

Washington Law Review

Volume 85

Issue 1 *A Tribute to the Honorable Betty Binns
Fletcher*

2-1-2010

Contents

anon

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>

Recommended Citation

anon, Table of Contents, *Contents*, 85 Wash. L. Rev. i (2010).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol85/iss1/1>

This Table of Contents is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

WASHINGTON LAW REVIEW

VOLUME 85, NUMBER 1, FEBRUARY 2010

Published by Students of the
University of Washington School of Law

SYMPOSIUM

A TRIBUTE TO THE HONORABLE BETTY BINNS FLETCHER

TRIBUTE

Tribute to Judge Betty Binns Fletcher

Judge William A. Fletcher 1

SPEECH

The Concept of Equality in Indian Law

Judge William C. Canby, Jr. 13

ESSAYS

All Rise! Standing in Judge Betty Fletcher's Court

Thomas D. Rowe, Jr. 19

Perfectionism and Maximum Consciousness in Anti-Discrimination Law: A Tribute to Judge Betty B. Fletcher

Norman W. Spaulding 33

Accountability for Mitigation Through Procedural Review:
The NEPA Jurisprudence of Judge Betty B. Fletcher, a
Trustee of the Environment and Woman of Substance

Kenneth S. Weiner 45

ARTICLES

Freedom of Speech in School and Prison

Aaron H. Caplan 71

Finality, Habeas, Innocence, and the Death Penalty: Can
Justice be Done?

Ellyde Roko 107

COMMENTS

What's Past is Prologue: Why the Prison Litigation Reform
Act Does Not—and Should Not—Classify Punitive
Damages as Prospective Relief

Lisa Benedetti 131

Finding the Least Restrictive Environment for Preschoolers
Under the IDEA: An Analysis and Proposed Framework

Theresa M. DeMonte 157

Copyright © 2010, Washington Law Review Association. Except as otherwise provided, the author of each article in this issue has granted permission for copies of that article to be made for classroom use, provided that (1) copies are distributed at or below cost, (2) the author and journal are identified, (3) proper notice of copyright is affixed to each copy, and (4) the Washington Law Review Association is notified of the use.

WASHINGTON LAW REVIEW (ISSN 0043-0617) is published quarterly by students of the University of Washington School of Law. Periodicals postage paid at Seattle, Washington, and additional mailing offices.

POSTMASTER: Send address changes to:

Frances Johnson
Washington Law Review
University of Washington School of Law
4000 15th Ave NE
William H. Gates Hall
Box 353025
Seattle, Washington 98195

SUBSCRIPTION INFORMATION: Subscription price for Vol. 85: \$37.50 per year in the United States and \$47.50 elsewhere. Single issue: \$12.00 (order directly from Washington Law Review Business Office). Subscriptions are renewed automatically unless the business office is notified of cancellation. No refunds will be issued.

BACK ISSUES: See advertisement at the back of this issue.

SUBSCRIPTION & BACK ISSUE CORRESPONDENCE:

Frances Johnson
Washington Law Review
University of Washington
Gallagher Law Library
William H. Gates Hall
Box 353025
Seattle, Washington 98195
e-mail: franj@u.washington.edu

MANUSCRIPTS: WASHINGTON LAW REVIEW invites the submission of unsolicited manuscripts. Manuscripts should be double-spaced with double-spaced footnotes. WASHINGTON LAW REVIEW prefers the use of gender-neutral language.

CITATION FORM: For Volume 85, WASHINGTON LAW REVIEW adopts the citation form of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (18th ed. 2005).

EDITORIAL CORRESPONDENCE: Editor-in-Chief
Washington Law Review
University of Washington
School of Law
William H. Gates Hall
Box 353025
Seattle, Washington 98195
e-mail: wlr@u.washington.edu

