



GERRY ALEXANDER

PEACEMAKER REWRITES HISTORY

By Bob Young

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Gerry Alexander was at the pinnacle of his career in 2006. He had been a judge for three decades. His peers on the Washington Supreme Court had again chosen him chief justice. He was a congenial centrist who helped pull back the tasseled drapes of the court with televised gavel-to-gavel coverage and his open-door-take-any-calls style.

A local boy who made good without wandering far, Alexander had a dash of Jimmy Stewart's wholesome looks and folksy manner. He didn't talk down to anyone, a fellow justice noted. And he applied this test to his Supreme Court opinions: Could he explain them to his barber?

He didn't even draw an opponent in his previous bid for a six-year term on the high court. A history buff, he took the political capital earned from his sterling reputation and spent it making amends for notorious blemishes in the state's past, such as the 1858 hanging of local Indian leader Chief Leschi.

But some were suddenly claiming that Chief Justice Alexander, on the cusp of turning 70, was past his prime and flirting with senility. And they weren't whispering. They were advertising it in an offensive led by the building industry under its conservative leader Tom McCabe. Several reporters used "knuckles"—bare and brass—to describe his style. When Alexander sought another term in 2006, McCabe's group, the Building Industry Association of Washington, hammered the chief justice.

A television ad criticized the "same, old tired record of Justice Gerry Alexander." A radio version reminded us he had worn a robe back when Richard Nixon was in the White House. "When it's your time, you know it," the builders' ad said. "You're tired, you get sloppy, you make mistakes." Alexander "has not only lost a step or two," it concluded, "he's done real damage."

Seeking a little relief, Alexander and his wife slipped away one night to a favorite haunt, an Olympia cinema. The lights dimmed in the movie house and the big screen lit up. Alexander, a movie enthusiast, saw something neither he nor veteran

political reporters had witnessed before—a campaign pitch before a major motion picture.

Alexander, the longest serving chief justice in state history, watched the ad extol the virtues of his opponent, John Groen, a Bellevue property-rights attorney. “Just totally ruined the movie experience for me,” Alexander recalled.

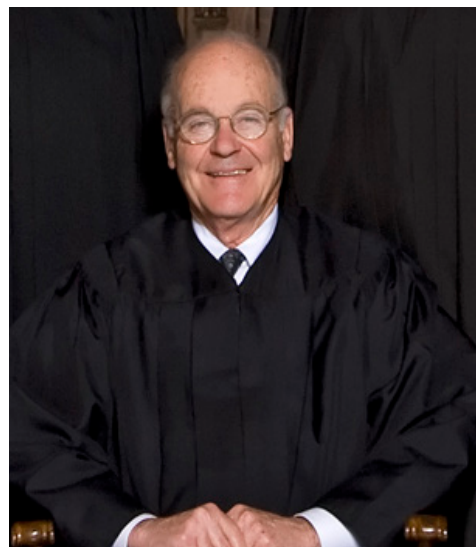
The campaign was shaping up as the most daunting of his career. Record spending by his adversaries was part of a national trend shaking the judiciary. Once sleepy and genteel, judicial elections in states such as Washington were turning into high-priced ideological melees covered by *The New York Times*.

Because of the explosive spending by special interests, the Washington Legislature, in March 2006, set new limits on contributions to judicial candidates. Alexander voluntarily obeyed the new caps before they took effect in June. His opponent did not. Alexander had disarmed himself in the OK Corral.

Then he seemed to invite more enemies to the duel. He urged his fellow justices to get a ruling out on perhaps the most controversial case in a generation of Washington Supreme Court decisions. The court had heard arguments about the state’s ban on same-sex marriage a year earlier but hadn’t issued an opinion. Alexander did not want the court to look like it was ducking a tough call to protect the three justices, including himself, who were on the ballot.

He would end up casting the decisive vote in the “most emotional case” of his Supreme Court career. He would call it his most unpopular decision. He would soon experience the most difficult day in his public life.

And there would be no immediate relief. Foes ran ads suggesting he coddled killers and drunk drivers. So much for the truth, the whole truth, and nothing but the truth—both claims were grossly distorted, as was the “tired” ad. On a drive to Seattle, Alexander saw an ad touting his opponent on an electronic billboard north of Tacoma, looming over Interstate 5. He told his wife, after the messages seemed to follow him from the theater to the freeway, “I might get whipped.”



The Building Industry Association of Washington spent nearly \$1 million trying to unseat Alexander in 2006, claiming he was “out of touch with voters.” *Washington Courts*

IF ALEXANDER'S STORY was a movie it would begin in April 1936 with a newspaper headline spinning around and around until it landed on "Births," and just below that, an announcement about the arrival of a son to a couple who had been Aberdeen High School sweethearts, Helen Huff and Edwin J. "Eddie" Alexander. The father was now the "exalted ruler" of the Aberdeen Elks lodge, the clipping said, and circulation manager of the *Grays Harbor Washingtonian*, Hoquiam's morning newspaper.

The first name on the boy's birth certificate was "Gerry"—pronounced with a hard "g," as in "Gary." He was apparently named after an ancestor. For the rest of his life he would gently correct people who called him "Jerry."

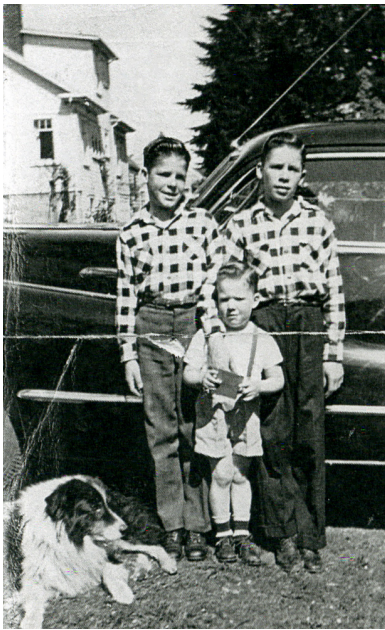
His next appearance in the news was headlined "Tot, 3, Safe After Long Street Tour." Frustrated one Saturday that he couldn't go to work with his dad, the three-year-old Alexander set out on what *The Aberdeen Daily World* called a little "Marco

Poloing." He made a solo 22-block journey to find his father's workplace. He stopped traffic while crossing downtown Aberdeen intersections. He stuck his hands in his junior-overalls while stopping to gaze at a Sears-Roebuck window display.

Eddie Alexander was a cheery go-getter, known for his fiery patriotic speeches at the Elks lodge. While working in sales and promotions for radio station KXRO in Aberdeen, he would lower a microphone from his office window to the sidewalk for "man on the street" interviews.

A stalwart Republican, he ran for Congress in 1940, a party loyalist willing to put his name on the ballot at a time when Democrats were gliding on the coattails of Franklin D. Roosevelt, who won 58 percent of Washington's presidential votes that year. In the primary field of seven candidates, Eddie finished dead last. But it wouldn't be his last race.*

His allegiance caught the attention of Governor Arthur B. Langlie, the only Republican to



Gerry (left), with his brothers, John (right) and Bob, and Tippy the dog, in Olympia. *Gerry Alexander*

* Eddie ran three times for statewide office in the 1960s, losing twice for State Treasurer, and once for Secretary of State. He took another stab at Congress in 1962 and lost to incumbent Democrat Julia Butler Hansen.



Gerry's dad, Eddie, was a softie about disciplining his boys. His mom, Helen, played Lady Justice at home. She died at 49, from breast cancer. *Gerry Alexander*

win a 1940 statewide or congressional election in Washington. Langlie hired Eddie to work in the first of his three nonconsecutive terms. Eddie started in the budget office. When voters tossed Langlie out in 1944, Eddie became business manager for *The Olympian* newspaper. After Langlie won the governor's office back in 1948, Eddie, later known as "Mr. Republican," became state director of personnel.

The spoils system was widespread then and state employees tended to be hired by the ruling party. But Gerry Alexander said he later heard from people who praised his dad for letting them keep their jobs although they were Democrats. In a later tribute, a columnist for *The Olympian*, Mike Contris, recalled how Eddie welcomed his Italian American family to an afflu-

ent Aberdeen neighborhood. Others had told Contris' father they didn't want "dagos" living on their street.

Young Gerry and his family followed Eddie to Olympia in 1942, taking up residence in the capital city's west side. His early years could have inspired a Frank Capra picture. He delivered papers to 140 homes in his neighborhood. On the school playground he and his friends argued whether Gene Autry or Roy Rogers was the greatest movie cowboy. ("I was sort of a Roy Rogers guy," he says.) Summers meant vacationing near sand and salty breezes in Grayland and Tokeland, places he still relishes. "I'm not a Pollyanna but I have really fond recollections of my grade school and high school years," he says. "It was a great town to be raised in." Albeit not a diverse one. During his four years at Olympia High, he says just one African American student attended the school.

