



# Navigating Modern Council Meetings: Civility, Compliance, and Crisis Management

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# Open Meetings Primer

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# Open Public Meetings Act

**The Open Public Meetings Act (“OPMA”), ch. 42.30 RCW, applies to all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of the state and its subdivisions.**

**RCW 42.30.010.**

# Open Public Meetings Act

All meetings must be open to the public, except authorized executive sessions. [RCW 42.30.030](#); [RCW 42.30.110](#).

The following are required: notice of meeting, agenda, and published meeting materials and minutes. [RCW 42.30.070](#), [.075](#), [.077](#).

Meetings where agency business is received, discussed, and/or acted upon must include a quorum of members.

Quorum requires a majority of members of the governing body. See [RCW 42.30.020\(3\)](#).

# Open Public Meetings Act

**Mandatory posting of agenda online. See [RCW 42.30.077](#) (agenda for each regular meeting of a governing body must be available online no later than 24 hours before the published start time); [RCW 42.30.080](#) (special meetings).**

It does not invalidate subsequent modifications to the agenda of a regular meeting and does not invalidate otherwise legal action taken at a regular meeting where the agenda was not posted. [RCW 42.30.077](#).

**At a special meeting, only action that appears on the posted agenda may be taken. [RCW 42.30.080\(3\)](#).**

# Open Public Meetings Act

**Serial conversations between smaller groups may be treated as a “meeting.”**

*Wood v. Battle Ground School Dist.*, 107 Wn. App 550, 564, 27 P.3d 1208 (2001) (exchange of e-mails among board members constituted a meeting under the OPMA).

**Use or passive receipt of e-mail or other social media communication alone does not automatically constitute a meeting.**

*Citizens All. for Prop. Rts. Legal Fund v. San Juan Cnty.*, 184 Wn.2d 428, 444, 359 P.3d 753 (2015).

**The mere fact of meeting does not violate the OPMA:**

- The members must intend to meet to transact official business.
- The members must communicate about issues that may or will come before them for a vote; i.e., the members must take “action” as the OPMA defines it.
- A quorum must be present.



# The COVID Pandemic: Dawn of Remote Meetings

# Remote Access

**“It is the intent of this act to modernize and update the open public meetings act emergency procedures to reflect technological advances, while maintaining the act's public policy that governing body's actions and deliberations be taken and conducted openly while balancing public safety in emergency conditions. Governing bodies are encouraged to adopt resolutions or ordinances establishing where and how meetings will be held in the event of an emergency, in order to allow the public to more easily learn about and observe public agency action in an emergent situation.”**

**WA LEGIS 115 (2022), 2022 Wash. Legis. Serv. Ch. 115 (S.H.B. 1329) (WEST)**

# Remote Access

**“[A]ny governing body of a public agency which held some of its regular meetings remotely prior to March 1, 2020, may continue to hold some of its regular meetings remotely with no declared emergency so long as the public agency provides an option for the public to listen to the proceedings pursuant to subsection (2) of this section.”**

**RCW 42.30.230(6)**

# Remote Access

**“Public agencies are encouraged to make an audio or video recording of, or to provide an online streaming option for, all regular meetings of its governing body, and to make recordings of these meetings available online for a minimum of six months.”**

**RCW 42.30.220**

# Remote Access

**“Public agencies are encouraged to provide for the increased ability of the public to observe and participate in the meetings of governing bodies through real-time telephonic, electronic, internet, or other readily available means of remote access that do not require an additional cost to access the meeting.”**

**WA LEGIS 115 (2022), 2022 Wash. Legis. Serv. Ch. 115 (S.H.B. 1329) (WEST)**

# Public Comment

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# Public Comment

- (1) Except in an emergency situation, the governing body of a public agency shall provide an opportunity at or before every regular meeting at which final action is taken for public comment. The public comment required under this section may be taken orally at a public meeting, or by providing an opportunity for written testimony to be submitted before or at the meeting. If the governing body accepts written testimony, this testimony must be distributed to the governing body. The governing body may set a reasonable deadline for the submission of written testimony before the meeting.**

**RCW 42.30.240** (added to the OPMA in 2022)

# Public Comment

**(3) Nothing in this section prevents a governing body from allowing public comment on items not on the meeting agenda.**