Member, National Conference of Law Reviews

WORLD WIDE WEB HOME PAGE: <http://www.law.washington.edu/WLR>

WASHINGTON LAW REVIEW

VOLUME 85
2010

2009–2010 EDITORIAL BOARD

Editor-in-Chief

CHARLENE KOSKI

Chief Articles Editor

BLYTHE CHANDLER

Chief Comments Editor

RACHEL FELLER

Chief Managing Editor

KATHERINE SWANSON

Executive Articles Editor

ENOKA HERAT

Executive Comments Editors

TYLER ARNOLD
DONYA WILLIAMSON

Executive Managing Editor

DARA LEVINSON

Associate Editor-in-Chief

KYLE GOTCHY

Associate Editor-in-Chief

CHARLOTTE ARCHER

Comments Editors

ALLISON BROWN
IAN CAIRNS
BRYCE COUNTS
NANCY GARLAND
AMANDA STACH
SUSAN FULLMER

Articles Editors

LISA BENEDETTI
SHANNON LAWLESS
NATHANIEL STRAUSS

Managing Editors

THERESA DEMONTE
JOAN FLASCHEN
JESSICA FRITZ
RACHEL MERCER
IVAN STONER
ALYSHA YAGODA

EDITORIAL STAFF

JUSTIN ANDREWS
JACOB BROWN
AMY DE SANTIS
M DUNNING
CALE EHRlich
AUBRI GOLDSBY
WILLIAM HENRY
NOEL HORTON

MOLLY LEAVERTON
SARA LEVERETTE
PATRICK LONEY
VLADIMIR LOZAN
WILLIAM MILLER
MICHAEL PIROG
WILLIAM RICHARD
KELLY SHERIDAN

CONNOR SHIVELY
JACQUE ST. ROMAIN
DANIEL STALLINGS
JORDAN TALGE
KATHLEEN WARNER
ERIK WALTERS
SARAH WASHBURN
BRANDON YOUNG

WASHINGTON LAW REVIEW ASSOCIATION FACULTY BOARD

CRAIG ALLEN
THOMAS ANDREWS

KAREN BOXX
GREGORY HICKS

LINDA HUME
KATHY MCGINNIS

BUSINESS STAFF

Faculty Business Manager
PENNY HAZELTON

Faculty Adviser
STEVE CALANDRILLO

Business Office
JONATHAN FRANKLIN
FRAN JOHNSON

University of Washington School of Law 2009–2010

OFFICERS OF ADMINISTRATION

Mark A. Emmert, B.A., Ph.D., President of the University
Kellye Y. Testy, B.A., J.D., Dean, James W. Mifflin University Professor of Law
Steve Calandrillo, B.A., J.D., Associate Dean, Charles I. Stone Professor of Law
Penny A. Hazelton, B.A., J.D., M.L.L., Associate Dean for Library & Computing Services, Professor of Law
Mary Hotchkiss, B.A., M.S.L.S., J.D., LL.M., Associate Dean, Senior Law Lecturer
Lisa Kelly, B.A., J.D., Associate Dean, Bobbe & Jonathan Bridge Professorship in Child & Family Advocacy
Peter Nicolas, B.A., M.P.P., J.D., Associate Dean, Jeffrey & Susan Brotman Professor of Law
Naomi Sanchez, B.S., M.S.W., Ed.D., Assistant Dean for Career Services

FACULTY EMERITI

William R. Andersen, B.S.L., LL.B., LL.M.
William T. Burke, B.S., J.D., J.S.D.
G. Meade Emory, B.A., J.D., LL.M.
Robert L. Fletcher, A.B., LL.B.
John Huston, B.A., J.D., LL.M.
John M. Junker, B.A., J.D.
John R. Price, A.B., LL.B.
Roy L. Prosterman, B.A., J.D.
Marjorie D. Rombauer, B.A., J.D.
Charles Z. Smith, B.S., J.D.
Frank W. Smith, B.A., J.D., LL.M.
William B. Stoebeck, B.A., M.A., J.D., S.J.D.
Philip A. Trautman, B.A., J.D.

