

Snohomish County Bar

MEMBERS NEWSLETTER

JULY 2021



photo: Joran Quinton

Lawyer Referral Service Rework

by Kristine Scott,
SCBA Interim Executive Director

There have been three times in my life that, had it not been for a good attorney, I'd have been royally out of luck. I know first-hand how critical a legal consult is in moving from despair or outrage to being responsive and ready for life's crises. This is why when, 3 months ago, I accepted my first LRS call, I was completely hooked. People in crisis are some of my favorite (thanks to a long career in human services). One of our members explained it well "When we need legal help, many of us can turn to friends and ask who they would recommend. But there are a whole lot of people out there who don't have that option, which is why LRS is an important community service." In my mind an image arose of legal advice like a sanctuary with a moat all around it, and LRS the bridge.

After consulting my crack team of advisors (Jeffrey Donchez, Kari Petrasek, Scott Carness, Aimee Trua and Paul Barrera), I've made a few changes. We no longer refer potential clients who have not yet paid the fee. With so many doing consultations remotely, asking members to bill clients was untenable. One possible side benefit may be in increasing the quality of the referral. Our April data suggests that 38% of our LRS referrals who paid then go on to hire the attorney they consult. We also now allow people to handle the whole intake process via e-mail, making LRS more accessible for those in violent homes or limited by schedule constraints. This has had the added benefit that now the attorney may receive advance information on the situation, in the words of the potential client. As a result, we often clear up referral mismatches before the consultation occurs.

But there remain big gaps. I'll list those here:

The have nots. As Ms. Noyes' June article details, *2/3 of the world's population lacks access to legal aid*. This country is hardly better; we've inherited a system of justice designed by and for those with wealth. While the frequency of requests for pro-bono is decreasing since instituting this "pay wall" in late April, the need has not. Unfortunately, there are many more seeking legal aid than providing it. CLEAR (the statewide clearinghouse for legal aid) has an automated outgoing message that now tells callers they are not taking new cases. In some situations, I can refer folks to SCLS, Legal Voice, Tenant's Union, and Domestic Violence Services. For many of our unfunded callers, I have nothing but an apology.

Attorney shoppers. These are people of means who want to get multiple referrals for one situation, as though our members are like cheese cubes on a platter at a Costco sample stand. LRS does not feel like the appropriate gateway for these potential clients, but we do wish to point them in the direction of our members. I remain open to ideas of how best to do this without obligating members to a 30 minute commitment.

Under-represented areas of law. Family law, civil rights, landlord representation, tax law. We simply don't have enough attorneys (just lost our one tax attorney!) to cover incoming potential clients.

Matchmaking. I've been slowly upgrading my own knowledge (understanding of when to refer, to whom,

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"LRS Rework" continued from front page

and when to simply admit we did not have anyone who could help the caller.) I am grateful to our sixty LRS attorneys for their patience as I learn. Now, with the help of members Donchez, Carness and Barrera, there will soon be a list of pre-referral questions to better match potential clients to the right attorney in personal injury, medical malpractice, and estate law. I welcome the same offer of help for other areas of practice.

Attorney preferences: the information we have about our LRS attorneys and the type of law they want referrals in is skin deep and analogue. To build a real-time referral system, we'd need to digitize this, possibly even have it web-hosted so members could update it (imagine having your own log-in to adjust when you are open for referrals, shift which types of cases you take, add a language your office can serve etc)

As you see, these last 4 are simply operational tweaks, they do not address the larger picture of the gap in access. I remain open to all feedback, ideas. While my time here is short, I remain committed to keeping member attorneys happy in their decision to lower that drawbridge for those seeking help in life's crises.

BAR CALENDAR

SCBA BOARD MEETINGS, 5PM

7/15 9/16 10/21 11/18 12/16

SCLS FUN RUN

8/22 10 am to noon, event host Judge Kurtz! For more info, contact Carrie (carriej@snocolegal.org)

GOLF TOURNAMENT

8/27 1:30 PM at Harbour Pointe Golf Club, Mulkiteo. sign up instructions on page11

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Lawyers Road Review

by Pete Patterson

Empire

Recently I finished reading Niall Ferguson's 2003 work *Empire, How Britain Made the Modern World* and thought a review might be of interest to the readership.

While Ferguson, an Englishman, obviously does not predict what happens in the 18 years since publication the view of what Great Britain was able to achieve in the 300 odd years leading up to the twin World Wars which effectively ended the British Empire was informative and inspiring.

Throughout the whole of it I could not help but think about how the Chinese are attempting to secure an empire of their own, and how different the approach is for them. While that same entrepreneurial spirit, if that is what the Chinese agenda is, sends men and material to far off corners of the world, the difference is it does not appear the intent is to install any lasting benefit for the people they encounter. As my African friend



Henry reported in the podcast *Out of Africa* at www.lawyersroadreview.Wordpress.com , or <https://lawyersroadreview.com/2021/04/25/out-of-africa/> the roads the Chinese recently built in the South Sudan washed away with the first heavy rains.

