest in the family. He has his doctorate in genetics. He's a scientist with NOAA (National Oceanic and Atmospheric Administration) in fisheries research. A few years ago they had a celebration of their 200th anniversary or something, and they picked 20 of the most significant people in those 200 years, including Rachael Carson.

Hughes: The author of the landmark book *Silent Spring*.

Utter: Fred Utter was one of those!

Hughes: And where is Fred living now?

Utter: He's in Seattle.

Hughes: How about Tim?

Utter: Tim was in social work, and is in Tacoma. He's married and has two *wonderful* children. Tim in many ways is a hero. He was dyslexic and still got through his master's in social work. He wound up working for DSHS as a counselor for families with children with handicaps. He did that until his mid-50s and then retired.

Hughes: I read that after John married Elizabeth, your stepmother, that they became very active in the church.

Utter: Yes, the First Christian Church.

Hughes: Had Besse and John Utter been active churchgoers?

Utter: I think people of faith. They went to the First Christian Church where my stepmother worked. When my father remarried, we went from the downtown First Christian Church to the West Seattle Christian Church. But a new minister arrived and he would not accept my stepmother because she was a Methodist and hadn't been immersed.

Hughes: There goes the neighborhood!

Utter: She'd been sprinkled, not dunked, so they were looking for another church... and we ended up at Seattle First Baptist.



The Seattle First Baptist Church

Hughes: In the French and Utter families, way back when, had there been a tradition of any one denomination?

Utter: In the French family it was Christian Science, which is very interesting, very interesting. I don't know if there are any remaining members of that family who are Christian Scientists.

Hughes: How about the Uppers?

Utter: I think people of faith, but I don't recall which church. The fact that we became members of First Baptist is the thing I remember most clearly.

Hughes: I remember we used to sing, "Red and yellow,

black and white, all are precious in His sight.” Do you have very fond memories of Sunday school?

Utter: I do.

Hughes: And your stepmother and your dad were both Sunday school teachers.

Utter: They were.

Hughes: Had he been a strong person of faith before Besse died? And then upon meeting Elizabeth – Was she the stronger person in terms of being churched?

Utter: I don’t recall, John. I just don’t recall. It had just always been a part of my life as a child.

Hughes: As a boy, do you remember having a real spiritual sense?

Utter: Very strong. I remember my early concept was whether to go to the theological school or to law school. It went so far as I went down to Berkeley Baptist Divinity School for a couple of days to just see if it was a strong enough calling. I’ve always told people I made the best decision for God and myself that I didn’t feel that strong of a calling. But it was there. And it was fortunate because in the early 1950s I think the ministry was very different than it is now.

Hughes: Absolutely. It would have been a lot more lockstep. Free thinking and using your head as well as your heart would have been a tall order back then.

Utter: Even for a (liberal) Baptist. ... But the inclination has always been there. I’ve always said that if you have a public service bent you can’t kill it with a cloth. If you’ve got it, you better recognize it, and deal with it. And for whatever reason it’s been there.

Hughes: What was life like in the Utter home when you were growing up?

Utter: We lived in West Seattle most of the time.

Hughes: You said your father was “a wonderful man.” What were his wonderful qualities?

Utter: Spiritual life to start with, but a real belief, not a doctrinaire kind of thing. He had a commitment of time and concern for others. He served on the Film Censorship Board in Seattle for a while.

Hughes: So John Utter would help decide if Hedy Lamarr was showing too much cleavage? Wasn’t that the national “Hays Code” in the 1930s to promote morals in movies?

Utter: It was a variation of that. The mayor had a screening committee, and it's unclear to me now exactly what their duties were.

Hughes: Well, the bad guys could never win and you had to be respectful of women.

Utter: Yeah, basically that was it. But I remember that was his, I think, one official duty – the Censorship Board. But there was a commitment by him to public service.

Hughes: Was he prudish?

Utter: No, just a loving person – and optimistic, which you had to be when you saw life in those days.

Hughes: So, what were some of the classic activities in the Utter household? Did people read books and listen to “Amos & Andy” and go to Saturday matinees?

Utter: Some of that. Classical music was the primary one I recall. My mother, *real* mother, was a cellist, and my kid brother is a wonderful cellist.

Hughes: Are you musical?

Utter: I *love* music, but I have no talent. I like classical, jazz – you name it, as long as it's *good*. Music is soothing to my soul when things get real difficult. ... If I had to choose one piece, it would probably be the Requiem Mass. All the works of Beethoven and Mozart. ... My father was a very good clarinetist, classical. There are pictures of my mother and father in Boise as part of a band. She was playing the cello and my dad the clarinet. And they would have quartets come to our home. Two or three times a month they would play woodwind quartets.

We had the most remarkable experience I should tell you about. Our first American Bar Association trip to Kazakhstan was in '94. We went there for a month to work with their judges. We arrived on July 3rd and were told that there was going to be a July 4th celebration at the embassy, which had just been housed in an old wooden hospital. It was about 104 outside, just baking, and we thought, “What are we coming into?” Well, they had the Kazakh Woodwind Band and they played “Rhapsody in Blue” by Gershwin. And I'll never forget it. The clarinetist didn't miss one note. Then they played Sousa marches, and here we were in a far-off country with the Tian Shan Range going up to 24,000 feet behind us. And a stockade full of both Kazakhs and Yankees both celebrating. Sousa Marches

being played, and they flew in McDonald's hamburgers from Moscow, and apple pie.

Hughes: That's wonderful!

Utter: Well, I'm at peace with my lack of talent in music because we had the good fortune to have good friends in Seattle who were very involved in music. Henry Siegel was the concert master of the Seattle Symphony, and his wife was involved in a small school that we had our kids involved in. So they would invite us over on occasion for Sunday afternoon music at their home. But I had complained *bitterly* to Henry that I had no talent. And he said, "Bob don't worry. Every musician needs an audience." I've been at peace since then. The only instrument I've ever felt some affinity to was the guitar. And I started playing that late.

Hughes: I love guitar. But I'm a lousy player.

Utter: Betty's cousin was a wonderful guitarist and teacher in Seattle. So for about two years when I was on the Superior Court, I took classical and jazz guitar. And did reasonably well on classical, but what you've got to do is practice every day. And I couldn't keep up with it.

Hughes: I once spent the day with Andres Segovia.

Utter: Oooohhhh!

Hughes: He came to Hoquiam for a concert at the historic 7th Street Theatre years ago, a beautiful venue. He was amazing. Have you ever listened to any Delta blues guitar?

Utter: I love it, I love it!

Hughes: Robert Johnson?

Utter: Yes! I use the word "primal" when I describe Johnson.

Hughes: "Primal" is the word. How anybody could coax that much fabulous soulful sound out of a guitar. You know, he's the guy who claimed he sold his soul to the devil so he could play like that.

Utter: "At the crossroads."

Hughes: At the crossroads – "going down to the crossroads."

Utter: I think I have one of Johnson's records here.

Hughes: Let's go back to the clarinetist! What kind of life lessons did you learn from your dad?

Utter: Oh, I think a lesson of optimism. He was an incurable optimist, which you had to be to be a good salesman. But I *couldn't* have followed in my dad's profession and sell life insurance because by nature I'm a fairly private person and I hate to impose myself on other people. The idea of going up and knocking on a door... I think I'd rather go dig graves or something like that.

Hughes: You characterize yourself as a "fairly private person"? I never would have guessed that from reading about your career.

Utter: Most people don't, but that's the real me.

Hughes: And yet you've had this eventful public life. You've been outspoken on matters of conscience. Someone once said, "Disguise is a formidable form of energy." So the real you is a private person?

Utter: At heart I think that's so. I like people, but I don't like to impose myself on people. I feel comfortable with silence and quiet. I actually thrive on that at times. But it doesn't mean I don't enjoy people. That was the paradox about running for election. I was *always* not at ease with that because I felt I'd have to impose myself on people. And yet once I got out and got talking with the public I found I enjoyed it.

Hughes: Do you know Booth Gardner well?

Utter: *Who knows Booth well?*

Hughes: Very insightful, judge. The private, secret man that's in there is starkly contrasted by his public face of vivaciousness. He is one of the most interesting and complex people I've ever been around. He lost his mother and sister in an airplane crash when he was 14. He inherited a fortune, didn't much care for money and went on to become an enormously popular politician. Now he's battling Parkinson's disease and championed the assisted suicide measure. Where do you come down on the issue of "death with dignity"?

Utter: I think people should have a choice. I don't think you legislate morality or immortality. I don't know what I would do when I'm faced with that. I have a problem with Parkinson's, which in my case is progressing slowly. I don't know what I'll do when I face that time, but the choice doesn't seem improper to me.

Hughes: Were you a kid who always had his nose in a book?

Utter: Always, always.

Hughes: What did you like to read?

Utter: Well, I guess it would be fair to say “anything.” I would be reading encyclopedias when I was quite young. It was very hard for me to socialize after my mother’s death. So I was the odd duck out in grade school. Grade school was probably the most painful time in my life.

Hughes: Were you the odd duck because you were still rebounding from losing your mom?

Utter: Yes. And by junior high I started to grow almost as tall as I am now.

Hughes: How tall are you?

Utter: I was about 6-1 – 6-1 and a half.

Hughes: Were you an athletic boy?

Utter: I had the curse of looking like an athlete, with no coordination. Everybody expected that I would be a great athlete. The enthusiasm and the spirit were there, but when it came time to perform I was hopeless. But the thing I could do was run and that came from my grade school days. Because of my lack of socialization I was picked on pretty much, so my defense was to outrun everybody. And I could do that pretty well.

Hughes: Were you on the track team?

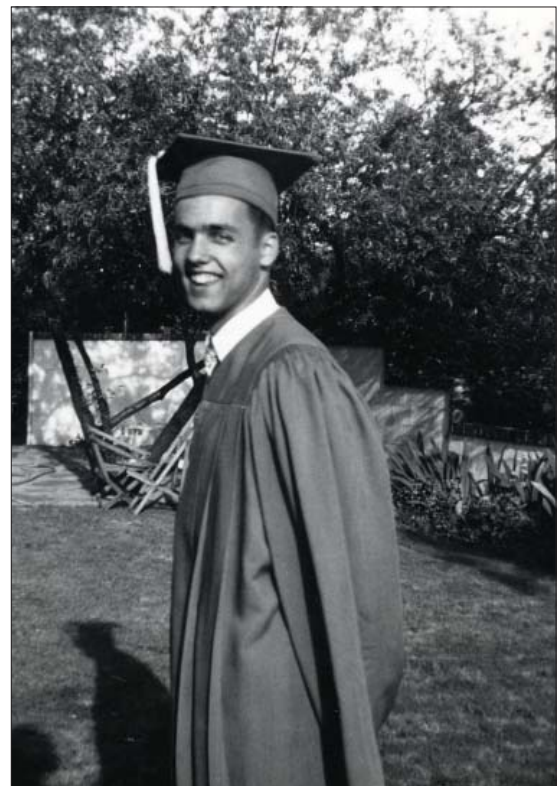
Utter: Well, I tried out. In grade school I was pretty fast. By the time I got to high school there were some faster people.

Hughes: And this is West Seattle High School?

Utter: West Seattle, yeah.

Hughes: Tell me more about what you were reading.

Utter: I liked history. I can recall reading entire encyclopedia sets just for the learning that came from it, especially about history. I recall being in college in a Western Civilization class. The teacher was saying, “And what is this?” She held up a



Utter graduates from West Seattle High School, 1948. Being in the YMCA Youth Legislature was the highlight of the year.

picture of Michelangelo's David. I said, "It's Michelangelo's David." I was the only one in class who knew that. And she said, "Where did you learn that?" I said, "I just read it somewhere."

Hughes: It's under "M" in the Encyclopedia Britannica.

Utter: Right. But unfortunately my memory is not a photographic memory. I can't read something and then recite it. I wish I could, I'd like to be able to pull it out.

Hughes: Did you have interest in the theater?

Utter: I have an interest, but I have no talent in it. Part of that goes to memory and part of it goes just from a natural shyness.

Hughes: Robert F. Utter is naturally shy?

Utter: Yeah. He is.

Hughes: Did you try anything as a kid to overcome that – like reading *The Power of Positive Thinking* and *How to Make Friends and Influence People*?

Utter: No, never did. That is a part of me, I think, people don't understand.

Hughes: So you wouldn't characterize yourself as being a popular kid.

Utter: Oh no. Definitely not in grade school. I was the wounded bird.

Hughes: When did you gain that first measure of adolescent self confidence?

Utter: Probably never. ... But when I was an adolescent that's when sailing first caught my attention. ... I recall being so enthralled by it.

Hughes: Were you always called "Bob," or did your family members call you "Robert"?

Utter: Only when I was in deep trouble. It was always Bob, and I feel comfortable with that.

Hughes: What did you think you wanted to be when you grew up? You knew you didn't want to be an insurance man?

Utter: *That's right.* But I didn't know really. Flying was a part of it. ... It was something I knew I definitely wanted to do. ... As for daydreaming, like any child there were times when I'd just let my mind wander. ... The one thing that my father *really* was focused on was fly fishing, and we would travel around to go fishing.

Hughes: No wonder he was spiritual. That's a de facto religion right there. Fly fishermen are fanatical.

Utter: Well, *this one* was. Every other area of his life he was rational, but everywhere we traveled he would have a reel and a creel in the trunk of the car. And it would take us probably three times as long to get anywhere because dad would go fishing always. I think part of my brother's genius with fisheries comes from that fascination by our father.

Hughes: But you weren't hooked on fly fishing?

Utter: Not to the extent it hooked my brother. Fred really is extraordinary. He's been one of the pioneers of finding genetic differences in fish and finding where they come from by their genetic code. ... After I left the court, I did quite a few mediations on Indian tribal fishery issues in Georgia. Being a former chief justice made no impression on them, but when they found out I was Fred Utter's brother, then they were really impressed!

Hughes: Did you excel in school?

Utter: No, no, never did.

Hughes: You weren't the classic kind of straight-A kid who won the spelling bee?

Utter: My standard comment is that there's probably nobody who astounded their teachers more than the two of us, my brother and me. I wasn't really *excited* about learning until I got to law school. ... I was immature with a capital "I." I just coasted until then, even coasted a bit through law school. My grades were adequate but not outstanding. In the courses I enjoyed there were A's, but in the courses that I didn't really enjoy I got some D's. But the interesting thing was that when I started law school I found, there was a switch, sort of a click. First, there was the feeling that "this is something I can do." Then it became an excitement about just learning. And I wound up reading more literature in law school that was not law-related than I did in all my undergraduate work.

Hughes: Do you recall with real fondness any teachers or mentors?

Utter: At Linfield College there was a professor named Horace C. "Hod" Terrell, a devout Quaker, who taught American literature and sort of opened my eyes to the various layers that literature can expose.

Hughes: Before that were you more interested in reading history and true stories than you were in novels?

Utter: Far more interested in history, far more, and I still am fascinated with history.

Hughes: What is your favorite episode of history?

Utter: All of it because I think we learn from the past, although it's not a sure prediction of the future. For instance, there's a book called *A Peace to End All Peace*. It's a story of the nation's exploitation of the Middle East just before the first war, following the end of the first war and the various machinations that were involved in creating the various countries there. Absolute forecast of what we face today, and a lesson that stands out to be learned. If people had just read that before we got involved in Iraq we would have been a lot wiser. My summers are when I dedicate myself to being on my sailboat and reading. Last summer we took five weeks and I read one book a week. A few of them on Theodore Roosevelt and David McCullough's biographies. I love them.

Hughes: What an amazing man Teddy Roosevelt was, forming the "Bull Moose" Progressives: "We stand at Armageddon and we battle for the Lord!" If I could just close my eyes and click my heels, I would want to be at that Progressive Party convention. T.R. is just extraordinary – "The Man in the Arena."

Utter: And, in the beginning, so many just saw this little man with a squeaky voice.

Hughes: How about novels?

Utter: Well, I loved Russian literature. I still do. But I think one piece had the greatest impact, simply because it clarified for me the fact that it was really the guys in the boiler room who make the ship run. It's not the captain. And that's an encapsulation of the lesson from *War and Peace*.

Hughes: When I did the oral history with Krist Novoselic, I asked him about the tragic suicide of his band mate, Kurt Cobain. He said he tried to get Cobain to read Solzhenitsyn about the Gulag and make him see that his angst was self-indulgent. He kept telling him he ought to read Russian literature to know about *real* suffering – fish head soup and daily beatings.

Utter: Exactly. I read a lot about the Gulag.

Hughes: And then you've traveled and met people who lived through these things. That's just fascinating.

Hughes: Do you vividly remember Pearl Harbor Day? You were 11 on December 7, 1941.

Utter: Oh, clearly. I came out of the church that Sunday morning. My brother and I would go listen to the car radio rather than stand around and gab after church. I remember running back into the church and telling my parents that Pearl Harbor was bombed and they didn't believe it.

Hughes: They must have been thunder struck.

Utter: Absolutely, as we all were.

Hughes: Did the war touch your family?

Utter: Yes it did. Shortly after the war started, my stepmother's brother, Kirk, was in Alaska and enlisted in the Army. He was in the first wave that went ashore in North Africa, and was killed. Got a Silver Star. (Becomes emotional at the memory.)

Hughes: When that news hit, it must have just been a cataclysm in the household.

Utter: It was difficult. But the great sadness to me is the *incompetence* of the generals during that North African Campaign. Just absolutely incompetent. There's a book on that. I forget which one it was, but I read it almost by accident. And it was damning. ... But I'm not sure that it would have made a difference for him. He stormed a machinegun nest single-handedly.

Hughes: How old was he?

Utter: Oh, he was young. He was in his twenties. Our oldest son is named for him.

Hughes: Your dad was too old to go in the service?

Utter: Yes.

Hughes: Kirk's courage reminds me of my late friend Bob Bush, from South Bend, who received the Medal of Honor as a young corpsman.

Utter: I knew Bob. Wonderful human being. He was a friend of friends from Olympia and was a member of a small investment club that I was part of. Might I add, a *spectacularly* unsuccessful investment club. Probably the only business venture that Bob Bush had ever failed at.

Hughes: What year did you graduate from West Seattle High School?

Utter: '48. Vintage year.

Hughes: There's an award named after you in the YMCA Youth & Government program.

Were you involved in high school?

Utter: Yes, in 1948, my senior year. I was very active in the YMCA at that time. It was the second youth legislature that they had in Olympia, and I really enjoyed it. It demystified



Justice Utter is congratulated by former governor Dan Evans in 1997 as the YMCA's Youth & Government program announces it has named its top award in his honor. It is presented annually to "an individual of unquestionable integrity who exemplifies outstanding citizenship, leadership and character." Chris Gregoire, then Attorney General, looks on at center.

some of the government process.

Hughes: Did you meet the governor and any high ranking officials or judges who really impressed you?

Utter: Not that I recall. I recall the YMCA leader, a guy who had just come back out of the service and very dedicated to kids ... and even let me drive his Jeep on occasion, which was a great thrill.

Hughes: Speaking of rites of passage and things that boys always covet, did you have a car when you were a teenager?

Utter: I did not. But my parents let me

drive theirs. My dad was intrigued with cars, but had no mechanical skill at all, again, a trait that I inherited. He bought an English Austin, a green little Austin with a sunroof that you could flip back.

Hughes: Those were cool.

Utter: They *were* cool. And I remember driving with my head out of the sunroof. It was a great car. The thing I recall so clearly is the turn indicators. They flipped up like a semaphore. And the second thing was the smell of that leather in a new car.

Hughes: Why did you choose to go off to Oregon to Linfield College?

Utter: It was a Baptist college, and I think I was looking for a smaller school. I was fairly shy.

Hughes: How much did it cost to go to Linfield in 1948?

Utter: Probably more than my parents could afford.

Hughes: So mom and dad footed the bill.

Utter: They helped, yeah. I worked every summer.

Hughes: That's right. You went back on the farm.

Utter: I don't recall what I did that summer. But I never paid for all of it until I started law school. My folks paid for the first year of law school. Then I said, "I'm going to really have to buckle down on this."

Hughes: Was it hard to get into Linfield College?

Utter: No. They were looking for more bodies. It's a *wonderful* school now and harder to get into.

Hughes: You must have had a lot of GI Bill students in that class.

Utter: A lot of combat boots in class there. There was a difference in the maturity of the people there. It was unfair for someone as immature as me. If I look back now at regrets I have, it was that I hadn't served in the service before I started school because I think I would have gotten much more out of college.

Hughes: What did you think you wanted to do when you enrolled at Linfield?

Utter: I had no idea, John. I thought maybe business of some kind.

Hughes: At this point had you flirted with theology – becoming a minister?

Utter: Not really.

Hughes: When did that occur?

Utter: Oh, it was just sort of gradual, sort of oozing out as a recognition that I had some sort of service ethic. If you have that, you can't kill it with a club, so you've got to find some way to deal with it.

Hughes: So how well did you do in college?

Utter: From a grade standpoint, just barely. Again the intellectual curiosity had not been really turned on until I got to law school. Great waste, I just so regret that because there was so much I could have learned.

Hughes: Well, it turned out OK.

Utter: People can argue with that.

Hughes: So is there any kind of eureka moment in those first two years? What prompted you to say, "Well, I'm heading back home to the UW"?

Utter: Mainly finances and the lack of other cultures. At Linfield I wouldn't have been able to grow in areas that I thought I might be interested in.

Hughes: By then had there been any sort of fleeting notion about going to law school?

Utter: Well, my parents always said, "You were born to be a lawyer because you argue so much." They probably had more insight than I.

Hughes: Wait a minute. Here's a self-described shy kid who likes to argue? Was that a fair indictment?

Utter: I think they might very well have been right. Well, you know, what kid doesn't argue?

Hughes: So Linfield, being a private school, was much more expensive than going to the University of Washington?

Utter: It was. And UW was cheap at that time. Even law school was remarkably so.

Hughes: So after your sophomore year in Oregon, you're back home, attending the U. Are you living at home?

Utter: I worked in a fraternity at the UW – Theta Chi. I was a houseboy there. So I had room and board there.

Hughes: If I recall correctly, you, like Judge Carolyn Dimmick, did the law school "early entry" program?

Utter: I did, but the summer before law school, I enlisted in the Air Force.

Hughes: Motivated by wanting to fly?

Utter: Yes, and by the imminence of the draft. I would have been drafted.

Hughes: It's the Korean War, right?

Utter: Exactly. I was all set to go. But I had my physical in Seattle and that was that. One shoulder was devastated, and it's still bad.

Hughes: An athletic injury?

Utter: It was. But I also grew so quickly when I was in junior high that all my ligaments are bad – knees, shoulders, thumbs, you name it.

Hughes: So did you modestly skip right over your stellar career as a high school halfback?

Utter: No, that was like everything else! (laughing) An athlete I wasn't. I hurt my shoulder

playing basketball, but there was no stellar career.

Hughes: Back to the books. Was it hard to get into law school?

Utter: Well, they required a reasonable grade-point to enter the UW Law School at the end of your junior year. I had almost a B-average by that point, which was remarkable given the amount of effort I put in. I had had an interest in political science and history before, and I looked at literature, too, but I said to myself, "I don't have the patience to teach and I don't think I have the talent to write. What will I do?" I could get into law school at that point with a reasonable grade-point and so I thought, "Let's try it for a year and see what happens." Those were the days when you had a large entry class and then they'd have strict grading on a curve, so they flunked out two-thirds of the class. And these were classes with mature people in them. So it was combat.

Hughes: Justice Smith told me that everyone was friends at law school at the University of Washington in that era. And he says that to this day you can immediately recognize them from their voices if they call on the phone. Was that your experience as well?

Utter: Absolutely.

Hughes: What was it about the University of Washington School of Law in that era that created that kind of wonderfulness?

Utter: I'm not sure it was unique to the UW. I think it's a lot like going through a harrowing experience together. A lot like sailboat racing, particularly ocean sailing, because you see people under great stress. You learn a lot about one another and you bond.

Hughes: Your best and worst.

Utter: Exactly. So I think that's more of what created the bonds, rather than the school itself. UW Law School was a good school at that time, but it was brutal.

Hughes: In your first year, was there a moment where you realized, "I really like this"?

Utter: Pretty much. There's a peculiar form of thinking that you need to be a good lawyer. You need to be able to say "What's closest to you?" That's the metaphor. Let me explain that because the English language, as fascinating as it is, is still imprecise. No matter how hard people try to express the idea of the law they're still using language that has to relate to a specific factual frame. But with legislation, the problem is trying to figure out "What

in the world were these people thinking?" ... An even better example is when you've got a constitutional provision that's really obscure and the language is very broad. You have to intuit in many cases, "What were they thinking when they used this language?" It's a process of what's closest to you.

Hughes: "What's closest to you?" I'm still not sure I fully understand what you're saying.

Utter: I'm saying that no factual situation is ever identical to any other factual situation. You have to say, "Well, what is closest to what was in the minds of the people when they passed this particular law?" And I found I had the ability to do that. What we're talking about here generally is legislated law, but it can also apply to constitutional law and judge-made law.

Hughes: What's closest to the intent?

Utter: Yes. And so that was sort of the beginning of things: I said, "Well, I can do this." It was sort of a eureka moment. And then there was a marvelous understanding that history itself has an impact on trying to determine what was in the mind of the people when they did something or the other. And that applies not only to legislation but to common law. Libel is a part of that. Tort law is a part of that.

Hughes: Over the years, I've known a lot of judges, and in doing these in-depth oral histories with Dimmick, Smith and now you, I'm impressed that the best judges aren't stuck in one spot.

Utter: Justice Scalia, for instance, is very doctrinaire but also very bright. I was once at a UW seminar where Scalia spoke. And the students there are as smart as they come. They pinned him down on, "What do you mean by 'original intent'?" If you look at some of the original issues dealing with property rights, voting rights and the Constitution, the (founders) said –

Hughes: "Bring in the slaves!"

Utter: Exactly. And Scalia said, "Well, I'm a literalist but I'm not a kook!"

Hughes: That's a pretty good line!

Utter: That's an *excellent* line.

Hughes: Were there any professors who were particularly inspiring to you?

Utter: Harry Cross taught properties. Very good, very precise, very history-oriented ... on how property laws developed. Interestingly, and I never thought this would happen, tax laws fascinated me. It was the kind of thing I could reason through and think. You wouldn't think that would be so for somebody who liked literature.

Hughes: What is it about tax law that appeals to you?

Utter: Trying to think what was really at the bottom of the problem that people were trying to solve with this kind of law.

Hughes: Sometimes, though, that way lies madness, doesn't it? Maybe they weren't thinking very well at all.

Utter: Absolutely right! But that's the *kind* of thinking you have to do to be a really good lawyer.

Hughes: So by the end of that first year were you hooked?

Utter: Pretty much.

Hughes: And did the shy kid who had not been working up to his potential say to himself, "Boy, I've got to get with this now," because law school is weeding out people right and left?

Utter: I knew I had to. And part of that was "If I fail, think of how embarrassed I'm going to be."

Hughes: So it's three years of law school, and you get your bachelor's degree after the first?

Utter: Yes. I had the three years of undergraduate. The first year of law school counted for (your senior year). So you get a B.A. after that, and then you get LL.B. after you finish your sixth year.

Hughes: And today it would be seven years of college.

Utter: Right.

Hughes: Was "early entry" a good idea, sort of like "Running Start" for high school kids? If you've got a bright kid who can do it, it's a good idea?

Utter: Well, I know that had the admission standards been as they are today, neither my brother nor I would have been able to do what we're doing. My brother is absolutely brilliant and he was as unmotivated and unfocused as I was when he got out of school. ...

My real regret is that I wasn't forced, even at a high school level, to reach down deep to learn. Had that happened I would have been motivated much earlier in my life. At one point my parents were thinking of sending me to a prep school at the end of junior high, probably because they wanted to have some peace at home. But I regretted that didn't happen because I think it would have taken that to turn the intellectual switch on. Same way with college. I thought about attending Reed and would have really had to produce to get through. As I look back on regrets in my education it just was that I didn't have to really do hard work before I got to law school.

Hughes: Wouldn't it be fun to go back to college now, knowing what we know?

Utter: To go back and learn just for the excitement of it, but I think I can do that without doing the structured course. ... That's one reason I enjoy sailing in the summer so much. I just can go out with a book. ... But I taught eight years at UPS in constitutional law, and that was very stimulating. The students were great, some of the older ones in particular. I found that that was one of the great things in teaching, the ability to work with people who had put a lot of thought and a lot of their purse into going back to law school. God bless them. Particularly the single mothers who had to not only take care of themselves, but take care of their kids. There were some *wonderful* people in those classes.

Hughes: We skipped over something important back there: At



Bob Utter and Betty Stevenson getting serious at a park (above) and at a party (right).

Linfield, you met a cute Seattle girl named Betty Stevenson and dated a few times. Then you leave Linfield College to come home. And Betty Stevenson leaves the next year and also enrolls at the UW. Do Betty and Bob become an item again?



Utter: We both dated other people who later became mentally ill.

Hughes: Gulp.

Utter: And so there I am in my first year of law school, studying hard but occasionally having to come out for a breath of air. And I was walking on the UW campus and I saw this group of girls ahead of me and I thought, "That looks like Betty." By Jove it was!

Hughes: You didn't know she was back?

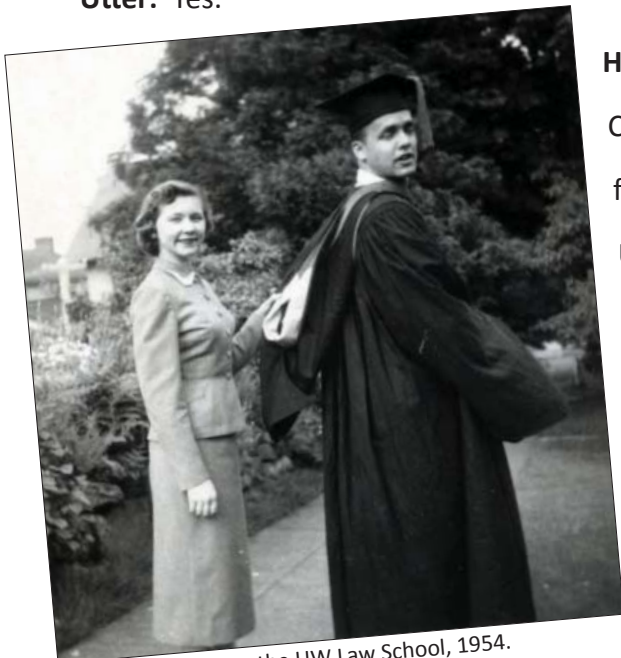
Utter: I didn't know she was back. So I said hello and things re-started. Best thing that ever happened to me! We were married the middle of my last year of law school, December of '53. We had a long honeymoon – three days.

Hughes: So Robert F. Utter graduates with the UW Law School Class of '54?

Utter: Yes.



The Utters on their wedding day, December 28, 1953.



Bob graduates from the UW Law School, 1954.

Hughes: Your future Supreme Court colleague, Carolyn Dimmick, is in the Class of '53. Were there females in your class as well?

Utter: I think we started with four and graduated two, maybe three.

Hughes: And what about ethnic minorities?

Utter: There were none.

Hughes: So now you're really focused and you graduate from law school. What happens then?

... Did you pass the bar exam on your first try?

Utter: I did. I never wanted to know how close it was. I never went back to find out the score. I was convinced I was going to be the first Supreme Court clerk to ever flunk the bar.

Hughes: Carolyn Dimmick was worried about how she'd done, too. She told me nobody is ever confident about passing the bar exam.

Utter: I did not know that about Carolyn. Another reason I'm so fond of her. ... There were questions that I just did not know the answer to. And the trouble is they weren't true or false. You had to write an essay. And I'm not very good at creating smokescreens in essays. I either know it or I don't.

Hughes: When you came out of the UW Law School did you have any debt to pay off?

Utter: No. That was the amazing part of it. As I shared with you earlier, I asked my parents to cover the first year of both tuition and room and board because it was a time when they flunked out two-thirds of the class. And if I was going to stay I was really going to have to focus. So they did and after that I was able to work summers at various jobs.

Hughes: What were the jobs you had?

Utter: One was being an apprentice in a cabinet shop for a couple of summers.

Hughes: Were you good at that?

Utter: I was awful! But interestingly I enjoyed the finishing part of the cabinet work because you would take something that was plain and by the time you were done it was gorgeous. But one of the things I noticed was the difference of doing something with your hands and creating something, which was *very* satisfying. At the end of the day you could look at what you'd done. And that's part of the problem with writing and developing law. It's a very long-term proposition. The other insight is you never know enough; you're never at a point where you have all four edges of the puzzle.

Hughes: Tell me about getting the law clerk spot at the Supreme Court.

Utter: Another member of the Seattle First Baptist Church was Supreme Court Judge Matthew Hill. So I went to him in I think my second year of law school and said, "Judge, can I clerk for you?" My grades were good, but not outstanding. And his first question was, "Can you drive? Do you have a driver's license?" I said, "Yes." He said, "You're hired." Judge Hill was so focused that when he drove he didn't think an awful lot about that process. I think he went through two transmissions from shifting from a lower gear into reverse. So he just wouldn't drive any more. Much like Charlie Smith, I thought it was a

wonderful opportunity to get to know this man and learn from him. I drove him all over. It was at a time when the Supreme Court was way behind on its cases. They would sit in divisions – departments on most of their cases. They’d take the nine judges, split 4-4, with the chief on each. And then they got all snarled up with appeals from one division, so it was a mess. And when I came to work for Judge Hill he was almost a year behind in terms of the caseload that he had. By the time I left we were current, and that was my commitment.

