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WASHINGTON STATE BarNews

THE OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR ASSOCIATION

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APRIL/MAY 2020

VOL. 74, NO. 4



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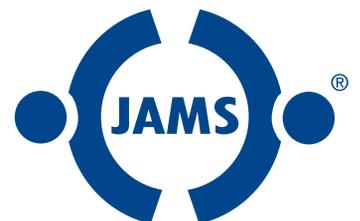
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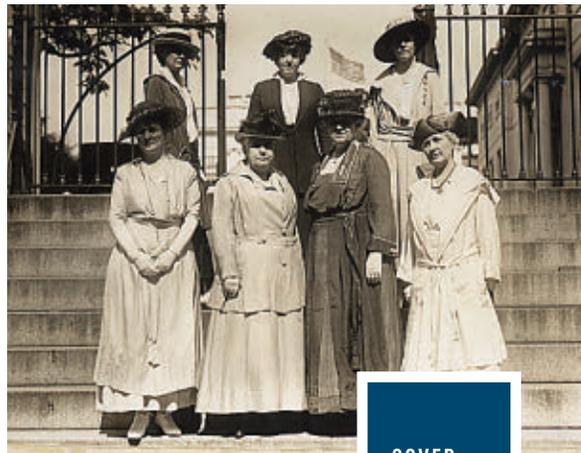
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Editor's Note

Although we plan magazine content months in advance, we understand that the COVID-19 pandemic is top of mind as this issue hits mailboxes. Therefore, we have included a link to WSBA resources on page 6, and we encourage you to visit www.wsba.org for more information.

100 Years, and Still So Many Firsts

In just the first few months of 2020, a whole slew of “firsts” have occurred for women in America—in fields including politics, military, education, music, and sports.

In Washington, Rep. Laurie Jenkins, D-Tacoma, became the state’s first woman Speaker of the House. In Virginia, Delegate Eileen Filler-Corn became that state’s first woman Speaker of the House. And in Mississippi, Lynn Fitch became the first woman to serve as state attorney general.

Cecily Myart-Cruz became the first woman of color to be elected president of United Teachers Los Angeles, the city’s largest teacher’s union. Erika James became the first woman and first person of color to be named dean of the University of Pennsylvania’s Wharton School.

Kirsten Abel is the editor of the *Washington State Bar News* and can be reached at kirstena@wsba.org.

Eímear Noone became the first woman to conduct the 42-piece orchestra at the Oscars. An unnamed National Guard soldier is expected to become the first woman selected to join the Green Berets. Katie Sowers became the first woman to coach in a Super Bowl, Alyssa Nakkem became the first woman coach in Major League Baseball history, and sports journal-

ist Lesley Visser will become the first woman to receive the Sports Lifetime Achievement Award from the Sports Emmy Awards.

I could go on, but my word count prohibits me.

When I look at this list, I have two different but simultaneous reactions: one of pride and one of sad disbelief. Both, “What a fantastic four months for women,” and, “How has it taken until now for these things to happen?”

This year marks the 100th anniversary of the ratification of the 19th Amendment, which (on paper, at least) gave most women in America the right to vote. The occasion also happens to be the theme of Law Day 2020, the annual May 1 event officially established in 1961 to “celebrate the role of law in our society and to cultivate a deeper understanding of the legal profession.”

In this issue, we cover how Washington women gained the right to vote 10 years before the 19th Amendment passed. (See page 34.) We also feature five lesser-known, but no less significant figures in the suffrage movement—African American, Chinese American, and Native American women who fought hard for voting rights.

Also in this issue, a profile on Poulsbo lawyer Roger Sherrard, known for his work in the Albanian justice system (page 42); an article about proper email etiquette (page 20), which may be especially useful now that many of us are working remotely; and much more. **BN**

ON THE COVER: Actress Hedwig Reicher dressed as “Columbia” during the 1913 Woman Suffrage Procession in Washington, D.C. Bain News Service / Library of Congress



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The WSBA's Official Members' Magazine

Washington State Bar News will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

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PUBLISHED BY THE

WASHINGTON STATE BAR ASSOCIATION

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Washington State Bar News is published nine times a year by the Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, and mailed periodicals postage paid in Seattle, Washington (ISSN 2690-1463). For inactive, emeritus, and honorary members, a free subscription is available upon request (contact wabarnews@wsba.org). A portion of each member's license fee goes toward a subscription. For nonmembers, the subscription rate is \$36 a year. Washington residents, please add sales tax; see <http://dor.wa.gov> for sales tax rate.

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Inbox

A NOTE TO READERS

The WSBA intends to continue the highest level of service to members and the public while also cooperating to slow the spread of COVID-19 in the weeks to come. For updates on how the WSBA is responding, visit: www.wsba.org/COVID-19.

UPDATED LETTERS TO THE EDITOR POLICY

Washington State Bar News reserves the right to edit letters for space, clarity, civility, and grammatical accuracy. *Washington State Bar News* does not publish anonymous letters, more than one submission per issue from the same contributor, or letters that do not respond to content presented in the magazine. If we receive more letters than we have space to publish, we reserve the right to select only certain letters for publication based on the following criteria:

- **Quality of writing.** Points should be made clearly, so as to be grasped on a first reading.
- **Brevity.** The ideal length for letters is about 150 words.
- **Accuracy.** Writers are, of course, entitled to their own opinions, but we do our best to check factual assertions made.
- **Frequency of contribution.** The Inbox should be a space for a variety of voices and perspectives. If you have had a letter published within the last three issues, we may choose not to publish your letter in order to give space to a writer who has not been published so recently.
- **Balance of opinions.** When multiple writers submit letters responding to the same piece of content, we may choose not to publish more than one letter expressing the same viewpoint. Instead, we may choose to publish one letter (chosen based on quality of writing, brevity, and accuracy) per viewpoint in an effort to present a balanced sampling of reader opinions.

As with all content in *Washington State Bar News*, the opinions expressed in the Inbox section represent the views of the respective authors and do not necessarily carry the endorsement of the WSBA or its Board of Governors.

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to wabarnews@wsba.org.

'The Life and (Legal) Times of Lem Howell'

I enjoyed reading about Lem Howell's history [February 2020 *NWLawyer*]. Lem has been a role model for many of us. We thank him for his tremendous contributions fighting for justice, and particularly the police department and the legal system itself. We also thank him for his mentorship. May we continue to learn from his courageous fights and his wisdom.

Ahoua Kone
Seattle

Just When You Thought It Was Safe to Go Back in the Water...

Many Washington state attorneys felt validated when, after receiving the results of a year-long task force study looking into the advisability of joining Oregon and Idaho as the only states requiring compulsory and mandatory malpractice insurance for active bar members in private practice, and after hearing extensive public input from bar members who primarily opposed imposing this requirement, the Board of Governors rejected the proposal. As a solution in search of a problem, the proposal was felt to be excessive when a less-intrusive alternative is available, such as opting instead for full disclosure of the lack of such insurance to potential clients. The proposed imposition was found to have untoward impacts on a minority of attorneys with small law practices or who were engaged in pro bono representation.

There were grounds for

refusal to mandate a one-size-fits-all solution to such a large and diverse body as the active Bar membership of Washington state. To follow in lockstep fashion where Idaho was in the lead appeared to many to be a case of apples and oranges. After all, Oregon has maintained a different program for many years, one that has not similarly motivated Washington to catch up. All appeared to be well until a careful perusal of page 48 of the February issue of *NWLawyer* revealed that the issue had returned again this year. The Washington Supreme Court is revisiting the issue as a revision of [Admission and Practice Rule (APR) 26] and is taking comments.

Lest many members might have missed this incursion into our home waters, I am writing this letter to urge Bar members to honor the former process by asking that this boomerang issue be tabled. When the vast majority of Washington attorneys either already carry such insurance or will remain unaffected because they are not engaged in private practice, there is a natural tendency to pass the buck and grant easy acquiescence to apparently benign or progressive impositions.

Unfortunately, these all too often only pave the way for litigation by providing a ready pot of gold at the end of every rainbow of dissatisfaction with legal services, effectively chumming the water. Malpractice litigation applied to attorneys is not an exact science and the need for expert testimony can add to litigation costs, motivating settlements in favor of the discontented followed by possible rate increases. While it is understandable that new and unavoidable prospects for insurance can be tempting



CALL TO READERS

Book Reviews Needed

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morsels in the beginning, time and experience soon modulate a grateful insurance industry as just one more staple is added to their diet. Surely a thumbs-down vote of the Board of Governors ought to endure for longer than a year unless there has been a decided change of circumstances. Unless one can be produced, the decision should stand if for no other reason than to allow sufficient time for the Idaho experiment to prove its inherent worth and viability.

Thomas Mengert
Keyport

Editor's note: More information about the proposed amendment to APR 26 can be found on the *Washington Supreme Court's* website at: www.courts.wa.gov/court_rules/?fa=court_rules.

proposedRuleDisplay&ruleId=4751. For information about how to submit comments, visit www.courts.wa.gov/court_rules/?fa=court_rules.proposed.

CORRECTION: The March issue of *NWLawyer* featured an article entitled "Presidents of the WSBA" that included the names of every past WSBA president as well as the city in which they practiced at the time they served their term. We are issuing the following corrections: J. Richard Manning practiced in Seattle, not Port Angeles, during his 2002-2003 term; S. Brooke Taylor practiced in Port Angeles, not Seattle, during his 2005-2006 term; Stanley A. Bastian practiced in Wenatchee, not Yakima, during his 2007-2008 term; and Mark A. Johnson practiced in Seattle, not Tacoma, during his 2008-2009 term.

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Washington State Bar News relies on submissions from WSBA members and nonmembers that are of interest to readers. Articles should not have been submitted to any other publications and become the property of the WSBA. Articles typically run 1,000-2,500 words. Citations should be incorporated into the body of the article and be minimal. Please include a brief author's biography, with contact info, at the end of the article. High-resolution graphics and photographs (preferably 1 MB in size) are requested. Authors should provide a high-resolution digital photo of themselves with their submission. Send articles to wabarnews@wsba.org. The editor reserves the right to edit articles as deemed appropriate. The editor may work with the writer, but no additional proofs of articles will be provided. The editor reserves the right to determine when and if to publish an article.

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The WSBA and Indian Law

“[T]hey all say they are my friends, and that I shall have justice, but while all their mouths talk right, I do not understand why nothing is done for my people. I have heard talk and talk but nothing is done. Good words do not last long unless they amount to something.”

Hin-mah-too-yah-lat-kekt (Chief Joseph, Nez Perce Leader)
1879, Washington D.C.

I've never been a big proponent of campaign promises—elected officials need to address things practically and pragmatically as they arise, collect good advice, and make choices based on the problems at hand. When I ran for the District 2 seat on the WSBA Board of Governors in 2016, the only promise I made was to find out what was happening at the WSBA and report back to the membership—I didn't think it was right that I was learning about happenings at the WSBA from the *ABA Journal*. I believe I kept that promise as a governor, and a third of the way through my term as president, I want to make sure I am upholding commitments I have made. While some of those commitments have to do with bringing democratic reform, member-orientation, process, and transparency to the organization—things that I feel we are succeeding at—a few commitments were a little more specific. One was promising to work hard at repairing some of the fractured relationships with section leadership and specific groups of lawyers. The large number of members who practice Indian law¹ is one of the groups that the WSBA needs to work with to repair damaged relations.

I always wanted to be an Indian lawyer.² I took every course I could in law school (two!) and entered legal writing competitions on Indian law topics. The first bar exam I took was in Washington, but it was not the Washington State Bar Exam. It was a bar exam for admittance to practice in the Tulalip Tribal Court. I would say it was more challenging than the state bar exam, but much shorter in length. It covered all the analogous practice areas as the Washington State Bar Exam but was based on the Code and Constitution of the Tulalip Tribes of Washington. It was a requirement for me to practice in the Tulalip Court System. Since then, I have also been admitted to practice, albeit without exam, in the Lummi, Nooksack, and Swinomish Nations, as well as the Pala Band of Mission Indians in California. This is not necessarily unusual for a Washington lawyer. Our bar exam is one of the few in the nation that has federal Indian law as a component, and we have 29 federally recognized Native American governments and jurisdictions inside our state boundaries. Two of them are larger than some East Coast states.



Rajeev D. Majumdar
WSBA President

Majumdar focuses his practice on real estate, civil litigation, municipal prosecution, and business-oriented law in Blaine, Washington. In 2015, he received the WSBA Local Hero Award for his work in improving public access to civil legal aid and advocating for homeless youth. In 2016, he was elected by the members to serve on the Board of Governors. He can be reached at rajeev@northwhatcomlaw.com.

The WSBA itself had designed a mechanism to make itself better situated to deal with this reality—the origins of the Indian Law Section (“ILS”) came out of a need for the WSBA Board of Governors to be advised on these issues. The ILS was established at a time when the relations between the state, its subordinate municipal corporations, and many of its inhabitants were not as respectful of the tribes’ unique sovereignty and legal status as the Indians deserved. Indeed, one of the purposes of the ILS was to serve as a liaison between lawyers practicing Indian law and those WSBA members who have little or no contact with the intricacies and history of Indian law, the tribes (both federally recognized and not), the tribal communities (including urban Indians), and the cultural differences that inform those of us in this field.

Indian tribes and culture are unique in the United States and in federal and state law. The U.S. Supreme Court recognizes this singular status as political and not one of race, ancestry, or free choice. In my experience, WSBA members practicing Indian law, whether they agree with this category or not, recognize that practicing Indian law is substantively different and varied from practice in our state’s courts. This has—unfortunately, over the last decade—been the source of a great deal of miscommunication between the WSBA and many of our members. The WSBA experienced a decade of centralization and attempts from downtown Seattle to dictate how the experience of practicing law and participating in the WSBA should be like a cookie cutter—the same everywhere. This resulted in the WSBA debating a policy that would have banned some traditional Native American practices at Indian Law Section CLEs and gatherings and did force the Indian Law Section into a set of bylaws more suited to a practice area group.³

The ILS is not like the law practice specialization sections, and Indian law and its traditions are not always like the traditions surrounding the practice of law in state court. The failure of the WSBA to respect this difference in preference for bureaucratic uniformity was very disappointing and horrifying to me upon joining the Board of Governors in 2016. When I joined the governance of the WSBA, there were no other practitioners in this area on the Board to bring perspective, and I don't think the

Special Message from President Majumdar Regarding the Coronavirus Pandemic

As a rural practitioner in a small firm, I am overwhelmed with empathy for my colleagues across the state whose livelihoods depend on both appearing in court and on the public walking in the door. Additionally, as the professionals responsible for resolving conflict in our society, it is likely that many of our members will fall ill as they carry out their professional duties.

Know that you are not alone in thinking about these issues, as I have heard from many of you reflecting my own thoughts. We are all under considerably more stress than normal. So this is my ask of the legal community: Let's aspire to the highest levels of integrity and collegiality as we navigate this unprecedented time. Let us find ways to help each other without taking advantage of the hardships that might affect our opposing colleagues. Let us tenaciously uphold the rule of law, which is always among the most critical human safeguards in times of turmoil. Let us be our best, together.

The WSBA is here to help. As you can read on page 10, we are striving to not only maintain but expand certain essential services to support you and your practice during the coronavirus emergency. We are brainstorming ways to facilitate and help members come together. Let us know if you have ideas we should consider. You can reach me at rajeev@northwhatcomlaw.com and Interim Executive Director Terra Nevitt at terran@wsba.org.

WSBA was utilizing its resources to listen to members, WSBA staff, or the ILS—which was designed to advise the organization. For the past, I apologize on behalf of the WSBA. But more importantly, I want to assure the members that the WSBA hurt with its actions that your Board of Governors is committed to governance that is focused on truly listening to practitioner input. I have never met a group of people that is as singularly focused on making amends and transforming the organization into one that owns up to the past and is focusing on enabling the unique needs of its members to practice law.

More than ever, liaisonship is needed. Both the WSBA and the ILS need to be seen by the tribes and individual Indians as entities deserving of respect and, in turn, also commit to respecting Indian status, culture, and history. To that end, I have invited both the Indian Law Section and the Northwest Indian Bar Association to join me on these pages to share with our entire membership the issues they work on (see pages 12-13). And further, I

want to commit to welcoming the ideas and input of all groups of members. This is your WSBA and we want to engage with you and learn how we can enable your practice.⁴ [BN](#)

NOTES

1. The term "Indian law," while perhaps imperfect, is the current term of art and is used to describe the laws attempting to clarify the relationship between the federal, state, and those tribal governments originating from the bodies politic of indigenous peoples of North America, and those laws dealing with their inherent authority to govern themselves within the borders of the United States.
2. Yes, I fully appreciate the linguistic and racial ironies of this statement as it applies to my person, as do most "Native American Law" practitioners.
3. The bizarre irony of paternalistically forcing a specific cookie-cutter structure on a group of lawyers that work with a population that has been subject to forced treaties is disturbing.
4. Special thanks to my colleagues Diana Bob (WSBA No. 37405) and Brooke Pinkham (WSBA No. 39865) for feedback on improving both our WSBA and my article.

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New Season, New Name, New Opportunities

Spring is naturally the time for fresh beginnings, and we can all certainly benefit from a little sunshine and optimism. With rapidly changing information and directives to curb the spread of the coronavirus, we have all experienced varying degrees of upheaval in our personal and professional lives—not to mention the stress associated with a global pandemic. Lately, I have sought opportunities instead of feeling overwhelmed: an opportunity to test and strengthen the WSBA’s ability to unite employees and members through virtual technology, an opportunity to deeply connect with my children while they are home from school for weeks, and an opportunity to find creative ways to connect when face-to-face contact is limited. There is also another silver lining: I have been so impressed—although not surprised—by how the legal community has stepped up to respond to the emergency. This includes WSBA staff and volunteers, who are continuing services despite great logistical challenges, and legal professionals who are generously volunteering their time—even with worries about their own economic and personal health—to assist the public now when legal safeguards are needed most. Thank you.

As an organization, the WSBA has had two goals: To follow official directives and best practices regarding the coronavirus as an employer *and* to continue services to support you and your practice. (For instance, our free April Legal Lunchbox CLE is available on-demand for the entire month via our CLE store.) We understand that your work on the front line of the justice system—and the public’s access to it—does not necessarily halt because of a crisis. In fact, I believe the legal community must be even more vigilant and active during times of turmoil. I am proud to stand among you, and the WSBA is here to support unity, professionalism, and service among legal practitioners.

As we move into spring, I also want to mention several WSBA initiatives and programs that are blooming, right alongside the tulips, after months of careful incubation. To start, did you notice something different about the cover of this magazine? *Washington State Bar News* is back—same award-winning content, a familiar “new” title! The Board of Governors in November voted to return to the magazine’s original moniker (from 1947-2012). The logistics of the change took several months, but we are proud to debut the *Bar News* masthead this issue. The new (old?) name is inclusive of all WSBA members and provides a clearer indication of the publication’s provenance and content.

Also, turn to this issue’s Discipline & Other Regulatory Notices (page 54) for another much-requested return-to-the-past feature. Among the many opinions raised during last year’s WSBA Listening Tour, one theme was consistent: *Bring back the expanded discipline*

notices. We heard you! For some context, the Bar must publish the notices, per the Rules for Enforcement for Lawyer Discipline, and the notices “should include sufficient information to adequately inform the public and members of the association about the misconduct found, the rules violated, and disciplinary action imposed.” (ELC 3.5(c)(1).) We must be highly accurate, consistent, and neutral. We must also, according to what we believe is clear court intent, make the notices accessible and explanatory enough so that practitioners can better comply with the RPCs and the public can make informed decisions. We believe the expanded format strikes that balance.

There are many other takeaways from the Listening Tour that we are taking to heart: resources for rural practice areas, clearer procedures and parameters for the WSBA’s political activities, steady license fees, and flexibility in certain categories of license status. We also found that just being *present* in your communities to hear and experience your day-to-day realities is critical to supporting you and your practice. In addition to these visits, we are making more organizational changes this year to be present where you practice—such as a plan to rework the historically Seattle-based APEX Awards ceremony into several local celebrations in honorees’ home communities.