**(4) Nothing in this section diminishes the authority of governing bodies to deal with interruptions under RCW 42.30.050, limits the ability of the governing body to put limitations on the time available for public comment or on how public comment is accepted, or requires a governing body to accept public comment that renders orderly conduct of the meeting unfeasible.**

**RCW 42.30.240** (added to the OPMA in 2022)

# Public Comment

**The people insist on remaining informed and informing the people's public servants of their views so that they may retain control over the instruments they have created. For these reasons, even when not required by law, public agencies are encouraged to incorporate and accept public comment during their decision-making process.**

**WA LEGIS 115 (2022), 2022 Wash. Legis. Serv. Ch. 115 (S.H.B. 1329) (WEST)**

# Public Comment

Things you can do:

**This section does not prohibit any generally applicable conditions determined by the governing body to be reasonably necessary to protect the public health or safety, or to protect against interruption of the meeting....**

**WA LEGIS 115 (2022), 2022 Wash. Legis. Serv. Ch. 115  
(S.H.B. 1329) (WEST)**

# Public Comment

Things you can do:

In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda.

Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting. Nothing in this section prohibits the governing body from stopping people from speaking to the governing body when not recognized by the governing body to speak.

[WA LEGIS 115 \(2022\), 2022 Wash. Legis. Serv. Ch. 115 \(S.H.B. 1329\) \(WEST\)](#)

# Public Comment: 'Condition Precedent'

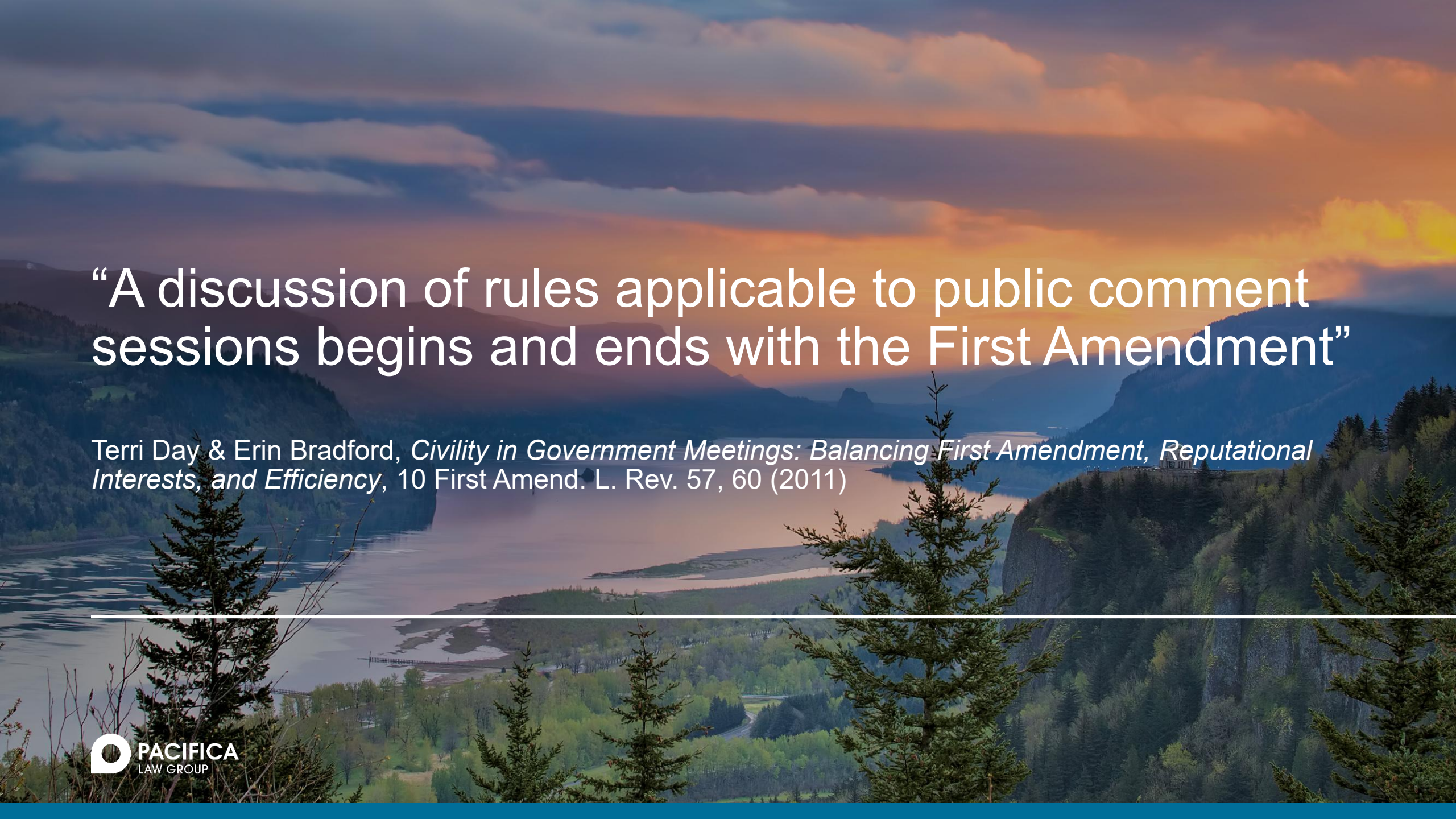
Things you can't do:

