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"SO MUCH TO PROTECT"

The first Tulalip Tribes member to pass the bar draws on her past to help build the tribe's future

By Colin Rigley

THE TULALIP TRIBES of Washington office sits in a small clearing surrounded by pine trees on the 22,000-acre reservation. A gust of wind in the right direction will carry briny air from below where fishing boats scuttle across the Tulalip Bay. On the southern edge of the building sits Michelle Sheldon's office, along with those of the other attorneys of the Tulalip Tribes Office of the Reservation Attorney.

Not long ago, there was only one in-house attorney. Today, there are about 14. In roughly two decades, the Tulalip Tribes' court system has grown from being virtually non-existent into a self-sufficient legal system for a growing tribe. Sheldon is not only a fresh addition to the tribes' legal team, but the first member of the Tulalip Tribes to have passed the Washington State bar exam. (The Tulalip uses the plural "tribes" as the Tulalip Tribes formed in 1934 under the Indian Reorganization Act from the Snohomish, Snoqualmie, Skagit, Suiattle, Samish, and Stillaguamish tribes in the region.)

Sunset over the Pacific Ocean as seen from the Tulalip Indian Reservation.



SITTING IN HER OFFICE ON A bright summer morning, Sheldon reflected on what it meant to pass the bar. Because as monumental as it can be for anyone to cross that line between law student and lawyer, for her there was more at stake. "You feel this immense pressure weighing down on you," she said.

It's the pressure of being a role model and a representation to her tribe of what's possible, as well as a representative of her tribe to other legal professionals outside of tribal law. More than being the first member of the Tulalip Tribes to pass the bar, Sheldon is also the first Tulalip tribal member to work as an attorney in the Tulalip Tribal Court system, which in a matter of years has grown from what has been described as "lawless" into a court system that handled

more than 800 criminal and civil cases last year. With more than 4,800 members, more than half of whom live on the reservation, the Tulalip Tribes is one of the largest of Washington's 29 federally recognized tribes.

While other Tulalip members have pursued a career in law, none before Sheldon took and passed the bar and began practicing law. Before Sheldon, none of the lawyers practicing on behalf of the Tulalip Tribes had the first-hand experience of growing up Tulalip.

Sheldon got a taste for the law when she started working at beda?chelh, the tribe's child welfare services program. She was in her early 20s, still unsure of what she wanted to pursue as a career. So she began exploring the things she could do for her tribe. It was at beda?chelh that

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she remembers first working alongside tribal attorneys, which soon led her to take a position at the tribal courthouse as a tribal court clerk, where she saw the potential of the law to help her tribe.

Growing up on the reservation meant growing up as a part of a hugely interconnected community and being taught about Tulalip history and culture.

"It's nice to get those teachings and know what your history is—those help shape and develop you," Sheldon said. "It's remembering where your roots are and remembering what your ancestors fought for so you could have today."

Sheldon got her associate's

degree from Northwest Indian College, and a bachelor's in criminal justice, at Columbia College. She earned her master's in criminal justice from Boston University before pursuing her J.D. at Seattle University (SU). She spent nights making the hour-long commute each way to attend night classes at SU School of Law and days working as the manager for the Tulalip Tribes Office of the Reservation Attorney. Sheldon said she was the only Native American member of her class, which isn't particularly surprising, given that there were just 262 self-identified American Indian/Native American/Alaska Native members of the Washington State Bar Association, as of the most

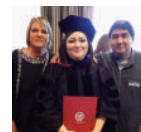
In just a few decades, the Tulalip Tribal Court system and tribal bureaucracy have grown significantly. In the Tulalip Tribes of Washington office, just north of Everett, there are approximately 14 tribal attorneys; in the mid-'90s, there was only one.

recent membership count.

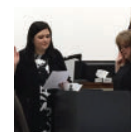
"You're sometimes going to be alone," Sheldon said of her experience as a Native American in law school. Among her law school classmates, Sheldon remembers, the thing that surprised them the most about Indian Law was, essentially, everything.

Indian Law was an unknown, and an intimidating unknown at that, combining elements of criminal, civil, federal, environmental, and just about every other area of law. Then

SHELDON KNEW WHEN SHE BEGAN LAW SCHOOL THAT, WHEN IT WAS ALL OVER, SHE WOULD COME BACK TO HER TRIBE.



MICHELLE SHELDON GRADUATED FROM SEATTLE University School of Law, where she earned her J.D. She received her master's in criminal justice from Boston University, and a bachelor's in criminal justice from Columbia College. Pictured from left to right are Heidi Sheldon, Sheldon, and Greg Sheldon.



ON APRIL 26, TULALIP TRIBAL COURT ASSOCIATE JUDGE JANINE B. VAN DUSEN (pictured right) swore in Michelle Sheldon as a member of the Washington State Bar. Sheldon took the oath of attorney at the Tulalip Tribal Court, becoming the first Tulalip tribal member to pass the bar and practice law.