He is nagged by one memory. It happened when the family was far from Olympia, visiting his uncle in California. He and his brother John, who was three years older, went to a driving range. John, who had a condition then known as "spastic paralysis" couldn't strike a golf ball very well. Some high-school kids were hanging

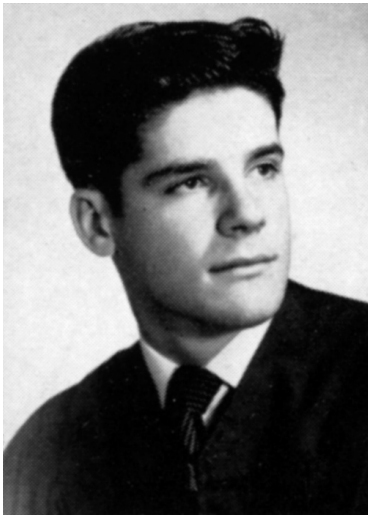
around outside the driving range fence.

“And they were laughing at him,” Alexander recalls. “And I was young, maybe in the seventh grade. It always bothered me that I didn’t go over there and fight them or something. I was just so upset by this. But I didn’t. I just ignored it. I’ve thought a lot about that. I thought about it the other day. I should’ve gone over and tried to make them feel bad or offer to fight them or something.”

Eddie’s backslapping style didn’t lend itself to raising brawlers, or disciplining his three sons. (Gerry was the middle child between brothers John and Bob.) “I don’t think my dad ever laid a glove on us. He was a real softie,” Alexander says. His mom played Lady Justice, laying down the law, stern and fair. She also handed down grains of wisdom. “I find myself quoting my mom on a lot of stuff. She used to say, ‘You get more flies with honey than vinegar.’ I still remember those things more than maybe what my dad said.”

At Olympia High he was popular enough to become president of the student body in his senior year. “I was an average student,” he recalls. “I think I was more a congenial politician.”

Classmates who signed his 1954 yearbook called him “Al” and “Alex” and “Ger.” They recalled what fun they had at parties and working on a school play. They repeatedly wrote that he was a “swell” president in “swell” times. One said, “Maybe we’ll see you some day when you’re a famous lawyer.”



Olympia High friends called Alexander, student body president in his senior year, “Al” and “Alex” and “Ger.” *Washington State Archives*

He had a vague interest in the law. On vocational days at Olympia High, he signed up to shadow an attorney. “I can’t even explain why,” he says. Back when Olympia High was located a few blocks from the Supreme Court’s headquarters, Alexander would amble over to the Temple of Justice. He’d scale its steps, slide between its towering columns, admire its marbled majesty, lit by 60-bulb chandeliers, and think “it might be a cool place to work.”

He worried about his future, though, when a teacher intercepted evidence that he and other students were betting on college football. The stakes were low, just a dime or quarter. But he was the student-body president and many of the school’s football players were also caught in the act. Their misconduct got the attention of Principal Willard J.



A substitute running back at Olympia High, Alexander would pass NFL Hall of Famer Lynn Swann near the finish line of the New York City Marathon 40 years later. *Washington State Archives*

Matters. “He called me in,” Alexander says, “And I thought, ‘Oh God, I’m gonna get kicked out of student-body president. This is going to mark me for the rest of my life.’” Matters gave him an hour of detention.

In his senior year, Alexander was a 150-pound substitute running back on Olympia High’s 1953 state champion football team. That was back when helmets didn’t have face masks. And his mother worried her son would get his nice straight teeth knocked out. The Olympia Bears went up to Seattle to play Queen Anne High for the state title. In front of a Thanksgiving Day crowd of almost 13,000—nearly the size of Olympia’s entire population then—the two undefeated squads battled in a low-scoring “drumstick duel.” Olympia had a touchdown nullified by a penalty and one of Queen Anne’s best players left the field with a broken arm in the third quarter. The Bears beat the big city boys, 7-6. Alexander got in for three plays, blocking for Olympia’s punter. His teeth remained in place along with a charming smile.

Neither of his parents went past high school in formal education. But it was just assumed he would attend college—and, of course, it would be the University of Washington.

“IF I COULD GO BACK IN A TIME MACHINE, and do those four years again, I would. I really loved it,” Alexander says of his undergraduate days at the UW.

It wasn’t so much being in Seattle he cherished. It was more the camaraderie of his fraternity brothers and their active social life. “I could’ve been a better student, but I had a helluva good time at the university,” he says.

They were happy days all over America. World War II hero Dwight Eisenhower was president, and even if you didn’t “like Ike,” you almost certainly respected him. The country was prosperous and at peace. Benefits for veterans included low-cost mortgages, low-interest business loans, and financial aid for education. Fraternities and sororities were popular in the conformist 1950s—and they were much



Alexander swears his fraternity days at the UW were nothing like “Animal House.” *University of Washington Special Collections*

different, much more polite, Alexander says, than what was portrayed in “Animal House,” set about a decade later.

“College boys drink beer. We did,” he says, but he swears he never tasted a drop inside the Sigma Nu house. (“I don’t think I can convince anybody of that today,” he says.) Instead they held “exchanges” with sororities, featuring punch and cake and maybe some dancing. Ill-mannered brothers were scolded for a “poor show,” which often meant they didn’t treat a woman in gentlemanly fashion. “There was a lot of emphasis on proper relationships between a man and a woman.”

He majored in history. His favorite professor was Giovanni Costigan, a specialist in Ireland and England. Costigan was also a liberal who spoke out against fascism, red-baiting and the Vietnam War during his half-century career. “He was very charismatic. And even then conservative people loved the guy,” Alexander says.

Then Gerry met Sally Hawkes, and the co-ed from Bellevue became his major interest. She wore his fraternity pin during his senior year in a sort of pre-engagement commitment.

The only cloud over his undergraduate years, was his mother’s death, at 49, from breast cancer.

He participated in the Reserve Officers Training Corps at the UW. He practiced drills, took military classes, and in exchange for \$27 a month in his junior and senior years, he went into the U.S. Army active duty for three years after graduating. He started as a second lieutenant and infantry platoon leader. He was assigned to Fort Lewis, 25 miles from his hometown. Hoping to get into a more exciting airborne unit, he headed back to Fort Benning, Georgia, site of his basic training. He made five jumps from a C-123 in his airborne tryout. But he was competing against Marines, who were so gung ho, he jokes, they would’ve jumped without a chute. They weren’t going to get left behind by Army college boys.

Sent back to Fort Lewis, Alexander got a taste of lawyering. Then, if a soldier was accused of a minor offense, such as an unexcused absence or petty larceny, they weren’t assigned a lawyer. Instead, they were represented by a junior officer who had

studied the military justice code as part of their training.

“I did a lot of that and really liked it,” Alexander says. “So I thought maybe I want to go to law school.” He knew he didn’t want to spend his career in cold wet foxholes with the infantry.

During his active duty, he and Hawkes were married in 1959. He entered UW Law School in 1961, with a different, more serious attitude about studying. He likened law school’s ruthless rigors to the 1972 movie, “The Paper Chase.” It depicts a Harvard Law School professor so intimidating he makes grown men squirm, stammer and attempt suicide. “It was not a nurturing atmosphere at all,” Alexander says of law school. “And they actually did have this deal where they said, ‘Look to your right, and look to your left. They won’t be here when you graduate.’”

He didn’t work during the academic year. The Dean had warned that law school was a full-time job. He and Sally had saved money when he was drawing paychecks from the Army and she taught public school in Dupont. She helped support him in law school while teaching in the Shoreline district. In his third year, Sally was pregnant and the couple were “poor as church mice.” They moved into subsidized housing at Rainier Vista, a project in South Seattle built for World War II defense workers. “They were wooden buildings, single story. And they weren’t fancy at all, with paper thin walls and so on,” he recalls. “But, it was clean.”

OLYMPIA HAD 33 ATTORNEYS in private practice when Alexander was admitted to the bar in 1964. He knew because he counted all of them in the local phone book. He had lived in a big city, was stationed in the Deep South, traveled around Europe, and possessed a skill marketable almost anywhere. He only looked for work in Olympia. “I just adored my childhood. I thought it was the right-sized town,” he says.

In those days almost every Olympia attorney was a general practitioner. “You did everything that came in the door, just about. Specialists didn’t exist in towns



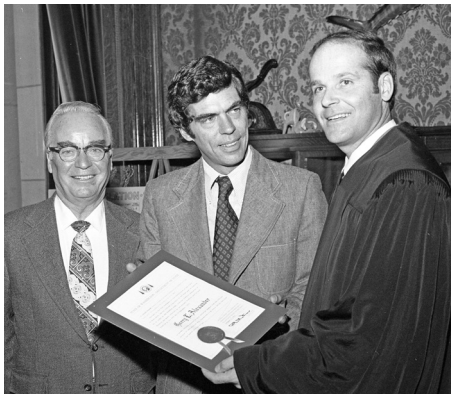
After getting his undergraduate degree, Alexander became an infantry platoon leader in the U.S. Army. *Gerry Alexander*

of this size.” He handled everything from divorces to a death-penalty case.

