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Cultural sensitivity or bias?

Our WSBA president could relieve at least one of his worries (“Tending Weeds,” President’s Corner, June 2010 Bar News) by ceasing to emphasize differences, including his own, and working toward unity of purpose no matter what our differences. Perhaps what really worries our WSBA president is the reality that his diversity campaign by its very nature requires a heightened awareness of differences.

There is a fine line between “cultural sensitivity” and “cultural prejudice.” In order to be culturally sensitive, we have to understand cultural “differences.” To one person, the recognition of those differences may be “sensitive” while to another, it may represent bias. To one foreign language speaker, the less than perfect efforts of a native American to speak his language may be commendable and appreciated; to another, those same efforts may be mocking or demeaning. We cannot have it both ways; the old adage “be careful what you wish for” could not be more pertinent. Perhaps the former foreign language speaker was glad to have somebody try to help, while the latter had a sense of entitlement to have someone serve him in his native language, itself a form of prejudice.

Emphasizing differences begets prejudices. Let’s work together to create a merit-oriented society (and Washington Bar) where we downplay our differences so that we can all do our best, ultimately to the good of our society. I have just two requirements I expect from those who are different from me. Do not act as if being different makes you “cool” or special, and do not ask for special dispensation because you are different. Working by those two rules should substantially reduce Mr. Mungia’s “worry.”

William R. Clarke, Richland

SB1070 Feedback

EDITOR’S NOTE: As of press time, we received eight letters in response to WSBA President Salvador Mungia’s views expressed in his President’s Corner column “Dangerous Words” in the July 2010 Bar News. Two greatly exceeded the word limit and one arrived past the publishing deadline. Following are the five remaining letters. President Mungia responds after the letters. For another viewpoint on this issue, see the article on immigration reform on page 28. The piece was written by the authors months ago and already scheduled to run this month, but readers may find it pertinent to President Mungia’s July column and the letters below.

Michael Ramirez, a political cartoonist, published a caricature of President Obama dressed as the Statue of Liberty, captioned “Give me your tired, your poor, your huddled masses yearning to vote for me.” That’s amnesty, open borders and the objection to Arizona’s SB1070 in a nutshell. That’s my belief and, admittedly, my opinion, but I don’t presume that I have the right to impose it on anyone else.

Mr. Mungia, WSBA president, obviously disagrees, and feels entitled to use the WSBA as a platform to promulgate his personal political views; opposing viewpoints be damned (“Dangerous Words,” President’s Corner, July 2010 Bar News). Suggesting our courts cannot competently apply the criminal law standard of “reasonable suspicion,” or distinguish between legitimate police investigations and pretextual racial harassment, he excoriates Arizona’s SB1070. Pronouncement of these failings might come as a shock to our courts.

What shocks me is that the WSBA has abandoned all pretense of intellectual diversity and declared its members’ freedom of political association null and void. We are now one with the Democrat Party, because it has been deemed (by Mr. Mungia) to be our moral and professional obligation.

This imperious, small-minded liberty that has been taken with the political rights of dissenting members of the WSBA is deplorable.

As enforcer and arbiter of the RPCs, the WSBA should strive to maintain at least an appearance of neutrality. Since Mr. Mungia characterizes opposition to SB1070 as a moral imperative, does dissent render one morally unfit to practice law, an apostate, or just guilty of a thought crime?

Michael A. Nelson, Spokane

Your decision to boycott Arizona is seriously wrong and I’ll tell you why. You are free to use the bar pulpit to make a case against the Arizona legislature or urge us to work for the defeat of their elected representatives or even urge us to support the overturning of their legislation. Instead, you urge us to punish the employees of Arizona hotels, restaurants, and convention centers. You urge us to punish those who will be the first to suffer if our visits are canceled: the innocent maids, waitresses, and janitors.

What have those workers done to you? What part did they have in the passage of
this legislation? How can you heap such anger on innocents who did nothing to deserve it? They need those jobs. They need those paychecks. They show up every day to perform hard, dirty work. If we boycott, then the maids, the waitresses, and the janitors will be the first to lose their jobs whether the legislation is changed or not. The fact that so many of those Arizona service workers are Mexican adds a special racial irony to your published position.

You can direct us to hurt innocent workers in the name of a higher cause but I will not join you. When I was sworn in as a lawyer decades ago our judge told us people would evaluate our character by how we treat support staff in all areas of our lives. You want Arizona support staff to lose their jobs because you disagree with their legislators. There are ways to oppose legislation without encouraging such collateral damage. Your decision to hurt innocents is seriously wrong.

John Panesko, Chehalis

In the July Bar News, Salvador Mungia objects to consideration of race and national origin in jury selection and in immigration laws. It is obvious that race and national origin are factors in determining whether someone is a foreign national. It is also obvious that race and national origin are factors in assessing reasonable suspicion that a person is illegally here. The Arizona law says that a reasonable attempt shall be made to determine immigration status only in the case of a lawful stop coupled with reasonable suspicion. Hardly extreme. As to jury selection, race and national origin and other classifications are factors that all lawyers consider in selecting juries. There is insufficient time to determine whether a person from some group has a prejudice based on being in that group. Lawyers must guess. Lawyers want to win cases, so their motivation is to get sympathetic jurors, not to exclude any group. In order to assist their clients in criminal and civil cases, lawyers must consider race and classifications, and in their judgment they should consult with others about it. It is inconceivable that government agencies would attempt to prevent this.

Mr. Mungia worries about indifference to civil liberties. He should be concerned about the civil liberties of GM bondholders whose property was effortlessly taken by the administration, about corporations threatened with vague business prosecution, and about the inviolate right of corporations to a jury trial in Washington.

Roger B. Ley, Astoria, Oregon

I believe that the Federal Government has immigration laws. I believe that the Federal Government has not enforced its own laws. In this vacuum the State of Arizona (or any state, especially one on the front lines) has the right and obligation to its citizens to do what it can to make the Federal Laws effective. Can reasonable minds at least differ on that count; without my position being characterized as racist or Nazi sympathetic?

If we had 12 million illegal Swedes here, I’d have this same position. Enforce the law or change or abandon the law.

As a mandatory Bar, this association should refrain from rendering opinions about social issues upon which reasonable minds may differ and which are not directly connected to the practice of law. I know, I know, the Board of Governors claim that it is adherence to the Rule of Law compels their taking a position. If the Bar Association is so concerned about the Rule of Law, then how could it stand by and remain silent about the flagrant violations of our borders? How can it stand by when cities declare themselves “sanctuary cities” which will ignore, bypass or contravene the duly enacted laws of the Federal Government? Is it the selective and discriminatory adherence to the Rule of Law which smacks of bias.

Scott Candoo, Tacoma

Bigotry is “our concern.” Thank you, WSBA President Sal Mungia, for speaking out against the Arizona law, SB1070! The Seattle and South Sound chapters of the National Lawyers Guild urge the WSBA Board of Governors to also speak out loudly against this racism. We applaud President Mungia’s leadership. He has reminded all lawyers that we have a history of legalized bigotry, and that we need to be out front in opposition to “legal” race discrimination. We hope that the Board of Governors will hear the call to do the right thing and to recognize that “justice is a constant struggle.”

Bernice Funk, Seattle

PRESIDENT MUNGIA RESPONDS:

To Mr. Nelson: Actually, I like opposing viewpoints. However, I did not make this a Democrat or Republican issue and it should not be such a partisan issue. Indeed, there are many Republicans who have criticized SB 1070. Just a few examples are the following. Florida Senate candidate Marco Rubio has stated: “It could also unreasonably single out people who are here legally, including many American citizens … Throughout American history and throughout this administration we have seen that when government is given an inch, it takes a mile.” Former Florida Governor Jeb Bush has criticized the law: “It’s difficult for me to imagine how you’re going to enforce this law. It places a significant burden on local law enforcement and you have civil liberties that are significant as well.” Miami Rep. Lincoln Diaz-Balart and South Carolina Sen. Lindsey Graham have both spoken out against the law; and former Republican Congressman Joe Scarborough has plainly stated: “I will tell you that this is un-American. It is unacceptable.”

To Mr. Panesko: The Board of Governors’ decision was not to require staff or bar volunteers to go to a state where you must carry certain identification papers or risk detainment. In the words of conservative Washington Post columnist Michael Gerson, a former President George W. Bush speechwriter, in his opposition to the act: ‘Americans are not accustomed to the command ‘Your papers, please,’ however politely delivered. The distinctly American response to such a request would be ‘Go to hell,’ and then ‘See you in court.’ “ As to the collateral damages, I doubt that the few staff/members traveling to Arizona in WSBA business in any year would have a noticeable economic impact.

To Mr. Ley: The opinion that race cannot be the sole basis for exercising a peremptory challenge during jury selection is not an idea that originated with me; instead, the U.S. Supreme Court has held that such a practice is unconstitutional in criminal cases in Batson v. Kentucky, 476 U.S. 79 (1986) and later extended that holding to civil cases in Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991). In my column, I cited a recent study that found that while the prohibition is explicit, it is commonly violated. Similarly, while SB 1070 explicitly states that race cannot be used as a factor, it is likely that race will be used.

To Mr. Candoo — my friend and colleague from Tacoma: I never stated that the federal
immigration laws should not be enforced. The federal government has actually increased border security dramatically during this past decade. The U.S. Border Patrol’s budget has tripled from $1.05 billion to $3.5 billion with the number of Border Patrol personnel in that same timeframe doubling. My concern is having a state law passed that will likely cause the harassment and detention of those who are legally within the state of Arizona — as noted above, many stalwart Republicans share my concerns. As with many legal issues, this act affects social issues as well.

To Ms. Funk: The Access to Justice Board also has asked the Board of Governors to adopt a resolution in opposition to SB1070.

Making bank accounts accountable

Teresa Schrempp’s article (“Should Bank Tellers Engage in Estate Planning?,” July 2010 Bar News) was very good. It points out a common failing of most bankers when changing or setting up new accounts. Either the WSBA, or some other high profile authority that would get a bank’s attention should contact and make certain that every Washington bank, including each of its branches, receives a copy of your article together with a notice recommending a solution for correcting this problem. The notice should emphasize the importance minimizing this common problem (caused by well intended but misinformed or uninformed bank personnel), and how to avoid it by, e.g., requiring documentation by the bank/person handling setting up or changing account owners or signers. There should be some sort of required bank procedure noting that the JTWROS questions were discussed with the account owner(s) or he was advised to get legal advice on that question. In any event, in some form or the other, the matter should be brought to the depositor(s’) attention. Maybe a bank policy could require that a well drafted pamphlet spelling out the issues involved, be given to each depositor when setting up or changing an account. This matter and recommended solutions should be communicated to all bank employees dealing with the opening of or changing signers/owners on bank accounts. I don’t favor abolishing JTWROS accounts or mandating a “reverse presumption.” In my opinion the Required Disclosure proposal as suggested in your article is the best approach.

Jacob L. Smith, Lynden
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Despite knowing full well that the title of this column will tempt Roger Ley to put fingers to the keyboard and write another letter to the editor excoriating me for saying this — I’m saying it: “I want a revolution.” And it’s begun.

It started on that first Monday last October at the Fall Judicial Conference.

I asked.

They responded.

Historically, less than 15 percent of the judges in our state participated in the Campaign for Equal Justice. The Campaign is our legal community’s statewide effort, with attorneys and judges working together, to raise funds to provide access to the justice system for those at the bottom of the economic spectrum. It’s our way of demonstrating to the general public, and to ourselves, that we are a profession with the public interest in mind, that we don’t simply profess that everyone should have access to the legal system regardless of financial condition, but in fact put our money where our mouths are. The Legal Foundation of Washington distributes the proceeds to 26 legal service providers throughout our state, most of which are run by county bar associations, who provide representation to children, the elderly, the abused, the poor — those who, without such help, would have little, if any, hope.

The judges jumped on this opportunity with more enthusiasm than my brother Les has when he visits an all-you-can-eat buffet. In just a few months, the judges tripled their rate of participation from 15 percent to 42 percent. From 15 percent to 42 percent in three months — that’s filthy.

In my January column, I mentioned a few of the judges leading the charge — my hope is that they continue that charge and that other judges will join them to talk with their fellow benchmates and explain the importance of having 100 percent of our judges, from all the various courts, state and federal, trial and appellate, participate in the Campaign. I hope judges around the state follow the example of Judge Rebecca Baker of the Superior Court for Ferry, Stevens, and Pend Oreille counties — she regularly exhorts her fellow judges to participate in the Campaign. As the saying goes, you can tell what a person’s values are by looking at their checkbook and their calendar. Judge Baker values access to the justice system.

Judge Baker is only one example of the 42 percent of judges who have stepped up to the plate. Judges — your stepping up to the plate, your taking the lead, has reaped benefits.

The benefits started with the WSBA Board of Governors. Historically, the BOG had only two to three of its members participating in the Campaign. Two to three governors — that’s filthy — in a bad way.

Last year, after learning about the positive responses by the judges, every single WSBA governor and officer donated to the Campaign. I know that 100 percent participation will be the expectation from this point forward.

This year, I’ve asked other bar association leaders to demonstrate their commitment to access to justice by fully participating in the Campaign for Equal Justice. The first board of trustees I approached was the Spokane County Bar Association led by their president, Mary Doran. I will never forget this visit for two reasons. First, after I made my request, I asked if there were any comments and Treasurer Matt Andersen responded: “I like what you’re doing. Do more.” Matt, I’ve been quoting you on that — “do more,” I will. And I’ve been asking others to do the same. Second, within two weeks, I got a call from Penny Youde, the Spokane County Bar Association’s executive director, telling me that all of their trustees had participated. Wow. I hadn’t had that kind of positive response since I offered to get Mark Johnson his coffee for a year. (As an aside — Penny tells me that the Spokane County Bar Association is aiming to have 50 percent of its entire membership donate to the Campaign for Equal Justice in 2010 and 100 percent in 2011. If they do, I’ll jump out of an airplane (yes, one that’s in the air) wearing a t-shirt (and a few more articles of clothing, of course) that reads: “Spokane County Bar Association Rocks!”)

I next went before my hometown group — the Tacoma-Pierce County Bar Association trustees — and asked for the help of my president, Scott Candoo, who has been known to dress as a military dictator and pronounce edicts in his president’s column. (That’s a whole other story.) With the help of Past-president David Snell, they have 100 percent participation of their board for 2010. I love my hometown.

How about young lawyers? If any group is on the short side of the financial equation, it’s newer lawyers. I made my pitch to the WYLD Board of Trustees with the full understanding that they are just starting off on their careers, student loans biting at their heels like crazed dachshunds. Julia Bahner, the WYLD president, took that request and ran with it. Let me tell...
you, those YLD trustees rock. 100 percent participation.

How about the board members for the Washington State Association for Justice? Shoot — the association changed their name a few years ago to make it clear what they stood for — for justice. Would their leadership not only show their members, but in fact all members of our profession, that they are committed to justice by promoting access to the justice system? I spoke with Brad Fulton, WSAJ’s president, and the omnipresent executive director, Gerhard Letzing (that guy is everywhere), about the task — and not a small task at that — WSAJ has 44 members on their board. In contrast to county bar associations, WSAJ asks its board members, and its members, to regularly contribute to causes that are of particular concern to its association. But guess what? Brad and Gerhard demonstrated how important access to justice is for everyone — and the WSAJ board members followed suit. 100 percent participation — all 44 members. No exceptions. They rock. They are for justice.

I know that Mark Fordham and Andy Prauzuch, president and executive director of the King County Bar Association respectively, are working to get 100 percent of their board members contributing to the Campaign. All those board members already give to the King County Bar Foundation but also realize the importance of their board members contributing to the Campaign for 2010 and I have no doubt, under the leadership of Jillian Barron and Kristin Lewis, the president and executive director of WDTL, that it won’t be long before they join the 100 percent club.

So judges, you are making a difference. But in the words of Matt Andersen, “I like what you’re doing. Do more. How about 100 percent for 2010?”

That same goal should be true for all bar associations’ boards of trustees — 100 percent in 2010.

We, as a profession, talk about the responsibility for every single lawyer in our association to assist those who cannot afford access to the justice system. But we don’t yet really believe that in our hearts. And we need to. We need to think about the question of who we are and who we want to be. While access to the justice system is a societal responsibility, we, as lawyers, have a special obligation to ensure that everyone has access.

This is the start of the revolution. However, like the Ghost of Christmas Past, my time grows short. I’m counting on Steve Toole, the WSBA president-elect, and then Steve Crossland, WSBA president-elect (I love that term) to carry the baton when it’s handed to them. I’m counting on all the current WSBA governors, and all future governors, to carry the baton. I’m counting on all county, specialty, and minority bar association trustees to carry on with this task. Most importantly, I’m counting on each member of our association to carry on this task. I’m counting on all of you to share with your colleagues the importance that everyone, those in big firms, those in small firms, those in solo practice, those in private practice, those in public practice, those in Eastern Washington and those in Western Washington, those in cities and those in rural areas, at some level, no matter how small, participate in the Campaign for Equal Justice. “Equal Justice for All” is not a platitude. It’s a conviction.