Hughes: In his book, *The Washington High Bench*, Charles H. Sheldon wrote, “Utter remembered his year with the court and Judge Hill with fondness. And Hill involved the young clerk in an ongoing seminar on life, law, morals and politics quite beyond the narrow legal issues confronting the court.” Sheldon adds, “That experience for Utter, although but for a year, provided him with a lingering taste for appellate judging.” Is that accurate?

Utter: I think its pretty close. You have to recall, John, I think I was not only shy but lacked self-confidence and that probably continues even today. Unlike Charlie Smith, who always said, “I know I’m as bright as anyone I deal with,” I was *exactly* the opposite.

Hughes: And I loved it when Justice Smith said, “My wife always tells me that I have an abundance of self-confidence.”

Utter: (laughing) Well, God bless him! And he has self-confidence for a good reason. But that is not the case with me.

Hughes: So tell me about Matthew Hill. Let’s put some flesh and blood on this interesting fellow. How old was Hill then?

Utter: Probably in his sixties; very devoted to the Masonic Lodge, the Baptist Church and the Supreme Court. He was a man who was an early devotee of walking. So every day he would walk from his home, which was nearby. I think it was on Quince Street, near the old museum. And every morning he walked. He was in great physical shape. Sadly, his mind gave out before his body did. Our daughter Kim required hospitalization and care for quite a while, and I recall her



Judge Matthew Hill, for whom Bob clerked at the Washington Supreme Court in 1954.

being in a nursing home in the same spot where Judge Hill was. He was physically alert but mentally just not.

Hughes: And I understand that he never turned down a speaking engagement, whether it was at the Cle Elum Kiwanis or the Aberdeen Daughters of the Nile – that he was everywhere.

Utter: That's right, and he had an up-to-date joke book that he would pull out. I can still tell you most of the jokes he told.

Hughes: Tell me a Matthew Hill joke.

Utter: Grover Cleveland Alexander was throwing the fastest pitch in the majors at that time. And the umpire is having to call strikes the batter couldn't even see. Finally, the umpire said, "Strike three!" And the batter turned and said, "It sounded a little high to me."

Hughes: That's great!

Utter: There you go. He was an excellent speaker, and he enjoyed it. He had a good sense of delivery and timing.

Hughes: Did you go with him on many of those trips?

Utter: I went on *all* of them. ... I thought, "What a wonderful chance to learn law." But what I also found out was that if you're going to give a speech you've got to be rested. You've got to get some sleep. So the judge is sleeping while the law clerk is driving to the engagement, and after the engagement he's tired so he sleeps on the way back. But we would stop at the Poodle Dog in Tacoma and have a piece of apple pie. Most of the time it wasn't total silence, but it wasn't the way it was billed in terms of the (interaction with the judge). I did the driving.

Hughes: What kind of lessons did you learn about law, life, morals and politics?

Utter: I saw a commitment to public service. At that time there was a lot of animosity between the Masonic Lodge and the Catholic Church. ... So much so that the Masons were very actively involved in defeating Catholic judges. I think there was a judge named Connolly who was of a Catholic background.

Hughes: Being a Mason and good rock-ribbed Baptist, did Judge Hill have any of those prejudices against Catholics?

Utter: I'm sure he was an active supporter of the Masonic position and so as I look back on it now I just think how narrow-minded that was. But at that time it appeared to be the right thing to do.

Hughes: Haven't we come a long way in your lifetime – my lifetime?

Utter: Oh, John! We have.

Hughes: So on the whole, was Matthew Hill a kind man?

Utter: He was a good man – family oriented, committed to public service.

Hughes: Can you think of one really most memorable experience with Matthew Hill, something you'll never forget?

Utter: I don't recall the specific case, but it was an opportunity to expand the law a little bit. And I recall explaining to him why this was common law, why readers of the old law had changed from the time it was written until now and how the social conditions had changed. We need the sensitivity to the new area where people should have their rights recognized.

Hughes: The law evolves, doesn't it?

Utter: It does.

Hughes: The nation's not the same. We don't hold slaves and treat women as second-class citizens, with no reproductive rights.

Utter: Society is continually in a state of change, and the law either changes with it or is left behind.

Hughes: But in "the sanctuary of the conscience," as you have written, the lines are still pretty bright, aren't they?

Utter: Well, that's your last court of last resort.

Hughes: The sanctuary of the conscience?

Utter: Yes.

Hughes: Interestingly, future justice Keith Callow clerked for Judge Hill in '53, and Charles Smith was Hill's clerk in '55. Then Gordon Walgren was Judge Hill's clerk. Walgren became a powerful state senator and got caught up in the "Gamscam" case. Did you know Gordon well?

Utter: I did not.

Hughes: Interesting wasn't it, in the Adele Ferguson oral history, to read her take on the political infighting and machinations that snared Walgren?

Utter: Yes.

Hughes: It appears there were a lot of shades of grey there about who did what.

Utter: There always are, John. There are few *really* bad people. We saw it in our disciplinary work we had to have for lawyers, where people do some things that are just hard to understand.

Hughes: What was life like in the Temple of Justice in 1954? Did you get in the trenches and do case law research for Judge Hill?

Utter: Lots of work to do for the judge. A lot of work. I was involved in trying to whittle down this backlog. And as I said, it was done by the time I left. It's not all *my* work, but we worked closely together. We (clerks) would have cases assigned to either prepare before argument or that the judge had heard previously. My job was to help him work out a solution to it. So usually he would turn something over to me and say, "Let me know what you think." And I'd prepare a report. On occasion I would prepare a suggested draft for an opinion, feeling great pride when it was adopted under the judge's name.

Hughes: Would he do a lot of revising and rewriting, or could you see a lot of Utter left in there?

Utter: There was enough left to see your paw print on it. But that was a fascinating time, a feeling of real responsibility but also of creativity. The whole year was a chance to really learn more about law without a lot of pressure to have to make money, or have to take care of office matters.

Hughes: To make this clear for the layperson, were you methodically and painstakingly researching precedents?

Utter: Very much. And doing research on the briefs. I was at the library almost every night and stayed late. I became acquainted with Justice Harry Foster, a wonderful judge. We had never really met, but I spent late hours at the library and I would see him all the time.

Hughes: So Judge Foster was there doing his own leg work.

Utter: He was. But what I got most from Judge Hill I think is a commitment to public service, and an opportunity to grow in the understanding of the law; to have another year to spend before I had to get out in the trenches.

Hughes: What did law clerks make in 1954?

Utter: We were one of the highest paid of any of the graduates. I think we got \$350 a month. I think I was the second or third highest paid in my class, if you can imagine \$350 a month.

Hughes: In terms of jurisprudence, was Judge Hill particularly sagacious or was he much more concerned with the outside world, public service and spiritual life?

Utter: Very concerned with spiritual life; pretty broad view of public service. But I think a man of his times. I don't recall his taking a position on controversial law issues.

Hughes: Looking back, if you were writing a profile of Judge Hill's jurisprudence would he be portrayed as a highly regarded jurist?

Utter: It's hard to quantify. ... Hard to measure. Just like anything, the closer you are to it, the worse your judgment is. He was a good judge in terms of wanting to find the law and follow it.

I think at that time I grew a lot in terms of my thinking about developing common law, which I find one of the great gifts, really, of being a Supreme Court judge.

Hughes: We're right back to the Magna Carta, aren't we?

Utter: That's exactly it. I don't think that was a great fascination for him ... But he was somebody to whom you could appeal for a sense of fairness about something. And if you could expand on that, based on some law principle, you'd have his attention. ... He was open. It was not a caste-conscious type of relationship. I think the best way to describe it is as he felt I was a member of his family.

Hughes: Was Mrs. Hill that way too?

Utter: Absolutely. Erma Hill.

Hughes: Has anything ever been written about Judge Hill beyond that Sheldon biography in *The Washington High Bench*?

Utter: I don't know. I'd be surprised if there wasn't, but I'm trying to think of what it might be.

Hughes: When the law clerks got together, having a hamburger or whatever you did at lunchtime in those days, did you say things like, “Boy, my judge did this.” Or, “You’re lucky you got Matt Hill instead of...”?

Utter: I think Judge Hill was respected. I guess would be the best way to phrase it. Whether it was for doctrine, or for intelligence, or for work habits, social concerns or just generally, it’s hard to pin down. But I think his religious commitment carried with him ideals of fairness, equity for love, obligation to your fellow citizen.

Hughes: Would it be fair to call Matthew Hill a legend?

Utter: Oh, I think so.

Hughes: And not just “in his own mind,” as the old saying goes, that he was a real man of parts?

Utter: Humble man, but talented. I’m trying to think who he reminded me of. A bit of Rumpole of the Old Bailey, the aging British barrister in the BBC TV series.

Hughes: Was Judge Hill in some respects enlightened for his era? Would he be sitting here nodding at the social equality issues we embrace?

Utter: Well, he hired Charles Z. Smith as his law clerk. Things were changing. I mean you look at Brown v. Board of Education, (the landmark school desegregation decision) and the revolution that that created.

Hughes: There were relatively few blacks in Seattle when you were growing up and way fewer on Grays Harbor in 1953 when I was in school. I remember when Aunt Jemima came to A.J. West School in Aberdeen, making pancakes, and how novel it was to see a black person.

Utter: Yes!

Hughes: In 1954 when you were a young law clerk, did you have strong feelings about race, equality and equal justice?

Utter: All of the above. I think the word “equality” is probably the strongest indicator of what I had strong feelings about.

Hughes: Did you actually know any minorities?

Utter: I knew Charlie Smith!

Hughes: Smith told me that when he graduated from the UW Law School in '55 there wasn't a Seattle law firm that would interview a black man – or a female of any race, for that matter.

Utter: And when Charlie Smith moved to Olympia in 1955 to clerk for Judge Hill right after me there were no other blacks. We went through this process of making sure that he could take our apartment when we left and that the people in the apartment would like him and accept him. ... We did the same thing when he moved back to Seattle and we worked as deputy prosecutors. We lived in North Seattle and we found a home on the block next to

ours where he and his family could stay.

Hughes: You had known Smith when he first arrived in Seattle around 1951 and became a member of Seattle First Baptist Church?

Utter: It was a fleeting acquaintance. We weren't friends at that time.

Hughes: Wasn't there a pastor there who was very inspirational?

Utter: Gus Hintz was the pastor there. Good man, very good man. First Baptist had an interesting background ... as essentially a pacifist church in the first

and second world wars, which in those years was not easy to do. ... As for my awareness of other races, I had done some work on ships and I recall having a friendship with a black shipmate. I was a high school senior. I was going to ship out on a boat going to Japan, Army transport, as the only white face in the all-black Stewards Department. But it stayed back all summer so the great romance of the sea was not available. Never got to go. Story of my life! (laughing) But there was a young black man there who I befriended. We did some hiking together, mountain climbing. Things of that kind. I'd forgotten about that until we starting talking. That's probably one of my only early experiences with race.

Hughes: Smith deserved the clerkship with Judge Hill on merit, but was giving him a chance



Surprise for Judge

About 20 former law clerks of State Supreme Court Judge Matthew W. Hill surprised the judge with a dinner at the Rainier Club and gifts including World Series tickets and plane tickets to get there. From left —Municipal Judge Charles Z. Smith and Superior Judge Robert F. Utter, who represented the former clerks in presenting a plaque of appreciation, Judge Hill and Mrs. Hill.

because he was black something that Hill would have felt strongly about? That he made a conscious decision to break down some barriers?

Utter: I think so.

Hughes: Do you think there were many other justices – “judges” as they were called then – on the Washington Supreme Court who would have taken a young black man to be their clerk?

Utter: I think Judge Fred Hamley probably would have. Maybe one other. I just think that the fact that Smith was a fellow member of the First Baptist Church and a sense of fairness that was inherent with Judge Hill were probably reasons for taking Charles Z. as his clerk – that and Charlie’s obvious intelligence.

Hughes: Was that a well integrated church?

Utter: Yeah, it was a liberal church at that time. Well integrated? Probably not, but not where there were barriers to admission for people of color.

Hughes: The University of Washington Law School produced seven future justices of the State Supreme Court in the space of four classes, from 1951 to 1955: Jimmy Andersen, Class of '51; Jim Dolliver, '52; Keith Callow also '52; Carolyn Dimmick in '53. Bob Brachtenbach and Bob Utter were both from the Class of '54, and C.Z. Smith graduated in 1955. Andersen, Dimmick, Dolliver, Brachtenbach and Utter served together, five of you. What an interesting collection of personalities.



The Washington Supreme Court in 1984. From left , Hugh Rosellini, James Andersen, Bob Brachtenbach, Vernon Pearson, Carolyn Dimmick, Robert Utter, William Williams, James Dolliver, Fred Dore.

Utter: That's an understatement.

Hughes: That's a fascinating cocktail party guest list. Did you know all those people pretty well before the court?

Utter: No, not all of them. I knew Jimmy Andersen pretty well because we'd served in the King County Prosecutor's Office together. And I knew Charlie Smith from Law school, and the First Baptist Church.

Hughes: If I recall correctly, Justice Jimmy Andersen saw some heavy combat during World War II. He was in the legendary Battle of the Bulge, wasn't he?

Utter: Yes, he was ... and having survived those terrible times, sometimes he would carry a loaded revolver. There's a wonderful story there: He was at a federal judges' meeting. Jim and Judge Alan McDonald had topcoats that were very similar. They put them on the same coat stand. Alan left earlier than Jim and accidentally put on Jim's topcoat. He gets to Sea-Tac Airport to fly back to Yakima and he reaches in his pocket. Then he says to security, "You won't believe this but I have a loaded revolver in my pocket. And I don't know how I acquired it." (Utter is laughing)

Hughes: Did they believe him?

Utter: Well they had to eventually. I think he was a federal judge by that point.

Jimmy is so complex. One of the most complex people I've ever met. He suffered greatly during the Second World War. He spent, I think, a year in French hospitals recovering. There was a class in the Second World War of young soldiers slated to become officers. Things were so desperate in the Battle of the Bulge that they packed them up and sent them to the front lines with literally no training. And Jim was among those.

Hughes: You also served with the much-admired Justice Charles Horowitz.

Utter: He was the brightest man I've ever met. Period. Anywhere. And that includes the U.S. Supreme Court, federal district courts, the court of appeals. He went to law school at the UW and won a Rhodes scholarship to Oxford. Charlie Horowitz chose Roman law as his focus at Oxford. He found out the summer before he was to go to Oxford that Roman law was taught not in English but in Latin, and he'd never taken Latin.

Hughes: Did you take Latin?

Utter: I did in high school. I got a D, and I didn't deserve it.

Hughes: I got a B! But outside of still being able to conjugate some verbs, it's not very utilitarian.

Utter: But Horowitz didn't know Latin. He learned it over the summer, goes to Oxford and



Justice Charles Horowitz, described by Bob Utter as "the brightest man I ever met."

gets a "first" in Roman law. I think he was one of the few Oxford Scholars from the U.S. who came out with a first. And then he came back to Seattle and wanted to practice law here, and of course they weren't hiring then. And the friend he wanted to practice with had no space and no time for him, and no money. And Horowitz said, "Well, just let me sit in your library and I'll work for nothing." And after six months they hired him and it became a partnership thereafter. That was the same firm that hired Betty Fletcher when nobody else would.

Hughes: Judge Betty Fletcher.

Utter: Oh, Betty is absolutely a must talk to for your oral history project.

Hughes: Is Betty Fletcher still alive?

Utter: She is.

Hughes: Actually, I was thinking of another Betty, who was a mentor to Judge Carolyn Dimmick and so many other female attorneys.

Utter: Oh, Betty Howard, who ran against me when I ran for the Superior Court in King County in 1964. Interesting story there.

Hughes: We've got to get back to that.

Utter: Anyway, Charlie Horowitz was *by far* the brightest man I ever met. And he had a big heart as well. He was the one who gave me that phrase, "To be a good judge you must first be a good human being." And he was absolutely right. He would come into the side of the Supreme Court hearings carrying stacks of books this high, refer to them without notes and recite them without looking at the text – just having them there in case he did. ... He was the attorney for Arnie Weinmeister of the Teamsters. Arnie was a member of the Pro Football Hall of fame and a well-known labor leader. Charlie was very successful in serving

the football league for Arnie and keeping the Teamsters out of trouble.

Hughes: So you got to serve with Judge Horowitz for how long?

Utter: Well, starting with the Court of Appeals in 1969. He was appointed along with me to the first Court of Appeals panel. ... The only area where Charlie had a semi-blind spot was on the issue of homosexuality. He wrote one opinion that was insensitive, I think, to the gay issues. But other than that he was just right on.

Hughes: There's a really interesting issue about the Court of Appeals that I want to get back to. In a 1999 TVW program on the occasion of the 30th anniversary of the Court of Appeals, you noted that when the voters approved the Court of Appeals as a means to reduce the Supreme Court's backlog, the high court's membership could then be reduced from nine to seven. Is that correct?

Utter: Yes, absolutely.

Hughes: So that sort of got lost in the translation over the years, didn't it?

Utter: It did.

Hughes: You noted at that time that numerous state supreme courts in the U.S. only have seven members.

Utter: Most have seven or less, and few have nine.

Hughes: We now have three divisions of the Court of Appeals, right?

Utter: Yes.

Hughes: Two divisions on the west side, one on the east side. And we still have nine Supreme Court justices. Would there be any case for reducing the number of justices?

Utter: Every case in the world because the more judges you have the more complex it becomes to decide a case. That's just two more judges you've got to run things through.

Hughes: Interesting. Do you think that among the present members or recent alumni of the court that you would find sympathy for reducing the size of the court?

Utter: The realities of politics raise their ugly head, and I've tried. I tried with Barbara Durham when Barbara resigned from the court. At the time she was still functioning fairly well. I tried to talk her into joining me in a campaign for that. And she did a little bit, but not much.

Hughes: In 1937, Franklin Delano Roosevelt, wanted to pack the U.S. Supreme Court with more friendly justices because he was frustrated by “nine old men” torpedoing New Deal programs like the NRA. Your notion is just the reverse. Fewer members, smoother justice?

Utter: Exactly. ... One more pipedream of mine, but we’ll see what happens.

Hughes: I wonder how Chief Justice Gerry Alexander feels about this.

Utter: Gerry is pretty much a historian, and I think he’s reluctant to deal with upsetting history. He’s a *good* man, and a *very* good judge, and he *loves* what he does.

Hughes: Alexander’s going to have to get off the court pretty soon by mandatory retirement.

Utter: He has to retire at the end of the year in which he becomes 75.

Hughes: You opted to take an early out through resignation on a matter of conscience, but is that a good rule? Judge Dimmick and the other federal judges essentially serve for life in the federal judiciary.

Utter: They lost Charlie Horowitz by the out-at-75 rule, and Charlie would have been good for another four or five years. But after that four or five years he started to slip, and it was very sad to see. And then you had the problem of who’s going to tell him? If they’re that far over the edge, are they going to listen even if you tell them?

Hughes: That must be one of the most tedious things of all, to have to approach a fellow judge about cognitive problems. Barbara Durham was suffering from pre-Alzheimer’s symptoms while she was on the court and died at the age of 59.

Utter: And she was affected by this for a couple of years before that, at least. It was very sad.

Hughes: In the collegiality of the court, and the self policing that the justices do, did you wander down the hall and say to someone, “Gosh, this is terrible. Who wants to go talk to Barbara?”

Utter: There was a lot of talk about the embarrassment at public occasions where she was asked to get up and talk and was just not tracking.

Hughes: Judge Dimmick told me that Durham knew it herself in about the last year, that she had grasped what was happening.

Utter: I admire Carolyn Dimmick so much, and especially for the way she handled that issue with her friend Justice Durham. Everything Carolyn does is first rate. Anne Ellington, a Court of Appeals judge, and Carolyn are the two women I served with whom I admire the most. ... The most significant thing I've seen in my lifetime has been the utilization of women's ability, much more than atomic energy or anything else.

Hughes: It's one of the best things that came out of the crucible of World War II. Of course, then there was the backlash when the guys came back. That's what I think is so remarkable about Carolyn Dimmick, and that generation of women. They persevered.

(Betty Utter joins us for lunch)

Hughes: I have to interrupt this lovely meal to turn on the tape recorder and note that Betty Utter has just revealed that the secret to her husband's accession to the Superior Court bench at the age of 34 was that he had mobilized the PTA with all the speeches he'd given.

Utter: In 1964, the year I was elected, I gave over 200 talks. It was an average of four a week. I had one rule, and that was I'd always be home for dinner.

Betty Utter: You did pretty well at that. ... I was pregnant with our son John and it wasn't going well at all. I had to remain in bed for about six months, during his campaign.

Utter: All Betty wanted to do was get out of bed, and all I wanted to do was go to bed. Neither of us got our wish.

Betty Utter: But anyway, John was healthy, but we were all scared, especially since Kim was born with her challenges.

Utter: It was scary, it really was. People ask our views on abortion. And my view is that that's a woman's choice. Although I have a reverence for life, I think a woman's body is her choice.



Chief Justice Bob Utter has Carolyn Dimmick sign her oath of office before joining the Washington Supreme Court in 1981. She was the first female member of the court.

Hughes: Hillary Clinton said something pretty eloquent in that regard, that abortion ought to be “safe and rare.”

Betty Utter: She did say that, and that’s *exactly* right.

Utter: I point out to people that we had to make our choice with John.

Betty Utter: This was 1964 and John was born in ’65. The doctor says, “It would probably be better if you lost it.”

Hughes: Easy for him to say.

Betty Utter: *Yeah.* Boy, I dug my heels in.

Utter: When Betty digs her heels in they’re done.

Hughes: Good for you, Betty.

Shakespeare said, “Journeys end in lovers meeting.” This seems like a wonderful match. How long have you two been married?



Newlyweds Bob and Betty Utter in the backseat, leaving the church in 1953.

Betty Utter: 55 years and three months.

Utter: *And three months...*

Hughes: And seven hours, six minutes and 10 seconds ... (laughing) Have you two reflected a lot on how lucky you are to have each other?

Betty Utter: Oh yes, we have.

Utter: We both had dated earlier.

The girl I had dated earlier had gone to the same church that I did, and my parents thought she was “the” one for me. I proposed to her and she said, “I want to take a week to make up my mind.” Being full of pride and ego, I thought, “Well, if she has to take a week, she’s not the girl for me!”

Hughes: Great story. Did you know this girl, Betty?

Betty Utter: I did know her. It’s a good thing he didn’t marry her! (laughing)

(Lunch ends; one-on-one interview resumes)

Utter: The story of how I got started in judging is interesting. I'd been in private practice almost three years.

Hughes: You could have made some real money.

Utter: I was doing *very* well. But I had been involved in the YMCA and helping get the Big Brother program started in Seattle in 1958.

Hughes: That's a wonderful program.

Utter: Oh, it's just worked out so well, just so well. But in 1959 I got a call one day from a Superior Court judge I had tried some cases before, Eugene Wright. And he said, "I know you're going to say no, but we need somebody to go to the Juvenile Court and be the second judge there – the court commissioner." Then he said, "It will be less than half of what you're making."

Hughes: What would that amount have been back then, if you were doing pretty well as an attorney in private practice?

Utter: This was in the late 1950s. I had been in practice three years. I think I was making \$20,000 or \$25,000 a year. Our son Kirk had just been born, with no handicaps, but we had no health insurance.

Utter: So, I got this phone call. His last line was, "Take all the time you want to decide, but we have to know tomorrow." Actually, the judge who called may have been Francis Walterskirchen, not Eugene Wright. Or it could have been both of them.

Hughes: In any case, having only 24 hours tends to focus your energies.

Utter: But bless Betty. We were facing these bills and no hope of an increase. I think I got three-quarters of what a Superior Court judge would get. So my pay was about \$9,000 a year. And one of the determining factors (in taking the court job) was that we had no medical insurance. And we had a child with severe medical problems and a lot of bills to look forward to paying. I had the option that if it didn't work out to go back into private practice, which I enjoyed.

Hughes: Where would we be without health insurance? It's incredible.

Utter: I will pay whatever I have to pay in taxes to get people covered. ... But they told me "There is no hope that you'll get a raise in salary" anytime quickly. The raises came every

three or four years, gradually, but we made it.

Hughes: It was a good decision, wasn't it? You were at the crossroads and made the right choice?

Utter: Well, I had this public service ethic, but I had no self-confidence that I would ever be a judge. I toyed with that idea, but I wouldn't have run for the judiciary. So when this came up I thought, "Well, this is a chance to be of service, and it's a chance to see if it's something I like." So Betty and I talked. And I thought, "Well, if I don't take it I'll always have to live with the 'what if' issue." And I never wanted to live with that.

Hughes: The road not taken.

Utter: That's exactly right. And that was part of what was behind the sailboat trip to Hawaii years later. I was thinking, "Here I am at another crossroads. If I don't do it, I'll always wonder."

Hughes: Did a Juvenile Court commissioner have the rank of a judge?

Utter: They have all the judicial power except the right to try jury trials. ... People usually referred to me as judge.

Hughes: And what did your dad, John Utter, have to say about your decision to leave private practice?

Utter: My dad, blessed man, just was so proud that I had graduated from law school. I won't say "amazed," but proud at least. And he said, "You'll ruin your career." And he said that with *every* good intention.

Hughes: Even though you didn't have medical, you *were* with a Seattle law firm and by taking that diversion into public service your dad figured you're not going to have that opportunity again.

Utter: That would be the end of it. And bless his heart I think he was looking forward to working on some clients with me. As a matter of fact we had done that with a few. It was very enjoyable for me and for him. ... He died at 58 of a sudden heart attack.

Hughes: That's too bad. Did he get to see his son become a Superior Court judge in 1964?

Utter: No, he did not.

Hughes: But even though he had these misgivings was he really proud of his boy Bob?

Utter: Oh, I think so.

Hughes: Earlier, you were downplaying the writing side of your career. But the line you wrote about the conscience as “a sacred sanctuary” is *really* good writing. I’m reminded of Pastor Niemöller, the German minister who wished he’d done more to protest anti-Semitism and wrote, “First they came for the Jews and I did not speak out ... Then they came for me.” The issue is listening to your conscience... Did scripture fascinate you when you were growing up?

Utter: In Sunday School it did. As I later became involved in the church and Betty and I were Sunday school teachers, the inevitable doctrinal splits began to occur within our church and this changed my internal ability to make that church the most important thing in my life. ... While my faith is still the most important thing in my life, I can’t make the commitment to organized religion that I once did. We still attend First Baptist Church, but there is enough pain involved that I’m reluctant to expose myself to it as deeply as I once did.

Hughes: At college in the 1960s, one of my theology professors was asked if he ever had any doubts. He said, “I’m a believer, but sometimes I can’t bring myself to let my left knee all the way down.”

Utter: (laughs) Well, that’s an interesting outlook!

Hughes: You have written about The Parable of the Good Samaritan, with that timeless admonition to have mercy and “go and do likewise.” It really says a lot about those struggles in “the sanctuary of the conscience” that you had regarding the death penalty, doesn’t it? The issues of mercy and equitability...

Utter: *All of that.* My phrase is that “no human being is wise enough to say when another should die.” It came really from the Don Anthony White trial. That was the *seminal* thing in my thinking about the death penalty. I struggled with that on the Supreme Court because I had the strong feeling of just the futility of the death penalty as a remedy.

Hughes: Don Anthony White was the young black man who had an extraordinary IQ and all sorts of mental problems. He killed two people in 1959. The notion was that he was bad to the bone. Please pick it up from there and tell us about it. It has an incredible ending.

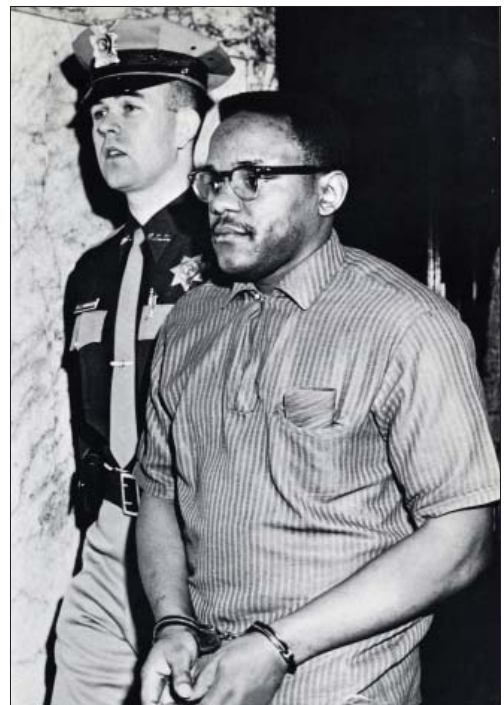
Utter: Well it does, it does. And before that case I had been involved in death penalty trials as a prosecutor in King County. Capital punishment didn't bother me. I didn't rejoice in the fact that I was asking for someone's death, but I just felt it was part of the law. ... We didn't win those cases when I was a prosecutor in the 1950s, thank goodness. As an aside, there was an interesting trial back then – a man named Clifford Law. Clifford was black, big and mean. And he killed his wife. Clifford couldn't read. Story Birdseye was the judge in King County Superior Court. (Future Supreme Court Justice) Jim Andersen and I tried the case. Jimmy was the lead prosecutor and I was second. Judge Birdseye was a strongly involved man in library causes – national, local. He had a sort of verbal tick. He would say two or three sentences and go, "Ho, ho, ho." And he went, "Clifford Law, I sentence you to life in the Washington State Penitentiary. Ho, ho, ho. But don't worry; you'll have lots of time to read in the prison library!" Not being aware that Clifford, of course, couldn't read a word.

Hughes: That's hilarious.

Utter: Well, it's "black" humor, no pun intended.

Hughes: What year did the Don Anthony White case end up in your court, judge?

Utter: It came back to Superior Court in 1968 ... Social workers had predicted White would kill somebody from the time he was seven years old. He was raised by a psychotic mother, in and out of juvenile court and almost every child care institution in King County as a young man. He was sentenced to the penitentiary for burglary when he was 15 or 16 and released when he was 17 or 18. Riding back to Seattle with his parole officer, they passed Western State Hospital. White pointed to it and said, "You know, I belong there, not on the streets of Seattle." Two weeks later, on Christmas Eve 1959, he killed two innocent people ... brutal murders. White was so far out of control that at the time of his first trial –



Don Anthony White being escorted by a sheriff's deputy in 1963. White was re-sentenced to death for the two murders.
Courtesy *Seattle Post-Intelligencer*

I wasn't the judge for that one – that they had to sit a deputy sheriff between him and his attorney so White wouldn't kill his attorney.

Hughes: Gulp.

Utter: Yeah, his own attorney, with good reason, feared for his own life. And that was the atmosphere in which the case was tried in 1960. It took the jury I think about two hours to decide he was guilty and that he should hang.

Hughes: Who presided over that trial?

Utter: Judge Theodore Turner. Good man; good friend of mine. But Judge Turner had neglected to inquire into White's ability to assist in his own defense. And after eight long years of appeals, that flaw finally resulted in a new trial. I was the judge on the new trial in '68. ... Young Bob Utter is trying that case. And at that time it was the most sensational murder case in Seattle. I had seen all the facts, but there had been dramatic changes in White after all those years on Death Row at Walla Walla. It was remarkable. The psychosis was gone. At one point before the trial started, White's attorney attempted to get him to enter a plea of "not guilty by mental irresponsibility" at the time of the murders. If the jury had found that, White would have been released. But White got up in the middle of this presentation by his attorney and said, "Judge, I'm not safe to be at large now and I won't enter that plea." This is a man who eight years earlier had been so far out of control that they were worried that he'd kill his own attorney – a man who once said, "When I heard the steam pipes clanging in my head I'd lose control."

What unfolded was a series of dramatic events like that. At the second trial, White confessed that he had killed those people, but he said he had made huge changes in his life and felt he had something to offer society. And the jury took two hours to say, "Guilty of first degree murder, but no death penalty."

What made the difference in White's life was a lot like the things I talked about in my talks at juvenile court. There was this marvelous reporter from the *Seattle Times*, Don Wright, who reported on the trial. He wrote a book called *To Die is Not Enough*, talking about White's troubled childhood and the murder trial. Don Wright not only wrote the book, he would drive to Walla Walla once a month to visit Don White for all those years.

At first, he was pretty much alone in this, but a number of members of the Quaker faith starting visiting, too, as well as the Archbishop of the Spokane Catholic Diocese. These good people, for the first time, gave White an appreciation of his own self-worth, and that began to overcome some of the anger that had built up inside him before the first trial.

Hughes: Was his violent rage a psychosis? Did medication or therapy help him regain his sanity?

Utter: Well, your question is very good, sir. I don't know about medication, but the therapy was mostly reading on his own, meditating and being visited, realizing that people really cared about him – that he wasn't just "garbage." The doctors at the first trial testified that he was hopelessly psychotic. There was no chance of curing that, they said. At the second trial, one of the doctors testified that there was no sign of psychosis.

Hughes: So much for psychiatry.

Utter: You can ascribe whatever you wish to that change, but I think it *had* to be the humanizing of him, all the efforts to show him he did have individual self-worth and that people cared enough to come and listen

to him and encourage him. He was a gifted architect, a gifted artist. He had just begun to show the results of this innate intelligence he had. And there was no sign of anger; the psychosis was *gone*. So that case – the story of Don Anthony White – was really the foundation for my views on capital punishment being "an unjust law."