The First Tulalip Member to Pass the Bar

add a layer of sovereign nations existing under federal jurisdiction that abut local and state jurisdictions—all stitched together by treaties dating back more than 150 years (Treaty of Point Elliot between the U.S. government and tribes of the Puget Sound region was signed in 1855²).

Sheldon knew when she began school that, when it was all over, she would come back to her tribe. But about 25 years ago, the notion of an in-house attorney was unheard of for Tulalip Tribes.

Mike Taylor was the first staff attorney for the Tulalip, which had previously contracted out its legal services. With a few decades spent working for other Native American tribes—primarily the Quinault, beginning in the late '60s—Taylor began working with the Tulalip in 1994.

"Tulalip had become a no-man's land where there was no law enforcement and there was no tribal code," Taylor said. "So we put in place a criminal code."

He served as the tribal attorney during the time when the early foundations of a more structured and powerful Tulalip Tribal Court were being established, and he said he helped create tribal codes that outlined how the court would handle employee disputes—a rising issue as the tribes' economy boomed and brought in larger numbers of tribal employees.

"The most misunderstood thing about tribal courts is that they are real courts with law-trained judges," Sarah

Lawson, president of the Northwest Indian Bar Association and an appellate judge for the Northwest Intertribal Court System, said by email. "There is a common misconception that tribal courts will just do what the tribe wants, and many attorneys view tribal courts as illegitimate based simply on the court's structure. As sovereign governments, tribes are entitled and empowered to create their own court systems, and frequently do not follow the traditional court structure either due to cultural differences, costs, or other factors."

Particularly for the Tulalip Tribes, their sovereign status can be linked to a few key decisions: the Boldt decision of 1974, and the retrocession process beginning in the 1990s. The Boldt decision served as an affirmation of sovereignty for the tribes of the Puget Sound region, ensuring fishing rights for tribal members and putting a federal stamp on long-held treaties that state regulations "not discriminate against the Indians."³

In recent years, the retrocession process created the groundwork upon which the tribes' legal systems evolved. In 1994, the Tulalip Tribes began the process of applying for retrocession "to take back jurisdiction on tribal lands due to the ever-increasing urbanization and population growth of the reservation" according to "Resurrection of the Tulalip Tribes' Law and Justice System and its Socio-Economic Impacts" by Wendy Church, the former tribal court director.⁴

For the Tulalip, retrocession was finalized in 2001, when the



Artwork by Anthony Jones, a Tribal Attorney for the Tulalip Tribes, and a colleague of Michelle Sheldon. Hand drums with moon design, made by acrylic on deer hide.

Photos © Anthony Jones

Artwork by Anthony Jones. Acrylic on deer hide. Square hand drum with painted Coast Salish eagle design.

Bureau of Indian Affairs accepted the retrocession⁵ of "partial criminal jurisdiction" to the Tulalip Tribes from the state of Washington. Before retrocession, Church writes, the Tulalip Tribal Government didn't use the court system or provide ordinances that would establish the court as a place to resolve personal issues. And until the mid-'90s, the court only dealt in "the occasional fisheries violations and housing evictions," as there was no "substantive" criminal code or established tribal police department at the time.

In her thesis, Church quotes Colville Tribal members Chief Judge Gary Bass and Judge Theresa Pouley as describing the pre-retrocession Tulalip reservation as a "zone of lawlessness."

Tim Brewer, senior attorney at the Tulalip Office of Reservation Attorney, said that although the tribe has always had its own system of tribal law, lack of criminal authority led to gaps in law enforcement. "I came here right about the time retrocession was happening and the tribe started building its criminal justice system," Brewer said. "Prior to retrocession, public safety was an issue but that has changed dramatically since [the tribes began] policing the reservation."

Retrocession, as Church argues, was a turning point for the Tulalip Tribes, as it was for about a half-dozen other Washington tribes that took jurisdiction over their own legal matters, establishing law enforcement and courts that were independent from the state.

In the past three years, the Tulalip court became the first tribe to host the Indian Law and Order Commission, which advised the White House and Congress "so that Native Americans may finally receive the full protections guaranteed to all U.S. citizens by the Constitution," according to the commission website. Tulalip was also one of the first tribes in the country to pilot the Violence Against Women Re-Authorization Act, which gave the tribe authority to prosecute non-Indians who committed acts of domestic



Photo ©Tiffany Royal of Northwest Indian Fisheries Commission

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AT HER SWEARING-IN CEREMONY, Michelle Sheldon was joined by the Tulalip Board of Directors. Pictured from left to right are Jared Parks, Mel Sheldon Jr., Bonnie Beam, Les Parks, Teri Gobin, Marie Zackuse (Chairwoman).