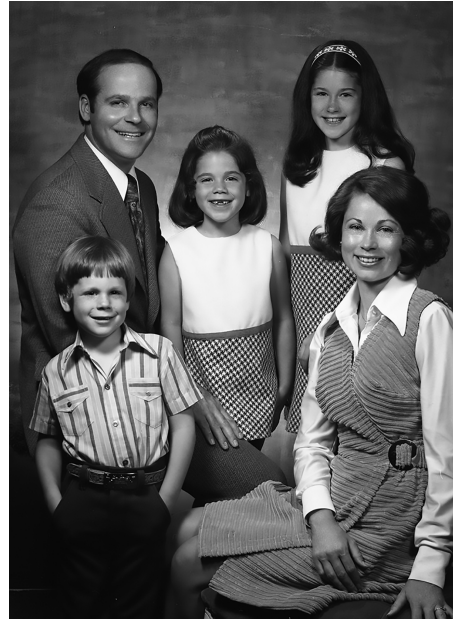
Thurston County didn’t have a public defender’s office at the time. So young lawyers were appointed to represent those who couldn’t afford an attorney. In 1969, Alexander was selected to represent William Sorby, then 18, and charged with setting an Olympia house fire in which his father and a sister and brother died. Sorby pleaded not guilty to first degree murder.

A psychiatrist said that Sorby was insane. “So our defense was kind of an odd one: he didn’t do it, but if he did, he’s criminally insane.” The jury’s verdict sent Sorby to Western State Hospital. He stayed there less than two years, Alexander says, before the hospital released him. “I’ve never heard anything about him. So I guess he’s never killed anybody else.”

After 10 years in private practice, Alexander was ranked at the top of a bar association poll on who should be appointed to open judgeships.



Eddie Alexander (left), who once ran for Secretary of State, with Secretary of State Lud Kramer at Gerry’s swearing in as a judge. *Washington State Archives*



Gerry and Sally in 1973, with children Andrew, Anna and Amy. *Washington State Archives*

In 1973, Governor Dan Evans named Alexander, then 37, to a Superior Court judgeship in Thurston and Mason counties. He was soon described as the youngest-looking judge on the bench, with a reputation for lenience in sentencing. He was at ease in the role, saying later that he knew he’d rather be making decisions than advocating for them. “It felt like it fit my personality better than being a lawyer. I liked having questions posed to me and being able to choose from the different options the court has in a case.”

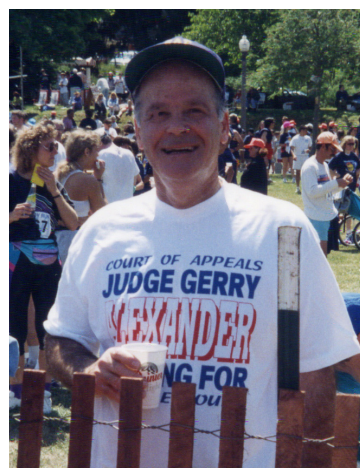
After 11 years as a Superior Court judge, he moved up to a more exclusive level of the judiciary, the Court of Appeals. There were

only 16 appellate court judges statewide. (He ran unopposed in 1984 after he first called all the judges in the six-county division of the appeals court and found none were planning to seek the open seat.) From his new perch, the differences between the two courts became even clearer. In trial courts, where cases start, judges are like baseball umpires, “calling ball and strikes up there every day.” Versed in rules of trial conduct, they decide what evidence can be presented, and what questions can be posed to witnesses. Appellate courts are more academic. There are no jurors or witnesses. They do not see new evidence. They want to know if the law was applied appropriately in lower court rulings. The final authority on interpreting state policy and law rests with the nine justices of the state Supreme Court.

While on the Court of Appeals, Alexander taught “Professional Responsibility” for four years at the University of Puget Sound School of Law. His students included future Washington Speaker of the House Laurie Jinkins and Thurston County Prosecuting Attorney Jon Tunheim. Ever the movie fan, he showed his students “The Verdict,” in which Paul Newman plays an alcoholic lawyer who rediscovers his moral compass and wins a medical malpractice case against a culpable hospital and its powerful attorneys. As for other favorite courtroom dramas, Alexander says he’s partial to several that dwell on military trials: “A Few Good Men,” “Paths of Glory,” and “Breaker Morant.” His favorite movie overall is “Wizard of Oz.”

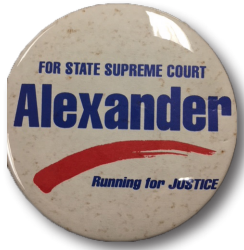
WHEN ALEXANDER TOOK AIM at an open seat on the state Supreme Court in 1994, he was 58. His thick dark hair had thinned considerably. But he was in good shape. He ran the New York City Marathon the year before and passed NFL Hall of Famer Lynn Swann, 41, near the finish line. (Swann, then a broadcaster for ABC Sports, was rigged with audio gear and reporting on his run.) Alexander bumped into Swann in a hotel elevator afterward. The judge introduced himself and joked that he was going to “tell everyone in the Northwest” that he beat the famously fleet wide receiver.*

“Running for Justice” was his campaign theme. He would be challenged all the way to the finish line. His opponents were two formidable women—Janice



“It fits my personality. I like people. I like talking to them,” Alexander says about being a judge. *Gerry Alexander*

* Alexander finished in 4 hours, 25 minutes and 37 seconds—64 seconds before Swann, according to marathon records. 26,578 runners participated in the November 14 race; 14,558 finished ahead of Alexander.



Alexander's Supreme Court campaigns were managed by his younger brother, Bob, an insurance executive in Seattle. *Washington State Archives*

Niemi, a Democratic Seattle state senator, and Faith Ireland, a King County Superior Court judge—at a time when women in politics were ascendant.

Patty Murray, who billed herself as “just a mom in tennis shoes,” had decided to run for the U.S. Senate two years earlier after watching the way male senators treated Anita Hill's allegations of sexual harassment against Supreme Court nominee Clarence Thomas. Murray became Washington's first female senator in “The Year of the Woman.” In 1992, women won three other statewide posts for the first time: Jennifer Belcher became lands commissioner, Chris Gregoire, attorney general, and Deborah Senn, insurance commissioner.

The Washington Supreme Court was getting a makeover too. Carolyn Dimmick had been the first female justice when she was appointed to an opening in 1981. In 1992, Barbara Madsen made history as the first woman elected to the high court without first having been appointed. Notably, Madsen had defeated Elaine Houghton, a respected attorney, in the first state Supreme Court election in which two women faced off in a November election.

Houghton also broke new ground by sinking more than \$430,000 into her campaign, a preview of spiraling spending to come in court races.

In 1994, a business group called the Liability Reform Coalition, which included Boeing, Safeco and Weyerhaeuser, quickly poured \$42,000 into mailers supporting Alexander and two other male candidates. That so-called independent expenditure—made without Alexander's awareness, never mind his blessing—was more than had been spent by *all* Supreme Court candidates in 1986 and 1988 *combined*.

Independent expenditures had two main advantages over traditional campaign contributions. They were exempt from contribution limits. And by dint of their arm's length relationship to candidates they were helping, they could produce nasty ads and their candidates wouldn't be held accountable for them.



Barbara Madsen, a former Seattle Municipal Court judge, became the first woman elected to the state Supreme Court without first being appointed to an opening. *Washington Courts*

The judiciary in Washington, as in other states, was entering a new era. The number of players who wanted a say in judicial races, as well as the stakes to play, were escalating.

Concerted efforts to reshape the judiciary were traced to doctors and business leaders in Texas who wanted to cap punitive damages in lawsuits. In Washington, business interests had successfully lobbied for a 1986 law capping the size of many damage awards in lawsuits. But three years later the state Supreme Court struck down a key piece of the law that set limits on how much a jury could award in pain-and-suffering damages. Business leaders realized they had ignored one part of the battleground.

After that, the Liability Reform Coalition would no longer limit its campaign contributions to races for the Legislature. “We were only looking at half the equation,” a spokesman said. Now the group’s funds would also be deployed to Supreme Court contests.*

Supreme Court Justice Robert Utter—whom Alexander admired greatly—warned of the danger to judicial impartiality. “When special interests square off against one another in these races,” Utter said, “The issue of who is the better judge becomes subordinate to who will support our position.”

The faces of judicial elections were also changing. Races that had been a bastion of white, male Republicans were now becoming a “calculus of name and gender politics.” The King County Bar Association rated Alexander better qualified than either of his opponents. But Niemi and Ireland branded Alexander as “insensitive” to women’s issues. Alexander said he felt as if he’d been punched in the gut. The two women split 56 percent of the primary vote, with Niemi edging Ireland for a spot on the November ballot against Alexander, who finished ahead of both of them.

