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Write on their Journey to the Caribbean Island Nation
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A delegation of 27 lawyers from the Washington State Bar Association traveled to Cuba to engage in a lawyer-to-lawyer exchange, which was made possible by the relaxation of travel rules by the Obama administration. As president of the Washington State Bar Association, I was allowed to lead this delegation. The trip was very rewarding in many respects, not the least of which was its intended purpose, which was to become more familiar with the Cuban legal system.

The delegation consisted of a fairly diverse group of lawyers including big- and small-firm lawyers, sole practitioners, lawyers from all four corners of the state, government lawyers, a judge, and a law school dean. It was also diverse in age, ranging from relatively young to some of us “pushing 70.”

The delegation gathered in Miami on October 15th to fly to Havana early on the morning of the 16th. The group would spend five days in Havana studying the Cuban legal system and gathering cultural experiences. Some of us extended the stay for an additional few days to add more cultural experiences.

My impressions of Cuba, and particularly Havana, are varied and vivid. I will let Doug Ende and Hugh Spitzer, in their article on page 24, and Patrick Palace, in his article on page 30, flesh out the details. The purpose of my article is to give you an introduction to our trip.

Havana is beautiful. Havana is grand. Havana is 1950s cars. Havana is cigars. Havana is rum. Havana is deteriorating. Havana has many people and inadequate housing. Havana people are warm and engaging. Havana, perhaps, is on the brink of dramatic change.

“The Revolution” is still very evident. As we drove from the airport, we were introduced to their “sports facility” that had been the training ground for when they hosted the Pan American Games in 1991. It was apparent that Cubans are very proud of their legacy in sports — particularly baseball.

Early in the trip, I was trying to adopt a way to put my experience in perspective and was taken back to my first year at Stanford, when the professor asked us to “compare and contrast” on a particular subject. It was not difficult to get into that mindset when viewing Havana. As we drove deeper into Havana, I was struck by the grandeur of the city. Streets, boulevards, and avenues were crowded with imposing “mansions,” centuries-old cathedrals, and elegant government palaces. Dilapidated now, one could see that in their prime, perhaps 50–70 years ago or more, they were “grand dames” in a very rich city.

Continuing with the “compare and contrast” mode, I got up my first morning in Havana, while still dark, to go for a run. Our hotel was adjacent to the Malecon, the boulevard next to the seawall with the Caribbean just beyond to the north. I opened the curtain in my hotel room to see that it was pouring rain. With my mindset of running at 5:00 a.m. in Seattle in the rain in late October, I suited up with raincoat, hat, and gloves … not more than three steps out the front door, I realized I was in the Caribbean. I had stepped into a quite warm shower. I put the hat, gloves, and coat away for the rest of the trip. Other contrasts for

A WSBA delegation traveled to Cuba in search of lawyer-to-lawyer exchange.
me occurred later in that same morning run. I encountered few people on my run, save for a few men fishing off the seawall . . . no homeless people . . . not much traffic, buses or otherwise. The sidewalks and streets were treacherous. There were gaping holes in the sidewalk that I feared stepping in and causing serious injury. At one point, I came upon a very large, dark, imposing building that to my great surprise was surrounded by what looked to me to be armed policemen, spaced about every 100 feet. Later in the week, we toured the facility, which turned out to be the United States Interest Section, the equivalent of the American Embassy, which is heavily “guarded” or “surveilled” by the Cuban Army 24 hours a day, seven days a week.

These early events were somewhat startling to me (what the heck, I am from Cashmere); however, as the week unfolded and we met many very friendly Cubans, visited many venues, and enjoyed many meetings, “compare and contrast” became much less of a mode of thinking for me about the trip. I soon realized that we are all very similar and all, for the most part, care about the same things in life. We just happen to be placed in different places and circumstances, sometimes for reasons completely out of our control.

We became very connected to our guides, Arturo and Eliseo. They were very adept at giving insights to the present-day and historical view of Cubans toward our country. I also came, once again, to realize that there truly are at least two different points of view (read: propaganda) on events. We, as lawyers, are trained to understand that and know it in our day-to-day professional lives.

This was one of the most enriching experiences of my life. And I can't say enough about the delegation with whom I had the privilege to travel. What an unbelievably thoughtful, caring, intelligent, and friendly group. I would travel with them all again in a heartbeat and hope to do so. We plan a reunion soon. There was talk about planning similar “sojourns” in the future and providing similar rich educational and cultural experiences to our members in the future. By the way, I think it is very important for our WSBA members to know that no WSBA funds were expended on this trip.

I think there will be significant changes in Cuba in the very near future. There have been several articles in the Seattle Times over the last few months indicating that change is on the way. In fact, shortly after our return, the Cuban General Assembly voted to allow Cubans to “own” property, which means that there could be an opportunity for Cubans to venture into the world of capitalism and actually buy and sell real property.

As I write this, I am listening to a CD by Buena Vista Social Club, a Cuban musical group. I was introduced to this group by my former law partner, Terry McCauley, a great musician and lawyer. As I was preparing to leave for this trip, I visited Terry and he told me I very much needed to hear this music. I was not able to schedule a time to hear the Buena Vista Social Club when I was in Cuba, but the music lives on as I write this. Because of this music, I have fond memories of my trip there and my life here. It is a wonderful world in which we live, with lots of work to do. It is encouraging to learn that we, for the most part, as individual citizens of the world, are about the same things. “Imagine...”

WSBA President Steve Crossland can be reached at steve@crosslandlaw.net or 509-782-4418.
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Mediate Causation and the *Pinkerton* Doctrine Applied to RICO Conspiracy Litigation

**BY DEAN BROWNING WEBB**

RICO (Racketeer Influenced and Corrupt Organizations Act of 1970) civil litigation has experienced exponential growth. The increasing employment of the federal racketeering statute to reach and ascribe liability to both individuals and entities that do not actually commit the underlying racketeering substantive offenses has engendered the assertion of RICO conspiracy claims to achieve this result. *Pinkerton* v. United States, 328 U.S. 640 (1946), a rule of criminal conspiracy law, is both increasingly and appropriately invoked in the RICO civil conspiracy context, and fusing the concept of "mediate causation" supports that application. In addition, the RICO Liberal Construction Clause similarly applies in this context, and no rational justification forecloses the *Pinkerton* Doctrine from judicial application and correlative recognition to civil RICO conspiracy litigation in order to achieve a concomitant result.

The *Pinkerton* Doctrine is a rule of criminal conspiracy law. Though *Pinkerton* is associated with, and has been invoked in, criminal prosecutions, the doctrine has seemingly found its way into civil RICO conspiracy litigation.

This article examines the evolution of the *Pinkerton* Doctrine, summarizes the review and analysis of particular federal RICO decisions construing *Pinkerton*, and advances malleable, practical arguments supporting its successful invocation in civil RICO conspiracy litigation. The article includes an analysis of the concepts of "mediate causation" and "affiliative liability" for purposes of rationally justifying the application of *Pinkerton*, concluding that the *Pinkerton* Doctrine is judicially appropriate and legally cognizable to advancing both civil RICO conspiracy claims and the underlying RICO Liberal Construction Clause.

**The *Pinkerton* Doctrine, Affiliative Liability, and the Concept of Mediate Causation**

Understanding the *Pinkerton* Doctrine requires a factual review. Walter and Daniel Pinkerton, brothers, were indicted for both substantive and conspiratorial offenses arising from evading federal liquor taxes. The U.S. Supreme Court reviewed the case because the jury had been instructed that it could convict the Pinkertons of all substantive offenses committed to further their conspiracy.

Upholding the instructions and sustaining the convictions, Justice Douglas concluded that the brothers were affiliated within a conspiracy when the offenses were committed. Justice Douglas's cogent analysis is both compelling and persuasive. Concluding that a conspiracy is essentially...
tantamount to a “partnership in crime,” Justice Douglas espoused the *Pinkerton* Doctrine. The doctrine recognizes that because members of a conspiracy are “partners in crime,” they are liable for acts taken by their co-conspirators in furtherance of their joint criminal purposes. The depth and scope of the judicial treatment underpinning this analysis is cogently analyzed and thoroughly reviewed by a pre-eminently recognized leading authority and proponent who vigorously advocates both recognition and application of *Pinkerton* in the civil RICO conspiracy context: Justice Douglas based this doctrine on two sources — a rule of proximate causation and a rule of complicity among co-conspirators. In dissent, Justice Rutledge contended that the majority’s use of the rule of complicity among co-conspirators abrogated the historic principle that in criminal law guilt is personal, not vicarious. But even before *Pinkerton*, participation in a conspiracy could establish liability for crimes committed by other conspirators; this was simply a means of proving complicity, and Justice Douglas derived his *Pinkerton* holding from this rule of complicity among co-conspirators. The major difference between the two doctrines is that under *Pinkerton*, membership in a conspiracy gives rise to a presumption of aiding crimes committed to further the goals of that conspiracy, while under the older rule membership was evidence of complicity but did not give rise to a presumption.

*Pinkerton*, therefore, can thus be characterized as a rule of conspiracy law recognizing affiliative liability. The act of mutually agreeing to the commission of offenses is considered to have an independent causal significance that justifies holding one who agrees to a conspiracy liable for its intended results. This observation is especially compelling when considering application of *Pinkerton* to civil RICO conspiracy pleading:

This act [affiliating with another for a criminal purpose] satisfies the criteria for imposing accountability under the traditional criminal law standard of personal liability: affiliating with another for criminal purposes is a voluntary act committed with a culpable mental state, or *mens rea*, that causes a prohibited social harm [footnote omitted]. In either of its guises, as *Pinkerton* liability or as complicitious liability, this act is clearly more culpable than the act that suffices for imposition of vicarious liability in civil law…. The only element of criminal liability that is attenuated under *Pinkerton* is causation, which receives the same treatment accorded it under the kindred doctrine of accomplice liability. Liability can attach under either form of affiliative liability without showing that the affiliative act actually caused commission of certain crimes [footnote omitted]. And because the affiliative act is a wrong in itself, liability can attach even though the target crime was not accomplished [footnote omitted].

Affiliative liability is, therefore, judicially recognized and appropriately applicable to ascribe *Pinkerton* liability to RICO co-conspirators whose offense is consummating the illegal agreement to contravene RICO substantive provisions. Brenner’s exposé on the application of *Pinkerton* aptly reveals that “guilt by association” is in fact a viable legal instrument for RICO conspiratorial liability:

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liability [footnote omitted], the Pinkerton doctrine holds a party liable for the consequences of a specific personal act — affiliating with another for criminal purposes. This act permits imposition of liability for crimes committed by those with whom one shares such a relationship. The non-acting party is liable for these offenses because her criminal act of aligning herself with the acting party “caused” them to be committed [footnote omitted].

No rational justification militates against employing Pinkerton in the RICO conspiratorial context. Its invocation is consonant with advancing the liberal construction of RICO to eradicate innumerable forms of racketeering activity and to reach those perpetrators who occupy conspiratorial capacities who do not actually commit the underlying substantive criminal offenses.

Significant within this analysis is Brenner’s observation that the concept of “mediate causation” is a recognized factor in situations in which one's acts are deemed to have “mediately caused” an effect upon another’s conduct. The result is the imposition of criminal liability that comports with traditional requirements by including the element of demonstrable personal fault:

“Mediate causation” denotes instances in which an individual’s actions can be deemed to have exerted some causal effect upon another’s conduct. It resolves the problem of attempting to identify the extent to which one person’s acts actually affected another’s conduct by making it possible, under certain circumstances, to assume a causal effect that is sufficient to support imposition of criminal liability.

“Mediate causation” and “affiliative liability” are terms evolved from Pinkerton that can support the invocation of the criminal liability doctrine by making it possible, under certain circumstances, to assume a causal effect that is sufficient to support imposition of criminal liability.

Comprehending Pinkerton
To comprehend Pinkerton and its impact, an examination of subsequent Supreme Court decisions interpreting the RICO conspiracy provision is warranted. The Supreme Court construed the RICO conspiracy statute’s application and construction in Beck v. Prupis, a civil RICO conspiracy decision. Beck lays to rest the conflicting positions of the federal courts relative to the necessary pleading requirements of a civil RICO conspiracy claim by conflating Section 1962(d) and the “by reason of” Section 1964(c) proximate causation requisite.

The judicious fusion of these two provisions is intended to achieve uniformity by extending the strictures of Holmes v. Securities Investor Protection Corporation to civil racketeering conspiracy by requiring the commission of an overt act that proximately caused plaintiff’s injuries.

Authoring the majority opinion, Justice Thomas arrives at this conclusion by invoking the law of civil conspiracy. The judicial expressions the court relies upon in supporting its decision presume the rational justification belying proximate causality engrained upon RICO civil conspiracy, distinguishing civil relief from criminal RICO conspiracy prosecutions.

The vigorous dissent of Justices Stevens and Souter critically assail the majority’s reasoning through civil conspiracy law as misguided and denouncing the Court’s foisting the “by reason of” requirement of Section 1964(c) upon Section 1962(d) as inappropriate when examined in the context of congressional intention underlying the enactment of RICO.
Beck is perilously inapposite with the Court’s Salinas v. United States decision construing racketeering conspiracy by introducing a rigid, inflexible demarcation line between RICO criminal conspiracy under Section 1962(d), where criminal liability attaches without the need to prove that a defendant committed an “overt” act. Salinas held that in the RICO conspiracy context, all that must be shown is that a conspirator intended to “facilitate or further” an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, and that the conspirator agreed to pursue the same criminal objective, or adopt the objective of “furthering or facilitating” the criminal endeavor. Under general conspiracy law, which Salinas says applies to Section 1962(d), in order to be liable under RICO concepts, one does not have to agree personally to perform every aspect of a violation and, in particular, one does not need to agree personally to commit the predicate offenses, let alone commit an overt act. The conspiracy springs from the agreement to pursue the same criminal objective and the work may be divided up among the conspirators, yet each is responsible for the acts of the others. The lower courts have had difficulty in applying the law as set forth in Salinas to civil cases, despite the lack of any legislative intent to treat civil cases different in any way from criminal cases.

Since the Salinas ruling, federal courts have continually struggled with its application to civil RICO conspiracy claims. The resulting decisions are confusing and inconclusive. Moreover, Salinas cites and follows with approval the Pinkerton Doctrine, recognizing its application to criminal RICO conspiracy practice and procedure. To further understand the logical relationship between Pinkerton and its application to civil racketeering conspiracy claim pleading, a review of the doctrine and Salinas, juxtaposed with the concept of “mediate causation,” supports advancing Pinkerton to civil RICO conspiracy claim pleading and practice.

**Salinas**

The Supreme Court

Salinas, a RICO criminal conspiracy prosecution, involved a deputy sheriff who was acquitted of the underlying substantive RICO offenses but was convicted of the RICO conspiracy crime under Section 1962(d). The defendant argued that his Section 1962(d) conviction could not be sustained unless the prosecution proved that he personally agreed to commit two predicate offenses and actually committed those offenses in furtherance of the conspiracy. Examining the legislative intent of the RICO statutes and general conspiracy principles, the Court summarily rejected defendant’s argument, concluding:

A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor. He may do so in any number of ways short of agreeing to undertake all of the acts necessary for the crime's completion.

The Court held that to be convicted of a RICO conspiracy a person must agree with other persons that they will engage in conduct that constitutes a crime. The purpose of the conspiratorial agreement is to facilitate the commission of a crime, and a particular defendant need not perform all of the criminal acts. All a RICO conspirator need do is to agree to support a criminal objective to further an endeavor which, if completed, would satisfy all of the elements of a criminal offense. Doing so does not require the conspirator to agree to
commit or facilitate each and every part of the substantive offense.