One other development to highlight: Results from our second WSBA Volunteer Satisfaction Survey (the first was conducted in 2017) show we are improving with regard to volunteer onboarding, providing adequate support, and creating a climate of teamwork. We also saw an increase in the number of volunteers who feel their role furthered the WSBA’s mission to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice. Perhaps the most rewarding area of improvement, however, is the number of volunteers who indicated that they felt that their time and talent were valued by the organization (73.6 percent). The survey also provided some helpful feedback and identified areas we might improve in order to get closer to 100 percent satisfaction.

Above all else, I hope you and your loved ones are healthy and in good spirits as the world learns to navigate together in uncertain times. **BN**



Terra Nevitt

WSBA Interim Executive Director

Nevitt can be reached at terran@wsba.org.

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In Memoriam Elizabeth Perry

We are deeply saddened to announce that
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Liz became the first female attorney at
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helping clients with Medicaid and estate
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Her years of experience, her wisdom, and
her partnership will be greatly missed.

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The Wide Reach of Tribal Law

BY ANDREW POLLOM

Home to 29 federally recognized tribes, Washington has a history that begins and lives through the history of the indigenous communities who've been here since time immemorial. Today, the tribes are vibrant communities, and the men and women of the WSBA Indian Law Section have the distinct pleasure of serving these communities as in-house counsel, outside counsel, and nonprofit attorneys. We are passionate in serving tribal members and Native peoples, whether they live on their homelands or in the heart of major cities like Seattle, Spokane, or Tacoma.

Many WSBA members' first and only experience with Indian law was the Washington law component of the bar exam. However, that doesn't tell the whole story. Tribes hold a unique status in our legal system. Indigenous peoples retain their sovereignty, which is recognized both by treaty and by statute. As a result, tribes have a special sovereign-to-sovereign relationship with the federal government. This sovereignty manifests itself in fully formed governments, nonprofits, and for-profit ventures.

If you work in child welfare, then you must have come across the Indian Child Welfare Act (ICWA), which not only recognizes that tribes have a seat at the table when their children are in foster care, but also establishes distinct placement preferences for Native children, and a higher standard of efforts for reunification between Native children and their parents. If you work in gaming, then you likely have to deal with the Indian Gaming Regulatory Act (IGRA), governing not only how gaming is done on tribal lands but also the government-to-government

relationship between the tribes and states. Work in environmental law, or land use law that might touch on wetlands and other sensitive areas? You will need to know about *U.S. v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), the seminal case that not only governs the fishing rights of the Puget Sound tribes but also plays a huge role in environmental design and decision making.

These statutes and treaties speak to the internal work of the tribes as well. I have served as an in-house counsel for the Lummi Nation for the last three years, first as a child welfare attorney and now as a prosecutor. Under ICWA, dependency actions can be started in tribal court or transferred from state court. This allows Native children to be cared for by their own communities according to their Lummi custom and tradition. As a prosecutor, I have the pleasure of seeing not only the enforcement of tribal law but also that the system of justice that is *Lummi justice* adheres to Lummi custom and tradition. While the day-to-day work is not dissimilar to cases you would see in state court, the very act of fostering a court according to Lummi law is a great act of sovereignty. Many tribal in-house attorneys focusing on civil issues assist the tribes they serve



Neah Bay Beach.

From Neah Bay to Usk, indigenous communities throughout the state of Washington are forging a path forward based on innovation, tradition, and sovereignty.

in a vast array of subject areas, including legislative drafting, environmental law, business transactions, and more. Through that act of sovereignty, Lummi and similar tribes are shaping their futures.

From Neah Bay to Usk, indigenous communities throughout the state of Washington are forging a path forward based on innovation, tradition, and sovereignty. This has led to massive economic development. Indian gaming, for example, is a \$33 billion industry. Through the Northwest Indian Fisheries Commission, tribes released millions of hatchery fish to help repair fishing stocks. The Tulalip tribes recently announced a tax-sharing compact that could be a solution to the issue of “dual-taxation”: tax collection by both the state and the tribe. These and other issues are being solved every day by tribal lawyers. Yet our members are not confined to in-house counsel; law firms like Miller Nash Graham & Dunn LLP; K&L Gates; and Kirkpatrick Townsend have all invested resources to serve as outside counsel. Nonprofits like Northwest Justice Project have set up units to meet the unique needs of Native peoples. These nonprofits and outside counsel are critical partners. Therein lies the beauty of our work. Indian and tribal law does not cover just one issue or only issues arising on tribal lands. Our work ranges from criminal law to business law, tax law to environment law, education law to housing law.

Interested in keeping up to date on the latest issues in Indian Country? Keep an eye out for our annual Indian Law Section CLE this May at Seattle University. Details will be coming shortly. You can also stay informed on what is happening in Indian Country by joining the WSBA Indian Law Section and subscribing to our newsletter. [BN](#)

Andrew Pollom, J.D., L.L.M., is staff attorney for the Lummi Nation and a member of the WSBA's Editorial Advisory Committee. His work for Lummi has included child welfare, prosecution, education, and housing. When not at work, Pollom enjoys watching the Sounders, yelling at the Seahawks, rooting for Gonzaga, and groaning at the Mariners. Sometimes he can also be found in his garden. He can be reached at andrewp@lummi-nsn.gov.



Fostering the Future of Native Lawyers

BY SARAH ROUBIDOUX LAWSON

The Northwest Indian Bar Association (NIBA) is a nonprofit organization of attorneys, judges, and Indian law practitioners in Alaska, Idaho, Oregon, and Washington. NIBA was established more than 20 years ago to improve the legal and political landscape for Pacific Northwest Native communities.

The goals of NIBA are: to represent and foster the education and welfare of Native attorneys, paralegals, and tribal court personnel of the Pacific Northwest; to provide role models and mentors in the legal profession for Native people, particularly Native youth and law students; and to encourage and promote pro bono legal work and civic involvement that benefits Native people throughout the Pacific Northwest. Our membership includes Native attorneys, Native law students, and tribal court personnel, as well as non-Native attorneys who practice in the field of Indian law.

Throughout the year, NIBA sponsors various networking and educational events for our community. Our marquee event, however, is the NIBA Annual Fundraising Dinner, which raises funds for NIBA programs that support Native attorneys, law students, and pro bono legal clinics for Native people in the Pacific Northwest. Recently, NIBA's efforts have been particularly focused on programs that increase the number of Native attorneys in practice.

In 2015, the National Native American Bar Association (NNABA), of which NIBA is a member, conducted the first national survey of attorneys of Native American, Alaska Native, or Native Hawaiian heritage

across all settings, including private practice; government practice in state, federal, and tribal arenas; the judiciary; corporate legal departments; and academia. One of the four key takeaways from the NNABA survey was the need to address challenges in getting Native students interested in and admitted to law school, which has been a longtime focus area for NIBA. NIBA's existing scholarship and bar study stipend programs have put it at the forefront of the national effort to recruit and retain Native law students. Every year, NIBA awards an average of \$8,000 in scholarships to Native students in law schools in the Pacific Northwest, as well as an additional \$3,000 of bar exam study stipends.

In addition, NIBA has expanded its law student support programs by offering small travel stipends to support: (1) undergraduate students attending the Native American Pipeline to Law Pre-Law Summer Program; (2) current law students attending the Na-

LEARN MORE

More information about NIBA can be found at www.nwiba.org.

ative American Pre-Law Summer Institute; and (3) current law students attending the Federal Bar Association Indian Law Conference and Native American Law Students Association

Annual Moot Court Competition. By awarding these travel stipends, we are helping remove barriers that prevent Native students from accessing resources and participating in events that develop future lawyers and foster community.

Thank you to the WSBA and, in particular, WSBA President Rajeev Majumdar for reaching out to NIBA to give us this opportunity to share our story with the Washington legal community. [BN](#)

Sarah Roubidoux Lawson

is president of NIBA and Of Counsel at Schwabe, Williamson & Wyatt in Seattle, where her practice focuses on tribal taxation and land and natural resource matters. She is admitted to practice in Washington, Oregon, Arizona, and Wisconsin, as well as tribal courts nationwide. Lawson earned her B.A. from the University of Michigan, J.D. from the University of Wisconsin, and LL.M. in tax from the University of Washington. She is an enrolled member of the Iowa Tribe of Kansas and Nebraska. She can be reached at slawson@schwabe.com.



Reforecast and 'Deep Dive' Audit Yield Good News

Here we are, more than halfway through the fiscal year, and we—the Budget and Audit Committee, the WSBA financial team, and I—are continuing to work hard to achieve financial goals on behalf of the membership. As I have mentioned before in this column, we are focused especially on the areas of financial transparency and maximizing value and efficiency. Here are a few updates:

2020 REFORECAST

The reforecast—an initiative to look for ways to make the WSBA more efficient and maximize license fees—is complete. This process entailed a highly detailed review of revenue and expenses in each WSBA cost center. Basically, we wanted to reconcile our *actual* expense and revenue numbers halfway through the year with the assumptions we had made to build the budget more than a year ago. Moreover, we have made several significant cost-saving decisions and the reforecast allows us to account for the recouped spending. WSBA employees in all functions participated in the reforecast, and I want to extend kudos to them for leading the effort with eagerness and precision. By the time this magazine reaches your mailbox, the Budget and Audit Committee will have reviewed the reforecast results. The entire Board of Governors will consider the results along with a corresponding request to modify the 2020 budget at its April meeting.

Please look for specific details about the reforecast results on the finance page, www.wsba.org/finances. Before the Budget and Audit Committee and Board of Governors work through the results, I can provide a few highlights:

- We have recouped savings from three employee positions that are vacant and will not be filled; this is due to diligent planning, prioritizing, and reorganizing among existing staff. We have also implemented new financial software that will ultimately maximize current employee functions, saving us from future staffing expenses.
- The newly aligned revenues and expenditures show a net savings of more than \$800,000, compared to what was budgeted, for the WSBA this fiscal year. Our original 2020 budget actually called for reserve-spending of more than \$500,000; after this reforecast, that has changed into an anticipated surplus of almost \$300,000.

Overall, this is great news. Our goal has been to maintain (and even grow) robust membership and public services while taking a hard look at efficiencies. I believe we are doing that. Also, the reforecast has been an important step in allowing us to more accurately hone our predictive models so that we can plan future budgets with



Daniel D. Clark

WSBA Treasurer

Clark is a senior deputy prosecuting attorney with the Yakima County Prosecuting Attorney's Office, Corporate Counsel Division. He can be reached at DanClarkBOG@yahoo.com.

precision and confidence. This will allow us to strategically plan the best use of actual revenues to support the WSBA's mission. The WSBA has consistently been a national leader for various important regulatory, diversity, and access-to-justice efforts, and we want to continue to lead.

I would like to especially thank Chief Financial Officer Jorge Perez, Interim Executive Director Terra Nevitt, and the WSBA financial team for their hard work to identify areas in which to increase efficiencies and save costs. We have worked collaboratively and will continue to do so on behalf of the membership.

'DEEP DIVE' AUDIT

I'm also excited and proud to report that we have the results from the "deep dive" audit conducted by accounting firm Clark Nuber. Every year, Clark Nuber performs an audit to confirm that the data the WSBA reports on its financial statements is true and accurate. For the first time in decades, we also decided to conduct an additional audit this year to look deeply into WSBA processes and procedures to ensure we are following our own policies and best industry practices. This type of audit is good practice for an organization every five to 10 years.

By the time you receive this magazine, the Budget and Audit Committee will have reviewed the audit report, and the entire Board will receive a presentation at its April meeting. Look for more details at www.wsba.org/finances. In the meantime, here's a sneak peek: It's good news, and you can feel confident in the integrity of the WSBA's financial operations.

CORONAVIRUS PREPARATION

These are uncertain times, and the WSBA—like you and the rest of the world—has had to modify operations to comply with official directives to slow the spread of the novel coronavirus. To allow for funding and agility to deal with necessary emergency expenditures, Interim Director Nevitt and I have proposed a slight budget modification. The modification covers costs such as increasing the number of accounts we have for teleconference technology like Zoom. On the other hand, we expect some cost savings from modified operations (for example, moving March's Board of Governors meeting from Olympia to a virtual format) that may well cover any expenditures. **BN**

MORE ONLINE

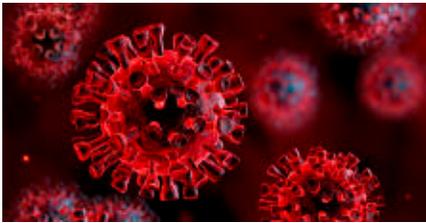
We want your participation: The complete schedule of Budget and Audit Committee meetings and WSBA Board of Governors meetings is at www.wsba.org.

There's More on the Blog



NW Sidebar

THE VOICES OF WASHINGTON'S LEGAL COMMUNITY



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DONE DEAL



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Spring Cleaning



**Things to know about
file retention and
destruction—including
your digital copies**

BY MARK J. FUCILE

With law firm files increasingly in electronic form, questions about file retention and destruction are also evolving from the days when paper reigned supreme. Even relatively recently, retention of paper files often involved some variant of in-office and off-site storage that could, depending on the venue, carry significant cost. Similarly, destruction of paper files often involved paying some combination of lawyer and non-lawyer time to cull through “bankers boxes.” Although cloud-based electronic storage is not free, it is typically far less expensive than renting space for paper files. Destruction of electronic files, too, is less expensive than culling and shredding paper counterparts.

At the same time, retention and destruction of files—even in electronic form—remains an important element of law firm risk management. In this column, we’ll examine both—but primarily from the electronic rather than paper perspective.

RETENTION

In an electronic practice environment, file retention is typically a blend of three related topics: (1) systematically closing files when work is complete; (2) returning client paper documents that have legal significance in their original form and other property that clients have entrusted to the firm; and (3) securely maintaining the remaining electronic file in a format that continues to be accessible to the client and the firm for a reasonable time period.

Closing Files

Systematically closing files when matters are complete can play a significant role in a firm's conflicts management and, in turn, its ability to take on new work. Under RPC 1.7, current clients typically have an unrestricted right to "veto" any representation a law firm proposes to take on that is adverse to them by refusing to waive conflicts. Under RPC 1.9, by contrast, former clients generally can only block an adverse representation by denying a conflict waiver when the proposed new matter for another client is the same or substantially related to the work the law firm handled earlier for the former client or would involve using the former client's confidential information in a manner adverse to the former client. Absent one of those two triggers, a law firm is permitted to oppose a former client without seeking a waiver.

Closing files can potentially open avenues for future work by turning current clients into former clients. In doing so, however, two practical steps are typically necessary.

First, the client involved should be informed—preferably in writing—that work performed has been completed and the firm is "closing its file" (or words to that effect). The standard courts apply for determining whether an attorney-client relationship exists, under *Bohn v. Cody*, 119 Wn.2d 357, 832 P.2d 71 (1992), among other cases, looks to the subjective belief of the client and whether that subjective belief is objectively reasonable under the circumstances. It is difficult for a client to claim later that the client subjectively believed the relationship continued in the face of a written file-closing letter or email.¹

Second, the firm should also close the file involved on its internal systems. It is difficult to argue that a client is a former one if the firm still lists the client as "current." In *In re Egger*, 152 Wn.2d 393, 412, 98 P.3d 477 (2004), for example, the Washington Supreme Court looked to a law firm's internal records in determining that a person was a current client of the firm.

Returning Paper Originals

Under RPC 1.15A(3), lawyers have a duty for "safekeeping" client property entrusted to them and, under RPC 1.16(d), they have a corresponding duty for "surrendering [client] papers and property" when a representation has concluded. Generally, therefore, prudent practice is to return any papers or other property clients have provided when we close their file.² Similarly, if we have created an original document that has legal significance in its paper form—such as an original will—we should also provide the

Securely Maintaining Files

Under RPC 1.6(c), we have a duty to protect client confidential information regardless of the format in which it is stored: "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." WSBA Advisory Opinion 2215 (2012) discusses our duties to protect client confidentiality in the specific context of cloud-based electronic files and is a "must read" for lawyers and firms using this increasingly

With the accelerating change from paper to electronic files, the practical dynamics of file retention are also changing.

client with that original. Returning client property and client originals holding legal significance when a file is closed will avoid putting the law firm in the position of being the custodian of a former client's property indefinitely. This risk has sharpened as people have become more mobile—increasing the probability that a law firm may lose contact with former clients over time.

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory, and attorney-client privilege matters, and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a former chair of the WSBA Committee on Professional Ethics and is a past member of the Oregon State Bar Legal Ethics Committee. He is a co-editor of the *WSBA Law of Lawyering in Washington*, the *WSBA Legal Ethics Deskbook*, and the *OSB Ethical Oregon Lawyer*. He also teaches legal ethics as an adjunct for the University of Oregon School of Law. He can be reached at 503-224-4895 and mark@frllp.com.



common method of file storage. ABA Formal Opinion 477R (2017) addresses related issues of securely transmitting electronic files and is also a "must read" for lawyers storing and accessing electronic files.

Our duty of confidentiality, however, does not end when we close a file. In *Martin v. Shaen*, 22 Wn.2d 505, 156 P.2d 681 (1945), and *Swidler & Berlin v. United States*, 524 U.S. 399, 118 S. Ct. 2081, 141 L. Ed. 2d 379 (1998), for example, courts held that the attorney-client privilege even survives the death of the client. Similarly, RPC 1.9(c) generally extends confidentiality to former clients on the matters we have handled for them. Therefore, as long as we maintain former clients' files, our duty of confidentiality remains as well.³

WSBA Advisory Opinion 2023 (2003) has long counseled that it is generally permissible to hold a former client's file solely in electronic form as long as client property and original documents of legal significance discussed earlier have been returned to the

CONTINUED >

client. The RPCs, however, are relatively silent on how long files and related records must be maintained. RPC 1.15A(c)(3) requires that records relating to the return of client property must be retained “for seven years after return of the property.” RPC 1.15B(a), in turn, requires that trust account records must be retained “for at least seven years after the events they record.” Beyond that, the RPCs do not specify any particular period to retain files and related records.

The WSBA’s Practice Management Assistance Program has a useful set of retention guidelines available on the WSBA website.⁴ Many malpractice carriers have similar guidelines available for their insureds.⁵ These guidelines typically blend general retention periods applicable to most files with suggestions for longer treatment of particular files such as those involving minors. The guidelines also implicitly blend reasonable client need for files with possible law firm need to rebut malpractice claims in fashioning practical retention periods.

With the accelerating change from paper to electronic files, the practical dynamics of

DESTRUCTION

File destruction usually involves two principal considerations: notice and security.

Notice

In addition to returning client originals and property, prudent practice during a representation is to provide clients with contemporaneous copies of correspondence, pleadings, and the like so that, in effect, the client has the functional equivalent of “the file” along the way.⁷ In addition to the benefits of clear communication during the representation, it also simplifies the eventual destruction of the law firm’s electronic copy because the client was already provided with all material elements of “the file” during the representation or at closing. Assuming those qualifiers, notice is not required in Washington by the RPCs before destroying files.⁸ Nonetheless, it often makes practical sense to provide clients with advance notice so that the firm’s practice has been clearly articulated. Given the mobility of clients today and the corresponding probability that a firm may have

ding it internally if the volume is small or particularly sensitive or using a reputable outside firm that offers secure document shredding.⁹ Similarly, although destruction of electronic files themselves is often a matter of relatively simple deletion from a storage data base, old hardware that contains the same information should also be securely “scrubbed” before recycling. Again, outside vendors offer secure “wiping” of data before recycling the remaining components and, as with paper files, typically provide certificates attesting to the secure destruction of the data involved. **BN**

We have a duty to maintain client confidentiality when we are storing client files, but we also have a responsibility for destroying them securely.

file retention are also changing. When the ABA issued an ethics opinion on file retention in 1977, it noted the cost of storing paper files as a primary driver for establishing practical retention guidelines.⁶ Electronic files, by contrast, have reduced the cost of storage considerably. With the switch to electronic files, however, firms should also give consideration—and seek advice from their carriers and IT consultants—on appropriate formats for long-term storage. Having electronic files will do little good if they are not saved in a reasonably accessible format.

lost contact with a former client by the time it is reviewing files for destruction, prudent practice also suggests giving the notice during the course of representation, at the conclusion of the representation, or some combination of the two.