Ireland ripped Alexander after she was knocked out of the race. In what the *Seattle Post-Intelligencer* called the kind of attack rarely made by a judge, Ireland said Alexander’s “preoccupations are white, male and corporate.” She cited a decision he wrote for the appeals court, affirming a trial court ruling. It said an insurance company wasn’t liable when a dentist sexually assaulted a patient after giving her nitrous oxide gas.

Alexander pointed out that he was one of three judges who unanimously ruled that malpractice payments were for medical errors, not deliberate assaults. “It was totally an insurance coverage question. And the insurance did not cover intentional acts of wrongdoing,” he said.

* Senator Niemi didn’t blame Alexander for the coalition’s support of his campaign. More than anything in his record, she attributed it to her criticism in the Legislature of the pro-business liability limits.



King County Superior Court Judge Faith Ireland finished third in the 1994 primary for an open seat on the Washington Supreme Court. *Jams Mediation*

Karen Seinfeld and Elaine Houghton, both Court of Appeals judges, published a letter in Tacoma's *News Tribune* in Alexander's defense. They stressed that Ireland, a judge herself, ignored four judges' interpretation of policy and instead complained Alexander was insensitive. Another judge called her outburst "felony sour grapes."

Alexander said he didn't hold a grudge against Ireland who later served alongside him as a Supreme Court justice. "I just kind of chalked that up to the fact that she was just really depressed that she hadn't made the finals. And from my standpoint, that was a godsend because she was a real hard worker and a good campaigner."

He beat Niemi in 29 of 39 counties. Although he lost on her turf in King County by almost 26,000 votes, his margins in Thurston and Pierce counties, where he lived and worked, more than made up for that deficit. He won with 53 percent of the statewide vote.

After his first term, his peers elected him chief justice. With women a majority of the court in 2004, his peers chose him again for a four-year term as chief justice. He later won an unprecedented third term as chief in 2008. The job called for him to preside over the court's public hearings, serve as the administrative head of the state's judicial branch, and act as the court's main spokesperson.



State Senator Janice Niemi won second place in the 1994 primary and faced Alexander, the top vote-getter, in the November election. *Washington State Historical Society*

ONE OF ALEXANDER'S FIRST PRIORITIES as a justice was to look into televising coverage of Supreme Court hearings on TVW, the state's new public-affairs version of C-SPAN.

Some legislators had reservations about video cameras recording their work. They worried about members caught snoozing, or preening, or feeling muzzled by constant scrutiny—and they had concerns about partisan influence on the TVW board. They wanted to negotiate some rules. But the Supreme Court steamed ahead,

under a recommendation by Alexander and Justice Charles Z. Smith, who were given the task of weighing the idea. TVW debuted on April 10, 1995. Its inaugural program was taped coverage of a death-penalty appeal. TVW's first president, Denny Heck, joked that the network's motto was "Dare to be Dull."

The terrorist attacks of 9/11 brought increased security, along with pocket-and-purse searching lines, to public buildings six years later. Chief Justice Alexander and his colleagues decided against installing metal detectors in the Temple of Justice. While most county courthouses in the state would employ security checkpoints at entrances, the Temple of Justice remained without them. With all of the tourists and students coming through the building, "I just didn't want young children feeling like they were coming into a prison or something," he says.*

Alexander really believed in openness and accountability, says Kathy George, a former law clerk. The chief justice's office is on the Temple of Justice's main floor, a quick stroll from the court's public entrance. Judges make people mad with their decisions, George notes. But Alexander kept his door unlocked so visitors could walk right in. The other eight justices were behind locked doors. In recent years, the chief justice has also been behind a locked door.

While Alexander was scaling the judicial ladder, his personal life was not so serene. He and Sally divorced in 1993. "She was a great mother, a good wife. After our kids got raised and into college...I guess I wanted to be more independent. But I think the world of her."

The greatest legacy of their marriage, he says, is their three kids, three grandchildren and two great grandchildren. "That's 11 good people we've contributed to the world that flowed out of our marriage. I'm really proud of that. And I know she is too."

He met Christine Broomfield, a Canadian law librarian, at a conference in Vancouver, British Columbia. They married in 1996.

As the court's 52nd chief justice, he took the opportunity to reply to a poignant request on behalf of a pioneering UW student, Takuji Yamashita.

In 1902, Yamashita, an immigrant, was the first Japanese student to graduate



The Alexander kids grown up: Amy, Anna and Andrew. *Gerry Alexander*

* Almost 25 years later, Alexander sees no downside to televising appellate court hearings, and no good arguments why the U.S. Supreme Court shouldn't follow Washington's lead.



Gerry married Christine Broomfield, a Canadian law librarian, in 1996. *Gerry Alexander*

from the UW's fledgling law school. But his ability to practice law was questioned by the Washington Supreme Court, because he was not a member of "any branch of the white or whitish race." The 14th Amendment, ratified after the Civil War, extended citizenship to any child born in the U.S. and to people of African descent. But it left in place an earlier order by Congress that otherwise limited citizenship to "free white persons."

Prejudice against Asian immigrants had surfaced in the late 1800s, first against Chinese men. Some whites saw the Chinese as an economic threat and harbored "hatred of their differences in culture and appearance." In 1882, Congress passed the Chinese Exclusion Act barring Chinese workers from entering the country and prohibiting those in the U.S. from becoming citizens. (The act was not re-

pealed until 1943 when China was an American ally during World War II.)

Anti-Asian sentiment then spread to Japanese immigrants, many of whom had been recruited to fill the labor gap created by Chinese exclusion. Just weeks after Yamashita entered law school, a mob of whites in Pierce County fired shots at an unarmed group of Japanese hop pickers.

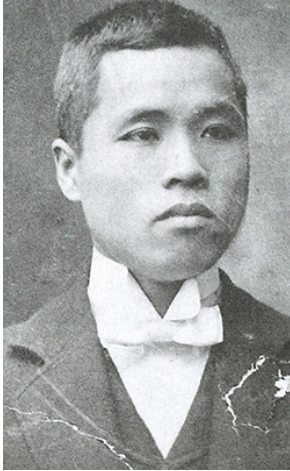
Yamashita made his case in a 28-page brief to the Supreme Court. He reasoned that his exclusion from the bar was not befitting of a nation "founded on the fundamental principles of freedom and equality."

Arguing for the state, Attorney General W.D. Stratton mocked Yamashita's "worn-out, star-spangled orations."

The Supreme Court justices acknowledged that Yamashita was "intellectually and morally" qualified to become an attorney. But he was not eligible to become an American citizen. And only



1902 UW Law School graduates, all of 10 of them, including Takuji Yamashita. *UW Special Collections (Yamashita Collection)*



Yamashita couldn't practice law in Washington because he was an Asian immigrant.
UW Special Collections
(Yamashita Collection)

citizens could practice law.

Yamashita turned to a career in business. Bankrolled by a Japanese mentor, he opened a restaurant and hotel in Bremerton. But he could not be listed as “owner” of his business properties because Washington law banned Asian immigrants, then ineligible for citizenship, from owning land.*

This extremism had been urged by a group of Seattle businessmen calling themselves the Anti-Japanese League. The league’s president, Miller Freeman, warned that the diligent Japanese were unstoppable. “They will work harder, deprive themselves of every comfort and luxury, make beasts of burden of their women, and stick together, making a combination that America cannot defeat,” Freeman said.

Yamashita and his family persisted. They raised oysters and strawberries in Silverdale. But after Japan bombed Pearl Harbor in December 1941, locals wouldn’t buy the Yamashitas’ products. Then, the U.S. government rounded up 110,000 people of Japanese ancestry on the West Coast and incarcerated them in so-called “internment” camps. After three years of imprisonment, the once-promising lawyer seemed resigned to his place in America. He became a live-in housekeeper for a widow in West Seattle. He moved back to Japan in 1957 and died two years later.

Congress didn’t allow Japanese immigrants to become U.S. citizens until 1952. Washington state didn’t repeal its Alien Land law until 1966. And the U.S. Supreme Court didn’t grant aliens the right to practice law until 1973.

With the UW School of Law approaching the centennial of its first graduating class in 1901, Dean Roland Hjorth, along with the State Bar Association and the Asian Bar Association of Washington, wanted some justice for Yamashita. They petitioned the state Supreme Court to posthumously admit him to the bar—the state-sanctioned organization that licenses all practicing lawyers in the state.

Chief Justice Alexander was game. “Just as it was important to make reparations to the Japanese who were interned, it’s important to symbolically right this wrong,” he said.**

* The 1920 census reported 17,387 Japanese residents in the state. Japanese farmers then “supplied nearly 75 percent of the vegetables consumed in King County and nearly half the dairy products.”

** In 1988, President Reagan signed a law to compensate people of Japanese descent who were incarcerated during World War II. The law offered a formal apology and \$20,000 to each surviving victim.