Salinas clarified the pleading and practice standard for criminal RICO conspiracy prosecutions. However, the lower courts have been slow to accord deference to the reasoning of Salinas in the civil RICO conspiracy context, and it appears that the several federal circuits will continue to attempt to narrowly construe and apply Salinas in the civil arena. The Ninth Circuit appropriately commented in both Chang v. Chen29 and Neibel v. Trans World Assurance Co.,30 that there is no reason in the civil RICO context to differentiate between the statutory basis of a civil and a criminal RICO case, and, accordingly, a civil RICO conspiracy claim should survive the dismissal of the Section 1962(c) substantive claims, regardless of whether it is a criminal RICO31 or a civil RICO case.32 The lower courts’ difficulty with consistently applying conspiracy requirements in a civil context in the same manner as applied to conspiracy in a criminal context may result from unsupported judicial antipathy towards the use of RICO in a civil context, without adequate jurisprudential basis to distinguish between the identical legislative basis for both. Part of the problem in consistent application of the law to civil and criminal RICO conspiracy claims may also lie in the practical necessity in the civil context to show an injury, which almost always coincides with an overt act even though Salinas makes it clear that an overt act is not necessary for a RICO conspiracy conviction. Perhaps the problem in consistent application is that inchoate crimes, such as conspiracy, are sometimes difficult to conceptually translate into the civil context, even though the legislative language is straightforward and clear in decreeing that conspiracy is one of the four bases for civil and criminal RICO liability. Yet, the applicability of the Pinkerton Doctrine is appropriate in civil RICO conspiratorial context.33

BECK34

The Supreme Court — The Majority Opinion
The Beck court’s majority opinion perfunctorily reviews RICO generally and then proceeds to analyze Section 1962(d) applicability in terms of civil conspiracy and proximately caused injury. Certiorari issued because of inconsistent positions between the federal circuits construing the racketeering conspiracy provision in the limited factual context of “whistle blower” standing.

We granted certiorari, 526 U.S. 1158 (1999), to resolve a conflict among the Courts of Appeals on the question whether a person injured by an overt act in furtherance of a conspiracy may assert a civil RICO conspiracy claim under §§1964(c) for a violation of §§1962(d) even if the overt act does not constitute “racketeering activity.” The majority of the Circuits to consider this question have answered it in the negative. See, e.g., Bowman v. Western Auto Supply Co., 985 F.2d 383, 388 (CA8), cert. denied, 508 U.S. 957 (1993); Miranda v. Ponce Fed. Bank, 948 F.2d 41, 48 (CA1 1991); Reddy v. Litton Indus., Inc., 912 F.2d 291, 294–295 (CA9 1990), cert. denied, 502 U.S. 921 (1991); Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 25 (CA2 1990). Other Circuits have allowed RICO conspiracy claims where the overt act was as in the instant case merely the termination of employment, and was not, therefore, racketeering activity. See, e.g., Khurana v. Innovative Health Care Systems, Inc., 130 F.3d 143, 153–154 (CA5 1997), vacated sub nom. Teel v. Khurana, 525 U.S. 979 (1998); Schiffels v. Kemper Financial Services, Inc., 978 F.2d 344, 348–349 (CA7 1992); Shearin v. E. F. Hutton Group, Inc., 885 F.2d 1162, 1168–1169 (CA3 1989).35
The Court then summarily concluded that the resolution of the issue revolved upon the agglomerated effect of Section 1962(d) and Section 1964(c). Then, inexplicably, the Court, literally, fused the combined statutory amalgamation in the context of civil conspiracy law, requiring that an injury arise from the commission of an overt act in connection with the RICO conspiracy. In turn, that “act” is required to be an “act” statutorily identified under RICO:

The principle that a civil conspiracy plaintiff must claim injury from an act of a tortious character was so widely accepted at the time of RICO’s adoption as to be incorporated in the common understanding of “civil conspiracy.” See Ballentine’s Law Dictionary 252 (3d ed. 1969) (“It is the civil wrong resulting in damage, and not the conspiracy which constitutes the cause of action”); Black’s Law Dictionary 383 (4th ed. 1968) (“[W]here, in carrying out the design of the conspirators, overt acts are done causing legal damage, the person injured has a right of action” (emphasis added)). We presume, therefore, that when Congress established in RICO a civil cause of action for a person “injured … by reason of” a “conspir[acy],” it meant to adopt these well-established common-law civil conspiracy principles.

Supported by its construction of civil conspiracy case law, the Court concluded that relief arising from a RICO conspiracy claim must be proximately attributable to the commission of an “overt act” specifically identified by the RICO statute. Any “overt act” not statutorily listed under RICO precludes the required standing to advance such a claim.

The Supreme Court — The Dissenting Opinion: Judicial Implausibility

Justice Stevens penned the Beck dissenting opinion. Joined by Justice Souter, the dissenting opinion astutely and constructively criticized the majority’s misplaced reliance upon invoking civil conspiracy law to premise its decision requiring proximate causality as a condition precedent to RICO conspiracy standing and correlative recovery.

The justices similarly distended the majority’s citations to the numerous federal and state decisional authorities that purportedly support their opinion to judicially fuse Sections 1962(d) and 1964(c), requiring a proximately caused injury emanating from an “overt act” listed under RICO’s “racketeering activity” provision:

The plain language of RICO makes it clear that petitioner’s civil cause of action under §§1964(c) for a violation of §§1962(d) does not require that he be injured in his business or property by any particular kind of overt act in furtherance of the conspiracy. The Court’s recitation of the common law of civil conspiracy does not prove otherwise, and, indeed, contradicts its own holding. For these reasons, I respectfully dissent.

The analysis embodied within the dissenting opinion accurately and correctly states the proper and intended construction and application of the RICO conspiracy provision. Beginning with the basic premise that the “plain language” of RICO does not compel a person to condition recovery under Section 1962(d) by demonstrating an injury proximately caused by an “overt act,” i.e., a form of racketeering activity, the invoking of civil conspiracy law is, indeed, judicially implausible.

The dissent’s cogent analysis is terse yet significant. No one need look beyond Sec-
tion 1962, which contains four alternative bases of prohibited activities. Melding Section 1964(c) to the former does not ipso facto accord a claim for relief under the latter. To adopt the majority’s position, Title 18 USC Section 1962(d) would be rendered mere surplusage, which Justice Thomas accentuated was in fact not intended.

**Pinkerton Precludes Application of Reves v. Ernst & Young**

Pinkerton similarly forecloses invocation of Reves v. Ernst & Young in the RICO conspiracy context. Though professionals such as attorneys and accountants have advanced Reves as an argument to obviate RICO conspiracy liability exposure, such efforts have produced inconsistent results. In fact, Reves has engendered intense debate, and a review of conflicting judicial positions illustrates the judicial exacerbation experienced by litigants.

Reves is a stringently construed rule essentially created to benefit professionals who find themselves embroiled in RICO litigation based on the mere rendition of perfunctory services, as long as they do not “conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs.” Reves has generated contentiousness and increased judicial activity that otherwise would have been silenced. Federal courts have increasingly construed Reves to apply, or not apply, in a myriad of differing factual contexts. Disposition of most of those RICO actions where Reves is invoked is achieved on a motion to dismiss for failure to state a claim, and the federal courts have exhibited a growing eagerness to jettison such actions through the federal summary judgment instrument. A developing body of positive federal case law refusing to apply Reves in traditional professional liability based RICO actions signals an increasing revulsion and recognized antipathy toward its perceived blanket immunization policy.

**Pinkerton forecloses Reves by its ostensible rule of law, supported by the RICO Liberal Construction Clause. Indeed, Salinas, Beck, and those federal decisions expansively construing this rule of law exemplify the appropriate construction and interpretation of Section 1962(d).**

**The RICO Liberal Construction Clause Supports Application of Pinkerton**

The RICO Liberal Construction and its interpretation by the Supreme Court further substantiates the justification to invoke and apply Pinkerton in the civil RICO conspiracy context.

Resolution of the conflicting positions of the federal circuits regarding the appropriate interpretation of RICO can be achieved through review of this Court’s decisions construing RICO. In its principal RICO decisions, including Salinas v. United States, NOW v. Scheidler, Alexander v. United States, Holmes v. Securities Investor Protection Corp., Tafflin v. Levitt, H.J., Inc. v. Northwestern Bell Telephone Co., Caplin & Drysdale v. United States, United States v. Monsanto, Agency Holding Corp. v. Malley-Duff & Assoc., Shearson/Am. Express, Inc. v. McMahon, Sedima, S.P.R.L. v. Imrex Co., Russello v. United States, and Turkette v. United States, this Court has acknowledged several propositions of statutory construction, established the basic principles that govern the interpretation of RICO, and consistently applied them to the statute:

(1) read the language of the statute;
(2) language includes its structure;
(3) language should be read in its ordinary or plain meaning, but must be viewed in context;
(4) language should not be read differently in criminal and civil proceedings;
(5) look to the legislative history of

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These general propositions of statutory construction of the interpretation of RICO advance the statute’s Liberal Construction Clause, RICO Section 1964. Application to those propositions clearly evidence the intent of Congress to have RICO construed expansively in order to achieve its envisioned objective of eradicating criminal activity that affects the economic fiber of American society. Reading RICO is basically a question of the language of the statute — the most reliable evidence of its intent. Read literally, the propositions are uncomplicated and unambiguous.

Finally, if a straightforward textual reading of RICO does not lead to a finding of criminal and civil accomplice liability and “a clear tie-breaker” is necessary, because “contextual analysis” results in a “tie,”68 then the Liberal Construction Clause ought to be read to play that role. Reading the possibility of accomplice liability or RICO’s provision of conspiracy liability in terms of the maximum expressio unius to exclude accomplice liability or to create a new, but narrower form of conspiracy liability — either criminally or civilly — is squarely inconsistent with RICO’s Liberal Construction Clause.69

Conclusion

The Pinkerton Doctrine is justiciably appropriate to, and commensurately supportive of, civil RICO conspiracy litigation. Pinkerton, which imputes co-conspiratorial liability for substantive crimes committed by other confederates of a conspiracy, can successfully be employed as an effective instrument to encourage and allow civil RICO plaintiffs to hold “deep pocket” parties liable for RICO contraventions.70

Judicially fusing Pinkerton with civil complicity emboldens litigants to obtain redress from those who agree to commit RICO offenses, as well as from those who actually perpetrate them. This fusion of postulates will generate two results. One result is that offenders, especially corporate and other artificial entities, will not be
able to immunize or insulate themselves from RICO co-conspiratorial liability by interposing their agents to commit acts that they have sanctioned. The other result is that those who have been injured by RICO-violative conduct can pursue redress from all who contributed to its commission. This advances both the policies of making victims of such activity whole and of ensuring that its beneficiaries suffer for the consequences of their unlawful actions.71

The most difficult part of employing the Pinkerton Doctrine72 is pleading conspiracy73 with the specificity required by the Federal Rules of Civil Procedure.74 For civil RICO litigants who can satisfy this burden, the Pinkerton Doctrine is an effective instrument for imposing RICO conspiratorial75 liability upon parties who might otherwise avoid such ascription.76

No rational justification precludes application of the Pinkerton Doctrine to civil RICO conspiracy litigation. As stated at the introduction of this article, Pinkerton advances the underpinnings of the RICO Liberal Construction Clause, and its progeny — Salinas and Beck — support that application.77 And the concepts of “affiliative liability”78 and “mediate causation”79 further support that judicially correct result. Indeed, Pinkerton appropriately melds the underpinnings of the RICO Liberal Construction Clause through realistic and pragmatic application to address a myriad of intricate and technically complex factual paradigms80 that engender the assertion of civil81 RICO conspiracy claims.82

Dean Browning Webb focuses on complex RICO litigation with emphasis on application of the Pinkerton Doctrine in RICO conspiracy. James N. Gross, of Philadelphia, Pennsylvania, and Webb represent plaintiffs in the RICO conspiracy case of Smith v. Berg, 247 F.3d 532 (3rd Cir. 2001). A member of both the RICO Law Reporter Advisory Board and the Civil RICO Report Advisory Board, Webb publishes extensively upon RICO conspiracy law and the Pinkerton Doctrine, as well as addressing RICO aiding and abetting issues. The author expresses sincere appreciation and recognizes the significant contributions to this article by legal assistant Mary Jacqueline Evans. The author dedicates this article in perpetual loving memory to Jaretta Elizabeth Oliver. Webb is the author of the article “Pinkerton Doctrine Applied to Civil RICO Conspiracy Litigation,” which appeared in the October 2008 Bar News.
NOTES
4. RICO § 1962(d) proscribes conspiring to con- 

travene any provision of § 1962. Outsiders and lower echelon employees who fail the operation and management test for participation in the enterprise under § 1962(c), may nonetheless be liable as co-conspirators under § 1962(d).” there is no requirement of government to prove that a conspirator knew of all criminal acts committed by insiders in furtherance of a conspiracy . . . [t]o be convicted as a conspirator, one must be shown to have possessed knowledge of only the general contours of the conspiracy. See United States v. Zichitello, 208 F.3d 72, 99 (2nd Cir. 2000) (holding § 1962(d) does not require defendant agree to personally participate in the operation and management of an enterprise, but one must knowingly agree to perform services of a kind which facilitate activities of those who are operating enterprise in an illegal manner), cert. denied, 120 S. Ct. 2688 (2000); United States v. Castro, 89 F.3d 1443, 1452 (11th Cir. 1996) (holding Reves “operation and management” test does not apply to convictions under § 1962(d)). But see Neibel v. Trans World Assurance Co., 108 F.3d 1123, 1128 (9th Cir. 1997) (holding liability attaches under §1962(d) where a defendant conspires to operate or manage an enterprise, but not where the defendant conspires with someone who is operating or managing an enterprise; subsequently overruled in United States v. Fernandez, 388 F.3d 1119 (9th Cir. 2004), relying upon Smith v. Berg, 247 F.3d 532 (3rd Cir. 2001)).

Thus, a defendant not guilty of the substantive offense may still be convicted of conspiracy if he is proven to agree to commit the substantive crime. See, e.g., Smith v. Berg, 247 F.3d 532 (3rd Cir. 2001) (holding defendant could be convicted of conspiracy to violate RICO even though he could not be charged with committing a substantive predicate act).
7. 328 U.S. at 642, 645 n.5. According to the Supreme Court, this was critical to Daniel because Walter committed the substantive offenses while Daniel was incarcerated. 328 U.S. at 648.
8. 328 U.S. at 642, 644–647. The Pinkerton Doctrine meant that Daniel was liable for the substantive offenses committed by Walter during Daniel’s incarceration. 328 U.S. at 651.
10. Id.
11. Id. at 385.
12. Id. at 419.
16. Id.
17. Title 18 United States Code Section 1964(c).
19. Brenner characterizes the mediate causality elem- 

ent in the context of Pinkerton as not imposing vicarious liability, but, rather, analyzing the personal act of affiliation with another for criminal purposes:

Because Justice Douglas couched it in agency terms, Pinkerton has been construed as in- 

posing vicarious liability — but it does not. Instead of a requirement for need for a per- 

sonal actus reus as an element of liability, the Pinkerton doctrine holds a party liable for the consequences of a specific personal act — af- 

fillating with another for criminal purposes. This act permits imposition of liability for crimes committed by those with whom one shares such a relationship. The non-acting party is liable for these offenses because her criminal act of ally ing herself with the acting party “caused” them to be committed.