Can you imagine the impact that our bar association can have upon bar associations across the country if every single one of our members participates in the Campaign for Equal Justice? Revolutionary.

Can you imagine the public’s perception of the legal profession if every single one of our members, attorneys and judges, participated in the Campaign for Equal Justice? Revolutionary.

Most importantly, can you begin to imagine the difference our profession would be making in the lives of those who are with little, if any, hope because they can’t access the justice system? Revolutionary.

Yes, the revolution is on.

With your whole body, your whole heart, with your whole conscience, listen to the Revolution. . . . This is the music everyone who has ears should hear.3

The last time I quoted the poem, Bernel Goldberg, a Kirkland attorney, wrote: “I hear the music and am writing my check today.”

I hope you’ll be like Bernel and hear the music. And then write your check — or easier yet, just go to www.c4ej.org and make your donation online.

Change our profession. Join the revolution. ☩

WSBA President Salvador Mungia can be reached at smungia@grh-law.com.

NOTES
2. For all you judges, “that’s filthy” is a compliment.
3. Russian poet Alexander Blok.
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Enhancing the Profession with Enhanced Education

Ground-breaking steps in educational development to support new lawyers, pro bono lawyers, and reduced-fee work

In the coming year, the WSBA will be launching a number of significant initiatives dedicated to enhancing training and development opportunities for our members. These opportunities are focused on two primary segments of our membership: new lawyers and lawyers providing pro bono or reduced-fee services for income-eligible clients. The goal is to enhance our members’ careers and support the profession. These new programs come in the wake of the Program Review conducted over the last two years that involved evaluating all of the WSBA’s programs to ensure the effective and efficient use of WSBA resources, consistent with our mission and Guiding Principles.

Training for New Lawyers

In the area of New Lawyer Education, the WSBA will be taking on a larger role in “on boarding” new lawyers into the profession by providing more training and development opportunities as they enter the profession. By combining the efforts of the New Lawyer Education program and the Young Lawyers Division (WYLD), new lawyers will be provided with a spectrum of free and low-cost skill-based training programs to assist in their transition to practice, which was a primary need identified in a recent WYLD survey of new lawyers. Efforts in the creation of this new range of training options for new lawyers will also be coming from sections and WSBA-CLE. Several new programs are currently in the development phase.

While attorneys who begin their careers at larger law firms may have their paths clearly spelled out by their employers, the vast majority of new lawyers do not have this experience and the path forward is not always so clear. As part of the focus on transition to practice, new lawyers will be provided with an online resource where they will be able to see a “virtual path” toward career development. There will be a menu of educational programs and suggested paths to follow in order to develop specific practice areas. This online resource will also be available to established lawyers looking to retool mid-career.

Pro Bono Training for Lawyers

On another front, the WSBA will be moving into training and development in a whole new way by serving those members interested in providing pro bono services to income-eligible clients. One of the most common things we hear from attorneys as we travel around the state is that they would like to take on more pro bono cases, but they don’t have sufficient training in the areas where those services are needed most (e.g., landlord-tenant, public benefits, etc.).

The Program Review Committee recommended in its report on this topic that the WSBA develop and implement training for areas of interest to pro bono programs. Similar to the training available for the WSBA’s Home Foreclosure Legal Aid Project, much of this training will be provided online so it is widely available to attorneys around the state. In addition, it is envisioned that these trainings will be made available at no or low cost. Members will be able to access these trainings not only through the public-service rubric, but many of the educational opportunities developed for new lawyers mentioned above will be relevant in this arena.

Training to Provide Low-cost Legal Services

The WSBA’s training and development efforts are also critical to the success of the WSBA’s new Statewide Moderate Means Program that will be launched in the fall. This program will provide low-cost legal services to those clients who are in the 200–400 percent range of the federal poverty level and are therefore not eligible for free civil legal aid but who likewise cannot afford to pay a lawyer’s standard fee. The Statewide Moderate Means Program will be implemented in partnership with the three Washington law schools; supervised students will provide the client intake services and will then match those clients with lawyers willing to take on these cases. Meanwhile, the WSBA will recruit and provide training to members interested in participating in the Program.
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There is much in motion at the WSBA as we refocus our energy and resources on these training and development initiatives. It is hoped by stepping into this arena in a more comprehensive fashion, the WSBA will provide more opportunities for both new lawyers and established lawyers who are looking to not only hone their skills but also provide services to clients in need of legal services who are unable to access the system. We are a profession built on service — each of these programs is envisioned to strengthen tools available to lawyers dedicated to better serving our clients, especially those in need. Our hope is that members embrace this culture of service, avail themselves of these new programs, and find ways to grow professionally while helping clients who may not normally be able to access legal services.

Paula Littlewood is the WSBA executive director and can be reached at paulal@wsba.org.
Looking Outside the Judicial Monastery

A Pragmatic Approach to Appellate Decision Making

BY LEONARD J. FELDMAN AND P.K. RUNKLES-PEARSON

Recently, in the context of Justice Stevens’s announced retirement, Michigan Governor Jennifer Granholm said on CNN’s “State of the Union” program that the Obama administration is “very wise” to consider nominating someone with expertise outside the “judicial monastery.” Governor Granholm added: “For somebody to experience and see what everyday people are feeling and experiencing out there, I think is an important thing to consider.” Then, of course, President Obama nominated Elena Kagan, who would come to the court from outside the judicial monastery — someone who has spent her career in academia and government service and has never spent a minute as a judge or justice.

This article explores Governor Granholm’s comments, which were repeated by many during the recent selection process. Whatever their other experience, it is important to select appellate judges who have diverse experiences. Sonia Sotomayor, for example, spent many years on the bench and as a government lawyer, but she also practiced in a law firm and as a solo practitioner. This breadth of experience allows an appellate court to understand and appreciate the very real impact of its opinions — how they affect the lawyers, the parties, other litigants, and subsequent trial court proceedings. To that end, this article offers specific suggestions for “looking outside the judicial monastery,” including a more pragmatic approach to appellate decision making.

To frame the discussion, this article starts by offering some very real examples of cases where the court failed to look outside the judicial monastery: where the court issued a decision but stopped short of satisfactorily deciding the parties’ dispute. Examples include: 1) ducking important issues; 2) remanding issues unnecessarily; 3) contradicting controlling precedent; 4) result-oriented decision making; and 5) issuing thinly reasoned and conclusory decisions. As discussed below, each example provides additional support for Governor Granholm’s view that it is important — if not essential — to look outside the judicial monastery and thereby provide “justice” to deserving litigants.

Before discussing these examples, a preliminary point bears emphasis. The intent of this article is not to criticize the legal conclusions of opinions or to cry “sour grapes” over cases in which we (the authors) were involved. In fact, we won some of the cases discussed below and were not even involved in many others. Rather, the intent of this article is to demonstrate that some judicial decisions are unsatisfactory because they fail to fully appreciate the consequences of the court’s reasoning. The purpose of this article is to point out that writing appellate decisions is not just an academic exercise and that judges can write better opinions by thinking about how their decisions affect the litigants and subsequent litigation. If this article prompts judges, lawyers, and politicians to think about these issues, our job will be done.

REPRESENTATIVE CASES

Ducking Important Issues
In Estate of Mitchell v. American Reliable Insur-
ance Co., 349 F. App’x 151 (9th Cir. 2009), the parties briefed two sets of issues. The first issue was whether the insurance company in that matter breached its duty to defend. The district court had rejected that argument, and the policyholder appealed. The second issue built on the first: whether the insurer was liable for the amount of a stipulated judgment, prejudgment interest, attorney fees, and costs, assuming it violated its duty to defend. The district court, having concluded that the insurer did not breach that duty, did not reach this issue. But the issue was fully briefed by the parties, and both parties agreed that it could be resolved as a matter of law.

The Ninth Circuit issued an unpublished memorandum disposition in which it concluded that the insurance company had breached its duty to defend. That is where the decision stopped: there was no discussion whatsoever of the relief that flows from such a finding. Instead, the parties were left to litigate that issue on remand. The policyholder promptly filed a motion for entry of judgment, and the insurance company filed a 40-page response brief opposing the requested relief on every ground imaginable. That was followed by a 40-page reply brief, a motion to refer the matter to a federal magistrate judge for a settlement conference, and a full-day mediation with parties attending from Montana, Washington, Alaska, and Georgia.

Remarkably, all of the above efforts could have been avoided if the Ninth Circuit had added a single paragraph to its decision addressing an issue that the parties had fully briefed and that by all accounts could be resolved on purely legal grounds. The net effect of ducking that issue was further delay (the district court proceedings took about four months to resolve), additional attorney fees and expenses (estimated to be in excess of $60,000), and significant use of judicial resources on remand (the district judge, the magistrate judge, and their respective clerks). Had the panel looked outside the judicial monastery, it presumably would have identified the need to avoid such a result. Instead, it ducked the issue without discussion or explanation.

Remanding Issues Unnecessarily
When an appellate court unnecessarily remands an issue, it squarely addresses the issue in its decision (no ducking involved), but sends the issue back to the district court rather than deciding it on appeal. Two recent examples come to mind:

- In Mitchell (discussed above), the Ninth Circuit also considered whether the district court abused its discretion in granting additional time for the plaintiffs to file a notice of appeal based on excusable neglect or lack of receipt of the district court’s summary judgment ruling under Federal Rules of Appellate Procedure 4(a)(5) and (6). The dissent would have remanded that issue back to the district court for further fact-finding. Although the majority rejected that approach and affirmed the district court’s decision, a remand on this issue would have been disastrous for the plaintiffs and their trial lawyer.

- In Florer v. Congregation Pidyon Shevuyim, 603 F.3d 1118 (9th Cir. 2010), the district court dismissed the plaintiff’s First Amendment claims based solely on its holding that the plaintiff had not sued a state actor. Although the parties had filed cross-motions for summary judgment on this point, both asserting that the issue should be decided as a matter of law, the Ninth Circuit found issues of fact and remanded the issue to the district court. More recently, in Pollard v. Geo Group, Inc., ___ F.3d ___, 2010 U.S. App. LEXIS 11496 (9th Cir. June 7, 2010), the Ninth Circuit decided the same issue — albeit “federal actor” rather than “state actor” — as a matter of law.
When an appellate court vacates a district court’s summary judgment ruling in favor of the defendant, it can appropriately be described as a “victory” for the plaintiff. But when issues are unnecessarily remanded to the district court, the party with greater financial resources — often the defendant — receives an undeserved opportunity to snatch victory from the jaws of defeat simply through continued litigation.

**Contradicting Controlling Precedent**

The Ninth Circuit, we are told, is bound by its own precedent. Its case law is clear on that point, appropriately recognizing that “one panel cannot reverse a decision by a previous panel.” It follows, therefore, that a litigant who can identify a controlling decision that is favorable to its position — similar facts, identical issues — ought to prevail on appeal. That is not what happened in *Superstition Crushing v. Travelers Casualty & Surety Co. of America*, No. 08-16454, 2009 U.S. App. LEXIS 28575 (9th Cir. Dec. 3, 2009), a point that one panel member acknowledged when the Ninth Circuit denied panel rehearing and rehearing *en banc*.

The principal issue in *Superstition Crushing*, simply stated, was whether the policyholder was limited to a single policy limit for covered losses that occurred over multiple policy periods. The Ninth Circuit addressed that issue in *Karen Kane, Inc. v. Reliance Insurance Co.*, 202 F.3d 1180 (9th Cir. 2000), a case that involved similar facts, identical issues, and — critically — the *exact same policy language*. The Ninth Circuit there, in a decision authored by Judge Harry Pregerson, ruled in favor of the policyholder. First, it held that the policy language was “ambiguous” and therefore resolved that ambiguity in favor of the policyholder. Second, it described the insurance company’s interpretation of the relevant policy language as “irrational” and “inconsistent with the objectively reasonable expectations of the parties.”

The Ninth Circuit in *Superstition Crushing* nevertheless ruled in favor of the insurer. On the issue of ambiguity, the court concluded that the policy language was “clear and unambiguous.” On the issue of reasonable expectations, the court concluded that “Superstition’s expectation is simply the fervent hope usually engendered by loss.” The court addressed *Karen Kane* in a footnote, explaining that *Karen Kane* “is not controlling here” because the Travelers’ policies are governed by Arizona law, whereas *Karen Kane* “applied California law.” Significantly, the court did not identify any differences between Arizona law, on the one hand, and California law, on the other.

Nor could the court identify such differences. Both logically and linguistically, language that is ambiguous in one state is equally ambiguous in another. Similarly, if an argument is irrational in one state, it is equally irrational in another. And expectations that are reasonable in California are equally reasonable in Arizona — the same laws of economics apply in both states. True, there may be instances where the law is materially different in one state versus another, but here there was no indication — and the panel identified none — that Arizona courts would approach these issues any differently than courts in California.

The policyholder responded to the panel’s decision by filing a petition for rehearing with a suggestion for rehearing *en banc*. Consistent with Rule 35 of the Federal Rules of Appellate Procedure, which governs *en banc* review, the first sentence of that petition read: “This petition presents a clear and unequivocal intra-circuit conflict.” The court nevertheless denied the petition, with Judge Betty Fletcher dissenting. In her dissent, Judge Fletcher noted:

In *Karen Kane Inc. v. Reliance Insurance Co.*, interpreting an insurance policy ma-

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Karen Kane is the law of our circuit, requiring us to hold that Superstition Crushing’s interpretation of the policy is objectively reasonable. But the case does not bind the Arizona Supreme Court. For that reason, I would grant the petition for panel rehearing and certify the case to the Arizona Supreme Court for it to decide the meaning of “occurrence” under the policies and to decide whether Superstition’s interpretation is objectively reasonable.13

Thus, Judge Fletcher correctly recognized that Karen Kane was “the law in our circuit,” but was unable to persuade her fellow judges to resolve the resulting intra-circuit conflict.

Judge Fletcher’s dissent highlights three additional issues relevant to this article. First, whether Karen Kane is or is not “binding” in Arizona courts is irrelevant; it is binding in the Ninth Circuit, which is where the matter was heard. Second, Superstition Crushing pursued its claims against Travelers because those claims were supported by controlling precedent; it reasonably anticipated that the Ninth Circuit would follow that precedent, only to find out — tens of thousands of dollars later — that Judge Pregerson’s textual and economic analysis in Karen Kane does not apply to policies that are governed by Arizona law. Third, Judge Fletcher’s dissent, like the decision that preceded it, does nothing to resolve the underlying issue. Insurance companies and policyholders in states other than California no longer know how their policy language will be interpreted by the Ninth Circuit, leading to unnecessary litigation. Judge Fletcher’s dissent does not remedy these issues — only en banc review could do so.

Result-Oriented Decision Making

A result-oriented decision is one that reaches the result that the court wants to reach, whether or not that result is supported by relevant case law. Lawyers often complain that any unfavorable decision is “result-oriented.” Here, we are not concerned with a bad outcome but rather the systemic effects of result-oriented decision making. As discussed above, parties litigate cases based on relevant case law. They can — and should — expect courts to follow controlling precedent. That expectation breaks down if courts issue result-oriented decisions. Such decisions also create bad precedent; they may be followed in other cases under different facts, thereby perpetuating the court’s result-oriented reasoning.

As litigants, we rarely know if and when a court has truly issued a result-oriented decision. Only the panel knows when that has happened. But occasionally, one member of the panel (a judge who was of course involved in the decision, attended the post-argument conference, and presumably knows why the majority ruled the way it did) will reveal that circumstance. Such decisions are not hard to find. For example:

- Nat’l Parks & Conservation Ass’n v. Bureau of Land Mgmt., 586 F.3d 735 (9th Cir. 2009) — “The result-oriented notion that BLM has ‘narrowly drawn’ this statement of
Two years ago, my close friend Tammy died while in the emergency room of a local hospital for flu symptoms. They told us she died from pneumonia, but we knew that wasn’t the case. In fact, she had sleep apnea and was put on a heavy narcotic but was not seen by a doctor or properly monitored. She died within minutes.

“I was put in charge of Tammy’s affairs and got really lucky when I was referred to Gene Moen. This was the first time I worked with an attorney, and Gene and his whole office did a phenomenal job. I was in good hands the entire time. Gene was clearly doing this from the heart, and he knew how important it was to fight for a settlement to take care of her three young sons. They will now be able to get the education Tammy wanted for them.”

—Allyson Y., Burlington, WA
introduced additional ambiguity by stating that “we affirm for substantially the same reasons stated by the district court.” The word “substantially” made the decision even more cryptic because it provided no guidance about what parts of the district court’s opinion were properly decided and which were not. Such decisions create a particularly heavy burden on practitioners in areas like employment law, where many aspects of the law are settled and it is therefore important to know how those legal principles apply to specific facts presented in each case.