The state attorney general mocked Yamashita's arguments to the Supreme Court as "worn-out, star-spangled orations." *UW Special Collections (Yamashita Collection)*

On March 1st, 2001, the court was poised to make Yamashita an honorary member of the bar in a ceremony at the Temple of Justice in Olympia. Descendants from as far as Tokyo and Maine, including great-great-grandchildren, were planning to attend. But the day before, while Alexander was greeting some visitors from Mongolia, the Nisqually earthquake rattled the court's headquarters. The quake, whose epicenter was just north of Olympia, registered 6.8 in magnitude.

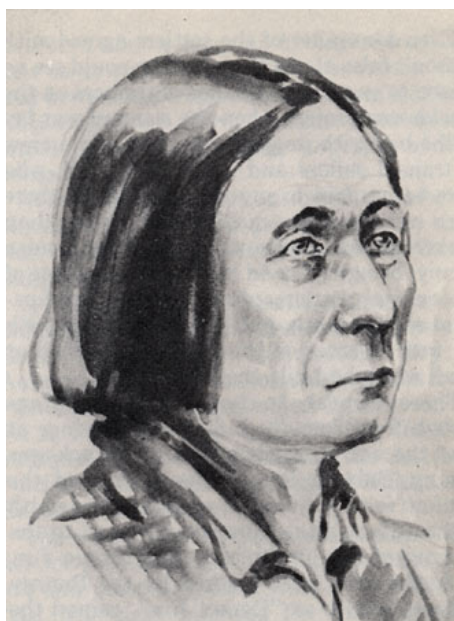
Alexander and the Mongolians rode out the tremor in the doorway to the courtroom, while plaster fell from the court's ornate ceilings. To make the experience even more memorable, Alexander gave his guests autographed chunks of fallen plaster to take home.

The Temple's courtroom was closed off and unusable for the scheduled Yamashita event. Scrambling to secure a new location, he arranged a shift to Tacoma's federal courthouse.

Descendants bowed in thanks when Alexander signed the Supreme Court's order making Yamashita an honorary member of the bar. Naoto Kobayashi made it all the way from Manchester, Maine despite three canceled flights. "This is the spirit of my great-grandfather," he said. "He taught me never to give up."

Earthquake and all, redress for Yamashita would prove a breeze compared to the case of Chief Leschi.

LESCHI, AS HE WAS SIMPLY KNOWN, was a prominent member of the Nisqually Tribe at the time when Washington became a U.S. territory. The Nisqually people lived in 13 villages stretching from the shores of Puget Sound to the foothills of the Cascades. In the 1854 Medicine Creek Treaty, the Nisquallys and other tribes gave the American government more than 2 million acres in Western Washington in exchange for several small reservations, fishing rights and \$32,500 in tools and other practical goods to be selected by the government.



Leschi was the first man to be legally executed in the territory that became Washington state. His hanging on February 19, 1858 was “the finishing blow in the subjugation of Indian tribes in the Puget Sound.” *Washington State Archives*

Leschi (pronounced lesh-eye) was friendly with white settlers he called “Bostons.” But he reportedly refused to sign the treaty because it would confine the Nisquallys, who fished and hunted for their sustenance, to an unsuitable patch on a forested bluff, cut off from their homes near the Nisqually River. The treaty showed an “X” next to his name. The Nisquallys believed it was forged. Pulitzer Prize-winning author Richard Kluger concluded it probably was.

Sporadic fighting erupted. Indians killed eight white settlers in what was called the White River Massacre. Leschi denounced attacks on civilians. But he stood accused of killing A.B. Moses, a soldier in the territorial militia, during an 1856 ambush in what is now Pierce County. Leschi denied the charge. The evidence against him hung on the questionable testimony of one witness. The jury was deadlocked in Leschi’s first trial. The judge in a second trial refused

to instruct jurors that killing an enemy soldier in war was not considered a crime. Leschi was convicted by the second jury.

His lawyers made the first death-penalty appeal to the Territorial Supreme Court. In an opinion written by Justice Obadiah McFadden, the court rejected the appeal and scheduled Leschi’s death by hanging. U.S. Army officers at nearby Fort Steilacoom saw Leschi as a prisoner of war, not someone who committed murder, and refused to host his execution. He was hung at a gallows near the fort. Even his executioner said Leschi was probably innocent.

Leschi’s death haunted his tribe for generations. One hundred and fifty years later, two women—young tribal leader Cynthia Iyall, and her mentor, tribal historian Cecelia Svinth Carpenter—had the idea of resurrecting the chief’s case and exonerating his name. Soon, they were assisted by Melissa Parr and David Nicandri of the state historical society. The Committee to Exonerate Leschi produced two tribal demands: a cleansing of Leschi’s legal record and an official apology for his execution.

Meeting those demands appeared “about as easy as moving Mount Rainier.” A Congressional order seemed to say the state Supreme Court could not meddle with cases of its territorial predecessor. And in the estimation of lawyers friendly to the tribe, Leschi seemed to have been afforded due process in his trials. But it was hard to know for sure because no trial transcripts existed.

The tribe didn’t want a governor’s pardon, perhaps the easiest available option, because it wouldn’t remove the stigma of Leschi’s murder conviction. What they wanted most, a legally binding reversal of the conviction, could only be granted by the courts.

John Ladenburg, formerly Pierce County’s top prosecutor, agreed to help. And he had an idea. He had seen historical re-enactments of famous trials on television. He told the Committee to Exonerate Leschi that he thought Gerry Alexander was their best hope.

Alexander was dignified but not stuffy. He listed his home number in the phone book. And having written and spoken about local history, he knew all about *Leschi v. Washington Territory*. The case was notorious in his mind. He ran through possible remedies. The Washington Supreme Court was unlikely to rewrite legal history, he concluded. He liked the idea of a historical court of inquiry—but not if judges were mere actors in a staged outcome.

Carpenter, the tribal historian, fretted over the possibility that such a court might reconvict Leschi. She wanted a guaranteed friendly result. The tribe pushed legislators to sign a resolution calling for the Washington Supreme Court to vacate

Leschi’s conviction and “depublish” the record of his case.

Alexander didn’t like the legislative branch pushing the judiciary around. Joking about his frustration later to a friend in a Capitol café, the chief justice wondered aloud if lawmakers were going to ask him next to vacate Al Capone’s conviction. An eavesdropper wrote a letter to *The Olympian* about what they overheard a justice say, without naming Alexander as the culprit. He would later confess to Kluger, who was writing a book about Leschi’s legacy. “I wanted to bite my tongue off,”



The prime movers behind Leschi’s exoneration were two Nisqually tribal officials: Cynthia Iyall, left, and her mentor, Cecilia Svinth Carpenter. *Washington State Historical Society*

Alexander said about his gaffe.

Politely but firmly, Alexander stuck to his argument that undoing Leschi's conviction was out of bounds for the modern court. He offered the tribe more details of his plan. Decisions would be left to a seven-judge panel that he would recruit, with help from Justice Susan Owens, a former tribal judge eager to be involved. The State Historical Museum in Tacoma was the proper venue for what was mainly an educational event, he said. Veteran prosecutors would present the territory's arguments; he knew they would be too professional to throw the case.

He wouldn't deliver a guaranteed outcome because that "would impeach the credibility of any decision the body reached." But the tribe's side was invited to call witnesses, most of whom would be credentialed historians. That might allay fears that this autopsy on history would bring fresh pain to the Nisquallys.



Justice Susan Owens called John Ladenburg's closing argument "fantastic."
Washington Courts



The judges recruited by Justice Susan Owens and Alexander (left) for Leschi's 2004 trial included Ronald Cox, Daniel Berschauer and Theresa Pouley. *Washington State Historical Society*

(Who came up with the idea of a historical court remains a bit confusing. Author Kluger, whose thoroughness impressed Alexander, wrote that Ladenburg and Alexander "both politely claim authorship." Justice Owens says it was her idea. Alexander says she may well have recommended it and he agreed.)

Alexander and Owens then began to round up judges. They ended up with a group that featured one tribal court judge, along with two judges apiece from the Supreme Court, Court of Appeals, and Superior Court. Daniel J. Berschauer, a Superior Court judge who agreed to serve on the panel, said when Alexander recruited him the chief justice in no way hinted how he wanted a decision to turn out.

On December 10, 2004, all 230 seats in

the Tacoma auditorium of the state museum were filled, many by spectators wearing tribal regalia. The tribe's lawyers argued that Leschi was a combatant under rules of war. He could kill enemy soldiers without facing murder charges from civilian authorities. Military lawyers from Fort Lewis agreed.

A parade of historians set the stage for a closing argument by John Ladenburg. As sketchy as the records were of Leschi's trials, the savvy trial lawyer said, they were still replete with evidence that both sides knew Leschi was not a murderer. Then Ladenburg's rhetoric took flight. He told of a lone eagle that had circled over Leschi's original home after the chief's death, screaming a piercing cry before it would disappear into tall trees.

"Today, another solitary eagle circles that sacred land, and it too has a lonely cry," he said. "This cry demands to know when we will have the courage to stand up as one people in Washington and admit the wrong of the past...The eagle now cries for simple justice.

