



Hon. Ronald J. Whitener

Chief Judge, Tulalip Tribal Court

by Ann E. Tweedy



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Hon. Ronald J. Whitener's path to serving as chief judge for the Tulalip Tribal Court started when he was a small child living in Kamilche, Wash., and accompanying his family in commercial fishing activities. A member of the Squaxin Island Tribe, he was 5 years old when the first, groundbreaking decision in *United States v. Washington*¹ was issued by Judge George H. Boldt, affirming that Indian tribes in Washington retained the right to fish at their usual and accustomed places when they entered into treaties with the U.S. government in the mid-1850s and that that right, including the taking of up to half of the fish available for harvest, continued into the present day. The United States filed the case in 1970 on the tribes' behalf to stop large-scale arrest and abuse by state and local officers of Native persons who were attempting to exercise treaty fishing rights, including an en masse arrest of 60 Native persons and their supporters in Tacoma, Wash., only days before the case was filed. The so-called Boldt Decision led to massive celebrations among tribal citizens, several years of defiance among state agencies, and outright rage, in many cases, among non-Indian fishers.²

Judge Whitener remembers fishing on a boat with his family shortly after the Boldt Decision was issued and recalls that it was an exciting time. He notes that the Supreme Court's affirmance of tribes' treaty fishing rights³ came just a few years later, at just about the time that he "was starting to be useful on a boat." He recalls the intense emotion on both sides following the Boldt Decision and the later Supreme Court case. When he was a child, his grandfather and father taught him about what things were like for Native people in Washington state before the Boldt Decision and about how the judicial confirmation of treaty fishing rights revitalized tribes. These experiences sparked the young Judge Whitener's interest in law, although initially he thought he would pursue a career in fisheries management or policy.

Judge Whitener's early gravitation toward fisheries management seemed a natural fit for him since he grew up fishing. He started out doing hatchery and shellfish-related work for the Squaxin Island Tribe at 16



and then moved into serving as a guard at the hatchery at night when he started college. Soon, however, he changed his schedule so that he was going to school at night and doing fisheries policy work for the tribe during the day. His work in shellfish and finfish policy deepened his interest in law, and he began to work on drafting and amending the tribe's codes in this area. Moreover, because the Squaxin Island tribal court was housed in the tribe's natural resources building, Judge Whitener saw firsthand the workings of the tribal court. Eventually, the court was made part of the natural resources department, since it focused largely on hunting and fishing violations, and was put under the young Judge Whitener's direction. Judge Whitener became more and more interested in tribal courts and began to serve on the board of the Northwest Intertribal Court System. This affinity for tribal courts—combined with reading some formative texts in college, such as Vine Deloria Jr.'s *Custer Died for Your Sins*—soon led him to law school.

In college, Judge Whitener majored in American Indian Studies, focusing on natural resources and environmental studies. At law school at the University of Washington in the early 1990s, Judge Whitener at first thought he would continue to focus in these areas, but, once he took the criminal defense clinic, he realized how

much he enjoyed being in court and working in the criminal law arena. He continued that focus throughout most of his career. But he hasn't left his interest in fisheries entirely behind—Judge Whitener still very much enjoys sportfishing, crabbing, and geoduck diving.

Judge Whitener's legal career first took him back to Squaxin Island, where he served as in-house legal counsel. He then served as a clinic director for the University of Washington and the legal services organization Northwest Justice Project, as an assistant professor at the University of Washington, and finally as a tribal judge and a consultant on tribal court development.

I asked Judge Whitener what the most rewarding part of being a judge was. He explained that the largest part of his docket at Tulalip comprises child abuse and neglect cases and that dismissing a case because a parent has accepted services and turned his or her life around is the most rewarding part of his work. He elaborated that seeing those who have come before him previously in a new case and finding out that they are doing well (e.g., have gotten sober) is also very inspiring.

I asked him to describe some of reasons he enjoyed serving as a judge for the Tulalip court, and he enthusiastically noted the Tulalip Tribes' commitment to its court system and its practice of consistently funding and supporting the court system. He explained that, for the Tulalip Tribes, the court system is up there with other extremely important priorities such as public health and safety. He is proud to serve on such an open court, where everything possible is done to make the court system accessible. He encouraged tribes to publish their codes publicly, as Tulalip does, and to follow Tulalip's lead in having nonmembers serve on juries and making court decisions public. Judge Whitener remarked on the fact that nonmembers have at times chosen Tulalip Tribal Court to resolve their disputes, even when no tribal members were part of the case. Judge Whitener is happy to serve on a tribal court that functions as well as a state court and yet still retains traditional aspects.

Judge Whitener also has been impressed with the quality of Tulalip's in-house attorneys. He explained that Tulalip has a lot of Native attorneys and that they are interested in solving problems and in doing the hard work that that requires. And he remarked on the fact that the court and the Tulalip Tribes have been willing to try out new initiatives and to explore new ways of doing things, such as taking on new subject areas and experimenting with different types of courts and solutions, as well as with different court structures. He views this openness as one of the keys to the court's success. He further noted that he really enjoys working with the Tulalip Tribal Council and appreciates the court's independence and accountability.

Regarding tribal courts in general, one of the areas where Judge Whitener sees a need for improvement is in creating a better bridge from practice to tribal judging. He explained that many lawyers in the Indian law field think that they want to be tribal judges, but a fair number realize after making the transition that it's not for them. Judge Whitener stated that he was grateful that the Chehalis Tribe took a

chance on him while he was still in academia, allowing him to serve as a judge part time. He said that there needs to be a better system for those who are interested to be able to try tribal judging on a part-time basis. He explained that it can be a difficult job because of the pressure on the judge to make a decision and the distance that judges are required to maintain from practicing attorneys. Because of these aspects, some people end up really liking judging, but others find out too late that it doesn't suit them at all.

He also explained that there is currently no system for training tribal judges, so most tribes must train judges on an ad hoc basis. One of the projects that Judge Whitener is most excited about at Tulalip is developing a benchbook and other materials for training tribal judges. This is one area where he can combine his law professor and judging skills.

I asked Judge Whitener who some of his greatest role models were. He did not hesitate before naming his father and grandfather. His father served as vice chair at Squaxin for 15 years, and his grandfather served as chairman and in multiple positions on the council. Both men were part of a group that revised the tribe's constitution in the 1960s, and Judge Whitener explained how meaningful it was to be able to find out directly from them why certain changes were made. He also spoke about his father's career as a math teacher in a long-term juvenile detention center. He was inspired by his father's example and the beliefs that he exhibited in that role. His father taught him that if you find the right way, you can change someone—but it takes a lot of work, as well as a willingness to accept that some approaches don't work and the wisdom not to blame the individual for that fact.

Judge Whitener uses his father's example in his work as a judge. To him it means setting and preserving boundaries while, at the same time, getting to know the people that come before him and letting them know—within those boundaries—that he cares about them.

Judge Whitener became embarrassed when I asked him about some of his biggest accomplishments as a judge. Finally, he said, "The reason I'm where I am today is as much about my parents as me." He explained that his parents made sure he grew up in a house where education and a work ethic were priorities and where their lives were free of chaos, such as the chaos caused by substance abuse. He ended by saying that he thinks his parents are proud of him and that that's his biggest accomplishment. ☺

Endnotes

¹*United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976).

²Walt Crowley & David Wilma, *Federal Judge George Boldt Issues Historic Ruling Affirming Native American Treaty Fishing Rights on February 12, 1974*, HISTORYLINK.ORG (Feb. 23, 2003), <http://www.historylink.org/File/5282>.

³*Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979).