

DUANE SWINTON ACCEPTANCE SPEECH FOR ANDERSON AWARD
AT 2010 WCOG ANDERSON-MADISON BREAKFAST

Thank you, Scott, for that kind introduction.

I want to reiterate that this is an award for the firm of Witherspoon Kelley. Over the last four years, Witherspoon Kelley lawyers have put in hundreds of hours preparing some dozen *amicus* briefs on behalf of WCOG and participating in the Referendum 71 litigation. Participation in such extensive litigation required a team effort.

I would like to particularly recognize Steve Dixson, who is in attendance today, and Les Weatherhead as two of the lawyers at Witherspoon Kelley who have contributed greatly to the Referendum 71 litigation.

In many respects this award today and our firm's current involvement in access and open government issues brings the firm full circle to its beginnings.

Those of you on the west side of the state may not know that Witherspoon Kelley is the oldest continuously operating law firm in the State of Washington. The firm was founded in 1884, five years before Washington became a state, and, as I have to continually remind younger lawyers in the firm, I was not present when the firm was founded. The firm actually survived two fires in Spokane in the 1880s and 1890s.

One of the firm's early partners was George Turner. Turner was one of the first federal judges for the territory of Washington and one of the first United States senators from the state. He was a personal friend of Teddy Roosevelt. More importantly, he is generally recognized as the father of the State of Washington's Constitution. When the constitutional convention convened in Olympia on July 4, 1889, Turner was one of 75 delegates and a driving force in presenting a proposed Constitution to the voters of the state for adoption on October 1, 1889.

Washington's Constitution is recognized as one of the strongest state constitutions in the country, and is replete with references to the principles of individual rights and liberties and self-governance by the people. Article I, Section 4 refers to the right of citizens to petition government, Article I, Section 5 to freedom of speech, Article I, Section 10 to the guarantee of open court proceedings, Article I, Section 11 to religious freedom for individuals, and Article II, of course, to the right of the citizens to pass laws through the referendum and initiative process.

There are also two other provisions of the State Constitution, as adopted in 1889, that I would like to reference. Article I, Section 32 is entitled "Fundamental Principles" and states that "a frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government." One of these fundamental principles that is so essential to the security of individual right and the perpetuity of free government is the first section adopted in Article I, the section being entitled "Political Power" and which states "all political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights."

I would like you to consider also the language of Article I in conjunction with the following language from a statute adopted in the State of Washington:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.

This statutory section clearly reflects the concepts of individual liberty and rights and self-governance set out in the Constitution when it was adopted in 1889. You may also recognize this statute as the preamble to Washington's Public Records Act, RCW 42.56.030, and as the language that was included on the ballot when the Public Records Act was adopted as Initiative 276 by the people of the State of Washington in 1972.

That Witherspoon Kelley has come full circle is reflected in the fact that the firm today is able to participate in access and open government issues that find their foundation in the principles incorporated by George Turner and others in our state's Constitution in 1889.

What the Public Records Act does is to provide a tool to enable citizens to monitor, understand and control how government operates. It brings meaning to the constitutional principles that are the foundation of this state.

The lawyers at Witherspoon Kelley have been fortunate and are gratified to have been able to help keep that important tool sharp and effective. Since the Public Records Act was adopted, the firm has represented clients in some three dozen reported open government cases in Washington. In addition, we have been involved in FOIA issues in federal court and in open government cases in the State of Idaho. These cases have involved a variety of matters, including access to search warrants and affidavits of probable cause, access to trial exhibits, access to police incident and internal affairs reports, access to teacher disciplinary records and access to e-mails of government officials.

While we have not won all of these cases in terms of accessing the records in question, we have hopefully participated in keeping public agencies and officials aware of the access rights of citizens and their need and right to be informed about how government operates.

I would be remiss if I didn't stress to this audience the importance of such watchdog groups as the Washington Coalition for Open Government, which monitors compliance by agencies with open government laws, which lobbies the legislature concerning open government, and which helps educate citizens throughout the state as to open government principles. Volunteer organizations, such as WCOG, are key in ensuring that the fundamental principles of self-governance and individual liberty in this state remain meaningful and vital.

I probably receive two to three dozen e-mails each day from WCOG members involving open government issues and am sometimes amazed at how prolific some WCOG board members are in sending out e-mails concerning open government matters. I applaud WCOG members and my fellow WCOG board members for their significant volunteer efforts in this regard.

We at Witherspoon Kelley have truly come full circle from when George Turner crossed the Cascades to attend the constitutional convention and put in place the principles that are key to the operation of government in this state.

We at the firm are truly grateful at having been given the opportunity by the Coalition and other clients to participate in carrying forward the principles first espoused in our State Constitution by George Turner and others of a government where authority and power lie with the people. Our contribution, we hope, has been to help keep the tools of openness – such as the Public Records Act – sharp and effective so that these constitutional principles of self-governance are more than mere words on paper but rather are given life and meaning through citizen access to information about how government operates.

Witherspoon Kelly looks forward to continuing our open government efforts in the future (although I am sure I won't be around when Witherspoon Kelley celebrates its next 126 years).

Thanks again from the lawyers at Witherspoon Kelley to the Coalition for this fine award.