We are not arguing that courts should never use the summary adjudication mechanisms described in this section. As former appellate clerks, we understand that the only reasonable decision in some cases involved substantial issues of law and comprehensive briefing and oral argument by competent counsel. In addition, the above opinions are not isolated examples: similar decisions are issued far too often in cases that truly merit detailed analysis and explanation. While such terse decisions may make sense inside the cloister, they create havoc outside and should be issued sparingly — if at all.

LOOKING OUTSIDE THE JUDICIAL MONASTERY

Many things can — and should — be done to avoid the types of issues addressed above. First, courts should strive to do justice in a pragmatic rather than academic manner and should not duck important issues. Oral argument is an important tool in that regard. The court there has an opportunity to ask the parties: “What do you want us to do?” The court obviously cannot decide an issue on an incomplete record. But if the record permits a decision on an important issue, or if an issue does not turn on factual issues to begin with, the court should strive to fully decide a dispute — limiting as much as possible what remains to be decided (if anything) on remand. The parties, in turn, should think about and discuss what they want from the court procedurally. Both the litigants and the judicial system alike would benefit from such analysis and decision-making.

Second, courts should recognize the enormous investment that parties make in litigating cases in appellate courts and attempt to provide useful guidance to the parties and to future litigants. It is especially important to issue well-reasoned, nonconclusory decisions so that the losing party knows its arguments were considered and knows why the court ruled the way it did. The decisions should contain sufficient explanation of the key facts so that other litigants can understand how the decision applies in their cases. Courts should also consider publishing more of their opinions to increase the body of useful case law. These steps will enhance the legitimacy of appellate courts, streamline proceedings on remand, provide greater certainty in trial courts and subsequent appeals, and allow litigants in other cases to improve their arguments.

Third, courts should similarly recognize the cost of litigation and the expectation that cases will be decided in accordance with controlling case law. In the very first year of law school, we are taught the importance of *stare decisis*: the notion that courts should follow precedent and that changes in the law should be gradual. There are, of course, times when the law must change (“separate but equal” being a prime example). But that sort of wholesale change should be rare and should be carefully briefed and considered. It should not be done by a panel, as in *Superstition Crushing*, that is simply unwilling (for ideological or other reasons) to follow
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controlling precedent. When it does occur, the court should carefully explain and justify its reasons for doing so and any factors that distinguish the case at bar from the previous precedent.

Fourth, courts should expand their supervisory role. In the Ninth Circuit, en banc and U.S. Supreme Court review are the only tools available to rein in a rogue panel. In state courts, the mechanism for doing so is discretionary review by the state supreme court. In both instances, further review is generally limited to cases that raise issues of “exceptional importance.” Such rules should be broadened to permit further review in cases, like those discussed above, where the court ducked important issues, contradicted controlling precedent, issued a poorly reasoned decision, or otherwise stopped short of appropriately deciding the parties’ dispute. At the very least, such decisions should be sent back to the merits panel to better explain its analysis.

Finally, these issues should also be addressed through the selection process. As with Justice Sotomayor, politicians who are responsible for selecting appellate judges should look for applicants who have a broad range of experience. Appeals are typically heard by three judges. If those judges bring different experiences to the table, the panel is better able to understand and appreciate the very real impact of its opinions — how they affect the lawyers, the parties, other litigants, and subsequent trial court proceedings. As noted at the outset, it is important to look outside the judicial monastery — both in selecting judges and deciding cases. Only then can courts truly dispense justice to those who deserve it.

Leonard Feldman is an attorney in the Seattle office of Stoel Rives LLP, where he heads the firm’s Appellate Group and focuses on appeals before the Ninth Circuit and Washington appellate courts. P.K. Runkles-Pearson works in the Portland office of Stoel Rives and focuses on appeals before the Ninth Circuit and Oregon appellate courts.

NOTES
1. Estate of Mitchell v. American Reliable Insurance Co., 349 F. App’x 151, 153 (9th Cir. 2009).
2. Id.
3. Id.
4. 603 F.3d at *25.
7. Id. at 1188.
8. Id. at 1187 n.2.
10. Id. at *8 (quotation marks and citation omitted).
11. Id. at *2 n.1.
12. Appellant’s Petition for Rehearing and Suggestion for Rehearing En Banc at 1, Superstition Crushing, LLC v. Travelers Cas. & Sur. Co. of Am., No. 08-16454 (9th Cir. Jan. 15, 2010).
14. Id. at 756 (Trott, dissenting).
15. Id. at 892 (Tallman, dissenting).
16. Id. at 993 (Kleinfeld, dissenting).
17. Id. at 1118 (Aldisert, concurring).
18. Id. at 805 (Wallace, dissenting).
20. Id. at 609.
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On April 23, 2010, Governor Jan Brewer signed Arizona Senate Bill 1070, capturing national attention and igniting public outcry that the new law mandates racial profiling by local law enforcement and compromises basic civil rights. Condemnation and boycotts quickly followed. Certainly, the Arizona law can be understood, at least in part, as a response to that state’s belief that it is bearing the brunt of the federal government’s failure in its duty to secure its borders against drug smuggling and violent crime. It also reflects broad anxiety over a broken immigration system and deeper fears of changing demographics. Arizona SB1070 is only the latest and most dramatic state plunge into this area of federal law. This article will review the problems generated by states individually addressing issues created by the federal government’s paralysis over immigration reform. It will also examine what the federal government has done in the last decade in attempting tougher and tougher enforcement measures, and the prospects for a more comprehensive solution.

Beginning in Arizona, SB 1070 states that law enforcement shall determine a person’s immigration status where there is a “reasonable suspicion” that he or she is unlawfully present, and allows law enforcement to verify individuals’ status by asking them to produce immigration documents, the failure of which could result in arrest and fines. The law also creates a private right of action for any individual to sue a state agency that does not enforce the law. The statute includes a provision for civil penalties. The stated intent behind SB 1070 is a “compelling interest in cooperative enforcement of federal immigration laws throughout Arizona,” and an effort “to discourage and deter unlawful entry and presence of aliens and economic activity by persons unlawfully present.”

After the bill’s passage, lawmakers narrowed it to require scrutiny only where police stop, detain, or arrest someone, as opposed to situations involving mere “contact” with police. The amendment also stated that in determining “reasonable suspicion,” officers may not explicitly use race, color or national origin as grounds for suspecting someone is in the country illegally “except to an extent permitted by the United States or Arizona constitution.” While some Arizona residents and national advocates have publicly opposed the law, and immigrant and civil rights groups have already formally challenged its constitutionality, local legislators have justified the law’s passage as a necessary measure. And while Arizona is the focus of current attention, it is not the only state to have considered such legislative action. Thus far, Arkansas, Maryland, Minnesota, Missouri, Nevada, New Jersey, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Utah have all introduced or are contemplating similar proposals.

Our state has taken a very different approach to immigration status. In a recent example, the Washington State Supreme Court considered the volatility of immigration status issues in the context of claims for employer negligence and recovery of lost future wages. In Salas v. High Tech Erectors, the Court held that the trial court abused its discretion in admitting evidence that the plaintiff was an undocumented immigrant, finding that the danger of unfair prejudice substantially outweighed the evidence’s probative value. In so finding, the Court highlighted the significant capacity for immigration status to be inherently prejudicial, as recognized by Washington and other states, stating “[issues involving immigration can inspire passionate responses that carry a significant danger of interfering with the fact finder’s duty to engage in reasoned deliberation.”

Beyond Arizona and Washington, there has been a recent groundswell in immigration-related legislative activity as other states have attempted to enforce federal law through state-specific measures and sanctions. Oklahoma and Georgia recently passed measures, with mixed constitutional results, aimed at cracking down on illegal immigration through state enforcement. Legislators in 45 states introduced 1,180 measures in the first quarter of 2010 alone, compared to 570 in all of 2006. These measures have targeted employers and landlords as well as undocumented immigrants. The growing, often confusing, mix of different state statutes governing employer
It should be noted that our country’s concept of an “illegal alien” is relatively new. It was not until 1875 that anyone was considered undesirable enough to be excluded from the United States, and 1921 before our country first instituted any type of numerical restrictions on immigration.

With all of these complexities, perhaps it is not surprising then that, while the debate rages over the Arizona law, our country is in almost universal agreement on one point: Our immigration system is broken. Anti-immigration groups and other Americans criticize the federal government’s failure to secure borders against an influx of “illegals,” arguing that this undesirable population is taking U.S. jobs, among other problems. Immigration supporters highlight our failure to retain the world’s best and brightest or to protect family unity, as evidenced by the significant backlogs that plague both family-based (in certain cases, a wait of up to 23 years) and employment-based avenues to a green card.

In the employment context, it is clear that our immigration system has surpassed simply being “out of touch” with the current economy and has reached the point of running directly counter to U.S. economic interests. This issue was highlighted in 2007 when Microsoft Corporation responded to the U.S. immigration system’s cap on H-1B visas by opening a Vancouver, Canada, office in order to “recruit and retain highly skilled people affected by immigration issues in the U.S.” With the end result being a loss of potential U.S. jobs to foreign interests across the border with a friendlier immigration system. Likewise, the lack of a...
viable path to U.S. employment for foreign-born college students means that talented students who attend our universities are ultimately shut out of our work force and the ability to contribute to our business, technological, and scientific endeavors, to U.S. disadvantage in the worldwide competition for top mathematicians, scientists, and engineers.

While anti-immigrant groups often argue that those without a legal status need to "get in line," the reality is that there is no "line" to get into — currently, most undocumented immigrants are ineligible to receive a green card because our immigration system has such restricted numerical limits and narrow categories of visa eligibility. Thus, while a vast number of undocumented people reside here, are a part of the economy, raise families, and pay millions of tax dollars into our Social Security system, no path to legal status exists for them.

The failure to reform the immigration system has a heavy impact on our own state. Washington benefits heavily from foreign workers who are crucial to our agricultural crops, growing technology companies, and large research and academic institutions that seek the best and brightest from an international pool of talent, including the University of Washington, Microsoft, Amazon, and Fred Hutchinson Cancer Research Center. Our state is 10th in the nation for size of the foreign-born population (approximately 778,501 foreign born, or about 12.2 percent of the state’s population), 15th in percentage of total population, fifth for refugee resettlement, and second for secondary migration of refugees. Immigrant workers make up 14.3 percent of Washington’s work force, and 12.5 percent of all households in Washington are immigrant-headed households, with those households accounting for 13.2 percent of all taxes paid in 2007 (nearly $1.5 billion).

The Arizona law has stimulated federal efforts to support more comprehensive immigration reform. An outline of a comprehensive solution was recently unveiled by Democratic leaders in the REPAIR Act. The Act would focus on controls on the hiring of unauthorized immigrants and require undocumented persons living in the United States to register their status and be screened and fingerprinted. It would allow them to apply for an interim legal status granting the ability to work and travel and ultimately provide a pathway to lawful permanent residence. The Act also includes measures for border and interior
enforcement, employment verification, high-skill and low-skill employment visas, and a family immigration system.  

While the REPAIR Act originated out of a bipartisan framework from Senators Charles Schumer (D–N.Y.) and Lindsey Graham (R–S.C.), and Democrats have pressed for Republican support, they have thus far been unsuccessful. Although the politics of immigration reform is controversial, it also seems that many Americans recognize that the complexities of the immigrant situation mean that a punitive or enforcement-only response to illegal immigration is not the right solution. Recent New York Times/CBS News and USA Today/Gallup polls indicate that while the majority of Americans believe our immigration system needs to be overhauled, many feel that illegal immigrants who have been living here, working hard, and obeying the law should be allowed to keep their jobs and be afforded some path to a legal status.  

So long as our immigration system continues to fail to meet the needs of our economy and communities, the trend of state and local governments considering legislation that would empower local officials to become de facto immigration agents is likely to continue. Without passage of true federal immigration reform, the recent activity in Arizona is likely to become a familiar headline.  

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NOTES
1. Actually, the crime rate in Arizona has decreased significantly for both violent and property crimes despite the publicity of high-profile drug and smuggling-related killings. U.S. Bureau of Justice Statistics, Data Online: Crime Trends. According to a 2008 report from the Conservative Americas in Majority Foundation, crime rates are lowest in states with the highest immigration growth rates, such as Arizona. From 1999 to 2006, the total crime rate declined 13.6 percent in the 19 highest-immigration states (including Arizona).

2. SB 1070 Section 2. Article 8(B), (E).

3. SB 1070 Section 2. Article 8(G).

4. SB 1070 Section 1. Intent.

5. Arizona House Bill 2162.

6. Id.


8. www.immigrationpolicy.org/just-facts/arizona-not-first-state-take-immigration-matters-their-


10. Id., pp. 8–9.

11. Id.


16. Id.


19. Relief like asylum against persecution is also required by U.S. adoption of international treaty.


21. Senate Bill S. 729, the “DREAM Act,” represents one effort toward ameliorating this patently harsh impact on children that have been raised in the U.S.; the bill would provide a path to lawful status for students who entered the U.S. at age 15 or younger, have lived in the U.S. for five years, have attended college or served in the military for at least two years, and meet other immigration criteria.

22. INA Section 212(a)(9)(B). A waiver is possible only if “extreme and unusual hardship” can be demonstrated to a U.S. citizen or lawful permanent resident spouse or child. Prolonged separation is considered a normal hardship.


n the past six years, the WSBA Leadership Institute (WLI) has graduated more than 70 Washington attorneys from its program—attorneys who have gone on to serve on numerous boards, committees, and in other noteworthy leadership positions within the Bar and in the legal community. Developed in 2005 by Ronald R. Ward (2005 WSBA president), the WLI is a leadership program designed to provide professional growth and skill development for early-career attorneys. Program participants have been selected with an emphasis on diversity (racial, ethnic, gender, sexual orientation, disability, cultural, and geographic). In addition, the WLI has served as a model for other bar associations, leading the way to the establishment of other “leadership institutes” in bar associations across the country.

I recently sat down with four WLI alumni—Beth A. Bloom, Frank Freed Subit & Thomas (2005 class), Shankar Narayan, ACLU of Washington (2006 class), Dainen Penta, McKiss Sargent & Olason (2007 class), and Lincoln Beauregard, Connelly Law Office (2009 class)—to discuss how the WLI has changed their lives professionally and personally.

Let’s first talk about why you applied to the program. What was it about the WLI that motivated you to get involved?

Shankar: I was actually involved in the program even before it was created. There was this informal subgroup of the King County Bar Association that was meeting to try and figure out how to improve diversity in the legal profession. We came up with the Future of the Law Institute (a program to encourage minority high school students to consider a career in law) to increase the pipeline, and then [the WSBA created] a leadership institute to actually help young attorneys of color. I was much more involved in the Future of the Law Institute, and so wasn’t really paying that much attention to what was happening to the Leadership Institute. The next thing I knew, it was this fully fledged program.

The reason I got involved was because it seemed like a great way for me to meet a lot of the people who mattered in our profession. It was a great way to talk about the things that mattered to me, such as the diversity in our profession...and to get outside the usual mode of talking about billable hours, which is what I most associated with being a lawyer.

Beth: I was drawn to the idea that this was an opportunity, like Shankar said, to meet a wide variety of leaders. That was exciting and interesting to me. I wanted some help and guidance, and maybe even some mentoring (even though I didn’t realize it at the time) to take it to the next level, all in terms of my professional development, particularly in the area of community service. The notion of lawyers as leaders and the idea of community involvement being a critical component of the profession was the draw. To be able to do that in the context of a program whose overall goal was greater diversity in the profession made it all the more exciting. It was win-win for me. And the CLE credits. I don’t think I’ll ever need CLE credits again.

[Laughter.]

Lincoln: I don’t have a great story of something internally driving me. There wasn’t some big deliberation about changing the world. The truth of the matter is, I remember getting an e-mail about the WLI and saw that there was a deadline and said, “Oh man, I’m going to miss a deadline!” [Laughter.] One of the reasons why I was interested was that I saw names like Judge Yu (whom I didn’t really know personally) and James Williams, people whose reputation I was familiar with, and I thought, “These are cool people associated with the program.” I’m glad I did it. Because as far as first impressions of the WLI, I had no idea what I was getting into. But the level of enthusiasm and organization on the part of the people who were involved was inspiring to me. It was so nice to see such an organized network of people involved and invested in the program. That made an impression on me.

Dainen: I got pushed by Beth here. Beth and I were both on the board of Q-Law and she was really encouraging me and others to apply. That’s how I got involved. You could say that Q-Law was formed because of the Leadership Institute. But I didn’t really start figuring out ways to get more involved in the Bar until my second year of practice. The key
piece was getting oriented to the structure of the Bar and what it offers. That was a really important for me.