This act satisfies the criteria for imposing ac- 

countability under the traditional criminal law standard of personal liability: affiliating with another for criminal purposes is a vol- 

untary act committed with a culpable mental state, or mens rea, that causes a prohibited so-

29. 80 F.3d 1291 (9th Cir. 1996).
30. 108 F.3d 1123 (9th Cir. 1997).
31. The Ninth Circuit finally adopted Smith v. Berg, 247 F.3d 532 (3rd Cir. 2001) as the correct rule of RICO conspiracy law, thereby overturning Neibel to the extent its previous analysis that required participatory involvement in the conduct of the affairs of a RICO enterprise to justify imposing RICO conspiratorial liability. The published opinion of the United States Court of Appeals for the Ninth Circuit in United States v. Fernandez, 388 F.3d 1199 (9th Cir. 2004) addressed both Smith and Neibel. Fernandez, one of six consolidated appeals involving federal RICO conspiracy and related RICO issues, affirmatively overruled the Ninth Circuit’s earlier ruling in Neibel v. Trans World Assurance Co., 108 F.3d 1123 (9th Cir. 1997), addressing RICO § 1962(d), as inapposite and inconsistent with subsequent United States Supreme Court authority requiring that pro- 

vision as envisioned in Salinas v. United States, 522 U.S. 52 (1997) and Beck v. Prupis, 529 U.S. 494 (2000). More importantly, the Ninth Circuit recognized Neibel’s legal reasoning rested upon an earlier Third Circuit decision, United States v. Antar, 53 F.3d 568, 581 (3rd Cir. 1995), and that Antar was overruled by a latter Third Circuit de- 

cision, Smith v. Berg, 247 F.3d 532 (3rd Cir. 2001), which squarely addressed RICO conspiracy law in light of Salinas and Beck. Affirming the RICO conspiracy convictions, the Ninth Circuit ex- 

pressly announced:

We now agree with the Third Circuit that the rationale underlying its distinction in Antar, and our holding in Neibel, is no longer valid after the Supreme Court’s opinion in Salinas. Accordingly, this case presents a situation similar to Miller v. Gannett, in which we held that “where the reasoning or theory of our prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher authority, a three-judge panel should consider itself bound by the later and con- 

trolling authority, and should reject the prior circuit opinion as having been effectively overruled.” 335 F.3d 889, 893 (9th Cir. 2003) (en banc). We adopt the Third Circuit’s Smith judgment, which retains Reves’ operation or manage- 

ment test in its definition of the underlying substantive § 1962(c) violation, but removes any requirement that the defendant have actually conspired to operate or manage the enterprise herself. Under this test, a defen- 

dant is guilty of conspiracy to violate § 1962(c) if the evidence showed that she “knowingly agree[d] to facilitate a scheme which includes the operation or management of a RICO en- 

terprise,” Smith, 247 F.3d at 538. 388 F.3d at 1229.
35. 529 U.S. at 500.
37. 529 U.S. at 504.
38. The dissenting opinion cites Salinas at footnote 1, parapraphing, in part, that: “Although, [t]here is no requirement of some overt act” to violate §1962(d), id., at 63, that, of course, does not mean that an agreement alone give rise to civil liability under §1964(c).” 529 U.S. at 63.
39. 529 U.S. at 512.
42. See Bachman v. Bear, Stearns & Co., Inc., 178 F.3d 930, 932–933 (7th Cir. 1999) (Bear Stearns did not exercise, or agree to exercise, some measure of control over the corporation it was merely a hiring as shown by fact that it only received its normal fee for determining a client’s fair market value); Goren v. New Vision Ins’rs, Inc., 156 F.3d 721, 727–728 (7th Cir. 1998) (outsider’s performance of services for illegal corporate enterprise is sufficient to incur RICO liability under RICO, even if outsider’s role is critical to success to fraudu-

43. Significant is the increasing trend of other fed-

44. See Handeen v. Lemaire, 112 F.3d 1339, 1349 (8th Cir. 1997) (refusing to apply Reves, stating “[a]n attorney’s license is not an invitation to engage in racketeering, and a lawyer no less than anyone else is bound by generally applicable legislative enactments.”) The court warned that it would “not shrink from finding an attorney liable when he crosses the line between the traditional ren-

46. 510 U.S. 1193 (1994); Resolution Trust Corp. v. Stone, 998 F.2d 1534, 1542 (10th Cir. 1993) (sufficient evidence supported jury finding that officers of parent company controlled operations of affiliate reseller of automobile notes); Tribu v. Pham, 370 F. Supp. 2d 1076, 1099 (S.D.N.Y. 1994) (unions played a management role in that they participated in the development and implementation of fraudulent scheme to file false workman’s compensation claims and coordinated by directing their members to take certain actions to carry out the fraud, and evidence supported finding of sufficient control over fraudulent scheme that omitted provisions in loan documents); Toucheau v. Price Bros., Co., 5 F. Supp. 2d 341, 348 (D. Md. 1998) (when lower level employees are involved, nothing in Reves limits RICO liability to those who commit predicate acts at the express direct-

46. Davis v. Mutual Life Ins. Co. of New York, 869 F. Supp. 1004, 1009 (D. Mass. 1994) (dismissing claims under Reves against law firms which, with full knowledge of fraud, counseled their clients to continue to participate in the fraudulent transactions and to conceal them from detection by their vic-

56. 52. 491 U.S. 600 (1989).
60. 56. 464 U.S. 16 (1983).
62. 58. NOW, 114 S. Ct. at 804; Holmes, 503 U.S. at 266.
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Tafflin, 493 U.S. at 466; H.J. Inc., 492 U.S.at 237 (citing Russello); Monsanto, 491 U.S. at 606 (citing Turkette); Shearson, 482 U.S. at 227; Sedima, 473 U.S. at 495 n. 13; Russello, 464 U.S. at 20 (citing Turkette); Turkette, 452 U.S. at 580, 593.
59. NOW, 114 S. Ct. at 804; Agency Holding Corp., 483 U.S. at 152; Sedima, 473 U.S. at 489–90 n. 8, 496 n.14, Russello, 464 U.S. at 22–23; Turkette, 452 U.S. at 581, 587.
61. H.J., Inc., 492 U.S. at 236 (citing Sedima); Shearson, 482 U.S. at 239–40; Sedima, 473 U.S. at 489, 492.
62. Holmes, 503 U.S. 267; Tafflin, 493 U.S. at 461; H.J., Inc., 492 U.S. at 236–39 (citing Sedima); Monsanto, 491 U.S. at 613; Agency Holding Corp., 483 U.S. at 151; Shearson, 482 at 238–41; Sedima, 473 U.S. at 486, 489; Turkette, 452 U.S. at 586, 588–91, but

it takes clear legislative history to vary the text, NOW, 114 S. Ct. at 506 (citing Turkette and Reves); Reves, 113 S. Ct. at 1169 (citing Turkette); Turkette, 452 U.S. at 580.
63. Tafflin, 493 U.S. at 467; Sedima, 473 U.S. at 493; Russello, 464 U.S. at 24; Turkette, 452 U.S. at 590.
65. Holmes, 503 U.S. at 274; Tafflin, 493 U.S. at 467 (citing Sedima); H.J., Inc., 492 U.S. at 237; Monsanto, 491 U.S. at 609 (citing Sedima); Sedima, 473 U.S. at 491–92 n. 10, 497–98; Russello, 464 U.S. at 21; Turkette, 452 U.S. at 587, 593.
67. Turkette, 452 U.S. at 593.
68. Reves, 113 S. Ct. at 1175 (Souter, J., in dissent).
69. Reves, 113 S. Ct. at 1172 (clause "ensure[s] that Congress' intent is not frustrated by an overly narrow reading of the statute"); Securities and Exchange Commission v. CM. Joinder Leasing Corp., 320 U.S. 344, 350–51 (1943) (expressio unius gives way to statutory intent and policy); United States v. Barnes, 222 U.S. 513, 519 (1912) (expressio unius is "a rule of construction, not of substantive law").
70. supra n. 9 at 421.
72. Another pleading considerations is advancing Pinkerton in the context of aiding and abetting a RICO conspiracy. The Seventh Circuit recognized aiding and abetting of a RICO conspiracy in the federal drug conspiracy context. See United States v. Gonzalez, 933 F.2d 417, 442–43, 444 (7th Cir.1991) (Pinkerton Doctrine analyzed in conjunction with aiding and abetting, citing United States v. Galilfo, 734 F.2d 306, 311 (7th Cir. 1984) (aiding and abetting a conspiracy).
73. Pleading considerations also reveal that a conspiracy to aid and abet a RICO substantive offense is recognized. The Ninth Circuit recognized a conspiracy to aid and abet a substantive offense in a RICO/drug conspiracy criminal prosecution. United States v. Shryock, 342 F.3d 948, 969 (9th Cir. 2003). Notable is that Shryock is a federal RICO prosecution related to United States v. Fernandez, 388 F.3d 1199 (9th Cir. 2004) (overruling Neibel v. Trans World Assurance Co., 108 F.3d 1123 (9th Cir. 1997), adopting Smith v. Berg 247 F.3d 532 (3rd Cir. 2001).

The [s]implified notice pleading standard relies on liberal discovery rules and summary
Federal courts have applied this reasoning of Swierkiewicz to reject requests to impose a heightened pleading requirement upon RICO pleadings. See Mendoza v. Zirkle Fruit Co., 301 F.3d 1163, 1168 (9th Cir. 2002) (applying “generous notice pleading standard” to allegation of RICO injury). Moreover, the Ninth Circuit held in In re Glenfed, Inc., Securities Litigation, 42 F.3d 1541 (9th Cir. 1994) (en banc) that Rule 9(b) requires particularity only as to circumstances constituting fraud, and not defendant’s scienter. Citing Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 530 U.S. 402, 114 S. Ct. 1161; 122 L.Ed.2d 517 (1995), the court held that imposition of such a requirement was a task for Congress and the various legislative and judicial bodies involved in the rule amendments.

But see Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) wherein the United States Supreme Court clarified that FRCP 8’s pleading requirements impose a burden of pleading facts upon a plaintiff alleging a conspiracy. In Twombly, an antitrust class action complaint broadly alleged a conspiracy to fix telephone service charges to monopolize telecommunications markets based largely upon allegations of parallel business conduct coupled with “merely legal conclusions” about an alleged conspiratorial agreement. Expressly overruling the landmark pleading-sufficiency standard articulated in Conley v. Gibson, 335 U.S. 41, 45–46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957), the Supreme Court in Twombly held that Rule 8 requires a plaintiff to allege sufficient plausible facts to justify an “entitlement to relief.” 127 S. Ct. at 1966. In other words, a plaintiff must plead “enough facts to state a claim to relief above the speculative level.” 127 S. Ct. at 1974. The Twombly opinion will attract considerable judicial attention and adjustment as to the proper gate-keeping role of courts at the pleading stage, especially in conspiracy cases. See also Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009), reiterating Twombly’s heightened pleading requirement to establish a plausible claim for relief.

At common law, too, one who was a co-conspirator, as an independent basis for criminal responsibility, was vicariously and substantively liable for reasonably foreseeable offenses committed in furtherance of the conspiracy. See Pinkerton v. United States, 328 U.S. 640, 647, 66 S.Ct. 1180, 1184, 90 L.Ed. 1489 (1946)”[t]he overt act of one partner in crime is attributable to all.” See also, Ferguson v. Omnimedia, Inc., 469 F.2d 194, 197–98 (1st Cir. 1972) (“[c]onspirator “may be held [civilly] responsible for the acts of a co-conspirator ... even if she herself did not participate in those acts”), I, therefore, concluded that a RICO “Enterprise” conspiracy may be established without personal conduct amounting to two personal offenses. Instead, it is sufficient if the government demonstrates that agreement through the defendant’s aiding and abetting in at least two such offenses, or through assent to the commission by someone else or several others of at least two such offenses. See Ban-non v. United States, 156 U.S. 464, 468–69, 15 S.Ct. 467, 469–70, 39 L.Ed.2d 494 (1895) (“To require an overt act to be proven against every member of a conspiracy, or a distinct act connecting him with the combination to be alleged, would not only be an innovation upon established principle but would render most prosecutions for the offense nugatory”), 581 F. Supp. at 331–332. 78. Supra n. 13 at 963–964. 79. Supra n. 13 at 974–975, nn. 189–190.

80. See Deutsche International I, LLC v. El Trade International Establishment, 2004 WL 1564232 (C.D. Calif., 6 January 2004)(FRCP 12(b)(6) dismissal motion denied; Pinkerton/Smith v. Berg based RICO conspiracy premised claim sustained; District Court specifically ruled that RICO §1962(d) claim sufficiently pleaded in Supra n. 13 at 963–964. 81. See Pinkerton v. United States, 328 U.S. 640, 647, 66 S.Ct. 1180, 1184, 90 L.Ed. 1489 (1946), and the jury unanimously found that each defendant was a member of the conspiracy.” 770 F. Supp. at 1372.

82. See Carter Bryant v. Mattel, Inc., 2010 U.S. Dist. LEXIS 103851, **44–45 (C.D. Calif., 2 August 2010): “[A] defendant is guilty of conspiracy to violate §1962(c) if the evidence showed that she ‘knowingly agreed[d] to facilitate a scheme which includes the operation of management of a RICO enterprise.’ United States v. Fernandez, 388 F.3d 1199, 1230 (9th Cir. 2004) (quoting Smith v. Berg, 247 F.3d 532, 538 (3d Cir. 2001)). A conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense. The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other.” Salinas v. United States, 522 U.S. 52, 63–64, 118 S. Ct. 469, 139 L.Ed.2d 352 (1997). A conspirator need not have “specific knowledge of or participation in each predicate act conducted by other members” of the conspiracy. United States v. Vannotti, 541 F.3d 112, 122 (2d Cir. 2008), “[i]t suffices that he adopted the goal of furthering or facilitating the criminal endeavor.” Salinas, 522 U.S. at 65.
Ask the average U.S. citizen about Cuba and its history and you may get a short list of iconic characters, events, and imagery — Fidel Castro, Che Guevara, the Cuban Missile Crisis, the Bay of Pigs, legendary-but-unattainable cigars — but little in the way of historical detail or current events. This should be no surprise. In 1959, shortly after Fidel Castro overthrew the government of Fulgencio Batista (the last in a long line of 20th-century U.S.-backed Cuban dictators), the United States curtailed diplomatic relations and imposed an economic embargo that continues in force. For more than 50 years, official United States-Cuban relations have been marginal and at times tense. Ordinary channels of communication and cultural exchange — tourism, trade in goods and services, exchange of information through the popular media — have been essentially nonexistent. As part of the embargo, travel to Cuba by U.S. citizens has been severely restricted (as is travel to the United States by Cuban citizens).

Recently, some of these restrictions have eased. As a result of policy changes by President Obama designed to encourage more contact between Americans and Cuban citizens, the U.S. Department of the Treasury is granting "people-to-people" licenses, which greatly expand travel opportunities for U.S. citizens seeking to visit Cuba. The Treasury Department’s Office of Foreign Assets Control has authority to grant licenses for travel-related transactions directly related to full-time professionals conducting professional research or attending meetings and conferences in Cuba. Such travel must be coordinated through a licensed operator, and guidelines published by the Treasury Department require that such tours must have a full-time schedule of educational exchange activities that will result in meaningful interaction between the travelers and individuals in Cuba.

In October 2011, the WSBA joined many other U.S. professional, academic, arts, and other nonprofit institutions taking advantage of these recently re-authorized travel programs. The WSBA’s delegation to Cuba encountered a country of remarkable contrasts and definite surprises. (See President’s Corner, page 7.) Because our 50-year embargo against Cuba has left it a mystery to most Americans, many of us did not really know what to expect in terms of Cuba’s politics, economy, and legal system. Whether in formal meetings and workshops; in one-on-one discussions with Cuban lawyers, law professors, and jurists; or in individual wanderings around Havana, we all came upon the unexpected.