**“One of the core protections under the OPMA is that an individual's right to attend a public meeting cannot be restricted to fulfilment of a ‘condition precedent.’ [RCW 42.30.040](#).”**

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**“[E]xtracting a promise not to record as a precondition on attendance at a public meeting would appear to qualify as a condition precedent.”**

***Zink v. City of Mesa*, 17 Wn. App. 2d 701, 709–10, 487 P.3d 902, 907 (2021) (citing *In re Recall of Kast*, 144 Wash.2d 807, 811-12, 31 P.3d 677 (2001)).**



“A discussion of rules applicable to public comment sessions begins and ends with the First Amendment”

Terri Day & Erin Bradford, *Civility in Government Meetings: Balancing First Amendment, Reputational Interests, and Efficiency*, 10 First Amend. L. Rev. 57, 60 (2011)

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# Public Comment: Disruption & Removal

“[T]he governing body may remove a member of the public who is disrupting the orderly conduct of business. [RCW 42.30.050](#). But any such removal must be reasonable.”

*Zink v. City of Mesa*, 17 Wn. App. 2d 701, 709–10, 487 P.3d 902, 907 (2021) (citing *In re Recall of Kast*, 144 Wn.2d 807, 811-12, 31 P.3d 677 (2001)).

# Public Comment: Disruption & Removal

**MS. WILLS:** So I'm not looking at new property and I'm not looking at –

**MAYOR WALLIS:** Excuse me, you are out of order, sir.

**MR. STILL:** Who's out of order, me?

**MS. STROBEL:** You –

**MAYOR WALLIS:** You are out of order. Yes, Mr. Jason Still, you are out of order.

**MS. STROBEL:** I was asking a question to staff; do you mind? Can I do my business?

**MR. STILL:** How am I out of order (inaudible)?

**MR. WALLIN:** This is a disruption of our public meeting, Madam Mayor. Madam Mayor.

**MAYOR WALLIS:** Yes, it is a disruption.

**MR. WALLIN:** Do we need to discontinue the meeting or take a recess or maybe ask Mr. Still to leave while he's disrupting a public meeting?

**MR. STILL:** Muttering something under my breath.

**MS. STROBEL:** I heard you, so it wasn't under your breath.

**MR. STILL:** Right. It still doesn't change that I have First Amendment rights.

**MS. STROBEL:** I would like to continue to ask my question to Ms. Wills.

**MAYOR WALLIS:** This is a complete disruption –

**COUNCIL MEMBERS:** Can you please clarify –

**MAYOR WALLIS:** Can you ask Mr. Still to leave the room, please?

*From Still v. City of Longview*

# Public Comment: First Amendment Rights

The Longview city council gave Still numerous opportunities to speak during the meetings in dispute. He elected to do so several times, speaking extensively and uninterrupted during each meeting's constituents' comments period. During two of the meetings, Still also elected to speak on specific agenda items when the council allowed public comment. Mayor Wallis and the council did not, however, allow Still to speak when the constituents' comments period had ended, the council was conducting its own business, and the council was not, at the time, allowing public comment. Mayor Wallis and the council acted reasonably as a matter of law by imposing such a limited restriction on the public so that they could discuss council business in an orderly and efficient manner. Under these circumstances, no violation of the First Amendment occurred.