Beth: Dainen’s right, the GBLT [bar association] was an outgrowth through the WLI. We were certainly aware that there wasn’t a GBLT-related statewide bar association. This was an obvious voice that was missing. But I don’t think that I would have had the personal “gunpowder” necessary to lift an organization off the ground from nothing, and also wouldn’t have understood the depth of the importance of that organization and that voice had I not been involved in the Leadership Institute. So, to invite and encourage Dainen to apply was also a natural outgrowth, too...the importance of mentoring new leaders. Part of the message of the WLI is the message that you can do this and that you don’t have to wait for someone else.

Shankar: I will say, Beth, that anytime you want to be lectured at, let me know. [Laughter.]

How did those personal conversations during the sessions affect you later as went about your day as lawyers?

Shankar: If I had to describe in one word what I got out of the WLI, it would be relationships. Because it’s been a while, I don’t remember every single session, but what I do remember is that everybody there was incredibly enthusiastic...and these were some of the leading lights of our bar association. . . . It was incredibly helpful to hear about their career paths. You see these people today and you think, “Boy, this person has been on the fast track to success their whole life,” and you figure out that it isn’t so...that they actually had a lot of challenges, issues, and b) they are all still talking to each other through the WLI. They come with this connection that allows them to take these relationships out into the world and put diversity on the ground in our profession and run with it. I think our minority bar associations have become stronger because of the WLI, which is pretty cool.

Lincoln: I want to go back to your original question as to how the WLI changed us. If I were to think about what being a part of the WLI and the impact that it had on me as far as maintaining my life, my career — I feel a greater responsibility to live up to a standard, and not necessarily in a bad way, but to challenge myself. If I’m going to do something career-wise and I cross paths with so-and-so, I want to be able to say I’m making the organization proud. [Laughter.] Being a part of an organization that is trying to get

Did you have any expectations when you came into the program?

Beth: I definitely had an expectation, and my expectation was that I would be lectured at. I was immediately surprised at the level of investment that the leaders had and also in their intimacy. A lot of the presentations — the bulk of them, I would say — are based on personal stories, personal narratives, many of which deal with issues that aren’t talked about, issues that are certainly not talked about in law schools, such as how the language of race or sexual orientation or gender impacts your interaction or capacity to succeed in the profession. Given the candor of the presenters, it was natural to want to fall in line with that intimacy and belief in yourself. And that was very different from what I expected, which was a bunch of CLEs with PowerPoint presentations. [Laughter.] So, I was like, “Wow, this is real. We’re having a real conversation here and that was great.”

Shankar: Myself included. Not quite within a year, but yes. I had significant changes that were inspired by what I learned at the WLI. Regarding the minority bar associations, I see the WLI giving a big boost to those efforts because a) it’s a steady stream of committed minority attorneys who are really interested and knowledgeable about these

Lincoln: You are the WLI Class of 2009 join Justice Susan Owens on the steps of the Temple of Justice in Olympia. This page, above left: Mentors share their stories with a WLI class. Above right: Lincoln Beauregard (second from left) and members of his WLI class observe a legislative session in Olympia.

Shankar: I was immediately surprised at the level of expectation was that I would be lectured at. Beth, that anytime you want to be lectured at, let me know. [Laughter.]
have if you are thinking about diversity. For example, to see a group whose entire focus is around diversity issues and to have that be openly acknowledged, not just through lip service but through actual action is very powerful. I’ve had the same experiences of going back and thinking, “You know, we’ve been talking about this stuff for a long time, now I’m in a position to make these hiring decisions. How do I make sure that that really is effectuated on the ground?”

Dainen: The format of the WLI kind of presents itself as experiential learning, but for lawyers, a lot of time what that means is that it’s a CLE with PowerPoints and somebody up at the front doing a talk. But the experience of the program was so much richer than that. I think that was brought by the faculty and by learning so much from the experiences of your classmates, and meeting other fellows of past and future programs. Another huge benefit of the program is really the visibility within the program and the other practitioners. A lot of us plan CLEs now and say, “I’m looking for an at-the other practitioners. A lot of us plan CLEs now and say, “I’m looking for an at the other practitioners. A lot of us plan CLEs now and say, “I’m looking for an at

deal? Why is a program like the WLI necessary? Could you speak to that?

Shankar: Everyone wants to move beyond this diversity discussion. I think you will find that minority lawyers are probably the ones who want to move beyond it the most. We wish we didn’t have to talk about this. But I think the reality is when you look at our legal profession, we’re just not doing a very good job. We still continue to have the same kind of imbalances that we’ve had for a long time. Not only that, but we’re fighting the really thorny problem of retaining people of color. The simple fact is, we haven’t succeeded in making our workplaces friendly, where people of diverse backgrounds feel empowered or want to be able to make a long-term career. What you see is that many minority attorneys end up quitting after a few years and end up going to a different workplace where they feel they are able to call the shots a little bit more. And to me that does speak of failure on the part of the legal profession to address these issues. There’s no doubt, to me, that we need a program like this. But there is also the broader picture that we’re facing, particularly in the criminal justice system. The criminal justice system is probably the part of our society that the civil rights movement has touched the least. And I see this every day down in Olympia, for example, where I am fighting against bills that would actually exacerbate the disparities that are currently present in our criminal justice system. You realize that you have to be able to have people of color…diverse attorneys at the table who really are able to understand the effects of these huge disparities in our system. And if we can’t do that, then we can’t say that we have a justice system. It’s not just about making a nice-looking bouquet of people in

other fellows of past and future programs. Another huge benefit of the program is really the visibility within the program and the other practitioners. A lot of us plan CLEs now and say, “I’m looking for an attorney with a specific kind of experience,” and you can look at the classes and say, “I know somebody.” It makes life a lot easier in that regard. I think of the toughest things, in my class at least, and the most rewarding things, was all the talk we did about the jobs we were in. I think a lot of us really liked the program because we were able to just talk to each other, particularly when we did the Private vs. Public Sector session. We looked at what we are doing now and it fits in with our values (before law school) and how have our values have changed since then.

You’ve probably had this question framed in many different ways. People will say, “We’re moving towards a more diverse society; we’re doing okay. What’s the big

Lincoln: When you talk about diversifying the legal community, I think it’s important to not make broad brushstrokes and generalizations about what the legal community is like and why it’s not more diverse. I’m a believer that the climate is changing and that the challenges of being a person of color in the legal community are greatly reduced from what it was a couple of years ago, even 10 years ago. I think that most people you meet in the legal community are committed to the idea of diversity. What they do to implement that is a different story, but I don’t think that if you go into [a large law firm], you’ll find people in the upper levels of the organization who are saying, “I don’t want to promote or encourage a diverse workplace.” It definitely
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make yourself a part of the diverse legal community.

Beth: I agree with what Lincoln said, but I think that part of the elephant in the room is the way that you become successful, and that is through having a network of relationships. That is part of what funnels cases to you, which in turn is how you establish your reputation, and if you’re someone who is from a diverse background or a woman, you’re not seeing as many faces that look like you and that have the same background as you. They’re not in the same clubs or the same associations or the same context where some of these relationships and networks are built.

So, I think that the relational context of long-term success in the law is critically important and I don’t think that is something that we talk about that much. But clearly race, gender, and sexual orientation are all obstacles to being successful and in terms of building your professional network. And I think the WLI plays a role, at least for those people who are lucky enough to participate and can counteract that on some level.

So, to pick up on the idea that you’re here to save yourself, I think it’s true. But I think the relationships that you build through an organization like the WLI can help you to take that next step to reach beyond your comfort zone.

Dainen: I think the program (and being on the board of Q-Law) has really increased my confidence, not only professionally but personally. I think the program for me, and I’m sure for some others, was a really big win.
All of these amazing people, these diverse lawyers and judges, and people who have done really amazing things…all of them believe in you and want you to take part in this program because they think you are going to go and do similarly amazing things, too.

Beth: But no pressure! [Laughter.]

Dainen: Yes, no pressure! But that was a big part of it for me. In particular to what Beth was saying about relationship building, I had met judges in my hometown before, but it’s really a different level to sit at lunch with a Supreme Court justice. Justice Owens came and sat with us at lunch on the first day.
What are you supposed to say to a Supreme Court justice? We didn’t even know, but we figured it out. 🤓

La’Chris Jordan is the WSBA Leadership Institute coordinator and can be reached at lachrisj@wsba.org.
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If the Senate approves Elena Kagan for the Supreme Court, she will become the third woman on the bench. Undoubtedly, many women lawyers were pleased to see another woman reach the top of the legal profession. But many could not help but notice that Kagan, like Justice Sonia Sotomayor, does not have children. What message does that send to women lawyers, the legal community, and the public at large? That children are not an option if you want to be a successful woman lawyer?

The Mother Attorneys Mentoring Association of Seattle (MAMAS) is working to send a different message: that a woman lawyer can succeed in her career after having children. Founded in late 2006, MAMAS is a 501(c)(6) organization that has grown quickly in both numbers and prominence. Currently, the organization boasts a membership of more than 750 attorneys. It also has sister organizations in California and Hawaii, and other chapters are forming.

Despite the gains women have made in the legal profession, women continue to face obstacles in the profession, especially mother attorneys. A spring 2007 report entitled "Women Lawyers and Obstacles to Leadership," by the MIT Workplace Center, noted that although women and men graduate from law schools and enter firms in virtually equal numbers, women make up only 17 percent of firm partners. The MIT survey found that although women may be able to negotiate a part-time schedule for family care — and those who do are more likely to stay in their firms — they are less likely to be promoted to partner than women who stay in their firms but do not use part-time options.

MAMAS aims to reach out to the mother-attorney population and provide a forum where they can celebrate their roles as both mothers and attorneys and speak freely about the challenges they face. Among its many goals, the organization seeks to empower mother attorneys and facilitate their success in the legal profession; raise awareness of work-life balance issues and help mother attorneys achieve balance; educate members and the lawyer must be a current member of a bar. Associate memberships are available to law students and recent graduates. There is a $10 annual membership fee.

Leadership and Justice Award
The biggest event of the year sponsored by MAMAS is its fall annual banquet, when it presents its Leadership and Justice Award to an individual who has paved the way to success for and has served as an inspiration to other women attorneys striving to excel in their legal careers while balancing family demands. This year’s recipient will be Connie Collingsworth, general counsel and secretary at the Bill & Melinda Gates Foundation. Collingsworth will be introduced by Bill Gates Sr. Past honorees are the Honorable Debra L. Stephens of the Washington State Supreme Court (2009) and the Honorable Barbara J. Rothstein, U.S. District Court for the Western District of Washington (2008). This year’s banquet will be held October 26 at the W Hotel Seattle.

Lunch seminars
MAMAS also hosts monthly brown-bag lunches. The lunch seminars feature panel presentations of particular interest to mother attorneys, such as "Evolving Your Practice" and "Client Relationships in Difficult
Economic Times,” featuring a panel of two in-house counsel and two law firm managing partners; “How to Build a Successful Private Practice: Mother Attorney Leaders and Rainmakers Share Their Wisdom”; and “Perceptions of Women in the Legal Field,” which featured panel members addressing real and perceived gender differences in the legal profession. Some seminars are eligible for continuing legal education credit at a low cost, which is particularly helpful for women who run their own law practices or who are maintaining active bar memberships while taking time off to raise their children. The lunch seminars are held on the second Tuesday of the month at K&L Gates in downtown Seattle.

Networking events
On the first weekend of the month, MAMAS hosts a networking event that provides a venue for mother attorneys to network, socialize, and problem-solve in a supportive and child-friendly environment. Women lawyers are encouraged to bring their children. The location of the networking events alternates between the Seattle area and the east side of Lake Washington, so that attorneys from throughout the greater Seattle area can attend. The July networking event will be a summer picnic, slated for July 24 from 10 a.m. to 2 p.m. at Lincoln Park in West Seattle. The event will feature a musician, face painting, and other activities for the children.

Mentoring program
MAMAS has an active mentoring program for law students and lawyers in the legal profession. The program links law students, newly admitted lawyers, and lawyers who recently had children or who are expecting with a member who has more experience with juggling family and career demands. Mentors and mentees meet at least twice during the year.

Special events
MAMAS has presented a number of special and annual events. For example, MAMAS co-sponsored a round-table discussion among the managing and hiring partners of Seattle’s premier law firms, in which firm leaders gathered to discuss and share ideas about improving the retention and promotion of diverse attorneys, including women. In 2007, MAMAS hosted an event featuring a panel of federal and state judges who addressed the importance of diversity within the bar.

Online resources
MAMAS maintains an active list serve where members exchange information on a variety of topics, including client referrals, practice areas, work-life balance issues, child-care options, and more. For instance, recent postings have discussed job discrimination against individuals who have family demands, advertised legal job openings, and sought referrals for a recruiting agency and a day care.

For more information about MAMAS, including how to join or to become a sponsor of the organization, please visit www.mamaseattle.org.

Sarah K. Duran, an attorney at Davis Wright Tremaine, LLP, practices media, trademark, and other intellectual property law, and general litigation. She works full-time, and is mother to two young children.

NOTES
 late last year, the Washington State Supreme Court in Magaña v. Hyundai Motor America, 167 Wn.2d 570, 220 P.3d 191 (2009), affirmed an $8 million default judgment against the defendant in a product liability case as a discovery sanction for wrongfully withholding key documents. The Supreme Court relied on CR 37 rather than the RPCs. Nonetheless, Magaña serves as a powerful reminder of our duties under the professional rules. Given Magaña’s notoriety and several other developments since we last looked at discovery ethics, it is a good time to revisit this topic. In this column, we’ll look at the twin poles of discovery ethics under the RPCs: our duty not to obstruct access to information that we’re required to produce; and our corresponding duty not to improperly obtain and use information that we’re not supposed to have.

Obstructing Access to Information
“Information you’re supposed to produce” generally equates to evidence that falls within the scope of discovery permitted by CR 26(b) and the other side’s proper requests. It is rooted in RPC 3.4(a) and (d), which prohibit lawyers from obstructing access to evidence and require lawyers to make reasonable efforts to comply with discovery requests, and CR 26(g) and its federal counterpart, which impose similar obligations through their certification requirements. It applies to both witnesses (see, e.g., Wright v. Group Health Hospital, 103 Wn.2d 192, 691 P.2d 564 (1984)) and documents (see, e.g., Washington State Physicians Ins. Exch. & Ass’n. v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993)).

Magaña both summarizes the law in this area and, as noted, serves as a powerful reminder of the sanctions lawyers (and their clients) can face. The plaintiff in Magaña was a passenger in a 1996 Hyundai Accent when the driver swerved to avoid an oncoming truck and lost control of the car. The Hyundai left the road and spun multiple times — ejecting the plaintiff from the rear window. The plaintiff became a paraplegic as a result. He sued Hyundai on a product liability claim, asserting the seat collapse that caused his ejection was due to a design defect.

Two categories of information requested during discovery later became the focus of the sanction. The first sought documents reflecting seat failure claims or incidents on Hyundai vehicles since 1980. Hyundai objected to the request as overbroad but then went on to state that there were no injury claims for seat failures in Accent models built from 1995–1999. The second was an interrogatory asking whether other Hyundai vehicles used similar seat mechanisms. Hyundai responded that 1995–1999 model Accents used the same seat mechanism but no other Hyundai model did.

The case went to trial in 2002 and the jury awarded Magaña $8 million. Hyundai appealed and Division II sent the case back for retrial of liability — but not damages. Retrial was set for January 2006. The plaintiff’s counsel asked Hyundai to update its discovery responses in advance of the new trial. That fall, Hyundai eventually admitted that another model, the Elantra, also used a similar seat mechanism and there were indeed seat-failure claims involving both the Accent and the Elantra. Nonetheless, Hyundai continued to refuse to produce seat-failure information beyond the mid-to-late 1990s. Following a motion to compel, the trial court ordered Hyundai to produce such data regardless of model year. Shortly before trial, Hyundai produced still more documents on seat failures generally and nine from its “consumer hotline” involving Accents that it had earlier withheld, even though they were from the 1995–1999 model years.

At that point, the plaintiff moved for a default judgment against Hyundai based on its failure to produce the information before the first trial. The trial court conducted a three-day evidentiary hearing on the motion. The trial court found that Hyundai had improperly withheld relevant evidence and that the plaintiff had been prejudiced as a result. The trial court considered lesser sanctions but concluded entry of a default judgment against Hyundai for the $8 million the jury had determined earlier was appropriate. Division II reversed, agreeing that Hyundai had improperly withheld relevant evidence but concluding that a more modest sanction would have sufficed. The Supreme Court disagreed.

The Supreme Court found that the trial court did not abuse its discretion under the circumstances in entering the $8 million default as a CR 37 sanction. The Supreme Court concluded that Hyundai acted willfully and that the plaintiff suffered substantial prejudice as a result. On
be frustrated if relevant material is altered, concealed or destroyed.”