"Let your verdict free the spirit of the eagle," he concluded, "so that it may rest in peace."

Owens called it the best closing argument she ever heard.

The judges recessed for 20 minutes. When they returned, Alexander said the seven of them had unanimously concluded a state of war existed between the federal territory of Washington and several tribes, including the Nisqually. "Chief Leschi as a matter of law should not have been tried for the crime of murder. Therefore, because that is the case the historical court would exonerate Chief Leschi..."

The room erupted in cheers, drowning out Alexander's last words.



John Ladenburg, the former top prosecutor in Pierce County, considers Leschi's case the most important trial of his career. *John Ladenburg*



Nisqually leaders Billy Frank Jr. and Cynthia Iyall celebrated the verdict in Leschi's historical trial. They were no longer descendants of a murderer, Iyall said. *SeattlePI.com*

Carpenter, the tribal historian, said “this was really a way for white people, for the state of Washington, to say ‘we’re sorry’—and I accept it. It’s the best we can do.”

ALEXANDER KNEW 2006 would bring his last campaign for the Supreme Court. Voters approved a constitutional amendment in 1952 that required judges to retire at 75. He would cross that threshold with one year left in a new term. He wasn’t expecting a bruising campaign after running unopposed in 2000. But a surge of spending in judicial races was about to crest in Washington.

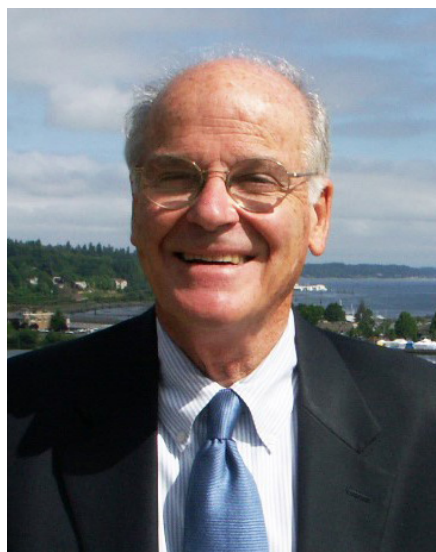
In 2002, Tom McCabe and the Building Industry Association of Washington pumped more than \$200,000 into the Supreme Court campaign of Jim Johnson, an attorney who had represented builders in land-use fights and other legal battles. Johnson lost despite heavily outspending his opponent Mary Fairhurst.

Johnson ran again in 2004. The builders again bet more than \$200,000 on him, this time for his campaign against Court of Appeals Judge Mary Becker. Johnson also got \$112,000 from a cruise-ship company that had lost a multimillion dollar judgment written by Becker. Johnson’s campaign eventually raised almost four times as much money as Becker’s. And he won.

McCabe viewed the builders’ group as a conservative counterweight to unions and aggressive liberal groups. In 2006, the BIAW backed Alexander’s only opponent, John Groen. Some saw a storm heading Alexander’s way.

Political consultant Paul Berendt, former head of the state Democratic Party, made a pitch to work for Alexander’s campaign. Because judicial races were nonpartisan, and there were just two candidates in the contest, the September election would be the finale for Alexander and Groen. The race would capture the media spotlight, Berendt predicted, and heaps of interest-group money. “There will be no contested statewide or congressional primaries this year,” he said, “making the Alexander-Groen race the big event for September.”

He also warned of a conservative coalition likely to play an outsized role in a



Conservative groups spent a record amount trying to unseat Alexander, although he came from a staunch Republican family and considered himself a Republican. *Washington Courts*

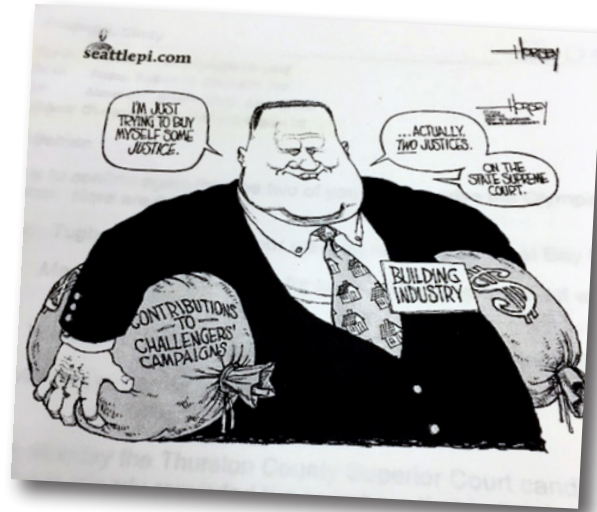
low-turnout primary election. “I also hope no one underestimates the power of the BLAW, the property rights movement and the organized far-right Christian community when they come together to try to press their agenda,” Berendt said.

Just a few weeks later, *The Seattle Times* reported that two factors seemed to be driving soaring spending on judicial races. One was the long-running feud between trial lawyers and business groups over liability laws. The other factor was “culture-war combatants on issues such as abortion and gay marriage are getting more involved.”

That March, the Legislature passed a law with new limits on contributions to Supreme Court candidates. Starting in early June, the maximum an individual or group could give was \$2,800—\$1,400 each for the primary and general elections. Unlike Alexander, Groen did not volunteer to stay within the new restraints before they took effect. He collected \$180,000 from 15 donations of at least \$5,000 each in the month before such amounts were outlawed.

Political analysts saw an unintended consequence of the new limits. Instead of donating thousands directly to candidates, some interest groups would now shift funds to mount their own hard-hitting campaigns, which could not coordinate with the candidates they sought to help. By the end of June, Groen had amassed more than \$300,000 to Alexander’s \$77,000. And independent campaigns were preparing to tap even larger stockpiles. It was a common problem in politics. Pinch one supply line of money and interest groups would find a workaround allowing another stream to flow. Independent groups spent less than \$6,000 in 2004 Supreme Court races. In total. They were on their way to spending almost \$1.4 million two years later on *just* the Alexander-Groen race.

Alexander’s team knew an ad blitz was coming. The chief justice’s inner circle on email connected a curious mix of family and friends. The campaign was steered



After seeing attack ads against Alexander, longtime political columnist Joel Connelly asked if “the Temple of Justice is reached through a sewer pipe?”

David Horsey

mainly by his younger brother Bob, an insurance executive in Seattle. It included treasurer F. Parks Weaver, former law clerks Stu Morgan and Kathy George (who had been a political reporter for the *Post-Intelligencer*), and Charlie Kirry, an Olympia photographer who had headed public relations for the Washington Farm Bureau. Rounding out the team was Gregg Hirakawa, a former journalist and Democratic Party operative, who had moved into a new career as a lawyer.*

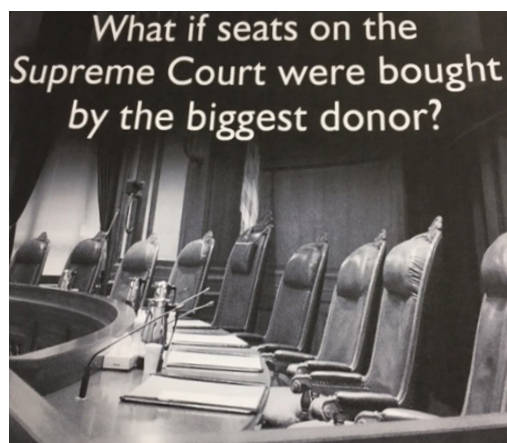
The “Running for Justice” crew had an obvious storyline to offer. They needed to make the BIAW a bogeyman, Kirry said in an email to the group. “Developers buying a Supreme Court seat is a pertinent message that tends to nullify the significant backing” BIAW was giving Groen, Kirry said.

Stories about the spending binge on Groen’s behalf ran in both of Seattle’s daily newspapers, as well as in Tacoma’s *News Tribune*. Other papers around the state, including the *Spokesman-Review* in Spokane, would run similar stories closer to the election.

AN ENTIRELY DIFFERENT ISSUE would soon roil the race. By early June it had been over a year since arguments had been made to the court about whether to uphold the state’s Defense of Marriage Act, which limited matrimony to heterosexual couples. Nineteen gay and lesbian couples had challenged DOMA’s ban on marriage by same-sex couples.

The case was being watched not just around Washington, but by groups, on both sides of the issue, across the country. If the state Supreme Court struck down DOMA, Washington would become the second state, after Massachusetts, to offer same-sex marriages.

Theories abounded about why so much time passed without a ruling. Some conjectured the justices didn’t want Washington to be so far out front on the issue. Others guessed politics was at play; three justices were up for re-election and wanted to wait that out before deciding such a monumental case. Still others said the



Underfunded and outgunned, Alexander’s campaign tried to cast their lack of firepower as a virtue. *Washington State Archives*

* Hirakawa became a King County District Court judge in 2016.

delay pointed to the court's difficulties coalescing around a majority opinion.