The WSBA group was composed of 27 lawyers, judges, and law professors from across the state. Led by WSBA President Steve Crossland, we spent an action-packed week of meetings and conferences focused on the structure of the Cuban legal system and contemporary Cuban law. Each day, panels of law professors, judges, and practicing lawyers described Cuba’s constitution, its criminal law, family law, commercial transactions, legal services, private legal practice, as well as the rapid changes underway in that country’s economic and statutory framework. We also attended several sessions of an international conference on the laws governing trade with Cuba. Both the panels and the conference were organized by the National Union of Jurists, the professional organization to which most...
Cuban lawyers, judges, law professors, and law students belong.

**Cuban Lawyers — Past and Present**

Lawyers have long played a decisive role in Cuban history and politics. In Spanish colonial times, lawyers were important members of the local elite but were also leaders in the 19th-century independence movement. Lawyers led separatist organizations at home and abroad, were war heroes, and one authored the national anthem. The Havana Bar Association was dissolved by a military order of the occupying American forces in 1899 because lawyers were so vocal in their protests of the occupation. (The organization was re-instituted in 1909.) Lawyers were players in Cuba’s rapid economic growth during the first half of the 20th century, until a lawyer named Fidel Castro led revolutionary forces to power.

When the Revolution’s nationalization of most private businesses destroyed the client base for most of the country’s lawyers, a majority of them left the country. Castro suggested that this “parasitic bourgeois profession” would become unnecessary in a new society. In 1962, the previously independent Faculty of Law at the University of Havana was folded into the Faculty of Humanities, and Castro urged young people to study useful topics such as medicine, engineering, and science, rather than law.

As with previous historical attempts to live without lawyers, the experiment failed. In 1976, the law school was returned to its former independent status within the University of Havana. Today, lawyers are busy representing individual clients, primarily in criminal law, domestic relations, labor, inheritance, and transfer of property. Lawyers also work in government agencies, for state-owned companies and business cooperatives, and, in recent years, for joint-venture enterprises formed with European, Canadian, Latin American, and Asian companies.

For three decades after the Revolution, Cuba operated with a communist-style economy. All major industries and commerce were state-owned and run, and the economic system was tied to and heavily subsidized by the Soviet Bloc’s Council for Mutual Economic Assistance (Comecon). After the Soviet Union collapsed, Cuba’s economy collapsed, too. Without Eastern Bloc customers purchasing sugar at inflated prices, and without a significant market with non-communist countries, Cubans suffered severe hardships in the early 1990s, leading directly to a surge of refugees from the island. The country’s leaders recognized that change was necessary, and changes were accelerated when Fidel Castro turned leadership responsibilities over to his brother Raúl in 2006 because of ill health. Since then, Cuba has worked actively to reconnect its economy to Europe and Latin America, focusing on tourism, mining, biotechnology, pharmaceuticals, and a diminished sugar industry. Since 2009, Raúl Castro’s government has lifted restrictions on consumer products; revamped the wage system; allowed private restaurants, taxis, and B&Bs; turned idle land over to private farmers and co-ops; and, late last year, permitted private sales of residential property and motor vehicles. Not surprisingly, these adjustments are accelerating the change in the role of Cuban lawyers.

**Cuban Contrasts**

Many people we’ve talked to since our return have an image of Cuba as a repressive, old-style “communist” society replete with secret police, fear, and privation — sort of a tropical North Korea. But contemporary Cuba is altogether different, a peculiar land of contrasts and internal contradictions — partly Third World but partly advanced at the same time. On the one hand, Cuba’s
Row 1: Café workers in Havana; classic 1950s automobiles serve as taxis; El Capitolio (National Capitol Building) in Havana, now the Cuban Academy of Sciences. Row 2: Author Hugh Spitzer and Professor Dorys Quintana Cruz; sign for the Union of Cuban Jurists; a vintage car; author Doug Ende rides in an “open-air” taxi. Row 3: Dr. Néstor García Iturbe with Dean Kellye Testy and Judge Mary Yu; a produce market; Castillo de San Severino. Row 4: Statue of José Martí and Elián González in the José Martí Anti-Imperialist Plaza; Havana building; street scene in Cárdenas, Matanzas Province.
with old-style communism was highlighted
tions of their economic system. The contrast
dence while recognizing the severe limita-
perceived accomplishments and indepen-
ability to travel and to associate with the Cu-
everyone was willing to talk with us, our
But the country did not come across to us
and could lead to one's career being stymied.
not viewed as appropriate at the workplace
they like, strong criticism of socialism was
hold whatever political (or religious) beliefs
 argued about politics (as well as baseball!).
Although medical materials and equipment
resulting in a literacy rate in excess of 99
percent.¹¹ The medical system is advanced.
Although medical materials and equipment
are in short supply, healthcare is readily
available, and the country's life expectancy
is 79 years — matched only by Chile in the
Western Hemisphere.¹² (Life expectancy in
the United States is about 78 years.¹³)

One thing that came as a surprise to
many of us in the WSBA delegation was how
openly critical people were about their gov-
ernment and economy, and how much they
argued about politics (as well as baseball!).
Cuban lawyers and economists at the con-
ference we attended were outspoken in voic-
ing their desire for more privatization
and fewer bureaucratic roadblocks to private en-
terprise. Nevertheless, Cubans are expected
to limit their criticism to permitted chan-
nels such as conferences, neighborhood
political meetings, radio talk shows, and
mildly satirical literature. Further, we were
told that while individuals are welcome to
tell what to expect, but many of us had thought
that 50 years of socialism might have over-
whelmed the country's Spanish juridical
roots. While the Communist Party initially
tried to institute a system of "socialist legal-
ity," the experiment seems to have flopped
and Cuba has returned to its civil law birth-
right. We learned that only a modest portion
of the country's civil and criminal codes
were rewritten after the Revolution, and the
legal system — both in structure and statu-
tory content — is fundamentally a Roman
law "civil code" system based on French,
German, and Spanish law. For example, just
as in Europe and most of Latin America,
statutes (rather than judge-made common
law) drive legal doctrine. Similarly, judicial
decisions do not create binding precedent
unless a special panel of judges drawn from
the country's several specialized supreme
courts is appointed to resolve conflicts that
have developed among the lower courts. As
with many European countries, such as Ger-
many, there is not a single supreme court,
but rather specialized high courts on topics
like criminal law, administrative law, family
law, and commercial law.

Legal contrasts and legal
change
One surprise was how thoroughly European
Cuba's legal system is. We didn't know quite
what to expect, but many of us had thought
that 50 years of socialism might have over-
whelmed the country's Spanish juridical
roots. While the Communist Party initially
tried to institute a system of "socialist legal-
ity," the experiment seems to have flopped
and Cuba has returned to its civil law birth-
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the country's several specialized supreme
courts is appointed to resolve conflicts that
have developed among the lower courts. As
with many European countries, such as Ger-
many, there is not a single supreme court,
attorney who spoke to our group, has participated in the development of extensive proposed changes to Cuba’s family code that will, among other things, allow same-sex civil unions and clarify that same-sex couples may adopt children. Gay and lesbian rights organizations, backed by Raúl Castro’s daughter Mariela, have been working to expand rights of sexual minorities and combat discrimination.

As Cuba continues to evolve in the coming years, it will likely retain some of the aspects of the socialist system that the public likes, particularly the medical care, the educational system, and access to housing. But as the country’s private-sector economy expands and interactions increase with the outside world, the legal system will evolve as well, and Cuba’s lawyers will continue to be at the forefront of this change.

**Cuban Culture and History**

The delegation spent a good portion of each day adhering to a busy itinerary of meetings with officials and lawyers, and learning about Cuban legal history and its current legal system. While it was by no means a Caribbean vacation, the trip was not without opportunities to experience the local culture and, yes, its cigars. During time allotted for individual pursuit of “cultural options,” delegation members visited historic sites like Old Havana, the Museo de la Revolución, the Necropolis Cristóbal Colón (Havana cemetery), the Estadio Latinoamericano (site of the landmark 1999 baseball game between the Cuban national team and American League Baltimore Orioles), and the Partagás Cigar Factory (a very popular tourist destination), and dined at some of the recently authorized private restaurants known as Paladares, including La Guarida, made famous in the 1994 Spanish-language film *Fresa y Chocolate*. During these walking (or taxi) tours of Havana, many members of the delegation were left with an overwhelming visual impression of the deterioration of a once magnificent city. Fifty years of economic hardship has taken its toll, reflected in the crumbling facades of the city’s formerly extravagant colonial, classical, and art deco architecture. Pre-1959 U.S. automobiles are still ubiquitous, and delegation members were delighted to actually ride in them, as many are now used as taxis.

The delegation also spent time visiting historical sites and learning about Cuba’s long struggle for independence from the rule of Spain, which endured until the turn of the 20th century and the Spanish-American War. It became clear to us that the Cuban people’s great pride in their independence and sovereignty had its source in centuries of struggle with Spanish colonial authority.

**Conclusion**

For those in the WSBA Cuba delegation (and for the estimated 500,000 other U.S. citizens who visited Cuba legally in 2011), Cuba is no longer the mystery and “forbidden fruit” of the Western Hemisphere. It is a country struggling to remain true to its ideological roots while at the same time experimenting in fits and starts with significant economic and political change. We were gratified to see that lawyers and the rule of law are integral to this change.

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NOTES


2. 31 CFR § 515.564.

3. The WSBA delegation included: Delegation Leader Steve Crossland (Cashmere); Delegation Co-leader Douglas Ende (Seattle); Aneelah Afzali (Seattle); Mark Bohe (Olympia); Jan Bush (Edmonds); Joseph Chalverus (Seattle); Brian Dano (Moses Lake); Tyna Ek (Seattle); Deborah Gates (Poulsbo); Anthony Gipe (Seattle); Kenneth Henrikson (Poulsbo); Leland Kerr (Kennewick); David Kitchell (Seattle); William Lee (Waterville, ME); Larry Loggren (Seattle); Marco Magnus (Seattle); Edith Martinez (Spokane); Krystal Noga-Styron (Shoahomish); Patrick Palace (Tacoma); Ron Perey (Seattle); John Price (Redmond); Richard Price (Omak); Tiffany Souza (Portland, OR); Hugh Spitzer (Seattle); Dean Kelley Testy (Seattle); Ruth Tressel (Seattle); Judge Mary Yu (Seattle).


5. Id.


7. Id. At 71.


11. Id.


Time Traveling to Cuba

Four Steps to Living the Havana Life

BY PATRICK A. PALACE

It is a well-known adage that the more things change, the more they stay the same. In October, I spent 10 days in Cuba (with U.S. permission) as part of a comparative law program. It was like stepping back into the year 1959. After living and breathing and eating and drinking Havana, I soon concluded that this was a city where time stood still. When Americans and capitalism retreated from Cuba, Havana didn’t change — it stopped changing. In many ways, the completion of the Revolution meant that the face of Cuba would forever be frozen in the ’50s. No more beautiful European architecture was to be built. No more American cars were to be shipped into Cuba. No more beautiful seaside casinos were to be developed. Castro and the Revolution made a great many social changes, but in the eyes of this visitor, it was a land where time was truly frozen.

I couldn’t help but wonder how much of our America of the 1950s still lived in Cuba, and how it must have felt living then as compared to today. As a product of the ’60s, I have straddled these transitions in American life, and wondered if Cuba could transport me back to see this time with fresh eyes.

For example, in the 1950s there were no computers, Internet, or smartphones. Today, Cuba may have such technology, but it is not available to most. I rarely had access to any Internet service and could not use my iPhone. While this left me cut off from my office and family, it also took me back to a simpler time in our culture — a time that my kids wouldn’t understand or be willing to accept.

I walked the streets without a single beep coming from my phone, knowing that I would not have emails to check; knowing that there would be no calls coming in; and knowing that I would have no calls, emails, or texts to return. I was free to engage with people the old-fashioned way: face-to-face. I didn’t miss Facebook or the loss of social media. I didn’t miss emails, text messages, or phone calls while walking down the street. If I wanted to communicate, I had to talk face-to-face. What a difference from today. The loss of instant information was more than made up for with the gain of truly personal time and peace that I happily spent making new friends and talking with old ones. If this was life in the ’50s, I welcomed it.

Because communication is done face-to-face, Cuba is full of meeting places. It is a real community, a community of people who meet in the streets, who are neighbors and friends and family. In old Havana, la Habana Vieja, people sit on their stoops, their balconies, and in public plazas and commons. As the city cools after sunset, the ocean breeze invites Cubans to the Malecon to stroll and talk. The Malecon is an esplanade or boardwalk next to a broad boulevard that runs along the ocean connecting Havana’s neighborhoods to each other and the ocean. This is a gathering place for Cubans, a place where musicians collect throughout the night and play their music; a place where philosophies are exchanged, friends are made, and baseball is debated among friends, family, strangers, and travelers.

Here, for a non-Spanish-speaking American, the mention of Ichiro will begin a conversation with anyone.

Art and music are everywhere in Cuba, especially on the Malecon. Everyone, it seems, plays an instrument, writes poetry, or paints. The arts come second only to baseball. Every restaurant has a band playing at lunch and at dinner. Art galleries and museums are housed throughout Havana. Musicians flow into the streets. These are not people looking for change to be tossed into their guitar cases. They are people simply celebrating their music.

There is another important piece of Cuban culture, and perhaps a lost piece of the world of Ward and June Cleaver: there is no crime. Murders, rapes, and other violent crimes are almost nonexistent in Havana. Police are visible throughout the city, but they are not carrying weapons. They merely
have a presence. Such a community furthers the ability of people to come out to their stoops outside their homes, to walk the streets, and to meet at the Malecon throughout the night. No fears, no worries. I walked throughout the city with money in my pockets, late at night, without any concerns. I wondered if walking in Mayberry, R.F.D., had felt just like this.

Walk among Cubans, talk to them, eat with them, and you understand that Cuba is also a place where the speed of living life is calming. Time has slowed. Nobody is well with the culture in Cuba. This is a place that does not appear to have deadlines and where sales quotas are unimportant. This is not a place where text messages or calls have to be returned instantly. In Cuba, time is plentiful and everyone has lots of it. It is OK to go slow, to smell the roses, to enjoy your café con leche, to smoke a cigar, to have a leisurely lunch, and to stay out late deep into the night.

Fewer choices mean fewer decisions and more time to do other things. Cuba is not the land of choices or options. There was competing for my money, my viewership, and nobody was trying to brand their product and make me theirs. I didn't have to be a savvy consumer or a comparison shopper. How nice to order the beer or the rum or to turn on the television and just watch the first channel, because I wasn't missing anything different on the other channels.

As I left Havana in the back seat of a 1956 Plymouth Belvedere taxi, it was clear to me that the 1950s were a good time to live, but a time that no longer exists in the United States. But just because we as Americans have moved on does not mean that I couldn't bring a piece of those years back to my house. I began to make a list of lessons learned from the 1950s. My list looks like this:

1. It is important to stop and have a cappuccino every day, not because you need coffee but because it gives you an opportunity to talk to those around you and to take time in a day where you should be available to meet with your friends, neighbors, and those that you work with. (As a result of this lesson, my whole office now breaks at 10:30 every Monday and has coffee and donuts to catch up on our personal lives. Shop talk is prohibited.)

2. Put away your iPhone once in a while. More information is just more information. It does not make you live better. Faster is not better, either. Faster is certainly not happier. At the end of the day, having answered dozens of emails and texts does not make me any more relaxed or give me more time. If you unplug, nothing bad will happen that is no decaffeinated coffee, just café. Drinks are Havana Club Rum or one type of beer. The food in Cuba is also simple. There is rice and there are beans. Beef is hard to come by and not worth having; fish is plentiful and cooked plainly. Cuba also gives you five state-run television channels.