MICHELLE SHELDON WAS SWORN IN at the Tulalip Tribal Court, joined by the Tulalip Board of Directors, Tulalip Tribal Court Associate Judge Janine B. Van Dusen, and friends and family. Pictured from left to right are Joe Sheldon, Greg Sheldon, Heidi Sheldon, and Megan Sheldon.



Michelle Sheldon graduated from Seattle University School of Law in 2018, going on to become the first Tulalip Tribes member to become a member of the Washington State Bar Association. During law school, she spent nights attending classes, commuting between Seattle and the Tulalip Reservation where she worked as the manager for the Tulalip Tribes Office of the Reservation Attorney.

violence against tribal members, Brewer explained.

Another sign of increasing sovereignty among Washington tribes is actually the decreasing dependency on the Northwest Intertribal Court System (NICS) (see “A Path to Tribal Justice” at page 20). Over time, the NICS has seen tribes discontinue its services as a wholesale court system, instead relying primarily on its appellate judges as they developed their own independent courts.

“I can just tell you that the tribe has grown in an exponential way in the past couple of decades and has a huge amount of visitors coming to the reservation,” Brewer said. “... To support that economic development, it’s been essential to have a good public safety system and criminal justice system, and the tribe has worked really hard at that and devoted a ton of resources to its court system and its police.”

One of the more recent issues for the tribes has been in collecting taxes to fund public safety and other services essential to the reservation community. The recently developed tribal municipality that fosters economic development, Quil Ceda Village, generates about \$40 million per year in sales tax, but those revenues go to the state and Snohomish County. The tribes sued in *Tulalip Tribes and the Consolidated Borough of Quil Ceda Village v. State of Washington* (No. 15-CV-940 BJR), arguing that businesses would have to double-tax their customers in order to generate Tulalip-specific tax revenues. The U.S. District Court of the Western District of Washington ruled in favor of the state,

but Tulalip is considering an appeal to the 9th Circuit Court of Appeals, Brewer said.

For Sheldon, now at the center of many tribal legal issues, the tribes’ hard-fought sovereign rights help drive her in her work. “I had always maintained that I wanted to help the people, help protect our tribal sovereign rights, and be involved in a manner that helps the tribe grow,” she said.

Along with independence of tribal courts, a different way of approaching legal matters also emerged. People interviewed for this article agreed that many tribal systems tend to favor rehabilitation and restoration rather than punishment of certain crimes. It’s partially the product of the deeply tied community on a reservation, where the end-goal of the court is to help people whenever possible, rather than sending them to jail or otherwise forcing them to leave the reservation.

For instance, pre-retrocession Tulalip was suffering from what Church in her thesis described as a “growing drug problem.” In 1994, however, the establishment of a Healing-to-Wellness Court began providing nonviolent drug offenders with an alternative to incarceration. Church wrote that the alternative court gave “more access to social service programs to address problems of drug and alcohol abuse, employment issues, parenting issues, and domestic violence problems.” Or, as a recent article by the University of Washington School of Law (“A Road to Recovery”) described it: “real help.”

The Tulalip also provides funding for tuition, books and supplies, stipends, and room and board to tribal members

seeking certain degrees.

“It’s important and desired by most tribes to establish trust within the community,” said Tulalip Tribal Court Associate Judge Janine B. Van Dusen, who swore Sheldon in as a member of the Washington Bar. “Natives have historically not been treated fairly in state courts, and there is a level of distrust when a community member has to deal with a non-native attorney. ... Since the tribes get their sovereignty from the people, the land, and their relationships, working with tribal attorneys who are members of their tribe or another tribe reinforces their ability to self-govern and serves to strengthen their tribe as a sovereign nation.”

For Sheldon, there’s a personal stake in practicing law. “I know Tulalip tries to be an inspiration for other tribes, because we’ve definitely built ourselves from the ground up,” she said. “Now it’s like, wow, we have so much to protect for our future.”



COLIN RIGLEY worked as a print news journalist and editor in California, as well as a content strategist in the Puget Sound area, before joining WSBA as the communications specialist earlier this year. He can be reached at colinr@wsba.org.

NOTES:

1. <https://www.tulaliptribes-nsn.gov/>.
2. <https://www.tulaliptribes-nsn.gov/Home/WhoWeAre/AboutUs.aspx>.
3. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974); <https://wdfw.wa.gov/fishing/salmon/BoldtDecision85x11layout-forweb.pdf>.
4. Wendy A. Church, “Resurrection of the Tulalip Tribes’ Law and Justice System and its Socio-Economic Impacts,” Evergreen State College Capstone Research Project, May 21, 2006.
5. <https://www.federalregister.gov/documents/2000/12/05/00-30956/notice-of-acceptance-of-retrocession-of-jurisdiction-for-the-tulalip-tribes-washington>.