Improperly Invading Privilege
“Information you’re not supposed to have” generally equates with an opponent’s privilege or work product. It is rooted in RPC 3.4(c), which requires lawyers to abide by court rules; RPC 4.4(a), which prohibits methods of obtaining evidence that violate the rights of others; and CR 26(b)(1) and its federal counterpart, which exclude privileged material from the scope of permitted discovery. It, too, applies to both witnesses (see, e.g., In re Firestorm 1991, 129 Wn.2d 130, 916 P.2d 411 (1996)) and documents (see, e.g., Richards v. Jain, 168 F. Supp.2d 1195 (W.D. Wash. 2001)).

Richards summarizes the law and provides another potent example of the sanctions lawyers (and their clients) can face. The plaintiff in Richards had been a senior executive with a high-tech company in Seattle for five years before leaving in the wake of a dispute over stock options. When he left (and notwithstanding a nondisclosure agreement), the plaintiff downloaded all of the e-mails he had sent or received during his tenure at the company onto a disk and gave it to his lawyers for their use in pursuing his claim against the company. The disk contained more than 100,000 e-mails and, by the court’s later calculation, included 972 privileged communications with both inside and outside counsel. Richards’ lawyers used the privileged communications in formulating their legal strategy and their initial pleadings.

When the plaintiff was deposed, he revealed that he had taken the e-mails. The company’s lawyers moved for both return of the disk and disqualification. Relying on Firestorm and an ABA ethics opinion (since superseded and now addressed directly by ABA Model Rule 4.4(b)) on handling inadvertently produced documents, the court disqualified Richards’ lawyers because there was no other effective way to “unring the bell” once they had unauthorized access to their opponent’s privileged information. The recent amendments to CR 26(b)(6) addressing inadvertent production and their federal counterparts in FRCP 26(b) (5)(B) and FRE 502 reinforce the result in Richards. As Comment 1 to RPC 4.4 puts it: “Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons . . . [which] . . . include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.”

Summing Up
Although dealing with converse aspects of lawyers’ discovery duties, Magaña and Richards share a common thread. Both counsel lawyers to seek the court’s guidance on such major issues as whether key documents can be properly withheld or whether privilege has been waived. Lawyers who make those decisions themselves may find the penalty for guessing wrong can be severe. 6

Mark Fucile, of Fucile & Reising LLP, handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a co-editor of the WSBA’s Legal Ethics Deskbook and the OSB’s Ethical Oregon Lawyer. He can be reached at 503-224-4895 and mark@frllp.com.

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At its regular meeting on June 4, 2010, in Wenatchee, the Board of Governors elected the next WSBA president-elect and filled an at-large position on the Board. Meanwhile, in response to immigration legislation recently enacted in Arizona, the Board instituted a moratorium on WSBA-related travel to that state.

The BOG elected Cashmere attorney Stephen R. Crossland to serve as WSBA president-elect for the 2010–2011 term. He will take that office at the September 23, 2010, meeting in Seattle, when current President Salvador A. Mungia will turn over the top office to current President-elect Steve Toole. Crossland will then assume the WSBA presidency in September 2011 for a one-year term.

Crossland, who was unopposed for the position, had lost in a contested race for WSBA president-elect eight years earlier. At the June 4, 2010, meeting, he described the new opportunity to serve as a long-delayed “silver lining” to his previous loss in the election and to a more devastating event that occurred shortly thereafter. Crossland recounted how he had learned after the election defeat that his wife had terminal cancer, which would have prevented him from taking office had he been elected. He expressed gratitude at now having a second chance to serve.

Crossland has practiced law for 37 years. After serving as a Chelan County deputy prosecutor from 1974–1975, he went into private practice and has maintained his own practice, Crossland Law Office, since 2001. He has a long history of service with the WSBA, including representing the 4th District as a governor from 1995–1998. In 2002, he received the WSBA Award of Merit, the Association's highest honor.

Meanwhile, the BOG elected Port Orchard attorney Tracy Flood as a new at-large governor. She will take office at the September meeting, succeeding outgoing Governor Brenda Williams for a three-year term. The Board selected Flood from among four candidates interviewed at the meeting. Flood is chair of the WSBA Civil Rights Law Section and a member of the WSBA Family Law Section’s Executive Committee. She has been active in a number of other legal and community projects as well. She worked with the Department of Assigned Counsel, served as an associate public defender, and had a solo practice for seven years. Since 2009, she has been an adjudicator for the U.S. Department of Labor.

Flood will join three other new governors being sworn in for three-year terms at the September meeting. Seattle attorney Susan Buri to succeed G. Geoffrey Gibbs. (Bar News 2010, October issue.)

In other business at the June meeting, the BOG debated a resolution opposing the Arizona Legislature’s passage of Senate Bill 1070, which requires state law enforcement officials to confirm individuals’ immigration status when making a traffic stop and find-
Civil legal aid programs currently are experiencing a flood of clients facing homelessness due to foreclosures, a skyrocketing need for bankruptcy assistance, and other serious legal problems as a result of the economic downturn.

Please join us in donating the equivalent of at least one billable hour to the legal community’s annual Campaign for Equal Justice. Your charitable contribution to the Campaign gives our state’s 26 legal aid programs the ability to address critical survival needs of Washington’s most vulnerable.


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Michael Heatherly is the Bar News editor and can be reached at barnewseditor@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/info/bog. For more information on issues addressed by the Board, visit the WSBA website at www.wsba.org and click on “News Flash” under “WSBA News and Information.”
Northwest Justice Project
Board of Directors
Application deadline: September 1, 2010
The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Northwest Justice Project Board of Directors (two positions, commencing January 2011) or a partial term (ending December 2011). An incumbent is eligible for reappointment to one of the three-year terms, and a written expression of interest and résumé is required for an incumbent seeking reappointment. The Northwest Justice Project is a statewide not-for-profit law firm funded by the state of Washington and the federal Legal Services Corporation to provide free civil legal services to low-income people throughout Washington. Board members play an active role in setting program policy and assuring adequate oversight of program operations and must have a demonstrated interest in, and knowledge of, the delivery of high-quality civil legal services to low-income people. For more information, e-mail cesart@nwjustice.org or lisag@nwjustice.org. Please submit letters of interest and résumés to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

WSBA Court Rules and Procedures Committee 2010—2011 Agenda
When it reconvenes in October, the WSBA Court Rules and Procedures Committee is scheduled to review the Evidence Rules (ER) and the Infraction Rules for Courts of Limited Jurisdiction (IRCLJ). Suggestions regarding these rules or questions about the committee should be directed to Elizabeth Turner at 206-239-2109 or by e-mail to wsbacourtrules@wsba.org. Interested individuals are encouraged to participate in the work of the committee. For more information and a schedule of committee meetings, visit www.wsba.org/lawyers/groups/courtrules.

Get More out of Your Software
The WSBA offers a hands-on computer clinic for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The August 9 clinic will be held from 10:00 a.m. to noon at the WSBA office and will focus on Outlook and practice-management software. The August 12 clinic will meet from 2:00 to 4:00 p.m. and will focus on using Adobe Acrobat Professional Version 9 (not Adobe Reader). For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

“Foundations of American Democracy” Civics Pamphlet
The WSBA offers a pamphlet for the public called “Foundations of American Democracy” that describes the basics of American government: the rule of law, the separation of powers, checks and balances, and a fair and impartial judiciary. Lawyers and judges are encouraged to bring the pamphlet with them when they speak to students or the public in schools, courthouses, and the community. Teachers may also request the pamphlet for classroom use. The WSBA can provide reasonable numbers of copies at no charge, or the pamphlet may be downloaded from the WSBA website at www.wsba.org/foad.htm. Requests for copies should be directed to Pam Inglesby, WSBA public legal education manager, at pami@wsba.org.

LOMAP and Ethics Traveling Seminar
The WSBA comes to you! Join us on September 15 in Friday Harbor, September 21 in Wenatchee, or September 22 in Yakima. Four ethics credits are available. Cost is $99 for lawyers; $29 for staff. To register, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Monthly Job Search Session
Join us Wednesday, August 11, to hear guest speaker Paul Anderson, a career consultant and master networker whose Job Search groups were recently featured in the Wall Street Journal. Mr. Anderson will be speaking about the new rules for tapping the secret job market and how best to engage your contacts. These free informational sessions take place the second Wednesday of each month from noon to 1:30 p.m. at the WSBA office. For more information, call 206-727-8267 or e-mail danc@wsba.org. Come as you are — no need to RSVP.

Lawyer Services Solution of the Month: Addicted?
We become addicted when we engage in a behavior repeatedly to obtain escape, relief, or pleasure even when the behavior itself becomes counter-productive. We can become addicted to just about anything: work, sex, alcohol, drugs, gambling, even relationships. If addiction is getting in your way, call the Lawyers Assistance Program at 206-727-8268. It’s confidential.

Weekly Job Finders Strategy and Support Group
Unemployed? Discouraged — or trying not to be? Our weekly job group focuses on job search basics such as résumés, cover letters, and informational interviewing. The group meets on Monday mornings from 10:30 to noon, and new groups begin every eight weeks. Contact Dr. Dan Crystal at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org if you are interested in this group.
Facing an Ethical Dilemma?
Members facing ethical dilemmas can talk with the WSBA’s professional responsibility counsel for informal guidance on analyzing a situation involving their own prospective ethical conduct under the RPCs. All calls are confidential. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Every effort is made to return calls within two business days. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Search WSBA Ethics Opinions Online
Formal and informal WSBA ethics opinions are available online at http://mcle.mywsba.org/io, or from a link on the WSBA homepage, www.wsba.org. You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Ethics opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Help for Judges
The Judges Assistance Services Program provides confidential assistance to judges experiencing personal or professional difficulties. Telephone or in-person sessions are available on a sliding-scale basis. For more information, call the program coordinator at 206-727-8268 or 800-945-9722, ext. 8268.

Learn More About Case-Management Software
The WSBA Law Office Management Assistance Program (LOMAP) maintains a computer for members to review software tools designed to maximize office efficiency. The LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in July 2010 was 0.208 percent. Therefore, the maximum allowable usury rate for August is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

Upcoming Board of Governors Meetings
September 23–24, Seattle • October 29–30, Vancouver • December 10–11, La Conner
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/2009_2010meetingschedule.htm.
or the past five years, the WSBA has been pleased to offer Casemaker, a powerful online research library provided at no additional charge to WSBA members. The WSBA recently signed a contract to continue Casemaker for another year, and we thought this would be a good time to make sure members are aware of Casemaker, and ask you to let us know what you think (there’s a survey on the login page, which we encourage you to complete). Casemaker provides free access to case law, statutes, and other materials from all 50 states. Plus, it has a large federal data set that includes Supreme Court Opinions and District Court Opinions. The welcome screen, which appears after you log in, is pictured in Figure 1.

A Few Helpful Hints

Before a search, we recommend that you check the currency of the database designated by the arrow in Figure 1.

Try using the detailed search tips form. Located below each search box is a listing of the available search functions. These search functions include examples to help you easily learn how to run relevant, high-level searches. With Version 2.2, introduced several months ago, you can now perform multi-book searches, enabling you to search all the data sets in the Washington library at one time, all the data sets in the federal library at one time, or search case law from multiple states with one search query. Version 2.2 also added an “All Jurisdiction” tab, so you can take your search to another venue without having to re-enter the search query information.

You can e-mail a case; print the case in two-column format or as a PDF; or convert it to a Word or WordPerfect document or HTML. Casemaker offers dual citation and pagination for state and regional reports. Linked footnotes are found within case law.

Your last search is always saved for easy review if you need to revisit that last search for information. “Breadcrumb navigation” (showing a trail of links) provides search history with return navigation.

The CaseCheck tool provides you with the cases that cite to the original case by later courts. Access to all cases that have cited a case being viewed is illustrated in Figure 2. Although Casemaker does not have Shepard’s or Key Cite, later this year it will introduce CaseCheck+, a way of checking whether your case remains “good law.”
The CaseCheck results appearing in a pop-up window ensure that you will never navigate away from the case that you are viewing. Casecheck is now operational within the MultiBook Search in each individual state library and in the federal Library.

Although Casemaker is free to WSBA members, CaseCheck+ requires an additional fee ($4.95 for 24 hours of unlimited use, $19.95 for monthly unlimited use, or $240 for annual unlimited use).

Additional new features include a “Session Laws” data set for each state library. Statutes are now continuously updated (see Figure 3).

CaseKnowledge provides downloadable secondary publications for your case law searches. To utilize CaseKnowledge, first run a search. Once your results are displayed, you will see, on the right side of your screen, CaseKnowledge. The publications are listed by “Current State,” “Third Party,” and “Additional Sources” (such as other state publications). All of the publications are available for purchase. Once purchased, the document is downloaded and stored to your computer.

Along with the availability of CaseCheck+, you can soon use CasemakerDigest. This free new product will provide summaries of appellate court decisions and federal 9th Circuit decisions, which can be sorted by practice and topic area, available within 48 hours, and linked to full text cases.

We hope you’ll try Casemaker as your first line of research. LexisNexis and Westlaw may offer more features, but you may find that your immediate research needs are met by Casemaker.
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The 2010 Washington State Bar Association’s Annual Awards Dinner and Business Meeting

Please join us for an evening of inspiration as we celebrate the accomplishments of the 2010 WSBA award recipients. All members of the legal community are invited to attend.

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Registration is $95 per person (table of 10 = $950). To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than September 16, 2010 (refunds cannot be made after September 16). Seating will be assigned.

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All those listed on the same registration form (up to 10) will be seated at the same table.

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No. AAd 92010
Conduct to support disbarment.

Some violations of the Rules of Professional Conduct, if proven by a clear preponderance of evidence, may matively admit the facts and misconduct, and involve the commission of a crime. Mr. Hecht stipulated to the convictions but did not affirmatively admit the facts and misconduct, and admitted the likelihood that the WSBA could prove by a clear preponderance of evidence sufficient violations of the Rules of Professional Conduct to support disbarment.

On February 27, 2009, Mr. Hecht was charged in Superior Court with threatening to cause bodily injury to another man (JH) by threatening to kill him, which is a class C felony. On August 30, 2008, Mr. Hecht threatened JH based on his understanding that JH had been talking about Mr. Hecht’s sexual conduct with JH when JH was a minor. Mr. Hecht screamed at JH: “Are you talking about me? You better not be talking about me. I’ll kill you.” On February 27, 2009, Mr. Hecht was also charged in Superior Court with making a threat to cause bodily injury to JH by threatening to kill him and of patronizing a prostitute.

Mr. Hecht’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not.

Christine Gray represented the Bar Association. Brett A. Purzer represented Mr. Hecht.

Suspended

Robert E. Beach III (WSBA No. 6710, admitted 1976), of Spokane, was suspended for three years, effective March 24, 2010, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving the filing of frivolous pleadings against people involved in litigation, and violations of court orders.

Mr. Beach covered these disbursements with funds belonging to others and third parties. The shortages in the trust account occurred, in part, due to Mr. Beach’s assistant’s use of the funds to pay her personal expenses.

Mr. Beach also failed to respond fully, promptly, or accurately to the Association’s requests for information and records, thereby requiring the Association to subpoena him for his deposition and bank records.

Mr. Beach’s conduct violated former RPC 1.14(a) and current RPC 1.15A(c)(1), requiring all client funds to be maintained in an interest-bearing trust account, holding property of clients and third persons separate from the lawyer’s own property; former RPC 1.14(b)(4) and current RPC 1.15A(f), requiring prompt payment or delivery to the client funds which the client is entitled to receive; current RPC 1.15A(h)(8), prohibiting disbursements for a client or third person to exceed the funds of that person on deposit, and/or using funds of a client or third person on behalf of anyone else; former RPC 1.14(a) and current RPC 1.15A(h)(1), prohibiting deposit or retaining lawyer funds in a trust account; former RPC 1.14(b)(3) and/or current RPC 1.15A(h)(2), RPC 1.15B(a)(1), RPC 1.15B(a)(2), and/or RPC 1.15B(a)(8), requiring a lawyer to maintain complete and current trust account records, checkbook registers, client ledgers, and copies of reconciled client ledgers of all client funds of which the lawyer has possession; current RPC 1.15A(h)(6), requiring the lawyer to reconcile trust account records as often as bank statements are generated, reconciling the check register balance with the bank statement balance to the combined total of all client ledger records; and former and current RPC 5.3(b), requiring a lawyer having direct supervisory authority over a non-lawyer to make reasonable efforts to ensure that person’s conduct is compatible with the professional obligations of the lawyer.

Marsha A. Matsumoto represented the Bar Association. Mr. Beach did not appear in person or through counsel. Erik S. Bakke Sr. was the hearing officer.