Cuba's simplicity is also evident in the streets. There is no advertising. There are no signs anywhere. Even on storefronts there is very little to tell you that a store exists. People in Cuba know where to buy things by word of mouth, not because of advertising. It was amazingly relaxing not to have my surroundings screaming at me everywhere I went. It brought a great sense of calm and an unexpected pleasure to walk down the street where there are just old buildings, homes, and gardens.

So, is the lack of choices and variety bad? Do we really need so many choices? I didn't mind less. Less was better. Nobody
can't be handled later. Being unplugged gives you more time to engage every day with people, not their machines. Unplugging brings peace and gives time back to spend on better pursuits, like soccer with your kids, a glass of wine with your spouse, or meeting friends at a neighborhood restaurant. (My iPhone has been off now for increasingly longer periods of time each day. I am getting braver and calmer. Nothing bad has happened!)

3. Don't Facebook when you can face look. Meeting friends on the street and at coffee shops and restaurants should not be something unusual, but should be part of our everyday life. It gives us the chance to stop and talk more, to be neighbors, and to be part of a living and connected community. (I have been making time to get out more and taking time to talk to friends and acquaintances when I see them. I try not to say, "I gotta run..." but instead, "Can you join me?")

4. More is not better. Voluntarily limit choices and keep it simple. It's OK not to have an all-access cable network with 192 channels or a blazing fast 4G smartphone that can open 10 websites at the same time and let you play a game while dictating a brief to be simultaneously translated into Spanish. Limit your choices and fully enjoy and appreciate what you do have. (I have put the television remote down, stopped mindless consumer spending, and am enjoying Moros y Cristianos — Cuban-style rice and beans — for dinner.)

In the United States, things have changed so much in the last 50 years. However, in Cuba they are still the same. Somehow, we got modernized and they kept the simple way of life. I think they got a better deal. Now I know that our 1950s weren't perfect, but as I look back on my time in Cuba, I realize I have brought home positive changes in my life that are more reflective of a lifestyle from the 1950s than one of today. It makes me wonder if Americans wouldn't be happier turning back the clock and choosing to live again in a simpler time, a time where Lucy and Ricky, Ward and June, and the Kramdens and Nortons once lived; a time where choices were clear, streets were safer, communities were close, and friends spoke face-to-face. So, my suggestion to you? Have a cigar, drink a café with a friend, and talk about it a while. See what you think.

Patrick A. Palace is a former WSBA governor representing the Sixth District.
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Show the Story — The Power of Visual Advocacy

By William S. Bailey and Robert W. Bailey; published 2011 by Trial Guides
409 pages, illustrated, includes DVD

Veteran Seattle trial lawyer William S. Bailey has teamed up with his brother, Robert W. Bailey, a California-based trial consultant, to produce this lavishly illustrated guide to visual persuasion. As suggested by its title, Show the Story is all about the importance of visual imagery and storytelling — in today’s culture in general, and in the courtroom. The book begins with an overview of the science and mechanics of visual learning. The authors emphasize how heavily we rely on non-verbal information in today’s technological, media-saturated world. Robert Bailey began his professional career in the film industry, and the book likens the process of conducting a trial to that of producing a movie. Show the Story presents a game plan for converting the myriad, sometimes random facts of a lawsuit into a cogent, visually oriented story ready for consumption by jurors. The Baileys point to research showing that 75 percent of what we learn is received visually, and that presenting material with a mix of verbal and visual delivery is six times more effective than depending on verbal information alone. They warn that only about 10 percent of information delivered verbally is remembered after three days, compared to 60 percent for information delivered both verbally and visually.

Show the Story returns to the movie production analogy throughout, urging trial lawyers to think like a director by writing and editing the story, visualizing facts, introducing characters, developing themes, and recreating climactic moments. Of course, the book is replete with illustrations, including photographs, video screen shots, and artists’ renderings from actual cases. The book comes with a DVD containing video clips of material from some of the same cases, including examples of how editing was used to improve the effectiveness of video reenactments. While not a manual for photo or video production, the book goes into a fair amount of detail regarding visual tools and techniques and advises lawyers on how to work with visual-presentation consultants. Show the Story also includes a section on using images from Google Earth and Street View to enliven courtroom presentations.

Given that William Bailey is a plaintiffs’ personal injury lawyer, it should be no surprise that the book focuses on accident and medical negligence cases. However, the principles could be applied to any type of litigation — or, for that matter, to just about any type of presentation a lawyer might need to make, in or out of the courtroom. Two appendices address (in complimentary terms) how defense attorneys use visual techniques. Meanwhile, the book also includes a thoughtful, informative Q-and-A with Hon. Marsha Pechman of the U.S. District Court for the Western District of Washington, who discusses the good, the bad, and the ugly of lawyers’ visual presentations from a judge’s perspective.

At a list price of $120, Show the Story is a substantial investment. However, it does an excellent job of hitting the reader over the head, in a good way. If any trial lawyer is yet unconvinced of the importance of visual storytelling in today’s world, this book should get that story across.

Cross-Examination Handbook — Persuasion, Strategies, and Techniques


With William Bailey (see above) as one of three co-authors, Cross-Examination Handbook hits some of the same themes as Show the Story, including the importance of developing themes for a case and carrying them through each part of a trial. But Cross-Exami- nation is primarily a nuts-and-bolts guide to perhaps the most powerful, yet often misused, weapon in the trial lawyer’s arsenal.

Bailey is joined here by Clark, distinguished practitioner in residence at Seattle University School of Law, and Dekle, legal skills professor at the University of Florida School of Law. While Show the Story focuses on plaintiff PI practice, Cross-Examination uses examples from all areas of law, civil and criminal, with advice applicable to plaintiff and defense counsel as well as prosecutors. The book has 14 chapters, with topics including “Purposes of Cross and the Total Trial Approach,” “Constructing the Cross: Your Chance to Testify,” “Impeachment Cross: Reliability,” “Witness Control: Strategies and Techniques,” and “Ethical and Legal Boundaries of Cross.”

Cross-Examination gives thorough, detailed advice on technique, illustrated by numerous examples of testimony, with excerpts from actual high-profile trials, including those involving serial killer Ted Bundy (co-author Dekle was on the prosecution team) and al Qaeda operative Zacarias Moussaoui. The book comes with a CD containing workshop-style “case file” materials that can be used for role-play rehearsal to further sharpen one’s cross-examination skills.

Of course, cross-examination has always been a favorite topic of legal authors. But this take on the subject is an eminently practical, thorough, and readable addition to the canon.

Michael Heatherly is the Bar News editor and can be reached at 360-312-5156 or barnewseditor@wsba.org.
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❖ Litigator and counselor for clients from all walks of life including workers, executives, and professional athletes

As I complete my term as president of the King County Chapter of Washington Women Lawyers (WWL), I must pause to consider and honor the legacy of women leaders in Washington. Women leaders have a long, proud history in Washington, enhancing diversity and opportunity in the law. Now Washington boasts four women justices on the State Supreme Court, a woman governor, two women law school deans, seven federal district court judges and magistrate judges, and numerous women appellate and superior court judges; features women managing partners among the ranks of the top 50 Washington state law firms; has elected a woman to serve as president-elect of the Washington State Bar Association; and has consistently been in the top five states nationally for the percentage of women legislators.

In fact, many Washington women leaders have been Washington Women Lawyers. The first woman elected president of the Washington State Bar Association, Elizabeth “Betty” Bracelin, was a WWL co-founder. A Seattle native, Bracelin received her law degree in 1969 from the University of Washington School of Law, where she was Law Review editor. After work as the only woman attorney in her law firm, in 1973, Bracelin and colleagues founded the firm Peterson, Bracelin, Young, Putra, and Zeder, Inc., P.S., which became a leader in medical malpractice. As a trial lawyer, Bracelin was an authority in employment discrimination and labor law, serving as counsel for plaintiffs in Van Bronkhorst v. Safeco, the first white-collar sexual discrimination case to be successfully litigated as a class action under Title VII of the Civil Rights Act of 1964.

Janice Niemi, a member of the state House for three terms, state Senate from 1987 to 1994, and another co-founder of WWL, recalled Bracelin and the founding of Washington Women Lawyers in a 2008 interview with the Washington Women’s History Consortium.1 Niemi remembered, “Right after I got out of law school, [Judge] Betty Fletcher and Betty Bracelin and I, and sometimes others, would go around just before the last LSATs on Saturday, for law school application, and tell all our horror stories to these women to try to get them to take the LSAT and go to law school. We'd say, ‘We need you all.’” Later, the women law students Niemi knew got together to write a letter to every woman member of the State Bar, encouraging them to join a women’s group similar to the bar association, which they named Washington Women Lawyers. From a group of 20 friends in the late 1960s, WWL has grown to more than 500 members statewide.

Alison Bettles, current WWL president, notes, “WWL has made significant progress toward achieving its mission of fully integrating women into the legal profession. However, there is still work to be done. WWL seeks to continue the dialogue about the challenges faced by women lawyers in Washington, while at the same time giving women lawyers access to mentoring and networking opportunities that are a key component of building a successful practice.”

Indeed, there has been progress. Sixty years ago, women comprised only three percent of practicing attorneys nationwide.2 Women have increased from 10 percent of law school entering classes in 19703 to 47.1 percent of entering classes in the 2009–2010 academic year.4 There is hardly a large firm today without a maternity leave policy, part-time policy, and a diversity initiative, all designed to enhance women
lawyer retention and advancement.\textsuperscript{5} Locally, through the combined resources of a statewide organization and network of local chapters, WWL provides mentoring, programming, and a forum for addressing issues affecting members at all levels and stages of practice, including woman attorney retention, gender and family, work-life balance, and professional development.

But women continue to be a minority of practicing attorneys in Washington,\textsuperscript{6} though roughly equal percentages of women and men entered Washington law schools in 2011.\textsuperscript{7} Nationally, fewer women than men are private practice partners and managing partners, law school deans, and federal and state judges.\textsuperscript{8} Indeed, the percentage of women who serve as equity partners and general corporate counsel has held steady only over the past five years, at 15 and 18.8 percent, respectively,\textsuperscript{9} and 86 percent of women attorneys of color leave their law firms before their seventh year.\textsuperscript{10}

Reflecting on the experience of women in the law, Bracelin noted in materials prepared for a 1993 session of the American College of Trial Lawyers that women attorneys can respond to these challenges through unfailing courtesy to opposing counsel, thorough preparation, and through involvement in bar activities and women’s professional groups.\textsuperscript{11} In addition to her accomplishments as a trial lawyer and her founding role in WWL, Bracelin also served on the board of advisors of the Northwest Women’s Law Center (now Legal Voice) and on the Gender and Justice Task Force, which through its later incarnations as the Washington State Gender and Justice Implementing Committee and Washington State Supreme Court Gender and Justice Commission has worked tirelessly to ensure equal justice for men and women in the courts.

All in all, the message of those early founders of WWL continues to call out across the years: we need you all, men and women, to continue our work together to provide equal justice in the courts, ensure civility in the legal profession, prevent discrimination, and promote diversity and opportunity in the law. As I complete my term as WWL chapter president, I am honored by the chance to serve in such distinguished company.\textsuperscript{12}

Kristen J. Larson is a Seattle land use at-
Carney Badley Spellman’s Appellate Practice Group congratulates James E. Lobsenz on his election as a Fellow of the American Academy of Appellate Lawyers, the nation’s premier group of appellate advocates.

NOTES
7. The University of Washington School of Law reported that women comprised 48.6 percent of its 2011 entering class. See www.law.washington.edu/admissions/statistics.aspx (last accessed 10/10/11). Gonzaga University School of Law reported that women comprised 51 percent of its 2011 entering class. See www.law.gonzaga.edu/admissions/class_profile.asp (last accessed 10/10/11). Seattle University School of Law reported that women comprised 53 percent of its 2011 entering class. See http://law.seattleu.edu/office_and_administration/admission/admission_facts_and_figures.xml (last accessed 10/10/11).
The WSBA Needs You
and your ideas, expertise, and enthusiasm.

Get involved with issues you care about.
Connect with other lawyers from around the state.
Make a contribution to the legal community and your profession.

We invite you to apply for service on a WSBA committee, board, or panel. Below and on the back of this page, you will find many opportunities to serve. Apply online* through myWSBA.org from January 3 until March 12. Most of the positions begin October 1. For more information, see www.tinyurl.com/wsbavolunteeropps.

* If you need a paper application, please see www.tinyurl.com/wsbacommiteetools or contact Sharlene Steele at 206-727-8262 or barleaders@wsba.org.

COMMITTEES

Amicus Curiae Brief Committee
Reviews all requests for amicus curiae participation by the WSBA, and provides a recommendation to the Board of Governors pursuant to the WSBA Amicus Curiae Brief Policy. Appointment is for a two-year term.

Committee for Diversity
Works to increase diversity within the membership and leadership of the WSBA; promotes opportunities for appointment or election of diverse members to the bench; supports and encourages opportunities for minority attorneys; aggressively pursues employment opportunities for minorities; and raises awareness of the benefits of diversity. Appointment is for a two-year term.

Continuing Legal Education (CLE) Committee
Provides policy guidance for the WSBA Education and Outreach Department in fulfilling its mission of serving the ongoing education needs of Washington lawyers. The CLE Department and its efforts have to be fiscally self-sustaining, which requires a business focus in the Committee. Standing subcommittees are quality control, technology, section/external relations, and a fourth “as needed” programming sub-committee to support the department in achieving its trademark, “The Innovator in Continuing Legal Education.” Appointment is for a three-year term.

Court Rules and Procedures Committee
Studies and develops suggested amendments to designated sets of court rules on a regular cycle of review. Performs the rules study function outlined in GR 9 and reports its recommendations to the Board of Governors. The Rules of Appellate Procedure (RAP) and the Rules for Appeal from Decisions of Courts of Limited Jurisdiction (RALJ) are scheduled for review in 2012-2013. Lawyers with experience or interest in these areas are encouraged to apply. Appointment is for a two-year term.

Editorial Advisory Committee
Acts mainly in an advisory capacity, supervising the publication of Bar News, including the recommendation of finalists for the editor position for selection by the Board of Governors, and the establishment of guidelines for format, content, and editorial policy. Appointment is for a two-year term.
Judicial Recommendation Committee

Screens and interviews candidates for state Court of Appeals and Supreme Court positions. Recommendations are reviewed by the WSBA Board of Governors and referred to the governor for consideration when making judicial appointments. Appointment is for a three-year term.

Legislative Committee

Reviews proposals from WSBA sections for state legislation that relate to the practice of law and the administration of justice, and makes recommendations to the Board of Governors for a position thereon. Appointment is for a two-year term.

Pro Bono and Legal Aid Committee

Deals with questions in the fields of pro bono and legal aid with respect to: 1) supporting activities that assist volunteer attorney legal services programs and organizations, and encouraging pro bono participation to meet the aspirational goals in RPC 6.1, Pro Bono Publico Service; 2) addressing the administration of justice as it affects indigent persons; and 3) cooperating with other agencies interested in these objectives. Both active and emeritus members may serve. Appointment is for a two-year term.

Professionalism Committee

Recommends programs to increase professionalism by assisting attorneys in fostering better client relations; improving civility among attorneys; and creating and promoting educational opportunities focusing on issues related to professionalism, ethics, and civility. Appointment is for a two-year term.

Rules of Professional Conduct Committee

Considers and responds to inquiries arising under the Rules of Professional Conduct (RPC) and may, upon request, express its opinion to the Board of Governors concerning proper professional conduct. Appointment is for a two-year term.

