

October 2013 Bar Bulletin

Profile / Phil Talmadge

Making the Perfect Pitch

By Tom Fitzpatrick



Phil Talmadge has had one of the most significant legal careers in the history of Washington. For almost 40 years, his life as a lawyer, legislator and justice of the

Supreme Court helped shape modern Washington law. He did this by learning how to make the perfect pitch.

Phil has three passions: family, the law and baseball. He grew up in West Seattle and, except for his undergraduate years at Yale, he has lived his entire life there. His dad was a fisherman and teacher, and Phil still reflects the working class background of his family and the West Seattle of his youth.

Although economically working class, the Talmadge household also was filled with books and art, particularly paintings by his grandmother, who was an accomplished local artist. Phil still considers many in the neighborhood as part of his extended family as he keeps up with childhood and high school friends, many with blue-collar occupations.

His affection for West Seattle also was honed from representing the 34th District for 16 years in the Washington State Senate. He was elected to the Senate when he was 26, the youngest senator in Washington history. He would go on to be re-elected three times.

His youth and exact questioning could sometimes be problematic early in his legislative career, symbolized by buttons in Olympia saying "I've been Philed." That period gave rise to what Phil believes is the biggest misconception about him: that he is an unrelenting partisan.

Phil reflects on those years by noting, "I loved the Legislature. It is a kaleidoscope with everything from administrative law to zoology. You have to make reasoned decisions on the fly."

When in the majority, he chaired the Judiciary, Health and Human Services Committees, and the Select Committee on Product Liability and Tort Reform. Phil's legislative legacy includes the 1981 Product Liability Act, statutes dealing with child abuse and neglect, the first toughening of DUI laws in the 1980s, the 1993 Health Care Reform Act, the creation of the Redistricting Commission and the Judicial Conduct Commission, and the State Administrative Procedure Act.

Phil notes that although he could be a hard-edge Democrat, he was never driven by ideology as an end in itself. His fundamental goal was to be a problem solver.

"The only way you can be a successful problem solver in the legislative arena is by making common sense arguments and forging alliances across the aisle," he says.

Phil worked with influential Republican senators such as Irv Newhouse, Kent Pullen and Gary Nelson in building consensus for the legislative achievements listed above. What gun control we have in Washington flows from the joint efforts of Phil and Pullen, probably two of the most ideologically diverse members of the Senate at the time.

West Seattle also launched Phil's baseball career, which now spans more than 50 years. He played West Seattle Pee Wee ball, Little League, Babe Ruth League, high school and college ball, and coached kids for 13 years. Since 1995, he has played and pitched in the Puget Sound Senior Baseball League, which has taken him and his teams to tournaments in Florida, Palm Springs, Las Vegas and Phoenix. This is not softball, but hardball being played.

While he has played various positions in his career, he has always been primarily a pitcher. Now in his 60s, Phil often faces players much younger than he is, including on occasion some former pros. So far this year, he is 8-0 with eight saves. Phil says his success proves that "old age and treachery overcome youth and skill." But his success comes from a studied approach, just like his approach to law and public policy making. "I can't pitch 100 miles an hour," he says. "So I need to figure out the batter and come up with pitches he will go for."

The same approach has been the hallmark of his legal career. Phil loves to take complex things and distill them to two or three major points tailored to the audience. "You've got to put yourself in the shoes of the decision maker, whether it's a court, a legislative body or a client. This is true for both written and oral advocacy," Phil says.

Now principally an appellate practitioner, he notes that too many lawyers want to argue about too many things. "If you have 15 points you want to make on appeal, forget it. Strategically select your best three or four points because that is about all any decision maker is going to consider," he says.

Of course his service on the Washington Supreme Court gives him the unique perspective of how a justice will look at a case. Phil left the Court to return to law practice because he says he enjoys the role of being a player more than being an umpire. "Both are vitally important roles, but I'm more suited for advocacy," he says.

Yet, he loved his time on the Court. Compared to the Legislature, he loved the "luxury of time" the Court provides for decision making, including crafting and persuading judicial colleagues about what should be in an opinion. His clear analytical opinions are often cited in case law.

"When I went on the Court," he says, "I had three goals: Make my jurisprudence consistent, make the Court's jurisprudence consistent and be clear about the rule of law the Court is announcing." These goals remain a basis for evaluating any justice's career.

While his opinions and dissents cover a variety of topics, *Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632 (1998), spawned a new intellectual legal interest for Phil. While the case primarily deals with subrogation, the case also represents the beginning of a new way to think about quantifying and what constitutes reasonable attorney fees.

Writing for the majority, Justice Talmadge established that the lodestar method should be used by the courts in making an initial determination as to what the fee should be, then checked and supplemented by the factors contained in RPC 1.5. While those factors are all appropriate, "without some structure simply relying upon them creates mush for jurisprudence," he says.

The case then sparked an ongoing interest in the subject of attorney fees generally, prompting Phil to write several articles, including two law review articles, on the subject. It also led to him to co-authoring with Mark Jordan *Attorneys Fees in Washington*, which covers all the ways you can recover attorney fees under Washington law and how to do it. Phil and his firm also devote a substantial amount of their practice dealing with all types of attorney fee issues from reasonableness to sanctions.

Phil's time on the Court did not just involve legal decision making. The Court has an important role to play in judicial administration. Phil is proud of his success in having the courts take their first steps in implementing technology through his chairmanship of the Judicial Information and Systems Committee. "There is still a lot to be done, but at least we began the work," he says.

After he left the Court, Phil began a campaign for governor in 2004, but had to withdraw from the Democratic primary when he encountered some health issues. Christine Gregoire would go on to win the primary and the famous general election and legal battle against Dino Rossi.

While not a pleasant time, Phil credits the last campaign experience and the health scare with changing and improving his life, including a dramatic loss of weight. Although politics was once a consuming passion, it no longer is.

"To succeed in politics today, you need a lot of money, which I don't have," he says. "You get money by roiling the base. That is not a prescription for problem solving, which is what I'm interested in." Phil believes we will continue to have ideologically driven, dysfunctional politics until "we adopt public financing of campaigns, limit their duration, and the public decides it wants problem solvers elected who can govern." He is not optimistic about seeing any of that any time soon.

These days, his passion for the law fills his prodigious work ethic. His vast knowledge of the law, including some arcane subjects, has led to a thriving practice, which also includes consultation and litigation on a variety of legal issues.

Phil probably is one of the most knowledgeable persons about the Washington Constitution and governmental authority. He deals with issues from ballot titles to the constitutionality of legislation. His ability as an appellate advocate is reflected in the range of issues he argues on appeal. Phil usually handles more than 15 oral arguments a year in appellate courts, a rare accomplishment.

While doing all of this, Phil and his wife raised five children (two girls, three boys), all of whom have careers outside the law, ranging from professional dancer to recruiter of professional talent. Although his eldest son Adam went to law school, he ultimately became a successful businessman. "I always told them to follow their passion, not mine," Phil says.

After 43 years, he is still in awe of his wife Darlene, a retired Seattle elementary school teacher and registered nurse, whom he calls "amazing" and "the boss." They enjoy traveling together and an annual year-end family gathering, usually in the tropics, filled with all generations of the Talmadge family. He credits his lengthy marriage to "love and communication."

At home, in court and on the field, Phil Talmadge knows how to make the perfect pitch.

Tom Fitzpatrick has been a friend of Phil Talmadge for 35 years, and is his law partner at Talmadge/Fitzpatrick PLLC. They have practiced together for 20 years in different law settings. Fitzpatrick is the KCBA ABA delegate.

[Go Back](#)