Don Anthony White, flanked by his lawyers, James C. Young, left, and David A. Weyer in 1963.
Courtesy *Seattle Post-Intelligencer*

Hughes: And what happened to Don Anthony White?

Utter: He spent lingering time in prison to serve out his term, then was released, lectured in some colleges, interested my oldest son, Kirk, at UPS when he lectured there. He was never involved in any serious criminal acts again. He worked with the Quakers and counseled prisoners and young offenders. Tragically, he was badly injured in a mugging – a

random assault – in Oakland and died in 1995. He'd had health problems too.

Hughes: Over the years did you have a chance to have a one-on-one follow-up with him?

Utter: No, it just didn't happen. But I followed his story, and that was the beginning of my statement that "no human is wise enough to say when another should die."

End of Interview I

March 4, 2009

Interview II

March 5, 2009

Hughes: I regret that I didn't get to meet the late Charles H. Sheldon, who published his biographical history of the Washington Supreme Court in 1992. Is that a praiseworthy effort, in your view?

Utter: In two aspects it was, John. First, he simply did it. He did the court a favor by just doing it. And he put a *lot* of research into it. The problem was that Chuck did not have a background as a lawyer so he didn't understand that labels don't mean anything. And he tried to categorize people. I was fond of Chuck – fond enough that I just spoke frankly to him about this. We had a number of interesting discussions, but I'm not sure I ever changed his mind.

Hughes: That makes me feel good because as a historian I resist plugging in labels like "Republican," "Protestant" ... trying to make well-rounded, multi-faceted people fit into square holes. But in Sheldon's defense, people evolved after he wrote the book. Justice Carolyn Dimmick certainly did and so did you. It must have taken him years to do all that research, interviewing and writing. It's an invaluable reference work.

Utter: Well, one of the great stories out of Chuck's book was that he categorized one judge as the most popular on the court because he had the fewest dissents to his opinions. I thought he was a pretty good judge, and I was fond of him. He had a good sense of justice ... but the reason he had few dissent opinions was that he'd go in the conference and say, "I've got an opinion written for either way, so what side would you like, boys?" (laughing) So he wrote very, very few dissents!

Hughes: Let's go back to Judge Matthew Hill, for whom you clerked in 1954-55. Sheldon wrote, "The experience, although but for a year, provided Utter with a lingering taste for appellate judging." Did you think, "Well, maybe someday I'll do this"?

Utter: Actually, John, it was such a stretch for me that I never thought I would be an appellate judge. My self esteem was never that high. It was beyond what I thought was my reach...

As for the appeal of appellate judging, I think it is because there is a creativity ... in

developing law. In state law systems you have three sources – legislative law, constitutional law and then common law, which fits in when there’s no other law that applies. It’s a wonderful exercise to be able to study history and find out where developing areas of sensitivities fit in, where people’s rights have to be respected. And it changes almost daily.

Hughes: Was that sailboat race in 1976 when you were 46 really a life-changing event in terms of your confidence? You were already an appellate court judge.

Utter: In terms of fear. There is a difference between fear and confidence. It was absolutely life changing in terms of fear.

Hughes: Because?

Utter: Because I’d been fearful of what I would find and the responsibilities I had as captain.

Hughes: Like, “My God, the mast broke and waves are crashing over the deck. We’re all going to die out here”?

Utter: Or, “Somebody has been washed overboard!” Even worse, if there’s a medical emergency and there’s not a doctor on board, you’re in charge.

Hughes: Or worse yet, Utter has cold-cocked himself and is below deck crumpled on the floor.

Utter: And doesn’t know where he is! I think that scared a lot of people. But it was that



Daring Spirit, which Utter owned in the early 90s.

experience, I think, that freed me to go ahead and take flying lessons. I enjoy flying a great deal, but I never do it with a sense of fear. Focused concern at times. I think that’s the way we describe it.

Hughes: We talked yesterday about the conceit of psychologizing. But when you look back from the vantage



Utter during the Toliva Shoal Race, February 1984.

point of 78 at a wonderful career and an eventful life that, like most, is not without its bumps, where do you think the lack of self esteem came from?

Utter: It came from my mother's death when I was five.

Hughes: Until I was 10, every other kid had a dad, and I didn't. It was hard.

Utter: Exactly. And that was one of the reasons I pushed so hard to get the Big Brother program started in Seattle and here in Thurston County. I always felt someone was missing. My stepmother, who was a *good* woman, had this frustration with young boys. At times when she would be frustrated with me, she'd tell me I'd never amount to anything, etc., etc. It was out of frustration. It wasn't out of malice. But that stuck. And as I look back at my problems with self esteem, that's probably where a lot of it came from.

Hughes: Happily, you channeled that into empathy and concern for young people so that they could have strong role models. ... Last night, I was reading the *Law Review* piece you wrote after you resigned from the court in 1995 to protest the death penalty. And I kept thinking about one of my favorite allegories – The Myth of Sisyphus. Poor Sisyphus was condemned to push a boulder up a hill. And every time he got it to the top, it rolled him right back down. You'd been writing death penalty dissents for years, to no avail. Then it came down to searching "the sanctuary of the conscience" for a course of action. You felt you had to make some sort of statement. That must have been incredibly difficult.

Utter: It was a hard choice, John. The impetus for that came from reading a lot of history, especially from the book about Hitler's judges. I think only two of them resigned in protest. Only two opposed Hitler's tactics during the entire Nazi regime. Only two non-Jewish judges.

Hughes: It's shocking. They were incredibly well educated men. And yet they were self-conscripted into this hateful, murderous regime. Albert Speer, Hitler's architect and later minister of armaments, was a genius, a cultured man who looked the other way and mobilized slave labor for the Reich.

Utter: Yes, a brilliant man. And that book about the judges was really what did it. Whether I would have done it (resigned) had I not read that book, I don't know. But it just struck me that it was such a clear example of where conscience should have triumphed over circumstances, and it didn't.

Hughes: Got to digress again! It is written that you had "several opportunities" in 1955 after clerking for Judge Hill. Was it Charles O. Carroll, the King County prosecutor, who made the best offer?



Young Lawyers Join Staff Of Prosecutor

Two young men Saturday joined Prosecutor Charles O. Carroll's staff as deputy prosecuting attorneys.

They are Leonard W. Schroeter 31, of 2619-11th Ave. N., and Robert F. Utter, 25, of 1126½ Lakeside Ave. S.

Schroeter has been director of the Washington Regional Office of the Anti-Defamation League of B'nai B'rith since December of 1952.

A former reporter for the United Press, he was an editor of the Rome edition of The Stars and Stripes during World War II. He received his law degree from Harvard Law School. He has two young sons. He is a native of Indiana.

Utter was born in Seattle and was graduated from West Seattle High School. He obtained his legal education at the University of Washington Law School, and for the past year he has been clerk for Justice Matthew W. Hill of the State Supreme Court. His wife, the former Elizabeth Stevenson of Seattle, is a teacher in Seattle's Montlake School.

New Assistants

KING COUNTY Prosecutor Charles O. Carroll (left) welcomes two new deputy prosecutors to his staff. They are Leonard W. Schroeter (center) and Robert F. Utter.

—(Post-Intelligencer Photo.)

Utter: The *first* offer. Betty and I were hiking through the Olympic National Forest on the old Press Expedition trail. I told Judge Hill to accept the first offer that came in. Talk about scientific career planning!

Hughes: What were the other applications you had in the hopper?

Utter: I had an application in to the Federal Communications Commission in D.C.

Hughes: That would have been interesting.

Utter: It would have been fascinating, if you look at the expansion now, radio and television. The other offer was to the graduate school in taxation at NYU. Three *very* different career paths. Who knows what would have happened?

Hughes: Did you hear from Chuck Carroll himself that he wanted you to join the office as a deputy prosecutor?

Utter: I don't know whether it was Chuck, or whether it was a deputy, or whatever. But that was the first offer that came in.

Hughes: Do you think he was interested in you because you'd done well and that there was a certain cache of having clerked for Matt Hill?

Utter: I think the clerkship was a part of it. I think that my father's involvement in city life with this commission on censorship also helped.

Hughes: Oh that's right. Dad was screening movies for imprudent things. I've always heard the phrase "Banned in Boston," but I never imagined Seattle had something similar.

Utter: It was a voluntary compliance by the distributors.

Hughes: And of course there was a lot of hubbub in the 1930s about movies portraying gangsters as being too romantic, and then in the 1950s about promoting juvenile delinquency – "The Wild Ones" on motorcycles and rock 'n' roll.

Utter: There was trouble in River City, John!

Hughes: Trouble with a capital "T" – "and that rhymes with 'P' and that stands for pool!"

Justices Smith and Dimmick told me that Charles O. Carroll was Mr. Republican, through and through.

Utter: Oh absolutely. And at that time I was a Republican, too. There is no question about it.

Hughes: But it was just a given that if you worked for Chuck you were going to lick envelopes and hit the hustings for him and whatever Republican was coming down the pipe.

Utter: Or you didn't work for him!

Hughes: What did he have you doing?

Utter: I was the vice-president of the Young Men's Republican Club in King County.

Hughes: Who was the president?

Utter: Probably Jimmy Andersen or some other person who worked at the Prosecutor's Office. ... We mainly found groups who would endorse Chuck Carroll. It was a good old political machine, is what it was, and everybody (in the office) had their job to do and part of the community to cover.

Hughes: What kind of man was Carroll, apart from politics?

Utter: Multi-faceted I guess would be the best way to describe him. Charming, driven, conflicted ... He thrived on public recognition and adulation.

Hughes: So what was your job as a deputy prosecutor for those two years (1955-57)?

Utter: I started where everybody did, and that was in the criminal non-support section.

Hughes: Deadbeat dads.

Utter: Deadbeat dads. And then I worked from there to the morals calendar in District Court. After that I did felony trials.

Hughes: Dimmick was a divorce proctor and then worked the morals calendar.

Utter: She was a hard worker and ended up breaking a lot of barriers in her spectacular career.

Hughes: And how about C.Z. Smith? He was working on the Dave Beck case.

Utter: I had already left the office by then. But I saw that he was going places.

Hughes: Whatever your misgivings about yourself, you never, ever had a whit of prejudice, did you? Being prejudiced against anyone of any race or creed never occurred to you?

Utter: Exactly that. I felt that I could be a role giver, a role model in assimilating with other races. I always had an activist point.

Hughes: Where did you get that attitude?

Utter: Perhaps from my family background and the Baptist Church. But it was just there. I've always had a heart for the underdog, for those who are dispossessed and for outreach in promoting equality.

Hughes: Carroll had his quotas. The way Charlie Smith tells it, it was, "Look – I've got a black, I've got an Asian..." He'd always point to somebody in the room as evidence that he was very ecumenical. That was a very good thing about Chuck Carroll, even if part of it was for political show. Hardly anyone else was doing that.

Utter: Exactly. With a name like Utter I could be any nationality you wanted, so I was a triple threat player.

Hughes: How many times have you suffered “Utter” puns over the years?

Utter: I tell people, “After grade school I got tired of losing so many fights. I just let it roll off my back.”

Hughes: What is the most utterly awful one you can recall?

Utter: They’re all bad! (laughing)

Hughes: Not as bad as some of the sexist stuff Carolyn Dimmick was subjected to. When I researched her biography, it was amazing to see all the classic 1950s, “Pretty Blonde Water-skiier” headlines they trotted out for her – the gee-whiz things about “she’s a woman *and* an attorney!”

Utter: And *smart!*

Hughes: Was there anything very important that you learned from being a deputy prosecutor for those 18 months?

Utter: I think just seeing a side of life that I hadn’t seen very closely before – lives thwarted or ruined by misconduct, exploitation; just how easy it is for people to take a wrong step and nearly be branded for life. Juvenile Court was what really shaped my point of view on the necessities for a full life. I saw a part of that in the Prosecutor’s Office as well. But I’ve always looked at Juvenile Court as the most significant part of my whole judicial career.

Hughes: Did you come home at night and tell Betty, “My God, you won’t believe what happened today”?

Utter: Well, either that or just keep it inside me. But I still had this drive to get out and do something about it. So it was an opportunity to change things. I’ve always thought that for those who have just spent a short time in Juvenile Court it had to be the most downbeat experience of their life because they never saw change as being possible. I was there for five years and people kept saying, “How can you stand it?” Well, it was hard, but it gave me an opportunity to get some things going for service in the community that I would not have been able to do before. The first time I got to Juvenile Court, 1959, my first year, they were still keeping infants in high-security detention facilities because there was

no other place for them. We had this room with cribs and little babies in there because the community hadn't provided any other place for them.

Hughes: Who took care of these children?

Utter: Nurses or detention workers. What a tangled mess. And I got together with KIRO radio, with a wonderful woman who was part of their community service program and we said—

Hughes: What was her name?

Utter: I don't recall. ... But she got together with me and said, "We're going to get these kids out of here." We worked with the Legislature, got the budgets changed for providing funds for really young children and within a year we closed down that part of Juvenile Court. And we got placement for children in smaller homes where they could be cared for and given affection.

Hughes: This helped spawn the foster family movement?

Utter: Very much.

Hughes: Thank you!

Utter: It was very satisfying because I could see a need. I could address it. I could work with lawmakers to not only bring it to the attention of the public but to bring out a solution. Personally, best of all, when I went to sleep at night it didn't nag on my conscience.

Hughes: So who were some of the lawmakers who helped with that sea-change?

Utter: That's 50 years back, John. You're out of luck with me there.

Hughes: I will try to dig that out.

Sheldon's biography says, "He remained with the King County Juvenile Court until 1964, when upon the urging of members of the King County bench he ran for and was elected to the Superior Court." Tell me about that.

Utter: Well, that was very interesting. I was a true underdog because the law even then was that if you won more than half the votes in the primary there was no final. And these two older attorneys were running for this spot on the King County Superior Court, a spot that by tradition had been assigned to the Juvenile Court. But the other judges had made

clear that whoever won that spot would not be assigned to the Juvenile Court; the new judge would just be put on the regular trial calendar. And it had been a while since I tried regular trial calendar cases. But I had the support of a lot of people in the community who worked very hard and we just simply outworked my opponents.

Hughes: Who were they?

Utter: One was Ed Quigley and the other was Betty Howard, Carolyn Dimmick's friend.

Hughes: Were they well connected politically?

Utter: Ed was well liked, as was Betty. They were both likeable people. But I think they didn't really understand how hard you had to work in a county of that size to be elected. ... We decided to go for the knockout punch in the primary. I'd been very active in PTAs and giving talks.

Hughes: Who were some of the people who played key roles for you in that campaign?

Utter: Oh, the various PTA chairs. Marge Roberson was a former state PTA officer.

Betty! (calls out to his wife in the kitchen)

Betty Utter: Yes.

Utter: I'm trying to think of people who helped in the '64 campaign. Marge Roberson, obviously. What was her PTA friend's name?

Betty Utter: Oh gosh, I can picture her. But Alice Frost did a whole lot too. She did an awful lot.

Utter: She was the wife of my CPA and dear friend – still is on both counts. We just had a lot of young energetic friends who pitched in. But the major part of the help came from the PTA. Some from lawyers. Charles Horowitz was on that committee then and we didn't know we would be compadres later.

Hughes: What sorts of things had you done to get yourself elected to the King County Superior Court bench at the age of 34?

Utter: I spoke *all over* the community for two or three years about juvenile matters and worked to develop services for kids. I had strong support from the PTAs, and I had helped found the Big Brother chapter in 1958.

Hughes: So a key part of the Utter platform was that you wanted that slot to be a Superior

Court judge who had oversight over Juvenile Court matters?

Utter: Well, not as much that as just someone who had the concern of the community at heart. I'd given over 200 talks the year the election was held, all over the county, four a week. Usually I'd talk about things I observed in Juvenile Court. And we'd talk about character building with children. I can still give it from memory.

Hughes: Give me a little shot of that stump speech.

Utter: I always said that the things people usually thought caused delinquency didn't. There were four basic things you had to do to give children a chance to grow up with a reasonable set of values and discipline. ... What was necessary for character building? Four things: love, identification, limits on conduct, and reasonable limits. I still think that that's pretty much it.

I'd start out with the need for love. I'd emphasize that every person has to feel important as an individual. The way you get that is through the sense of self-worth that comes from the reinforcement of others. Money has nothing to do with it, but time invested has a lot to do with it. I'd tell them that good role models are crucial – someone to emphasize the self-worth of each individual.

Hughes: "You *are* somebody." Jesse Jackson had that one right.

Utter: Exactly. Some wonderful studies have been done in Hawaii on a select group of kids who could be studied close enough over the years that we could be sure of what was going on. They found the one constant was the presence of one person in somebody's life who said basically, "You can do it." It didn't matter if it was the grocer or the policeman or the next-door neighbor or whatever. The third thing I would emphasize was a need for reasonable limits on conduct, consistent with age limits. I went on for about a half an hour like that.

Hughes: Did you get good press in the *Times* and the *P-I*? Did you get endorsed?

Utter: I did.

Hughes: By both papers?

Utter: I don't recall. But they had a Bar Association poll that was very interesting. I think Ed Quigley won it. He got 35 or 40 percent. I came in one or two points below him. Betty

UTTER APPOINTED TO FILL OUT JUDGE LONG'S TERM



NEWLY ELECTED SUPERIOR COURT JUDGE ROBERT F. UTTER AND FAMILY
Wife, Betty; Son, Kirk, 5; Daughter, Kimberly, 6, and Dog, Krissy, 2.

—(Post-Intelligencer Photo by Phil H. Webber.)

BY CHARLES RUSSELL

GOV. ALBERT D. Rosellini yesterday appointed Robert F. Utter, newly elected Superior Court judge, to fill the unexpired term of Judge William G. Long.

This means that Judge Utter will take office as judge of Department No. 6 of the Superior Court on Monday instead of waiting until next January, when the four-year term to which he was elected commences.

AT 34, he will become King County's youngest Superior Court judge.

Judge Long retired August 1 after nearly 31 years as Juvenile Court judge. Judge Utter has been a Superior Court commissioner assigned to the Juvenile Court for the past five years.

Governor Rosellini said he was "delighted to announce" the appointment of Judge Utter to fill the vacancy that would have existed until January.

"It is my feeling that this vacancy should be filled at once because of the court's heavy case load," the governor explained.

JUDGE UTTER'S election Tuesday and appointment yesterday to the Superior Court do not necessarily mean that he will serve as Juvenile Court judge. It is up to the judges of the King County Superior Court to decide which of their members shall hear juvenile cases.

In the past, one judge has been assigned regularly to the Juvenile Court. However, the judges now intend to distribute the juvenile case load to a five-judge Juvenile Committee, with one judge serving as presiding Juvenile Court judge. Superior Judge Lloyd Shorett now is presiding.

JUDGE UTTER said he hopes to be named to the Juvenile Committee because of his experience in Juvenile Court work and his "real interest in working with families and children." However, in addition to working with the Juvenile Court, he hopes to spend part of his time hearing cases on the regular trial calendar.

Judge Utter thinks it is "a positive step forward to have more than one judge trained and experienced in Ju-

venile Court work." The move was made necessary because of the constantly increasing case load. But it also, he thinks, will bring a better judicial perspective to juvenile cases.

THE NEW judge and his family—wife, Betty; daughter, Kimberly, 6; son, Kirk, 5, and dog, Krissy, 2, a big, friendly, 110-pound shepherd-malamute—live in an attractive Carkeek Park area home at 616 NW 116th St. The Utters expect another child in February.

Both Judge Utter and his wife, the former Betty Stevenson, were born in Seattle and attended Seattle Public Schools—he West Seattle High School and she Ballard High School. However, they first met in Oregon, while attending Linfield College at McMinnville. They returned here to finish their college work, both graduating from the University of Washington.

UTTER WAS graduated from the UT Law School in 1954 and that year began his legal career as law clerk for Chief Justice Matthew W. Hill of the State Supreme Court. He served as a deputy prosecutor for King County, 1955-57; was in private practice with the law firm of Rummens, Griffin, Short & Cressman, 1957-59, and was appointed King County Superior Court commissioner April 1, 1959.

Judge Utter is president and was one of the founders of the Big Brother Association in Seattle. He also is active in the YMCA and Friends of Youth. He was honored by the Junior Chamber of Commerce as "Young Man of the Year, 1964," and was the recipient this year of an honorary life

membership in the Washington Congress of Parents and Teachers for outstanding contribution to the welfare of children and youth.

THE UTTERS—being, as the judge puts it, "of a practical frame of mind"—bought a sailboat before they bought a home. The old sailboat—a 29-foot reconverted Bristol Bay fishing vessel built in 1911—provides the whole family "a way to escape and to enjoy a wonderful country," the judge explained.

Utter's overwhelming victory over two opponents in Tuesday's election was his first political experience.

"The thing I'll remember longest about this campaign is the tremendous gifts of time and energy that people make," he said. "I think on election to the Superior Court the really basic feeling you have is one of humility and responsibility."

JUDGE UTTER will be formally sworn in at 9 a.m. Monday in the Presiding Judge's courtroom, Room 915, King County Courthouse, with Judge Story Birdseye delivering the oath and Judge Eugene A. Wright the address of welcome. A reception will follow in Courtroom 812.

Naming of Utter to the Superior Court at this time leaves vacant the Court Commissionership which he has held. Judges of the Superior Court no doubt will receive applications for the post from attorneys. It pays \$12,000 a year. The judges could, if they wish, appoint to the post their brother judge, Raymond Royal, who was defeated for re-election by Municipal Court Judge Walter T. McGovern.



Howard came in third. But I had the support of enough lawyers of merit that my candidacy wasn't an out-of-left field kind of thing. That was encouraging because I had not been on the regular trial calendar for five years.

Hughes: Later, you won the endorsement of the Seattle Police Guild, I believe, in a Supreme Court race. Early on, had you picked up key support from people in juvenile services and law enforcement?

Utter: Very much so. Part of that came through the work with the Juvenile Court in the community, and part of it in getting the Big Brother program put together.

Hughes: Who helped? Were you *the* founder or were there others?

Utter: I have a little statue that says "Founder," but you never do anything alone. One was a dear friend, Howard Jones Jr., who is a stockbroker. Another was Earl Pinegar, who had been a "Little Brother" in Dallas when he was growing up. We were part of a young service club that had just got started in the Northwest. It was called Sertoma.

Hughes: Did that stand for something?

Utter: "Service to mankind."

Hughes: So this was in 1957-'58.

Utter: It would have been. I was the service chairman of the club and looking for a project. And one of our members of that committee was Earl, who felt strongly about Big Brothers. Earl was instrumental in giving us the idea. Then we got the whole service club behind it. There were no Big Brother programs in King County – or anywhere in Washington, Oregon or Idaho, for that matter. So we were really pioneers in that area.

Hughes: Wonderful. How many young boys and men did you have involved at one time?

Utter: It built slowly. We wanted to do it right. We started with the premise that we wanted to have a one-year's budget ahead of time so we didn't get something started and then have to drop it. To me the unforgiveable thing is to get yourself involved in the life of a young person and not be able to follow through. They'd had enough broken promises. Howard Jones Jr. was a very active one. He may have been the first president of our Big Brothers chapter. He's a great guy. Still alive. Just sent me a note, as a matter of fact, a couple of weeks ago about my editorial that appeared in the paper about the elections.

Hughes: Did you have any kind of a clubhouse or a fixed place for kids to meet, or was it more one-on-one with men and kids?

Utter: It was one-on-one. Getting Big Brothers recruited, and then supervising the matches between men and boys. I wanted to bring home every kid I ran into in Juvenile Court, but given our daughter Kim's struggle that would not have been possible. But I felt that I could concentrate on helping kids in other ways. Again, it's crucial that if you get involved in a child's life the obligation is not to get in and then get out. So I looked for some special opportunities. There were three kids that we wound up with as a result of my experience in Juvenile Court and in Superior Court.

Hughes: Tell me about those three.

Utter: Oh, it's hard. (He becomes emotional)

Hughes: I hope this has a happy ending. I knew that I liked Cindy McCain and that John McCain had a very big heart when I heard the story about Cindy getting off an airplane from Bangladesh with a child in her arms. She'd rescued the child when she was there as a volunteer. John said to Cindy, "Where's she going?" And Cindy said, "She's coming home with us." And John McCain said, "I thought so!" That's a very good woman.

Utter: Incredible woman. (Still choked with emotion)

Hughes: You should write a book, judge. These stories of yours are wonderful.

Utter: There were two boys and one black woman. The first one was Charles Russell, who was 15 and brought into Juvenile Court for shooting the boyfriend of his mother. The boyfriend was beating her.

Hughes: Shot him dead?

Utter: No. I told Charlie the only mistake he ever made was just shooting him in the foot. He was a determined kid who had not been in trouble before and just had no place to go. We found a spot for him at the Jessie Dyslin Boys Ranch. I kept in touch with Charlie and said, "If you can put things together I'll find a way to get you through college." I have the blessing of having good friends who had confidence in my judgment. And they said, "If you find somebody you have faith in, we'll back them." That was the Wyman family – the Wyman Youth Trust. Well, Charlie Russell got three degrees at WSU, then worked in electron

microscopy. Then he went back to the University of Georgia and got a Ph.D. in ecology.

Hughes: Amazing!

Utter: He became, I think, one of the world's leading experts on developing marginal land to produce food. Charlie learned five languages – Swahili, Japanese, Spanish, Portuguese, and one other incredible language, Hebrew. He could get along in them all. He's a great guy.

Hughes: Are you still close?

Utter: Oh, very close. I keep in touch with him once a month, at least.

Hughes: That is incredible, judge. See, one person can make a difference – can make *a lot* of differences.

Utter: The second young person we helped was Joe Fabre, a black man. Joe had been held in detention at the Juvenile Court because the judge I was working with said, "I'm not releasing you until you confess to your crime." The fact was, he hadn't committed the crime.

Hughes: "If you know what's good for you, son, you'll confess!"

Utter: That's exactly it. So one time when the judge was gone I went over to the detention facilities and let Joe out. I made the same commitment to Joe that I had made to Charlie Russell. He went on to get his master's in social work. He was the head of the YMCA branch in East Madison for a while. He died of cancer in his late thirties. He had married a *marvelous* woman, Vicki Fabre. Vicki is a remarkable black woman who is a law graduate from UCLA, bright as a button. Vicki called me when Obama was nominated for president, saying what a tremendous feeling of self worth this had given her. Here's this woman who is beautiful, well educated, accomplished in every sense of the word and yet this validated her.

Hughes: Who was number three?

Utter: Number three was Khalilah Rashad. Khalilah was a witness in the last case I tried as a Superior Court judge. It was just a terrible case of dysfunction. She started to testify against the defendant and broke down on the stand. We couldn't continue.

Hughes: I'll bet Judge Utter was having a hard time, too.

Utter: *I had a hard time.* But I held it together. ... What I would always do is offer them a glass of water. One of my connections with Carolyn Dimmick was that when there was something that was really tragic we were hearing on the Supreme Court I'd look over at her

and she'd get a little tear in the corner of her eye at the same time I did. ...

But anyway, the jury acquitted the man because she couldn't testify against him. She was upset, as you might imagine. ... And the woman who had raised her came to me and said, "Can you help?" And I had the same resource from the Wyman family that I had for the other two kids. I made the same commitment. She graduated from college later on.

Hughes: Still in touch with her?

Utter: Oh very much so.

Hughes: And these people have had productive lives?

Utter: Every one of them. Khalilah is working as a legal secretary now in a good firm and doing first-class work. ... All this has been a blessing for both Betty and me. She's as much involved in this as me.

Hughes: That's a great wife.

Utter: I'm very blessed. ... But the Charlie Russell story is especially fascinating. He has an endless curiosity and he's bright enough to follow it where it leads him. His track coach in high school said, "This kid will never give up." He has done contracts for World Bank and Inter-American Development Bank and assessing projects in Latin America and Central America, all over the world basically. But he doesn't want to leave home. He's happily married now and lives in Seattle. He has all this restless intellectual curiosity. He had a friend who had been involved in the tour business. So two years ago this friend talked him into starting a tour company. He came to me and said, "I want to get a boat and start boat tours." Well, I've had a lot of experience in buying boats, and I know a lot of things to avoid and what not to do. I learned the hard way. I tried to talk Charlie out of it. And here he winds up with this 38-foot former lifeboat from a Coast Guard icebreaker that was available down on the harbor. And I kept saying, "Charlie, what in the world are you thinking? You have to look at insurance. You have to learn how to run the darn thing." He did exactly the right thing: He ignored me. Showed me a picture of the boat and I fell in love with it. He went ahead and got his captain's license so he's a licensed skipper now. And then he took a diesel engine course. He's now taking a marine electronics course. And this marvelous mind is at work now on trying to get this tour company going. He's amazing.

Hughes: Before I forget, I need to ask you how much it cost to get elected to the King County Superior Court bench in 1964 in this three-way race?

Utter: It was about \$13,000.

Hughes: \$13,000 in 1964. We're talking real money.

Utter: And we were left with a deficit of \$6,000. Some of my campaign advisers suggested throwing a get-well party after the campaign. I wouldn't hear of it. I put a second mortgage on our home and paid it off. And I disqualified myself from a number of cases where I had people who were actively involved in my campaign.

Hughes: So you won it outright in the primary?

Utter: Sixty percent of the vote.

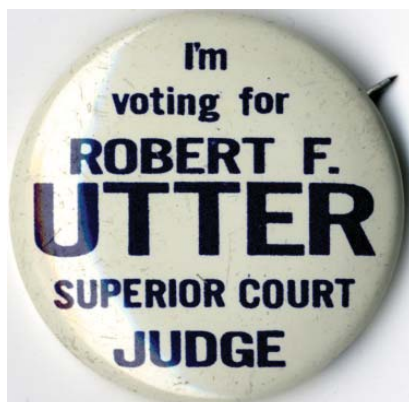
Hughes: Not bad for a beginner.

Utter: Well, it was unusual, again, because of my age, or lack of age. I was only 34. We just simply outworked them. They didn't expect that anybody would win it in the primary. They were going to put all of their effort into the General Election. And we thought, "Well, let's go for it right now." I had a lot of help from friends. It was just wonderful.

Hughes: Did you do classic things like yard signs?

Utter: Oh absolutely. But the main thing was endorsement cards. We sent out about 100,000 in King County. My PTA friends really helped on that.

Hughes: Did you have an Utter-for-judge campaign button?



Utter: We did.

Hughes: I collect campaign buttons.

Utter: I'll find you one. It's very small.

Hughes: This is a good segue to what it costs to get elected to the bench today.

Utter: It's staggering, just staggering. The one contested campaign I had while I was on the Supreme Court was in 1980, and that was against Danny Clem who was a county prosecutor. A genuinely difficult guy. In my view, he was a demagogue in the sense of roughing up feelings and sloganeering.

Hughes: Saying that you were soft on crime?

Utter: Exactly.

Utter: But I had some great help in that campaign. I had Charles Z. Smith, as well as Rabbi Levine and Father Treacy, (the well-known ecumenical figures in the Northwest). They got together and made a television spot for me. We ran that the last week of the campaign.

Hughes: Rabbi Levine uttered one of the greatest lines I've ever heard. He presided over the funeral of a revered citizen in Aberdeen and said as his benediction, "Remember that a good name endures beyond the grave." Those two clergymen were TV stars in Seattle for years.

Utter: They were great. Raphael Levine and I were good friends. ...

Hughes: Did you get good coverage from the media in the 1980 campaign?

Utter: I did. It wasn't that I was so good, it was that Danny was so bad.

Hughes: How much did that campaign cost?

Utter: Too much. It ran \$100,000. Just as I'd done in 1964, I put a second mortgage on our home to pay off the deficit – about \$18,000. I did not feel comfortable raising money after I was elected.

Hughes: The contentious 2006 campaign against Chief Justice Alexander, with the Building Industry Association of Washington weighing in for his challenger, that cost what – a million bucks?

Utter: I think the total amount spent in that campaign (against him) was more than \$2 million. ...The main threat wasn't that they were campaigning against a Supreme Court judge. It was that they were trying to influence how the judge would rule. They weren't looking for somebody who was middle of the road and would call it the way they saw it. They were looking for a candidate of theirs on the court. ...

(Editor's Note: During the Gregoire-Rossi gubernatorial rematch in the fall of 2008, Utter was the co-author of a guest editorial in the *Seattle Post-Intelligencer*. The column asserted that "Special interests are increasingly supporting candidates through 'independent expenditures' that are not subject to contribution limits." He was also involved in a lawsuit against the builders.)

Hughes: Who was your co-plaintiff in the 2008 lawsuit against the BIAW?

Utter: It was Faith Ireland, another former Supreme Court justice. We didn't serve together but we have mutual friends. Mike Withey is one. Mike's a very good attorney in Seattle and practiced for a while with Paul Stritmatter, your friend from Hoquiam. Michael was in the lawsuit during the early suit against the tobacco companies in favor of the union health and welfare funds. And after I retired from the court they got me involved in that on state constitutional issues. I got to know Mike well through that. I might say, by the way, that it was not successful.

... Faith is concerned about good government and, as am I, particularly concerned about improper influence in judicial races. That was the common thread: The 2006 race for the Supreme Court. ...I believed there were some really bad things done there to mislead the public on what was going on and who was supporting who. Faith and I were both outraged about that. A member of the judiciary can't really come out and say much. But as private citizens, now the door is open.

I just feel so strongly about threats to judicial independence. Serving judges are hamstrung to oppose that kind of thing because it looks like they're just talking from self-interest. But I think it's unfair for judges who had experience and hopefully some kind of public respect to not speak out when they see something they believe is wrong. The BIAW is totally off base in the way they are funding their campaign contributions.