BOARDS

Character and Fitness Board

Deals with matters of character and fitness bearing on qualifications of applicants for admission to practice law in Washington; conducts hearings on the admission of any applicant; makes recommendations to the Board of Governors and Supreme Court; and considers petitions for reinstatement after disbarment. Appointment is for a three-year term. Prerequisite: Board members must have prior experience as a Disciplinary Counsel or adjunct investigative counsel. The Hearing Officer Selection Panel reviews applications and makes recommendations to the Board of Governors for appointments to the panel. In addition to completing the application form, applicants are required to submit separately a letter of interest (highlighting relevant skills and experience), references, and a writing sample to Elizabeth Turner, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or elizabetht@wsba.org. All application materials and requested information must be submitted before March 12 in order to be considered for appointment, and the Selection Panel may request additional information during the evaluation process. Initial appointment is for one year commencing October 1, 2012, and may be followed by reappointment for five-year terms. Prerequisites: A hearing officer must be an active member of the WSBA, have been an active or judicial member of the WSBA for at least seven years, have no record of public discipline, and have experience as an adjudicator or advocate in contested adjudicative hearings. Please review the Rules for Enforcement of Lawyer Conduct, particularly ELC 2.5 to 2.6 and ELC Title 10, prior to applying.

Mandatory Continuing Legal Education Board

Approves courses and educational programs that satisfy the educational requirements of the mandatory CLE rule and considers MCLE policy issues, as well as reporting and exception situations. The Board meets five to six times a year. Appointment is for a three-year term.

Disciplinary Board

Carries out the functions and duties assigned to it according to the Rules for Enforcement of Lawyer Conduct adopted by the Supreme Court. The full board meets at least six times a year, reviewing hearing officer decisions and stipulations. Three-member review committees meet at least an additional three times a year and review disciplinary investigation reports and dismissals. Considerable reading and meeting preparation are required. Appointment is for a three-year term. Prerequisite: Board members must have an active member of the WSBA for at least seven years at the time of appointment. Four positions are available: applicants must be from District 4, 6, 7, or 9.

Law Clerk Board

Supervises the Law Clerk Program in accordance with Rule 6 of the Admission to Practice Rules; considers applications for enrollment in the program; follows the progress of law clerks assigned to liaison; interviews and evaluates law clerks and tutors during the course of study; and certifies that law clerks have successfully completed the program meeting the educational requirement for the Washington State bar exam. The board has regular meetings four times a year and may call additional meetings for special topics. Appointment is for a three-year term. Members are appointed with consideration for the geographic distribution of law clerks in the program, a balance of those who completed the law clerk program and law school graduates, and other factors of diversity.

Lawyers’ Fund for Client Protection Board

Pursuant to APR 15, reviews claims for reimbursement of financial loss sustained by reason of an attorney’s dishonest actions or failure to account for client funds; decides claims up to $25,000; and makes recommendations to the Board of Governors on claims for greater amounts. The Board meets four times a year. Appointment is for a three-year term.

Conflicts Review Officer

The Conflicts Review Officer (CRO) is appointed pursuant to Rule 2.7 of the Rules for Enforcement of Lawyer Conduct. The CRO, with support from the Office of General Counsel, is a lawyer outside the discipline system who reviews and makes initial determinations for grievances filed against disciplinary counsel and other lawyers employed by the Association, hearing officers, and members of the Disciplinary Board, the Board of Governors, and the Supreme Court. The CRO may dismiss the grievance, defer the investigation, refer the attorney for diversion evaluation, or have the grievance assigned to special disciplinary counsel for further investigation. The CRO acts independently of disciplinary counsel and the Association. Three CROs serve staggered terms; each year one CRO will be appointed to a three-year term. The Supreme Court makes the appointments based on recommendations from the WSBA Board of Governors. Prerequisites: The CRO must have prior experience as a Disciplinary Board member, disciplinary counsel, or special disciplinary counsel, and no other role in the disciplinary system while serving as CRO. If you are interested in the position, please submit a letter of interest, references, and résumé separately from (and in addition to) the application form to Elizabeth Turner, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or elizabetht@wsba.org. Please review the Rules for Enforcement of Lawyer Conduct, particularly ELC 2.7, prior to applying.

Council on Public Defense

The Council on Public Defense was established to implement the recommendations of the WSBA Blue Ribbon Panel on Criminal Defense, which was appointed by the Board of Governors in spring 2003 as a first step in addressing concerns about the quality of indigent defense services in Washington. Appointment is for a one-year term. Prerequisite: Applicants must not be employed by a government entity or government-funded entity.
WSBA Board of Governors Meeting

October 28, 2011, Tacoma

BY MICHAEL HEATHERLY

At the October 28, 2011, meeting in Tacoma, the WSBA Board of Governors heard an update from Washington State Supreme Court Chief Justice Barbara Madsen regarding the effect of state budget cuts on the courts. In a live presentation to the Board, and in a letter she presented to Governor Christine Gregoire, Madsen maintained that proposed additional budget reductions would further erode critical services throughout the state court system and impair the administration of justice.

Using a pie chart, Madsen noted that general fund expenditures in the judicial branch account for only 0.69 percent of the state’s total general fund expenditures. Meanwhile, 79.64 percent of judicial branch spending is for services that are mandated (or virtually mandated) by the Constitution, she said. Nevertheless, as the Legislature headed into a special budget-cutting session in November, the judicial branch faced potential additional cuts.

Madsen explained how she had asked managers of each part of the judicial branch to assess the likely results from an additional 5 percent to 10 percent reduction in appropriations for the balance of the 2011–2013 biennium. She summarized those projections in her letter to Gregoire.

Regarding the Supreme Court and Court of Appeals, Madsen pointed out that those budgets already have been reduced by more than 16 percent since 2009, after adjusting for judges’ salaries and benefits. “Further reductions of any magnitude will result in the elimination of essential staff and basic operational resources necessary for the timely administration of justice,” she wrote in her letter to the governor. Additional cuts “cannot be sustained without derogating the courts’ constitutional duty to timely decide cases,” Madsen added.

In the Office of Public Defense, a 5 percent to 10 percent reduction in non-constitutionally mandated services would amount to $382,000 to $764,000 in cuts, Madsen said. While those figures appear relatively small, “eliminating this level of quality control and enhancement activities would eventually lead to cases being reversed at a cost substantially greater than the amount saved,” she added.

Madsen voiced similar concerns about the remaining divisions of the judicial branch. In particular, she mentioned the potential consequences of cuts to programs operated through the Administrative Office of the Courts. A five percent reduction in the $58 million or so of non-constitutionally mandated services provided by that agency would result in elimination of the Office of Public Guardianship and the Certified Professional Guardianship program, as well as a 50 percent reduction in staff who respond to the needs of appellate and trial courts in operating the statewide court case management systems. It also would reduce the Court Appointed Special Advocates (CASA) pass-through program.

In other business at the October meeting, the BOG:

• Watched a presentation by the 2011 Class of the WSBA Leadership Institute regarding their community service project, a publication entitled, “Police & Your Community — What You Need to Know to Challenge Actions and Change Policy in Washington State.” The class worked with the Seattle Police Department, the Spokane Police Department, the ACLU of Washington, and the University of Washington School of Law Library to produce the publication. The booklet includes information for non-lawyers on topics including how to file an agency complaint or legal claim regarding police action a citizen feels was improper, and how to work for changes in law enforcement policy through the legislative process.

• Was advised of an upcoming “Judicial Institute Boot Camp,” scheduled for January 21, 2012, at the Seattle University School of Law. The training and mentoring program is expected to include approximately 20 lawyers interested in eventually pursuing judicial positions, as well as up to 10 panelist/presenters. The program will address three major focus areas: 1) a day in the life of a superior court judge; 2) how to navigate the judicial appointment process; and 3) how to run an effective election campaign. The newly created boot camp, which may become an annual event, is part of a collaborative project involving the WSBA diversity programs, the Minority Bar Associations, and the Washington State Minority and Justice Commission. The goal of the program is to increase diversity on the bench.

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/about-wsba/governance/board-of-governors. For more information on issues addressed by the Board, see NewsFlash at www.wsba.org/news-and-events/publications-newsletters-brochures/news-flash.

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2012 Notice of Board of Governors Election
Nomination/application deadline: March 1, 2012

Five positions on the WSBA Board of Governors will be up for election this year. These are the governors representing the 1st, 4th, 5th, and 7th-West* congressional districts, and one at-large position. These positions are currently held by Marc Silverman (1st District), Leland Kerr (4th District), Nancy Isserlis (5th District), Roger Leishman (7th-West District), and Carla Lee (at-large WYLD position**).

The WSBA Bylaws provide that any active member, except a member previously elected to the Board of Governors, may be nominated or apply for the office of governor from the congressional district (or geographical region within the 7th District* or nominated by the WYLD Board of Trustees for the at-large position***) in which such member is entitled to vote. Nominations or applications are made by filing a statement of interest and a biographical statement of 100 words or less.

Generally, members are entitled to vote in the congressional district in which the member resides. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(f), or, if specifically designated to the executive director, within the district of their primary Washington practice. However, the member must reside in the congressional district to be eligible for election.

Nomination and application forms are available from the WSBA Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; by phoning 206-239-2125; and on the WSBA website at www.wsba.org/elections.

The WSBA executive director must receive nomination or application forms for district races by 5:00 p.m. PST on March 1, 2012. The Board of Governors determines the official dates of the election. Paper ballots for district elections will be mailed on or about March 15 and must be received by 5:00 p.m. PDT on April 16. For the fourth year, the WSBA will also use an electronic voting system. Members with email addresses on file with the WSBA will not receive a paper ballot unless requested. All electronic voting will also begin on March 15 and must be completed by 5:00 p.m. PDT on April 16. The at-large governor will be elected by the Board of Governors at its June meeting.

Note: Biographical statements of nominated candidates will be published in the April issue of Bar News.

* The 7th Congressional District is divided into three sub-districts: East, Central, and West. These sub-districts are distinguished by zip codes, and each has one elected governor. For the coming year, a governor from the West sub-district (zip codes 98013, 98070, 98106, 98107, 98116, 98117, 98119, 98126, 98133, 98136, 98146, 98160, 98166, 98177, 98195, 98199) will be elected.

** The Board of Governors shall elect one at-large governor from nominations made by the Young Lawyers Division Board of Trustees. The Young Lawyers Division Board of Trustees shall nominate two or more candidates who will be members of the YLD at the time of the election.

Board for Judicial Administration Public Trust and Confidence Committee
Application deadline: January 6, 2012

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Board for Judicial Administration Public Trust and Confidence Committee. The term will begin upon appointment, and will expire December 31, 2013. The Council on Public Legal Education brings together lawyers, judges, educators, and community representatives to promote public understanding of the law and civic rights and responsibilities.

The Council meets two to three times per year and works through its committees. Projects include civics education in the schools, the lawforwa.org website, support for Street Law, and public forums and events. Please submit letters of interest and résumés to the WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or email barleaders@wsba.org. Further information about the Council on Public Legal Education can be found at www.wsba.org/legal-community/committees-boards-and-other-groups/council-on-public-legal-education or by contacting co-chairs Judge Marlin Appelwick; 206-389-3926, j_m.appelwick@courts.wa.gov; or Judith Billings, 253-840-4690, judtaral@aol.com.

Council on Public Legal Education
Application Deadline: January 6, 2012

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Council on Public Education. The Board of Governors will appoint two members at its January meeting. The term will commence on appointment, and will expire on December 31, 2013. The Council on Public Legal Education brings together lawyers, judges, educators, and community representatives to promote public understanding of the law and civic rights and responsibilities.

The Council meets two to three times per year and works through its committees. Projects include civics education in the schools, the lawforwa.org website, support for Street Law, and public forums and events. Please submit letters of interest and résumés to the WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or email barleaders@wsba.org. Further information about the Council on Public Legal Education can be found at www.wsba.org/legal-community/committees-boards-and-other-groups/council-on-public-legal-education or by contacting co-chairs Judge Marlin Appelwick; 206-389-3926, j_m.appelwick@courts.wa.gov; or Judith Billings, 253-840-4690, judtaral@aol.com.

Seeking Questionnaires from Candidates for Judicial Appointments
February 10, for March 23 interview; May 10, for June 21 interview; August 3, for September 14 interview

The WSBA Judicial Recommendation Committee (JRC) is accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the dates listed above. The JRC’s recommendations are reviewed by the WSBA Board of Governors and referred to Governor
Gregoire for consideration when making judicial appointments. Materials must be received at the WSBA office by the deadlines listed above. To obtain a questionnaire, visit the WSBA website at www.wsba.org/jrc or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212; or email judithb@wsba.org.

2012 Licensing and MCLE Information

Online licensing is a convenient and easy way to complete your license renewal and MCLE certification. The License Renewal form and the Section Membership form were mailed together in mid-October and online licensing became available at that time. Renewal and payment must be completed by February 1, 2012. WSBA Bylaws require a 30 percent late-payment fee if the annual license fee remains unpaid after February 1, 2012. If you are due to report MCLE compliance for 2009–2011 (Group 2), you should have received your Continuing Legal Education Certification (C2) form in the license packet that was mailed in mid-October. Lawyers in Group 2 include active members who were admitted in 1976–1983, 1992, 1995, 1998, 2001, 2004, and 2007. (Members admitted in 2010 are also in Group 2 but are not due to report until the end of 2014.) The deadline for completing credits was December 31, 2011. The certification (C2 form) must be completed online or be postmarked or delivered to the WSBA by February 1, 2012, or a late fee will be assessed. For detailed instructions, go to www.wsba.org.

Judicial Member Licensing

New WSBA Bylaws relating to judicial members became effective on January 1, 2012 (see WSBA Bylaws Art. III, Sections A.3, B, C.2, C.4, H.1.e, H.2 and H.3). If you are currently a judicial member and are no longer eligible for judicial membership, you must change your membership with the WSBA by February 1, 2012. Judicial members are required to complete annual license renewal forms and pay a $50 license fee if they wish to maintain eligibility to transfer to another membership class when their judicial service ends. Please note that a 30 percent late fee of $15 will be assessed on February 2. The Judicial Member License Renewal form was mailed in mid-October and online licensing became available at that time. If you have not received your form, please log in to www.mywsba.org to complete your renewal, or contact us at questions@wsba.org, 800-945-9722, or 206-443-9722.

WSBA Membership Survey

WSBA is working to better understand the complex challenges and opportunities facing our members. In order to do this, we are conducting a study that looks at career transitions, job satisfaction, and other factors that characterize Washington lawyers’ experiences. We have commissioned Areté Resources PLLC, a professional research and evaluation firm, to conduct a three-part study of the membership over the next two months.

1. Randomized-participation survey. On Jan. 5, an invitation will be sent to randomly selected members asking them to complete the membership survey. The invitation will be sent by email or by U.S. mail. Areté will handle all aspects of this survey in order to ensure the confidentiality of your responses.

2. Open-participation survey. By its nature, only a limited number of participants will be invited to complete the randomized-participation survey. However, on Feb. 6, Areté will open the survey for any member who wishes to participate.
be heard. Please take advantage of this opportunity.

3. **Online fora.** During January and February, Areté Resources will facilitate several online fora, similar to focus groups. The fora will be confidential, moderated conversations among WSBA members, and will provide much-needed in-depth information for the study. Each forum will have approximately 10 participants who log into the conversation at their convenience over a period of 4–8 days. Themes will include racial and ethnic minorities, sexual orientation, gender, and parenting and caregiving. If you identify with one of these topics and are interested in participating in a forum, email arete@arete resources.com by January 5. Include your contact information and which theme you are interested in participating in.