Suspended

Sharon Lee Gain (WSBA No. 27972, admitted 1998), of San Antonio, Texas, was suspended for two years, effective February 4, 2010, by order of the Washington State Supreme Court following approval of a stipulation. This discipline was based on conduct involving the filing of frivolous motions, failure to respect the rights of third persons, conduct prejudicial to the administration of justice, and violations of court orders.

Ms. Gain was one of three co-counsel representing members of two citizens’ groups (groups) who were defendants in a SLAPP (Strategic Lawsuit Against Public Participation) lawsuit. The defendants filed counterclaims for damages in the lawsuit. In September 1999, the plaintiffs brought a motion to compel the production of...
In the original lawsuit. In April 2003, Superior County, the State of Washington, and Ms. Gain's two former co-counsels and the opposing counsel named as defendants in the petition were trial court. The clerk responded that there was no basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law; former RPC 4.4, prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear.

Francesca D'Angelo represented the Bar Association. Ms. Gain represented herself. Octavia Y. Hathaway was the hearing officer.

Suspended

Alfoster Garrett Jr. (WSBA No. 31044, admitted 2001), of Seattle, was suspended for 30 months, effective March 24, 2010, by order of the Washington State Supreme Court. This discipline is based on conduct involving failure to communicate, failure to deposit client funds into an interest-bearing trust account, failure to maintain complete records of client funds, failure to pay clients funds which they are entitled to receive, and dishonest conduct. The Court also imposed specific conditions on reinstatement.

Matter No. 1: In 2002, Mr. Garrett was retained by three clients to represent them in their employment discrimination claims against their common employer, a government agency. At that time, Mr. Garrett was employed as an associate attorney in a law firm, which he was planning to leave in order to open his own solo practice. Representation of the three clients was outside the firm's practice area and conflicted with his duties to the firm; thus, Mr. Garrett met with the clients outside of work hours.

Mr. Garrett orally informed two of the clients, Ms. C and Ms. G, that payment for his legal services were not well grounded in fact, and ordered CR 11 sanctions of $2,550 assessed against Ms. Gain.

In March 2003, while Ms. Gain's "counterclaims" and amended complaint and/or supplemental proceeding were still pending, she filed a Notice of Appeal/Notice of Discretionary Review in the Supreme Court of Washington purporting to appeal, among other things, the Supreme Court's published decision in the original lawsuit, and all previous rulings in the case. On March 5, 2003, the clerk informed Ms. Gain by letter that there was no copy of the signed order or judgment of which she sought review and that the failure to comply with the rules could result in dismissal of the matter. On March 21, 2003, Ms. Gain filed a motion to modify the clerk's ruling of March 5, 2003. That same day, the clerk responded that this motion was "premature, if not frivolous" as the court had not yet made a ruling on her appeal. The Supreme Court dismissed the Notice of Appeal/Notice of Discretionary Review, noting that no order had been filed and that it appeared no order existed. Sanctions in the amount of $500 were ordered against Ms. Gain personally. Ms. Gain's subsequent motion to modify this ruling was denied.

In May 2003, Ms. Gain filed a Petition for Extraordinary Writ and Motion for Summary Judgment in the Supreme Court. Among those named as defendants in the petition were trial court Judge A, the State of Washington, opposing counsel, and Ms. Gain's former co-counsel in the original lawsuit. The petition requested, among other things, that the Supreme Court change its published opinion in the original defamation lawsuit, dismiss the lawsuit against the petitioners (which had already been dismissed by Judge A), reverse its prior rulings on sanctions, and award compensatory and punitive damages against Judge A, the County, and the State of Washington. The Supreme Court sanctioned Ms. Gain $1,000 for this filing.

In June 2003, Ms. Gain filed and served another Petition for Extraordinary Writ and Motion for Summary Judgment in the Supreme Court, adding as additional defendants, among others, the Washington State Supreme Court, the Supreme Court justices, the Supreme Court clerks, the Supreme Court commissioner, the Washington Court of Appeals Division II, and several judges. In the petition, Ms. Gain added the allegation of bad faith on the part of plaintiff's attorney and her former co-counsel "with the aid of [Judge A]." In this petition, Ms. Gain requested much of the same relief as in the prior petition. The clerk's ruling stated: "[Ms. Gain]s pleadings constitute another motion to modify this ruling was denied.

In May 2003, Ms. Gain filed a Petition for Extraordinary Writ and Motion for Summary Judgment in the Supreme Court. Among those named as defendants in the petition were trial court Judge A, the State of Washington, opposing counsel, and Ms. Gain's former co-counsel in the original lawsuit. The petition requested, among other things, that the Supreme Court change its published opinion in the original defamation lawsuit, dismiss the lawsuit against the petitioners (which had already been dismissed by Judge A), reverse its prior rulings on sanctions, and award compensatory and punitive damages against Judge A, the County, and the State of Washington. The Supreme Court sanctioned Ms. Gain $1,000 for this filing.

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would occur on a contingent-fee basis, but failed to communicate how the fees would be calculated. The third client, Ms. R, was not informed of the contingent nature of Mr. Garrett's fee until after settlement was obtained. Mr. Garrett did not have a written fee agreement with any of the three clients. Each client gave Mr. Garrett $50 for costs to be incurred in their claims, with which he opened a general office account for a small business at a bank. Mr. Garrett referred to the account as his "client account," and instructed the three clients to deposit money for costs into the account. He did not maintain complete records of client funds in the account nor render to the clients accountings of those funds. Instead, he relied on the bank to provide information of the account's status and required each client to maintain deposit information. In December 2002, Mr. Garrett signed a WSBA "Trust Account Declaration," in which he denied maintaining any Washington individual (non-IOLTA) trust account.

On the same day Mr. Garrett opened the business account, he filed a lawsuit in superior court on behalf of the three clients. Mr. Garrett did not file a tort claim with respect to the clients prior to filing the civil suit action, which is a requisite against a governmental entity. Mr. Garrett litigated each of the clients' claims individually.

Following Mr. Garrett's instructions, Ms. R deposited $150 into the client account on March 15, 2003. Ms. R's claim settled for $3,500. In a letter dated December 3, 2003, Mr. Garrett informed Ms. R that he would disburse the settlement proceeds, including paying for deposition costs. Mr. Garrett failed to pay the court reporter her fee for the deposition transcript until July 2007, and Ms. R did not receive the $150 she earlier deposited into his account until January 2007. Mr. Garrett was unable to account for the $150 deposited by Ms. R or the $677.75 he withheld for deposition costs from settlement proceeds. This money became commingled with other funds, some of which Mr. Garrett withdrew for his own purposes.

Ms. G's claim was dismissed in October 2003. Without informing his client, Mr. Garrett initially signed a voluntary withdrawal of Ms. G's claims. He subsequently signed a dismissal with prejudice and, in December 2003, an order of dismissal prepared by defense counsel. Copies of documents related to the voluntary withdrawal and dismissals were not provided to Ms. G. In a letter to her on December 2, 2003, and in a subsequent phone conversation, Mr. Garrett told Ms. G that her claim was dismissed, but misrepresented the nature of the dismissal or that he had agreed to a dismissal with prejudice.

In 2003, the employer moved for summary judgment against Ms. C. C's claim because of the failure to file a tort claim before the start of a civil action. Faced with that motion, Mr. Garrett dismissed by "nonsuit" the claim of Ms. C, and filed a tort claim. The employer offered to settle the claim by payment of $10,000 to Ms. C, but the offer was rejected at Ms. C's direction. Another civil action on behalf of Ms. C was then filed on May 4, 2004. This action was dismissed because of improper form and service of the tort claim. While the dismissal was without prejudice, the applicable limitation period had expired.

**Matter No. 2:** Mr. Garrett was retained in March 2005 to represent a minor in school expulsion and juvenile court criminal proceedings. At his juvenile court trial in July 2005, the minor client was convicted on two of the three counts of assault in the fourth degree with sexual motivation. The client's mother was dissatisfied with Mr. Garrett's representation and discharged him by letter, dated August 2, 2005. She filed a grievance with the WSBA about Mr. Garrett on August 4, 2005.

When he was retained, Mr. Garrett provided the minor client's mother with his business card, one side of which identified Mr. Garrett as president of the local chapter of a prominent civil rights organization. After discharging Mr. Garrett, the client's mother attended a meeting of that organization, wrote letters to the organization's legal department, and wrote to a prominent local civil rights activist in order to complain about Mr. Garrett. By August 2005, the organization was highly factionalized, with one side supporting Mr. Garrett. A local radio station provided a forum for the factions to each voice their positions. On August 12, 2005, Mr. Garrett took part in a live radio broadcast, during which he mentioned the full name of his minor client. After Bar disciplinary counsel contacted Mr. Garrett later in 2005 regarding the propriety of mentioning the full name of the minor client, Mr. Garrett denied having called into the live broadcast and falsely represented to the Association that the program's host played a "CD of a prior conversation..." Mr. Garrett also wrote to Bar Association disciplinary counsel, in which he made these same misrepresentations.

**Matter No. 3:** In January 2005, Mr. Garrett was retained by a local group (the Alliance) whose members were concerned about portions of a proposed city ordinance. Mr. Garrett was requested to write a letter to the mayor regarding the members' concerns and discussed the possibility of a civil action to enjoin the ordinance provisions. Mr. Garrett requested payment of a deposit for fees to be incurred, which would accrue at the rate of $200 per hour. He estimated he might require about one hour of professional time to produce the letter. The Alliance's director made a payment of $400 and, in his transmittal letter to Mr. Garrett, directed that the check be placed in a lawyer trust account and that Mr. Garrett "not do any more work for us until we come up with your retainer and/or agreed deposit you require." The check for $400 was deposited into the business account previously identified. On February 24, 2005, the Alliance's director sent Mr. Garrett a check for $800 and authorized him to write a letter to the mayor. The check was deposited into Mr. Garrett's business account. An implied fee agreement was formed on the basis of the director's letters to Mr. Garrett. Mr. Garrett wrote to the mayor on March 28, 2005, but did not copy the letter to anyone in the Alliance.

The ordinance went into effect in early April 2005. Because the Alliance and its director believed that Mr. Garrett did not write the mayor, the director requested a refund of the $1,200 previously paid to Mr. Garrett. On April 15, 2005, Mr. Garrett denied the request for a refund in a letter, in which also enclosed a copy of Mr. Garrett's March 28, 2005, letter to the mayor. The mayor, reacting to Mr. Garrett's letter, did agree to seek amendment of the ordinance. On July 18, 2005, City Council voted to amend the ordinance. This news was conveyed to Mr. Garrett in a letter from the Alliance's director, dated July 20, 2005, in which he also requested Mr. Garrett's assistance for a member of the Alliance. On August 4, 2005, the Alliance's director wrote to Mr. Garrett that his services were terminated and sought a refund of $600. Mr. Garrett did not provide the requested refund or provide the Alliance with an accounting or a billing; nor did he keep check registers or a running balance with respect to his client account or the Alliance's funds. While Mr. Garrett was able to reconstruct his time providing professional services to the Alliance, he did not do that until late 2008.

Mr. Garrett's conduct violated former RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; former RPC 1.5(b), requiring the lawyer, when he has not regularly represented the client, to communicate the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer's billing practices to the client, preferably in writing, within a reasonable time after commencing representation; former RPC 1.5(c)(1), requiring that a contingent fee agreement be in a writing and state the method by which the fee is to be determined; former RPC 1.14(a), requiring that all funds of clients paid to a lawyer or law firm be deposited into one or more identifiable interest-bearing trust accounts and no funds of the lawyer be deposited therein; former RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into possession of the lawyer and render appropriate accounts to his or her client regarding them; former RPC 1.14(b)(4), requiring a lawyer to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive; former RPC 1.14(c), requiring lawyers to maintain interest-bearing trust accounts pursuant to the Rules and pay the interest to the Legal Foundation of Washington; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Marsha A. Matsumoto represented the Bar Association. Kurt M. Bulmer represented Mr. Garrett. Kelby D. Fletcher was the hearing officer.

**Suspended**

**Thomas Owen Mix Jr.** (WSBA No. 24112, admitted 1994), of Flint, Michigan, was suspended for two years, effective April 28, 2010, by order of
the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving the commission of felonies.

On January 26, 2008, Mr. Mix presented one or more counterfeit prescriptions for Clonazepam, Lorazepam, and Chloridiazepoxide, which are Schedule IV controlled substances, to a pharmacy in Genesee County, Michigan. Mr. Mix himself wrote the prescriptions that he presented to the pharmacy. On the basis of the counterfeit prescriptions, the pharmacy provided Mr. Mix with the controlled substances. On July 11, 2008, the Genesee County, Michigan, prosecutor filed an Amended Information charging Mr. Mix with 12 counts of unlawful possession of a controlled substance, in violation of Mich. Compo Laws § 333.7403(2)(b)(ii). These offenses are felonies.

On July 11, 2008, Mr. Mix pleaded guilty to the Amended Information. On August 25, 2008, the Genesee County Circuit Court accepted Mr. Mix's plea, deferred proceedings, and placed Mr. Mix on probation for 60 months. Among other things, the court made it a condition of probation that Mr. Mix not practice law during the 60-month probation term. Mr. Mix has appealed that aspect of his probation.

Mr. Mix’s conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(i), prohibiting a lawyer from committing any act which reflects disregard for the rule of law, whether the same he committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not.

Joanne S. Abelson represented the Bar Association. Mr. Mix represented himself.

Reprimanded

Matthew B. Aylworth (WSBA No. 37892, admitted 2006), of Eugene, Oregon, was ordered to receive a reprimand, entered on March 25, 2010, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. This discipline is based on failure to review records before preparing, signing, and filing an affidavit with the court, which resulted in a judgment based on false information. For more information, see the Oregon State Bar Bulletin (May 2009) available at [www.osbar.org](http://www.osbar.org).

Mr. Aylworth’s actions violated Oregon’s RPC 8.4(a)(4), prohibiting conduct prejudicial to the administration of justice.

Joanne S. Abelson represented the Bar Association. Mr. Aylworth represented himself.

Reprimanded

Bernice C. Delorme (WSBA No. 31148, admitted 2001), was ordered to receive a reprimand on April 20, 2010, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of North Dakota following approval of a stipulation. This discipline is based on conduct involving failure to consult with two clients to obtain their informed consent as to the limitation of the scope of representation. For more information, see North Dakota State Bar Association’s official publication, The Gavel (November 2009), available at [www.sband.org/gavel](http://www.sband.org/gavel).

Ms. Delorme’s conduct violated North Dakota’s RPC 1.2(c), allowing the lawyer to limit the scope of the representation if the client consents after consultation.

Joanne S. Abelson represented the Bar Association. Ms. Delorme represented herself.

Reprimanded

Daniel Nathan Gordon (WSBA No. 32186, admitted 2002), of Eugene, Oregon, was ordered to receive a reprimand, entered on March 25, 2010, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. This discipline is based on failure to review records before preparing, signing, and filing an affidavit with the court, which resulted in a judgment based on false information. For more information, see the Oregon State Bar Bulletin (May 2009) available at [www.osbar.org](http://www.osbar.org).

Mr. Gordon’s actions violated Oregon’s RPC 8.4(a)(4), prohibiting conduct prejudicial to the administration of justice.

Joanne S. Abelson represented the Bar Association. Mr. Gordon represented himself.

Reprimanded

Roger J. Leo (WSBA No. 20654, admitted 1991), of Portland, Oregon, was ordered to receive a reprimand, entered on April 20, 2010, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. This discipline is based on concurrent representation of clients in matters adverse to one another, representing a current client against a former client, and failure to obtain client consent after disclosure of conflict of interest. For more information, see the Oregon State Bar Bulletin (December 2008) available at [www.osbar.org](http://www.osbar.org).

Mr. Leo’s actions violated Oregon’s DRC 5-105(C), current client conflict of interest; and DRC 5-105(E), former client conflict of interest.

Joanne S. Abelson represented the Bar Association. Mr. Leo represented himself.

Reprimanded

Alan Mark Singer (WSBA No. 11970, admitted 1981), of Tukwila, was ordered to receive a reprimand on March 25, 2010, following approval of a stipulation by the hearing officer. This discipline was based on conduct involving failure to adequately supervise non-lawyer staff and practicing law while suspended. Mr. Singer is to be distinguished from Alan Michael Singer of Olympia.

In December 2008, Mr. Singer received a license renewal packet for 2009 from the Association. Between December 2008 and February 2009, the Association sent three e-mails to Mr. Singer reminding him about licensing renewal for 2009, which he had not yet completed. In March 2009, Mr. Singer’s office received a pre-suspension notice that was sent by the Association by certified mail, and later by e-mail, instructing him to take immediate action to avoid suspension. The Chief Justice of the Washington State Supreme Court entered an order (Order) in May 2009 suspending Mr. Singer from the practice of law, effective June 1, 2009, for failing to comply with licensing requirements.