Security

Just as we have a duty to maintain client confidentiality when we are storing client files, we also have a responsibility for destroying them securely. If paper has been converted to electronic form for long-term storage, the paper can be recycled as long as the firm does so in way that comports with the duty of confidentiality—such as shred-

NOTES

1. See *also* *Hipple v. McFadden*, 161 Wn. App. 550, 559-60, 255 P.3d 730 (2011) (essentially applying the *Bohn* test to determine the end of the attorney-client relationship).
2. Any remaining funds held in trust after payment of the final bill should also be refunded to the client when a file is closed. See RPC 1.16(d). Although comparatively rare, lawyers have been disciplined for improperly destroying client original documents. See, e.g., *In re Spencer*, 58 P.3d 228 (Or. 2002).
3. See *also* WSBA Advisory Op. 175 (rev. 2009) (discussing the continuing duty of confidentiality following a client’s death). “The [attorney-client] privilege may be asserted or waived by a client’s personal representative after the client’s death.” Robert H. Aronson and Maureen A. Howard, *The Law of Evidence in Washington* 9-19 (rev. 5th ed. 2018).
4. [www.wsba.org/docs/default-source/resources-services/practice-management-\(lomap\)/table-of-dates-for-file-retention_20191007.pdf?sfvrsn=4d0d05f1_12](http://www.wsba.org/docs/default-source/resources-services/practice-management-(lomap)/table-of-dates-for-file-retention_20191007.pdf?sfvrsn=4d0d05f1_12).
5. See, e.g., Oregon State Bar Professional Liability Fund File Retention and Destruction Guidelines, available at www.osbplf.org.
6. ABA Informal Op. 1384 (1977); see also ABA Formal Op. 92-389 (1992) (citing Informal Opinion 1384 and further discussing file retention considerations).
7. WSBA Advisory Opinion 181 (rev. 2009) discusses the concept of “the file” extensively.
8. See Sandra Schilling, *How Long Do You Need to Keep Closed Files?* WSBA NWSidebar post, Nov. 17, 2017, available at <https://nwsidebar.wsba.org/2017/11/17/how-long-do-you-need-to-keep-closed-files/>.
9. See *generally* Oregon State Bar Formal Op. 2005-11 (rev. 2015) (discussing secure recycling of paper client files).

WELCOME SCOTT & CAROLYN!



WE ARE DELIGHTED TO ANNOUNCE THE RELOCATION OF OUR NEW VANCOUVER OFFICE AND REUNITE FORMER PARTNERS, CAROLYN M. DREW AND SCOTT J. HORENSTEIN. THEY WILL CONTINUE THEIR SERVICE TO FAMILY LAW AND THE VANCOUVER LEGAL COMMUNITY.

Scott, while remaining retired from the practice of law, will continue his independent mediation practice through Scott Horenstein Mediation, LLC. He will also continue serving the Vancouver legal community by mentoring the next generation of family law attorneys.

Carolyn joins the firm with nearly 30 years of family law experience in the Vancouver community. She will continue her full-time practice as a family law attorney, representing clients with domestic relation matters in SW Washington—including divorce, collaborative law, and custody/parenting time issues.

WE ARE THRILLED TO WELCOME THEM TO OUR TEAM!

Gevirtz Menashe

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RE: EMAILS

BY LAUREN SANCKEN

Hey Sancken - I'm not going to be in class today because I need to take my car to the shop and the only time I can do it is during your class. Sorry, but I can't miss Property. I'll come by your office hours next week to get filled in on what I missed. Thanks! - Student

On occasion, I receive emails like the one above from a well-meaning student.¹ After I'm done resting my head on my desk in soul-crushing defeat (well, admittedly, a "Hey Sancken" greeting did temporarily make me feel cool), I talk with the student about how their email came across. For such a short message, it has so many problems. First, it addresses me as if I were a 13-year-old peer. Then it tells me that my class isn't a priority, and it ends by offering to let me reteach it at the student's convenience.

While this is an extreme example of poor form, writing an email that isn't a burden for its recipient can be difficult. Writing one that's enjoyable is even harder. Effective email communication should *help*, not frustrate, your intended audience. The following practice tips are designed to help attorneys (or anyone) write a good email. Or at least one that isn't annoying.

1. Use a meaningful subject line.

A descriptive subject line allows a reader to sort their messages by category and priority, and that's helpful because inboxes can get full, fast. Subject lines like "Question" or "Request" or, my favorite, "Re: [no subject]" are vague and hard to track, as much for the sender as for the recipient. A subject line like "*State v. Barnes*—Motion to Dismiss Question" or "KCBA Fundraiser Breakfast—March 14" allows someone to quickly skim the contents of their inbox and assess whether a message requires immediate attention or can wait until later. Also, although messages between a lawyer and a client are generally confidential and therefore may be considered privileged or otherwise legally protected, it is still prudent to take measures to prevent any unintended waiver of such protections. Making note in the subject line with a clear "Privileged and Confidential Communication: [subject description]" makes it far less likely that the contents will be inadvertently forwarded or otherwise disclosed.

2. Don't bury the lead.²

Begin your email with why you're writing it in the first place. This lets your reader focus their attention appropriately. If you're

writing with legal advice or a recommendation, start with the conclusion, then support it with more detailed analysis and reasoning. I ask my students to write "e-memos" in CRAC form (Conclusion, Rule, Application, Conclusion), so their intended reader could, theoretically, skim it on their phone and digest the main point. Similarly, if the purpose of an email is to ask a question, ask it in the first paragraph, or first couple of sentences. If the question is hidden at the end of the email or buried in a paragraph, there's a good chance a busy reader will miss it or begrudge having to dissect the email to find it.

3. Write short(er) emails.

Just do it. If you have a lot of information to convey by email, consider using bullet points, short paragraphs, and descriptive headings. Or consider not using email at all. *See Tip #9.*

ASK US

If you have a question about legal writing that you'd like to see addressed in a future "Write to Counsel" column by UW Law writing faculty, please submit it to wabarnews@wsba.org, with the subject line "Write to Counsel."

4. Acknowledge receipt.

Most people expect a timely acknowledgement of their email, even if you can't immediately send a thorough response. Telling the sender that you received the email helps reassure them that it did not fall into a black hole. Even better, add a line that tells the sender when they might expect a response. When an exchange has run its course, it's helpful to acknowledge that finality and when you can expect to be in touch again, with something like: "Thank you for your help. I'll follow up if I need anything else."

5. Avoid informality.

It's better to wait for permission for informality than to assume it. Some people prefer to be addressed by their titles, especially if they hold a more senior position ("Judge" or "Dean" or "Professor" or "Mrs."). Wait for a more senior recipient to signal that an informal address may be used. For instance, if I address my email to "Dean Barnes" but he responds with "Please call me Mario" I can assume *Dear Mario* won't be viewed as rude. Similarly, if someone continues to sign their emails "Professor Ziff," don't persist in writing "Hi David." In general, email tone should feel like an extension of the existing relationship.

6. Be cautious when using acronyms and "text-speak."

At one of my former workplaces, emails with "PTI" (Pardon the Interruption) in the subject line were common, usually to ask for an attorney referral or to send an announcement regarding cookies in the breakroom. The use of the acronym made several people furious (I was not one of them—I like cookies—but I understood the gripe). "PTI" is a phrase that reminds me of "No offense, but ..." What follows "PTI" will inevitably interrupt the recipient, and I'm not convinced that the sender is genuinely seeking a pardon for it. Likewise, acronyms like "LMK" (let me know) or

In general, email tone should feel like an extension of the existing relationship.



Lauren E. Sancken is a senior lecturer and the director of the Moot Court Honor Board at the University of Washington School of Law, where she teaches legal writing courses.

"IMHO" (in my humble opinion) or "FWIW" (for what it's worth) don't really do much for an email. Most likely, nothing meaningful will be lost by simply writing these words out or, better yet, eliminating them altogether.

7. Proofread to ensure spelling and grammar are correct.

Most people proofread formal documents. Before you send an email in place of a formal document or letter—giving or requesting legal advice, or clarifying something with opposing counsel, for instance—try to print the email and proofread it to ensure it doesn't contain typos. Those are the types of emails to which you and the recipient may refer many times. Reading your typo repeatedly will annoy them and embarrass you. For more informal email communication, try to give it at least a quick read to catch spelling or grammatical errors. But if you miss a typo, don't dwell on it.

8. Write your email as if it will be read at a deposition (or published in the *New York Times*).

The advice I received as a new associate still holds true: if an email does not belong on the cover of a major newspaper or attached to an exhibit filed with a court, then don't write it. I spent a good chunk of my junior associate days sifting through emails that had been subject to discovery or public records requests, and I had a lot of internal "yikes" and "eeehhh" moments, knowing that the sender probably regretted the carelessness (and permanent documentation) of those comments. On more than one occasion, a rude email from opposing counsel would become an exhibit to a motion to compel. While we may not want emails to live forever, they can, and, it's good to write them as if they will.

9. Know when to begin and take a conversation offline.

Email is rarely the best place to discuss sensitive information, have a heated exchange, or share frustrations about a coworker or client. Before sending sensitive information over email, evaluate whether there's a better, or more secure, way to communicate. Several back-and-forth email exchanges are often far less efficient (or satisfying) than a few minutes on the phone or face to face. And particularly when navigating a challenging dynamic (with opposing counsel, for instance), it's easier to slip and be rude or difficult over email than to behave that way in person or on the phone. So, when an email exchange begins to feel more like a conversation, consider having one.

P.S. "Please" and "thank you" go a long way.

Thank you for reading.

Yours truly,

Lauren 

NOTES

- The idea for this title and many of these tips came from the marvelous Mary Whisner. See Mary Whisner, *Re: Memos*, 95 Law Libr. J. 601 (2003). I'm also thankful to Professor Sarah Kaltsounis for her inspirational primer on email etiquette for legal writing students, and Professor Jeff Feldman and Joanne Hepburn, who know a thing or two about email.
- Although "lede" is also an acceptable spelling, the AP Stylebook uses "lead" and states: "The lede is journalistic jargon."

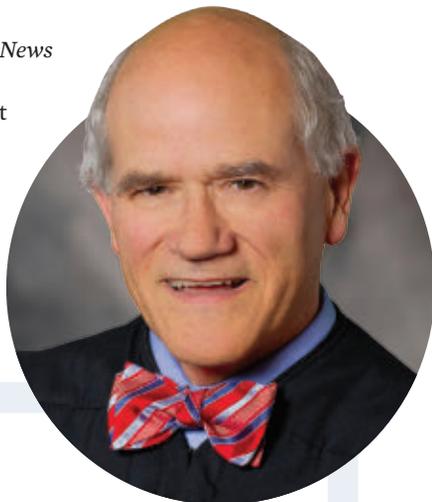
A Distinguished Decade Spent on State's Top Bench

Q&A WITH JUSTICE CHARLES K. WIGGINS

After a decade on the Washington Supreme Court, Justice Charles K. Wiggins announced his retirement, effective March 31. A WSBA member since 1976, Wiggins practiced criminal and civil appellate law and served as a judge in Division II of the Washington Court of Appeals, a pro tem superior court judge in King and Jefferson Counties, and a pro tem district court judge in Kitsap County.

In response to Wiggins's announcement, Gov. Jay Inslee released a statement saying, "I thank Justice Wiggins for his decade of service on our state's highest court, which was preceded by a distinguished career of over 30 years representing clients in both civil and criminal matters."

Washington State Bar News got in touch with Justice Wiggins, to ask him about his years on the court; his work helping to establish votingforjudges.com; and, of course, how many bow ties he owns.



QUICK BIO

After nine years as a Justice of the Washington Supreme Court, **Justice Charlie Wiggins** retired effective March 31, 2020. Justice Wiggins was first elected in 2010 to the Supreme Court and re-elected to serve a second term in 2016. He has enjoyed a remarkable career as Supreme Court Justice, Court of Appeals judge, and appellate lawyer for nearly 45 years and is retiring to spend more time with his wife and family.

Q. What is the greatest accomplishment/achievement during your time on the Supreme Court?

A. Our greatest accomplishment as a court was to stand firm in the *McCleary* case, in which the court found it necessary to hold the Legislature in contempt. We could not have held steady if we had not had the support of the people, who demanded adequately funded schools.

Q. Did you have a goal in mind when you joined the Supreme Court and did you meet that goal?

A. My goal was to be impartial in deciding cases, refusing to yield to the temptation to slip into bias. I am satisfied that I have met that goal to the best of my abilities.

Q. What do you hope to see from the Washington judiciary going forward?

A. We have excellent, courageous leadership in Chief Justice Debra Stephens at the Supreme Court and at all levels of our courts. Going forward, I trust our judiciary will continue its efforts to help those who need our services the most, our Washington citizens seeking justice. To achieve this, we need a strongly funded infrastructure, a vision focused on the present as well as the future, and cooperation amongst all agencies involved in the pursuit of our common goals. Our judiciary will continue to pursue the goal of justice successfully as we work together as the third branch of government.

Q. What was the most memorable and difficult decision you had to make while on the bench?

A. It's not one decision, but an entire area of the law: the most difficult are the decisions whether to terminate the parent-child relationship. These are difficult because you know that the parent-child relationship will be destroyed. At the same time, in most of these cases, the court must terminate the relationship to protect the child and allow the child a new home in which they can thrive.

Q. What are the pros and cons of electing Supreme Court justices?

A. Pros:

- This is a democracy and voting for judges is more consistent with democratic values.

RAPID FIRE

How many bow ties are in your collection?
About 50 or 60.



Which do you prefer: Star Wars or Star Trek?
I like both, with the edge going to *Star Wars*.

Cats or dogs?
Dogs.

Phone call or text? No preference.



Coke or Pepsi? Coca Cola.

Book or eBook? Never read an eBook. But I do listen to a lot of audio books.

Summer or winter? Summer.

Tea or coffee? Coffee.



iOS or Android? Not enough experience with iOS to draw a fair comparison.

Socks with sandals or no socks with sandals? With socks.



- [Elections] empower the people to participate directly in the critical task of selecting a judge.
- [Elections] encourage candidates to walk out of the courthouse and engage more directly with the citizens during an election year.
- The election process educates judicial candidates about the people they serve and the issues they face.

Cons:

- [It is] difficult for citizens to take the time and energy to research the candidates and cast an informed vote.
- Citizens often skip the judicial races because they don't feel they know enough about the candidates, which hands power to special interest groups and to the influence of money in judicial elections.

Q. You helped establish the website votingforjudges.org. Why did you think that was a necessary resource in Washington?

A. I believe that the average citizen is quite capable of voting intelligently for judges, but generally finds it difficult to learn about judicial candidates. VFJ [votingforjudges.org] is an important resource to make it easier for citizens to exercise their right to vote intelligently. It is also extremely well received by members of the public who learn of its existence.

Q. Your seat was targeted with a fierce opposition campaign in 2016. What did you learn from that experience?

A. So long as wealth remains so unequally distributed, there will always be the threat that a wealthy individual who is interested in only one issue will overwhelm the election with large expenditures to promote their individual views.

Q. As you enter retirement, what one piece of advice would you most like to impart to the legal community?

A. Take the time to enjoy life, especially time devoted to family.

Q. What do you plan to do with this weird new thing called "spare time"?

A. See my response to the prior question. And come summer, I plan to climb aboard our boat and cruise north. Eventually I hope to engage in some pro bono activities as well as some consulting. **BN**

Courtesy photo of Justice Wiggins; Rapid Fire Q&A images © Getty

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Perspectives

A forum for members to express their opinions and start conversations about important legal issues.

Have a response? We want to hear it, via wabarnews@wsba.org.

Editor's note: What follows is an edited transcript of a talk that Merf Ehman originally gave at TEDx Bellevue in December 2019.

What Gender Rules Do You Unconsciously Follow?

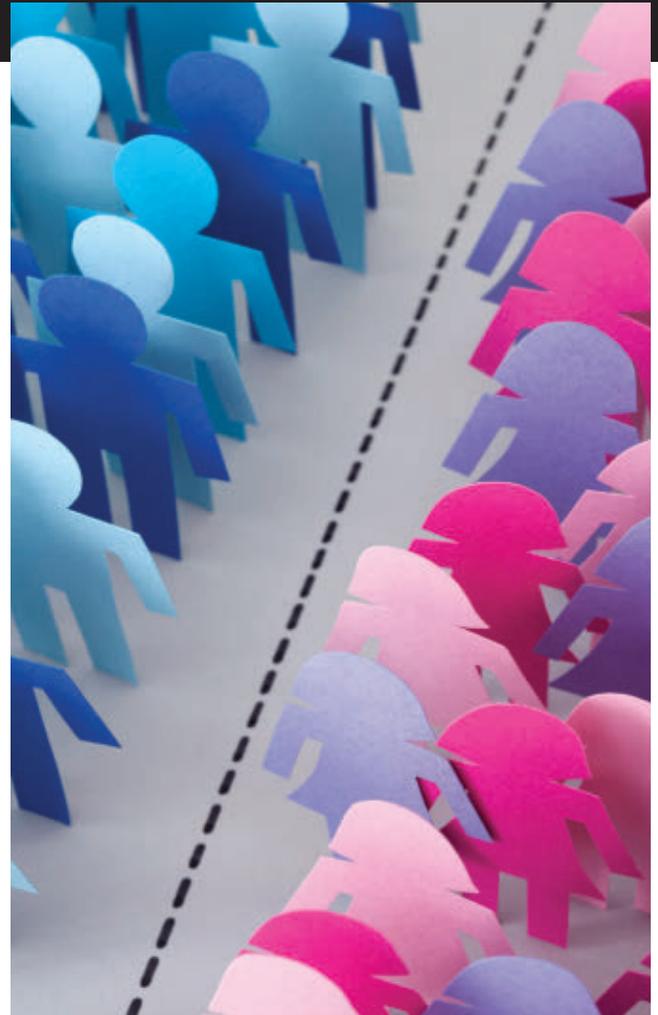
BY MERF EHMAN

Gender. There's much talk about gender these days. There's transgender, male, female, gender binary, gender non-binary, gender-fluid, genderqueer. What does it all mean? And then there's the question: What is your pronoun? For me, that's not a one-word answer. It's a story.

And so today, I'm hoping that all of you will go on a journey with me—my gender story. And we'll think about your own journey and your own gender. Because gender is something we don't have much choice about. It's assigned to us at birth.

I grew up in a very small—almost tiny—town in the foothills of the Allegheny Mountains. There, in my family: strict gender roles. My dad worked. My mom stayed home. My dad was violent. My mom cried. My dad drank. My mom cooked.

For me, I didn't really think a lot about gender when I was a kid. I wore jeans; I wore boys' clothes mainly. I loved to shoot guns. I won a sharpshooter medal in high school. I loved to fish, and I could gut my own fish. And I really, really enjoyed baking blueberry muffins. One year, my blueberry muffins went to state fair.



Then I met Big Al. Big Al was our softball coach. She was about six feet tall. She had a wallet; she had keys that hung off her jeans, and I knew there was something about Big Al that I wanted to be like. And I thought, it's possible. And then came sixth grade, otherwise known as “the battle of the yellow dress.”

My mom decided for my sixth grade graduation that she would make me a dress. She went to the store, drove one hour to the big city, picked out a pattern, got the fabric, and made this beautiful

VIDEO ONLINE

Watch the talk at https://www.ted.com/talks/merf_ehman_what_gender_rules_do_you_unconsciously_follow.

CONTINUED >

Perspectives

CONTINUED >

yellow and white checked dress. I hated it. I hated everything about that yellow dress. I said, I am not wearing that yellow dress, in my big 10-year-old voice: “No.” And then I said, “Big Al would never have to wear a yellow dress.” That argument made it much worse. I lost. I had to walk across the stage in that yellow dress—ashamed, embarrassed, and with absolutely no words to express how I felt or why that dress was so wrong for me.