**26th Annual Goldmark Award Luncheon Honors Justice Gerry L. Alexander**

The Legal Foundation of Washington will present the 2012 Charles A. Goldmark Distinguished Service Award to Justice Gerry L. Alexander at the 26th Annual Goldmark Award Luncheon. The luncheon will be held February 24 at the Sheraton Seattle Hotel between noon and 1:30 p.m. For more information or to register online, visit www.legalfoundation.org.

**Facing an Ethical Dilemma?**

Members facing ethical dilemmas can talk with WSBA 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.

**Get More out of Your Software**

The WSBA offers hands-on computer clinics for members wanting to learn more about what Microsoft Office Outlook and Word, as well as Adobe Acrobat, can do for a lawyer. We also cover online legal research such as Casemaker and other resources. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Bring your laptop or use provided computers. Seating is limited to 15 members. The January 9 clinic will meet from 10 a.m. to noon at the WSBA offices and will focus on Adobe Acrobat Professional. On January 12, from 2:00 to 4:00 p.m., we will discuss Outlook and Word. There is no charge and no CLE credit. To reserve your seat, contact Peter Roberts at 206-727-8237, 800-945-9722, ext. 8237, or peter@wsba.org.

**Just Starting a Practice?**

Think “out of the box” and consider purchasing “Law Office in a Box.” For $89, you receive an hour of consultation time plus everything you see here: http://tinyurl.com/3rn75hj. Questions? Contact Peter Roberts at peter@wsba.org, 206-727-8237, or 800-945-9722, ext. 8237.

**Individual Counseling and Consultation**

The Lawyers Assistance Program provides treatment for those struggling with depression, work stress, addiction, and life transition, among other topics. Our licensed counselors can offer up to 10 sessions on a sliding scale. The first appointment is $20. We also provide consultations on job seek-
ing and can offer informational and referral resources on a range of topics. Contact us at 206-727-8268, 800-945-9722, ext. 8268, lap@wsba.org, or go to www.wsba.org/lap.

Monthly and Weekly Job Seekers Groups
The Weekly Job Seekers group provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. We provide the comprehensive WSBA job search guide “Getting There: Your Guide to Career Success.” The Monthly Job Seekers Group will be held January 11 from noon to 1:30; award-winning public speaker and Seattle-area attorney Lisa Voso will bring her engaging style to a presentation on networking and interview skills and making a great first impression. For more information about monthly and weekly job group programming, contact Dan Crystal at danec@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

Work/Life Balance Group
The Lawyers Assistance Program (LAP) is offering “From Surviving to Thriving: Achieving a Meaningful Work/Life Balance.” This eight-week group offers both specific skills and a supportive environment for this critical topic. If you are interested in participating in the next group, contact LAP therapist Heidi Seligman at 206-727-8269, 800-945-9722, ext. 8269, or heidis@wsba.org.

Interested in Mindful Lawyering?
A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on the last Wednesday of each month (January 25) at the Lawyers Assistance Program office from 8:15–9:00 a.m. The group explores ways in which mindfulness practices may lead to more effective delivery of quality legal services, increased professionalism, and lawyer well-being and health. For more information, contact Sevilla Rhoads at s rhoads@gsblaw.com. Learn more about mindful lawyering at www.wacontemplativelaw.blogspot.com.

Job Satisfaction?
Do you look forward to going to work? If not, why not? If you’re unhappy doing your current job but don’t know what to do about it, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268, to schedule a confidential consultation.

Upcoming Board of Governors Meetings
January 26–27, Olympia
March 9–10, Walla Walla
April 27–28, Tulalip
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/about-wsba/governance/board-of-governors.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in December 2011 was 0.051 percent. Therefore, the maximum allowable usury rate for January is 12 percent.

Never needed more... ...Never more in need.

- Nearly 30% of Washington residents live below 200% of the poverty level
- Only 1 in 5 people will receive help for an urgent legal problem this year
- Since 2009, top requests for legal help have drastically increased:
  - Domestic Violence Advocacy ↑ 109%
  - Foreclosures ↑ 556%
  - Unemployment ↑ 890%

Sources: 2010 US Census; King County Crisis Clinic (2008-2010 comparison)

Please consider supporting the Campaign by making a secure online contribution at www.c4ej.org or by sending your donation by mail to the address below.
We are pleased to announce the formation of

**THE MERYHEW LAW GROUP, PLLC**

The Meryhew Law Group will focus on the representation of those accused of sexual misconduct in state and federal criminal courts, family court, and administrative proceedings, including Child Protective Services. Our attorneys have extensive experience working on these complicated issues and are available for consultation or referral.

**Brad Meryhew**
has focused his practice for the last several years on representing those accused of sex offenses in state and federal court. He has extensive felony trial experience, and has been a member of the Washington Sex Offender Policy Board since 2008. He speaks regularly on issues related to representing adults and juveniles accused of sex offenses, sex offender registration, and the use of psychosexual evaluations.

**Norm Partington**
has extensive felony trial experience and a wide range of skills after more than 20 years as a criminal defense attorney. His practice also includes petitions to end sex offender registration, and to seal juvenile sex offense records.

**Adam Shapiro**
represents our clients in various family law proceedings including Child Protective Services proceedings, child support and child custody issues, protection and restraining orders, dissolution, and legal separation.

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**KAMPBELL, ANDREWS & ARBENZ, PLLC**

Brianne Kampbell
Jennifer Andrews
and
Annie Arbenz

are pleased to announce the opening of Kampbell, Andrews & Arbenz, PLLC, a Tacoma-based law firm focusing on estate planning, probate and trust administration, business transactions and corporate law, domestic relations, guardianships, and elder law.

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Diane L. Cushing

and

Jeffrey G. Maxwell

have joined the firm as associate attorneys.

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Stephen C. Smith, former Chair of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.

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These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

NOTE: Approximately 30,000 persons are eligible to practice law in Washington state. Some of them share the same or similar names. Bar News strives to include a clarification whenever an attorney listed in the Disciplinary Notices has the same name as another WSBA member; however, all disciplinary notices should be read carefully for names, cities, and bar numbers.

Disbarred
Nicholas R. Matarangas (WSBA No. 27407, admitted 1997), of Seattle, was disbarred, effective July 7, 2011, and September 16, 2011, by orders of the Washington State Supreme Court following two separate default hearings. The July 7, 2011, disbarment was based on conduct involving failure to act with reasonable diligence, failure to communicate, conversion of client property, trust account irregularities, failure to promptly notify a client of receipt of client’s property, failure to promptly pay a client funds she was entitled to receive, failure to keep complete trust account records, theft, and dishonest conduct. The September 16, 2011, disbarment was based on conduct involving failure to act diligently in a client matter, failure to maintain client funds in a trust account, theft of client funds, failure to protect a client’s interests, and failure to cooperate in a Bar Association investigation.

July 7, 2011, disbarment: Client A was a Missouri resident injured while on vacation in Washington. In November 2004, Client A hired Mr. Matarangas, a solo practitioner, to represent her in her personal injury claim. Under their contingent fee agreement, Mr. Matarangas was to receive 35 percent of any settlement amount if a lawsuit was commenced before settlement. Client A’s insurance paid $4,337.40 toward her medical expenses. The July 7, 2011, disbarment was based on conduct involving failure to act with reasonable diligence, failure to communicate, conversion of client property, trust account irregularities, failure to promptly notify a client of receipt of client’s property, failure to promptly pay a client funds she was entitled to receive, failure to keep complete trust account records, theft, and dishonest conduct.

On May 4, 2009, Mr. Matarangas wrote a letter to Client A stating, “Once the case is dismissed, [opposing counsel] will tender the check to me which I will deposit to my trust account. Once the check has cleared, I will deduct my fees and costs and pay [the subrogation service] whatever amount we ultimately agree on. I will send the balance to you.” At the time he wrote the letter, Mr. Matarangas knew he had already received and deposited the settlement check and taken his fee. Mr. Matarangas thereafter misappropriated the remaining settlement funds, totaling more than $15,000.

Over the months following Client A’s receipt of Mr. Matarangas’s letter, she left him numerous messages and numerous emails inquiring about the settlement. Mr. Matarangas did not respond to the voicemails, but did respond to one or more of the emails telling Client A that he was working on her case and negotiating with the subrogation service to reduce the amount to be paid in subrogation. He assured her that payment was forthcoming. From April 10, 2009, through May 4, 2010, Mr. Matarangas withdrew approximately $5,500 of the funds from his trust account. Other than his 35 percent fee, Mr. Matarangas was not entitled to any other funds from Client A’s settlement.

A representative from the subrogation service informed Client A that their files showed no contact with Mr. Matarangas after March 2009. In September 2009, Mr. Matarangas was evicted from his leased office space for nonpayment of rent and his address was no longer valid. He did not inform Client A, the subrogation service, or the Bar Association of the change. After Client A filed a grievance against Mr. Matarangas with the Bar Association, Mr. Matarangas sent the subrogation service a check for $2,000 and sent Client A a cashier’s check for $13,188.71, representing the settlement amount less his fee, the subrogation payment, and costs. In his response to the grievance, Mr. Matarangas stated that he had been negotiating to reduce the reimbursement in subrogation and had “felt it would be prudent to hold on to the settlement until the lien issue could be resolved.” Following a subpoena issued by the Bar Association for Mr. Matarangas to appear for a deposition and produce his client file on May 20, 2010, Mr. Matarangas appeared but produced no records. Although he agreed under oath to provide the specified records by June 15, 2010, Mr. Matarangas produced no documents.

September 16, 2011, disbarment: Client B hired Mr. Matarangas to represent her in connection with a single-car accident. Client B’s insurance included coverage for personal injury protection (PIP). On January 25, 2010, Client B’s insurance issued a check for $9,616 to Mr. Matarangas to be used toward Client B’s medical expenses. Mr. Matarangas informed Client B that he would hold these funds in his trust account for payment of her medical expenses and deposited the check into his trust account.

On March 19, 2010, Mr. Matarangas withdrew $2,715.53 from his trust account, which he sent to Client B in a cashier’s check. After this disbursement, $6,900.47 should have remained in Mr. Matarangas’s trust account for eventual payment of Client B’s medical expenses. Between January 25, 2010, and March 29, 2010, Mr. Matarangas transferred nearly $8,000 from his trust account to a joint personal checking account he maintained with his wife. Most of those funds belonged to Client B. Mr. Matarangas had not signed any fee agreement with Client B, nor had he issued any invoices to her for his services, and was not entitled to withdraw her funds from the trust account. On March 31, 2010, only $23,44 remained in Mr. Matarangas’s trust account.

Client B subsequently tried to contact Mr. Matarangas to have him disburse the remaining PIP funds to her medical providers, but found it extremely difficult to reach him. To avoid being sent to collections, Client B hired another attorney, who wrote to Mr. Matarangas at his address of record stating that Client B had asked his firm to substitute as her counsel and requesting that Mr. Matarangas forward her file and PIP funds. He received no response. Client B filed a grievance with the Bar Association. The Bar Association sent several letters to Mr. Matarangas’s address of record and to his home, requesting a response. Mr. Matarangas did not respond to the grievance nor supply the Bar Association with a valid business address.

Mr. Matarangas’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer to keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.15(a)(b), prohibiting a lawyer from using, converting, borrowing, or pledging client or third-person property for the lawyer’s own use; RPC 1.15(a)(1), requiring a lawyer to deposit and hold in a trust account funds subject to this Rule; RPC 1.15(a)(d), requiring a lawyer to promptly notify a client of receipt of the client’s property; RPC
1.15A(f), requiring a lawyer to promptly pay or deliver to the client the property which the client is entitled to receive; RPC 1.15A(h)(2), requiring a lawyer to keep complete records (of client property) as required by Rule 1.15B; RPC 1.15A(h)(3), allowing a lawyer to withdraw earned fees only after giving reasonable notice to the client of the intent to do so; RPC 1.15A(h)(5), requiring that all (trust account) withdrawals be made to a named payee and not to cash; RPC 1.15A(h)(7), prohibiting a lawyer from disbursing funds from a trust account until deposits have cleared the banking process and been collected; RPC 1.15B, requiring a lawyer to maintain current trust account records and specifying what, at minimum, the records must include; RPC 1.16(a)(3), prohibiting a lawyer from representing a client if the lawyer is discharged; RPC 1.16(d), requiring that, upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client’s interests, such as surrendering papers or property to which the client is entitled; RPC 8.1(b), prohibiting a lawyer, in connection with a disciplinary matter, from knowingly failing to respond to a lawful demand for information; RPC 8.4(b), prohibiting a lawyer from committing a criminal act (here, theft) that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Natalea Skvir represented the Bar Association. Mr. Matarangas did not appear either in person or through counsel. Lish Whitson and J.C. Becker were the hearing officers.

Suspended

Ralph E. Crear (WSBA No. 33692, admitted 2003), of Shoreline, was suspended for one year, effective September 15, 2011, by order of the Washington State Supreme Court. This discipline is based on conduct involving failure to safeguard client property, the practice of law while suspended, dishonest conduct, and failure to provide a complete response to a grievance.

Mr. Crear failed to pay his annual license fee for 2009 and was suspended by the Supreme Court on June 1, 2009. Mr. Crear learned of the suspension and discussed it with two Bar Association employees on June 2, 2009. He was told he must “promptly inform his current client(s), opposing counsel(s), and any relevant court(s) of the suspension issue.” To reinstate his license, Mr. Crear was required to pay the Association’s $430 annual license renewal fee plus $830 in late and reinstatement fees. In early June, Mr. Crear paid the $430 fee, but not the $830. He applied for a hardship exemption but was denied the exemption on June 4, 2009. Mr. Crear was reinstated by order of the Supreme Court on July 13, 2009, effective 3:24 p.m., and informed of the reinstatement on the same day.

From June 1, 2009, through July 13, 2009, at 3:24 p.m., Mr. Crear was not authorized to practice law in the state of Washington. In late June 2009, Mr. Crear and Client A discussed having Client A pay the $830 outstanding late and reinstatement fees necessary for Mr. Crear to reinstate his license to practice law. Mr. Crear inquired from the Bar Association whether the payment could be made by a client through a credit card, to which he was told the Bar Association would accept the payment if the services had been provided prior to the suspension and resulting fees were currently owed. On June 29, 2009, Client A’s friend paid $830 directly to the Association on Mr. Crear’s behalf.

Mr. Crear began representing Client A in April 2009. Client was a building contractor who was trying to collect from a debtor for work he performed. Client A had hired Mr. Crear to send a demand letter to a debtor, file a lien, and files and defend against a restraining order petition. Mr. Crear filed the lien on Client A’s behalf on June 2, 2009. After Mr. Crear’s suspension, Client A contacted him regarding two issues: a June 18, 2009, hearing involving the restraining order, and a July 14, 2009, hearing in superior court on the debtor’s Motion to Appear and Show Cause why the lien Mr. Crear had filed should not be stricken as frivolous. The deadline for the response to the Motion to Show Cause was noon on July 13, 2009. Mr. Crear prepared the response pleadings and gave them to Client A, who signed the pleadings pro se and took them to a copy center to be copied. Client A returned to Mr. Crear’s office with the copies, which Mr. Crear stapled and sorted for distribution to the court and opposing counsel. While at the courthouse delivering the documents, Client A called Mr. Crear and received instruction on how to file and serve the response pleadings. Client A appeared pro se at the hearing on the Motion to Show Cause, after which the court struck and released the lien. After he was reinstated, Mr. Crear filed a Motion to Reconsider and Vacate; the court denied the motion.