... (The lawsuit) was essentially to bring accountability in campaign financing in an area where it was being used negatively. Failure to follow the laws, and particularly in judicial elections. There was a question that has no partisan label. It didn't matter whether it was Dino Rossi or somebody else. I didn't know Rossi and had no reason to think he was anything other than a good person. But I felt that the BIAW's involvement (in helping his campaign), contrary to the spirit of the Campaign Finances Disclosure Act, was destructive of the goals of the system, particularly where contributions were sought and used in judicial elections.

Hughes: And Utter is now beyond their reach – right?

Utter: Well, I don't care. ... (The lawsuit) was essentially to bring accountability in campaign financing in an area where it was being used negatively. Failure to follow the laws, and

particularly in judicial elections. There was a question that has no partisan label. It didn't matter whether it was Dino Rossi or somebody else. I didn't know Rossi and had no reason to think he was anything other than a good person. But I felt that the BIAW's involvement (in helping his campaign), contrary to the spirit of the Campaign Finances Disclosure Act, was destructive of the goals of the system, particularly when it was used in judicial elections.

Hughes: Has that been resolved?

Utter: Portions of it have. There were essentially two parts of it. One was to highlight the expenditure by the BIAW of funds in a political race without adequate disclosure of

where the money was coming from. And that was resolved partially against BIAW and partially in their favor. The second part of that, though, and this is an interesting one, is the role of the BIAW as a trustee of the funds that they collect from the various members of the association. There is a serious question about whether as a trustee if they are properly expending the money. That's not been resolved yet. The Public Disclosure Commission has asked for more time to complete their investigation.

Hughes: OK. We have to go back to 1964 to keep our story on track. Now you're on the trial court. What was that like? Initially, was that anything like "be careful what you wish for"?

Utter: No. I liked it. It was, first of all, a real stretching experience. I always like to take on things that stretch me – things that didn't necessarily feel comfortable. Learning new things is fun and that's exactly what it was.

UTTER SWORN IN:

Son Helps Newest Judge Don Robes



JUDICIAL AIDE: Kirk Utter, 5, today proudly helped his father, Superior Judge Robert F. Utter, button his robe after the former Juvenile Court commissioner was sworn in. Mrs. Utter looked on. Judge Utter was named to the King County bench Friday by Governor Rosellini to fill the Department No. 6 vacancy left by retirement of Judge William G. Long. Utter last week was elected to the position but was not scheduled to take office until January 11.

... The ultimate experience as a judge is a well-trying jury trial with good lawyers and good issues. It's a three-ring circus, every corner of the room. And if there are good lawyers involved and you've got a good jury and good law involved then it really does stretch you.

Hughes: Did the Superior Court leave you with an abiding faith in the common man – “a jury of one's peers”? H.L. Menken once said, “Nobody ever went broke underestimating the intelligence of the American people!”

Utter: Juries are pretty good ... but they surely aren't efficient. If I had a matter of life and death in my own hands, and if I could pick the judge beforehand, I'd probably feel more comfortable with a judge than a jury because I know the law and the facts would be fairly assessed. But I think it's important to have the juries as a safeguard. And they're not available in every case. But I support the system.

I had a blessing on the Supreme Court and the Court of Appeals: I had *marvelous* law clerks. If I had anything I could ascribe quality of my work to, it is the quality of those clerks.

Hughes: Who were some of those young men and women?

Utter: Gosh, too many to name. If I give you a couple, I'll probably leave someone out. They were just a number of wonderful, wonderful young men and women. I had two on the Supreme Court. I had none on the trial court except I had the right to pick a bailiff. And that was almost always a political appointment. You'd pick as a bailiff somebody who really helped you out in your campaign. I felt after my initial campaign that I had a pretty good organization put together, so I hired young lawyers who were waiting to take the bar but couldn't take it right away because they hadn't been a resident for a year, and that was the best thing I ever did.

Hughes: Any other really memorable cases during those five years on the Superior Court?

Utter: Well, there was a case where there was a question of whether there was an implied warranty by a carpenter who built a home. I held there was one. We had no law like that before.

Hughes: Really? That takes me by surprise.

Utter: I was making law for that case. There were some other memorable cases,

some malpractice cases, where a group of brilliant neurosurgeons were charged with malpractice, three of them together. It was a long complicated jury trial. One of the neurosurgeons was so distrusting of lawyers that he took over the cross-examination of opposing expert witnesses.

Hughes: We know what they say about that – “pro se” usually means you have a fool for a client.

Utter: But he won! He was good.

Hughes: You haven’t seen that sort of thing very often?

Utter: Not very often. That’s like “Perry Mason.” ... I enjoyed that because there were good lawyers, and good issues, and a good jury. The *difficult* thing on the Superior Court was that occasionally you would get a person with a good case that they should have won. But they had a *terrible* lawyer, and sometimes those cases would last for weeks. You’d sit there with your sense of justice killing you but you can’t step in as the judge. If I get a bad lawyer on the appellate court I only have to listen to them for a half an hour as opposed to being stuck for three weeks silently agonizing over whether somebody should do their case better.

Hughes: Were you still involved with the Big Brothers, Youth & Government and other programs like that?

Utter: Still involved with Youth & Government. I got another Big Brother program started here in Olympia in 1982. And it’s now for both Thurston and Mason Counties.

Hughes: You don’t hear as much about that program now. Are the Big Brothers still doing well around the state?

Utter: They are. But they used to have a fairly good source of support from bingo and things like that. It’s harder now to find the support. ...

When I was a Superior Court judge, I got very involved to try to change the way we dealt with prisoners. Given my experience with kids in Juvenile Court, seeing how people got in trouble and then learning what they had to have to change, I just felt our whole system was totally wrong. I felt that I could make a difference if I kept stepping up and moving up. I became involved with friends who had a faith background and in developing

a visitation program for men and women in prison. It was called M2 – Man to Man. At that time, there were federal LEAA funds available – the Law Enforcement Administration Act – for programs dealing with parole and placement. We had more than a thousand people visiting, mainly through churches.

Hughes: An ecumenical outreach, all faiths?

Utter: Very, very strong. And we also had an employment agency involved, so the outreach was done very professionally. We were able to find jobs for men and women getting out of prison. And that was a breakthrough. I had to send people to prison because there were few other alternatives. It tore me up because I knew how bad the conditions were there, so this was a way to try and alleviate some of that.

Hughes: Imagine if you had been on the Superior Court bench in the “determinant sentencing” era that was so frustrating to so many thoughtful judges. There was a bright young Superior Court judge in Grays Harbor County who threw in the towel because of determinant sentencing and went into private practice. There were no shades of gray for judges. Their hands were tied.

Utter: I opposed that policy. And while I felt (King County Prosecutor) Norm Maleng was a man of principle, I felt he was dead wrong, just dead wrong, with his “tough on crime” attitude. It had nothing to do with his integrity, courage or intelligence. I just think he overlooked the power of rehabilitation, especially when it came to his support for the death penalty.

Hughes: Well, now we’re up to 1968, when the voters approved a constitutional amendment forming a new Court of Appeals. Right from the get-go was that job something that really interested you?

Utter: It was. I was very interested in that appointment, but a very good lawyer and judge I had not really known before, (Morell) “Mo” Sharp, wanted that seat. He had been Gov. Dan Evans’ campaign finance committee chair for the east side of King County. If Mo wanted that seat, it was his. But he was aware that I was interested in it as well. A few months before the appointment was to be made, he called and said, “I’m withdrawing.” Had he stayed in the running, there is no question he would have been the one. I found out, by the

way, that he was a wonderful guy, and not just because he withdrew.

Hughes: Why did Sharp withdraw?

Utter: I think he saw potential for a Supreme Court seat coming along, and he did get that. He was appointed in 1970 by Gov. Evans, but the next year he was opposed by Charles T. Wright from Olympia, and Wright won the election. Mo knew White House Counsel John Ehrlichman and went back to work for the Nixon Administration – almost got involved in the Watergate-era problems. But then he was reappointed by Evans to Supreme Court when another opening occurred. However, in short order, there was an opening on the federal court bench and he took that post. Lots of musical chairs on that one. Sadly, Mo died of cancer in 1980. But you look back at forks in the road, John, and the things over which you have no control and conclude that fate is fickle. Had Mo Sharp been appointed to the Court of Appeals instead of me, my timing for the Supreme Court might have been different.

Hughes: Did you know Dan Evans well?

Utter: We campaigned at many of the same places in '64 when he was running for governor the first time and our paths were crossing all over the place. His wife Nancy belonged to a WARC Guild and Betty belonged to the same one in Seattle. (Editor's Note: WARC was the Washington Association for Retarded Citizens.)

Hughes: Great lady, Nancy Evans. I'm going to do an oral history with her.

Utter: Oh, she's a lovely lady.

Hughes: Many know that she saved the Governor's Mansion, but she doesn't get enough credit for her political moxie. I imagine the table talk and bedroom talk in the Governor's Mansion was very interesting because, like Betty Utter, Nancy Evans has a really good brain for politics and public life.

Utter: Yes she does, and that was how we became acquainted with Dan in the sense we were fellow Republicans of the same persuasion and all the rest.

Hughes: So at that time if you had asked anyone about Robert Utter's politics they would have said, "Oh yeah, he's a Republican."

Utter: They would have. And the fact is I voted for Nixon the first time he ran. I may excise

that out of the oral history! (laughs) But I figured he could handle foreign policy better than anyone else. My big mistake was that I felt that Congress was strong enough to fence him in on domestic policy. Dead wrong. And of course the second time he ran it became apparent that he was not that strong. After that, the Republican Party started to eat its young with their paranoid doctrines and the rest of their excesses. *They left me.* I didn't leave them.

Hughes: I forgot to ask you if you had any memorable colleagues on the King County Superior Court bench from 1964 to 1969.

Utter: Charlie Smith was on the Superior Court bench at the same time. (1966-73) Carolyn Dimmick came on the Superior Court later (in 1976).

Hughes: Smith is on a parallel track with you, except that you got on the Supreme Court way earlier – some 16 years.

Utter: But in his early career he was way ahead of me, prosecuting the Dave Beck case in Seattle and then as a chief federal prosecutor for Robert Kennedy, going after Jimmy Hoffa.

Hughes: That was a sure-thing to make some headlines, wasn't it?

Utter: It surely was. And I was directly involved in Charlie's appointment to the Municipal Court in 1965.

Hughes: Really?

Utter: Walter McGovern (a future member of the Supreme Court) and I were co-conspirators on that. We got in touch with Charlie and asked for his permission to push his availability. He was set to be the Peace Corps director in Brazil.

Hughes: His wife has never forgiven him for that abrupt change of plans, he told me.

Utter: And probably never forgiven *me*.

Hughes: Was that a hard boat to float in Seattle? Smith was a highly regarded, even celebrated, young black attorney, but he was still black. Was that a hard sell?

Utter: Not that we were really aware of, but I'm sure there was (some undercurrent of opposition). ... We certainly didn't feel we were endangering our own careers, and we wouldn't have cared in any case. The fact is, Charlie was the right man for the job and Seattle needed a man like him in more ways than one. Those were very interesting times.

Hughes: So now it's 1969. There's a new Court of Appeals. Re-enter James Dolliver, trusted chief of staff for Gov. Evans and a future Supreme Court justice. Was Dolliver the guy who really vetted judicial appointments for Evans?

Utter: I'm pretty sure he was the gatekeeper. I wasn't terribly aware politically at that time, but I had demonstrated I could win an election. And if appointed, I'd have to run for the spot to keep it. They figured I would probably win, and Evans liked the things I stood for. I got the appointment to the Court of Appeals and ran unopposed in 1970 for a full term of six years.

After a while, I was musing about running for a spot on the Supreme Court even if it was against an incumbent. I thought I could have won because of the support I had from King County. At that time, ironically, there was only one judge from King County on the Supreme Court.

Hughes: Robert Finley?

Utter: That's right. And that was part of my interest in getting there. I felt that they were writing a lot of cases involving metropolitan areas and there wasn't anybody else on there to share the views of King County.

Hughes: Sort of ironic given the view today, especially on the east side of the mountains, that everything is so Seattle-centric. Slade Gorton once quipped that it's "The State of Space Needle" – "all the votes a Democrat needs to win can be seen from the top of the Space Needle."

Utter: A lot of irony.

Hughes: I have something here that you wrote about that era. It says, "I think I had been on the bar list for several years. Although I had not been an active party member, through civic projects in Seattle I had been involved with some of the people who worked closely with Gov. Evans." So there you were, on an appellate court. And not only that, you're a trailblazer because it's a brand new undertaking. Were there 12 new judges in all?

Utter: There were six of us in the northern division, three in Tacoma, and three in Spokane.



Hughes: When we talked yesterday, you said you still think the Supreme Court should be reduced to seven members, as the constitutional amendment approved in 1968 allows. You thought that was a good idea 40 years ago and still do.

Utter: Still do.

Hughes: On account of?

Utter: Administrative multiplication of effort and duplication added by two more judges. A seven-member court would be more efficient. The fewer you have, the better the discretion is, the more focused it is. By having nine members, the court becomes more like a mini- legislature than a court where ideas are discussed.

Hughes: Did you have the temerity to broach this topic again during your time on the Supreme Court and lobby for it?

Utter: I tried. Like many of my efforts, it didn't go very far. ... I also had been opposed to judicial elections long before my appointment to the Supreme Court in 1971.

Hughes: So you still fervently believe that it would be much better to have appointed judges?

Utter: Very strongly.

Hughes: But from time to time, under the plan you favor, you'd have to "run against yourself." Stand on your record.

Utter: Exactly. And that's a good plan. The best one I think was adopted by Utah, which exchanged a straight elected judgeship system for one where there was a strong provision for removal of judges who misbehave. But they also enacted merit selection for their Supreme Court. Judges are appointed based on merit, selected by a panel. Then they have to run after two years against their own record: "Should Judge X be retained?"

Hughes: You favor a seven-member appointed Supreme Court for Washington state?

Utter: Yes.

Hughes: And would those men and women serve to a set age or for life, like a federal judge?

Utter: Well I batted that around a little bit when we were talking yesterday, and I've been thinking about it some more. We lose some really good people by having them have to quit at 75. But what's the magic age? Should it be 70 instead of 75? On balance, I think we're better off to have a fixed date because of the problem with how to remove someone who is not functioning? And, will it work?

Hughes: You were on the Court of Appeals for three years, right?

Utter: It's not quite three – 1969-1971.

Hughes: Were you pleased that the new system was working as it should?

Utter: Very much so. It was the best appellate job I ever had. And why did I think that way?

Hughes: Thank you, but I thought I was the interviewer!

Utter: Next question? (laughing)

Hughes: No, go ahead! Tell me more.

Utter: With three judges, you can focus more directly on the issues. What we would do before the cases were argued was to have a short conference and say, "What's really troubling you about this case?" And we'd focus on that so the arguments were pinpointed to areas of real concern in the case.

Hughes: And this is both more collegial and more efficient than what happens with nine members on the Supreme Court bench?

Utter: Exactly. And that worked very well. It helped the counsel. You didn't waste time

if they had matters that weren't really consequential or helpful. And it focused their presentation and also the discussion between judges. It speeded up circulation as well, and the difference between getting a "yes" or "no" out of three judges, as opposed to nine, is enormous.

Hughes: There's really no court proceedings at the appellate court, is there?

Utter: I'm not sure I know what you mean.

Hughes: I mean you don't hear opposing attorneys in oral arguments.

Utter: Oh, you do.

Hughes: I'm misinformed.

Utter: Well, when I was there we heard an argument in every case. That's changed now. They have an expedited calendar. ... But even with that, the ability to discuss with your comrades beforehand and pinpoint the concerns in the case was very helpful.

Hughes: With whom did you serve on the Court of Appeals?

Utter: I served with Jerry Faris, with Frank James, with Herb Swanson, and with Charlie Horowitz and Chuck Stafford, too. Faris ended up on the 9th Circuit. He was a man of color involved in the judiciary early on. Very good man.

Hughes: African-American?

Utter: Yes.

Hughes: Is that when you became good friends with Horowitz?

Utter: Yes, and interestingly, as I mentioned earlier, Charlie Horowitz was a supporter of mine when I first ran for the Superior Court in 1964. Very bright man, obviously! The best thing about Charlie was that he had a heart as big as his mind. Just full of good advice, one piece of which was to never ever leave a person without dignity, no matter what you decide. And that extends to so many things. There's your deportment in front a person but it's also what you write. I mean if you write something as a judge it's there forever.

Hughes: So, before we promote you again, were there any truly memorable moments in those three years on the appellate court?

Utter: Well, the national publications have something called "cases of note" where they go over the cases that have come up in the appellate courts and supreme courts. The irony

is that I had more cases of note on the appellate court than I did for all those years on the Supreme Court.

Hughes: Was that happenstance or were you just on a roll for those three years?

Utter: Just able to write better stuff because of the focus on the issues. Part of it was that the Supreme Court had had a huge backlog, so they weren't really discriminating on the cases they gave us on the Court of Appeals. It was just a case dump, is what it was. We got their whole selection, and there were some very good cases in there.

Hughes: Did they just do that en masse or did they pick and choose which to send down?

Utter: It was en masse. They just said, "Here it is, boys." We had an early case on flag desecration. In the '60s, there was a lot of social and political unrest and some kid had sewn the American Flag on the seat of his pants.

Hughes: Some hippie kid?

Utter: Exactly.

Hughes: How did that turn out?

Utter: It was assigned first to Charlie Horowitz. And Charlie was having trouble with these young hippies. That was not his era. And I told him, "Charlie, if you don't write to reverse that conviction I'm going to write it." I changed his mind and he wrote to reverse the conviction.

Initially there was an inclination by a majority of the panel, two judges, to validate the prosecution under the flag desecration statute. But eventually we were able to agree that the free speech component was more important and ruled that you couldn't restrict people's freedom of expression, with very few exceptions.

Hughes: Our flag isn't like the "blood banner" that the Nazis were anointing every storm trooper legion with? It's bound up in the whole principle of free speech?

Utter: That's exactly right. And that was the luxury of both the quality of discussion that was going on in the Court of Appeals and the kind of cases we had.

Hughes: This is the first time I've grasped how much fun it could be to be an appellate court judge. I imagined it would be dull.

Utter: It was *very* interesting. And I missed that on the Supreme Court. That was one reason I kept proposing that we reduce the number of judges. That's why it was such a

good experience. If I really had “a lingering taste for appellate judging,” it was satisfied on the Court of Appeals. The other thing was that I was in my home district, basically, in King County and I didn’t ever have to worry much about an election. I was where I was born, and if my furnace went out I knew who to call; if my car stopped running, I knew who to call. And we had paid \$22,000 for our home in Broadview.

Hughes: Shocking! Such excess.

Utter: A half-acre lot, in the city, next to Carkeek Park; view of the Sound; view of the Olympics. And I think our mortgage payments were a hundred and some dollars a month. That will never happen again. And it never did, except when we left to go to the Supreme Court it was the bottom of the Boeing depression and we had that house on the market for over a year before we could sell it for \$33,000.

Hughes: So the Supreme Court opportunity comes along all of a sudden in December of 1971 and you jumped at it?

Utter: That’s a fair statement. I looked forward to it.

Hughes: We’re back to Morell Sharp, who resigned from the state Supreme Court to accept the Nixon appointment to the federal bench. Did you know that was coming?

Utter: I was pretty sure it was coming. I had good contact with people in the Evans Administration. Actually, there were two appointments that came up around that time. One was the vacancy in January of 1970 that Chuck Stafford got, which was created by Judge Hill’s retirement at the age of 75. The next was Mo Sharp’s departure in December of ’71. ... And I obviously was interested in Judge Hill’s seat for sentimental reasons, having been his law clerk. But Chuck Stafford was a good friend and a very able judge.

Hughes: Stayed in contact with Matt Hill over the years had you, judge?

Utter: Yes, pretty much. Although he was so busy and we had different paths. It wasn’t the social kind of thing, but he was a good friend.

Hughes: Everyone who ever knew him tells me that Judge Hill was so busy. What with being on the court, involved in his church, giving all those speeches, that must have added up to 80-90-hour weeks for that gentleman.

Utter: He put in a lot of work. And he walked back and forth from his home in north



Olympia to the court every day, walked wherever he went. He was a little taller than Betty, but not much. He liked food, so he wasn't slim by any means, but a great walker.

Hughes: So he was wandering to Wagner's bakery down the street.

Utter: Often.

Hughes: Well, Gov. Evans quickly named you to succeed Sharp. You join the Washington Supreme Court on Dec. 20, 1971, at the age of 41. When did you get the word that you were going to be appointed? Did Jim Dolliver call you?

Utter: I don't recall whether it was Jim or the governor. It may have been Jim

calling to say that the governor wanted to speak to me.

Hughes: So the governor spoke to you personally.

Utter: Yes he did.

Hughes: Was that a nice conversation?

Utter: It was brief. There was not a whole lot to say. But I was always a fan of the governor and still think he's the best governor we ever had. He was and still is a *remarkable* man – just bright as a button. And correct on many, many issues.

Hughes: Environmentally, social services reform.

Utter: Even the income tax. Our tax system is so regressive.

Hughes: Didn't the Washington Supreme Court invalidate an income tax passed by the people?

Utter: Yes. In the 1930s. Terrible decision.

Hughes: Did you go back and study it at length?

Utter: Well, it never came before us, but I recall reading the case and thinking that it just simply was not logical, as well as being wrong on the result.

Hughes: I'm going to look that one up because it would be interesting to see what the angle was to get it passed by the voters during the Depression. Someone must have put a populist slant on it that you could really soak the rich.

Utter: I think there's some truth to that.

Hughes: So you're headed for Olympia in 1971 – leaving Seattle, where you had lived all your life and attended church since childhood. Had you been active in the First Baptist Church during the appellate court era? Is that when you played a leadership role in the church?

Utter: Somewhat. "Leadership role" I guess is hard to describe. Betty and I taught Sunday school. And we still lived in Seattle until a year after my appointment down here in Olympia.

Hughes: So you commuted. But it must have been a lot easier then.

Utter: Well, not a lot, although the speed limit was 70 and everybody was going 80 or 90. The incident that propelled our move down here occurred when I was driving up the Nisqually Hill doing about 70 miles an hour, and it was raining just as hard as could be. Suddenly it turned to snow and sleet at the top of the hill and three of us spun out. At that point I said to myself, "I know I'm going to die someday but if it's on I-5 I'm going to be mad!" But the Lord was looking after each of us, and there was no wreck. However, at that point I began to think Olympia was a lot more attractive.

Hughes: Were you well received on the court?

Utter: I think I was.

Hughes: Who received you most warmly?

Utter: Oh, that's hard to say.

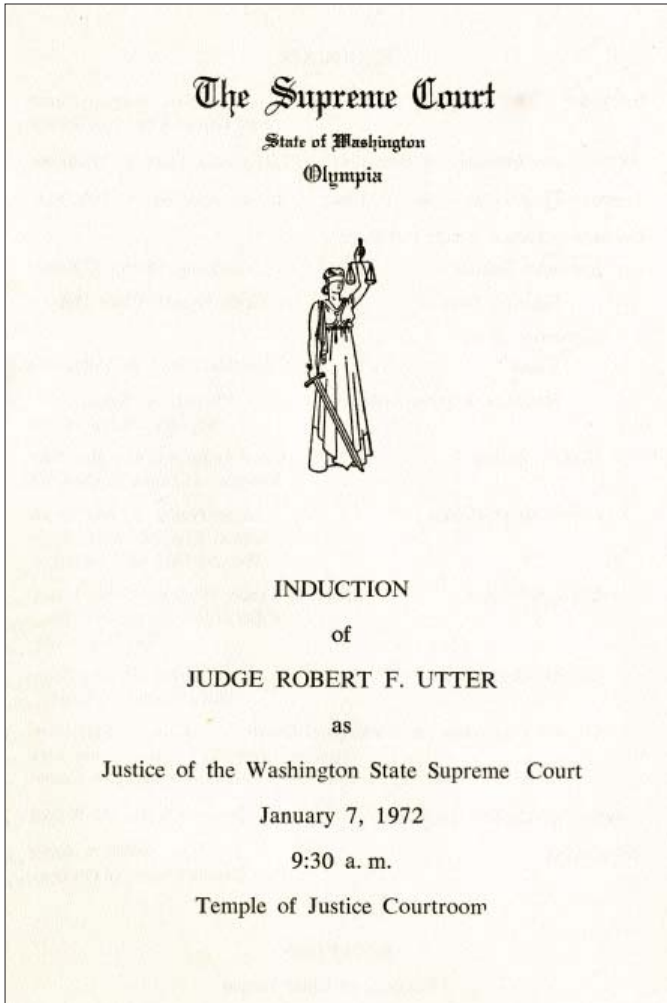
Hughes: Who was on the court at that time?

Utter: Bob Finley was probably the senior judge. Charles Wright was there. Frank Hale, Bob Finley, Marsh Neill, I'm trying to think of who else was there...

Hughes: A bunch of old guys compared to young Bob Utter.

Utter: They were elderly. Oh, I left off Orris Hamilton, who was a wonderful judge, a great

guy. A number of them were combat veterans. Orris won the Bronze Star for bravery as an infantry officer in Europe during World War II. Frank Hale had been a paratrooper in Normandy. They had life experiences that were different from mine. But the fact was I was the only one who had life experience in King County, which made a *huge* difference.



Hughes: Not to mention, experience with juvenile delinquents and the redemption of kids.

Utter: Yes, I brought that, too. ... That was a hard message to get across. I also had other hard messages. One of my problems on the court when I was chief justice (1979-81) is that I was determined to get through a constitutional amendment on judicial discipline and removal. I'd been *very* involved with the American Judicature Society, a national group that focuses on improving the administration of justice. My second goal was to straighten out some court rules involved with timing for early hearings after people were arrested.

Hughes: Did you achieve the constitutional amendment on judicial discipline and removal?

Utter: Eventually we did, to great bitterness on the part of others on the court. Jim Dolliver, who came onto the court in 1976, was *bitterly* opposed to that.

Hughes: On what grounds?

Utter: He saw it as a threat to the independence of the judiciary. We were the only state in the country at that point without any provisions for discipline and removal, short of impeachment.

Hughes: I wonder why that was.

Utter: Probably Washington's history of stubborn independence. ... But the reason I pushed so hard – and the other judges really didn't viscerally understand why – was that I'd had a troubling experience in King County when I served as a judge there. It involved Judge Cornelius Chavelle. Corny was a brilliant guy. His mother had an estate worth over a couple of million dollars, which was really a lot of money in those times. But Corny was a rake, and an unprincipled one.

Hughes: "Rake" is an under-used word today. Like the old folk song, "A rake and rambling guy."

Utter: Well, it pretty well describes it. He was tall, 6-3 or 6-4, handsome, suave, urbane and would use terrible discretion on what lady of the night he'd take out. He'd put it on a credit card, would have them in his court, then dismiss the case and all that sort of thing. Finally Stan Soderland and Warren Chan on the King County Superior Court came to him (in 1974) and said, "If you don't resign we're going to the newspapers with our documentation of what you've been involved in."

Hughes: Shades of the judge who committed improprieties with young men. But he committed suicide on the eve of the revelations being printed in the 1980s.

Utter: Gary Little. There's another long story there. (The Judicial Conduct Commission had known of accusations against Judge Little for several years, but had taken no public action against him.) But Corny was bitterly opposed to getting off the bench, even though they had him absolutely dead to rights. He had enough money that he sued the other two judges for whatever.

Hughes: Defamation?

Utter: Yeah, whatever. He flatly denied the allegations and said it was all a smear. But they could prove it was true.

Hughes: "Truth" is about the best defense there is.

Utter: But they were facing a bitter, protracted lawsuit. The Big Judge in the Sky finally decided the case. Corny resigned from the bench and died half way into all this (in 1977). Other than that, it likely would not have been resolved. So I came away with the determination that I never want to see a judge put in that spot again where they have to

put their own fortunes on the line to enforce something that nobody can stand.

Well, my colleagues on the high court had not been in King County and didn't understand the real danger to the system from conduct like that. They didn't see the imperative that I saw to having a better system. I think I had one other judge on the court who supported me, Vern Pearson. Even my friend Charlie Horowitz was opposed. Jim Dolliver got Dan Evans to form a committee against the constitutional amendment.

Hughes: Was it a hard-fought campaign?

Utter: Oh yes. But I had State Senator Irv Newhouse's support. I think Irv was a saint. Wonderful, *wonderful* man; hop farmer from Selah; became chair of the House Judiciary Committee and was the brightest non-lawyer about law I've ever met. A principled guy. And he understood what the problem was with the lack of a law for judicial discipline and removal. If Irv signed on it was going to pass. He did and it did, although he needed a two-thirds vote in the Legislature for a constitutional amendment.

Hughes: Were you satisfied that the plan as proposed and adopted by the people had the right kinds of checks and balances in it? (It is Amendment 77. Article 4, Section 31, on judicial conduct, removal and censure.)

Utter: Very much. It's working, and it's working well. But Jim Dolliver every year or so would stand up and give me a hard time for passing that. But I understood that it was something he had not experienced at close range, and I had. I knew what I was talking about. But Jim was a man of strong opinions and little doubt. ... He felt it was an infringement of judicial independence. And my pitch was, "You're independent only because the public trusts you."

Hughes: When Jim Dolliver suffered his stroke was he diminished intellectually in any way?

Utter: I think so, John. It's hard to talk about that. But he was a different guy (after the stroke).

Hughes: I never exchanged more than a few words with him after the stroke, but I knew him well before then.

Utter: I admired his courage. Just a very brave guy. And a very bright guy. But when he had his stroke, the other judges were reluctant to go see him in the hospital because they were

just so stricken by what had happened. And at that point there was a question of whether he would live or not. But he had to take his oath of office to continue on the court. And I gave him his oath of office in the hospital. He was not able to talk. So I just said, "Jim, if you squeeze my hand it will signify 'yes.'" I'm not sure he squeezed it, but I decided he said "yes."

Hughes: What a story. Well, the Baptists went to see Jim. Charlie Smith and Bob Utter were regularly there.

Utter: Yes. ... But that night when he was on death's door I was the only one there.

Hughes: When Dolliver endured more complications, Justice Smith went to see him often.

Utter: Yes. Charlie was just devoted to Jim. And when Jim was expiring at home I went to see him again.

Hughes: Is there anything harder than that sad duty?

Utter: It was a very hard time. But we talked about areas where we were able to make a difference together. And those were the environmental cases; some of the human rights cases; some search-and-seizure cases. Jim was not an automatic vote, but we saw things the same in a lot of areas.

Hughes: With whom did you get along particularly well on the Supreme Court?

Utter: After Charlie Horowitz left the court and before Chuck Johnson came on board, Vernon Pearson was probably the closest. I don't think there was ever an issue on the Court of Appeals or the Supreme Court where we differed.

Hughes: Tell me about Vern Pearson.

Utter: Wonderful, *wonderful*. Even temperament; combat veteran from the Pacific War. Navigator on a troop transport. ... My throat is getting dry.

Hughes: Let's call it a day. Next time, let's be sure to talk some more about flying.

End of Interview II

March 5, 2009

Interview III

March 9, 2009

Hughes: We've talked about sailboats. Let's talk some more about airplanes. I didn't get on tape the most character-building experience you've ever had in an airplane. Please tell me that great story once again.

Utter: I was at a Poulsbo Bar Association meeting where they honored Justice Stevens.

Hughes: *The* John Paul Stevens?

Utter: John Paul Stevens of the United States Supreme Court. And this little bar association had the most marvelous program. Every year they would get someone of that caliber as a guest speaker. Justice Scalia had been there; Stevens was there. They'd lure them out with the promise of salmon fishing that you couldn't beat. They'd find out what the weakness of the judge was and promise them that if they'd only come to Poulsbo it would be wonderful. There's a group of just delightful people in that bar association. Jeff Tolman was one of leaders of that group later on.

Hughes: What year was that?

Utter: Oh gosh, I was still on the Supreme Court so it had to have been 1993, '94,



Utter with his Cessna 182.

somewhere around there. ... Anyway, they had this meeting and I flew from Olympia to Apex Airpark just outside of Bremerton, and went to the bar association meeting. It was starting to rain pretty hard about two-thirds of the way through the meeting and I excused myself, came back to the airport, got in the plane and got my IFR (instrument flight conditions) clearance to fly to Olympia. By then it was socked in. At the beginning of

the landing approach I think I found the outer-marker at about 3,000 feet. At that point,

air traffic control directed me right to the center of the thunderstorm. The engine started sputtering badly. So I pushed the throttle all the way forward, which deactivated the warning horn that my wheels were still up. I proceeded to make a flawless approach and it was great until I landed. I made a little more noise when I landed than I normally do. And that's the most embarrassing call in the world: "Hello air traffic. I have something to report. Runway X is closed in Olympia. And it may be closed for a little while."

Hughes: You landed wheels up!

Utter: I got a lot of comfort from my flying friends, who said there are only two types of pilots: Those who have landed with their wheels up, and those who are going to land with their wheels up. That helped a lot.

Hughes: What kind of airplane was that?

Utter: It was a Cessna 210. Wonderful airplane.

Hughes: You told me earlier that there were just a few scrapes to the paint off the rivets along the bottom of the fuselage. That's amazing that you didn't do more damage.