I decided that I didn’t want to stay in that small town, but there weren’t very many avenues to leave. My father had been in the army for 20 years, and so I decided that I would really like to be a medic and I would like to help people. I filled out all the forms and got approved and went to the center in Buffalo, New York. I got on that big Bluebird bus all by myself, went into that huge building, stayed in a motel by myself for the first time. I was so excited. I had done really well on some of the tests, and then I passed the physical. I passed all of the exercises and the strengths tests. And then they pulled me out of line and they said, “You need to come over here into this office with the psychologist. We have some concerns.”

That psychologist started asking me questions, which seemed really kind of odd: “Do you shave your legs?” “Uh, sometimes.” “Do you shave your armpits?” “Do you ever wear dresses?” As it turned out, they thought that I was a man or a boy trying to be a woman.

I didn’t get into the Army. They didn’t take people like me. And I got the distinct impression that I wasn’t welcome most places. But there was one place where I found that I could go, and that was the bars. In particular, the gay bars. At 18, I set off on a journey that would take me very low. I didn’t feel like I was welcome anywhere else. What happened is, it got really bad. And then one day, my friends dropped me at the emergency room because I was having the delirium tremors from trying to stop drinking. And from there, I started a journey to sobriety and a journey of recovery.

During that time, I spent about five years on Welfare and was eventually placed in a Welfare-to-Work program. Now my friend, she got placed at Meals on Wheels, so she got free lunch. I wasn’t so excited

because I got placed at a legal aid organization. I thought, “Boring.”

I had to be the receptionist, so they told me I had to wear dresses and skirts. I hated every minute of it. Also, I wasn’t very good at it because I was angry and didn’t like people. So I did that for nine months. I had a job coach who came and helped me with the social aspects of being in an office. I didn’t think people like me could be in offices. And as I was leaving to move on from that program, one of the attorneys said to me, “Have you ever thought about going to law school?” I said, “No, never.” And I walked away.

Over the next two years, I got a job cooking in a kitchen, which I loved. I got to just wear whites, the cook’s uniform; I didn’t have to think about it. And that’s where I thought people like me, who were genderqueer, who were butch, who were different, belonged—in kitchens, and in factories, and in construction. I didn’t see



I think that we can all get each other, if we’re willing to move beyond the ‘F,’ beyond the ‘M,’ beyond pink, and beyond blue, to step outside the box.

anybody who looked like me as lawyers, as doctors, or as professionals.

So I went to law school and after I finished, I was at a hearing. I was putting the chairs away for the hearing and I was wearing a dress. The attorney on the other side, he said to me, “Sir.”

And I thought, “I’m wearing a freaking dress.”

He said, “Sir, put those chairs over there, sir.” And I realized he thought that I was a man in a dress, trying to be a woman.

What I realized in that moment, is that that would be the last time that I ever wore a dress. I decided that I would stop trying to fit in a box.

And what to me is really interesting, is that when people think I’m a man—a white, straight man—I can move through the world in an incredible way. I can move through quickly. I can get through airports. People open doors for me. They think that I am the expert. And when I’m a woman, things move a little slower. I get interrupted a lot more, and people are a little bit gentler, maybe a little quieter. And when people aren’t sure what I am, it’s very awkward.

But the thing is, I am the exact same person in each of those situations.

I was born Martha Sue, and when I decided not to wear a dress anymore, I also decided that I would change my name. When I was a kid, I was called Merf, because no one could really say Martha Sue when they were little, and I hated it. So I decided to change my name.

I called up my mom, and said, “I’m going to change my name.”

And she said, “You always hated that

name. My world is falling apart.” She burst into tears and hung up.

Then I called my sister—my sister who is an evangelical Christian who I love with all my heart. I didn’t know what she would think. I said, “I’m going to change my name.”

She said, “To Merf?”

And I said, “Well yeah, not Sally.”

And she said, “You’ve always been Merf. You are Merf.”

Then my sister was diagnosed with stage 3 breast cancer, and it had spread to her central node. She found out that she had the BRCA gene, and that I had up to an 85 percent chance of getting breast cancer because I had the same gene; I was tested.

As executive director of Columbia Legal Services (CLS), **Merf Ehman** is leading organization-wide efforts to prioritize advocacy that supports community-led social justice movements that transform racialized systems and eradicate racism. Ehman credits the People's Institute for Survival and Beyond for training, supporting, and challenging Ehman and CLS on what it means to be an anti-racist organization. Ehman can be reached at merf.ehman@columbialegal.org.



I had to make a decision whether or not to have a mastectomy, because that was recommended, and to have my ovaries out, called a really fun name—oophorectomy. So I decided to go with the “ooph” and also to have a mastectomy. But the really difficult decision for me was whether or not to have reconstructive surgery. Most women did. I decided not to. To me, that felt like a real risk. But I had the surgeries, and I moved forward in my life with a body that felt really comfortable to me.

I never really felt like a man, and I never really feel like a woman, so I also decided not to take testosterone—not to step into a box but to continue to live in between those boxes.

I think that if all of us are willing to live just a little bit in between, that the world can be better.

What can we do to make that change? Well first, I think we need to notice. We need to notice that one of the first things we see about people is their gender; we do it almost automatically. We treat people differently because of their gender. So just notice. Notice what you wear, how you treat your bodies, how you think about yourselves—based on something that you had no choice over.

Second, reflect. Really think about, why do we need gender? Talk about it; reflect. What is your gender story? What would you say if you really, truly had a choice about gender? What would that look like for you, for your children, for your friends, for your family? What would that look like at work? How would the world be different?

Third, and last, is to act. There are

actions we can take. I can't tell you what to do. It's going to be uncomfortable and slightly awkward. We have some words, but we don't have all the words. We still have “male” and “female,” and sometimes we have more pronouns; we have “they.” But we need to change our language, and we need to be willing to be awkward.

As far as specific actions, there's no rule book. There's no magic formula. What I will say is some of the things you can think about are—what kind of restrooms are in your workplace? What kind of restrooms are in the places that you go? Could you change them? Are you open to other people's gender? And if you have your pronouns on your email at work, do you have a parenthetical that says why they're there? Do you know why they're there?

My mom, she sent me this Christmas gift a few years ago. I was really concerned. Most years, I got something yellow. She figured that was my color.

But I realized something, that my mom is really a hero. What she was trying to do, she was trying to save me. She was trying to save me from the world's hate and the world's rage. And she knew that someone like me would have a really hard time surviving in the world. She knew what I didn't know about Big Al. She knew what Big Al's life was like; she knew what people said about Big Al and how they treated her and how hard her life was. My mom didn't want that for me. What she knew was a box. So to try to save me, she gave me everything that she could.

That holiday, when I opened up that gift, it wasn't yellow. It was red, and it had the Incredible Hulk on it. And when I pulled it out, it was a men's necktie. My mother, she got me.

I think that we can all get each other, if we're willing to move beyond the “F,” beyond the “M,” beyond pink, and beyond blue, to step outside the box. **BN**

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MY FEELINGS DON'T CARE ABOUT YOUR FACTS

Why law and facts are
not enough to persuade

BY JOEL MATTESON

In Dr. Seuss's "The Zax," from *The Sneetches and Other Stories*, two Zak—a North-Going and a South-Going—approach from opposite directions. When their paths converge, the one tells the other, "You are blocking my path, get out of my way and let me go forth!" When the other demands the same, the two remain nose-to-nose, each paralyzed by its own demands, neither thinking about the other.

Similarly, in the legal community, there's an enduring mythology that effective negotiation requires hammering away at the law and facts until the other side "gets it" and gives in. This despite mounting evidence that people are not persuaded by your interpretation of objective reality but by their subjective experience and emotion. The law and the facts are a necessary, but not sufficient, condition to persuasion.

But if people are not swayed by law and facts alone, how are they persuaded? The answer lies in emotion and psychology. Perception is reality and perception is based on subjective experience, not objective truth. Recognizing this, legendary U.S. Supreme Court Jus-

tice Oliver Wendell Holmes Jr. observed, "The life of the law is not logic: it has been experience."

In *The 22 Immutable Laws of Marketing*,¹ we learn that consumers make purchasing decisions not on objective product superiority, but on how they perceive (consciously or not) the product to be fulfilling some underlying psychological or emotional need. "Sell the sizzle, not the steak," says the savvy marketer. This applies to negotiation too, where the true fulcrum of persuasion involves embedding the law and facts within the larger tapestry of emotion, psychology, and perception.

Indeed, studies of human psychology confirm the emotional underpinnings of decision making. In 1999, for instance, Antonio Damasio, a neuroscientist and professor with the University of Southern California, made a startling discovery.² Damasio found that people with damaged amygdalae—the part of the brain responsible for emotion—retain their normal functioning and sense of

Joel Matteson is general counsel for Barlean's, a dietary supplement company near Bellingham. His legal practice includes regulatory compliance, enterprise risk management, contracts, litigation, and intellectual property. He can be reached at joel.matteson@barleans.com.



self but can no longer decide anything, even what to have for lunch. Emotional decision making, it turns out, is hardwired into our brains.

In another study, researchers found that 95 percent of purchasing decisions are emotion-driven.³ The saying might be, “My facts don’t care about your feelings,” but the reality is, “My feelings don’t care about your facts.” Stuart Diamond—a Pulitzer Prize-winning author, negotiation consultant, and professor at the Wharton School of Business at the University of Pennsylvania—contends that less than 10 percent of successful negotiation is about substance.⁴

According to Diamond, emotion-driven negotiation is problematic because “[p]eople who are emotional stop listening” and “become unpredictable and rarely able to focus on their goals.”⁵ Angry people, in particular, take more risks while underestimating the danger of risky behavior and decisions.⁶

For lawyers, the problem of emotion is compounded by a narrow training in a purely deductive and analytical reasoning process.⁷ Disregard for emotion in legal reasoning is baked into the rules themselves. For instance, Rule 403 of the Federal Rules of Evidence excludes evidence that encourages the jury to decide on an improper basis, such as “commonly ... an emotional one.”

Over the past century, the legal academic community, particularly the legal realist movement, has begun to appreciate the role of emotion and psychology in law.⁸ Yet the legal profession remains mostly ignorant with respect to emotional awareness and understanding. Until recently, this general under-recognition of the prominence of emotion in decision making has been a multi-disciplinary phenomenon.⁹

Nevertheless, for the relative few who recognize how the emotional tail wags the analytical dog, the question remains: What

to do about emotion? Recognizing this dilemma, the late Sen. Howard Baker lamented, “The most difficult thing to do in any negotiation, almost, is making sure that you strip it of the emotion and deal with the facts.” Unfortunately, this asks too much of our inner Zak. Strive as we may to separate people from the problem,¹⁰ we cannot extirpate emotion from negotiation any more than we can change the hardwiring of our brains.

But we can limit the harmful effects of negative emotion while maximizing the positive. To do this, start by making sure you’re not the issue. Donald Dell, sports agent for professional tennis player Arthur Ashe, once recounted a tense endorsement agreement meeting between his client and a leading tennis racket brand.¹¹ The negotiation threatened to derail when the company chair lost control, screaming, “This is outrageous! He’s making ten times what I’m making and I’m the chairman of this company!” Instead of making himself the issue and firing back, Dell responded gamely, “But Pierre, Arthur has a much better serve than you do.” The levity defused the situation and the negotiation got back on track.

Another way to stay above the fray, according to William Ury, author of *Getting Past No: Negotiating in Difficult Situations*, is what he calls “going to the balcony,” a negotiator’s count-to-10 resource. The goal is to gain objectivity by visualizing the situation as a detached observer. “From the balcony,” Ury explains, “you can calmly evaluate the conflict almost as if you were a third party.” This helps you “think constructively for both sides and look for a mutually satisfactory way to resolve a problem.”¹²

And as you view the negotiation from the balcony, keep the focus on the other side’s needs and perceptions. For instance, Harvard Business School professor Deepak Malhotra writes, if you focus only on “what will happen to me if there is no deal?” you’ll often end up worse off than if you focus on “what will happen to the other side if there is no deal?”

“When you make the negotiation about what happens to them if there is no deal, you shift the frame to the unique value you offer, and it becomes easier to justify why you deserve a good deal,” Malhotra explains.¹³

But because not all emotion is destructive, don’t try to indiscriminately sanitize a conflict of all emotion (which isn’t possible anyway).

Instead, strive to mitigate the destructive while engendering the constructive. To engender positive emotion, offer genuine “emotional payments” or gestures of good will and respect. Emotional payments tend to diffuse tensions and calm our inner Zak. When people are calm and feel valued, they are ready to listen and think more rationally.¹⁴

Putting your negotiating counterpart at ease is especially important when you consider how acknowledging negative emotion defuses its harmful impact. For instance, researchers Norbert Schwarz of the University of Michigan and Gerald Clore of the University of Virginia conducted a study¹⁵

For the relative few who recognize how the emotional tail wags the analytical dog, the question remains: What to do about emotion?

CONTINUED >



My Feelings Don't Care About Your Facts

CONTINUED >

where participants filled out a survey about life satisfaction. Half the participants filled out the study in sunny weather and the other half in rainy weather. Predictably, participants answering in sunny weather reported higher life satisfaction than their rainy-weather counterparts. But when the researchers began the rainy-weather survey by acknowledging the bad weather with the question, “By the way, how’s the weather down there?” the rainy-weather participants’ scores increased to that of their sunny-weather counterparts. Acknowledging the negative (bad weather) defused its impact on their evaluations.

Relying on standards (appeals to agreed-upon, objective reference points) also helps rein in undue emotional influence. As Diamond formulates it, “a standard is a practice, policy, or reference point that gives a decision legitimacy.”¹⁶ To determine appropriate standards, consider what the *other side* deems fair and whether you can agree on *their* criteria.

WHEN WE LOOK PAST OUR INNER ZAK

Imagine how much better our negotiations would be if we put the above principles into practice: We’d start the mediation off by genuinely acknowledging something positive about the other side—even if it’s just their willingness to give mediation a try. If there were past hostilities, and there probably were, we’d acknowledge them and by so doing, defuse them.

And because we properly prepared our client—not just for the legal arguments, but for the emotional slings and arrows—we’d take satisfaction when our client gave us a knowing glance when the adversary’s inevitable initial low-ball offer came rolling in. (We told our client in advance: “Remember, when we start discussing numbers, they’re going to start small and I mean insultingly small. What matters is not the number we get first but the number we get last, so don’t take the bait.”)

Then, we apply the same principle to ourselves. When the other lawyer makes a ridiculous legal argument, bastardizing the case law in the process, we take a stroll to the mental balcony, where we see the situation as it really is: a desperate lawyer making a desperate argument. Instead of getting angry, we think, “We’re winning! If he has to stretch his case that far, he’s running out of arguments.”

Then, when it comes time to present our pitch, we tune it to the other side by appealing to their interests, not ours. Instead of talking about what *we* want, we frame the discussion in terms of *their* cost, *their* risk, and *their* interest in achieving the certainty that only a settlement can offer. We talk about the law and the

facts but we do so in view of the larger emotional and psychological tapestry.

Each of us struggles with our own inner Zak: a myopic, self-centered creature of emotion that views the law and facts through the prism of its desires. And we know that too often, our inner Zak fails to realize that by thinking only of its own interests, it has failed to advance them. But this time is different; this time we looked past our Zak and saw the person on the other side. **BN**

NOTES

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4. Stuart Diamond, *Getting More: How You Can Negotiate to Succeed in Work and Life*, p. 34 (Penguin 2010).
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6. Olga Khazan, “The Best Headspace for Making Decisions,” *The Atlantic* (Sept. 19, 2016), <https://www.theatlantic.com/science/archive/2016/09/the-best-headspace-for-making-decisions/500423/>.
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12. William Ury, *Getting Past No*, pp. 37–38 (Bantam 1993).
13. Deepak Malhotra, “Control the Negotiation Before it Begins,” *Harvard Business Review* (Dec. 2015), <https://hbr.org/2015/12/control-the-negotiation-before-it-begins>.
14. *Getting More*, *supra* n. 4, at 155.
15. Norbert Schwarz and Gerald L. Clore, “Mood as Information: 20 Years Later,” *Psychological Inquiry* 14, 296–303 (2003).
16. *Getting More*, *supra* n. 4, at 84.

We can limit the harmful effects of negative emotion while maximizing the positive. To do this, start by making sure you’re not the issue.



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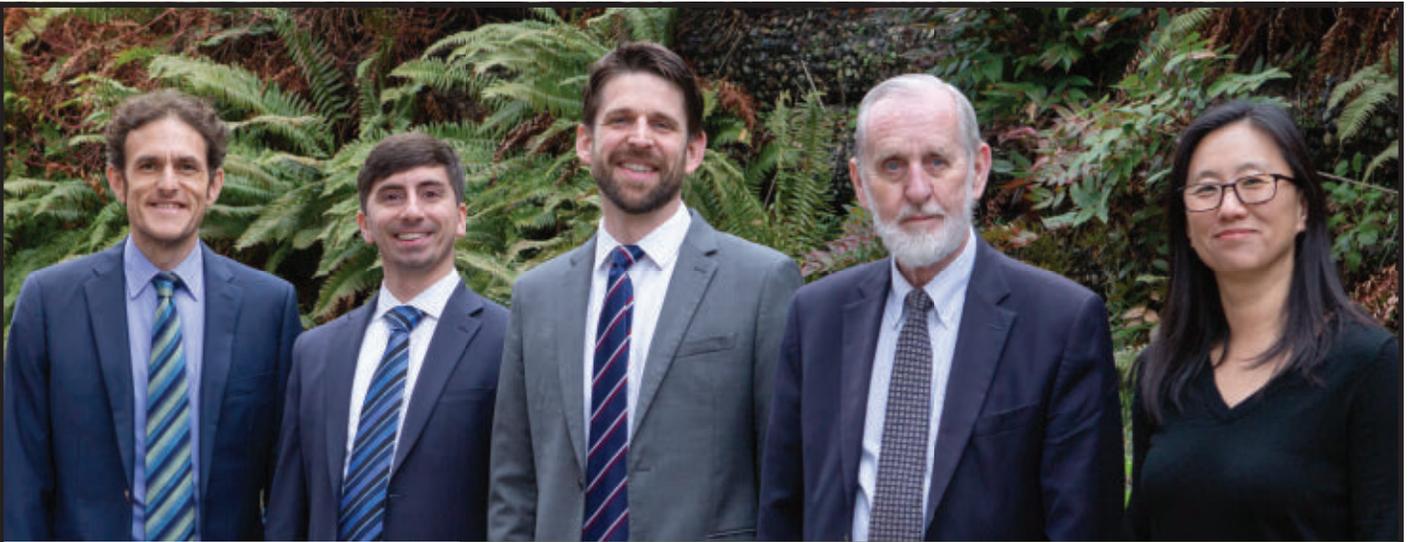


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Law Day celebrates the ratification of the 19th Amendment

WOMEN'S RIGHT TO VOTE TURNS 100

Law Day, an idea envisioned by ABA President Charles S. Rhyne in 1957, was officially established by Congress in 1961. According to the ABA, the May 1 holiday is held “to celebrate the role of law in our society and to cultivate a deeper understanding of the legal profession.” This year’s Law Day theme is “Your Vote, Your Voice, Our Democracy: The 19th Amendment at 100.”

On this centennial, we honor the hard-fought achievement of women’s suffrage, while also acknowledging that the 19th Amendment did not give every woman in America the right to vote. Many women, because of laws, efforts to suppress the vote, or both, were not able to exercise their constitutional right until years later.

For example, in parts of the country, many African American men and women were not able to vote until the Voting Rights Act of 1965 was enacted, 45 years after white women claimed the right to vote. This law prohibited common practices used by election officials to try to disenfranchise African Americans, practices like forcing people to take literacy tests before being allowed to cast a vote.

Other groups of people not able to vote after the ratification of the 19th Amendment include Native Americans, who were

eventually granted citizenship but not necessarily the vote, by the Indian Citizenship Act of 1924; and Chinese Americans, who were not granted citizenship until the Chinese Exclusion Act was repealed in 1943.

The names of several white women involved in the suffrage movement—like Elizabeth Cady Stanton and Susan B. Anthony—are well known to many Americans. But the significant achievements and efforts of others—many of whom were women of color—are left out of or glossed over in the mainstream historical account.

In the pages that follow, we cover a brief history of the women’s suffrage movement, detail the events leading up to Washington state granting women the right to vote 10 years before ratification of the 19th Amendment, and highlight five lesser-known, but no less significant, women who contributed to securing women’s right to vote.