Alexander thought it wouldn't reflect well on the court to put off a ruling much longer. He encouraged his colleagues to issue a decision before the July 28 filing deadline for candidates. That way, critics could still jump into a race and the court couldn't be accused of running out the clock. "I was really sensitive to that and I just said to the court we've got to get this out before filing."

The justices just beat that deadline. On July 26, journalists on their deadlines hurried to make sense of the 62-page opinion by Justice Barbara Madsen, which reflected a five-member majority who voted to uphold DOMA. The high court



Justice Mary Fairhurst's dissent in the same-sex marriage decision called the 5-4 majority opinion "blatant discrimination." *Washington Courts*

had rarely been so splintered. In a 5-4 decision, eight justices authored opinions. Madsen's opinion was signed by two other justices, Alexander and Charles Johnson; Justices Richard Sanders and Jim Johnson wrote their own opinion, using different reasoning to find DOMA constitutional. Alexander wrote a separate concurring opinion, saying the majority's view did not stop voters or lawmakers from legalizing same-sex marriage in the future.

On the dissenting side, Justice Mary Fairhurst authored a 41-page opinion, co-signed by Tom Chambers, Susan Owens and Bobbe Bridge, saying the majority relied on discriminatory speculation and circular reasoning. Chambers and Owens wrote a separate dissent, as did Bridge.

In "perhaps the biggest civil-rights decision of a generation," said David Postman, chief political reporter for *The Seattle Times*, the ruling "came out muted and in places muddled."

The New York Times printed the crux of Madsen's opinion: "Limiting marriage to opposite-sex couples furthers procreation, essential to the survival of the human race, and furthers the well-being of children by encouraging families where children are reared in homes headed by the children's biological parents."

Madsen stressed that the majority applied a very deferential standard to the legislature's 1998 law—finding there was at least a "rational basis" for it. She said a more searching review, often used in cases of race or sex discrimination, was not warranted. Under existing case law, homosexuality was not considered an im-

mutable characteristic like race or gender. Therefore the plaintiffs were not part of a “protected class.”

The chief justice votes last on decisions. That meant Alexander knew his was the tie-breaking vote in the 5-4 ruling.

Almost immediately, guesswork about political fallout began. With the filing deadline closing in, some said that the heretofore unopposed Tom Chambers would draw a conservative opponent (he did). Rumors circulated that gay activists were going to recruit a candidate to run against Alexander (they did not).

Others, though, said Alexander’s vote could help him against his more conservative challenger. “There were two legs under Groen,” said the Rev. Joe Fuiten, who headed a prominent political-action group. “One was gay marriage and one was property rights.”

Charlie Kirry agreed in an email to Alexander’s confidants, saying Groen “cannot re-energize critical support from Christian political conservatives, a group that builders had hoped to bond with to stir up motivated voters.”

Furthermore, critics complained that Alexander was an “activist” judge who legislated from the bench. But his decision in this case practically genuflected to the Legislature.

It just so happened that Alexander had an endorsement interview scheduled at *The Stranger*, the profane *enfant terrible* of Seattle newspapers, the day after the ruling. As soon as Alexander sat down for his interview, Dan Savage, the paper’s outspoken gay editor, confronted the justice. Savage plunked down a framed picture of his adopted son on the table, forcing the justice to stare at it throughout his grilling. “It was very uncomfortable,” Alexander recalled of the hour-long interrogation—parts of which *The Stranger* recorded and proudly posted on-line.

Savage went right at the perceived weak links in the majority’s opinion: What was the rational basis for denying marriage rights to gays? Why would allowing homosexuals to marry hurt the state’s interest in procreation? Other staffers cornered Alexander on the question of whether homosexuality was a choice—as Madsen’s opinion suggested—or an immutable characteristic like race or gender. After a significant pause, the chief justice said the evi-



Dan Savage, left, with his husband, Terry Miller, at Seattle’s Gay Pride Parade. *KUOW*

dence pointed to it being an immutable characteristic.

Alexander went home and told his wife, “That was probably the most difficult day of my public life.”

Kathy George, who clerked for Alexander, says few justices would’ve walked into such hostile territory after a contentious ruling. “And it would’ve been easy, I think, to dodge the questions,” she says. After all, what was *The Stranger* going to do, endorse his more conservative opponent?

Savage and his colleagues weren’t the only ones rolling their eyes at the court. Syndicated national columnist Ellen Goodman skewered the majority: “If marriage is for procreation, shouldn’t they refuse to wed anyone past menopause? Shouldn’t they withhold a license, let alone blessings and benefits, from anyone who is infertile?”

Goodman also blasted the court’s argument that DOMA advanced the well-being of children by encouraging families headed by heterosexual parents. The American Academy of Pediatrics had reported ample evidence “that children raised by same-gender parents fare as well as those raised by heterosexual parents.” But Washington’s high court ruled that the Legislature was entitled to believe the opposite, Goodman fumed.

Looking back, Alexander still feels comfortable with his decision. He wasn’t satisfied, in legal terms, that there was sufficient evidence DOMA was unconstitutional. And without that legal foundation, he didn’t think the court should act like lawmakers and scrap DOMA because they *thought* it was unfair or unwise.

As for the court’s procreation argument, Alexander says “that might have been the weakest part of our opinion.”

At the time, UW law professor Hugh Spitzer told *The Seattle Times* the DOMA decision will “seem weird in twenty-five years, akin to prohibiting marriage of blacks and whites.”

“I don’t buy that,” Alexander says, 13 years after the decision.

Washington voters legalized gay marriage in 2012. Three years later, the U.S.



Alexander displays the Schrammie Award he got from broadcaster Ken Schram, who called the court’s same-sex marriage ruling “boneheaded.”

Bob Young

Supreme Court followed suit, in part, by rejecting long-held ideas that procreation was the core of marriage. Because heterosexual marriage had evolved over years to a gender-neutral bond of love—often decoupled from procreation—the nation’s high court ruled that gays and lesbians were just as entitled to matrimony as heterosexuals.*

IN 2006, THE “RUNNING FOR JUSTICE” team readied for a late August onslaught. The campaign tried to inoculate Alexander against the coming blitz with solemn, black and white photos and messages around the theme, “Our justice shouldn’t be for sale.”

It was best to hit those notes before liberal interests, including unions and trial lawyers, spun up their own grim, misleading ads against Groen. Which they would do, although they were still vastly outspent by Groen’s supporters.

Groen himself seemed a nice enough guy to Alexander. “He’s personable, smart and conservative, with roots in the Tri-Cities. His background in property rights matches Eastern Washington sensibilities,” wrote editors of the *Tri-City Herald*. But many still wondered: Was he an arm’s length beneficiary of the builders’ offensive? Or was he their hand-picked robe?

The when-you’re-“tired” ad by builders offered no evidence that Alexander was “sloppy” or made mistakes as it said. When pressed by reporters, McCabe said it was intended to show that Alexander had been a judge for so long he had “lost touch with voters.” (“Sure, and the Easter Bunny is real,” quipped *The News Tribune*.) “At least they didn’t blame me for Watergate,” Alexander joked to Justice Susan Owens.

The builders followed that ad with another misleading one that tried to tie Alexander to the 2003 drunk driving arrest of Justice Bobbe Bridge. At the time of her arrest, reporters wanted to talk to the chief justice. In one television interview Alexander said Bridge was a fine judge and he was very supportive of her. And, he added, she’s going to have to face her legal challenges. In early September, an ad assailed Alexander’s comment backing Bridge, without even hinting at his remark that she had to face the legal consequences of her action.

“That was a dirty ad. That really was,” he says. But his campaign didn’t have enough money to reply with its own TV ads. And because of his desire to maintain a proper judicial temperament, he would not stoop to saying unpleasant things about his opponent. As *The Spokesman-Review* put it, he was “more professor than pugilist.”

* For more, see Legacy Washington’s profile of Stephanie Coontz, whose book *Marriage, A History* was cited by the U.S. Supreme Court’s landmark 2015 opinion. <https://www.sos.wa.gov/assets/legacy/aotc/stephanie-coontz.pdf>

A national tort-reform group, based in Virginia, joined the attacks on Alexander. A TV ad by Americans Tired of Lawsuit Abuse showed a mom whose three-year-old son had been unintentionally beaten to death. The killer, the boy's uncle, was released early from prison after the Washington Supreme Court ruled that assault couldn't be the underlying cause for a so-called felony murder conviction. Alexander sided with the 5-4 majority in what was called the *Andress* case.



Independent of Alexander's campaign, liberal groups attacked his opponent John Groen. But they spent less than the builders' association did against Alexander. *SeattlePI.com*

The facts were complex. Put simply, before the *Andress* ruling, Washington was one of the few states that allowed assault to lead to a murder charge instead of the more customary offense of manslaughter. But the ad mentioned none of the legal reasons for the court's decision.