Utter: I tell you, it was raining so hard it was the best landing I ever made. I literally hydroplaned down the runway. Unfortunately, the propeller overhangs a bit and that got bent, which meant the engine had to be replaced. My two long-suffering partners put up with that.

Hughes: Would the twisted prop just make all the valves and everything in the engine internals go cattywampus?

Utter: The sudden stoppage puts a stress on the engine. And the engine is one thing you don't want to fool with on airplanes.

Hughes: Do you still own this plane?

Utter: No, no. I wish I did, but I had to choose between sailing and flying. And sailing has been with me far longer, so a few years ago I said "enough flying." And that was when the first bout with cancer hit. I would have had problems getting my medical (certification to fly) and that made up my mind for me.

Hughes: When did you start flying?

Utter: When I hit 50, so that was in 1980. As I shared with you last week, I had always wanted to fly.

Hughes: For the record, it's now snowing, and we have a great view from this lovely alcove overlooking Budd Inlet.

Utter: Beautiful.

Hughes: We may be here for days. We can talk for hours!

Utter: Get the guest room ready, Betty!

Hughes: How long did it take you to get your instrument rating?

Utter: You had to have been flying for a year before you could test for that. So I picked up the instrument rating about 1981. I just believed firmly that you should not fly in the Northwest without an instrument rating. The god that looks after idiots and children works overtime until then, if you survive.

Hughes: Well, tell us more about that fateful decision you made to run for the Superior Court in 1964. I've been doing more research on that. It's remarkable how that campaign all came together.

Utter: I'd been the Juvenile Court commissioner for five years, and took that job with the expectation that that's what I'd do the rest of my life. I was even thinking about getting a master's degree in social work to help me understand what I was doing a little better. But the commissionership was for the Superior Court, not just the Juvenile Court, and the judges on the King County Superior Court decided that they did not like the way the Juvenile Court had been run. They believed that the judge who was then sitting, William Long, while well intentioned, had become too territorial. That was his court and they wanted more responsibility over the entire court. He was retiring from the court, which created the opportunity for me. It became apparent that if I ran for his vacant position and won then I would serve part-time at Juvenile Court but probably two-thirds on the regular trial calendar. I'd practiced law before that, and while the learning curve would have been steep – and it was – that didn't frighten me. So that was when I decided to run. I was 34 at that time. The next youngest judge on the court was 44. And the average age was 64. I was the second youngest, I think, in state history to be a Superior Court judge.

Hughes: Really? Do you know who the youngest was?

Utter: A man who was later president of the Northern Pacific Railroad, Robert S. Macfarlane.

(Macfarlane became a Superior Court judge in 1930 at the age of 31.)

Hughes: You would have thought that given life expectancy in the early years of Washington statehood and the fact that younger men moved up more quickly back then that there would have been more judges who were quite young.

Utter: Yes, but the disparity between the pay for private practice and on the bench was great. Not as great as it is now, actually, but it was one of a number of disincentives to become a judge. And I think the concept still was that you really had to be seasoned to be a good judge. With me, I was seasoned and I was still young, so I made the leap.

Hughes: Do you recall what a Superior Court judge was earning in 1964?

Utter: It was \$14,000 or \$15,000. And a court commissioner got paid two-thirds of that, so my pay was about \$9,000 a year when I first started in 1959. ... But you could buy a new car for \$1,300. My salary as a law clerk in '54 was \$350 a month, and I was the second-highest law clerk among my contemporaries for a graduated lawyer.

Hughes: What could a really successful lawyer earn in the early 1960s? The guys who were just at the top of their game.

Utter: I don't know, but it would have been much, much, much less than they do now, even in terms of comparative dollars.

Hughes: Really?

Utter: They earned good money, but I would say somewhere around \$50,000 would have been a (law firm) principal's salary, and \$100,000 was probably unheard of outside of a really big firm.

Hughes: I'm amazed that you were involved in so many things. You'd helped launch Big Brothers and Job Therapy Inc. You were working with the PTAs and other youth groups. Were you active in the First Baptist Church as well?

Utter: Very active then.

Hughes: Sounds like you were doing things about 100 hours a week.

Utter: I had a lot more energy in those days, John. I look back now and think "How did I give 200 talks the year before I was elected to the superior court?"

Hughes: 200 talks!

Utter: Averaged four a week.

Hughes: Looking back on what you saw as someone involved in youth activities in the 1950s, do you think more kids were in trouble then? That was the era when there was a lot of hubbub about juvenile delinquency, wayward youth. They were my growing up years. I'm reminded of that great refrain from the musical *Bye Bye Birdie*: (Interviewer attempts to sing) "Why can't they be like we were – perfect in every way – What's the matter with kids today?"

Utter: Say, you've got a good voice, John.

Hughes: I do not! But was juvenile delinquency a bigger problem then, or was it just emerging into the consciousness of the country?

Utter: It was *always* a concern, but there were no drugs at that time, which was sort of the defining demarcation point I think in dealing with young people. Occasional marijuana, but nothing of any consequence. No gangs or at least very few gangs.

Hughes: So most of the kids who got in trouble were out stealing hubcaps and drinking beer – the classic things?

Utter: You pretty much nailed it. So it wasn't worse then, but it was emerging that there were a *lot of problems* with neglected children. And the Juvenile Court heard general delinquencies and the neglect cases. And all of them broke your heart. I wanted to take every kid home that came there.

Hughes: Your reclamation projects were just so amazing.

When you moved up to the bench in 1964, were there any other judges you met that you felt were really top drawer? Made a real impression on you?

Utter: Very much. I must say that as a court commissioner the older judges extended every courtesy and encouragement to me. I could not have asked for a more welcoming, supportive atmosphere. The only problem was that when Judge Long retired he decided he wanted his son to succeed him, not me. And so for the last six months of his term, overlapping the ramp-up to election filing, the judge was pretty actively campaigning for his son. In the end, he didn't even file, but that was the rumor, so I had that issue to deal with. His son was an interesting guy, a classmate of mine at the UW ... But there was a rift

there between me and the judge, his dad. It was the classic story of a person who had done something all his life who saw someone else come in and say, "This is mine."

Hughes: But you were friends with the son?

Utter: I was, and remained so that the whole time.

Hughes: So that 1964 race, and then the 1980 race for re-election to the Supreme Court, those are the only two times you ever had any opposition?

Utter: That's correct.

By the way, you asked about the names of judges I had worked with on the King County Superior Court and I never mentioned that Judge Lloyd Shorrett was the chair of the Juvenile Committee and a wonderful man. He was a former prosecutor in King County and a person of absolute integrity. Malcolm Douglas was the senior judge at that time. They were a bunch of characters, but very loveable.

Hughes: Characters in the sense that?

Utter: Every sense of the word. One was a racing aficionado. Court would adjourn early on those days!

Hughes: You mean horse racing – the ponies at Longacres?

Utter: That's right. That was Hugh Todd. He loved horse racing.

Hughes: What sorts of outside things were you doing by the time you got on the appellate court in 1969? I know it wasn't going to the horse races. Did you divest yourself of some of those activities or did you still have all these other irons in the fire?

Utter: Very much. I was *very* involved with the YMCA.

Hughes: The Seattle YMCA?

Utter: Metropolitan YMCA. I was vice-president and then slated to be president when I was appointed to the Washington Supreme Court in 1971. But I remained active in Youth & Government. And I was *very* active in the Job Therapy program in developing resources for men and women in prison, both in prison and after their release.

Hughes: Tell us about the genesis of the Job Therapy program in the 1960s. Was that something that had been in existence, or was that your brainchild?

Utter: No. It was a friend of mine, Dick Simmons, a former minister and fraternity brother

from the UW. He was the one who really got it going. ... He had a very strong religious bent, and he felt that the biblical injunction of visiting those in prison absolutely applied to modern times. As a Superior Court judge, I knew how bad the conditions were in prison and yet there were people who had to be locked up because they weren't safe to be at large. So I faced some difficult choices from the bench. I had a job to do, but I wanted to change some lives after people were incarcerated. I didn't want to be just part of the problem; I wanted to be part of the solution. I was open to suggestions on how to improve that and Dick came up with an idea of visiting them in prison to show them that they were still cared for, not with the expectation that they would change but simply as a Christian obligation. That got going with a lot of effort, but a lot of success. We had over a thousand people at one time visiting prisoners. Job Therapy grew out of that.

Hughes: Amazing.

Utter: For a time, there was federal funding available for job placement. So we had a professionalized job placement service going for men and women coming out of prison. That was successful. But the money started drying up and we decided we weren't going to do it unless we could do it right.

Hughes: How good a job do you think we're doing today on that score – in offering programs that place ex-offenders in jobs so they're less likely to reoffend?

Utter: Well, I've always been opposed to the theory that incarceration should be just punitive. I think any incarceration has punitive aspects because you're removed from the community. But everybody except those who are put in prison for life without possibility of parole is coming back out on the streets someday. And the issue we don't deal with is this: What's that person going to face in the real world of the community? Invariably they're in even worse shape when they come out than they were before they left.

Hughes: Learned a lot of new tricks.

Utter: Under current philosophy, there's no real reforming going on. Although I had great admiration for the late Norm Maleng, the longtime King County prosecutor, he and I differed on the area of crime and punishment. He'd say, "Well, we tried the soft approach and it doesn't work." That's "soft," quote unquote, but there's nothing soft about it. I just

felt that the rehabilitative part of it was overlooked. I still feel that way.

Hughes: Over the years were you visiting men and women in the county jail, or were you going to the state institutions?

Utter: Both early on. Later, on the bench, I couldn't be involved because I might hear their case at some level. So I got involved on the national level and was involved with visiting men in Lorton Prison back in D.C. We'd go back there on occasion. There was no way that their cases would come up before me.

Hughes: What did you observe?

Utter: Well, I observed that you're validating somebody's worth as an individual just by virtue of being there and being interested in them as a person. It was a restorative part of justice. We'd talk about their victims, too. If you have a more positive self-image and more empathy for others, there are things you're not going to do. Or you're going to at least question these things before you do them. Particularly when you have no job skills, you need encouragement and some assistance. And that works. A hundred percent of the time? No. But more often than not, yes. I still feel that way. With all things, the pendulum swings a long ways one way, then swings back the other way. We're coming back closer to dead center now in terms of rehabilitation of criminals. The problem is that restorative justice takes some money, and we're in a budget crunch, so it's hard.

Hughes: Are we really kidding ourselves if we think Texas has the right idea – just stake out some tents and make prison like boot camp and they'll all get with the program?

Utter: It doesn't work.

Hughes: So let's get you back on the State Supreme Court. I think it's interesting that King County was so under-represented.

Utter: Just Bob Finley, who was from Renton, and me from North Seattle. And that was it.

Hughes: Anything particularly memorable from your early years on the Supreme Court?

Utter: Well, the first case that I was appointed in November of '71 was the Seattle police bribery case, involving my old boss, Chuck Carroll. Chuck was one of about 20 people indicted for "conspiracy against government entities."

Hughes: Tell us about that.



Utter as a young Supreme Court Justice.

Utter: In the late 1960s, the Seattle papers ran several exposes about the police payoff system in Seattle, and Chuck was accused of meeting in secret with the owner of a pinball machine company. Chuck threatened to sue for libel, and a federal grand jury decided he was not directly involved in the payoff schemes. Even so, he was charged in 1971. I think Jimmy Andersen was the attorney for Carroll and for one or two others. Jim had been a *very* close friend from our prosecutor days. But I felt that the challenge to the prosecution was correct. The case was thrown out at trial and we affirmed that. I forget what the grounds were, but Jim's position was upheld. It started out in controversy

and ended in controversy, and Chuck's reputation would never be the same.

Hughes: What were the nuts and bolts of the case? Was it the notion of organized crime ties or just general graft and corruption?

Utter: Both. Not national or international organized crime. Localized crime. And there was definite corruption in the Police Department and Sheriff's Office.

Hughes: Were they taking kickbacks classically in terms of allowing prostitution or gambling, running numbers, that sort of thing?

Utter: Everything. It was a time of corruption. Seattle had a long, long history. Reform, counter-reform, reform again and then counter-reform again. Here's a marvelous story on Seattle politics: A man named Hiram Gill was the mayor of Seattle in the early 1900s. Seattle was a seaport town; the economy was lagging. Gill ran on the premise that if elected he would have the city wide open to income-producing things. And he was a man of his word. He was elected, he opened it up, the city ran wide-open and they built the largest brothel on the Pacific Coast. ... Then they just threw him out in the next election. But Hiram Gill was not a dumb man. Next time, he ran for election against the guy who had defeated him. "If you elect me," Gill declared, "I'm going to shut everything down because I know where it all is!" They elected him, he shut everything down, then he lost

the *next* election. Ralph Potts, a Seattle attorney, wrote a history of Seattle. It included this classic line: "All of this just confused poor Hiram Gill, who only wanted to be mayor."

Hughes: What a great line.

So what was Charles O. Carroll's alleged role in that case in the 1970s? Was Chuck accused of complicity, of looking the other way in connection with the graft and corruption?

Utter: I think that was the general thrust. But it was the end of the Carroll era.

Hughes: And what was the high court's ruling?

Utter: The high court ruling upheld the challenge to those particular prosecutions. They later went on to target more people who were tried and convicted. In Seattle, even as large as it is, you know everybody when you're in public life. Some dear friends of mine in the Police Department who were involved in getting Big Brothers started were involved in that controversy. So there's a human aspect. People on both sides – people who blew the whistle and people who were involved – were friends of mine from the Juvenile Court days.

Hughes: In those early years when you on the Supreme Court are there any other cases or incidents that stand out in your mind to this day?

Utter: At that time, the state environmental protection law had just been passed. But the Legislature did not define its operative terms. It left very vague the things that were really the building blocks necessary to make a working act. Gov. Evans pushed for environmental standards, together with some good people in the Legislature. But they knew they didn't have the votes if they spelled out the operative terms. So intentionally it was left to the Supreme Court. After just drawing a name out of a hat, it fell to me to write the first case involving the validity of the state Environmental Protection Act. I forget the exact issue but it was fairly narrow. I basically said, "Yes, this is proper and we're going to follow the definitions of the terms found in the federal act." There was some language in the state act that directed you to the federal act for interpretation.

Hughes: Was that controversial?

Utter: Oh, you bet it was. And it was a narrow, narrow vote on our court. ...There were four environmental cases in all. With the second case, someone else won the vote in

conference (to write the opinion) following the argument to overturn a part of the act. I dissented. My dissent carried and so that was number two. The third case was assigned to me, again by luck of the draw. My vote carried. Finally, the fourth case came up. I was in the minority and I dissented and that again carried to uphold the act.

Hughes: Who were the combatants on the other side of the issue?

Utter: Well, I don't recall the specific names of the justices, but they were essentially the steelhead fishermen of the court.

Hughes: You remarked on that before the tape was running today. You said you came on a court that was "populated by avid steelhead fishermen."

Utter: And hunters. ... Good people, awfully good people, but just so much of judging depends on what your background is. It's very hard to rule out, I think, the things that you personally experienced and the freedom to go fishing basically anywhere you wanted to. ... Remember, I came from a family of fly fishermen. My brother is an internationally renowned scientist in that field.

Hughes: When federal Judge George Boldt handed down his landmark decision upholding the treaty tribes' rights to fish in their "usual and accustomed places," it really hit the fan in places like Grays Harbor where I was a newspaper man. Did you have a strong feeling then that George Boldt had got it right?

Utter: I did because the question of the pre-emption. You had three levels of complexity on most environmental and fishing issues. You have federal law, state law and you have international treaty law, and all three intermix. Unless state law focuses purely on conservation, there are some limits to it. It takes second place to treaty law and federal law. I felt that Judge Boldt got it right the first time.

Hughes: Tell me about Robert Utter's environmental conscience.

Utter: The irony is that together with my brother and two other friends, I bought a large chunk of property on Orcas Island. It had been logged over. So our only salvation would be to develop it. Oh boy! It turned out that every environmental decision I wrote cut my throat – every single one of them.

Hughes: Talk about "walk the walk."

Utter: I still look back on that. We were involved in selective logging. Probably cut millions of board feet in timber, not just on Orcas but other places in the state. So I understood from a personal standpoint what loggers go through. I was involved in rebuilding. But every blessed decision I had to write just did me in and it did in my friends, too.

Hughes: So along the way, in the emerging field of environmental law and environmental conscientiousness, were your horizons broadened in terms of our stewardship of the whole planet?

Utter: Very much so. I can recall boating in the 1950s, throwing garbage over the stern and watching it trail behind. I would no more do that now than commit murder. And just the emerging sensitivity to the fact that we're stewards of the Earth. We don't own anything. We're here as temporary stewards, and it's a very real responsibility.

Hughes: Did you happen to see that marvelous PBS documentary on Pete Seeger, who built a sailboat and used it to campaign for cleaning up the Hudson River?

Utter: Yes, I loved it – *loved* it.

Hughes: Talk about an amazing character, he's 90 years old and he's out chopping his wood and tapping the trees for syrup. Still singing "This Land is Your Land."

Utter: Still going strong.

Hughes: Any other memorable early cases on the court?

Utter: Well, the seminal case was one called State v. Wanrow in 1977. Yvonne Wanrow was a person of American Indian extraction who lived in Spokane County. She was a small woman physically. She was on the way to visit a friend one night when a neighbor came out and menaced her child. She was a little scared by that but nothing happened. When she got to her friend's home, she found out that this neighbor had in fact molested her friend's daughter. As fortune would have it, later that evening this man appeared at her friend's door intoxicated, demanding to be let in. Wanrow, as I said, was a small, frail woman and the man was over six feet and weighed a lot of pounds. Wanrow basically told him he couldn't come in. He insisted and she shot him and killed him. Those were times of *strong* anti-American Indian sentiment in Spokane County. The prosecutor prosecuted her under the murder statute. The judge instructed the jury and the jury found her guilty.

The question essentially was this: “What’s the proper self-defense instruction?” At that time, the self-defense instruction was “What would a reasonable man do under the same or similar circumstances?” The argument in *Wanrow’s* case was that that was an improper instruction because you have to look at how the situation appeared to a person who was threatened. Actually, there were two things wrong: You also couldn’t use “What would a reasonable *man* do?” It would be “What would a reasonable *woman* do?”

Hughes: And a tiny woman at that.

Utter: And a tiny woman to boot. ... To a reasonable woman, self defense was necessary, even though a man might not have perceived the same thing. It’s hard to believe, but that was the first case in the U.S. that approached that problem. That set the whole background for the “battered wife syndrome,” etc., etc. Well, the other justices wanted to affirm the conviction. It started out 8-1. I was the lone dissenter. But one by one I was able to get one more vote, and one more vote. Finally, Bob Hunter from Ephrata was the last vote I needed for a 5-4 majority. Bob was a wonderful guy, heart as big as the whole outdoors. Sophisticated? No, but he had the courage of a lion when he had to. And he said, “You know, sometimes you’ve got to pull up your socks and be a judge.” So he voted for me, although that was his constituency over there on the east side. Ironically, when I was on the Court of Appeals I wanted to be on the Supreme Court. I would have been running against Bob, and I’m glad I didn’t.

Hughes: This give and take jawboning is what I find so fascinating, having been privileged to talk so much with present and former Supreme Court justices. Do you just sort of wander down the hall and make your case one-on-one?

Utter: Well, people have different styles. My style is not to do that. I tried to do my convincing by my writing. I had the good fortune to have *superb* law clerks. Some great ones from all schools, including my alma mater, the UW. But in getting great law clerks, I also had the marvelous good fortune to have a man named Tony Amsterdam really like what I wrote. He was a law school professor at NYU. Tony was once on the cover of *Time* or some major magazine as the best “power lawyer” in the United States and the best common-law professional in the United States. He was a young law school professor at

Stanford in 1972 when he argued *Furman v. Georgia* before the U.S. Supreme Court. Tony won the case and the court halted executions nationwide. However, four years later, he lost *Gregg v. Georgia* and the court allowed the states to pass new death penalty statutes. But he gave it his best.

Hughes: Tony had been your law clerk?

Utter: No, no, but he liked what I wrote. And he would refer his top legal assistants to me as law clerks. So I got the cream of the cream. And they were wonderful.

Hughes: How much leeway did you give those bright young men and women?

Utter: Every leeway in the world. I told them, "First of all, you don't have to agree with me. We're here to talk." What would usually happen is I would read the briefs involved before the argument. You understand the process of the court, but let's spell it out for people who might read this: You're assigned a case by lot before the argument. You then submit



Justice Utter with some of his law clerks after a ride in his Cessna 210.

a pre-hearing memorandum to the rest of the court on the case you're assigned. Following the oral argument, there is a brief oral conference that day on what the tentative vote of the court is. Then the chief justice assigns the majority opinion to be written. That's written first. Then on circulation (among the justices), whoever wants to dissent can. And that depends on who gets the majority vote. Five votes wins.

Hughes: Where in that process does the jawboning come in? Is it when Chuck or Gerry reads something that Bob wrote, walks down to his office and says, "This is really compelling, but how about ...?"

Utter: It can start at that point, and it can start at the end of oral argument where you take

the tentative vote. You know who you've got to convince at the conference that follows the oral argument.



The Washington Supreme Court in 1982. Front row, from left: Robert Utter, Hugh Rosellini, Chief Justice Bob Brachtenbach, Charles Stafford, and James Dolliver. Back row, from left: Fred Dore, Floyd Hicks, William Williams, and Carolyn Dimmick.

Hughes: Invariably, you've got some really bright colleagues there, including a lot of good arguers. In oral arguments is that often a really robust debate – people chiming in with their views, vigorously insisting that a notion is just plain wrong?

Utter: Oh very much so, very much so. But your first question was “What style did I have?” It was weak in that sort of give-and-take. I think I probably write better than I speak. At least that's what I'm accustomed to doing. My writing leaves much to be desired but that was where I think I make my major impact. I was uncomfortable arguing out loud. As I told you, the essential me is a shy person. I know you don't believe that, but it's true. ... I very seldom would go into somebody's chambers and say, “Here's a problem we've got to solve.” Usually I would depend on my writing to do that. I'd talk with my clerk about

the problems in the case. I would usually ask them to do a first draft. After that, we would polish and change.

Hughes: How long would an oral conference session last?

Utter: Oh, it depends on the complexity of the case. They would seldom go into the next day but on occasion they would.

Hughes: You could argue all afternoon.

Utter: Yeah. On occasion. ... And the fact is you have four cases to determine in that conference each day. There are four arguments in a day – two in the morning and two in the afternoon. You usually tried to dispose of the morning cases between the time the argument ends and lunch comes along.

Hughes: It would be rare that your plate would be full of four juicy things?

Utter: Rare, but on occasion that would happen. And it was not rare to have something of monumental importance in one of the four cases you were going to hear.

Hughes: Any really monumental moments other than the death penalty cases?

Utter: Well, there was the Northshore School District case in 1974, the one where the court was sharply divided over the constitutionality of financing public schools through property taxes. The majority held that the plan was constitutional. Justices Stafford, Finley and I were the dissenters. I wrote that our State Constitution goes far beyond the Federal Constitution in establishing education as a “paramount” responsibility of the state. The issue came back before us one more time in 1978 (*Seattle School District v. State*) and we voted 6-3 to force the state to fully fund “basic education.” The Constitution meant what it said. Justice Stafford had a great line in the 1974 case. He wrote that the majority had given “birth to a legal pygmy of doubtful origin.”

(Editor’s Note: in the 1974 decision, *Northshore School District v. Kinnear*, Justice Utter wrote: “Sections 1 and 2 of Article 9 of our Constitution require the state, through its legislature, to make provision for an ample system of education. These sections impose a duty on the state government to directly finance at least the basic operation and maintenance budget of the schools. The present system improperly forces the school districts to rely on local funding. It therefore allows local political and social considerations,

such as those reflected in decisions on special levies, to interfere with the basic state guaranty of education. As such, it violates the constitutional requirement that the state itself make ample provision for the school system. This is not to say that special levies cannot be used, but only that it is impermissible that they be relied upon to meet the minimum needs of the schools.”)

The “legal pygmy” language might also be applied to the WPPS cases the Supreme Court heard during my tenure. They were the only ones where I saw the court blatantly bow to apparent public pressure. To have upheld the duty to pay the Supply System bondholders would have placed great pressure on the ratepayers and a majority of the court could not bring themselves to take this step, although the reasoning in the majority opinion was so poor that it has not been cited, to my knowledge as controlling or persuasive law in any subsequent cases.

Hughes: Were you involved in the American Judicature Society during this period?

Utter: Very involved. Fine organization. It was formed in the very early 1900s. It was supporting merit selection of judges and merit retention of judges. Problems were much the same then as they are now of having people there for political purposes only, or putting pressure on the courts. ...The interesting thing was that the group’s focus for a long time was on federal judges. Part of what I did and others did was to focus on the fact that 90 plus percent of the judges in the United States are state, and two-thirds of those are elected. What do you do to strengthen that process or to make it work better? I was very involved there. I also began to get involved in the People to People International program.

Hughes: You and Betty were saying earlier that the program has its roots in the Eisenhower Administration?

Utter: It does. The goal was to boost international friendship and understanding. I think I first got involved in 1986, my first trip to China.

Hughes: So you’re flying, you’ve got a sailboat; you’ve got a wife and three kids, one of whom has handicaps; you have a demanding job, and you’re involved in Big Brothers and the YMCA and the American Judicature Society. Are you now going to church at Olympia First Baptist?

Utter: Yes. And one thing I'd forgotten to tell you is that I was very involved in the National Conference of Chief Justices. In 1977 Charles Wright, who defeated Mo Sharp, was the chief justice. Charlie was from Olympia and a good human being, a lot like Bob Hunter. Not strong on theoretical law but strong on just law. Well, Charlie's health was not good and he didn't like large groups. I was the acting chief justice, and he appointed me to serve in a lot of areas that he otherwise would have done. One of those was the Conference of Chief Justices. I filled in for him, and in that process became very involved in getting something established called the State Justice Institute Act. That took a *large* chunk of my time for five years.

Hughes: Tell me about the State Justice Institute Act.

Utter: What it did was to point out that there was a federal interest in having effective state courts. And this was an interest that had to be not just theoretical but also had to be funded in part by the federal government because a large portion of the cases we had to decide involved federal issues. The states weren't getting anything in the way of help. It was, as always, a time of budget constriction. And so for five years I was involved in chairing a committee to draft the prospective act, secondly to get it before Congress and then third to get it funded. I was averaging one trip a month back to D.C. to do that for five years.

Hughes: That's a lot of red-eye trips.

Utter: A lot of flying, but the result was we got a bill passed that resulted in hundreds of millions of dollars to states during the time it was funded. The funding went toward improvement of justice systems in the states. How much they got depended on their ability to iterate their needs to committee that we'd set up to disburse the funds.

Hughes: Would it go toward salaries?

Utter: No, not toward salaries. Administration generally. How can we effectively administrate the courts? Part of it would be toward imprisonment problem issues, and say, "How we can be more effective? How can we improve communication between prosecutors and judges?" That type of thing. There was a tremendous effort, just tremendous effort. I finally had to go back so often that I thought, "I'm going to make

something worthwhile out of this.” So I’d visit Civil War battlefields and it was a time of enrichment as well.

Hughes: Earlier, you mentioned that as a young deputy prosecutor you actually prosecuted a death penalty case. Between 1957 and, say, 1987 when you were on the Supreme Court, when did your opposition to the death penalty really start to percolate through your conscience?

Utter: Well, the event I could not escape was the re-trial of Don Anthony White in King County Superior Court in 1968. That really opened my eyes to the power of rehabilitation.

Hughes: A defining moment. From then on did it all start coming together? – The power of redemption. “The Power of the Holy.” The Parable of the Good Samaritan and your power to use mercy to change lives.

Utter: It congealed.

Hughes: “Congealed.” What a wonderful word to sum it up.

Utter: My dissents to the death penalty on the court were all involved in issues of law. I could not just say, “This is spiritually wrong, and for religious reasons I can’t go along with it.” If I couldn’t have a legal reason I wouldn’t dissent. Death penalty cases are very hard to try properly, very hard. Flaws are almost inevitable. Judicial error, investigatory error, juror error. The constitutional grounds are broad. And the requirements for what added up to a good death penalty lawyer were very strong. Inadequate representation is a continuing issue in death penalty cases.

My feelings *personally* about our individual ability to say when somebody should die came from the Don Anthony White case. But the legal reasons against it are there in almost every case you look at. So that’s an important differentiation. Again, if I couldn’t find a good reason in law for not agreeing with the death penalty case I wouldn’t have dissented. I actually had some questions about the death penalty when the White case was assigned to me as a Superior Court judge in 1968, but my feeling was that “I ran for this spot, and I got elected to this spot and if I disqualify myself from hearing this case I’d just be passing it on to another judge.” My feelings were that that was not proper. ... The hard question I kept asking myself was, “Is there some point in this whole process where just by

being a part of the process I validated it?" That entered my mind in the wake of the Don Anthony White case. Then I came on the Supreme Court.

Hughes: With increasing frequency some time during those 23 years on the high court did troubling death penalty cases keep popping up?

Utter: They did. But there was a honeymoon period where all the state death penalty laws were invalidated on federal constitutional grounds. Then as time passed and statutes were amended it became more and more of an issue. The lingering part of *Gregg v. Georgia*, a key Supreme Court decision in 1976, was a requirement that proportionality be involved in every death penalty decision. And when our state rewrote the death penalty statute to conform with *Gregg*, it wrote this into the statute. The U.S. Supreme Court has since diminished that requirement, but it's still there in our state statute. That was and continues to be my great departure, I guess, from death penalty convictions in our state. After the Green River Killer case and the Spokane mass killings and no death penalty was either asked for or given in those cases, I have difficulty seeing where proportionality can be found in lesser cases as required under the statute.

Hughes: Speaking of proportionality, King County Prosecutor Norm Maleng did not seek the death penalty in the Green River Killer case because he had a cooperating defendant who was willing to help solve a lot of other murders and give families some closure if he could escape the death penalty.

Utter: "You want to find where the bodies are? Take the death penalty off the table." That was at the heart of this editorial that I just submitted to *The Seattle Times*. ... Some people get put to death, others don't, and innocent people are executed, too. We cannot in good conscience allow this sort of "unjust justice," as I've called it.

Hughes: While on the court, my opposition to the death penalty grew steadily. Then I read the book about Hitler's judges. My doubts became even stronger in 1993 after our first execution in 25 years. (Editor's Note: Westley Alan Dodd, who had molested and killed three boys, was hanged on Jan. 4, 1993.) Finally, I felt I had no choice but to submit my resignation. I was getting worn down.

Hughes: So you were sitting there one day and you got to the last page of "Hitler's Judges."

You close the book and you say to yourself, “That’s it. They sold their souls to devil. In the sanctuary of the conscience, how could a judge do that?”

Utter: Nobody stood up. I had to. I appreciate the voters of the State of Washington. I never made a secret of my feelings about capital punishment, and some 80 percent of them favored it, according to a poll around the time I resigned, yet I only had an opponent that one time and I beat him by a sizable margin.

Hughes: With that huge visceral majority of the voters saying “Hang ‘em high!” did you think that you were really making any headway?

Utter: I don’t know. With people who favored it, my approach was to say, “Look, if I am the only person in the state who thinks you’re right and you bring the case before me, and I agree with you, you *know* that I’ll vote for you.” It made them think. Maybe not that much, but that was my approach. I kept trying. With my Christian friends, I always say, “If you kill him, you don’t have a chance to change him!”

Hughes: So was there any particular reason for resigning when you resigned?

Utter: There were two death penalty cases coming up in the next term. At that point I had to ask myself, “Am I going to do more benefit in the long term by staying on the court or by resigning and bringing the issue to the floor?” And I decided that because of the court’s failure to deal adequately with this issue of proportionality, the likelihood of that changing in the future was small. So I just weighed that and decided resignation was the best way to turn.

Hughes: Did this come as a surprise to your colleagues or did they know that you were heading that way?

Utter: I think it may have come as a surprise because I dealt with death penalty issues for so long. But you asked if my position changed public opinion. That *wasn’t* why I left. It was about an individual decision.

Hughes: As Shakespeare wrote, “This above all, to thine own self be true.”

Utter: Yes. But let’s examine this issue even more critically. My main concern about the death penalty is that it gives a false illusion of solving a problem – if it *did* solve a problem. And I’ve really wrestled with it because there are *terrible* things that people do.

But by killing others, which emotionally never really helps in the end, the outcome is so problematic – that and the decision of who faces the death penalty and who doesn't. So far, things have had *no* basis in logic or reason. Then there's the cost to prosecute a death penalty case and all the appeals.

Hughes: Can you imagine any kind of situation where Robert F. Utter would support a death penalty?

Utter: I can't. The Charles Rodman Campbell case, which we heard in 1984, was the worst I've ever seen – a cold-blooded, unrepentant killer who killed two women and a 9-year-old girl the minute he got out on work-release.

Hughes: When you see someone who is bad to the bone – a Charles Rodman Campbell – you don't want to kill him but you absolutely want him locked up in a secure place for the rest of his life?

Utter: *Forever.* And I've always felt that way.