For more information about Law Day, including events and resources, visit lawday.org.



FROM THE LIBRARY OF CONGRESS' "SHALL NOT BE DENIED: WOMEN FIGHT FOR THE VOTE" EXHIBIT

Suffrage wins in Washington, California, and Oregon were followed by hard-fought victories in Arizona, Kansas, Nevada, and Montana. By the end of 1914, more than four million women had voting rights equal to men in 11 states, all in the West, leaving women elsewhere still reaching for the light of liberty's torch of freedom. Henry Mayer's 1915 illustration, "The Awakening" was the centerfold of a special suffrage issue of Puck magazine, guest edited by New York state suffrage groups.

*Washington women secured the right to vote
a decade before passage of the 19th Amendment*

HOW THE WEST WAS WON



Illustration © Library of Congress

BY KARRIN KLOTZ

“Go West, young woman!” might have been the more apt rallying cry in the mid- to late-19th century for American women seeking equal rights—including voting rights. In Washington state, in particular, women gained the right to vote a full decade before ratification of the 19th Amendment to the U.S. Constitution. In this article, we’ll explore the unique historical context that made it possible. CONTINUED >

How the West Was Won

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THE NATIONAL SUFFRAGE MOVEMENT

The call for the right of women to vote in the United States dates back at least to the beginning of the Revolutionary War, when Abigail Adams implored her husband and the eventual second president of the country, John Adams, to “remember the ladies and be more generous and favorable to them than your ancestors.” She continued, “Remember, all men would be tyrants if they could. If particular care and attention is not paid to the ladies, we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation.”¹

It would be nearly 150 years after Mrs. Adams wrote those words before women were officially granted the right to vote by the 19th Amendment. The rebellion she spoke of, however, began much sooner.

In the 1830s, a move to reform all areas of American society had begun. Two of the most active groups were the abolitionists—against slavery—and the temperance move-

ment—against the consumption of alcohol. Women joined both movements in great numbers.²

The first women’s rights convention was held on July 19 and 20, 1848, in Seneca Falls, New York, where for the first time women categorically demanded the right to vote. Key organizers were Elizabeth Cady Stanton, Lucretia Coffin Mott, Martha Coffin Wright, Jane Hunt, and Mary Ann McClintock. The document they prepared for a vote at the convention, the “Declaration of Sentiments,” was inspired by the Declaration of Independence.

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Approximately 300 people attended the convention, and 100 of them—68 women and 32 men—signed the Declaration of Sentiments on July 20, 1848. Among the resolutions in the document were demands for women to have equal religious and employment rights. Suffrage, however, was the most controversial of the document’s demands. In fact, it was the only resolution on which every signer did not agree. According to Therese DeAngelis, author of *Women’s Rights on the Frontier*, this was because at the time, “most women’s rights advocates thought that securing other rights was more urgent.” For example, the right to own property legally, attend college, secure jobs of their own choosing, and keep the wages they earned.³

The convention’s leaders feared that if they demanded suffrage too soon, leaders and lawmakers would not take them seriously, so they did not immediately fight back on the issue.⁴ The Seneca Falls Convention did, however, spark a series of state and local conventions. On Oct. 23 and 24, 1850, Lucy Stone and other Seneca Falls organizers held the first National Women’s Rights Convention in Worcester, Massachusetts, where members resolved to support “equality before the law, without distinction of sex or color.”⁵

When the Civil War broke out in 1861, the suffragists suspended working on vot-



ing rights issues and concentrated on supporting abolition. When the 13th Amendment was passed four years later, ending slavery, many women returned to the fight for suffrage. In 1866, the American Equal Rights Association (AERA) was formed; the group included both abolitionists and women's suffrage supporters.

Shortly thereafter, however, a rift began to form between certain members of the AERA. The two sides disagreed over who should get the right to vote first—women or Black men. In 1869, the AERA split into two different organizations: the American Woman Suffrage Association (AWSA) and the National Woman Suffrage Association (NWSA). The more conservative AWSA, which included members such as Lucy Stone and Sojourner Truth, advocated only for women's suffrage, supported the 15th Amendment giving Black men the right to vote, allowed male members, and believed in the success of state-by-state grassroots campaigns.

NWSA, on the other hand, led by Elizabeth Cady Stanton and Susan B. Anthony, allowed only female members, fought specifically for a constitutional amendment granting women the right to vote, and did not support the 15th Amendment. Stanton and Anthony were among those who employed racist rhetoric in their messaging, emphasizing the rights of white women and de-emphasizing those of Black women and men.

Head of the 1913 Woman Suffrage Procession in Washington, D.C., with herald Inez Milholland at the front.

“I will cut off this right arm of mine before I will ever work or demand the ballot for the Negro and not the woman,” Anthony told Frederick Douglass during a meeting in 1866.⁶ Stanton was known to use language such as, “We educated, virtuous white women are more worthy of the vote,” and also called Black men rapists,⁷ “degraded,” and other inexcusable things.⁸

AWSA and NWSA eventually merged in 1890, forming the National American Woman Suffrage Association (NAWSA).⁹

SUFFRAGE IN THE WEST: SETTING THE STAGE

Although the 19th Amendment to the U.S. Constitution, which guaranteed American women the right to vote, did not pass until

CONTINUED >

Suffragists You Should Know About

Mary Ann Shadd Cary

1823-1893



“We have been holding conventions for years—we have been assembling together and whining over our difficulties and afflictions, passing resolutions on resolutions to any extent; but it does really seem that we have made but little progress considering our resolves,” Mary Ann Shadd Cary wrote, demanding action, in an 1848 letter to Frederick Douglass.¹

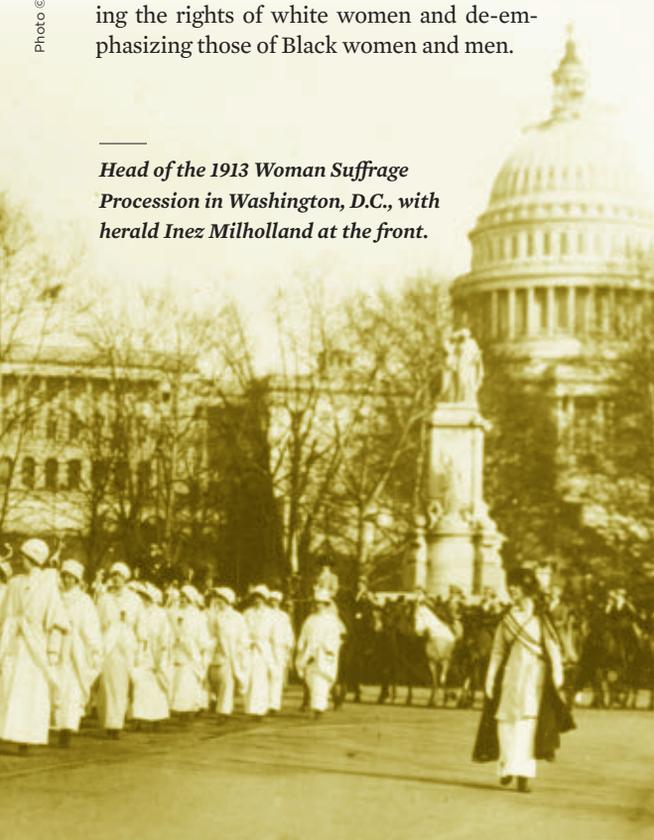
Shadd Cary was born in Delaware in 1823. She attended school in Pennsylvania and eventually became a teacher. In 1850, she and some of her family moved to Canada after the United States Congress passed the Fugitive Slave Act, which required Americans to help capture runaway slaves.

Once in Canada, she published content encouraging other Black Americans to move across the border to safety in the north. In 1853, Shadd Cary founded a newspaper—the first Black woman in North America to do so—entitled *The Provincial Freeman* that was “[d]evoted to antislavery, temperance and general literature.” The paper ran for six years before shutting down.

Shadd Cary eventually returned to the U.S. and in 1870, graduated from Howard University with a law degree and took up the cause of suffrage. In January 1874, she addressed the House Judiciary Committee, arguing on behalf of 600 women in Washington, D.C., who were seeking the right to vote.²

NOTES

1. “Overlooked No More: How Mary Ann Shadd Cary Shook Up the Abolitionist Movement,” by Megan Specia, *New York Times*, June 6, 2018, available at <https://www.nytimes.com/2018/06/06/obituaries/mary-ann-shadd-cary-abolitionist-overlooked.html>.
2. Jane Rhodes, *Mary Ann Shadd Cary: The Black Press and Protest in the Nineteenth Century*, Indiana University Press, 1999, p. 194.



Frances Ellen Watkins Harper

1825-1911



"You white women speak here of rights. I speak of wrongs," Frances Ellen Watkins Harper said in her powerful speech, "We Are All Bound Up Together," at the National Women's Rights Convention in 1866. She continued, "I, as a colored woman, have had in this country an education which has made me feel as if I were in the situation of Ishmael, my hand against every man, and every man's hand against me. Let me go tomorrow morning and take my seat in one of your street cars ... and the conductor will put up his hand and stop the car rather than let me ride."¹

Born to free African American parents in Baltimore in 1825 and orphaned at just three years old, Harper was raised by her aunt and uncle. When she began speaking on the abolitionist lecture circuit, she sent the money she earned back to her uncle to support the Underground Railroad.

Throughout her career, Harper spoke and wrote in support of civil rights, women's rights, education, and temperance. She was co-founder and vice president of the National Association of Colored Women, superintendent of the Colored Section of the Philadelphia and Pennsylvania Women's Christian Temperance Union, director of the American Association of Colored Youth, and a member of the American Women's Suffrage Association (AWSA).²

NOTES

1. "We are All Bound Up Together," Frances Ellen Watkins Harper, 1866, available at <https://awpc.cattcenter.iastate.edu/2017/03/21/we-are-all-bound-up-together-may-1866/>.
2. <https://www.blackpast.org/african-american-history/harper-frances-ellen-watkins-1825-1911/>.

How the West Was Won

CONTINUED >

1920–72 years after the Seneca Falls Convention, the principles of that Convention's Declaration of Sentiments were being incorporated much earlier, in the new territorial governments of the West that were forming during the mid- and late-19th century.¹⁰

After the American Revolution ended in 1783, the new nation required more workers to establish and maintain settlements. Women were thus in demand as laborers outside the home. The U.S. also acquired a series of territories in the West through wars and transactions during the early half of the 19th century; these territories eventually became states. Women who lived in western frontier communities performed physically demanding work as they established households and farmed lands. As their roles changed, they worked side by side with men, helping to clear land and build homes and towns.

Suffragists protest in front of the Lafayette Statue in Washington, D.C., in 1918.



As Therese DeAngelis, author of *Women's Rights on the Frontier*, writes:

[T]o establish their homesteads, women on the frontier often had to help their husbands with work that women living in the established U.S. states would never have been expected to do. For this reason, women's rights supporters realized that the territories might be the best place to gain a foothold for women's suffrage.¹¹

Before a territory could apply for statehood, it had to hold a constitutional convention and establish a constitutional government that was in alignment with the U.S. system. According to Rebecca Mead, Northern Michigan University history professor and author of the book *How the Vote Was Won: Woman Suffrage in the Western United States, 1868-1914*, "Pioneer' suffragists took advantage of small territorial legislatures, the statehood process, third party challenges, and reform politics to pursue a broad women's rights agenda."¹²

A few key events occurred in the Western territories that impacted the suffrage movement by causing a migration of women from the eastern United States to the West.

First, in the mid-1840s, right before the Declaration of Sentiments was signed, people were moving in growing numbers to what was then called the Oregon Country (which encompassed what is now Washington as well as parts of Idaho, Montana, and

Wyoming.) Then, in 1850, the federal Donation Land Claim Act was passed, giving married women important property rights and thereby providing more incentive for families to settle in the Northwest.

A second key event was the gold rush in California in 1848, the same year the Women's Rights Convention was held in Seneca Falls. Among the thousands of people who traveled to California around that time, about 10 percent were women, some of whom came on their own, while others came with their husbands and children.¹³

Third, just a few weeks after the gold discovery, the U.S. signed the Treaty of Guadalupe-Hidalgo, ending a nearly two-year war with Mexico, and acquired a huge expanse of land which included modern-day California, Arizona, New Mexico, and Texas, as well as parts of Colorado, Nevada, and Utah.

Lastly, in 1850, Utah became a territory and attracted large numbers of Mormons fleeing persecution after the death of the religion's founder, Joseph Smith, in 1844.

WASHINGTON WOMEN WIN THE RIGHT TO VOTE

Women in the Wyoming Territory were actually the first to be granted the right to vote starting in 1869. The Utah Territory was next, in 1870, followed by Colorado in 1893 (the first state to approve women's suffrage through popular election) and Idaho in 1896. Washington's path to granting women the

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Suffragists You Should Know About

Harriet Redmond

1862-1952



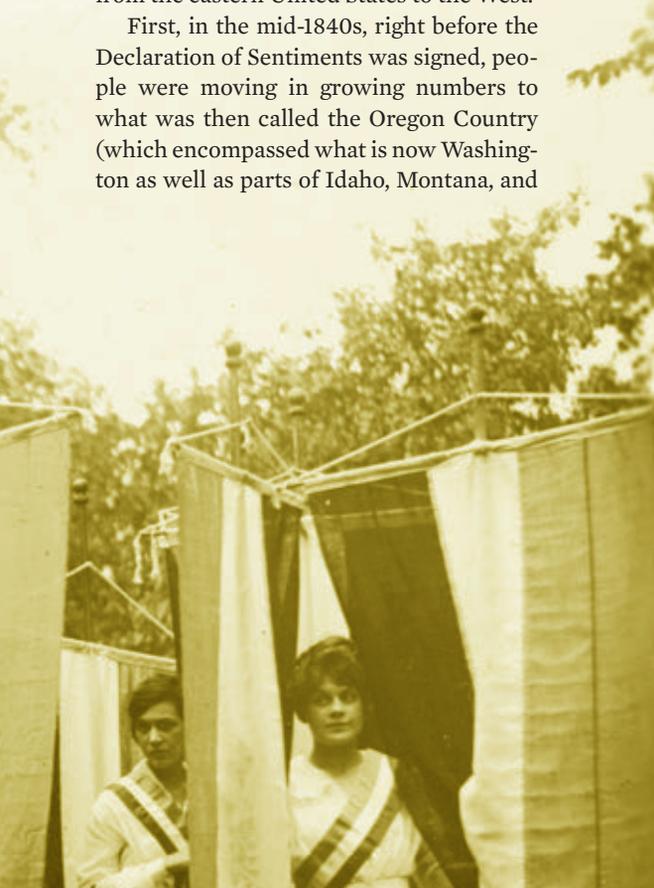
After successfully helping to campaign for women's suffrage in Oregon, Harriet Redmond officially registered to vote in April 1913. Redmond was the first secretary, and eventually the president, of the Colored Women's Equal Suffrage League in Portland. She also served on the State Central Campaign Committee and organized meetings and lectures about women's suffrage at her church, Mt. Olivet First Baptist Church.¹

Redmond was born in 1862 in St. Louis, Missouri, but settled with her family in Portland, Oregon, in 1880. Her leadership was especially significant during this time, as Oregon still had three "Black Exclusion Laws" in its constitution. Although these laws were not often enforced, they still worked to discourage African Americans from settling in the state. The last of the laws was not repealed until 1926.²

For 29 years, Redmond also worked as a janitor for Oregon's U.S. District Court. She received a pension when she retired in 1939.³ In 2018, Oregon State University renamed the building that houses its Women's Center, the Hattie Redmond Women and Gender Center.

NOTES

1. https://oregonencyclopedia.org/articles/redmond_harriet_hattie/#.XmvL_VNKgUs.
2. https://oregonencyclopedia.org/articles/exclusion_laws/#.XmvMVFNKgUt.
3. <https://www.blackpast.org/african-american-history/redmond-harriet-1862-1952/>.



Zitkala-Ša

1876-1938



“In the land that was once his own—America. ... there was never a time more opportune than now for America to enfranchise the Red man!” Zitkala-Ša wrote in *American Indian Magazine* in 1919.¹

Zitkala-Ša, born in 1876 on the Yankton Indian Reservation in South Dakota, was an accomplished musician, writer, and Native American rights activist. A member of the Yankton Dakota Sioux, she left South Dakota at age 8 when Quaker missionaries took her to a boarding school in Indiana.

Zitkala-Ša went on to attend Earlham College in Indiana and later, the New England Conservatory of Music. After she graduated, she taught music at the Carlisle Indian Industrial School in Pennsylvania and started to write critically about the boarding school system. Her articles were published in magazines including *Atlantic Monthly* and *Harper's Monthly*.

In 1916, Zitkala-Ša began serving as secretary of the Society of American Indians, which was founded to advocate for full U.S. citizenship for Native Americans while at the same time preserving traditional culture. Zitkala-Ša traveled the country, giving lectures in support of enfranchising Native Americans.

The Indian Citizenship Act of 1924 granted U.S. citizenship to all Native Americans, but left the decision up to the states whether or not they would have the right to vote. That same year, Zitkala-Ša started the Indian Welfare Committee of the Federation and ran a voter registration drive. Then in 1926, she and her husband, Captain Raymond Talefase Bonnin, founded the National Council of American Indians, which focused on uniting tribes in support of suffrage for all Native Americans. Zitkala-Ša also worked with other suffrage groups such as the General Federation of Women's Clubs. She was described as “a Jeanne D'Arc [Joan of Arc] to lead her people into citizenship.”²

NOTES

1. <https://www.nps.gov/people/zitkala-sa.htm>.
2. Kate Clarke Lemay, Susan Goodier, Lisa Tetrault, and Martha Jones, *Votes for Women*, 2019, p. 223.

iel Bigelow, with the help of Abigail Scott Duniway, an Oregon campaigner for woman's rights, and Susan B. Anthony, introduced another bill in the Washington Legislature to explicitly give women voting rights. Borrowing from successful arguments made in Wyoming, they suggested that passing a women's suffrage law would stimulate the immigration of “a large number of good women to the Territory.”¹⁶ This argument was unsuccessful, and even worse, a new bill was passed clarifying the vague wording of the 1867 law—clearly stating that women did not have the right to vote and would not until Congress passed a national law allowing it.

However, women's rights advocates refused to give up. Anthony's presence in the Washington Territory had, in fact, sparked even more support for the cause, and in 1873, Whatcom County legislator Edward Eldridge attempted to introduce another bill granting women the right to vote. Once again, the bill failed.

Between 1875 and 1881 many similar bills were introduced, but all failed. And in 1878, delegates to a constitutional convention seeking eventual statehood excluded women's suffrage by a single vote. In that same year, Washington Territory voters—all of whom were male—rejected two proposed ballot measures on women's suffrage during a vote on the constitution.¹⁷

Finally, in 1883, nearly 30 years after the first bill was introduced, both chambers of the Washington Legislature passed a bill authorizing women's suffrage, and Gov. William Newell signed it into law on Nov. 23, 1883. But in 1887, citing a technicality in the legislation, the Supreme Court of the Washington Territory revoked the law. Even though the Legislature quickly amended the error, the new legislation specifically excluded women from serving on juries. Opponents of women's suffrage again took the issue to the Supreme Court of the Washington Territory, and in 1888 the court ruled that the federal government had intended to place the word “male” before “citizenship” in the Washington Territory Organic Act when it first established voter qualifications. The result was the total rescinding of women's voting rights in the territory. Thus, when the territory applied for statehood the following year, delegates to a new constitutional convention decided not to include a provision for women's suffrage.¹⁸

Not until 1906 did a new generation of activists attempt to secure women's right to

How the West Was Won

CONTINUED >

right to vote was a long, arduous, and complicated one—it took more than 50 years.

The first attempt at granting women voting rights in the state was a bill introduced by house member Arthur A. Denny in 1854. That bill failed by one vote.