Contrast this experience in the same real estate with the railway built by the British from Cairo to Khartoum to support military traffic in the 1880's and gunboats drawn up the Nile. The entire effort by Her Majesties government then, including a young Winston Churchill, was to come to terms with that generations Osama Bin Ladin, Mohammed Ahmed Mahdi. These bits of infrastructure of war are left behind obviously, completely at the expense of Her Majesties government, an infrastructure these people would not otherwise have. I was left feeling colonialism was not all bad.

On the other hand Ferguson does not hesitate to call out the Empire on its excesses and failures, yet in the end, what it's colonies saw was a significant enhance-

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"Empire" continued from page 3

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ment in the administration of their countries, largely supported by this notion of the Rule of Law. There are exceptions of course, and yet he cannot help but contrast the differences as to how Spain and the British encountered the world and left it.

Spain snapped up all the wealth in the New World as they got there first, leaving barren places like New England and Australia for the British. And yet consider how unstable or repressive the governments of Latin America and the Philippines have historically been. The exported government just didn't work out there as they did in what became the British Empire.

Not all the former British colonies have thrived once granted independence. Many have succumbed to less than liberal democracies for their means of government, defaulting to the historical strong man governance preference of humankind. And yet Ferguson convincingly argues India would not be India but for the structures installed there centuries ago.

He particularly applauds the British for not accepting Herr Hitler's proposal they carve up the world

together, particularly since they spent the last of their empire defeating the Nazis. While Britain spent everything they had defending liberal democracy, it just wasn't enough. Paradoxically it was one of their former colonial possessions, now calling itself the United States, which came to their aid. Alas, the American embrace was suffocating.

As Dean Acheson, Secretary of State under Truman remarked, "Great Britain has lost an empire and not yet found a role." Even during the closing years of the Second World War the "Big Three" we see famously represented by their leaders at the Yalta Conference, Stalin, Roosevelt and Churchill, were being called the "Big Two and a Half". By the time of Yalta the British were effectively broke. But they were all in.

This is not always the causa mortis for any other empires fall as opposed to Great Britain. The Romans for example stopped sending their sons to fight their wars, hiring barbarians instead, which meant the average citizen had no skin in the game. When ultimately called to defend the Realm, their character failed them.

This was not the case with Britain. One only need to consider the service of members of the Royal Family, as well as the aristocracy in their armed forces.

It is not uncommon to read a story about Bomber Command in the Second World War and find a commoner with

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the rank of flight Sergeant in command of a Lancaster or Halifax bomber and members of his crew be officers, as a gunner or navigator, ranks for the upper class. The distinction for the RAF was necessitated by the nature of air warfare, where competence was paramount; the physics and dangers of the environment did not recognize the deference of primogeniture.

Notwithstanding all the heroism, it was America that was left with an empire after World War II, not Britain, whether we like it or not.

The vast number of bases held by the United States worldwide along with far flung commercial interests remains a parallel with how things were for the British, and we are stuck with defending them and the people who inhabit those nations. The chief difference is these places are defended by sophisticated weaponry rather than the immense throw weight of the guns of the 1906 HMS Dreadnaught.

That sophisticated weaponry includes the F-35B, a new fighter jet flown not only by the United States Navy and Marines, but also by the fleet air arm of the Royal Air Force, sailing on the new aircraft carrier they can scarcely afford, HMS Queen Elizabeth.

Much comment has been made of the necessity of sending our Western Pacific stationed USS Ronald Reagan

carrier to the Middle East to cover the withdrawal from Afghanistan this summer. And yet it is our allies the British in their new carrier, with the aid of a contingent of US Marine aviators flying their own F-35B's from her deck that will be there on station this summer, sailing through the South China Sea to ensure no mischief takes place while the Reagan is away.

My favorite comment most often heard about post war Britain's foreign policy is they "punch above their weight." And yet I suspect the Marines are on board their carrier because the F-35B is so expensive Her Majesties government simply could not outfit the entire wing.

No matter, their ship and those jets they can afford complemented by ours sail on like true comrades to the end. As we stepped forward to the rescue of Great Britain some 80 years ago, they now come to do the same for us.

Ferguson did not see Brexit coming when he wrote the book I review here, I doubt anyone really did. They may have lost their empire then left the European Union, but they are still Great Britain.

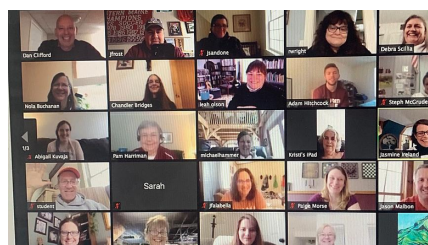
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THE RISKS OF SUNK COSTS

Marya C. Noyes, 123LLLT, MBA.