Hughes: In the Campbell case, you concurred in upholding his conviction for aggravated murder, but dissented on the imposition of the death penalty. "Charles Campbell will die in prison, as he should," you wrote. "The only question before us is whether it will be of natural causes or at the hand of the state. The Washington capital punishment scheme is applied arbitrarily, without pattern or meaningful standards, and therefore violates the equal protection clause of the 14th Amendment to the United States Constitution. ... The statute violates these constitutional provisions by allowing the prosecuting attorney to choose who the jury may decide to sentence to death if convicted of aggravated first-degree murder, while removing from that consideration criminals convicted of murder similar in circumstance and character." This whole issue of "proportionality" is critical to equal justice under law, you emphasized, calling it the "fatal flaw" in the imposition of the death penalty. You also pointed out that in 11 of the 35 aggravated murders where the death penalty was sought in recent years, the jury balked at imposing the death penalty in six. "In one of these, one person was killed; in two cases, two were killed and in another, the co-defendant in the Wah Mee Club killing of 13 people faces the death penalty while his two accomplices do not." This dissent contains some of your best writing, in my

opinion, and really sums up your opposition to capital punishment. You made it clear that Campbell was the poster child for the death penalty. “In a case as factually repugnant as this, it may be difficult to conceive of any reason to quarrel with the prosecutor’s choice,” you wrote. “Indeed, the facts were so repugnant that the prosecuting attorney officially acknowledged the receipt of a petition containing over 1,000 signatures calling on the prosecutor to seek the death penalty. ... Public outcry may, however, be a double-edged sword which makes impossible the determination of whether or not passion or prejudice plays a role in bringing about the sentence of death. In King County, labor reform leaders were allegedly gunned down by hired assassins. Members of the defendants’ ethnic community asked that the prosecutor not seek the death penalty ... The death penalty, in turn, was not sought. The nature of the deaths, the argument that the killings were for hire and the brutal murders of idealistic labor reformers make that case difficult to distinguish from other homicides of the most aggravated nature.”

Utter: And this current case with this guy coming up for execution now – Cal Brown – it’s sad. It’s a *terrible* case for the victim, just terrible. He is a horrible, horrible human and yet there is a mental illness component to that, and there is every argument in the world that you do *nothing* by executing people with mental illness. (Editor’s Note: In 1991, Brown, who has been diagnosed with a bipolar disorder, carjacked a woman, then robbed, raped and tortured her before killing her. Police discovered her body in the trunk of her car, which had been abandoned near Sea-Tac Airport.)

And the other part of it is that once you decide you’re going to kill somebody, then how do you differentiate that from others? Is this the model for a society you want solving your problems? The irony is that the Council of Europe with over 50 nations, including Russia, Central Asia and Ukraine, has no death penalty.

Hughes: It doesn’t seem like it’s much of a deterrent, does it?

Utter: There are arguments that it is, but I think there are more respectable arguments that it is not. So you’re left with the feeling of, “OK, you spent all this money, you convinced yourself that you’re solving a crime problem when it really doesn’t.” How do you choose? To me it’s fairly clear, but I can understand the grief of people who are victims



Justice Uter talks with the Rev. Brad Gill at Christian Cable Ministries in Aberdeen in 1991 about his trips to the Soviet Union. Kathy Quigg for the *Daily World*, Aberdeen

and their loved ones. But the irony there is that I've talked with a number of families who are survivors or who have had people killed in their own families and a number of them have embraced the component of forgiveness and reconciliation. They say you get far more peace that way. *That's* remarkable.

Hughes: "I have reached the point

where I can no longer participate in a legal system that intentionally takes human life," you told a reporter in the Temple of Justice on March 30, 1995, when you announced that you had submitted your resignation to the governor. "...We are absolutely unable to make rational distinctions on who should live and who should die." After resigning, you gave interviews, wrote articles and went on panels, always emphasizing how you'd been impacted by the book about the co-opted Nazi judges.

Besides the death penalty cases and the environmental cases, were there any other cases during those 23 years that stand out? I don't want to leave out anything important.

Uter: Well, there are two others. The first, which we ruled on in 1980 when I was chief justice, concerns a 5-year-old boy who had suffered "irreversible loss of brain activity" and had been ruled "dead" by the trial court, based on the then medically accepted definition of death. Little Matthew Bowman, rest in peace, had suffered massive injuries at the hands of a non-family member who was caring for him. He was being kept alive on a ventilator. A dispute arose between the boy's biological parents and his guardian ad litem, who wanted the court to order DSHS to authorize extraordinary life-support measures.

I wrote the majority opinion, which established that it is for law, rather than medicine, to define the standard of death. And although the law adopts the "brain death" standard, it is for the medical profession to determine the applicable criteria, using accepted medical standards, for deciding whether brain death is present. The old medical standard was not

adequate to resolve the dispute because the traditional common law “cessation of heart and lungs” standard was no longer adequate. Modern medicine – in 1980 and even more so now – has the ability to sustain life in absence of spontaneous heartbeat or respiration.

The guardian ad litem appealed the decision of the Snohomish County Superior Court, which ruled that because Matthew had suffered irreversible loss of brain activity, he was in fact dead on Oct. 17, 1979, when a dependency hearing was conducted. The Supreme Court adopted the provisions of the Uniform Determination of Death Act, which states: “An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.” We noted that the act reflects both the former common law standard and the evolutionary change in medical technology. (In re the Welfare of William Matthew Bowman, 94 Wash.2d 407, 617 P.2d 731)

The second ruling I should mention came in an important 1976 case that tested the outer limits of the doctrine of “separation of powers.” The Lincoln County Superior Court had ordered the county commissioners to boost the salary of the director of County Juvenile Services. The judge said the director’s salary was so inadequate that the court could not fulfill its duties. The Supreme Court, in a majority opinion that I wrote, held that the Superior Court could not usurp the statutory power of a legislative body of government, “absent a showing of the highest degree of proof that established other methods have failed or an emergency exists.” In other words, there was no statutory or constitutional basis for the Superior Court judge to order the commissioners to give the director a raise – and no evidence that his salary was so inadequate that the court couldn’t do its job. The court’s claim needed to be proved by the highest burden of proof in civil cases, which is “clear, cogent and convincing” evidence. The courts needed to show more than that there was a threat to their efficient operation; they had to demonstrate their very power to survive was threatened. (In the Matter of the Salary of the Juvenile Director 87 Wash. 2d 232, 552 P.2d 163)

Hughes: Anything else?

Utter: Well, you’ve got a lot of cases in search-and-seizure law. They are very important.

My basic thesis was that law enforcement wants to do it right. There were a few rascals there who were really sloppy or just lazy or vindictive, but most police officers – most everyone in law enforcement wants to do it right – and do it right the first time. But I saw a continuing problem: No matter how hard they wanted to do it right, our search-and-seizure law was so disjointed that it was impossible that people in good faith would not foul up cases. So with the help of a couple of very good law clerks I put together the *Law Review* article on a survey of Washington’s search-and-seizure laws. It was encyclopedic. First time it had been done. I basically did it to give them a road map on how to do it right. It’s been a great help to lawyers, but essentially it was for police.

Hughes: So there’s nothing that constrains a Washington State Supreme Court Justice from being very proactive in working with law enforcement and others to improve the system?

Utter: Oh no.

Hughes: I don’t think we hear enough about that. It’s a different twist on “activist” judges – making the law clearer for the law enforcement people in the trenches. Has that happened often over the years?

Utter: Not often but there are surely people who are very capable of that. There was just a need I saw.

Hughes: What year did you get together with Hugh Spitzer and complete this reference guide analyzing and explaining the Washington State Constitution?

Utter: We got started while I was on the court. The book was published in 2002.

Hughes: As a non-lawyer, I salute you and Spitzer for writing in clear English, not legalese. Jargon is a pet peeve of mine. I read that book and understood it. In fact, I read it twice.

Utter: Good!

Hughes: I was fascinated to learn that the Washington State Constitution offers more protection for individual rights than the federal Constitution.

Utter: Absolutely. The most fascinating area of my life in terms of legal work involves the State Constitution.

Hughes: Tell us about that.

Utter: I got involved in that through the Conference on Chief Justices when I was going to

all those meetings in Chief Justice Wright's stead, and then my own stead in 1979 when I became chief justice. And then because I was carrying on this project, the State Justice Institute Project, they kept me on for five years after my term expired. So I got that done.

Hughes: He's a glutton for punishment, that Utter.

Utter: It was fascinating work, John. Just fascinating work. And in that process we were exposed to some national scholars. Dick Howard from the University of Virginia was the seminal one there. We were talking about the possibility that state constitutions might in fact offer more rights than the federal Constitution did. And the fact that there's a jurisprudential reason for this, not just because you wanted more powers in the state court – historic and jurisprudential reasons.

Hughes: Tell the non-lawyers who will be reading this for years to come what you mean by "jurisprudential" reasons.

Utter: I mean the foundation of law for giving more validity to state constitution law than federal law. The state courts have been criticized and in some cases corrected by just saying bare-bones, "We have the power under state constitutions. We didn't exercise it." And a lot of the criticism was that there had been no reasons in law that could be substantiated for taking that approach. I was challenged by that and had the opportunity to teach state constitutional law at what's now Seattle U, but was then the University of Puget Sound, for about eight years. It was the hardest work I've ever had.

Hughes: Because the kids were so bright?



Justice Utter in 1992.

Utter: The kids were bright and it was such a developing area of law that you had to stay absolutely on top of what was going on nationally. I was still on the court, too. But I was convinced that if I could complete that guidebook, working with others, it would be an essential gift really to the people of this state. They would have a basis in law, not just whim, for looking at their own State Constitution to solve a number of problems.

In the 1980s, about the time I was chief justice, our daughter Kim became *very* ill. ...
(Justice Utter chokes back his emotions)

Hughes: I'm so sorry. What a blow to you and Betty and your whole family. You're doing all of these things and Kim is seriously ill.

Utter: Desperately. ... The most difficult time came when it appeared we'd have to find some of the best help in the world for her. One clinic was \$15,000 a month for treatment. And I think I was earning less than \$80,000 a year. But at that time my interest in state constitutional law came up and that absorbed me for a while. And flying came up. I remember thinking "If I can take flying I can concentrate on one thing and put all these things in the back, at least while I'm up in the air." And that worked.

Hughes: And what was Betty doing at the same time to deal with the pressure and anxiety?

Utter: She was teaching full time and working on her master's degree. She's strong. We did some travel with the state Supreme Court judges; we did conferences a couple of times a year. That was good travel for Betty especially.

Hughes: Is the pay for Supreme Court justices a lot better today than it was then, in terms of real dollars? (Editor's Note: In 2009, Supreme Court justices are paid \$164,221.)

Utter: Yes it is. At one time, not too long ago, Washington was next to last in terms of Supreme Court salaries in the United States. We're now I think close to median, maybe a little above median. But I've talked to judges in other countries where there were problems of corruption, and I can say in good conscience that I've never known one case where a Washington judge decided a case for monetary reasons.

Hughes: That really speaks well for the institution, doesn't it?

Utter: It speaks well for the people of this state.

Hughes: But, the fact is, Justices Utter, Smith and Alexander probably could have gone out and doubled their salaries if they had gone into private practice, eh?

Utter: And that was something I considered when Kim was so ill. But two things happened: I developed this interest in state constitutional law, which was all-encompassing for a while. And then Kim qualified under one of the federal programs for childhood disability. So she has qualified now for that kind of support that will help her for most of

her life. It relieves the burden on us for that – not totally, but a big help. So things work in mysterious ways. And I did some writing during that time and it's the best I've done, I think.

Hughes: What writing was it?

Utter: One was a talk I gave for the British Columbia Prayer Breakfast, up in Vancouver. I called it "The power of one plus One."

Hughes: Do you happen to have a copy of that anyplace?

Utter: I'll find it for you. And then I did some writing on "the voice of the church" and social problems. Then the third effort was about a chapter in the book Jim Houston wrote with the University of British Columbia. That book was instrumental in helping me deal with adversity. I told you about him earlier. Houston is an Oxford graduate; a wonderful man. The chapter is called "Living in a Suffering World." It's only four pages long, but it's the only thing I *ever* read that theologically was satisfying.

Hughes: What's the name of Jim's book?

Utter: *I Believe in the Creator.*

Hughes: I know that you've probably also read *Why Bad Things Happen to Good People*, which I find very eloquent.

Utter: Yeah. I have.

Hughes: We need to get back to the State Constitution and be sure we've covered that. One of the things I was fascinated to learn about our State Constitution is that the right of individual citizens to bear arms is stipulated with much more—

Utter: Clarity than the U.S. Constitution.

Hughes: What are some of the most remarkable things about the Washington State Constitution? Are there many state constitutions, for example, that stipulate a "paramount duty" to fund basic education for all children?

Utter: There are a handful of others. When Washington came into the union in 1889, education was a major concern, especially "on the frontier." I would say at least half the states have some constitutional provision giving some elevated obligation to fund education.

Hughes: What kind of marks do you give the men who framed our state's Constitution?

Utter: They did a remarkable job in terms of their foresight on what really counted – education, freedom of religion and speech, proportional representation, anti-special interest. There was a lot of pressure at the time of the Constitutional Convention by railroads and big business.

Hughes: The Grangers were out there fighting the good fight for the common man.

Utter: Yes, Krist Novoselic's spiritual ancestors in the Grange movement were pretty much behind that. Our State Constitution largely shows remarkable foresight, but also a remarkable lack of vision in some cases.

Hughes: Concerning what?

Utter: In deciding that the penitentiary was more important than the state capital in terms of location.

Hughes: That's funny! Any other things that really stand out?

Utter: The individual rights part of the Constitution, Article I, is a remarkable document. There's just some very broad language on the importance of fundamental principle. Of course, like most things, the law leaves you the challenge of defining "fundamental principle." We talk about that in the book. They had the prescience to say "No person shall be disturbed in their private affairs or their home invaded without authority of law." Article I, Section 7, is a *tremendous* blueprint for individual freedom. And the foreword I wrote for the book I think sets it up.

Hughes: "No person shall be disturbed in his private affairs or his home invaded without authority of law." That really is an emphatic declaration, isn't it?

Utter: It is, and it's one of the few instances where language can be used to say what's meant by "constitutional provision." When you talk about jurisprudential backing for state constitutional law, that's what it comes down to. Unless you can get that, there's nothing to last for centuries. And that was basically what I was writing for there on the court, and hopefully with my other cases as well. That's the privilege, I think, of being on the appellate court: If you did a good enough job you've left something that will far outlive you. And that was a challenge.

Hughes: What did Washington State's founding fathers notably overlook?

Utter: Well, some more reasonable bounds on public enactment of laws in the initiative process, for one thing. Courts put some boundaries on that now. We did that when I was on the court. We said you've got to reach a certain level of approval before you can bring something on the ballot for the public to decide. But that's an issue with ballots, and everything is an issue with ballots. There are very few absolutes.

Hughes: How long did it take Utter and Spitzer to write this reference guide on the Washington State Constitution?

Utter: Utter would still be writing that if Spitzer had not come along! I started about five years before I left the court. I had not written a book before, just some law review articles, so I had *no* idea what was involved. And then when I left the court I was without a secretary. And God bless Hugh, he started teaching state constitutional law after I left the court. He's such a brilliant man. I shared my outline with him. Talk about intellectual curiosity – he has *boundless* intellectual curiosity and the energy to follow through on it. So we teamed up on the book and finally got it done.

Hughes: What is Spitzer doing now?

Utter: He's with a large Seattle law firm, does mainly bond work. He's a man of many talents. He teaches Roman law, teaches state constitutional law.

Hughes: At Seattle U?

Utter: No, at the University of Washington Law School. And he also teaches municipal finance. He's probably one of the best people in municipal finance.

Hughes: Judge Carolyn Dimmick told me that when you two were in law school at the UW in the early 1950s, the professors were more pure intellectuals than real-world practitioners of the law.

Utter: Exactly.

Hughes: Is that a major change over the past – my gosh – half century?

Utter: It's been a while! You're older than a half a century, too, John! But yeah, it's been a major change in law schools. They have clinical courses now, which I think are wonderful. As a matter of fact, some much-respected law schools like NYU make their whole first

year clinical because it gives people a bridge of reality between what's on the books and what's really happening. And they teach how you approach problems from an individual perspective.

Hughes: Who are some of the best attorneys you've ever seen appear before the State Supreme Court?

Utter: There are appellate specialists now who do just appellate law. Charlie Wiggins is one. Malcolm Edwards used to be I think right at the top or very close. Also Catherine Wright Smith. I would do injustice with the current ones, because I'm not up to speed, but there are some very good ones. Those three or four strike me as among the best I've seen.

Hughes: Who is the best judge with whom you served? The best and the brightest? Or maybe there's more than one.

Utter: Well, there surely are. But in terms of intellect I think Charlie Horowitz. I told you earlier that I've just never seen his equal. I've been thinking about that some more, and I still feel the same way. Hugh Spitzer and Charlie Wiggins might be if they ever get on the court.

Hughes: And what was it about Horowitz? Was it just one of those classic steel-trap minds and his ability to do critical thinking?

Utter: It was that, and it was his humanity and the wisdom to say, "Don't ever take a person's dignity away from them, particularly if they're going to lose." And then his boundless energy. The energy component is really important because these are hard problems to work with. I think of Charlie Horowitz from an intellectual standpoint—while Lloyd Shorrett, the trial judge from Juvenile Court I mentioned earlier, had incredible integrity and courage. When you talk about judges you'd trust your life with, Shorrett was surely one. Vern Pearson was a marvelous, marvelous man. He went on the Court of Appeals with me. Just a good human and almost always right with what he came up with on the bench. Gerry Alexander, the present chief justice, is as good as I've run into in terms of administrative ability and just loving his job.

Hughes: How did you pick chief justices when you got the job in 1979, and is it different now?

Utter: It was purely on merit, John.

Hughes: On merit?

Utter: No, I'm kidding you! It was the judge with the least time remaining in his term who had not previously served as chief justice.

Hughes: And that's how you got to be the chief justice?

Utter: That's it. Terrible system.

Hughes: And are they doing it differently now?

Utter: They are. They now select their chief judge by majority vote for a four-year term.

Hughes: It's a feather in Gerry Alexander's cap that he's served multiple terms. (Editor's note: Alexander is in the first year of his third term at this writing.)

Utter: Very much so. And he deserves it.

Hughes: By the way, I found a lot of front-page stories when you resigned in 1995.

Utter: Surprisingly so. And there was a particularly good *Tacoma News Tribune* story that followed up on these troubled kids that we brought into our family from Juvenile Court. So there was good in-depth reporting at that time.

Hughes: Was Betty with you all the way when you started bringing kids home and getting involved in all those youth activities? Here she is a mom with young kids, including Kim, who needs special love and attention.

Utter: Huge burdens. Well, surely if she had said, "It's too much," we wouldn't have done it. But we've had a remarkable congruence in just about every area of our life together and our



Kim Utter with her parents at her 50th birthday party.

thinking about causes and concerns, church, politics, family affairs. Part of that was a real challenge with Kim. There were times when the stress was terrible, just *terrible*.

Hughes: Do we do enough today in our society to help people and families who have disabled children? Have we come a long way?

Utter: No, not really, John. The Social Security Act, which promises some funding

for care for disabled children, was a great step forward. For me to amass an estate large enough to provide for Kim would have been absolutely impossible. Even if we left nothing, she now would be cared for on the fringes. But before that disability act was passed there was nothing. We are fortunate and blessed that we're a fairly affluent part of society, and we couldn't have done it. So there's a great improvement there.

Hughes: Have Kim's brothers helped their sister?

Utter: They've been wonderful, just wonderful. Our youngest son, John, looks on Kim as



John Utter at the wheel of a sailboat.

part of his life. When he would get a girlfriend, the first thing he would do is bring her by to meet Kim. And we love that about him.

Hughes: Are you still active in the church today?

Utter: We're members, but there's a difference between members and active. The Baptist church, God bless them, have the seeds of destruction sewn within each one – and that is the way they pick and change their pastors.

Hughes: Oh judge, you're such a wise man! I've served on a parish council, and I know exactly where you're coming from.

Utter: Well the horrible thing is there's no way to change unless you go with it.

Hughes: Talk about choosing up sides.

Utter: It is that. There are time bombs planted in every Baptist congregation.

Hughes: Some of your students in your seminars overseas had encountered real bombs.

Utter: With tragic results.

Hughes: So where are we in these pictures we're now looking at?

Utter: We're in Prague.

Hughes: Under the auspices of what?

Utter: The American Bar Association and its Central European & Eurasian Law Initiative – CEELI – went together to develop an institute there for teaching judges in new and

emerging democracies. The first session was in 2000, and that was with English-speaking judges from central Europe in cooperation with the American Bar.

Hughes: A picture that Betty showed me featured you with a couple of Iraqi judges, and she remarked that tragically...

Utter: The judge on the right in this picture was assassinated on January 25, 2005. Judge



Utter with two Iraqi judges. Judge Qais Hashem al-Shamari, right, was the Secretary of the Iraq Council of Judges. He was assassinated in 2005.

Shamari was the chief administrator of the Iraqi Council of Judges. Wonderful, bright man, fluent in English. He was in the first group that we taught. In all, we taught 140 Iraqi judges.

Hughes: What's the history of this building in Prague?

Utter: A fabulous one. Built around the turn of the previous century by an industrial magnate who established a huge park. It was one

of two buildings that were hit by bombs in the Second World War. Prague is so spectacular because it's never been the scene of a siege, so they had this enormous historical preservation there. But one of two bombs hit this building.

This next photo is interesting. These are Iraqi women judges that we taught in Istanbul. They had an American Bar Association meeting there. I was the token male judge. And look at this, these are Kurdish judges.

Hughes: How many years have you been going on these trips to promote the rule of law?

Utter: My first one was not with the American Bar Association. I taught in Moscow in 1991 at their judicial institute. But the first CEELI program was in '91. I went to Sofia. ... There were usually three of us who were Americans – a court administrator, a judge from California, Judy Chirlin, and me. And then there were judges from various backgrounds. We usually had a judge from a Muslim country, Egypt or Syria or Jordan. And then usually we had an Iraqi of some background, a foreign national.

Hughes: OK. We're going to hop around here a little bit as we sort through your photos.

Where are we now?

Utter: This is in Kazakhstan in 1992.

Hughes: There are so many "stans" that I get confused. This hut you're posing next to is a yurt?

Utter: That's a yurt. It's a dwelling made of felt. It's a traditional nomadic dwelling of

Kazakhstan. And this man in the photo is now chief justice of Kazakhstan.

Hughes: Here's Betty Utter offering a toast.

Utter: That was a farewell luncheon they gave for us out on the steppes of Kazakhstan in 1992. All the cooking was done outside. It was a spectacular dinner but this huge storm came through, a rain storm pelting everything.



While dining in the ceremonial yurt, Betty Utter offers a toast. From left: Bob, in ceremonial robe, Victor and Igor.

Hughes: Your work there was directed at helping post-Soviet bloc countries develop independent judiciaries?

Utter: That's exactly right. Re-emerging democracies. "What is a judge's role?" It was going to be very different from what it was in the Soviet system. The Soviet judges were an arm of state policy. There was no independence.

This photo, by the way, is of the prize-winning yurt in Kyrgyzstan, a small country on the border between China and Central Europe. And this photo shows how they look on the inside. They had carpets. And it was the 1,000th anniversary of the poem about Manas, who was the hero of a tale that was truly epic.

Hughes: In those days, did an epic poet do anything other than write epics?

Utter: Just epic poems!



The Utters and other members of the delegation outside a ceremonial yurt in Kazakhstan in 1992. Made of felt, yurts are the traditional nomadic dwelling of Kazakhstan.

Hughes: That would have been a very cool writing gig to live in an era where you sat around and wrote epic poems.

Utter: Well, John, the thrill is that two of them were preserved, and one has close to half a million lines. And the tradition is that it's all oral. So these poems go on and on and on. And they're taught to the kids. They chant them is what they do.

Hughes: Did you memorize any epic poems during your stay there?

Utter: Yeah, "The Cremation of Sam McGee"! (laughs)

Hughes: What are you doing here in this photo in what looks to be a Russian helicopter?

Utter: On our first trip to Kazakhstan we chartered a Russian helicopter and it took us to their version of the Grand Canyon. (Charyn Canyon) We went from the Grand Canyon to the meadow of the mountains that border China. And this is a shepherd with his family camped up here.

Hughes: What's happening here?

Utter: That's my birthday in Kazakhstan. They threw a birthday party for me. It was probably in 1994. And this is my dear friend Tagiir. "Tagiir" stands for tiger, and he is. On



Tagiir playing the accordion while he and his family host the Utters in Kazakhstan.

my first trip to Kazakhstan I met Tagiir. He was a young reformist judge. I had been back home for about two weeks when I got a call. He said, "I'm dying of leukemia." And so I said, "Tagiir, let me see what I can do. But I've got to have you promise that you won't do anything without first

clearing it with the American Embassy." About two weeks later I got a call from him saying, "I'm at the airport. Come get me." He was at Sea-Tac. I tried to place him with the Fred Hutchinson Cancer Center in Seattle, but they wanted \$300,000 in advance, cash, before they would do anything. Well, the judges in Kazakhstan, God bless them, who earned maybe at most \$2,000 a year, had contributed \$30,000 to his care.

Hughes: Please tell me this has a happy ending.

Utter: On the way from Olympia to Sea-Tac, I called a doctor friend of mine whose former partner was head of Swedish Hospital. And I said, "Neil, what can you do to help him?" And he said, "Well, I'll call him." The secret is that once they're admitted to the hospital they won't let them out ... So we arranged to have him admitted to Swedish.

Tagiir arrived with a friend and two big gunny sacks. One had fresh bread and vegetables. The other had brandy. Once we got inside the hospital, they went to the waste basket and dumped all the fresh bread and vegetables. They kept the brandy! Tagiir was treated for about three months at Swedish. Bob Alsdorf, a Superior Court judge who spoke Russian, would come up and translate for me. ... One of the doctors in oncology also worked with Hutch, so it was a sort of cooperative venture. The oncology nurse and her husband realized that this fellow needed special care so they brought him to their home for the intervening chemo treatments, which killed all the white cells in his blood. But you use your own cured white cells eventually. He had four of those treatments and four months later he was released.

Hughes: What a wonderful story!

Utter: Isn't it great! He's alive and well. They celebrated his 60th birthday in Hong Kong this year. I was unable to go, but Nancy the nurse met him there.

Hughes: What's happening in this photo?

Utter: This is when I was teaching in Moscow. There are two things I vividly recall. This is a monastery outside of Moscow. And I was listening to the bells ring there. They're just so moving – the enormity of the bell concert. These were monasteries where the political prisoners were held by Stalin. So it's in this magnificent religious setting that these photographs were taken of all the guards who had not a flick of humanity in their eyes. Think of literally the *thousands* of people who were there with no hope, and of course left dead.

I don't talk much about awards, but I'd like to show you this. I received the American Bar Association Volunteer Award in 2003 for the work I'd done with CEELI. There were tremendous people who were involved doing all that work, and it was totally unexpected. That was a humbling one.



Hughes: Let’s move forward to your experience with the Rwanda Tribunal Project that investigated the genocide there.

Utter: November of 2008.

Hughes: How long did you spend over there?

Utter: Five weeks. We were working with the UW Information School to try and find a new way to preserve the history of

what’s going on in the world. Their thesis essentially is that you want to look at preserving information over a hundred-year life span. The question was “What can we do that will speak to people a hundred years from now?” And the notion is that nobody is going to look at the printed page. ... So it was a combination of work with skilled cinematographers. We did interviews with the personnel on the criminal tribunal.

Hughes: You’re preserving and sharing information about this terrible chapter in the history of Rwanda, and how justice played out, for better or worse?

Utter: Exactly. And we went with wonderful people, including John McKay, the federal prosecutor who was fired by Bush. He’s a wonderful guy, now teaching at Seattle U. Former King County Superior Court judge Donald Horowitz, a dear friend of mine going back 40 years, was also part of this effort.

Hughes: Now we’re looking at pictures of a stunning million-dollar sailboat you acquired.

Utter: In the early 1970s, that boat won every race it entered for about two years. It was



Batya Friedman, Betty Utter, Bob Utter, Patricia Boiko and John McKay at the International Criminal Tribunal for Rwanda Information Center in Kigali, Rwanda, during the fall of 2008. Courtesy *University Week*

just a remarkable sailboat, with several design changes over the years. It's a rich man's sport. Way too rich for me. Two years after it was built it was already out-designed ... so the owner gave it to the Naval Academy, and they raced it for five or six years in every ocean race in the world. By the time they had just beat the stuffing out of it, it came on the market in 1979. A sailboat broker with whom I had done some racing had tracked it down and said it was available. And of course I never dreamt that I would own or sail a boat like this.

Hughes: How long is this vessel?

Utter: 54 feet. It's the *Charisma*. I put together a group of five other friends and we bought it – all five of us feather merchants. There wasn't one rich man in the whole group.

Hughes: Did this cartel have a name?

Utter: No. "The Charisma Misadventure" would be a proper name. We owned it for about five years – bought it at the peak of the Carter inflation. I think we had a note for 18 percent interest. I could barely keep up with the monthly payments. Of course what we didn't realize was that if you owned a boat that cost that much to build, even if it was out-designed, if a part went bad you paid the price of what it cost to build it, which meant we had a constant struggle. We finally sold it for half of what we paid for it. That's the story of my life. But it was a magnificent boat to sail, just gorgeous. It took 14 of us to race it in the ocean.

Hughes: Is that the sailboat you took Supreme Court Justice John Paul Stevens out on?

Utter: Yes, he's on the *Charisma* in the photo I showed you. It was a day to remember.

Hughes: Sailing was spiritual for you. ... I asked C.Z. Smith, "Judge, you've been president of the American Baptist Churches. Tell me about your faith." And he said, "Well, I don't wear it on my sleeve."

You've read your Bible a lot, haven't you?

Utter: Not as much as I should because the Bible in a couple of the churches I attended



Bob Utter at the wheel of the *Charisma*, with U.S. Supreme Court Justice John Paul Stevens at his side. Washington State Justice William Goodloe is seated at right, wearing a white shirt.

was used as a weapon, not for wisdom. Frankly, as a fairly young man it turned me off. I still read it for wisdom, and it's there. But I went through some difficult church experiences, as Baptists are prone to do. ... But I'm exactly with C.Z. I don't wear my faith on my sleeve.

Hughes: Is your faith resolute?

Utter: It's abiding. It's the only way I could get through Kim's problems.

Hughes: Tell us more about Kim's disability.

Utter: A number of things. She had orthopedic problems. She had no hip socket on one side.

Hughes: I saw her in photos on your refrigerator using a walker.

Utter: The walker comes later. She was in casts and braces until she was 4 years old to help that hip. And then she was born with no voice.

Hughes: No voice?

Utter: She had what's called a curled epiglottis. It just didn't work. So for the first three or four months we would have her sleep next to our bed, and we could only know she was in distress by her breathing heavily. She couldn't cry. Then she had surgery. ... We put her in fairly advanced schools when she was young. Betty remembers her coming home saying, "Mom, I'm not like the other kids." And she had no physical attributes other than this limp that she had. But she said, "I just can't keep up." She had *years* of speech therapy and things of that kind. Our feeling was that the doctors we had were good people, and they'd say, "Oh there's nothing to worry about. She'll catch up." Well, she couldn't catch up, God bless her. She had lack of oxygen at birth and that caused the brain damage. So we dealt with that. She could memorize things but she had trouble applying them to new situations. And that's been a problem. So she has a lack of confidence that shows if she gets a job. It's been difficult for her, and her family, but we love her dearly. She is wonderfully musical. She is playing some Bach now for her recitals and enjoys the singing in the Gloria Dei choir. She loves her new electronic piano, which sounds much like the real thing. Blessings often come with some pain.

Hughes: So it's back to my question: If you didn't have your faith how would you cope with all those things? There's an old saying that you deal with what God gives you.

Utter: And Kim was having a very tough time when I was chief justice – 1980, '81. So

everything else was piling on. I still don't know how we made it through that, John. Read that chapter in Jim Houston's book. It's the *only* thing that has given me peace. It basically says it's not for us to understand. ... I don't want to worship a God that is no smarter than I am.

Hughes: There's a funny but eloquent routine on that theme by the comedian, George Carlin.

Utter: Yes, I liked him.

Hughes: He was a genius.

Utter: He was.

Hughes: I have a note here to myself that says, "Ask Judge Utter more about Willi



Mountaineer Willi Unsoeld, one of Justice Utter's gurus.

Unsoeld." I didn't know Willi, but I know Jolene Unsoeld, his wife, really well. I covered her campaigns for Congress and we talked often when I was an editor.

Utter: We were members of a discussion group that Willi had. ... It was just made up of friends. Remember, I told you that Willi always told us about the two unanswerable questions – "What if?" and "Why?" and to dwell on them only leads to madness! ... You can begin to live with that kind of understanding. The piece by Jim Houston is a follow-up on that.

Hughes: If you put those two together you've pretty much

got the Rosetta Stone to figure out what Bob Utter believes?

Utter: I think close to that. That and the traits of character I learned.

Hughes: If God is so good and great and works in these mysterious ways, how does He – or She – countenance this whole business of what organized religion has done in His name over the centuries?

Utter: Must break His heart.

Hughes: Are you and Betty on similar paths in all this?

Utter: Very. We're so fortunate that we are.

Hughes: Having survived cancer, I feel like I've got a lot of living to do, but I'm not really that afraid of dying any more.

Utter: Yes, and after I did the first big Maui race I lived without fear. And the analogy there, John, is to set sail from Cape Flattery and see the land disappear in the background and know for another two weeks you're not going to see land again. And you don't know what's going to happen in between. You hope that if you follow the jet contrails you get there. But it's that sort of snap of faith inside you. And a sense of adventure of what's going to happen. As long as I can believe God is merciful then I can face it.