Mr. Singer’s staff received a letter from the Association informing Mr. Singer about the suspension Order. Mr. Singer did not take the necessary actions to comply with his licensing. During the period in question, Mr. Singer directed his staff to take care of his licensing requirements, but he did not adequately supervise them and he did not check e-mails because he was having problems receiving spam.

On June 1, 2009, Mr. Singer was suspended from the practice of law under the May 2009 Order. Unaware of his suspension, Mr. Singer continued to engage in the practice of law, including signing and filing a notice of appearance in district court and appearing in a district court hearing on behalf of a client in a criminal matter. After the hearing, the court clerk informed Mr. Singer of his suspension. Mr. Singer ceased actively practicing law, but did not take the appropriate steps to cease holding himself out as a lawyer and allowed his office staff continued to work on legal matters for him. Mr. Singer’s office directory continued to list Mr. Singer as a lawyer and his correspondence continued to reflect that he was a lawyer.

In June 10, 2009, an Association investigator went to Mr. Singer’s office and informed his staff about the suspension, and they informed Mr. Singer about the investigator’s visit. That same day, Mr. Singer took the necessary steps to comply with his licensing requirements and obtain reinstatement. The Association opened a grievance against Mr. Singer for practicing law while suspended.

Mr. Singer’s conduct violated RPC 5.3, requiring a lawyer with direct supervisory authority over a non-lawyer to make reasonable efforts to ensure that the non-lawyer’s conduct is compatible with the professional obligations of the lawyer; and RPC 5.8(a), prohibiting a lawyer from engaging in the practice of law while on inactive status, or while suspended from the practice of law for any cause.

Jonathan H. Burke represented the Bar Association. Mr. Singer represented himself. William Edward Fitzharris, Jr. was the hearing officer.
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## Criminal Law

### 2010 Criminal Justice Institute

**September 16–17 — Seattle. CLE credits pending.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

### Making your Case with a Better Memory

**September 21 — Seattle and webcast. CLE credits pending.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

## Family Law

### Creative Internet Sleuthing for Person and Asset Location

**August 10 — Seattle. 1 ethics credit.** By McKinley Irvin; cle@mckinleyirvin.com; 206-625-9600; [www.mckinleyirvin.com](http://www.mckinleyirvin.com).

### Paternity Establishment and Disestablishment

**September 15 — Seattle. 1 CLE credit.** By McKinley Irvin; cle@mckinleyirvin.com; 206-625-9600; [www.mckinleyirvin.com](http://www.mckinleyirvin.com).

## General

### Discovery Skills Boot Camp

**August 4 — Seattle and webcast. 6.5 CLE credits.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

### Successful Interaction with Your Jury

**September 28 — Seattle and webcast. CLE credits pending.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

### Ethical Marketing of Legal Services

**August 19 — Toll-free teleconference with online PowerPoint. 2 ethics credits.** By Rubric CLE; [www.rubriccle.com](http://www.rubriccle.com); 206-714-3178.

### Ethics, Professionalism and Civility

**September 14 — Seattle and webcast. CLE credits pending.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

### Healthy Retirement Plans, IRAs and Happy Plan Fiduciaries

**September 30 — Seattle and webcast. CLE credits pending.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

### Anatomy of a Trial

**August 27 — Seattle and webcast. 6.5 CLE credits.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

### Diversity and Dealing with Bias

**September 15 — Seattle and webcast. CLE credits pending.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

### Digital Forensics vs. eDiscovery

**September 18 — Sequim. 4 CLE credits.** By Red Handed Forensics of Clallam County; 360-775-8687; info@redhandedforensics.com; [www.redhandedforensics.com](http://www.redhandedforensics.com).

### Negotiations with Marty Latz

**September 22 — Seattle. CLE credits pending.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

### Indian Law

#### 6th Annual Re-Emerging Northwest Tribal Economies


#### 23rd Annual University of Washington Indian Law Symposium

**September 9–10 — Seattle.** By UW School of Law; [www.law.washington.edu/cle; 206-543-0059; uwcle@u.washington.edu](http://www.law.washington.edu/cle; 206-543-0059; uwcle@u.washington.edu).

### Intellectual Property

#### Intellectual Property for the Non-IP Attorney

**September 8 — Seattle and webcast. CLE credits pending.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).

### Mediation

#### Residential Appraisal Dispute Resolution

**August 10 — Seattle and webcast. 2.75 CLE credits.** By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbcle.org](http://www.wsbcle.org).
Breaking Impasse: Straightforward Strategies for Mediators and Advocates
Sept. 10 — Seattle. By Dispute Resolution Center of King County and Sam Imperati, executive director of the Institute for Conflict Management, Inc.; 7.25 CLE credits; www.kcdrc.org/training/registration.

Mediation Training
September 20, 22, 23, 27, and 29 — Seattle. 34.25 CLE credits, including 1.75 ethics. By Dispute Resolution Center of King County; www.kcdrc.org/kaseya@kcdrc.org.

Settlement Conference Mediator Training
September 28 — Tacoma. 2.75 CLE credits, including 1 ethics. By Pierce County Center for Dispute Resolution in Tacoma; www.pccdr.org/settlement-conference@pccdr.org.

Personal Injury Law
Personal Injury Boot Camp from the Defendant’s Perspective
August 11 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Intellectual Property for the Non-IP Attorney
September 8 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Real Property, Probate and Trust
Commercial Condominiums

Probate Boot Camp
September 23 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Webcast Seminars
Discovery Skills Boot Camp
August 4 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Residential Appraisal Dispute Resolution
August 10 — Seattle and webcast. 2.75 CLE credits. By The Seminar Group, 206-463-4400; www.theseminargroup.net/seminar?seminar=10.appwa.

Anatomy of a Trial
August 27 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Personal Injury Boot Camp from the Defendant’s Perspective
August 11 — Seattle and webcast. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Trial Lawyer’s Guide to the Washington Consumer Protection Act
August 24 — Seattle and webcast. 6.5 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics, Professionalism and Civility
September 14 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Healthy Retirement Plans, IRAs and Happy Plan Fiduciaries
September 30 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Diversity and Dealing with Bias
September 15 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Making your Case with a Better Memory
September 21 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Probate Boot Camp
September 23 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Arbitration and Mediation Boot Camp
September 24 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Successful Interaction with Your Jury
September 28 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Healthy Retirement Plans, IRAs and Happy Plan Fiduciaries
September 30 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Get More Out of Your Software!
The WSBA offers hands-on computer clinics for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat can do for you.

Are you a total beginner? No problem. The clinics teach helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members.

There is no charge, and no CLE credits are offered. Clinics are held each month. The August 9 clinic focus on Outlook and practice-management software. The August 12 clinic will focus on Adobe Acrobat Professional Version 9.

For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.
activities, delivering education in an organized, comprehensive fashion. Previous successes working and supporting the endeavors of work teams is crucial. This position is also responsible for a percentage of the department’s overall revenue plan. For position details and how to apply, visit www.wsba.org/jobs.

Washington State Bar Foundation development director — This position is responsible for developing a strategic plan for cultivating donors and funding sources for long-term programming for the Washington State Bar Foundation (WSBF) and in support of WSBA programming. Working with the WSBA executive director, WSBF Board of Trustees (BOT), WSBF staff, and related parties, this position identifies programs in need of support; develops fundraising goals and implements immediate and long-term funding strategies; identifies and evaluates prospective donors; and coordinates fundraising programs and activities. This position reports directly to the WSBA executive director, who serves as secretary to the Foundation. The position works in close collaboration with the WSBF BOT. Visit www.wsba.org/jobs for further details.

Felony trial attorney for downtown Seattle firm focused on representing persons accused of domestic violence and sexual misconduct. Ideal candidate will have relevant trial experience and excellent client counseling skills. Out-of-state or out-of-county applicants welcome. We offer an excellent work environment in a historic building with very competitive salary and benefits. Send résumé to Danica Wetland at danica@rhodesmeryhew.com.

Associate position — Labor and Employment Group. The Stoel Rives Labor and Employment Group continues to grow! Stoel Rives’ labor and employment attorneys provide strategic counseling and litigation services across the full spectrum of labor and employment law. The group is now seeking an attorney to join the Seattle office. Ideal candidates will have minimum two years of experience with labor and employment issues, including traditional labor-management relations and employment litigation. Strong academic credentials, writing skills, and interpersonal skills are required. Washington Bar admission is preferred. Interested applicants should visit our website at www.stoel.com and submit application materials to Lianne Caster, Lawyer Recruiting and Diversity Manager. E-mail submissions to lecaster@stoel.com are welcome. EOE.

Corporate attorney — Stoel Rives LLP provides strategic counsel to public, private, and emerging companies. Stoel Rives is seeking an associate attorney to join its corporate practice group in the Seattle office focusing on complex public and private securities offerings, public company reporting and compliance, M&A, project finance, and general business transactions. The ideal candidate will have a minimum of three years of experience in these areas. Strong academic credentials, writing skills, and interpersonal skills are required. Interested applicants should visit our website at http://join.stoel.com/jobs.html and submit application materials to Lianne Caster, Lawyer Recruiting and Diversity Manager. Principals only, no recruiters please. EOE.

Litigation associate attorney needed for Spokane law firm of Kirkpatrick & Startzel. Minimum five years of litigation experience required. Must be proficient in all aspects of litigation and be able to work with minimal supervision. Send cover letter and résumé to firm@ks-lawyers.com.

Rare, busy, corporate practice seeks senior associate experienced in the representation of venture stage technology companies. One of the few Seattle law firms that is very busy in corporate work seeks to hire a senior associate who has at least four years of experience representing start-up technology companies. This innovative and very successful firm is interested only in candidates who can counsel and handle corporate transactions for pre-IPO companies without any supervision. Will also consider in-house candidates, but all candidates must have strong academic credentials and training from a top firm or company. Candidates who have an MBA and/or previous non-legal business experience at a company are particularly welcome. This firm has a very exciting and entrepreneurial culture.

Legal Ease, L.L.C. exclusive — Real estate finance litigation associate sought by well-regarded downtown Seattle firm. Top of the market compensation and one of the best benefits bonus packages we have seen in a long time. Candidates must have at least two years’ civil litigation experience including strong motions and courtroom exposure. High-volume, top-quality, fast-paced practice background is a plus. Must have strong work ethic and team-oriented mentality! Submit your résumé in strict confidence to Lynda Jonas, Esq., at ljonas@legalease.com.

Attorney — Seattle family law firm. Growing downtown practice seeks highly motivated individual with minimum three years’ experience and strong writing skills. Rewarding salary and bonus structure. For more information, visit www.ttlawco.com/jobs.html.

Corporate counsel — Strategic Transactions. In today’s hectic environment filled with constant motion, we at T-Mobile USA pride ourselves on providing wireless communications that allow our customers to stick together with the people who mean the most to them. Based in Bellevue, Washington, T-Mobile USA, Inc. is the mobile communications subsidiary of Deutsche Telekom AG (NYSE: DT) and serves more than 30 million customers nationwide. We have more than 40,000 employees who work together to keep our customers connected through the quality of our service, the span of our coverage, the reliability of our network and the value of our plans. The T-Mobile Legal Department has an exciting opportunity at its corporate headquarters in Bellevue, WA. This attorney will advise and partner with a diverse group of internal clients that negotiate agreements of strategic significance to T-Mobile’s business. Representative matters include a wide range of subject matter. In addition to traditional M&A, this attorney can expect to draft and negotiate deals with vendors for network infrastructure and cloud computing services. While contract negotiations represent a significant focus for this position, the successful candidate will also be adept at analyzing complex factual scenarios and combing legal and business judgment into recommendations that accomplish the goals of the company. Requirements: Minimum seven years of legal experience; law firm experience preferred, in-house experience a plus. Education: JD degree required. Get ready for more with T-Mobile: career growth, personal recognition, and a diverse, high-energy culture are just the beginning. You’ll also enjoy competitive pay, special employee phone plans, generous paid time off, tuition assistance, medical and dental coverage, a great company-matched 401(k) plan, advanced training, and more. If interested, please apply online at www.tmobile.jobs and search for REQ#241636. At T-Mobile everyone has a voice! We strongly support diversity in the workforce and T-Mobile is an equal opportunity employer (EOE).

Associate attorney — Small, well-established, AV-rated civil practice in downtown Everett offers excellent long-term opportunity for an attorney with experience who is seeking professional growth (including potential to develop an area of specialization within the firm) and meaningful involvement in the greater Snohomish County community. Please submit a résumé advising us of your experience, a writing sample, and a letter of introduction telling us why you should be considered for this opportunity. E-mail to Legal2930@yahoo.com.

Labor and employment associate. Large Pacific Northwest law firm seeks a labor and employment attorney with a minimum of four years’ experience representing employers in a wide range of labor and employment law, including discipline and discharge, defense of employment-related and class action litigation, ERISA, employee benefits, compliance with federal and state laws, and regulations related to equal employment opportunities. Practice experience before the NLRB and EEOC a plus. Experience with depositions and motion practice required; some trial experience a plus. Candidates should e-mail cover letter and résumé to roden@laneppowell.com — Mr. Len Roden, Manager of Attorney Recruiting, Lane Powell PC, 1420 Fifth Ave., Ste. 4100, Seattle, WA 98101-2338. Lane Powell PC is an equal opportunity employer and actively encourages applications for employment from qualified individuals of diverse backgrounds. If you need reasonable accommodations to apply for any position, please let us know.

An industry-leading law firm is currently recruiting for an associate litigation attorney for our Bellevue, Washington, office. Our firm emphasizes the representation of financial institutions in matters related to licensing, servicing, mortgage banking, consumer finance, title insurance, real estate finance, and the enforcement of mortgage loans. The ideal candidate will have at least three years’ experience in litigation, including pleadings practice and in-court argument. The candidate must also have relevant title experience. Must have strong writing skills and the ability to work self-directed on a volume of files. Dual license in Washington and Oregon preferred. Salary DOE with full benefits, including health insurance, paid vacation, and payment of all required bar license fees and CLE fees. Please send a Word-formatted résumé to bellevueattorney@gmail.com with the job code “Associate Attorney” in the subject line.

In-house corporate paralegal — downtown Seattle. G2 Investment Group, LLC, a growing financial services company, is looking for a corporate paralegal to support its legal department. The successful candidate would report to G2’s general counsel and would be responsible for: assisting with contract review, drafting, and administration; supporting corporate secretarial functions, including preparation of organizational documents, maintenance of minute books, tracking corporate authorizations and intercompany agreements, organization and distribution of board and shareholder documents; and assisting with administration of corporate compliance programs. In addition, the successful candidate would assist in coordination between the company’s New York headquarters and its Seattle office, providing office and administrative assistance where required. Requirements include: B5 or BA degree; minimum seven years of related experience; professional demeanor; excellent communication
Advantages of advertising in Bar News:

► Bar News circulation is more than 30,000.
► Nearly 75 percent of the WSBA’s active members always or usually read Bar News.
► Washington state lawyers and judges read Bar News more than any other legal publication.
► Bar News is the only legal magazine received monthly by every practicing attorney in Washington state.
► Bar News is published 12 times a year with more than 750 pages reaching readers.

To place an ad, contact WSBA Advertising Manager Jack Young at 206-727-8260 or jacky@wsba.org.

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skills, written and oral; proficiency with Microsoft Office applications; excellent word processing capabilities; and ability to excel in a fast-paced, entrepreneurial environment. Interested candidates should e-mail a résumé and cover letter to Dori Karjian: dkarjian@g2inv.com. No phone calls please. Interviews will start ASAP, since this is an immediate contract-to-hire need. Compensation: DOE.

Business/employment attorney. Carson & Noel PLLC, an Issaquah business/real estate firm, is looking for a lateral attorney. Seeking attorney with minimum two years’ experience with a small book of business. Great opportunity to build your practice in a growing area. Submit cover letter and résumé to Dana Carrothers at carrothersd@carsonnoel.com.

Seeking director of contract administration for the NORDAM Interiors and Structures Division in Tulsa, Oklahoma. Experience with aerospace contract negotiation, management, and compliance required. For more information, or to apply for the position, go to http://nordam.com/careers/current_openings.aspx, and search for keyword 8097.

The Washington State Investment Board (WSIB) is seeking candidates to fill a compliance officer vacancy. This position is exempt from civil service. The incumbent will provide assistance in preparing an annual compliance plan, including identifying areas where compliance work is needed, designing programs to ensure consistent compliance work is efficiently and effectively performed, and reporting results to management. Please visit our website at www.sib.wa.gov and look under “JOBS” for the complete job announcement and application procedures.