Is our inability to let go sinking access to justice?

Greetings Readers. Last month I wrote about how irrationality may be playing a part in the perpetuation of the justice gap. To review, rational behavior to an economist is defined as a decision-making process wherein people choose actions that benefit them, rather than actions which are neutral or harmful. Therefore, the perpetuation of a justice gap viewed through the eyes of an economist makes absolutely zero sense given the vast number of studies which show that the benefits of closing the justice gap far outweigh the costs. (e.g. A Tool for Justice – A Cost Benefit Analysis for Legal Aid, World Bank, and International Bar Association, 2019)

As you may or may not remember, in my research on the topic I picked up the Book, Quasi Rational Economics by Nobel Prize winning economist, Richard Thaler. In his book, Mr. Thaler explores the ways in which people's actual behavior often systemically deviates from what would be predicted by the normative economic model and posits explanations, formulas, and models for those differences.

There is a theory that people make irrational choices because they are often at the effect of some level of mental illusion, or what economist Herbert Simon referred to as "Bounded Rationality." I will spare you the explanation, however, suffice it to say Mr. Simon posits because of their mental illusions most people do not have the capacity to make objective decisions in the real world.

One of the first mental illusions that Mr. Thaler explores in Quasi Rational Economics is people's inability to ignore sunk costs. Now, if you do not know, "Thou shall ignore sunk costs" is an economic commandment, right along the lines of "Thou shall not kill." This commandment is taught as one of the first rules in the evaluation of any business decision. It is instilled in the brain of any microeconomics student and reviewed in the first week of most MBA programs.

What is a sunk cost? A sunk cost is any cost that has occurred that is not recoverable. A sunk cost will be the exact same regardless of any outcome. A sunk cost occurred in the past. It cannot be undone. For

example, dropping \$100 at a casino, money spent on law school tuition, time spent in an unhappy marriage. These things are gone. In these situations, the time, money, and emotional energy spent are not coming back regardless of the decisions made from this point forward. Economics instructs the rational decision maker to choose the most profitable avenue forward regardless of any past costs that have been incurred.

In reality, that is not what happens. Studies show that people do not ignore sunk costs when evaluating their decisions. Often they become victims of the "sunk-cost fallacy," which is defined as the phenomenon whereby a person is reluctant to abandon a strategy or course of action because they have invested heavily in it, even when it is clear that abandonment would be more beneficial. For example, they throw good money after bad when gambling because they are going to "win it back" on the next hand. When a rational mind would predict the next dollar spent in series of losses would have less of a chance at winning than the previous dollar. People continue to spend more time in a failed marriage instead of simply cutting their losses and moving forward. Which, like the gambling, often just perpetuates and exacerbates the overall loss.

The Germans have a terrific word for the inevitable re-



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sult of this sort of thinking, dumme steuer. It means stupid tax. This tax is the culmination of all the time, money, and resources a person pays for being stupid. (i.e., throwing good money after bad) Please understand, I am not throwing stones. I personally have paid thousands of dollars in stupidity tax. Unfortunately, I also know that I am not alone. There are loads of psychology, business, and economic articles on the phenomenon of the sunk-cost fallacy.

At present, I do not have the space to explain how to avoid the sunk-cost fallacy. The point of this article is just to point it out and the thinking associated with it. That generally in the evaluation of any business decision, humans will irrationally add an artificial amount of value to the time, money, and expenditures they have already incurred. This artificial value then skews the evaluation of future decisions and the estimated rate of return on the decision most associated with the past sunk cost. (I will spare you the charts)

How does this play into justice gap? Well, in our country we have a legal system. A system of education and business practices associated with the existing legal system as it is currently put together. As previously stated, there are vast number of studies which show that closing the justice gap outweigh the costs of doing so. Within the

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last few years, there have been some relatively revolutionary suggestions put forth to close the justice gap. These changes involve adding to the existing legal system, adding new regulations or laws ensuring access to justice, possibly adding a new level of legal professional, or maybe even changing the existing educational system around law.

"I personally have paid thousands of dollars in stupidity tax. Unfortunately, I also know that I am not alone."

Where and when these changes have been presented, they have been met with some rather violent resistance. Some of the common objections are, "I paid this much for law school. So should you." "The system works for me. It should work for everyone else." "I had to go through it. Everyone else should go have to go through it as well." Carefully dissected, it is clear these statements are examples of the sunk-cost fallacy. They add value to a previously incurred costs without addressing the profitability of the various possibilities available. If our society is ever going to be able to objectively evaluate the validity of the various options, we are going to have to recognize and set aside sunk-cost fallacy thinking. Only then will we be able to rationally evaluate the profitability of the choices we have at our disposal.

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Future event in consideration: Aqua Sox games & happy hour. Interested in joining? Make sure Colin has your contact information: cmcmahon@snocopda.org

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