Hughes (turning to Betty Utter): Did you have mixed emotions about him going off on those sailing trips?



Bob and his son Kirk on a race to Maui.

Betty Utter: Oh yes. Even more so when our son Kirk went with him, and the two of them were on the same boat.

Hughes: How old was your son then?

Utter: He was 21 I think. But he also went when he was 15.

Betty Utter: And I was just a nervous wreck, but Micki Hemstad, a friend, said to me, "Well, would you rather he get his highs on the high seas or on drugs?" And I said, "All right. He's going."

Hughes: Did you really enjoy the boating?

Betty Utter: Yes, but I was reluctant at first. It was a little scary to me. I also get seasick quite easily.

Utter: *Other than that!*

Hughes: Other than that it was a lot of fun.

Betty Utter: But we did have a good time, we really did. Our family trips were just wonderful. And I think all the kids look back on that as just a really magical time. We used to go way up north with the kids in diapers. ...



The Utters on the *Tacita* in the late 1960s. The kids are, from left, Kim, John and Kirk.

(As for the trips around the world with the Bar Association groups), I was always kind of scared to do things. Well, what do I do? Stay home? So I'd go. But I wouldn't have done that on my own without Bob to say, "Well, you want to go to Kazakhstan this summer and stay a month?" And I'd said, "Where's that?"

Hughes: In the late 1970s, we spent three weeks on the road in Korea. Some of the bathroom facilities in rural areas were a hole in the ground.

Betty Utter: Yeah, the bathrooms! That was the worst.

Hughes: And I'm not a finicky eater, but there's some stuff that I just can't handle, like a tentacle that's still wriggling.

Betty Utter: But if you're there, it's so much easier to do it because you really don't want to alienate them. You have to sometimes just do it.

Hughes (turning to Bob): At the banquet you mentioned earlier, did you eat the eye you were presented?

Utter: The first one, no. I hid it under a plate of noodles.

Betty Utter: Well, I ate my ear.

Utter: If you swallow quickly it's no problem. If you linger, it's bad.

Betty Utter: Well, an ear is just gristle. But an eye, oh!

Utter: There are some great adventures to do with eating, and one of them was in Lhasa in Tibet. That was in 1987. That was when the Chinese really cracked down on the Tibetans.

Hughes: And they're really cracking down now, aren't they?

Utter: It just breaks your heart.

But they wanted to show us how a dispute resolution system worked among the native Tibetans. They were so proud. They had a dispute resolution council going. Tibetans have a childish sense of humor, and they really like to sing, and laugh and tease.

Hughes: Sounds just like the Koreans.

Utter: Part of it was that they had drinking games. A woman would sing and you had to finish quaffing your bowl of barley beer. And it wasn't a cup – it was a *bowl* of barley beer. And if you didn't finish before they stopped singing then you'd quaff another bowl. What they had forgotten or never knew was that college kids in the United States can really quaff a lot of beer. And I beat them! Their eyes were just flashing (in admiration).

Betty Utter: It was so cute. They were all standing in a circle watching Bob, eyes just sparkling. And these darling little Tibetan women with beautiful costumes just encircling him. It was quite a picture. ... Sometimes in the yurt they'd give us little glasses about that high of vodka. And once in a while people would just dump it on the grass, if it was a grass-floored yurt. And then they'd think you had drunk it all and they'd be right there to refill it. The same in Tibet with that yak butter tea.

Hughes: Ugh! Yak butter tea.

Utter: *That's bad stuff!*

Hughes: You also taught in Prague for 10 years, like every summer?

Utter: It was connected with the American Bar Association project of educating judges in emerging democracies. We had a course entitled, "Judging in a new democratic society."

Hughes: This is after you left the court?

Utter: Yes. I think I first went to Prague in 1999 to help set up the course. And then for about every year after that.

Betty Utter: You were there with People to People too?

Utter: Yes, but I was just talking about the teaching. Until last year I think I had gone every year at least once.

Hughes: How long did you stay at a time?

Utter: Two or three weeks.

Betty Utter: And the last three times we were there, he was teaching Iraqi judges. They were flying them in from Iraq.



Utter speaking at the ambassador's residence in Prague.



Justice Utter, front row, center, poses with faculty members and some of the Iraqi judges who attended an educational seminar in Prague in 2004.

Hughes: Are either of you multi-lingual? Did you pick up any languages along the way?

Betty Utter: I don't have a good ear for languages, but Bob does. He can get along.

Utter: I speak taxi-cab German, Russian, Spanish and Chinese.

... Prague, by the way, is a *magic* city. We taught in a variety of circumstances for about half

of the time we were there. We were gypsies. We'd teach at NYU facilities there in the old Commercial Building, and we'd go from place to place. Finally, the American Bar found this old estate that had been turned into a park in the middle of Prague – not in the center of the old historic section but not very far from it. Do we have pictures of that Betty? I'm sure we do.

Betty Utter: Oh, we do. In fact I have one right here.

Hughes: You say the judge on the right was assassinated?

Utter: Yes. The first class we had we lost three Iraqi judges – one before the class started and two after it started. One of my former pupils was the first judge who tried the Saddam Hussein case. And there's a picture of him there.

Hughes: So these are some brave fellows, and brave women, too.

Betty Utter: Very brave.

Table talk ends

Hughes: With Willi Unsoeld as one of your gurus, did you climb any mountains?

Utter: I am no mountain climber! I shouldn't have done what little climbing I did because my shoulder was bad from college on. Bad knees, same thing. I turned out for football. Could run fast but not fast enough to escape.

Betty Utter: Then Willi died in a climbing accident (in 1979). It was tragic

Hughes: Earlier, their daughter Devi died during a climb in India. Talk about double blows to Jolene.

Utter: I still tear up when I think about it. The description of her dying in Willi's arms on the Nanda Devi. I still have copies from the service of her memorial in 1976. You talk about the fact that death should be a celebration. Well, that was exactly what Devi's service was. I love good music, and Gabriel Fauré wrote the only victorious requiem mass. It is a thing of exquisite beauty. If you haven't heard it, get it.

Hughes: I like Elgar's Crown of India Suite and "Pomp and Circumstance." They're so triumphant.

Utter: You just want to march down the aisle.

Hughes: Absolutely!

End of Interview III

March 9, 2009

Interview IV

March 10, 2009

Hughes: We're back with Judge Robert Utter, and it's a gorgeous winter day. Four inches of snow in Everett, but we're doing fine with just a trace on Cooper Point. ... I want to revisit "Living in a Suffering World," a chapter in Dr. Houston's book about why bad things happen. It was an epiphany for you?

Utter: Absolutely.

Hughes: Because?

Utter: Because I had never read anything that satisfactorily explained some of the difficulties that happen to innocent people. Houston made it clear there are some things that are not for us to understand. And I could go with that. As I pointed out to you earlier, I don't want to worship a Creator that is no smarter than I am.

Hughes: That's a wonderful line. We were talking yesterday about the fact that we both like George Carlin. He always said the nuns at "Our Lady of Perpetual Motion School" had the same reply for everything: "It's a mystery."

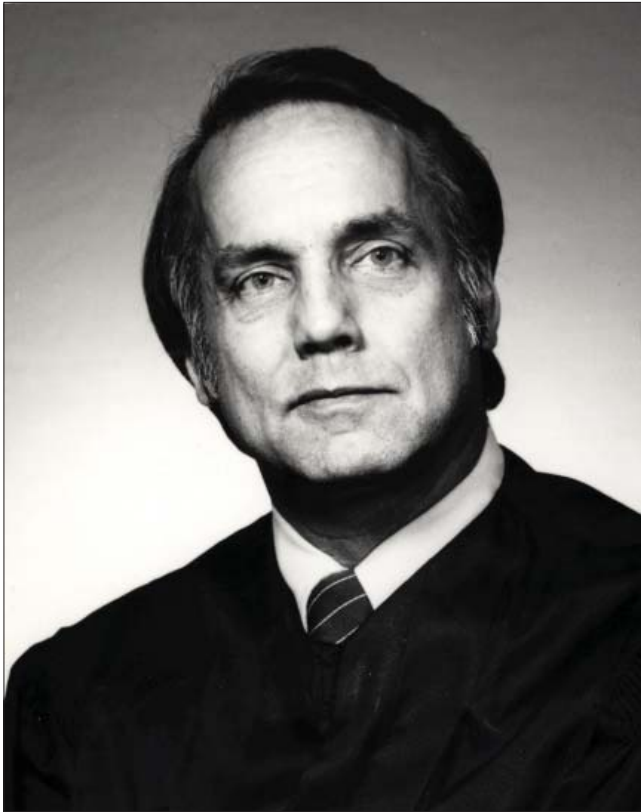
Utter: Ahahahaha! They were being profound. I gauge the depth of thinking of writers by how they deal with their problems – The suffering of the innocent.

Hughes: When did you make your final decision that you were going to leave the court? Was it several months before your resignation or was it more of thing where you sat bolt upright in bed in the middle of the night and decided "Well, this is it"?

Utter: I read *Hitler's Justice* in the fall of '94, and then I think things just percolated. In the court schedule (for 1995) we had two death penalty cases. I looked at two more coming up and thought, "When is this going to end and where is my approach to it going to resolve something?" It was a gradual sort of leaning towards resignation and then the scheduling of those two cases, which was fortuitous. It wasn't something that someone really planned. But it crystallized my thinking.

Hughes: Did you turn to Betty and say, "Enough of this. I'm going to do it"?

Utter: I don't recall. I surely discussed it with Betty. One of the other factors was just thinking, "I've had such wonderful law clerks. What kind of a legacy am I going to leave



Justice Utter in the 1980s

with them?” Many of them are still active in anti-death penalty work all over the country.

Hughes: How long was it before you announced it to your colleagues?

Utter: I think it was within a week. And part of the problem was alerting the governor (Mike Lowry) that an appointment was coming up. I think I let him know as soon as I decided what I was going to do. So it was fairly short. ...

Hughes: After alerting Lowry, who did you talk to first among your colleagues?

Utter: The chief justice, Barbara Durham.

Hughes: There certainly were a lot of fascinating things happening on the

Washington Supreme Court at that time, weren't there?

Utter: There surely were, John. Surely were.

Hughes: Do you recall what her reaction was?

Utter: I don't recall. What I do recall was that Barbara was interviewed when I resigned and had some very nice things to say.

Hughes: Even with her health problems (pre-Alzheimer's symptoms) and your philosophical differences, did you get along well with her?

Utter: Not initially. Barbara came on the court with an agenda – a very strong one to overturn a lot of things the court had done over the years, and she joined a bloc that had a very similar commitment.

Hughes: Who were the other members of that bloc?

Utter: Mainly judges coming from Division 1 of the Court of Appeals.

Hughes: I read stories from early in her career that portrayed Carolyn Dimmick as being an arch-conservative. I found out that she really grew in jurisprudence, whereas Barbara Durham, bless her heart and rest in peace, was really a lot more doctrinaire judge.

Utter: Far more, far more. ... There wasn't the depth there that Carolyn had.

Hughes: How much lead time did you give everyone?

Utter: I announced my resignation on March 30, 1995, effective April 24. There was a need for quick change if they were going to get another judge on before the next session started. So that was one of the things I was considering in trying to give the governor enough lead time. The irony is that Anne Ellington, one of my very favorite people, was thinking about applying for appointment to my vacant spot. I kept talking to her about it, saying, "Time is fleeting and you have to decide." She *finally* decided but it was after Roselle Pekelis, who had been on the Court of Appeals for nine years, had decided she wanted it, too. And Roselle got the appointment from Gov. Lowry. Good judge, good friend. But Richard Sanders then ran against Roselle and beat her. I know Richard well and he has told me, "Had Ann received the appointment I wouldn't have run against her."

Hughes: Earlier when we were talking about Justice Sanders, I think you called him a "free thinker." Was that your word?

Utter: It surely could be. But you understand Richard by understanding the word "Libertarian." Richard is a true Libertarian, I think. I think he thinks that too. Things start to fit into place if you understand that.

Hughes: Was Roselle Pekelis philosophically someone very much in tune with Robert Utter?

Utter: Very much. I just don't think she anticipated a strong campaign. She had not had a strong campaign in King County, and I just don't think she anticipated what a statewide campaign would be like.

Hughes: So was the reaction to your resignation surprising to you in any way – in terms of columns, editorials, calls and letters?

Utter: I can't think of a critical media comment that came out. The *Times* and *P-I* were very kind, as was the *Tacoma News Tribune*.

Hughes: Were there any calls or letters that you received from any unexpected sources?

Utter: Not really. My views had been known for a long time. They were mainly just expressions of regret, from a broad base, not just from people who were political liberals

but conservatives, middle of the road people ...

Hughes: Much as we both hate labels, how would you describe yourself? If you summed up the philosophy of Robert F. Utter, you'd say ...?

Utter: Well, I think what guides me is a sense of history. To be an appellate judge, I think you have to have a love for history and a love for orderly progression of the law. What drove me to do the search-and-seizure article was to give a road map for law enforcement. The work on the State Constitution was really driven by a desire to put some order in the house of lawyerly thinking, jurisprudential thinking, on the State Constitution. I think I'm a realist in terms of criminal sentencing, criminal procedure. What's the outcome? What's the role of the law, the role of the court? I'm an activist in a sense of trying to remain sensitive to victims of crime, not just offenders. Early in the process of thinking about victims of crime, I worked with others and came up with a concept that victims are the clients of the system – it's not the offenders.

Hughes: "Victims are the clients of the system." That's really well put.

Seattle Post-Intelligencer Thurs., Jan. 20, 1972 S **A9**

Crime Victims Are Forgotten People, Says Judge Utter


BY WALTER A. EVANS

The most glaringly forgotten persons in our society are victims of criminal activity, Supreme Court Justice Robert Utter told the Seattle Rotary Club yesterday.

He urged the community as a whole to make special efforts to find employment for the victims of criminal offenses, tailored to their possibly diminished capacity to fit into the current job market.

"Once the immediate reactions of anger, fear and vengeance have been verbally expressed (about a crime), the average citizen washes his hands of all responsibility and leaves it to the official avengers," he said.

"Victims of violent crime deserve more from society than to be ignored."



JUSTICE UTTER
Urged special efforts

Justice Utter, newest member of the state's high court, outlined the statistics of violent crime and discussed proposed federal and state laws to provide monetary compensation for victims.

Terming such action a long overdue start to meet the problem, he warned:

"The sensitizing of society to the plight of the victim has a number of implications beyond that of payment.

"The way in which the whole legal system handles a victim must be examined with the question in mind of how well this system is serving its primary client, the victim."

Justice Utter mentioned the time involved in prosecuting a case, the number of court appearances a victim must make.

"In urging compensation for victims from the state, I do not mean to ignore the responsibility of the person causing the injury. This responsibility is primary," he said.

Unfortunately, the perpetrator of the crime seldom has the resources to compensate his victim, the justice said. And, in any case, failure of police protection is a prerequisite to any crime.

"That is an additional reason why the state should assume a major portion of responsibility to the victim," he added.

The Human Affairs Research Center of Battello Institute is conducting a study of all proposed victim compensation programs. Even an ideal compensation program would not do the whole job, however, Justice Utter said:

"Improvement in the governmental approach to the problem will still leave many areas of assistance in which the public as a whole needs to be involved."

Utter: When you put it that way it makes a lot of difference on how you view problems of crime. And I still feel that way.

Hughes: So you're 65 years old and you wake up one morning and you suddenly don't have a job. You could have had a job for 10 more years and you'd gotten to the point where the Supreme Court justices were paid a whole lot better than when you started, comparatively speaking.

Utter: Much better. I think the pay was \$35,000 when I went on the court in '71 and \$100,000 when I left. So it was more than double.

Hughes: You could have retired, of course, but you really didn't want to retire. What did you think you were going to do?

Utter: I had no real idea. I knew I was interested in working with foreign judiciaries and that that might expand in some way. We had still a number of visits to China in mind and we went on those.

Hughes: Was that mixing business and pleasure, so to speak?

Utter: No, all jurisprudential. I didn't really anticipate any foreign "business" as a consultant. The shyness in me comes out when I anticipate private practice. And I hate developing friendships with dual motives. If people are friends, they're friends. I don't want to look at it as, "What can I get from this person?" So I'm probably the world's worst private entrepreneur.

Hughes: So were the Chinese trips with the American Judicature Society or the ABA?

Utter: A lot of that was with People to People. Some were with a group called Advocates International, which was pushing for religious freedom all over the world, regardless of faith. Their thesis is that unless you have strong courts there isn't any religious freedom. And they're right on target on that.

Hughes: Did you go to China shortly after resigning from the court?

Utter: Indeed. We went to China and Outer Mongolia.

Hughes: Is there also an Inner Mongolia?

Utter: There is, and I've been there as well.

Hughes: We just don't hear enough about *Inner* Mongolia. (laughing)



Bob and Betty playing dress-up in Mongolia in 1998.

Utter: We had been involved previously in these exotic locations in China. But I'd never been to Mongolia so I was interested in taking that trip. This was 1990, the year after the Tiananmen Square Massacre, and very few people were going to China at that time. My close friends in China wrote and said, "It's imperative

that you come to encourage the moderate elements in China." So we did, and of course tourism was pretty skimpy at that time.

Hughes: Those pictures of the defiant Chinese kid poking a flower down the barrel of a tank might not have been the best advertisement for tourism.

Utter: Impressive stand, wasn't it? But it was really skimpy in Inner Mongolia because nobody went there before or after the Tiananmen Square Massacre. Anyway, when we wound up in Inner Mongolia they literally rolled out the red carpet. They took over a theater one night and put on a special show just for our group of maybe 30 people. And they had a marvelous place in Hohhot – that's the capital of Inner Mongolia – called the Children's Palace. It was just that – a large building dedicated entirely to children's activities. We had the best time! They had ballet and orchestras and art. I still remember the little budding ballerinas, little girls acting just like girls here ... like little girls everywhere. When the teacher wasn't looking, one would reach over and nudge one.

Hughes: If only we could get the world to see the world through children's eyes.

Utter: Exactly, John. ... No matter how destitute people are, no matter how desperate they are, when it's time for their children to go to school they find the resources to dress them, scrub them and send them off just polished.

Hughes: So when you were in China and Inner and Outer Mongolia in those first forays

after leaving the court, was the theme to emphasize the importance of an independent judiciary and the rule of law?

Utter: Pretty much that. It's the post-communist era, which is a remarkable one because the whole concept of the role of the judiciary was being reshaped in those countries. But it was hard for them to let go of the old communist model, which was that judges were simply an arm of state policy. So you had to work with judges to reshape their own vision of their identity, and you also had to work with legislators and executive branch people and say, "If you want world-wide credibility, here are things you're going to have to provide."

Hughes: Some 14 years later, what is the judiciary in China like?

Utter: Slowly changing, very slowly. Chinese are very concerned about disorder because there are so many countercurrents moving within. ... And the hardest thing to give up is power. Once you've got it you're very reluctant to let it go. We see that ironically in our own government.

Hughes: Speaking of an independent judiciary, the rules of evidence and habeas corpus, I've been shocked by some aspects of this controversial case involving a young college student from Seattle who is accused of killing her roommate in Italy. Apparently over there you can hold someone for 15 or 18 months before charges are filed, I gather without possibility of bail. What's that all about?

Utter: It's all about different rules. It's like a wise person in China once said, "You know, there are Chinese solutions for Chinese problems." And there is a lot of wisdom in that. With more than 1.3 billion people, there have to be some things that are done differently in China. I think the Europeans look on it much the same way. In many areas they are far more enlightened than we are, but their criminal procedure rules are very different from ours. ... There's something called the Council of Europe that very few people in this part of the world seem to be aware of. It's not the European *Union*; it's the Council of Europe. And there are over 50 member states – Russia, Ukraine, I think even Kazakhstan is a member of the Council of Europe. Its focus is on the European Convention on Human Rights. Part of what they've done is to construct a series of aspirations for judges and judicial systems in their member states. They're about even or ahead of us in the area of

criminal procedure, but they're bringing the states along slowly. And Italy is perhaps an example of that. To hold somebody as long as they have without trial I think would be a violation of the European Convention on Human Rights.

But in China there are billions of people, and billions of problems. I was fortunate to have dinner with the members of the Ministry of Justice for China. All enlightened men dedicated to bringing justice to China, but in accordance with *their* view of justice. I asked them, "What's your goal as ministers of justice?" Two of them said, "To make certain that something like the Cultural Revolution can never happen again." And when you look at the tremendous upheaval that was caused by the Cultural Revolution you can understand why they said that. ... Things were destroyed; the fabric of order was gone in China and they came as close to losing control of the country as anyone can. ... An enormous amount of people starved to death in China during that time. The whole systems of support were destroyed.

Hughes: So how many trips to China in all?

Utter: Six. The last one was in the late '90s.

Hughes: Have you done the Great Wall?

Utter: Oh yes, many times. To stand on the Great Wall and just think of all the waves of history that lapped on the base of that wall. And then to be in Lhasa, Tibet, next to the Potala Palace. It's this huge edifice up on the hill behind the capital. And to see these prayer flags and all the rest. It just sent chills down my spine.

Hughes: Have you met the Dalai Lama?

Utter: Have not.

Hughes: Are you an admirer of his?

Utter: I am, and I've met with his advisers. There is a group in Seattle called the Sakya Sect, part of the Tibetan royalty, very high up in terms of their religious prominence. One was a UW law graduate and his father was the head monk of the Sakya Sect. He would come to talk to me on occasion about criminal procedure issues when the government in exile was formed. In fact, I even have one of those white scarves from the Dalai Lama for the work I've done with him.

Hughes: You noted that the other group you've been involved with is "CEELI" – the

American Bar Association's Central European & Eurasian Law Initiative. Were those the trips to Prague?

Utter: Yes. As with many things in my life, totally unplanned, but it turned out very interestingly. But to back up a moment – in the early 1990s when I was still on the court, I was still very active with the American Judicature Society, and its executive director was asked if she could go on the first trip to the former Soviet states in the Warsaw Pact to work with the judiciary. She could not go and recommended that I go in her place. That was in the winter of '91 to Bulgaria. We went there to talk with their judges, including a newly emerged minister of justice, about the attributes of an independent judiciary.

Hughes: What kind of lawyers and judges did you find?

Utter: I found *marvelous* lawyers. Lawyers are the same all over the world. Well, *good* lawyers are the same.

Hughes: What characterizes a good lawyer all over the world? What kind of instincts spring from the breast of a good lawyer?

Utter: The word "anarchist" comes to mind! But I say that in jest. (laughing) I remember having dinner with this marvelous lawyer who was very involved in trying to put limits on the actions of the wife of the premier. She was taking over the major courthouse for a museum that she wanted.

Hughes: In which country?

Utter: Bulgaria. He was a brave guy, and he was doing this in the face of real tradition and real strength on the part of the premier. And I saw some of that same bravery in Cuba when I was there.

Hughes: Enlightened subversives?

Utter: That's a good way to put it. "Subversive" is better than "anarchist." I ran into this marvelous lawyer in Cuba – a labor lawyer in Cuba, of all things. ... I was in Havana for the 2000 elections. One of the Cubans wryly volunteered that he would be an election observer in Florida should we need one. It's a short swim!

Hughes: Was it controversial to be going into Cuba?

Utter: That was with the People to People program – their first trip to Cuba in literally

decades. We had to go in through the Bahamas. Our State Department knew what we were doing, but it was with sort of a wink and a blink.

Hughes: Did you meet Fidel Castro?

Utter: No, no, no. Part of the trip was to have dinner with Cuban lawyers and judges, but Cuba was more reluctant than we were – our country, that is – so all our plans didn't come to fruition. The government was worried about them being polluted by our ideas. But we still got to talk to these labor lawyers, who were trying to turn these ridiculous laws on their head so people could get real representation. They told these stories with a little gleam in their eyes and a little smile on their lips.

Hughes: I'm reminded of the photos we looked at that feature Utter standing between a couple of judges from Iraq – one of whom, not long thereafter, was assassinated. You've gone to faraway places to try and spread democratic ideals and an independent judiciary and they're standing up for it with their lives.

Utter: Absolutely. The key ingredient in justice is "Courage." ... But change often comes hard. In the former Soviet Union, for instance, there's this old history of judges being an arm of state policy under Soviet law.

Hughes: Did you meet men your age who had been judges under that system – who told you privately or publicly that democratic reforms are just a revelation?

Utter: Oh yes. There are a number of judges who are my age who demonstrated *extraordinary* courage in the face of threats to their lives or their housing and their children's education. I came away inspired from every trip.

When I taught in Moscow in 1991 it was at the Soviet Judicial Academy. They have judges from all over the former Soviet Union there. And at the end of the class the judges were asked to give a little story about who they were and what they'd done. This judge from Kazakhstan got up and told about having some pressure put on him to reach a certain result on a certain case. It was at the time of the attempted coup. He said he stood up and refused to do it because he felt that "in a nation of slaves the revolt of one slave was significant." And I thought, "If there are people out there like that, this is all worthwhile."

And a couple of years later I went down to a little city called Shymkent which is

on the border of Kazakhstan and Uzbekistan. It's a godforsaken part of Russia – the lead mining capital of the area and the site of a pharmaceutical plant where they make heroin for medicinal purposes. Who would appear at the seminar but the same judge I had met in Moscow a number of years earlier. Head judge now of his area. Independent. Brave. And he came up and said, "Do you remember me?" I told him I had never forgotten him!

Hughes: Have you been to Iraq as well?

Utter: I have not. I would have gone but I haven't been asked.

Hughes: What did these Iraqi brave judges tell you when you met them in Prague in 2005? Did they let their hair down about Saddam, the war and the American occupation?

Utter: Well, my background was *total* opposition to the war. The notion was that the Saddam regime represented an imminent danger to the United States. And there was no way they could find that. But we went right ahead. The example we set for the rest of the world was heartbreaking.

Again, I love history and there's a marvelous book called *A Peace to End All Peace*, a play on words of "the war to end all wars" – the First World War. It describes the machinations of the major powers to carve up the Middle East at the end of the First World War and the disasters that occurred there. I think it was 1922, as the British troops marched out of Iraq in total defeat, Churchill said, "These people are ungovernable." That was part of the tragedy of the war. You can go in calling yourselves "peacekeepers," but they're going to look at you as occupiers no matter what you call yourself. That's the only thing that united the Iraqis – to have somebody else go in there.

Hughes: Were you able to glean any real insights into what had happened under Saddam? Had Saddam's judges been just like Hitler's judges?

Utter: There were two very distinct (types) of judges – those who were political and presided over Saddam's political trials and "civil judges" who were responsible for civil law. The non-criminal judges were men of great character, very intelligent. ... They were critical of our heavy-handedness of going into Iraq to start with. ... The tribal system is so strong in Iraq that there are really two levels of justice. You have your justice on the surface, with traditional types of judges. Then there are tribal courts. And unless those are working

somewhat in conjunction, it's not going to work out well.

The one thing we did well in the occupation was to have some marvelous judges from the United States go over there and vet their judges who had been under Saddam. And they did a good job of picking a variety of very wise people. I was proud of that.

Hughes: The judge you knew who was assassinated, why was he targeted?

Utter: Because he was up in the hierarchy of the judiciary.

Hughes: Was he seen as compliant with Western reforms?

Utter: Oh I think very clearly. As were all almost all their judges who worked with us. It was not a death sentence necessarily to come and work with us, but it would surely put them under scrutiny.

Hughes: Four years later, do your friends and associates tell you that we are making headway there?

Utter: Oh I think a lot of headway. Violence is diminished, but it's not all gone. A judge I knew was killed just a few months ago, together with his bodyguards and his son. There has been some improvement in security. And *a lot* of improvement I think in terms of Iraq's identity as a separate country, breaking away on their own. But those were great people we dealt with. They were fiercely intelligent, and fiercely brave.

I'm reminded of a marvelous story I heard on my travels that I recounted in my Christmas letter: At a warrior's funeral, this brave tribesman arrived. He had been called upon to assist a neighboring tribe when they went to war. The neighboring tribe asked for 500 warriors. Instead, they got five. And the neighboring country complained. The reply was, "Would you rather have 500 sheep or five lions?"

Hughes: Your last trip to Prague was in 2005?

Utter: 2006

Hughes: Tell me what happened then.

Utter: That was the third group of Iraqi lawyers. And I was with a wonderful group of judges from the United States, including my dear friend Judith Chirlin. She's a trial judge in Los Angeles. She is a former president of the American Judicature Society, and a gifted teacher as well as a very good trial judge. A former U.S. Supreme Court fellow, she is just a

remarkable woman.

Hughes: Were the sessions like seminars or lectures?

Utter: It was a very interesting process because we were determined to not follow the European model of teaching, which was rote lecture followed by examination. So we started with European Law and International Law, not necessarily U.S. law. The only focus on United States proceedings was essentially our administrative law.

The way we taught it was to have about 20 minutes of lecture, then about 30 minutes of small group meetings, discussion, and then 10 minutes to report back. This was a revolution for these judges, and they loved it. And our concern initially was how the Iraqis would react. We worried about whether they would participate in discussions ... whether they would be shy. But it turned out that the level of the discussion was superb. These are bright people and they all did their homework. ... We had a lot of translators. But most of them spoke some English. Many of them, in fact, spoke very good English. The judge who presided at the trial of Saddam, a Kurd, spoke flawless English.

As for the seminars, I think the idea that there is a different way to learn was very interesting to them. In the old days when you taught to a Soviet-style audience, after about the first five or 10 minutes you'd hear the rustle of the newspapers. They'd open the newspaper and read them through the rest of your lecture.

Hughes: Because?

Utter: Dry lectures were the tradition, not involvement.

Hughes: Oh I see: They were prepared to be bored.

Utter: That's exactly right. And when you would ask questions as part of your lecture it just totally upset them. So the teaching technique was I think universally of interest to them. We encouraged discussion. They knew they would be called on. I called on everybody at one time in the class at one point. So I think that was startling, number one. Number two was the exchange of ideas was very helpful to them, not only in keeping them awake but in learning from each other.

Hughes: That was an American Bar Association program in Prague?

Utter: Yes it was. And I give so much credit to the leadership of the American Bar. Early on

there was a lot of thought put into program so that it could be successful. They've been very enlightened; very good people involved in CEELI. That was why this award to me as their top volunteer was so meaningful to me. There are many far more people involved than me and many far more insightful than me.

Hughes: Tell us the number one thing you learned from these overseas experiences?



Bob showing guests from Turkey a good time. At left is Yusuf Ozal, former president of Turkey's Senate. His brother, Turgut Ozal, was president of Turkey from 1989 until his death in 1993.

Utter: There is a universal longing for a fair and independent judiciary. It's absolutely universal. Go to Haiti, Mongolia, South America, Asia ... people everywhere want fair judges and fair government. In Haiti, they did a survey on people's wants and hopes. They listed food, employment, a home, but the number one thing they wanted was a fair government and a fair judiciary.

Hughes: So your most recent trip was when?

Utter: In October of '07 at Prague. That was a group of chief judges from the Balkans.

Hughes: Did we touch on Advocates International?

Utter: Yes we did. They were part of the group on one of my trips to Mongolia.

Hughes: The theme of "Doing Justice with Compassion" as we see in Luke 10:25.

Utter: They were very involved in my work in Albania. I've been to Albania 15 times since 1994.

(Editor's Note: In recognition of his 15 trips to Albania, the Albanian government awarded Utter its Medal for Special Civil Merits in 2006.)

Hughes: In Russia, there's a tradition of giving everybody medals. You could dress up like a Russian general!

Utter: I only have one, John. (laughing) I'm working on others.

Hughes: So are you planning on going any place far, far away anytime soon?

Utter: I talked to Betty about that. Our plans are to get on the sailboat as soon as we can and just do some reading this summer. But much of what I do is pretty much unplanned so

we keep our calendars open. I'm not giving talks any more, *ever*.

Hughes: All talked out, says Utter.

Utter: As I reflect on some of these things, the emotion of it sometimes overwhelms me. I'm just tired of being embarrassed that way.

Hughes: I think that that's one of the most heartwarming things about people like Charles Z. Smith and Robert Utter, people who care so much about making a difference and get emotional as they recall the events of their lives. I don't think you should be embarrassed by your emotions at all. It inspires people when they see it. It's so heartfelt.

Utter: Well, *thank you*.

Hughes: I may have asked you this before, but if I did it's still fun to revisit because you probably let the question percolate: Political heroes in American history?

Utter: Abraham Lincoln is number one.

Hughes: Because?

Utter: For a lot of reasons. A great writer. Inspiring. His second inaugural address I still think is the best thing I've ever read in terms of capturing the spirit of America. ("With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds ...to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.") I think every American should look at that and say, "*This is us.*" And you look at the times and the suffering that he had gone through as an individual. But in terms of American heroes, Washington was also remarkable. John Adams, too. Look at his acts of conscience in defending the British over the Battle of Bunker Hill. Getting an acquittal was a remarkable piece of history. A great lawyer. Teddy Roosevelt is just a marvelous study of a human being. And Franklin Roosevelt, of course. Truman, too. Even in my lifetime there have been some great ones.

Here's something very few people are aware of. (Hands over some papers) It's the only letter I've ever written to a president. It was to Clinton over the Monica Lewinsky scandal. It reminded me of the Profumo scandal in England.

Hughes: Let me borrow this. Is there more than this one page?

Utter: There is, but I can't find the second page. I basically told him to resign.

Hughes: Did you actually send this letter?

Utter: Oh, you bet I did.

Hughes: Did you get a response?