V.P. of Legal Affairs — John L. Scott Real Estate, a national leader in the industry since 1931, is seeking a qualified candidate who can provide residential real estate, franchise, and general legal counsel. John L. Scott Real Estate has 29 owned offices in Washington and Oregon, 10,000 transactions per year, and 1,350 broker/agents. In addition to the company-owned operation, JLS has 95 franchised offices in Washington, Oregon, and Idaho. The candidate will coordinate network-wide legal activities to protect and defend the companies’ business and professional interests. This involves both direct work on residential real estate matters, franchise, and general business matters. Responsible for oversight of work performed by outside legal counsel selected and retained as required. Duties include but are not limited to: first point of contact on residential real estate transactional matters, negotiates and maintains office lease agreements, risk management, and claims/litigation. This is a full-time exempt position with an excellent benefit package. Salary is DOE. Qualifications: good standing with the Washington State Bar Association; emphasis on RE law; real estate license, Washington and Oregon preferred. Send CV to hiring@johnlscott.com. Visit our website at www.johnlscott.com.

Microsoft Corporation — senior attorney. LCA’s OEM Legal Group has an immediate opening for an experienced commercial senior attorney in Redmond. Primary responsibilities for this position include serving as lead attorney and trusted advisor for several OEM business teams, advising on a broad range of strategic legal and business matters including intellectual property, licensing and commercial transactions, competition law and other regulatory matters, product marketing and development, compliance, and communications. Qualifications: J.D. or equivalent degree; 10-plus years’ experience as a practicing business attorney with relevant in-house and/or top law firm transactional experience. Please view full job description and submit résumé at: https://careers.microsoft.com/ JobDetails.aspx?ss=&pg=0&so=&rw=1&jid=20404&jlang=EN.

United Online, Inc. seeks an experienced business affairs/commercial attorney to join its team as corporate counsel at its Classmates Media segment headquarters
in Seattle. Please apply to canderson@classmates.com.

**Litigation associate** — Stoel Rives LLP seeks a mid-level associate with a minimum of three years of relevant work experience to join the Trial Section of the Litigation Practice Group in Seattle. The ideal candidate will have experience in commercial and corporate litigation with extensive motion practice. Strong writing skills and academic credentials are required. A judicial clerkship is a plus. Washington Bar admission is preferred. Interested applicants should visit our website at http://join.stoel.com/jobs.html for more information and how to apply. E-mail submissions to Lianne Caster, Lawyer Recruiting and Diversity Manager, at lecaster@stoel.com are welcome. EOE. Principals only; no recruiters, please.

Lyon Weigand & Gustafson, an AV-rated Yakima law firm established in 1939, seeks an attorney with a solid litigation background to join the team. We focus our practice on business and corporate law, agricultural law, estate planning and probate, litigation, real estate, education law, employment law, elder law, and adoption. Candidates should be admitted to the Washington Bar with a minimum of three years of litigation experience preferred. Salary is dependent on qualifications and experience. Partnership-level candidates will be considered. Requests for confidentiality will be respected. Please send résumé, cover letter, references, and writing sample to Patrick Shirey at pshirey@lyon-law.com.

## Services

**Forensic document examiner:** Retired from the Eugene Police Department. Trained by the U.S. Secret Service and the U.S. Postal Inspection Service. Court-qualified in state and federal courts. Contact Jim Green at 888-485-0832.

**Virtual Independent Paralegals, LLC** provides full-range comprehensive legal and business services at reasonable rates. Due diligence document review/databasing, medical summarization, transcription, legal research and writing, pleading preparation, discovery, motions, briefs, and in-person trial support. Because we’re 24/7/365 we’re able to bridge the 9-to-5 gap. The hours we produce contain no overhead costs, and are thus, all billable. We hit the ground running, providing highest quality results. We’re just a phone call or email away. [www.viphelpmecom](http://www.viphelpmecom).

**Résumé/career consultations for attorneys** — 30-minute sessions — $65. Lynda Jonas, Esq., owner of Legal Ease L.L.C. — Washington’s Attorney Placement Specialists since 1996 — works with attorneys only, in Washington state only. She has unparalleled experience counseling and placing attorneys in our state’s best law firms and corporate legal departments. It is her opinion that more than 75 percent of attorney résumés are in immediate, obvious need of improvement. Often these are quick, but major, fixes. Lynda is uniquely qualified to offer résumé assistance and advice/support on best steps to achieve your individual career goals within our local market. She remains personally committed to helping attorneys land the single best position available to them. All sessions are conveniently offered by phone. Please e-mail legalease@legalease.com or call 425-822-1157 to schedule.

**Experienced contract attorney** and WSBA member drafts trial and appellate briefs, motions, and memos for other attorneys; I enjoy complex research. Resources include LEXIS Internet libraries and UW Law Library. Tell me about your case! Elizabeth Dash Bottman, Attorney, 206-526-5777, bjelizabeth@qwest.net.

**Experienced, efficient brief and motion writer** available as contract lawyer. Extensive litigation experience, including trial preparation and federal appeals. Reasonable rates. Lynne Wilson, 206-328-0224, lynnewilsonatty@gmail.com.

**Clinical psychologist** — competent forensic evaluation of individuals in personal injury, medical malpractice, and divorce cases. Contact Seattle office of Gary Grenell, Ph.D., 206-328-0262 or mail@garygrenell.com.

**Oregon accident?** Unable to settle the case? Associate an experienced Oregon trial attorney to litigate the case and share the fee (proportionate to services). OTLA member, references available, see Martindale, AV-rated. Zach Zabinsky, 503-223-8517.

**Experienced contract attorney:** 18 years’ experience in civil/criminal litigation, including jury trials, arbitrations, mediations, and appeals. Former shareholder in boutique litigation firm. Can do anything litigation-related. Excellent research and writing skills, reasonable rates. Peter Fabish, pfab99@gmail.com, 206-545-4818.

**Legal research and writing by attorney** in Spokane, WA. Gonzaga University graduate, associate editor of law review, excellent skills, and very reasonable rates. Pamela Rohr, 509-928-4100.

**Contract attorney available** for research and brief writing for motions and appeals. Top academic credentials, law review, judicial clerkship, complex litigation experience. Joan Roth, 206-898-6225, jmcc@yahoo.com.


**Insurance — lawyers professional liability, general liability, and bonds.** Independent agent, multiple carriers, 16-plus years’ experience. Contact Shannon O’Dell, First Choice Insurance Services, 509-638-2558; 1-888-894-1858; www.cins.biz.

**Scenic View Protection consulting.** Accurate 3D imaging of existing and proposed view conditions, expert testimony. Ron Lloyd Associates, Inc. 206-297-1957; rilloyd@ronlloyd.com; www.ronlloyd.com.

**Appraiser of antiques, fine art, and household possessions.** James Kemp-Slaughter ASA, FRSA with 33 years’ experience in Seattle for estates, divorce, insurance, and donations. See http://jameskemsplauughter.com for details. 206-285-5711 or jkempslaughter@aol.com.

**Contract attorney** with extensive litigation experience available to research and write memos, motions, and briefs. Kevin Ireland, 206-285-3386; kevinireland@q.com.

Reasonable, negotiable rate: lawmotion@christensenlaw@aol.com. 20+ years, top credentials, have Lexis. for estates.

Wish you had time to look for the perfect line of cases for your brief? Litigat

Space Available

Pioneer Square (Seattle). Congenial, full service offices available (Maynard Building). Walking distance to courthouse. Includes receptionist, conference room, messenger service, library, DSL, fax, copier with e-mail scanner, kitchenette. Steve, 206-447-1560.

Downtown Seattle executive office space: Full- and part-time offices available on the 32nd floor of the 1001 Fourth Avenue Plaza Building. Beautiful views of mountains and the Sound! Close to courts and library. Short- and long-term leases. Conference rooms, reception, kitchen, telephone answering, mail handling, legal messenger, copier, fax, and much more. $175 and up. Serving the greater Seattle area for over 30 years. Please contact Business Service Center at 206-624-9188 or www.bsc-seattle.com for more information.

Turn-key — new offices available for immediate occupancy and use in downtown Seattle, expansive view from 47th floor of the Columbia Center. Office facilities included in rent (reception, kitchen, and conference rooms). Other administrative support available if needed. DSL/VPN access, collegial environment. Please call Amy, Badgley Mullins Law Group, 206-621-6566.

Pioneer Square (Seattle) firm offering sublease for two professional offices and one staff office. For details, see Craigslist ad titled “3 Offices Available (Pioneer Square).” Contact Griff Flaherty at 206-682-2616.

Bellevue office space: Two offices available for sublease in downtown Bellevue. Rent includes shared use of conference rooms, small law library, and kitchen. Options include use of copier and covered parking. Please contact askag@jgslaw.com.

Belltown (Seattle) law firm offering turn-key sublease. Corner lot building with large windows and beautiful cherry wood interiors. Two professional offices (18’ x 16’ and 14’ x 11’), plus one paralegal office, and two staff work stations. Office share available with use of one of the professional offices and one paralegal office. If shared, the office facilities include furnished reception room with working fireplace, built-in reception desk, furnished conference rooms, library, kitchen, working file room with high-speed copier/fax/scanner, and large basement file storage. Administrative support of high-speed Internet, cable, and Voicetel is available. Contact accounting@aikenbrownlaw.com.


Issaquah office space. Two offices available for sublease in Issaquah law firm. Office — $1,050; with assistant station — $1,225. Rent includes reception, copier, fax, and conference room. Possible referrals. Contact Christina at 425-391-7427, or christinaforte@obrienlawfirm.net.

Seattle office space (Class A): Up to three professional offices and two staff offices on 38th floor of Bank of America Plaza (5th and Columbia) available for sublease by small construction law firm. Includes use of conference room, reception, kitchen, telephone service. Bookkeeping, garage parking, Westlaw, copier, fax services available. Lots of flexibility with your size needs and duration of lease. Larry, 206-442-1560.

Downtown beautiful Bellevue office space available — Seeks new tenant to share space, one private office, plus space for secretary, storage, completely equipped with T1, share conference room, telephone, copier, fax, scanner, etc. Please call Winston at 425-213-0553.

Mountlake Terrace offices — Private furnished, unfurnished, or shared offices from $250/month in downtown Mountlake Terrace. Great location near I-5 and Transit Center. Contact Vince Slupski, 206-854-4936; vince.slupski@gmail.com.
I became a lawyer because as a child I saw the power and ability lawyers had to resolve problems and I wanted to be able to do the same for my family and other people.

The future of the practice of law is exciting. I am very interested to see how changes in society and advancements in technology will impact and craft the practice of law and the law in general.

This is the best advice I have been given: Hard work pays off.

I would share this with new lawyers: Be open-minded about the practice of law and don’t limit yourself.

Traits I admire in other attorneys: Sharp and intelligent oral advocacy skills.

I would give this advice to a first-year law student: Your goal in law school is to build the best résumé possible to get the best job you can upon graduation.

People living or from the past I would like to invite to a dinner party: César Chávez, Martin Luther King Jr., Abraham Lincoln, and President Barack Obama.

I am most proud of this: Being the son of immigrants who came to this country to give me a better life and taking advantage of that opportunity by obtaining my license to practice law.

I am the most happy when I have the sense of accomplishment after completing or finishing a big project.

My favorite non-job activity: Basketball/snowboarding.

On television, I try not to miss “Law & Order.”

Best stress reliever: Basketball.


My favorite vacation place: Hawaii/Whistler/Tahoe.

One of the greatest challenges in law today is keeping up with technology.

If I were not practicing law, I would be a firefighter or P.E. teacher.

Technology is great, when it works.

Currently playing on my iPod/CD player/record player: 50 Cent.

If I could live anywhere, I would live in Hawaii.

What keeps me awake at night: I’m usually too tired to worry about anything.

If I could change one thing about the law it would be the lack of diversity.

This is the best part of my job: Always working on something new/different and client development activities.

I currently work as an attorney with Perkins Coie LLP. I am in the labor and employment practice group; however, I also practice general litigation. Prior to joining Perkins, I attended law school at Gonzaga and college at the University of Redlands. Throughout my life, I have been very active in extracurricular activities. In high school, I was a four-sport athlete (football, basketball, track, baseball) and president of the student body. In college, I was a two-sport athlete (football/track) and president of my fraternity. In law school, I played rugby at Gonzaga and was editor-in-chief of the Gonzaga Law Review. Now, as an attorney, I am on the board of the Latina/o Bar Association of Washington and Hispanic National Bar. I have always been active in these sorts of activities because I see them as opportunities to better myself and contribute to the respective organization and/or team. I am a firm believer in taking advantage of opportunities. As a first-generation Mexican American, I have seen and know people who have not had the same opportunities as I have had. Likewise, I have seen people with opportunities completely disregard them. My biggest inspiration comes from my mother, who brought me to this country a month before I was born and to this day works harder than anyone I know. I can be contacted at 206-359-8036 or jgarcia@perkinscoie.com.

This profile was requested by WSBA Editorial Advisory Committee Co-chair M. Lisa Bradley. To learn more about “Briefly About Me” or to submit your own, go to www.wsba.org/lawyers/brieflyaboutme.doc.
sentences such as, “I am dedicating this month’s Bar Beat to writing tips.” I hope the following additional tips will assist in your legal word smithing.

Never Make Up Words
Like “wordsmithing.” And avoid sentence fragments, such as, “Like ‘wordsmithing.’”

Working Environment
A comfortable work space helps focus attention, which is vital to good writing. The window of my home office overlooks foliage that is soothing to behold and inspires me to work — dang, it looks like the impatiens I put in that big planter with the bamboo are wilting. Hold on. I have to toss some water on the stupid things.

Where was I? Oh. Make your work space comfortable, efficient, and ergonomically sound. Avoid buying a chair that was half-price but turns out to be bent an inch or so sideways and causes you to walk like a sailor after you get up. If you wear bifocals, update the prescription regularly so you don’t need to perch them on the tip of your nose to see the computer screen, even though you have the text cranked up to 36-point type.

Discipline
Writing requires extraordinary concentration. Even when I’m working at home, I dedicate specific blocks of time to tasks, as if I had a boss looking over my shoulder. Of course, I take occasional breaks to refresh myself. For example, the World Cup is still on and I’m writing this, so I occasionally take a moment to flip on the TV and check the — Woah! GOOOOOOOOAAAAAAAAALLLLLLL! Sorry.

Audience
Something I hate to see is material that is mismatched with its intended audience. For example, when writing to explain something to a client, it is crucial to use accessible, non-technical language. This helps cultivate understanding and a bond of trust between lawyer and client. As a journalist, I was advised to write at about the eighth-grade level (which was easy for me because my brain development was frozen at that level anyway). It’s a sad commentary on our educational system, but I have seen recently that the typical adult now reads at an even lower level. Keep that in mind when drafting correspondence, although I would recommend against beginning letters with, “I am writing this at middle-school level so that even you can understand it.” Then again, it would be awesome to write that in a letter to opposing counsel who was being a jerk. Somebody try that sometime and let me know how it goes.

Compositional Organization
I think of legal writing as being the mental equivalent of building a brick house. The research is akin to gathering the bricks. Then, drafting is like the strenuous, tedious task of putting the bricks into place one by one. Finally, editing resembles the meticulous straightening of the bricks necessary to — wait, that isn’t really analogous. Once you put bricks in place you can’t move them much because of the mortar. But unless you’re still writing briefs on a 1969 IBM Selectric typewriter, when you’re editing you can move the words around as much as you want. So what I meant is that writing is like building, let’s see, a Lego house. Yeah, it’s like that. Never mind the brick house thing.

Grammar
Legal writing requires extensive use of nouns, verbs, pronouns, adjectives, adverbs, conjunctions, articles, expletives, and so forth. These can readily be found in dictionaries and thesauruses. (Ha, ha. I had to look up “thesaurus” in a dictionary to see what the plural is. It can be either “thesauruses” or “thesauri.” Then, just for fun, I looked up “dictionary” in a thesaurus and all it had were some lame entries, like “lexicon” and “glossary.” Oh, and you will need punctuation marks, which can be found on most computer keyboards. Review of the specific rules used to arrange these elements into coherent prose exceeds the scope of this column. However, I should note that when I was learning grammar, I was particularly fond of the gerund because the word reminded me of “gerbil.”

Proper Word Usage
Entire books have been written about the subtleties of word usage. I vaguely recall reading parts of them in college. One is by two guys, Funk and White — no Strunk and Wagnalls — no, that was a dictionary. Anyway, those books are out there and if you read them you’ll learn things like how to use the word “comprise” properly. It means “embrace.” So, you can say, “the principle of negligence comprises the concepts of duty, breach, and proximate cause.” But you shouldn’t say, “negligence is comprised of...,” because you would be literally saying “negligence is embraced of...” which is goofy. You could say “negligence is composed of...” but if you use “comprises” instead, you don’t need the “of.” So you would save a word while also looking smarter.

Conclusion
It’s always good to finish a piece with a conclusion that neatly summarizes all the preceding content. I would have done that here, but I ran out of space.
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