FACULTY OF LAW

Craig H. Allen, B.S., J.D., LL.M., Judson Falknor Professor of Law
Kimberly Ambrose, B.A., J.D., Law Lecturer
Helen A. Anderson, B.A., J.D., Assistant Professor of Law
Robert T. Anderson, B.A., J.D., Associate Professor of Law, Director of Native American Law Center
Thomas R. Andrews, B.A., M.A., J.D., Professor of Law
Robert H. Aronson, B.A., J.D., Betts, Patterson & Mines Professor of Law
Karen Boxx, B.A., J.D., Associate Professor of Law
Steve P. Calandrillo, B.A., J.D., Professor of Law
Thomas Cobb, B.A., M.A., M.A., J.D., Senior Law Lecturer
Molly Cohan, B.A., J.D., Law Lecturer
William Covington, B.A., J.D., Assistant Professor of Law
Samuel A. Donaldson, B.A., J.D., LL.M., Professor of Law, Director of Graduate Program in Taxation
Signe Dortch, B.A., J.D., Law Lecturer, Director of Immigration Law Clinic
Dwight J. Drake, B.S., J.D., Associate Professor of Law
Jonathan A. Eddy, B.A., J.D., Professor of Law, Manager of Afghanistan Legal Educators Project
Joan C. Foley, B.A., J.D., Law Lecturer
Julia Gold, B.A., J.D., Senior Law Lecturer, Director of Mediation Clinic
Robert W. Gomulkiewicz, B.A., M.A., J.D., Professor of Law, Director of Graduate Program in Intellectual Property Law & Policy
James H. Hardisty, A.B., LL.B., Professor of Law
Penny A. Hazelton, B.A., J.D., M.L.L., Professor of Law
Gregory A. Hicks, B.A., J.D., Professor of Law
Roland L. Hjorth, A.B., LL.B., Dean Emeritus, Garvey Schubert Barer Professor of Law
Mary A. Hotchkiss, B.A., M.S.L.S., J.D., LL.M., Senior Law Lecturer
Maureen A. Howard, B.A., J.D., Assistant Professor, Director of Trial Advocacy Program
Linda S. Hume, B.A., J.D., Professor of Law
Stewart M. Jay, A.B., J.D., Professor of Law
Sarah Kaltsounis, B.S., M.Ed., J.D., Law Lecturer
Yong-Sung (Jonathan) Kang, B.A., J.D., Assistant Professor of Law
Sylvia Kang'ara, LL.B., LL.M., S.J.D., Assistant Professor of Law
Lisa Kelly, B.A., J.D., Bobbe & Jonathan Bridge Professorship in Child & Family Advocacy, Director of Children & Youth Advocacy Clinic
Alan Kirtley, B.A., J.D., Associate Professor of Law
Richard O. Kummert, B.S., C.P.A., M.B.A., LL.B., D. Wayne & Anne Gittinger Professor of Law
Patricia C. Kuszler, B.A., M.D., J.D., Charles I. Stone Professor of Law, Director of Multidisciplinary Initiatives
Clark B. Lombardi, B.A., M.A., J.D., Ph.D., Associate Professor of Law
Deborah Maranville, B.A., J.D., Professor of Law, Director of Clinical Law Program, Director of Unemployment Compensation Clinic
Anna Mastroianni, B.S., B.A., J.D., M.P.H., Associate Professor of Law
Kathleen M. McGinnis, B.A., J.D., Senior Law Lecturer
Jacqueline McMurtrie, B.G.S., J.D., Associate Professor of Law, Director of Innocence Project Northwest
Paul Steven Miller, B.A., J.D., Henry M. Jackson Professor of Law, Director of University of Washington Disability Studies Program
Theodore Myhre, B.A., M.A., M.A., J.D., Law Lecturer
Joel M. Ngugi, LL.B., LL.M., S.J.D., Associate Professor of Law
Peter Nicolas, B.A., M.P.P., J.D., Jeffrey & Susan Brotman Professor of Law

Sean O'Connor, B.A., M.A., J.D., Associate Professor of Law, Co-Director of Graduate Program in Intellectual Property Law & Policy, Director of Entrepreneurial Law Clinic
 Kathleen O'Neill, B.A., J.D., Associate Professor of Law
 Anita Ramasastry, B.A., M.A., J.D., D. Wayne & Anne Gittinger Professor of Law, Director of Shidler Center for Law, Commerce & Technology
 Beth Rivin, B.A., M.D., M.P.H., Research Associate Professor of Law, Director of Global Health & Justice Project
 Michael Robinson-Dorn, B.A., J.D., Associate Professor of Law
 William H. Rodgers, B.A., J.D., Stimson Bullitt Professor of Environmental Law
 Sallie Thieme Sanford, B.A., J.D., Acting Assistant Professor of Law
 Eric Schnapper, B.A., M.A., B.Phil., LL.B., Professor of Law
 Scott A. Schumacher, B.A., J.D., LL.M., Associate Professor of Law, Director of Federal Tax Clinic
 Toshiko Takenaka, B.A., LL.M., Ph.D., W. Hunter Simpson Professor of Law, Director of CASRIP, Associate Director of Graduate Program in Intellectual Property Law and Policy
 Veronica L. Taylor, B.A., LL.B., LL.M., Dan Fenno Henderson Professorship in East Asian Legal Studies, Director of Asian Law Center
 Michael E. Townsend, B.A., M.A., Ph.D., J.D., Associate Professor of Law
 Lea B. Vaughn, A.B., J.D., Professor of Law
 Walter J. Walsh, B.C.L., LL.M., S.J.D., Associate Professor of Law
 Kathryn Watts, B.S., J.D., Assistant Professor of Law
 Ron J. Whitener, B.A., J.D., Assistant Professor of Law, Director of Tribal Court Criminal Defense Clinic
 Jane K. Winn, B.Sc., J.D., Charles I. Stone Professor of Law, Director of Shidler Center for Law, Commerce & Technology
 Louis E. Wolcher, B.A., J.D., Charles I. Stone Professor of Law
 Dongsheng Zang, LL.B., LL.M., LL.M., S.J.D., Assistant Professor of Law