The issue did not arise again until 1867, when the Legislature passed a law giving

the right to vote to “all white citizens above the age of 21.” Women's suffrage advocates argued that the 14th Amendment defined “citizen” as being “all persons born or naturalized in the United States,” which by its wording included women.¹⁴ A group of women attempted to exercise this right by voting in White River in 1869, but the votes were declared invalid. In a Thurston County election the following year, however, 15 women successfully cast votes.¹⁵

Thereafter, in 1871, a lawyer named Dan-

vote. With the help and leadership of Emma Smith DeVoe, a professional organizer for NAWSA,¹⁹ and the renowned suffragist May Arkwright Hutton, a ballot measure to amend the Washington Constitution and give women the right to vote passed by majority vote in 1910. Every county in the state voted in favor of it.²⁰

“As the first state in the 20th century to pass women’s suffrage, Washington [s]tate’s vote inspired a nationwide push to secure an amendment to the U.S. Constitution to allow woman suffrage,” writes DeAngelis in *Women’s Rights on the Frontier*.²¹ After Washington women secured the right to vote, more than a dozen states and territories followed with full or partial voting rights, including California (1911); Oregon, Kansas, and Arizona (1912); the Alaska Territory (1913); Montana and Nevada (1914); North Dakota, Ohio, Indiana, Rhode Island, Nebraska, New York, and Arkansas (1917); and Michigan, Oklahoma, and South Dakota (1918).

“General suffrage histories have generally neglected the West, or failed to evaluate its significance within the national movement,” Mead writes in *How the Vote Was Won*.²² However, without the passion and endurance of so many suffragists in Washington and other western states, who knows what direction the movement might have taken, or how long women would have had to wait to gain their rightful “voice [and] representation.” **BN**

NOTES

1. www.history.com/this-day-in-history/abigail-adams-urges-husband-to-remember-the-ladies.
2. Therese DeAngelis, *Women’s Rights on the Frontier* (Simon and Schuster 2014) at 19 [hereinafter DeAngelis]. Women were motivated by the effect alcoholic consumption had on family finances and by spousal and child abuse concerns.
3. DeAngelis, accessed at <https://www.google.com/search?tbo=p&tbn=bks&q=inauthor:%22Therese+DeAngelis%22>.
4. DeAngelis at 3.
5. DeAngelis at 24.
6. www.pbs.org/newshour/politics/hundreds-voted-stickers-left-susan-b-anthonys-grave.
7. www.nytimes.com/2019/01/04/obituaries/rosalyn-terborg-penn-dead.html.
8. www.npr.org/2011/07/07/137681070/lori-d-ginzberg-elizabeth-cady-stanton#137681155.
9. www.britannica.com/topic/National-American-Woman-Suffrage-Association.
10. Shanna Stevenson, *Women’s Votes, Women’s*

Voices (Washington State Historical Society 2009) at 7.

11. DeAngelis at 15.
12. Rebecca J. Mead, *How the Vote Was Won: Women Suffrage in the Western United States, 1868-1914* (New York University Press 2004) at 2 [hereinafter Mead].
13. <https://daily.jstor.org/yes-women-participated-in-the-gold-rush/>.
14. These arguments also persuaded election judges in two Washington precincts to recognize women’s rights to vote based on the wording of the territorial law.
15. www.historylink.org/File/20717.
16. G. Thomas Edwards, Sowing Good Seeds: *The Northwest Suffrage Campaigns of Susan B. Anthony*, p. 88, available at http://www.washingtonhistory.org/files/library/Edwards_chapter5.pdf.
17. One small victory occurred. In 1877, the Territorial Legislature passed a law permitting taxpaying women to vote in school elections. However, suffragists criticized the law as implying that women’s votes should be confined solely to home and family matters.
18. DeAngelis at 50-51.
19. NAWSA later became the League of Women Voters when the 19th Amendment was passed in 1920.
20. <https://historylink.org/File/9444>.
21. DeAngelis at 52.
22. Mead at 4.

Suffragists You Should Know About

Dr. Mabel Ping-Hua Lee

1896-1966



When Mabel Ping-Hua was just 16, she helped lead a suffragist parade through the streets of New York City on horseback, earning herself coverage in the *New York Times*.¹

Born in Guangzhou, China, in 1896, Lee eventually came to the U.S. with her family after she won a Boxer Indemnity Scholarship.

She started college in 1912 at Barnard College, where she joined the Chinese Students’ Association and authored feminist articles for *The Chinese Students’ Monthly*. One essay she wrote in 1914, entitled “The Meaning of Woman Suffrage,” argued that the woman’s right to vote was necessary to have a successful democracy. In 1915, she gave a speech—also covered by the *New York Times*—for the Women’s Political Union encouraging the Chinese community to support the education of girls and the civic participation of women.

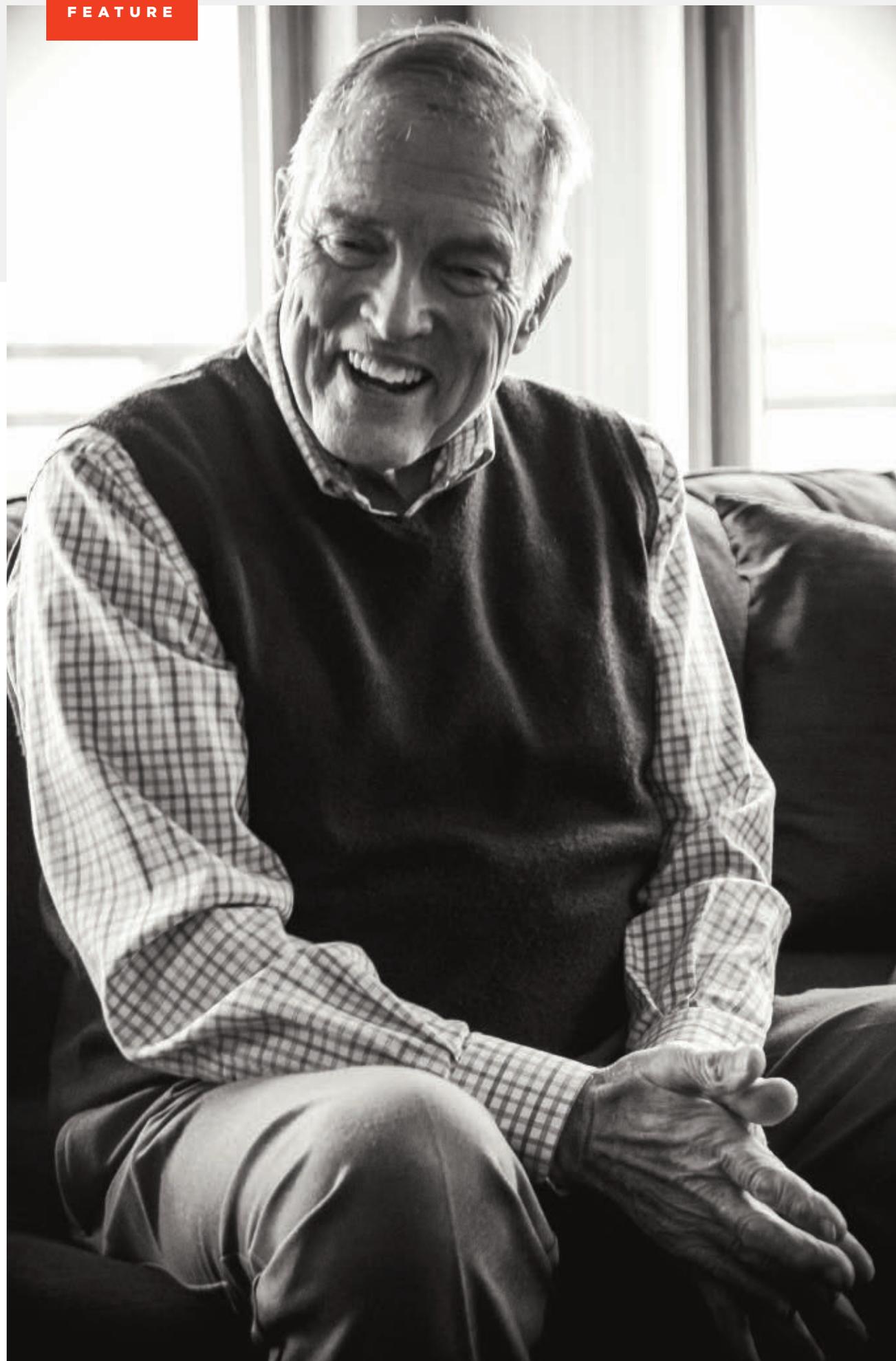
Lee graduated from Barnard College and went on to earn a Ph.D. in economics from Columbia University, eventually publishing a book called *The Economic History of China*.

Although women gained the right to vote in New York state in 1917, and nationwide in 1920, Lee was not able to exercise that right. The Chinese Exclusion Act kept Chinese immigrants from becoming U.S. citizens until 1943 when the act was repealed. Lee died in 1966, and it is unknown if she became a U.S. citizen or voted in any U.S. elections.

NOTES

1. <https://www.nps.gov/people/mabel-lee.htm>.

FEATURE



A Legal Legacy Forged From Afar

How a lawyer from Poulsbo altered the course of the Albanian judiciary

BY COLIN RIGLEY



It would have been a warm, humid evening when the Americans went out onto the terrace to light their sparklers and wave their flags. As they gazed at the Adriatic Sea from the southern coast of Albania on July 4, 1994, they celebrated, they sang “The Star-Spangled Banner,” and they socialized with their hosts. Back home it barely would have turned heads. In Albania, however, these were acts that in the not-so-distant past could have landed them in jail, or worse.

At the time, Roger Sherrard was an attorney in private practice in Poulsbo, still in his 40s and about 20 years out of law school. He’d never set foot in Albania before the summer of 1992; within a few years of his first visit he was something of an Albanian celebrity.

For the 1994 trip he brought along his wife, Katoo, and an assembly of U.S. judges including now retired Washington Supreme Court Justice Charles K. Wiggins; then Washington Supreme Court Chief Justice Robert Utter and his wife, Betty; and other judges from local, state, and federal courts around the country. Their hosts were the justices of the Albanian Supreme Court and their accommodations were remarkable, even if the Americans didn’t know it at the time.

The Albanian chief justice made a toast at dinner, Katoo recalls, saying “if we can have Americans here in this home, I know we must be free.” Curious about his statement, after dinner she asked him to explain. “And he told us we were in the [former] home of the dictator.” (Not only that, the couple’s accommodations were his former bedroom.)

Albanian Communism had come to an end only two years before this visit, when the Albanian Democratic Party unseated the long-ruling Communist Party, as the newly independent nation took political baby steps into a post-Soviet Union world. For four decades, until his death in 1985, Enver Hoxha (pronounced “ho-jeh”) led Albania down a staunchly Communist path, seizing private property, abolishing religious expression and implementing an atheist state (Albania today is approximately two-thirds Muslim, 12 percent Catholic, and 8 percent Orthodox), and maintaining a tight rule through a combination of fear and imprisonment of dissenters.

Clearly, had Hoxha been alive and his party still in power, he would not have taken kindly to an American lawyer sleeping in his bed and sharing dinner with Albanian Supreme Court Justices in his summer home. Yet, there Roger was.

WHO IS ROGER AND WHY ALBANIA?

Roger Sherrard is the youngest of four boys. His father died when Roger was 8 years old and he and his siblings were raised by his mother, who took over the family business and moved from Des Moines to Normandy Park, where Roger grew up.

Roger wanted to follow in a friend’s footsteps and attend the U.S. Naval Academy, but he didn’t have the 20/20 vision needed to get in, so he went instead to the U.S. Military Academy at West Point. From there it was off to airborne and ranger training at Fort Benning, under leaders who thought the training was “too soft,” according to Roger. (Roger likes to boast that Pulitzer Prize-winning author Rick Atkinson’s book *The Long Gray Line* recounts the grueling treatment of Roger’s 1966 class at West Point and the ranger training they endured.) Roger pursued the armored branch and was sent to Germany, where he became a company commander of 17 tanks, then off to Italy as aide-de-camp to two major generals, and later to Vietnam.

He was awarded three Bronze Stars for

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Roger Sherrard, left, holding a picture of himself and Hon. Paul A. Magnuson standing outside the Pyramid of Tirana in Albania. Katoo Sherrard, right, holding a picture from the 1994 Judicial Conference held in the same building. Below, Sherrard as a plebe (freshman) at West Point in 1962.



A Legacy Forged From Afar

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valor and other recognitions for his military service.² His original plan was to stay in the military, but the call to start a family with Katoo back in Washington shifted things. He actually took the LSAT from Vietnam, started law school at Seattle University, and graduated with distinction in 1975, the same year Saigon fell.

He worked as a prosecutor his last year of law school before becoming partners with Bill McGonagle and his brother, Jean, at Sherrard McGonagle Tizzano & Lind, a firm that specializes in estate planning, real estate, and business consulting. Over the course of his 41-year legal career, he litigated constitutional law issues at the trial and appellate level, which is partly what took this small-town lawyer's career in a decidedly international direction.

POULSBO TO ALBANIA BY WAY OF BULGARIA

Roger's meandering journey into the Albanian judiciary first took him to Bulgaria.

He represented the defendant in a high-profile 1986 Washington Supreme Court case involving anti-abortion protests at a Tacoma health clinic³ which, in addition to further immersing him in constitutional law jurisprudence, caught the attention of Sam Ericsson, a Virginia attorney and then-executive director of the Christian Legal Society, who was looking for ways to get involved in advising

post-Communist judiciaries in Eastern Europe. Bulgaria in particular was looking for American lawyers who had not worked for the government and knew constitutional law. In the summer of 1991, Roger and Ericsson headed to Sofia, Bulgaria.

Over the next year, Roger made three trips to Bulgaria. On the first trip, when tensions were still high between the new party and the Communists, he and Ericsson made news when they nonchalantly walked through a wall of protesters to get into the law school. They passed an overturned car in flames on the way, Roger remembers.

Once inside, a student said to Roger, "Don't you think it's great that Parliament is granting us human rights again?"

"And I said 'no.' You could hear a pin drop," Roger recalled. "I said, 'If Parliament gives you these human rights today, they'll think they can take them away. And we don't



SIDEBAR

In December 2005, Roger Sherrard received the “Medal for Special Civil Merits” from the President of Albania, Alfred Moisiu. According to John L. Withers II, the U.S. Ambassador to Albania from 2007 to 2010, tensions among Albanian political parties would have resulted in controversy over this award going to anyone else. “As far as I know, there was no objection from any of the political factions in Albania to Roger accepting that award.”

believe you can do that. Those rights are given to us as human beings.”

Later that night, Bulgarian news stations broadcast images of American lawyers walking through a protest to meet with law students.

“They all thought we were these heroes,” Roger said. “We were oblivious enough; we weren’t scared at all walking through the picket line to go into this law school.”

In the airport waiting to fly home, Roger and Ericsson decided they should continue that work and form a company, which became Advocates International, self-described as “the largest, oldest, most efficient, legal aid organization you’ve never heard of before.”⁴ Roger was the first board chair and a member of the board until recently, which today includes such recognizable names as Ken Starr.

“We were happy to have the experience,” Roger said. “How many chances do you get in a lifetime to do this kind of stuff?”

In 1992, Roger was invited to come for the elections, which put Bulgarian Democrats in power. Around that same time he got two separate letters on the same day asking him to come to Albania.

In the summer of ’92, Roger landed for the first time in Tirana, Albania. Over the next 25 years, he would visit Albania more often than many people visit their parents, with more than 50 trips to the country.

WINNING HEARTS AND MINDS

There’s no rulebook for an American lawyer advising a formerly Communist country on

the foundational principles and logistical infrastructure of a constitutional judiciary. If there’s any secret to how Roger did what he did, it’s probably his personality. There’s no law barring a private American citizen from advising foreign officials,⁵ according to John L. Withers II, U.S. ambassador to Albania from 2007 to 2010. But it’s rare for anyone to listen.

“As a practical matter, most foreign officials have neither the time nor the interest in meeting with most private citizens, be they American or other,” Withers said. “That’s what was remarkable about Roger. Officials—from all parties—and the legal community wanted to hear what he had to say and sought his advice.”

Looking back, Roger marvels at how he was actually invited to participate in shaping a new, independent judicial system in Albania.

“They wanted American lawyers who knew something about the constitution to come over there—*American lawyers*,” he said in a video interview as a winner of a WSBA 2019 APEX Award.⁶ “Now where in the world do they like American lawyers?”

One of the reasons that Roger became one of, if not *the* key figure in creating the new Albanian judicial system, added Withers, is that he was able to listen to and appreciate the perspective of the Albanian people.

“And Roger was extraordinary. ... His devotion was something like I’d never seen. Not only would he meet the people there and discuss things with them, but he would address their conferences, he would go on television, he would advise them on documents that they were trying to prepare to meet NATO standards or European Union standards. He would set up programs to bring jurists out to Albania to hold seminars, discuss things, advance proposals, advance procedures. And then he would find ways of bringing Albanian jurists here, and when they would come here he would find ways of introducing them to noted judges.”

Roger became an advisor, friend, and confidant to many Supreme Court justices, members of Parliament, and other Albanians.

“Whenever you went to Albania, and this is because of the ground that Roger plowed, you’re just treated like royalty; you speak and they hang on to every word you say,” said Hon. Paul A. Magnuson, a senior judge with the U.S. District Court for the District of Minnesota who has done rule-of-law work in more than 50 countries, including in Albania with Roger. “You go to Albania with Roger and first you meet with the chief justice of the state Supreme Court and their entire Supreme Court; then chief of Constitutional Court and the entire Constitutional Court; then meet the president, and they’re in a ceremonial location; then meet with the prime minister; and then you go meet with the minority leader. It was just kind of a routine to do that because Roger had so much standing and so much respect that the people, they wanted to see Roger Sherrard.”

Roger’s efforts were also appreciated by his own government.

“If I were to speak as an American ambassador ... what [Roger] was doing was very important for me from the perspective of advancing our interests,” Withers said. “One of the big, big things that was part of our program as an embassy was the judiciary, and we actually had people from the [U.S.] Justice Department who were officers in the embassy and who were working via official means to try to im-

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A Legacy Forged From Afar

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prove the judiciary. ... Again, to have a private American doing that, not a U.S. government official but a private American, was really, really truly exceptional. And I valued our relationship at every level.”

HUSTLING FOR GAVELS AND LITIGATING IN A PYRAMID

A typical trip to Albania was usually an “absolute whirlwind,” said Katoo, who accompanied Roger on more than a half-dozen visits. Roger was always invited and hosted by the Albanian Supreme Court justices. He and those he brought with him advised on topics including constitutional government modeled on the American democratic system, property law (to help manage the transition of property from the government back to private citizens), and the day-to-day logistics of court process and procedure. Often he cobbled together—with the help of others—creative solutions to more practical needs.

Enter Charles Wiggins, future Washington Supreme Court Justice, recruited by Roger to help find robes and gavels for Albanian jurists. Wiggins’ eureka moment occurred when he noticed that the choir robes at his mother’s church in Alabama were near identical to judges’ garb.

“It turns out there are robes, if you know where to look,” Wiggins said.

Encouraged by Wiggins’ Alabama-to-Albania success, Roger next asked Wiggins to find 180 gavels on a thimble-sized budget. After scouring trophy stores with no luck, Wiggins happened upon a “gavel dealer in Chicago” and convinced him to supply the needed gavels at a steep discount. He picked them up during a layover at O’Hare on the way to Tirana.

If you’re thinking that customs agents might have questions about boxes full of choir robes and gavels, you’re right.

“Suffice it to say we were greeted with suspicion,” Wiggins said, adding that Roger schmoozed customs agents and even got them to waive fees on their supply of smuggled gavels and judicial attire. “It’s just really characteristic of him that he wouldn’t flinch.”

Roger’s telling of the story adds an additional layer of mystery. Despite securing 200 choir robes, they were still 92 short. But during a judges’ conference, the U.S. Embassy’s information officer was called to pick up a package at the airport.

“She excitedly waved to call a recess in the mock trial,” Roger said. “The package she had retrieved contained 92 robes, enough for all the judges to receive one. To this day we do not know where the package came from.”

A thoroughly invested Wiggins went on to accompany Roger to Albania several times. On one trip, the two played lawyers for a mock trial. The subject matter was fairly dull—easement issues, Wiggins remembers—but the location was anything but.