Justice Richard Sanders, known as a friend of the BIAW, had defended Alexander against the claim he was slipping at work. Sanders had joined Alexander in the *Andress* majority. And when asked about the angry mom ad, Sanders said he doubted that the Virginia group cared a lick about the felony-murder ruling. He surmised they were "trying to make a little political hay" by painting the court as soft on crime.

Groen said he couldn't denounce, or even comment on the negative ads run by his supporters. "Whether I like them or not, I'm not supposed to say," he told *The Seattle Times*. But that wasn't true, said a spokesman for the Public Disclosure Commission.*

While a few groups wouldn't endorse Alexander because of his decision on same-sex marriage, others across the political spectrum got behind him. Mainstream Republicans, Democratic Party organizations, unions, tribes, environmentalists, and the Association of Washington Business all backed the chief justice. Washington Women Lawyers gave him an "exceptionally well qualified" rating.

* If a candidate commented on an ad before it ran that could be construed as illegally coordinating with an independent campaign. But once an ad airs, candidates are unmuzzled under state rules.

Alexander swept newspaper endorsements from Bellingham to Walla Walla. *The News Tribune* in Tacoma said Groen's impartiality was suspect, while it attested that the "widely respected" Alexander, "still has all his marbles." The *Daily World* in Aberdeen condemned the exaggerated charges against Alexander, but was more appalled that Groen hadn't decried the cheap shots by his backers. "To us, that speaks volumes about his temperament for the high court." The *Tri-City Herald*, which had written favorably of Groen, said Alexander was not an "appropriate target" for the challenger. Alexander was "moderate and fair" and his diverse array of supporters made him the better choice.

Even *The Stranger* came around—albeit profanely.

The Stranger began its endorsement by saying "we kind of hate" Alexander. "The chief justice—a sound legal mind and consistent liberal vote on most issues facing the court—royally f***** us over when it came to the all-important" same-sex marriage case. (*The Stranger* did not use asterisks.)

"So why would we ask you," *The Stranger* continued, "to vote for this misguided 70-year-old incumbent? Because his opponent, hotly partisan conservative John Groen (he's contributed thousands of dollars to GOP candidates) must be kept out of the courts at all cost."

When election results were tallied, 20 rural and Eastern Washington counties favored Groen over Alexander. But the chief justice won King, Pierce and Thurston counties by 102,000 votes. He received 54 percent of the statewide vote.

"I felt like I was riding the white horse on this. I really did," he said years later. "So I get I didn't get as uptight about it as some people did."

ALEXANDER SAW HEALTHY SIGNS for the court in his triumph. Voters appeared to see through the barrage of negative ads against him and Justice Susan Owens, who was handily re-elected in November after also facing BIAW-funded attacks. "The fact that I beat down that infusion of money, I thought, was a good thing because it sort of showed that the public isn't going to go for that," he says. "There



Newspaper endorsements criticized the ads attacking Alexander. The Association of Washington Business said it got "a fair shake in front of him and that is the hallmark of a good judge." *SeattlePI.com*

was a lot of focus on that election and I think the informed voters knew what was going on.”

The 2006 election seemed to mark a high-point in spending on judicial races in Washington, with more than \$2.7 million in independent expenditures on three Supreme Court contests.* In the next dozen years, special interests stepped back and a majority of incumbent justices ran unopposed for re-election. And of those few challengers, most were arguably token opponents, based on the small amounts of money they raised.



Justices past and present gathered for a holiday photo. At left is Alexander, with the late Charles Z. Smith to his right. *Washington Courts*

But 2016 was an exception. Outside groups spent \$1.4 million unsuccessfully trying to unseat the three incumbent justices on the ballot: Barbara Madsen, Charles Wiggins and Mary Yu. Big spenders included Bill Gates and other Microsoft executives, such as former CEO Steve Ballmer (and his wife Connie). They were fervent supporters of charter schools. In 2012, voters approved Initiative 1240 allowing charter schools. The Supreme Court ruled three years later that the state’s charter school

law was unconstitutional. The 2016 splurge in spending seemed to confirm the view that Supreme Court justices provoked the most passion—and wrath—when they gored someone’s ox with a ruling.

The 2006 campaigns had led to handwringing proposals about new ways to choose justices. Some said they should be appointed instead of elected. Others suggested public financing of elections as a way to offset special-interest spending. But the civic quest to shelter justices from sharp-elbowed politics had all but vanished a decade later.

“I think they’ve got a really good court up there now,” Alexander says in late 2019. “Intellectually, it’s probably as strong as it’s ever been.” It’s also the most di-

* The BIAW was the biggest spender, dropping just under \$1 million trying to unseat Alexander. It spent another \$428,000 trying to unseat Susan Owens. After it spent \$6 million in the 2008 governor’s race, and lost, the BIAW retreated from elections. The recession sapped its checkbook. Lawsuits and a fight with its largest chapter also drained resources. The BIAW elected new leaders in 2010. Tom McCabe departed from the group after the vote.



The Supreme Court in January 2020, from left: Susan Owens, Mary Yu, Charles Johnson, Steven Gonzalez, Debra Stephens, Sheryl Gordon McCloud, Barbara Madsen, Raquel Montoya-Lewis and Charles Wiggins, who retired and was replaced in April 2020 by G. Helen Whitener, the first black woman to serve on the court. *Washington Courts*

verse group of justices in state history, with seven women, including the court's first Native American justice, Raquel Montoya-Lewis, and its first openly lesbian justice, Mary Yu, who is of Mexican and Chinese descent.

Alexander feels optimistic about the country too, despite the sharp tribalism in American politics. "You know there was a lot of unrest around the Vietnam War and the emerging civil rights, women's rights, and all that," he says. "People were angry. Young people were mad at old people. Old people were mad at young people. And we just have to work through that stuff. I think the country came out better for it in the long run. Even though it was unpleasant at the time. I think we're just going through one of those times."

Now that he's no longer a judge, he can talk more freely about his own politics, which are "more on the conservative side." He didn't vote for Donald Trump in 2016. He wrote in former GOP House Speaker Paul Ryan of Wisconsin. As for 2020, he says he still cringes at Trump's deportment. But he likes his tax cuts and efforts to roll back regulations. "So I'm divided on him." If Democrats nominate a "quasi-socialist," he said in late 2019, like Bernie Sanders, "I would probably vote for Trump." His concern is not for his own financial well-being, he says, but rather that too much government control would threaten individual liberty.

His legacy includes hearing more than 2,300 Supreme Court oral arguments,



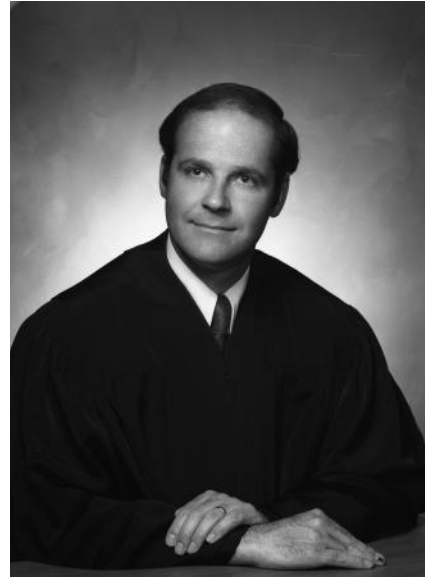
With the appointment of G. Helen Whitener in April, 2020, 99 men and women have served as justices on the Washington Supreme Court. *Washington Courts*

writing over 400 opinions, and becoming, in 2006, the first Washington resident to win a prestigious legal award for “sterling character and unquestioned integrity.” But Alexander takes the most satisfaction from rewriting bits of history. “I’m really proud of the role we played in the Leschi exoneration inquiry. And also the admission of Yamashita to the bar,” he says. “Not just of myself, but of the court supporting those.”

Lem Howell, one of Washington’s leading civil rights attorneys, befriended Alexander in the 1960s, when both were “baby lawyers” in Olympia. Howell, who has been blunt when he thought the justice muffed a decision, describes Alexander as a peacemaker and traditionalist with a love of the law. “Gerry is not a revolutionary but he has a good heart,” Howell says.

As retirement neared in late 2011, his successor as chief justice, Barbara Madsen told a reporter, “When you think about all the things that make up Gerry Alexander, there is a pattern—he loves people and he has a sense of responsibility to serve and improve their lot.”

Alexander says his embrace of humanity is rooted in Olympia’s red-white-and-blue quaintness. “A lot of it is just due to being raised here in this town...I think there’s a certain culture in small towns to get along with people and be kind to your neighbors. I hope I exemplified that.”



Gerry Alexander’s “welcoming warmth” and “caring inquiry” reminded Pulitzer Prize-winning author Richard Kluger of a “kindly village pastor.” *Washington State Archives*

Bob Young
Legacy Washington
Office of the Secretary State

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what they wanted most, Kluger, *The Bitter Waters...*, p. 265

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Alexander knew all about, Kluger, *The Bitter Waters...*, p. 268

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