***Still v. City of Longview*, No. C23-5750 BHS, 2024 WL 3638057, at \*9 (W.D. Wash. Aug. 2, 2024)**

# Public Comment: First Amendment Rights

After the Mayor admonished a citizen speaker whose time had expired to relinquish the podium and sit down, Mr. Norse gave a Nazi salute directed at the Mayor. Having resumed the meeting, the Mayor was unaware of Mr. Norse's gesture until another council member brought it to his attention. At the direction of the Mayor, Mr. Norse was ejected from the meeting. Mr. Norse was also ejected from a second meeting in which he “engaged in a parade about Counsel chambers.”

The city argued that any violation of its decorum rules constituted a “disturbance” which could result in ejection from a public meeting. The court disagreed, concluding that “actual disruption means actual disruption” not “**constructive disruption, technical disruption, virtual disruption, nunc pro tunc disruption, or imaginary disruption.**”

Terri Day & Erin Bradford, *Civility in Government Meetings: Balancing First Amendment, Reputational Interests, and Efficiency*, 10 First Amend. L. Rev. 57, 64–65 (2011)



# The Good, the Bad, and the Ping Pong Balls...

*From Civility to  
Custody...*



# The Five “C’s” of Civility

- 1. Compassion**
- 2. Caring**
- 3. Context**
- 4. Convergence**
- 5. Custodial**

# Compassion & Caring: "The Opportunity to be Heard"

**“The First Amendment right to associate and to advocate “provides no guarantee that a speech will persuade or that advocacy will be effective.” The public employee surely can associate and speak freely and petition openly, and he is protected by the First Amendment from retaliation for doing so. But the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it.”**

***Smith v. Arkansas State Highway Emp., Loc. 1315*, 441 U.S. 463, 464–65 (1979)  
(cleaned up)**

# Context

**'El Dope Dogg' goes to court | 1st Amendment auditor arrested 4 times this year in Wenatchee**

# Convergence

3. The Petition at issue presented a knowing and willful course of conduct directed at Petitioner that is not protected speech and is designed to harass, intimidate, instill fear, and get Petitioner to take action that would be beneficial to Respondent;
4. The complained-of conduct in the Petition meets the definition of Unlawful Harassment

# Custodial

**McNew approached Still and Still, who was cooperative at first, walked directly outside of the city hall chambers. Thereafter, however, Still “stood in the hallway where he could still be seen and heard by those inside the City Hall Council Chamber.”**

**McNew asked Still several times to leave the building, but Still refused. McNew then ordered Still to leave the building, and Still again refused. At this point, an officer at the scene would have reasonably believed that Still had committed the crimes of disorderly conduct and obstructing a law enforcement officer. McNew reasonably exercised his discretion to *not* arrest Still and to, instead, “gently touch[ ] his arm to direct him toward the exit.” No Fourth Amendment violation occurred.**

***Still v. City of Longview*, No. C23-5750 BHS, 2024 WL 3638057, at \*10 (W.D. Wash. Aug. 2, 2024) (excerpts)**

# Custodial

The First Amendment does not protect true threats of violence. “True threats are ‘serious expression[s]’ conveying that a speaker means to ‘commit an act of unlawful violence.’”

*State v. Hensley*, No. 57518-3-II, 2024 WL 800338, at \*5 (Wash. Ct. App. Feb. 27, 2024) (citing *Counterman v. Colorado*, 600 U.S. 66 (2023))

The State must show that the defendant consciously disregarded a substantial risk that [the] communications would be viewed as threatening violence.” In other words, the State must demonstrate that the defendant was “aware ‘that others could regard [the] statements as’ threatening violence and ‘[delivered] them anyway.’ ” Doing so entails “consciously [accepting] a substantial risk of inflicting serious harm.” Still, under this test, the State need not prove that the defendant actually intended to carry out their threat.

*State v. Hensley*, No. 57518-3-II, 2024 WL 800338, at \*5 (Wash. Ct. App. Feb. 27, 2024) (citing *Counterman*))

# Questions?

**“Let us consider that we are all partially insane. It will explain us to each other, it will unriddle many riddles, it will make clear and simple many things which are involved in haunting and harassing difficulties and obscurities now.”**

Mark Twain,  
*Christian Science* (1907)





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