“The place where we did this was literally a pyramid,” Wiggins said. In fact, the location was the Pyramid of Tirana, built by Hoxha’s family shortly after his death to serve as a museum to the legacy of the decades-long Communist ruler. “It was kind of a sign of a remarkable thing that there we were. ... To then be transforming that for a day to a venue for a mock trial was very special.”

“I don’t remember how much I knew of what it would be like in Albania, but it was an adventure and it was something that sounded really interesting to me,” Wiggins said. “And the idea of trying to help a country through a transition from communism to democracy, how they would deal with constitutional rights and constitutional issues and how, in fact, their entire judicial system would deal with all kinds of issues—it’s a look back in time almost, to a time when the United States was formed.”

A BACKWARD GLANCE

When I met Roger, one of the first things he told me is that he has Parkinson’s disease, which he attributes to being sprayed with Agent Orange in Vietnam. He offered this information by way of explaining one of its side effects—that he cries more easily. Saying this actually caused him to cry. When he described past experiences in Albania or recounted tales from his military service, the emotions would well up and choke his breath momentarily ... before he dove right back into telling the story.

Roger converses through a web of stories, daisy-chaining one to the next in vivid detail with arching plotlines and a slew of characters—he even does voices. With a soft, almost whispering voice and an open-mouthed smile that gives him the appearance of Dick Van Dyke having a great day, Roger happily shares the almost outlandish tales from Albania, often featuring coincidences and serendipitous moments he chalks up to nothing short of divine intervention.

An example: A winding tale about efforts to prevent Parliament from implementing rules that would have been used to oust three judges. Roger took the judges to lobby (successfully, as it turned out) 18 members of Parliament. Then he helped earn favorable coverage in the press. In an environment where the press was often used to squelch the judiciary, Roger was successful because,

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as the reporter he was talking to explained, Roger had given advice to a woman years before that kept her son out of jail.

And then the reporter said, “Well I was that guy and you got me out of jail!”

That’s the type of person Roger is, said Magnuson, the Minnesota District Court judge—someone who dives straight in when he believes what he’s doing is right and will help people.

“You’re dealing with a guy that’s a West Point grad, a guy that’s gone through hell in Vietnam, has had roadblocks thrown up in his face,” Magnuson said. “A bunch of Albanian judges, that’s another challenge to him. Sort of like charging the hill; you go out and do it. And he did.”

It would be impossible to chronicle all that Roger has done in one article; in fact, he is working with a friend to share his experiences in a book. This has been but a sliver of the sprawling, decades-long saga of how a Poulsbo attorney found himself in the midst of a revolutionary reconstruction of a judicial system on the other side of the world.

Toward the end of our last interview, Roger is telling another story about Albania when he trails off. He’s quiet for a moment and gazes toward his window overlooking Edwards Point.

“It’s a privilege to have had this opportunity,” he says. “Anybody, if you were a lawyer, you don’t want to let these people down. I just feel incredibly fortunate, I guess I would say, to be able to have had these experiences.” **BN**

NOTES

1. https://eacea.ec.europa.eu/national-policies/eurydice/content/population-demographic-situation-languages-and-religions_en.
2. <https://www.sherrardlaw.com/roger-d-sherrard>.
3. Federal Way Family Physicians, Inc. v. Tacoma Stands Up for Life, 106 Wn.2d 261, 721 P.2d 946 (1986).
4. <https://advocatesinternational.org/our-core-values>.
5. So long as they don’t falsely claim to be representatives of the U.S. government or commit illegal acts such as bribery.
6. Roger won the WSBA’s 2019 APEX award of merit, after being nominated by his peers, many of whom Roger had coaxed into joining in his Albanian escapades. Roger Sherrard, Award of Merit, 2019 WSBA APEX Awards, YouTube, <https://www.youtube.com/watch?v=u97amTy2PxY>.

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Coogan v. NAPA,
2020 WL 824192 (2020)

(overturning \$81.5 million judgment)

Meyers, et al. v. Ferndale School District,

___ P.3d ___, 2020 WL 614329 (2020) (district responsible for student killed by driver who ran off road striking him during improper off campus walk)

Habu/Chinn v. Topacio, et al.,

2020 WL 533947 (2020)

(reversing enforcement of CR 2A agreement)

**Hendrickson v. Hempzen Enterprises;
Sotebeer; Davenport; Ware, et al.**

2019 WL 6869584 (2019) (vacating default judgment entered against commercial tenants)

Volkert v. Fairbank Constr. Co. and Ziegler,

8 Wn. App. 2d 399, 438 P.3d 1203 (2019) (Uniform Health Care Info. Act foreclosed disclosure of all experts’ past CR 35 exam reports)

Adamson v. Port of Bellingham,

192 Wn.2d 178, 438 P.3d 522 (2019); 923 F.3d 728 (2019) (recognizing liability of Port as premises owner)

Kimberly Gerlach v. The Cove Apts.,

437 P.3d 690 (2019) (reversal of judgment based on voluntary intoxication defense)

Ingenco Holdings v. ACE American Insurance Company,

921 F.3d 803 (9th Cir. 2019)

(reversal of district court summary judgment in insurer’s favor as to all risk policy coverage)

Brunson v. Lambert Firm and Bechtel National,

757 Fed. Appx. 563 (9th Cir. 2018) (Court upholds district court confidentiality rulings in qui tam action)

Chan Healthcare Group v. Liberty Mutual Fire Insurance Co.,

192 Wn.2d 516, 431 P.3d 484 (2018) (court dismissing new class action based on Full Faith & Credit)

Sampson and Raymond v. Knight Transportation et al.,

193 Wn.2d 878, 448 P.3d 9 (2019) (amicus brief for WTA/ATA supporting income averaging)

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News from Olympia

An overview of the Legislature's 2020 session

BY SANJAY WALVEKAR

The Washington Legislature's 60-day 2020 regular session began on Jan. 13 and adjourned sine die on March 12. Legislators passed a number of policy measures, as well as a \$10.4 billion state transportation budget intended to mitigate Initiative 976's potential effects on transportation spending and a \$53.4 billion supplemental state budget that directs \$200 million to Washington's COVID-19 response. Below are some of the WSBA Outreach and Legislative Affairs team's highlights from the session.

BAR-REQUEST BILL PASSES LEGISLATURE

One of the WSBA's main priorities during each legislative session is to support Bar-request legislative proposals initiated by WSBA Sections and approved by the Board of Governors. This year's request legislation, Senate Bill (SB) 6037, passed the Legislature and is expected to be signed into law by Gov. Jay Inslee. Originating from the Corporate Act Revision Committee of the Business Law Section, SB 6037 addresses optional provisions in articles of incorporation, shareholder consent requirements for corporate action, and board gender diversity requirements under the Washington Business Corporation Act to better align with the Model Business Corporation Act and other leading corporate law jurisdictions.

WSBA SECTIONS WEIGH IN

In addition to Bar-request legislation, the WSBA Legislative Affairs team monitors and takes appropriate action on legislative proposals significant to the practice of law and administration of justice.

The WSBA Legislative Affairs team was busy this year, referring nearly 900 bills to WSBA Sections and tracking hundreds of bills through the end of session. Key bills involving WSBA Section action and collaboration included:

- **Senate Bill (SB) 6028:** Adopting the Uniform Electronic Transactions Act (UETA) and aligning statutory provisions relating to signatures, declara-

tions, and documents. This legislation would make Washington the 48th state to adopt the UETA. The bill was supported by the Solo & Small Practice and Family Law Sections and passed the Legislature this session.

- **SB 6287:** Concerning guardianships and conservatorships. This bill amends the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act adopted by the Legislature in 2019 to delay the effective date of certain provisions, among other substantive changes. The Family Law Section expressed concerns in the House and Senate. This bill passed the Legislature this session.
- **House Bill (HB) 2793:** Vacating criminal records. This bill requires the Administrative Office of the Courts to conduct a pilot program for developing a court-driven process to review and vacate criminal convictions based on

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current statutory eligibility requirements. The bill was supported by the Civil Rights Law Section and passed the Legislature this session.

- **HB 2576:** Concerning private detention facilities. This bill requires the Department of Health to conduct a study evaluating state and local authority and practices for inspecting private detention facilities and enforcing statutes, codes, rules, and policies on the health, safety, and welfare of detainees. The bill was supported by the Civil Rights Law Section and passed the Legislature this session.
- **HB 2567:** Concerning open courts. This bill prohibits civil arrests inside or near state court facilities, with certain exceptions, and prohibits judges, court staff, court security personnel, and prosecutor's office staff from (1) inquiring into or collecting immigration or citizenship status information, except in certain circumstances, and (2) disclosing nonpublic personal information about an individual to immigration authorities, except as provided by law. The bill was supported by the Civil Rights Law Section and passed the Legislature this session.
- **HB 2806:** Concerning mediation in family law cases involving children. This bill revises standards for mediation in dissolution and legal separation proceedings and requires mediation to be scheduled within 90 days in any matter regarding issues in a parenting plan (except dissolution and relocation), subject to exceptions and the ability to opt out. Versions of this bill were supported by the Family Law and Alternative Dispute Resolution Sections. This legislation did not pass committee.
- **HB 2544:** Concerning the definition of a veteran. This bill expands certain definitions for veterans' benefits in state pension systems, legal assistance, scoring criteria on civil service exams, and other programs. The bill was supported by the Legal Assistance to Military Personnel Section and passed the Legislature this session.

HB 1788 DOES NOT ADVANCE

A bill of particular interest to the WSBA this session was House Bill 1788, which would have repealed the majority of the State Bar

MORE ONLINE

To read the full text of bills discussed in this article, go to <https://apps.leg.wa.gov/billinfo/> and enter the bill number.

Act. The WSBA Board of Governors opposed this legislation during the 2019 legislative session and the Board of Governors Legislative Committee closely monitored this bill throughout this session. The bill did not pass out of the House and no bill related to the State Bar Act moved forward this year.

ISSUES TO WATCH NEXT YEAR

For bills that did not achieve final passage this year, legislators have already expressed an interest in studying issues for potential reintroduction in 2021. A few bills and issues to watch include:

- **SB 6053:** Establishing wage liens. This bill creates a statutory wage lien for claims on unpaid wages and creates procedures for establishing, foreclosing, extinguishing, and prioritizing wage liens. The bill was monitored by the Uniform Commercial Code Committee of the Business Law Section and did not pass the Senate this session.
- **SB 5339:** Reducing criminal justice expenses by eliminating the death penalty and instead requiring life imprisonment without possibility of release or parole as the sentence for aggravated first-degree murder. This bill would repeal statutes pertaining to the death penalty. The bill did not pass the House this session.
- **SB 6281:** Concerning the management and oversight of personal data. This bill aims to give consumers more power over their personal digital data by implementing European-style data-privacy laws. The bill did not pass the Legislature this session.

The next legislative session will begin in January 2021 and is scheduled to last 105 days, marking the first half of the 2021-2022 biennium. During the interim and the upcoming session, the WSBA will continue to monitor and take action on legislation significant to the practice of law and administration of justice. **BN**

Product Liability
Automotive Product Liability
Catastrophic Injury

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PERSONAL INJURY LITIGATION - PLAINTIFFS - TIER 1
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On Board

NEWS FROM THE BOARD OF GOVERNORS & WSBA

MARCH 19, 2020

A Summary of the Board of Governors Meeting

The WSBA Board of Governors determines the Bar's general policies and approves its annual budget.

Note: The March Board of Governors meeting is traditionally held in Olympia. Because of public directives to curb the spread of the coronavirus, the March 2020 meeting was moved to a near virtual-only format. For more coronavirus-specific updates, see pages 6-10.

TOP 8 TAKEAWAYS

1 Request to Supreme Court to extend licensing deadline. Per the Board's anonymous vote, President Majumdar will ask the Washington Supreme Court to extend the WSBA's deadline for sending recommendations for licensing suspensions from May 5 to June 30. This will apply to members who are currently late complying with licensing payment and/or MCLE requirements, and these members will receive an email directly from the WSBA if the deadline is extended.

2 Proposed amendment to APR 26. The Washington Supreme Court has ordered a proposed amendment to APR 26 published for public comment, with a comment deadline of April 30. The amendment would require lawyers in private practice to carry **mandatory malpractice insurance**, with defined exceptions; in response, WSBA President Majumdar communicated to the court why the Board declined to endorse the same rule last year. President Majumdar has created an ad hoc committee to generate public-protection alterna-

tives to mandatory malpractice insurance. Stay tuned for more information.

3 Expanding the license-fee exemption. Governors considered on first reading a bylaw amendment that would allow the WSBA to waive active members' annual license fee twice per lifetime—as opposed to once—due to economic hardship. This bylaw amendment will come back for possible action at the April meeting.

4 Keeping the awards but sunseting the APEX banquet. Governors voted to sunset the annual APEX (Acknowledging Professional Excellence) Awards dinner in September and transition to a new format to meaningfully recognize award recipients. Concerns about the traditional dinner event include: it is expensive for both the WSBA and attendees, it is Seattle-centric, and it does not allow for widespread participation of members and the public. Stay tuned for more details about possible alternatives and the announcement of our 2020 APEX winners.

5 The WSBA annually presents **Local Hero Awards** during its March meeting in Olympia. Because this year's meeting was moved to a virtual format, we are sending electronic confetti and clappers and kudos, in lieu of the real deal, to these two local heroes: **Mary Barrett**, assistant director of the Administrative Review of Hearings Division for the Washington State Department

of Revenue, and **Megan Winder**, deputy prosecuting attorney at the Thurston County Prosecutor's Office. Read more about each local hero at www.wsba.org/news-events/media-center/media-releases.

6 Eliminating barriers for judicial members. Governors gave final approval for a bylaw change to make it easier for members who are entering or leaving a judicial office to change status classification, reducing barriers for judges to take active or pro bono emeritus status. As with other approved WSBA bylaw amendments, this is now subject to approval by the Washington Supreme Court.

7 Removing references to the death penalty in Indigent Defense Standards. Governors approved a request from the Council on Public Defense to submit a comment on behalf of the WSBA on proposed amendments to remove references to capital punishment in the Indigent Defense Standards. Although the Washington Supreme Court ruled in 2019 that the death penalty, as applied, was unconstitutional, the Council on Public Defense believes references to indigent defense standards associated with capital punishment in CrR 3.1, JuCrR 3.1, and JurCr 9.2 should *only* be removed if the Legislature acts to abolish the death penalty and not before then.

8 Maintaining two free legal-research tools. The Board voted to renew three-year contracts with Casemaker and Fastcase, the two platforms currently offered as free legal research tools to WSBA members.

MORE ONLINE

The agenda, materials, and video recording from this Board of Governors meeting, as well as past meetings, are online at www.wsba.org/about-wsba/who-we-are/board-of-governors.

Need to Know

NEWS & INFORMATION OF INTEREST TO WSBA MEMBERS



VOLUNTEER

Custodians Needed

The WSBA is seeking interested lawyers as potential volunteer custodians of files and records to protect clients' interests. Visit www.wsba.org/connect-serve/volunteer-opportunities/act-as-custodian, or contact Sandra Schilling: sandras@wsba.org, 206-239-2118, 800-945-9722, ext. 2118; or Darlene Neumann: darlenen@wsba.org, 206-733-5923, 800-945-9722, ext. 5923.

Vote for Section Leaders Online

Voting begins May 15 to fill various open executive committee positions. Eligible voting members should expect to receive an email ballot from your section and voting ends May 31. Visit www.wsba.org/sections for more information.



RESOURCES

Grant Funds Available from Legal Services Corporation

The Legal Services Corporation (LSC) recently announced the availability of grant funds to provide civil legal services to eligible clients in 2021. In accordance with LSC's multiyear funding policy, grants are available for only specified service areas. Please visit www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant for eligible service areas, filing dates, applicant eligibility, submission requirements, and updates regarding the LSC grants process. Applicants must file a Notice of Intent to Compete (NIC) and the grant proposal through LSC's online application system in order to participate in the grants pro-

cess. Please email inquiries pertaining to the LSC grants process to LSCGrants@lsc.gov.

Free Practice-Management Assistance and Consultations

The WSBA offers free resources and education on practice-management issues. For more information, visit www.wsba.org/pma. You can also schedule a free phone consultation with a WSBA practice-management advisor to find answers to your questions about the business of law firm

ownership. Common inquiries we can help with include technology adoption, opening or closing a law office, and client relationship management. Visit www.wsba.org/consult to get started.

Lending Library

This free service to WSBA members offers hundreds of titles for short-term loan. Due to coronavirus-related office closures, this service was unavailable at the time the magazine went to press. Visit www.wsba.org/library for more information.



WSBA NEWS

Opportunities to Comment on Proposed Court Rule Amendments

The WSBA encourages members to actively monitor and provide feedback when the Washington Supreme Court is considering amendments to its rules. Keep track of opportunities to comment at www.wsba.org/for-legal-professionals/rules-feedback, or visit the court's website at http://www.courts.wa.gov/court_rules/?fa=court_rules.proposed.

COMMENT THROUGH APRIL 30:

- Admission and Practice Rule (APR) 26 (Insurance Disclosure) Mandatory Malpractice Insurance Amendment. Visit http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=4751.
- Rule of Professional Conduct (RPC) 1.15A and LLLT RPC 1.15A (Safeguarding Property). Visit http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2715 and http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2716.
- Rule of Professional Conduct (RPC) 6.5 New Comment [8] (Nonprofit and Court-Annexed Limited Legal Service Programs). Visit http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2719.

COMMENT THROUGH MAY 30:

- Rule of Professional Conduct (RPC) 7.3 (Solicitation of Clients). The Washington Supreme Court has revised the proposed amendment to RPC 7.3 (part of the RPC Title 7 advertising amendment recommended by the WSBA last year) and has republished just that rule for public comment. Visit www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=4774.

Free Legal Research Tools

WSBA offers resources and member benefits to help you with your research. Visit www.wsba.org/legalresearch to learn more and to access Casemaker and Fastcase for free.



ETHICS

Ethics Line

Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance. Learn more at www.wsba.org/for-legal-professionals/ethics/ethics-line or call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

WSBA Advisory Opinions Available

WSBA advisory opinions are available online at www.wsba.org/for-legalprofessionals/ethics/about-advisoryopinions. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.



WSBA MEMBER WELLNESS

WSBA Connects

WSBA Connects provides all WSBA members with free counseling in your community on topics including work stress, career challenges, addiction, and anxiety. Visit www.wsba.org/for-legal-professionals/member-support/wellness/wsba-connects or call 1-800-765-0770.

The 'Unbar' Alcoholics Anonymous Group

The Unbar is an "open" AA group for attorneys that has been meeting weekly for over 25 years. Find more details

HAVE SOMETHING NEWSWORTHY TO SHARE?

Email wabarnews@wsba.org if you have an item you would like to place in *Need to Know*.

at www.wsba.org/for-legal-professionals/member-support/wellness/addictionresources or by calling 206-727-8268.

Career Consultation

Get help with your résumé, networking tips, and more—www.wsba.org/for-legal-professionals/member-support/wellness/consultation—or email wellness@wsba.org.

WSBA COMMUNITY NETWORKING

New Lawyers List Serve

This list serve is a discussion platform for new lawyers of the WSBA. To join, email newmembers@wsba.org.

Join the WSBA CLE Faculty Database

Current and interested CLE faculty are encouraged to register in the database. Log in to your my-WSBA account, go to “My WSBA Profile” and select “CLE Faculty Database Registration.”

ALPS Attorney Match

Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. Learn more at www.wsba.org/connect-serve/mentorship/find-your-mentor, or email mentorlink@wsba.org.