ADJUNCT, AFFILIATE, AND VISITING FACULTY

Gad Barzilai, B.A., LL.S., LL.B., M.A., Ph.D., Adjunct Professor of Law
 Sharan E. Brown, B.A., M.A., J.D., Ed.D., Adjunct Research Associate Professor of Law
 Mark Cammack, B.A., J.D., Affiliate Professor of Law
 Nancy S. Jecker, B.A., M.A., M.A., Ph.D., Adjunct Professor of Law
 Michael McCann, B.A., M.A., Ph.D., Adjunct Professor of Law
 Steven G. Olswang, B.A., J.D., Ph.D., Adjunct Professor of Law
 Saadia Pekkanen, B.A., M.I.A., Ph.D., M.S.L., Adjunct Associate Professor of Law
 Hugh D. Spitzer, B.A., J.D., LL.M., Affiliate Professor of Law
 Susan Whiting, B.A., Ph.D., Adjunct Associate Professor of Law
 Richard O. Zerbe, Jr., A.B., Ph.D., Adjunct Professor of Law

GALLAGHER LAW LIBRARY STAFF

Alberthal, Crystal, Library Specialist, Serials
 Ballard, Karen, B.A., Library Specialist, Cataloging
 Britt, Rob, B.A., M.A., M.A., Japanese Legal Materials Specialist, East Asian Law
 Chemnick, Theresa, B.A., Assistant to the Director
 Cossette, Melia, B.A., J.D., M.L.I.S., CILP Co-Editor
 Davis, Judy, B.A., M.L.S., Librarian, Resource Sharing
 Escarez, Flora, B.S., Library Specialist, Cataloging
 Fossum, Lori, B.S., M.A., M.A., M.A., J.D., Librarian, Reference
 Franklin, Jonathan, A.B., A.M., J.D., M.L.S., Associate Law Librarian
 Hall, Sharon, Library Specialist Supervisor, Cataloging
 Hart, Tricia, B.A., M.L.S., Librarian, Cataloging
 Jarrett, Peggy, B.A., M.S.L.I.S., Librarian, Collection Development & Reference
 Johnson, Fran, Fiscal Specialist, Wahington Law Review, Pacific Rim Law & Policy Journal
 Jost, Richard, B.A., M.A., M.A., Information Systems Coordinator
 Kim, Choong, B.A., Fiscal Specialist
 Mack, Kaden, B.A., Library Tech, Circulation
 McMurrer, Nancy, B.A., J.D., M.L.S., Librarian, Reference
 Morley, Craig, B.A., Library Materials Conservation Supervisor, Serials
 Moskowitz, Jessica, B.A., Library Tech, Circulation
 Nez, Ann, B.A., M.L.S., Technical Services Coordinator
 Northington, Vickie, B.A., Library Supervisor, Circulation
 Nyberg, Cheryl, B.A., M.S.L.S., Librarian, Coordinator of Reference Services
 Perdue, Chris, B.A., Library Tech, Serials
 Pike, Nikki, Information Specialist, CILP
 Roberts, Patty, B.A., Library Tech Lead, Evening Circulation Supervisor
 Schriwer, Tania, B.S., J.D., M.L.I.S., CILP Co-Editor
 Tawatao, Dave, Senior Computer Specialist
 Turnquist, Reba, B.A., M.L.S., Librarian, Collection Development
 Turpin, Rachel, B.A., J.D., M.L.I.S., CILP Co-Editor
 Whisner, Mary, B.A., J.D., M.L.S., Librarian, Reference
 Zhang, Quan (John), B.A., M.A., Ph.D., Library Specialist, Acquisitions



*The Washington Law Review
Dedicates This Issue to the
Honorable Betty Binns Fletcher*

On March 6, 2009, the Washington Law Review and the University of Washington School of Law hosted *A Tribute to the Honorable Betty Binns Fletcher*. The symposium honored UW Law alumna Judge Fletcher ('56) and her thirty years of service as a federal judge. The distinguished judges, scholars, and attorneys who spoke at the event included Judge Fletcher's family, colleagues, and her former law clerks.

The speeches appearing in this issue of the *Washington Law Review* were delivered at the symposium. Likewise, the essays and articles are based on speeches given there.

The Washington Law Review thanks Brendan McNamara ('09), former Executive Articles Editor, for organizing the symposium; the participants for agreeing to publish their tributes; and Judge Betty Binns Fletcher for her years of service and inspiration.