Utter: No, and I thought of writing another one and saying, "*And I mean it!*" (laughs)

Hughes: You write, "On the evidence so far, I do not believe you have committed an impeachable offense. Nonetheless, that is not the real issue. The real issue is what damage will be done to this country by making your inexplicable conduct the focus of national and international attention at a time when our focus must be directed to more serious affairs, both domestic and foreign. Even if you avoid impeachment, you will cripple the Democratic Party ..."

I wrote a column on that same theme. A brilliant politician, crippled by character faults and broken promises.

Utter: It's sad, just sad.

Hughes: I wonder if the difficult childhood Clinton had – losing his father; the abusive stepfather and all that ... I wonder if that created in him this sense of entitlement, this conceit that he could get away with things ...

Utter: A dear friend of ours, Nancy Gertner, is a federal court judge from Boston – just a brilliant, brilliant woman. She's a lot like Carolyn Dimmick in terms of being self-effacing, no airs. Nancy was a classmate of Bill and Hillary Clinton at Yale. She taught with me in Prague a number of times. I told her my feelings about Clinton and she said, "His ego would not let him resign. Nor would Hillary's." Well, it was so apparent that if he'd just followed the procedural path (and resigned) Gore would have been president, for better or worse. But he couldn't have been worse than (the George W. Bush Administration).

Hughes: I wonder what Bush's father really thinks about the last eight years. ...

Utter: George H.W. Bush is a *good* man.

Hughes: I wonder what you say to your kid if you think he's screwing up and he happens to be the president of the United States?

Utter: Well, whatever you say isn't going to be listened to. You know, that was part of the problem.

Hughes: In Sheldon's biography of the high court you're listed as a Republican. But I get the impression that like most people in this state you vote for the person, not the party. Freed from the canons that prohibit judges from being too political ... you started to put some money where your heart was. You donated to Bill Bradley, didn't you?

Utter: I did.

Hughes: Who were some of the other candidates that were important for Bob and Betty Utter – \$100 to \$500 here and there?

Utter: Well, Sam Reed is one. Sam is a real hero of mine in terms of independence and just doing his job (as secretary of state) the way he's supposed to. It took a lot of courage the way he handled the assaults, literally, on the first Gregoire election. It was commendable.

Hughes: Boy, did he take a lot of heat for that from some Republicans.

Utter: Undeserved. That's why (the reporting by) KIRO Channel 7 is so off base.

(Editor's Note: Reed filed a formal complaint against KIRO with the Washington News Council, asserting that in 2008 the Seattle TV station aired inaccurate election-related stories accusing the Office of the Secretary of State of negligence in keeping ineligible voters off the rolls. At this writing, KIRO has refused to retract the stories but did remove them from its Web site.)

Hughes: We'll go from there to your experiences as chairman of the Washington News Council in a just minute.

On two occasions you made donations to Barack Obama. Have there been other candidates you've given money to in recent years?

Utter: Well, I think to the Democrat Congressional Senate races. And to the Wesley Clark campaign.

Hughes: Tell me about your feelings about Wesley Clark.

Utter: General Clark was a classmate of Roger Sherrard, a dear friend of mine who is a lawyer from Poulsbo. And I just felt that in that election (2004) it was crucial that we have somebody with a better understanding of history to avoid the trap that we fell into on the Iraq War. Roger had told us about Clark and he struck me as a very impressive man.

... At the state level I've been pretty bipartisan.

Hughes: Well, it's a pretty bipartisan state.

Utter: It really is. Although I started out as a Republican, I haven't felt that I've moved a great deal. I think the party just simply has gone away from me. It's gotten too narrow, not representative of enough of a base of the American people.

Governor John Spellman was a dear friend of mine – a guy who I really still like a lot. I started a fellowship group in Seattle when I was on the courts there. It was mainly elected officials. At one time we had Wes Uhlman, the Democratic mayor of Seattle, and John Spellman, the Republican King County executive, as part of that group. And as luck would have it, these two fellows who had been meeting at breakfast with me for quite some time ended up running against each other for governor. I thought to myself, "Now that's the way it ought to be."

Hughes: Over to the News Council: Were you their non-voting chairman?

Utter: I was. I was their first chair. I served there for six years. (1998-2004)

Hughes: Tell me about that experience. Was that very satisfying?

Utter: It was. I felt there needed to be a way to reconcile conflicts between media and those who they were reporting on. It wasn't that one had a black hat and one had a white hat. The truth was what mattered. The thing that impressed me was the pledge that people had to make that they would not sue if they used the News Council as a forum for disputes.

Hughes: My understanding is that KIRO sort of blew off the notion that there was any error in its reporting (about keeping the voter rolls purged).

Utter: They did. They were wrong. They did exactly that same thing about two or three years earlier in an incident involving the beef industry. Its sensationalist reporting, nonfactual, slanted facts. Hopefully, they will have learned from this experience, because we need good reporting.

But you were asking what I learned while serving as chairman. One direction that they were going with the News Council was to focus on mediation as well as on the hearing process. We had a couple of incidents where we were able to mediate disputes between the media and the subjects of some news coverage. And I thought that was very positive.

Both sides learn from that.

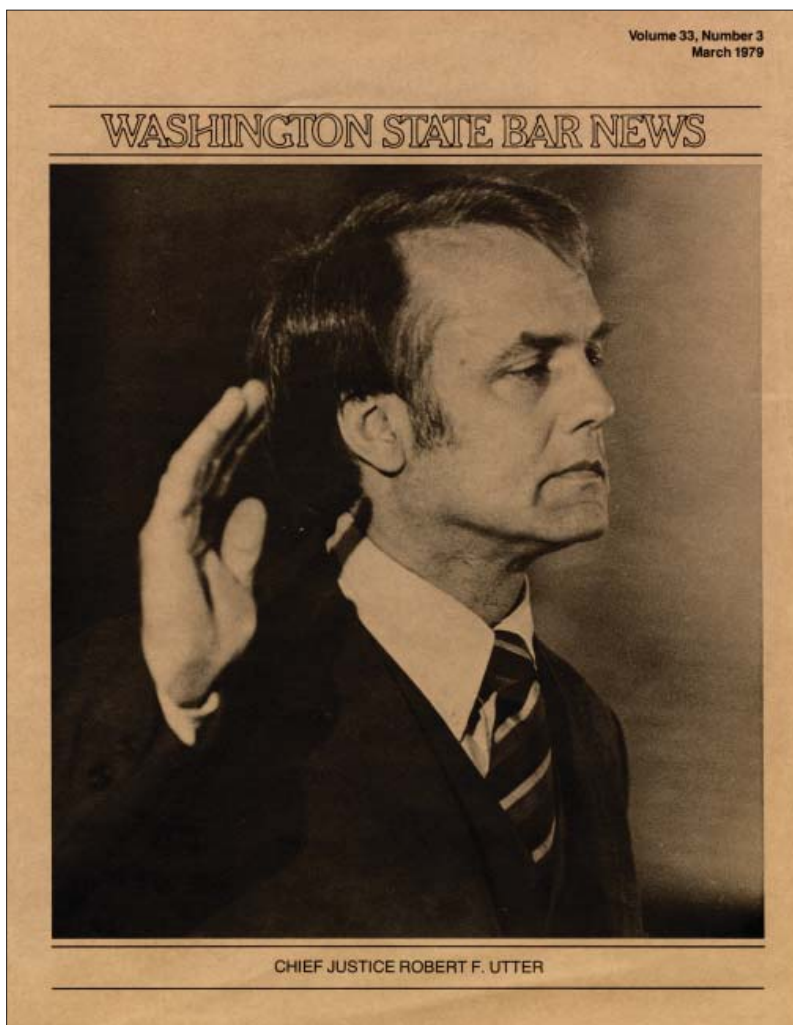
Hughes: Another Interesting thing we haven't talked about is that in 1997 King County Executive Ron Sims named you to head a special task force looking into the mental health system and how it deals with misdemeanor offenders. I think this evolved from the murder of that retired firefighter.

Utter: Mr. Stevenson.

Hughes: Yes, this mental patient just walked up and stabbed him outside the Kingdome.

Utter: With a sword.

When I was chief justice, I was very concerned with bringing law enforcement and



the judiciary together to discuss areas where we could work together, respecting the need for separation in some areas. So I brought in the head of the sheriffs' association – a friend of mine from Tacoma, Ray Fjetland – and the head of the State Patrol and the chief of police in Seattle and one other person. Then we gained a man from the University of Washington who worked for the community psychiatric department, Eric Trupin – just genius of a guy. We went for dinner two or three times a year and tried to focus on the real areas where we have a common interest.

Utter takes the oath as chief justice in 1979.

At the end of the two years we came

to the conclusion that the primary problem with the whole criminal justice system was the presence of mentally ill people ... and how to deal with them to protect all involved.

And so, as irony would have it, along about that same time, Ron Sims, who is a

dear friend, called me when the stabbing happened and said, “Would you head a task force to look into what we can do?” It was a good process and we had good people from the Legislature, good people from law enforcement and good people from the psychiatric community getting together and proposing solutions. One of them was this mental illness court in Seattle where there is a continuity of judiciary and leadership. It was one of the first in the country and it’s doing a great job.

Hughes: Is there one judge presiding?

Utter: One judge. And we changed attitudes (about dealing with mentally ill offenders), like how Juvenile Court used to be the Devil’s Island of the judiciary.

Hughes: Juvenile Court used to be the Devil’s Island of the judiciary?

Utter: Well, people perceived it as that. Other judges looked at it as a wonderful opportunity to serve.

Hughes: That’s certainly how you felt right from the get-go back in 1959.

Utter: I did. And the judges who served on that mental illness court in King County have looked at it as a positive way to serve. ... Some very positive things came from that task force. It was a *large* group – the largest group I’ve ever had to work with as a committee. I think we had close to 40 people. But it worked out well.

Hughes: What’s your view on the McNeil Island Detention Center for chronic sex offenders who have done their time but are still deemed highly likely to reoffend?

Utter: My basic thesis is that society has a right to protect itself. I think that’s number one. With a *large* majority of the people who offend, no matter what you do with them, they’re coming back into the community again.

Hughes: What is that recidivism rate for those sex offenders?

Utter: It’s well over 50 percent. On the other hand, if there is a rehabilitative component in there along with some reintegration back into the community, it drops down to 10 to 20 percent. So that’s where I start. At ground zero, society has a right to protect itself. But hopefully by forward thinking we make sure it’s not just punitive – make sure that they stress rehabilitation, too. Drug courts are an *excellent* example of this. It’s been shown beyond controversy that if you focus on offenders in a special drug court you have a failure

ratio that's in the 10 to 20 percent area. In other words, a success ratio of about 80 percent.

Hughes: Did we skip over anything really innovative that came out of the special task force on the mental health system?

Utter: Yeah, the focus on having an integrated focal point in the committee where everything comes together. Part of the problem with the Stevenson case was that Western State Hospital was not directly communicating with the court. The court wasn't integrating all of the information that was available. This tragedy could have been prevented.

Hughes: It's amazing with all the tools at hand, what with cell phones and the Internet, how much stuff still slips through the cracks.

Utter: Yes, at a national and local level, no matter what the problem is.

Hughes: And for all the lawsuits that come down the pike against DSHS, I mean, my gosh, there's simply not enough case workers and practitioners to go around – to salve every wound and identify every pervert.

Utter: And that's a hard issue to decide. There's always been a gap between rhetoric and funding. When something goes wrong, everybody cries that it's the state's responsibility or somebody's responsibility. But there has *always* been reluctance on the part of the public to fund efforts enough to make a difference. ... Mental health is a great example of this. I was deeply involved in the system when the state hospitals, the mental hospitals, were basically shut down. And the promise was that when you spend the money in the community it's much better spent. The reality was that the appropriations were *never* enough to take care of the potential for service of people in the community. And the gaps you see (in treatment and public safety) are a result of that reluctance to spend.

Hughes: Was part of that the drive to close down facilities for the developmentally disabled and other handicapped people?

Utter: Yes, that was a part of it.

Hughes: As an editor, I met with groups of parents and other activist groups who were appalled by the idea of closing those institutions. They said that their loved ones were being kicked out of the only homes that they'd known for years and that they'd formed important relationships.

Utter: Very sad. And that's not to say the mental health facilities weren't places with problems of their own. They surely were. The book *Shadowland* details that. I think the actress Frances Farmer's problems were a tragedy.

Hughes: Was it Governor Al Rosellini and Dr. Garrett Heyns who really made the major changes there?

Utter: That's exactly it. Talk about fascinating people. I think Al Rosellini is one of the most complex people – so enlightened in some areas and so traditional in a negative sense in some others. And still going strong.

Hughes: At 99!

Well, as Walter Cronkite used to say on *See It Now* in the 1950s, your life has been filled with events that "alter and illuminate our times." ... Here's something we should talk about that's "as current as today's headlines" – an op-ed piece that you and Charles Wiggins just had published in *The Seattle Times* (March 2, 2009). It's headlined "Judges should recuse themselves from cases involving campaign benefactors." When I covered the courts, I saw judges routinely step aside over relatively minor potential conflicts, so I'm at a loss to understand how the case now before the U.S. Supreme Court wasn't resolved a long time ago. It involves a \$3 million contribution to a judge by a coal company.

Utter: It's ghastly. Wiggins and I wrote that 800 years ago in the Magna Carta, King John promised the English barons, "To none will we sell; to none will we deny; to none will we delay right or justice." We emphasize that "Justice must appear to be fair as well as actually being fair."

Hughes: Did you ever have in the back of your mind that you wanted to be on the U.S. Supreme Court?

Utter: Oh I'm sure the thought was there. But I didn't ever think it would actually happen. ... There's so many forks in the road, matters of timing that you have no control over. I thought about the possibility of other elective office, too. But there is a statute in Washington State that says that if you are a judge you cannot be appointed to a state position during the term for which you were elected. And early in my career as a Superior Court judge in Seattle, Mayor Dorm Braman resigned, and the City Council had the power

to appoint the substitute. As fate would have it, the majority of the City Council were friends of mine and basically sent word around that if I was interested then they'd be interested in making the appointment.

Hughes: But you were proscribed by state law from taking it?

Utter: That was it. But I wasn't aware of that law at that time. And I thought about it.

Hughes: Couldn't you have just resigned?

Utter: That's what the law does. It says "for the term in which you were elected."

Hughes: That's a good law, isn't it?

Utter: I think it's a wonderful law because judges should never be suspected of harboring other political ambitions. Because you make so many tough calls, and once you start thinking "How is this going to affect my chances for appointment to another office?" or whatever then you're suspect in not only your own mind but the public's mind.

And the only other sort of fork in the road was when Scoop Jackson died (in 1983) and Governor John Spellman had the opportunity to appoint a U.S. Senator. He appointed Dan Evans. Had I known Dan was interested in the job, I would not have even mentioned to John that it was a spot I might be interested in. Ironically, the law wouldn't have applied to that post because that's a federal position and I was in a state position.

Hughes: And as luck would have it, unlike Slade Gorton, the U.S. Senate was absolutely not Dan Evans' cup of tea.

Utter: No. But Dan was a wonderful public servant. *What a good choice Spellman made.* I think I sent one letter to John Spellman at that time saying, "If you're interested in me (for that appointment), I would consider it. I'm not going to try and get any other support. This will be the only letter from me."

Hughes: Were you close to Spellman?

Utter: I was. John Spellman is a very good man.

Hughes: What an interesting twist that is.

Utter: Life's full of them.

Hughes: You could have easily been a history teacher, couldn't you?

Utter: I think I could have, or a literature teacher. That was a passion of mine and it still

remains – Russian literature, American literature... Before I started law school, I thought “What am I going to do?” And I thought, “Be a teacher.” But then I said to myself, “No, I don’t have the patience.” I changed my mind, though, when I taught state constitutional law at UPS. At that time it was a pioneer course in Washington State. No other law schools taught Washington State Constitutional Law. It was a wonderful experience. Never worked harder in my life – all these bright kids in a field of law that was just being opened up and explored.

Hughes: I’m fascinated, in terms of your scholarship here, in the emerging field of constitutional law, the dual tracks between the State Constitution and the Federal Constitution. And some of the areas you’ve explored, both in jurisprudence and as a teacher about the state constitution and how it offers even more protection for personal rights...

Utter: Exactly. You did read my book!

Hughes: *I did.* Did the Utter/Spitzer book on the State Constitution come before or after you started teaching?

Utter: That came after. I wish I’d had it when I began. When I started teaching, there was no book in the United States on state constitutional law so all of my lectures were of my own manufacture. Two or three years into the course, the first book was published on state constitutional law.

Hughes: And your book is now one in a series examining state constitutions.

Utter: Yes.

Hughes: I think that that must have been something of a revelation – whether in Wisconsin or Maine or Washington there hadn’t been a lot of scrutiny about what the state founders intended.

Utter: I was *very* fortunate. When I was chief justice and going to conferences, I had some exposure to thinking about what’s the difference between state and federal constitutions. So I got involved very early in doing writing and then thinking about that. But that was a great privilege.

But again, let me tell you, I was scared to death when I started teaching. I had no

self-confidence. My first class was for three hours on Monday. And I thought, “How am I going to keep these people from dying of hunger?” So I walk into my first class with two huge hot pizzas. And I said, “We’re going to work for a while, and then we’re going to eat for a little bit.”

Hughes: Great idea!

Utter: I bribed them. I got great evaluations. There were so many bright young people who for the most part had had remarkable life experiences. We had a lot of older students, too. The average class age was pretty close to 30. There were a lot of single mothers who were raising children, working almost full time and still going to law school. I cut them no slack. These were very serious students.

Hughes: Are you pleased and gratified that some of these former students have achieved remarkable things?

Utter: I’m gratified that when I was on the court I saw the caliber of work they turned out. Fine lawyers who did some very good work in state constitutional law. And that was at a time when it was just developing. They worked hard. When I started my class I would say, “You’re going to work harder than you’ve ever worked in any class in your life. And I’m going to give you one session to withdraw – no problems, no penalty. But once you stay for that one session you’re hooked.” And we worked them hard but it was so satisfying. I got an evaluation from one of the kids saying, “This is what I always thought law school would be like, but never was.”

Hughes: For the record, Judge Utter is now fighting back tears because that means so much to him. Where is it written that you can’t show your emotions? Seeing your emotion well up is a wonderful experience because I can see how much these memories mean to you.

Utter: I know.

Hughes: Well, let’s talk some more about Betty Utter, especially since she’s not here now. You’ve been married to this woman for 55 years.

Utter: Yes. She’s a *wonderful* gift.

Hughes: When you think of the way people keep running through marriages right and left, to be married for 55 years and still have somebody be your friend is wonderful. Through all

this journey of this past 55 years she's been pretty resolute, hasn't she?

Utter: She's been great! (choking back tears)

Hughes: Especially having somebody who can always be depended on to tell you the truth. Who can build you up or bring you down to size when need be.

Utter: And so much of it, John, is just flat luck. You look back on how you meet somebody. How you either become compatible or how you start out compatible in so many different areas of life, and then the testing things that occur during a marriage. ... During troubled times in recent years, Jim Houston's book was also so helpful.

Hughes: Is God a providential God? How does all this come about – the good and the bad? Is this part of a design?

Utter: Well, I don't know, John. I can't think that a loving God, which I still think is my underlying concept, would intend that these bad things happen. You see something like (the new movie) *The Reader* and look at the horrors of the German conduct during the Second War. The Holocaust. Or the Cambodian massacres and now the Rwandan ones.

Hughes: Where they were hacking off people's arms, just for drill, with machetes.

Utter: It's just impossible to conceive that that would be preordained. I think you set things in motion and how it's going to be equaled out later on I don't know.

Hughes: *It's a mystery.*

Utter: It still is, but that's part of what Houston was talking about. There's a wonderful quote that he has about a poem called "The Hound of Heaven." A man is fleeing from God because he can't handle the burden of things that have happened in his life. And God speaks to him and says, "All things I've taken from you not for your pain but that you may find them again in my arms." Francis Thompson wrote the poem.

Hughes: Who is Francis Thompson?

Utter: A gifted man with a line like that!

(Editor's Note: A brilliant, drug-addicted English poet, Thompson lived from 1859 to 1907.)

Hughes: You know, I'm having a hard time finding people who think you're a son of a bitch to add some "balance" to all this.

Utter: Keep trying! They're out there.

Hughes: When you look back over all the bumps along the way – losing your mother when you were 5 years old – and all the wonderful achievements, accolades and experiences you’ve had, have you thought of anything that sums it all up?

Utter: I think of my gratitude for being able to find some areas where I could contribute. Fame was of absolutely no importance. Never sought it. But one real privilege was in being able to develop some law, particularly in the appellate area, that I think will last for a long time because hopefully it’s well thought out and well written. The whole area of the battered wife syndrome, for instance. And being able, with the help of friends, to get some really good programs going. Big Brothers has been a good example of that. And I’m on the board of directors of the Rural Development Institute, a program started at the UW Law School by Roy Prosterman. RDI has directly affected the lives of more 400 million people around the world in bringing land ownership to those who till the land. Roy is a genius on land-use issues and he’s been nominated numerous times for the Nobel Peace Prize. The YMCA Youth & Government program is another one I feel very happy about. Youth & Government is a great concept.

Hughes: It would be interesting to look at a list of the Youth & Government alums over the past 62 years.

Utter: From 1947 to now.

Hughes: To see how many of those bright young people, like Bob Utter from West Seattle High School, had become movers and shakers in their own right.

Utter: They all have in some sense. But the big thing is that you don’t serve to see change. You serve simply to be a part of the *opportunity* for change. I felt that by being respectful of people and their dignity and their need to be able to express themselves, that I could make contributions. I just feel thankful I’ve been able to do it. I don’t try and measure it. And I am immensely grateful for Betty as a helpmate on this. She is such an independent, very bright person on her own. She was a *great* teacher. She would have parents of the brightest children in the school and the most handicapped children in the school all wanting her as their teacher. That’s a heck of an accolade.

Hughes: What did W.C. Fields say he wanted on his tombstone? “On the whole, I’d rather

be in Philadelphia”? Have you thought about what you’d like on your stone?

Utter: It’s coming soon, I know, but I haven’t thought about that.

Hughes: I think you’ve got a lot of good years left.

Utter: We’ll see.

Hughes: It’s all a crap shoot.

Utter: It’s an adventure.

Hughes: Not many regrets?

Utter: Not many. They’re mainly on a personal level. I could have been much more sensitive to many who had special needs and to all the burdens Betty was carrying. Sailboat racing was wonderful, but much time and money went into those adventures that could have been more focused on needs at home. And there were two incidents that occurred when I was much younger. The first involved a fine girl I first dated to whom I should have been much more supportive. The second involved a law student in our beginning class who suffered from epileptic seizures when he was under stress. To this day I am haunted that I was not sensitive enough to be more helpful.

In other words, I want to be clear that Utter is a lousy candidate for sainthood. As I look back, there are many things I wish I had done differently. I am eternally thankful for those opportunities where I could act consistently with a higher calling. My main feeling is one of gratitude just from the standpoint of never envisioning that I’d have the opportunities I’ve had to be able to make a contribution.

Hughes: You sure have.

Utter: Thanks, friend.

End of Interview IV

March 10, 2009

Interview V on Justice Utter's sailboat at the Olympia Marina

March 11, 2009



Bob on board the 30-foot *Merlot* in Olympia, March 2009.
John Hughes for The Legacy Project

Hughes: What a gorgeous day! Tell us about the sailboat we're on now.

Utter: It's a 30-foot boat called the *Merlot*. It was built in Canada for Great Lakes sailing and some ocean sailing. It was designed by people who had done a lot of ocean racing and wanted to have something more simple that people could take their families out on.

Hughes: Is Betty a pretty good sailor after all these years?

Utter: She learns. She's teachable. (kidding) Yes, she is, bless her heart.

Hughes: And the crew on that amazing trip with the *Nerita* that first time – how many were there?

Utter: There were eight. And 14 on the 54-footer we later raced, the *Charisma*.

Hughes: Did I read correctly that on that first trip that you didn't come back with the boat – that you had another engagement and had to fly back from Hawaii?

Utter: That's correct. That's happened with each of the races. I just couldn't take enough time off to bring it back.

Hughes: So let's get this straight: In 1976, you nearly kill everybody in this storm, but once you're finally there, you fly back: "All right guys, I'm out of here!"

Utter: "It's all yours!"

This reminds me of a great true story from my annals of sailing: On our first trip on the *Charisma* in 1982, I was at the wheel as we left Cape Flattery. Suddenly, this sperm whale headed right toward our bow. It was about 50 feet long – a big hummer! Then he turned parallel to the boat. Just as he was amidships he turned and headed directly for

the boat. He dove under, came out on the other side, swam around, then raised an eye out of the water. He took a good look at the mast and submerged again. I had opened the doors for the life raft and was sure he was going to hit us. I told the crew, "Well, he's a male and he thought we were a female. He looked at all that rigging and concluded 'This gal wears too much jewelry for me to support!' " Ah, the perils of the sea!



A dolphin frolics alongside Bob's sailboat. This is preferable to encountering a whale.

Hughes: Great story!

Say, I like the sign you have posted here that says, "A perfect boat drinks 6, eats 4, and sleeps 2."

Utter: That's right!

Hughes: And here is an oil lamp. Shades of the ancient mariner. And it's true that Bob and Betty Utter bought a boat before they bought a house?

Utter: Doesn't everybody?

Hughes: What does something like this cost if I want to rush out and buy one right now?

Utter: This now would run about \$80,000 or \$85,000.

Hughes: I would have guessed it would be a lot more.

Utter: Well, for a boat this size that's actually very expensive because of the quality of the work. I tell people I've owned a lot of boats but I finally own a ship because the construction on this boat is of such quality.

Hughes: What distinguishes a sailboat from a yacht?

Utter: It depends on who writes the contract! If you're selling it, it's a yacht. It's size primarily.

Hughes: Are you anxious to do some more sailing this summer?

Utter: Time is going by and I don't know if the next year is coming or not. I don't want to lay there in a hospital bed some time and say, "Gee, I wish I'd spent more time sailing."

Hughes: Where did you go for five weeks on this boat last summer?



Bob on the *Merlot*.
Lori Larson for The Legacy Project

Utter: Not far. We were just on the boat. There is a wonderful line. They say, “You get a power boat to go from one place to the next. You get a sailboat because when you’re on the boat you’re there.” And it’s true.

Cocoa for all?

Hughes: Sounds wonderful!

Where did you go on these trips?

Utter: Just here in the South Sound basically. We have friends scattered all

along the coast here on the Sound. We went as far north as Poulsbo and Kingston.

Hughes: Does it amaze you when you read those stories about people who sail around the world all by themselves in something a lot smaller than this?

Utter: Absolutely! My oldest son, Kirk, still says he’s going to sail around the world when he retires. And he probably could. He is a wonderful sailor. He’s with marine electronics, specializing in satellite communication. He lives on our old sailboat, the big one you saw in the picture you made a copy of. That’s his home.

Hughes: So there have been 12 of these sailboats over the years?

Utter: That’s right.

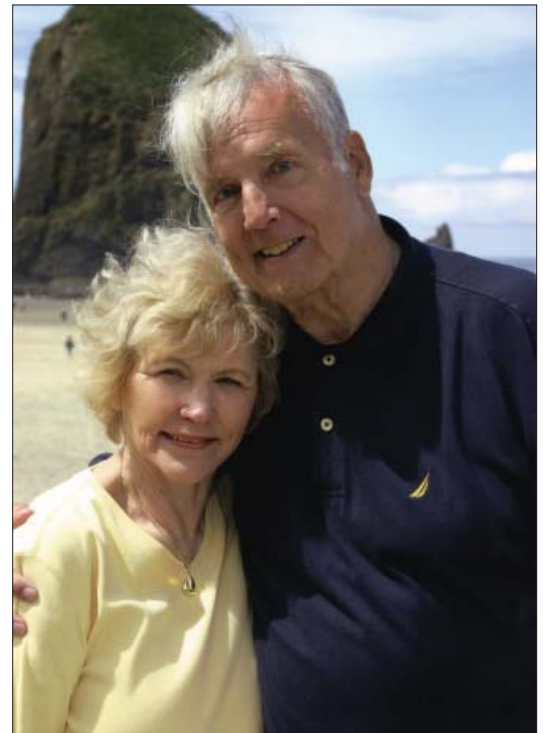
Hughes: How much did the first sailboat cost?

Utter: Maybe \$2,000.

Hughes: Was it hard to convince your bride that this is a good idea?

Utter: She knew before we got married that this awaited her. As a matter of fact, what she says is, “I was astounded that we got a car first.”

Hughes: Had you been on a sailboat before you bought yours?



Bob and Betty at Cannon Beach, Oregon.

Utter: Not much. We basically sailed with the book “How to Sailboat” in one hand and the other on the wheel.

Hughes: “Sailing for Dummies”?

Utter: Seriously, that’s what we did.

Hughes: Do the grandchildren like to sail?



Bob and Betty with their grandchildren. From left: Molly, Eli, Colson, and Anders

Utter: Kirk’s children love it. They’ve spent almost every summer at some time on a sailboat, their own or ours.

Hughes: Back to matters of life and death: I was up with your comments on capital punishment until 2 o’clock this morning. That’s how fascinating it was. That whole issue of “proportionality” was really the linchpin wasn’t it? Some people die for their crimes while others don’t.

Utter: It was the determining thing. Had our court tackled that issue, I think I probably would have stayed on the court until retirement. The lack of taking on that key issue was

the straw that broke the camel's back. I saw little hope for change in Washington State. I must note that the court rendered on proportionality a couple of years ago and came within one vote of tackling that issue. That was encouraging to me. I don't know how things are going to turn out. It's hard. I think I told you the *Seattle Times* called me and asked me to do an op-ed piece on that. It will come out tomorrow.

Hughes: And on Friday an execution is scheduled.

(Editor's Note: The Supreme Court voted 5-4 to stay the execution of Cal Brown two days later.)

You volunteered for the Air Force as a young man during the Korean War. Would you now characterize yourself as a pacifist?

Utter: I think if I was young and was drafted I would be a conscientious objector. I would serve as probably an ambulance driver or medical corpsman. Some job like that. I wouldn't avoid danger.

Hughes: Would it be fair to characterize you as an ecumenical Christian? Is Jesus' example, above all, the one that's your North Star?

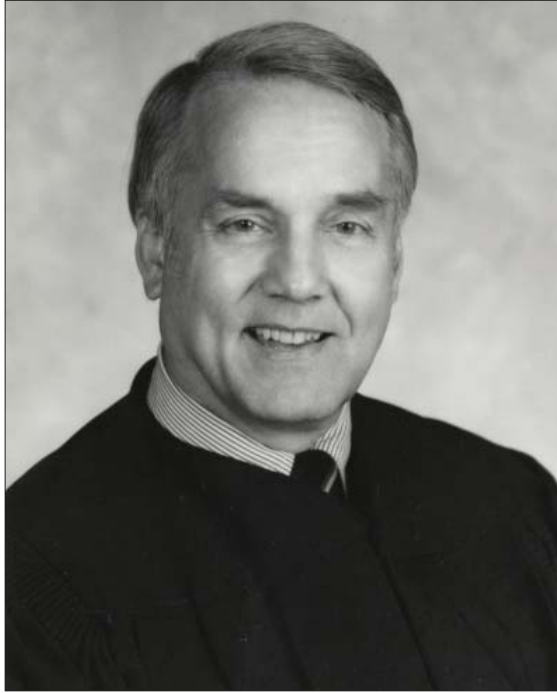
Utter: The closest I can find. Now whether that's cultural, because that's how my parents raised me, or whether that's the end of intellectual quest, I don't know. Probably more cultural. I find the best explanation of the power of love through Christ. I think that's why I'm still here.

Hughes: Can you think of anything we didn't touch on that's really central to who you are?

Utter: It's hard to say. I think there's an underlying level of sadness.

Hughes: And then you try to temper the underlying level of sadness with being thankful for a day like today and for just being alive?

Utter: And that's where joy in nature just abounds. It's a wonderful experience just being out in beautiful weather and feeling a connection to something far beyond yourself. That's where Willi Unsoeld's thinking just resonated so much with how I felt and thought. We're so *fortunate* to live in the Northwest. There's just no better gift in the world except a good spouse. The second greatest gift is to live here and have access to nature and basically good people, good values.



One other thing that I should say is that I am immensely proud of being an attorney. I think the lawyers do so much good and have such a social conscience.

Hughes: This from a guy who wasn't sure he wanted to go to law school.

Utter: I didn't know that was a career for me.

Hughes: Hey, I know one question that has really hit home with the two other judges I've interviewed for The Legacy Project – and that is whether you watch Judge Judy?

(laughter) For the record, Utter is holding his nose.

Utter: It's terrible, just terrible. The TV judges probably do more harm to the judicial profession than *anything* else. It's just not all that simple like they lead people to believe. You have to give people dignity, not tear them down and make wise-mouth comments about things. As a matter of fact, when I was a trial judge I only had one sign on my bench that I could see and it said, "Keep your mouth shut!"

So do I like Judge Judy? Do I need to go into more detail?

Hughes: Judge Dimmick said that Judge Judy is a real former municipal court judge.

Utter: Oh that's right – with emphasis on *former*. She's in an income bracket that no other judge is in.

Hughes: Judge Judy is probably easily a millionaire from the residuals of all those shows.

Utter: Multi, multi-millionaire!

Hughes: Think of all the boats you could buy.

Utter: Think of the boats!

End of Interview

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