QUICK REFERENCE April 2020 Usury

The usury rate for April 2020 is 12.00%. The interest rate required by RCW 4.56.110(3)(a) and 4.56.115 for April 2020 is 3.029%. The interest rate required by RCW 4.56.110(3)(b) and 4.56.111 for April 2020 is 6.75%. **BN**

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The Lodestar Method for Calculating a Reasonable Attorney Fee in Washington,
52 Gonz. L. Rev. 1 (2017)

We have a track record of success in fee cases:

Estate of Hunter (\$2.8 million fee award in arbitration)
Easterly v. Clark County, 2 Wn. App. 2d 1066 (2018)
Arnold v. City of Seattle, 185 Wn.2d 510, 374 P.3d 111 (2016)
Bright v. Frank Russell Investments, 191 Wn. App. 73, 361 P.3d 245 (2015)
Tupas v. Washington State Dept. of Ecology, 191 Wn. App. 1036 (2015)

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Notices

DISCIPLINE & OTHER REGULATORY NOTICES

Resigned in Lieu of Discipline

Clinton Jonathon Sonny Behrends (WSBA No. 45371, admitted 2012) of Bothell, resigned in lieu of discipline, effective 2/05/2020. Behrends agrees that he is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct contains the following alleged violations of the Rules of Professional Conduct: 1.1 (Competence), 1.3 (Diligence), 1.5 (Fees), 1.6 (Confidentiality of Information), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 5.3 (Responsibilities Regarding Nonlawyer Assistants), 8.4 (Misconduct).

Behrends' alleged misconduct, as stated in disciplinary counsel's Statement of Alleged Misconduct, related to his representation of multiple clients and involved areas of law including personal injury, family law, criminal law, and employment law. His alleged misconduct includes: 1) taking legal fees his employer was entitled to receive; 2) telling his employer that he had only taken two clients without the firm's knowledge, when in fact he had taken more; 3) charging and collecting unreasonable fees; 4) failing to diligently represent clients; 5) failing to

return unearned fees and client files; 6) failing to deposit fees identified as flat fees that did not comply with RPC 1.5(f)(2) into a trust account; 7) failing to appear at court hearings, and failing to advise or take action to resolve matters related to a client's criminal matters; 8) telling a client he had filed an appeal and sent letters on the client's behalf when he had not; 9) failing to adequately supervise his staff; 10) disclosing information related to his clients' representation; and 11) failing to timely respond to disciplinary counsel's written requests for responses, failing to timely produce client files, and failing to appear for deposition.

Kathy Jo Blake acted as disciplinary counsel. David Carl Burkett represented Respondent. The online version of *Washington State Bar News* contains a link to the following document: Resignation Form of Clinton Jonathon Sonny Behrends ELC 9.3(b).

Darlene Ann Piper (WSBA No. 24244, admitted 1994) of Box Elder, resigned in lieu of discipline, effective 1/29/2020. Piper agrees that she is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct. Piper states that she does not agree with the allegations and has answered the Formal Complaint in her Answer, which is of record. Rather than defend against the allegations, Piper wishes to permanently resign from membership in

the Association. The Statement of Alleged Misconduct reflects the following alleged violations of the Rules of Professional Conduct: 1.15A (Safeguarding Property), 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 8.4 (Misconduct).

Piper's alleged misconduct, as stated in disciplinary counsel's Statement of Alleged Misconduct, related to her practice in estate and probate law, and includes: 1) removing funds from a client's trust account without entitlement; 2) converting funds from client A's estate; 3) converting funds from person B to pay client A's estate's bequest to a third party; 3) making one or more misrepresentations to person B regarding a loan and the disposition of funds; and, 4) making one or more false and/or misleading statements in Piper's bankruptcy schedules.

Francesca D'Angelo acted as disciplinary counsel. David P. Horton represented Respondent. The online version of *Washington State Bar News* contains a link to the following document: Resignation Form of Darlene Ann Piper (ELC 9.3(b)).

Suspended

Christopher Craig Anderson (WSBA No. 42410, admitted 2010) of Naperville, IL, was suspended for one year, effective 12/10/2019, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Illinois. Joanne S. Abelson acted as disciplinary counsel. Christopher Craig Anderson represented himself. The online version of *Washington State Bar News* contains a link to the following document: The Washington Supreme Court Order.

Christopher John Dickinson (WSBA No. 18269, admitted 1988) of Arlington, was suspended for six months, effective 1/28/2020, by order of the Washington Supreme Court.

THESE NOTICES OF THE IMPOSITION OF DISCIPLINARY SANCTIONS AND ACTIONS

are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of the *Washington State Bar News* at www.wsba.org/news-events/wabarnews or by looking up the respondent in the legal directory on the WSBA website (www.wsba.org) and then scrolling down to "Discipline History."

As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

The lawyer's conduct violated the following Rule of Professional Conduct: 8.4 (Misconduct).

In relation to his conduct involving colleagues while at a work-related conference, Dickinson stipulated to a six-month suspension for the following: 1) committing acts that resulted in his conviction of fourth-degree assault, and by committing an unjustified act of assault; 2) making false statements to a sheriff's deputy; 3) interfering in field sobriety tests administered to his girlfriend; and 4) committing acts that resulted in his conviction for reckless driving.

Marsha Matsumoto acted as disciplinary counsel. Christopher John Dickinson represented himself. Timothy James Parker was the hearing officer. The online version of *Washington State Bar News* contains links to the following documents: Disciplinary Board Order Conditionally Approving Stipulation to Suspension, Consent Under ELC 9.1(e)(2), Stipulation to Suspension, and Washington Supreme Court Order.

Reprimanded

Robert Charles Kaufman (WSBA No. 12543, admitted 1982) of Bellevue, was reprimanded, effective 12/20/2019, by order of the hearing officer. The lawyer's conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records).

In relation to his sole practice focused on family law and collections, Kaufman stipulated to a reprimand for: 1) failing to maintain complete and current trust account records and failing to reconcile his trust account; 2) failing to promptly deliver funds from his trust account to clients entitled to receive them; and 3) failing to withdraw earned fees from his trust account.

Marsha Matsumoto acted as disciplinary counsel. Joel Evans Wright represented Respondent. The online version of *Washington State Bar News* contains links to the following documents: Order Approving Stipulation to Reprimand, Stipulation to Reprimand, and Notice of Reprimand.

Matthew B. Weber (WSBA No. 31308, admitted 2001) of Miami, FL, was reprimanded, effective 11/14/2019, by order of the hearing officer.

In relation to his representation of a client in an immigration matter, Weber stipulated to a reprimand for the following: 1) failing to file a brief or response to a motion after requesting a continuance from the court to do so; and 2) failing to provide his client with Weber's new contact information upon moving, and failing to inform his client that he did not file a motion to remand with the Board of Immigration Appeals or a timely motion for reconsideration, when the client had entered an agreement and paid additional fees for him to do so.

Francesca D'Angelo acted as disciplinary counsel. Matthew B. Weber represented himself. The online version of *Washington State Bar News* contains links to the following documents: Order Approving Stipulation to Reprimand, Stipulation to Reprimand, and Notice of Reprimand.

Admonition

Rodney R. Moody (WSBA No. 17416, admitted 1987) of Everett, was admonished, effective 12/20/2019, by order of the hearing officer. The lawyer's conduct violated the following Rule of Professional Conduct: 8.4 (Misconduct).

In relation to his representation of a client in an employment lawsuit, Moody stipulated to an admonition for failing to timely file and serve an amended complaint.

Jonathan Burke acted as disciplinary counsel. Rodney R. Moody represented himself. The online version of *Washington State Bar News* contains links to the following documents: Order Approving Stipulation to Admonition, Stipulation to Admonition, and Admonition.

Rajiv Nagaich (WSBA No. 32991, admitted 2002) of Federal Way, was ordered to receive an admonition, effective 12/19/2019, by a Review Committee of the Disciplinary Board. The lawyer's conduct violated the following Rule of Professional Conduct: 8.4 (Misconduct).

In relation to his supervision of his non-attorney employee who was seeking to become an APR 9 Licensed Legal Intern, a Review Committee of the Disciplinary Board ordered an admonition. The Review Committee found that Nagaich: 1) negligently signed two documents containing false statements regarding his disciplinary

RESCHEDULED: Hearing on Petition For Reinstatement of James Lloyd White

A petition for reinstatement after disbarment was filed by James Lloyd White, WSBA No. 14132, who was admitted in 1984, suspended in 2005, and disbarred in 2006. A hearing on Mr. White's petition was scheduled to take place before the Character and Fitness Board on Friday, April 24, 2020. Because of the current coronavirus situation and the measures being taken to prevent the spread of the virus, this hearing date has been cancelled. The hearing on Mr. White's petition will be rescheduled to Friday, September 25, 2020. Future notice of the rescheduled hearing date will be published in accordance with Washington Supreme Court Admission and Practice Rule (APR) 25.4(a).

history and qualifications to serve as a supervising lawyer; and, 2) negligently certified under penalty of perjury that he was in compliance with a court rule without reading the rule and/or determining his compliance.

Marsha Matsumoto acted as disciplinary counsel. Brett Andrews Purtzer represented Respondent. The online version of *Washington State Bar News* contains a link to the following document: Review Committee Order and Admonition. [BN](#)

MORE ONLINE

Access further details of the notices by clicking the links in the online version: www.wsba.org/news-events/wabarnews.

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Stacy W. Marchesano will continue to counsel clients in real estate, hospitality, and financing transactions. Stacy graduated from the University of Washington School of Law in 2008.

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Yates v. Fithian,
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City of Seattle v. Menotti,
409 F.3d 1113 (9th Cir. 2005)

State v. Letourneau,
100 Wn. App. 424 (2000)

Fordyce v. Seattle,
55 F.3d 436 (9th Cir. 1995)

LIMIT v. Maleng,
874 F. Supp. 1138 (W.D. Wash. 1994)

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Profitable Northwest Oregon law practice located in Marion County. The practice was established in 1991 and has a practice/case breakdown by revenue of 34% probate and trust administration, 30% estate planning, 20% real estate transactions, and 10% business law and contracts. The practice is completely turnkey and has a strong client base. If you are interested in exploring this opportunity, would like

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Profitable Pierce County law practice that has been a staple in Pierce County for over 20 years. In 2019, the practice brought in over \$700,000 in gross receipts! The practice/case breakdown is 35% real estate; 30% residential, commercial, corporate, employment, and general litigation; 20% personal injury including wrongful death; 10% business formation; and 5% other. The practice is located in a 2,500 SF, fully furnished office that is also available for sale, if desired. If you are interested in exploring this opportunity, would like the freedom to be your own boss, and/or increase your current book of business substantially, then this is perfect for you. Email info@privatepracticetransitions.com or call 253-509-9224.

Thriving Grants Pass, Oregon, family law practice with cases in Josephine and Jackson Counties. The owner has built a firm with a stellar reputation and desires to sell the business as a turnkey operation in order to retire. The average gross

revenue for the past two years is over \$530,000, and the 2019 Seller's Discretionary Earnings (SDE) was over \$350,000! The practice/case breakdown is 100% family law. The practice was established in 1975 and is located in a desirable, fully furnished office. The practice employs three staff, including the owner. Email info@privatepracticetransitions.com or call 253-509-9224.

Real estate legal practice with two locations is headquartered in the fastest growing metro area in the fastest growing state (Idaho). This real property law firm has two locations (Spokane and Coeur d'Alene), two attorneys, three support staff, and average gross revenue over \$625,000 the last three years (2017-2019). For more information on this turnkey practice, contact info@privatepracticetransitions.com or call 253-509-9224.

Extremely profitable Seattle immigration law practice that has average gross revenue of over \$1,600,000 the last three years (2017-2019). Even more, in 2019 the gross revenue was over \$1,800,000! This successful firm has substantial advance fees in trust. The practice employs two attorneys in addition to the partners, seven paralegals, three full-time administrative staff, and one part-time support staff. If you are interested in exploring this opportunity, would like the freedom to be your own boss and/or increase your current book of business substantially, then this is perfect for you. Contact info@privatepracticetransitions.com or call 253-509-9224.

Central Washington elder law & estate planning practice with a practice/case breakdown by revenue of approximately 34%

probate, 30% estate planning, 19% guardianship, 13% Medicaid planning, and 4% vulnerable adult. The practice has average gross revenue of over \$266,000 the last three years (2017-2019), with 2019 gross revenue over \$300,000. The owner of the practice is open to selling the office building to the person who purchases the practice, if desired. Contact info@privatepracticetransitions.com or call 253-509-9224.

Established Tumwater family law & estate planning practice that has a practice/case breakdown by revenue of approximately 70% family law, 15% estate planning, 5% real estate, 5% business, and 5% other. The practice is located in a 2,650 SF building that is also available for sale, if desired. With 2019 gross revenue right around \$200,000 and 166 active clients, this practice is poised for growth under new ownership. Contact info@privatepracticetransitions.com or call 253-509-9224.

Established Pierce County insurance defense practice that was established in 1998 and has approximately 150 active clients as of December 2019. The average gross revenue the last three years was over \$1,017,000. The practice/case breakdown by revenue is 50% bodily injury, 10% property damage, 10% product liability, 10% professional liability, 10% plaintiff work, and 10% other. Contact info@privatepracticetransitions.com or call 253-509-9224.

Established Seattle estate planning practice that has a practice/case breakdown by revenue of approximately 45% estate & trust administration, 40% estate planning, and 15% other (collateral matters, estate tax preparation, real property issues, etc.). The practice is located in the heart of downtown Seattle, has average gross revenue of over \$286,000 the last three years (2016-2018), and is poised for growth under new ownership. Contact info@privatepracticetransitions.com or call 253-509-9224.

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Successful King County

insurance defense practice that is located in the heart of Seattle and had 2019 gross revenue of approximately \$1,300,000. The practice was established in 2006, has a great reputation in the legal community, and has five total employees, including the owner. Contact info@privatepracticetransitions.com or call 253-509-9224.

Thriving Stevens County personal injury & family law practice

that was established in 2009, has a strong client base, and brought in over \$855,000 in gross revenue in 2018. The practice/case breakdown by revenue is approximately 48% personal injury, 43% family law, and 9% other (estate planning, probate, general litigation, etc.). The practice employs six people: one owner/attorney, one associate attorney, three legal assistants, and one office administrator. Contact info@privatepracticetransitions.com or call 253-509-9224.

Thriving & well-rounded Pierce County law practice

that has been a staple in Pierce County for over 20 years. The practice is absolutely thriving with average gross revenue over \$1.6 million the last three years. The practice/case breakdown is 30% trusts, estates, & probate; 15% business formation; 15% plaintiff personal injury; 15% commercial & corporate litigation; 8% real estate; 7% municipal; and 10% other. Contact info@privatepracticetransitions.com or call 253-509-9224.

Profitable Snohomish County personal injury practice

that has been in business for more than 27 years. The practice/case breakdown by revenue is approximately 95% personal injury and 5% other. The practice is located in a 1,022 SF fully furnished office that is also available for sale, if desired. Contact info@privatepracticetransitions.com or call 253-509-9224.

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Luke hiking the Tolmie Peak Lookout trail near Mt. Rainier.

Rachel Luke

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LAW SCHOOL: Seattle University School of Law

→ I am an associate attorney at Friedman Ruben PLLP in Seattle, where I focus my practice on personal injury and aviation law. I can be reached at rachel@friedmanrubin.com.

WE'D LIKE TO LEARN ABOUT YOU!

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I became a lawyer because I was afraid I wouldn't make it as an art historian. This is not a good reason to become a lawyer, but I have no regrets regarding my decision!

Before law school, I apprenticed as a cosmetologist at Marco Two Union Square. I continued working at the salon while I went to the University of Washington to get my undergraduate degree.

In my practice, I work on improving my ability to communicate—whether with clients, colleagues, the court, or the jury.

My career has surprised me by going from practicing family law out of law school to practicing aviation law.

The best advice I have for new lawyers is: find some really great mentors.

Since I graduated from law school, the

legal profession has not evolved into the 21st century as much as I wish it would. It is still an old boys' club, but we are working to change that.

I keep up with legal news and developments by listening to Nina Totenberg on NPR. I love her!

During my free time, I am usually hanging out with my kids and my husband.

The most memorable trip I ever took was going to Daegu, South Korea, to see where I was born.

I look up to: (1) my dad because he taught me to prove other people wrong when they make assumptions about me, and (2) my mom because she will do anything for her family.

If I took one day off in the middle of the week, I would like to think I was hiking, but I would more likely be doing some type of home improvement project or taking my car in to be serviced.

I want to try paddle boarding.

My best recipe I make at home is a flourless chocolate cake.

My fitness routine is lacking.

My favorite places in the Pacific Northwest are Mt. Rainier, Deception Pass, and anywhere on the water.

I worry about institutional barriers and the lack of opportunities available to people of color, immigrants, and other historically marginalized groups.

I am happiest when I am searching for sea glass at the beach with my two daughters.

I grew up in Enumclaw, WA.

My fondest childhood memory is playing in the woods near my house.

Nobody would ever suspect that I am superstitious.

Friends would describe me as "loved by everyone." That is a quote from a friend—because I asked. My other friend said "responsible." Guess who I love more?

Aside from my career, I am most proud of this: training for my half marathons. Running is not easy for me and so merely finishing a race is an accomplishment.

My worst habit is procrastinating. It's the worst of both worlds—active avoidance and then eating sweets.

An item I will never throw out is my piano.

My favorite restaurant is Pink Door.

My favorite musical artist is probably Mary J. Blige.

My favorite visual artist is Jacob Lawrence.

My all-time favorite movie or TV show is *The Godfather* and *The Godfather Part II*.

My hero is Maxine Waters.

I have been telling others not to miss Beyoncé's *Homecoming* documentary.



Luke with her husband, Joe, and daughters Violet (left) and Nora (right).

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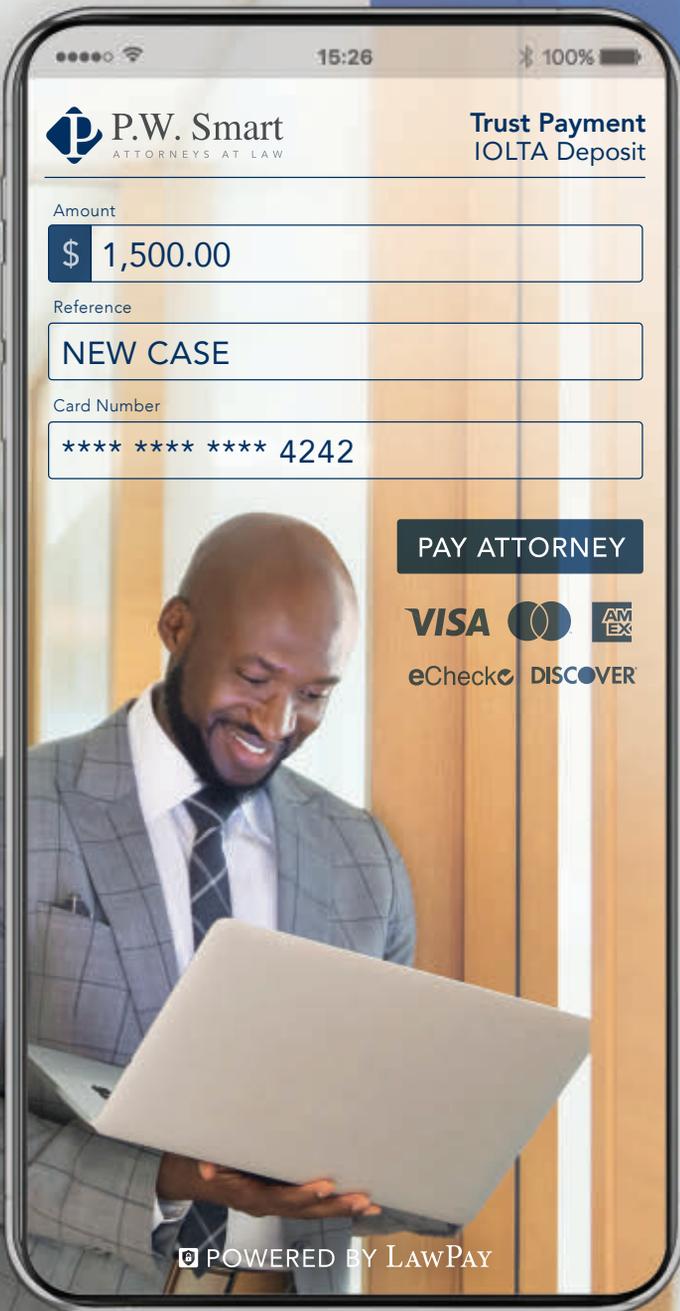
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