Client A and Mr. Crear entered into a written fee agreement dated April 1, 2009, whereby Mr. Crear would bill Client A monthly for his services. Payment was due on receipt of the billing. Although no statements were mailed to Client A until July 31, 2009, Mr. Crear made requests to Client A for money by phone. His first billing to Client A on July 31, 2009, was for a balance due of $747. On June 18, 2009, Client A delivered payment of $200 to Mr. Crear, thereby reducing the balance owed to $547. This was the balance outstanding when the $830 reinstatement penalty was paid on June 29, 2009. The $830 payment created a credit balance of $283 in Client A’s account, none of which was placed in Mr. Crear’s trust account.

On August 10, 2009, Client A filed a grievance against Mr. Crear with the Bar Association. Mr. Crear signed and sent a letter dated August 24, 2009, to the Bar Association stating, in part, that he informed Client A that he could not represent him on the lien matter, but that he “did however provide client with a template to develop a response.” Mr. Crear intended that the letter hide the fact he engaged in the unauthorized practice of law.

Mr. Crear’s conduct violated RPC 1.15A(c)(1), requiring a lawyer to hold property of clients and third persons separate from the lawyer’s own property and to deposit and hold in a trust account funds subject to this rule pursuant to the rules; 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; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and ELC 5.3(e)(1), requiring a lawyer to promptly respond to any inquiry or request made under these rules for information relevant to grievances or matters under investigation and furnish in writing, or orally if requested, a full and complete response to inquiries and questions.

Sachia Stonefeld Powell represented the Bar Association. Mr. Crear represented himself. John J. Tollefson was the hearing officer.

Suspended

Alexander W. Gambrel (WSBA No. 24018, admitted 1994), of Belgrade, Montana, was suspended for two years, effective July 7, 2011, by order of the Washington State Supreme Court following approval of a stipulation. This discipline was based on conduct involving failure to act diligently in a client matter, failure to communicate, failure to safeguard client property, withholding client funds, trust account irregularities, failure to protect clients’ interests, failure to expedite litigation, and failure to cooperate with a grievance investigation. Conditions are imposed when Mr. Gambrel returns to practice.

Between late 2007 and October 2008, Mr. Gambrel represented five clients, during which he engaged in the following misconduct:
• Failed to diligently handle clients’ cases and to expedite a lawsuit;
• Failed to keep clients informed of the status of their matters, promptly respond to clients’ phone messages requesting information, or explain matters to the extent reasonably necessary for clients to make informed decisions regarding the representation;
• Failed to communicate the basis or rate of his fee to one client, and failed to explain to a second client who paid a $2,500 non-refundable “flat fee advancement for fees and costs” which portion was for fees and which portion was for costs;
• Failed to deposit earned fees of between $2,000 and $3,000 into his trust account, instead depositing them into his general account without first notifying the clients of his intention to do so, and without providing written accountings of his distributions of the funds or keeping the clients informed regarding the status of their bills or the handling of their funds;
• Failed to deposit advance fees of $2,500 into a trust account; and
• Failed to promptly refund money that clients were entitled to receive.

During the Bar Association’s investigation of the grievances filed by clients in the referenced matters, Mr. Gambrel failed to promptly respond to the Association’s requests for information or cooperate with the investigation by producing requested records.

Mr. Gambrel’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to promptly inform the client of any decision of circumstance with respect to which the client’s informed consent is required by these rules, reasonably consult with the client about the means by which the client’s objectives are to be accomplished, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(b), requiring that a lawyer communicate the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible, preferably in writing, before or within a reasonable time after commencing the representation; RPC 1.5A(c), requiring a lawyer to hold the property of clients and third persons separate from the lawyer’s own property; RPC 1.5A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request, and to provide at least annually a written accounting to a client or third person for whom the lawyer is holding funds; RPC 1.15A(f), requiring a lawyer to promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive; RPC 1.15A(h)(3), prohibiting funds belonging to the lawyer from being deposited or retained in a trust account; RPC 1.16(d), requiring that, upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client’s interests, such as surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Marsha A. Matsumoto and Deborah J. Slater represented the Bar Association. Mr. Gambrel represented himself. Timothy J. Parker was the hearing officer.

Suspended

Thomas O. Mix Jr. (WSBA No. 24112, admitted 1994), of Flint, Michigan, was suspended for 179 days, effective October 14, 2011, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order by the Michigan Attorney Discipline Board. This discipline is based on Mr. Mix’s conviction for embezzlement. For more information, see the Michigan Attorney Discipline Board’s May 2011 notices, available at www.admblog.org/cope/no/notes/2011-05-11-10n-66.pdf.

Mr. Mix’s conduct violated Michigan’s MCR 9.104(A)(5), prohibiting a lawyer from engaging in conduct that violates a criminal law of a state or of the United States.

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

Reprimanded

Robert W. Denomy (WSBA No. 9050, admitted 1979), of Tacoma, was ordered to receive a reprimand following approval of a stipulation by the chief hearing officer on September 19, 2011. This discipline is based on conduct involving failure to maintain complete and accurate trust account records, failure to hold client property separate from the lawyer’s property, mishandling client funds, failure to provide a written accounting to a client after distribution of property, and failure to properly supervise a non-lawyer assistant.

From January 2008 through June 2009, Mr. Denomy’s legal assistant deposited unearned client funds into his general account. Upon learning of this, Mr. Denomy immediately terminated her employment. For at least a year prior to the legal assistant’s termination, Mr. Denomy had not reviewed any bank account records for his general or trust account.

Mr. Denomy failed to properly supervise the legal assistant, failed to maintain adequate records relating to his trust account, failed to hold his property separate from his clients’ property, failed to deposit client funds into his trust account, and failed to provide a written accounting to a client after distribution of property.

Mr. Denomy’s conduct violated RPC 1.15A(c), requiring a lawyer to hold property of clients and third persons separate from the lawyer’s own property; RPC 1.15A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request; RPC 1.15A(h), prohibiting funds belonging to the lawyer from being deposited or retained in a trust account; RPC 1.16(d), requiring a lawyer to hold his property separate from his clients’ property; RPC 1.2, requiring a lawyer to make informed decisions regarding the representation; RPC 1.5(b), requiring a lawyer to hold his property separate from his clients’ property; RPC 1.5A(e), requiring a lawyer to promptly provide a written accounting to a client or third person after distribution of property or upon request, and to provide at least annually a written accounting to a client or third person for whom the lawyer is holding funds; RPC 1.15A(f), requiring a lawyer to promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive; RPC 1.15A(h)(3), prohibiting funds belonging to the lawyer from being deposited or retained in a trust account; RPC 1.16(d), requiring that, upon termination of representation, a lawyer take steps to the extent reasonably practicable to protect a client’s interests, such as surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter.

Marsha A. Matsumoto and Deborah J. Slater represented the Bar Association. Mr. Gambrel represented himself. Timothy J. Parker was the hearing officer.

Suspended

Thomas O. Mix Jr. (WSBA No. 24112, admitted 1994), of Flint, Michigan, was suspended for 179 days, effective October 14, 2011, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order by the Michigan Attorney Discipline Board. This discipline is based on Mr. Mix’s conviction for embezzlement. For more information, see the Michigan Attorney Discipline Board’s May 2011 notices, available at www.admblog.org/cope/no/notes/2011-05-11-10n-66.pdf.

Mr. Mix’s conduct violated Michigan’s MCR 9.104(A)(5), prohibiting a lawyer from engaging in conduct that violates a criminal law of a state or of the United States.

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

Reprimanded

Robert W. Denomy (WSBA No. 9050, admitted 1979), of Tacoma, was ordered to receive a reprimand following approval of a stipulation by the chief hearing officer on May 17, 2011. This discipline was based on conduct involving a conflict of interest and conduct prejudicial to the administration of justice.

A client hired Mr. Landry in a personal injury action in 2004. Mr. Landry filed a complaint within the three-year statute of limitations but failed to serve it on a named defendant within 90 days. The court granted defense’s motion to dismiss based in part on Mr. Landry’s failure to timely name and serve the proper party.

In May 2008, the client from that action filed a grievance with the Bar Association alleging that Mr. Landry failed to communicate with him adequately. The client also stated that Mr. Landry told him that Mr. Landry had mishandled the case. On July
3, 2008, the client withdrew his grievance, stating that he and Mr. Landry had resolved the misunderstanding. Neither Mr. Landry nor the client advised the Bar Association that the withdrawal of the grievance arose from a confidential settlement agreement signed on July 3, 2008. The client was not represented by counsel when negotiating the settlement and Mr. Landry did not advise him in writing to seek counsel. Under the terms of the settlement, Mr. Landry paid the client $15,000 in exchange for a full release of all claims arising from his handling of the case. The settlement agreement required the client to withdraw his Bar grievance. In June 2010, the client filed a second grievance related to the personal injury action. In response, Mr. Landry disclosed that after the personal injury action was dismissed, he paid the client from his own funds to resolve the matter.

Mr. Landry’s conduct violated RPC 1.8(h) (2), prohibiting a lawyer from making an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Joanne S. Abelson represented the Bar Association. Joseph J. Ganz represented Mr. Landry.

Reprimanded

Philip W. Sanford (WSBA No. 18593, admitted 1989), of Seattle, was ordered to receive two reprimands following approval of a stipulation by the chief hearing officer on August 23, 2011. This discipline was based on conduct involving failure to comply with a discovery request in a pretrial procedure and assault.

On May 26, 2007, Mr. Sanford was involved in a physical altercation with a man on a trail bicycle path. He was convicted of fourth-degree assault (RCW 9A.36.041) and sentenced to 365 days in jail (suspended), community service, and to attend an anger management program.

In 2008–2009, Mr. Sanford represented a defendant in an admiralty action arising from an on-the-job injury. Prior to discovery, Mr. Sanford requested that the client’s claims adjuster send him the file on the employee’s claim. During discovery, the plaintiff requested the claims adjuster’s complete file, which was produced, minus various privileged documents and a privilege log listing those documents. Some information that was relevant to the plaintiff’s claim was missing from the claims adjuster’s file. Although Mr. Sanford made no inquiry with the claims adjuster about whether the entire file was submitted, both he and the defendant certified that the responses to the plaintiff’s discovery request were complete. The existence of the missing documents was discovered during trial. After trial, pursuant to the plaintiff’s motion for discovery sanctions, the trial court found that Mr. Sanford recklessly violated CR 26(g) by failing to make a reasonable inquiry before certifying the answers to discovery. Mr. Sanford was ordered to pay sanctions of $5,000, which he has paid.

Mr. Sanford’s conduct violated RPC 3.4(d), prohibiting a lawyer, in pretrial procedure, from failing to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party; and RPC 8.4(i), prohibiting a lawyer from committing an 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.

Joanne S. Abelson represented the Bar Association. Stephen C. Smith represented Mr. Sanford.

Admonished

Adolpho Banda Jr. (WSBA No. 31676, admitted 2001), of Yakima, was ordered to receive an admonition following approval of a stipulation by the chief hearing officer on August 11, 2011. This discipline was based on conduct involving failure to act with diligence in a client matter and conduct prejudicial to the administration of justice.

Beginning in October 2009, Mr. Banda represented a client on a felony charge in superior court. Between October 2009 and April 2010, Mr. Banda failed to appear for the client’s pretrial court hearings 18 times. He offered reasons for missing some, but not all, of the hearings.

Mr. Banda’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; and RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Erica W. Temple represented the Bar Association. Kurt M. Bulmer represented Mr. Banda.

Non-disciplinary Notice

Suspended Pending the Outcome of Supplemental Proceedings

Marianne Meeker (WSBA No. 29674, admitted 1999), of Federal Way, was suspended pending the outcome of supplemental proceedings pursuant to ELC 7.2(a)(3), effective November 22, 2011, by order of the Washington State Supreme Court. This is not a disciplinary sanction.
or 206-443-WSBA; www.wsbacle.org.

Environmental Law

Hawaii Water Law
January 11 — Honolulu. 5.5 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar.lasso?seminar=12.wahi.

2nd Annual Financing, Developing, and Permitting Renewable Energy Projects in Hawaii
January 12 — 6.5 CLE credits. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar. lasso?seminar=12.frehi.

19th Annual Endangered Species Act
January 26–27 — 11.25 CLE credits, including 1 ethics. By The Seminar Group; 800-574-4852 or 206-463-4400; www.theseminargroup.net/seminar. lasso?seminar=12.esawa.

Washington Ethics Highlights

Litigation

Evidence and Objection Boot Camp
February 21 — Seattle and webcast. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

The Legal Team: Medicine for the PI Practice

Solo and Small Practice

The Small Law Firm in Today’s World
February 24 — Seattle and webcast. By the WSBA Solo and Small Practice Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Webcast Seminars

Elder Law Best Practices
January 20 — Seattle and webcast. 6 CLE credits pending. By the WSBA Elder Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Washington State Association for Justice Annual Insurance Law Seminar

General

Limits of Liberty Under Law: The Pledge of Allegiance

Evidence and Objection Boot Camp
February 21 — Seattle and webcast. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Enhancing Your Skills for Criminal Practice
February 29 — Seattle and webcast. WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Insurance Law

Washington State Association for Justice Annual Insurance Law Seminar

Washington State Association for Justice Annual Insurance Law Seminar
Tableau Software Inc. — Position: general counsel. Location: Seattle. We are looking for an extraordinary legal executive and company leader. We need someone who can oversee all of Tableau’s legal activities. This person will also negotiate enterprise software license agreements, manage the company’s intellectual property portfolio, assist with overseas expansion and channel partnerships, including corporate structure and subsidiaries, and help us prepare for an IPO. The full job description can be found here: http://tbe.taleo.net/na11/ats/careers/requisition.jsp?org=tableau&cws=1&ruid=442.

Manager professional services — Serengeti. Develop and execute professional services strategies, programs, and processes for delivering a superior customer experience. Manage full life cycle, including sales, delivery, marketing, technical capabilities, and strategy. Lead and manage a team. Responsible for revenue generation, expense management, managing/leveraging resources, securing profitable engagements, and shaping strategy. At least seven years’ experience in law practice/corporate legal department required. Please apply direct: https://toc.taleo.net/careersection/2/jobdetail.ftl?lang=en&job=pro00006071.

Reinisch Mackenzie, P.C., a Northwest regional law firm, seeks full-time litigation associates for its Seattle and Portland offices. Ideal candidates must be highly motivated to advise and represent employers in Washington workers’ compensation matters with emphasis on aggressive defense, client development, and sound judgment. Successful candidates must have a minimum of three years’ experience in workers’ compensation or civil litigation, outstanding interpersonal communication, and excellent writing and oral advocacy skills. We offer a team-oriented work environment with competitive salary and benefits. Qualified and interested candidates should submit a cover letter, résumé, and writing sample to Michael H. Weier, Managing Partner, Reinisch Mackenzie, P.C., 10260 SW Greenburg Rd., Ste. 1250, Portland, OR 97223. No phone calls, please.

Guidant Financial Group is seeking a licensed attorney who has demonstrated interest and experience in tax and ERISA matters. Attorney ideally will have experience in 401(k) plan compliance and administration, IRS and DOL regulations, and excellent written and verbal communication. Qualified candidates should submit a cover letter and résumé to andrew.moser@guidantfinancial.com.

Trademark litigation associate — Seed IP Law Group, located in downtown Seattle, is looking for a trademark litigation associate with district court and TTAB experience to join its trademark group. The successful candidate will have a minimum of two years’ experience as a trademark litigation attorney. Experience with prosecution and licensing a plus. Please send cover letter and résumé to G@SeedIP.com.

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Request for proposals — The city of Spokane is soliciting separate proposals from law firms for outside counsel to represent the city and its employee in (a) litigation arising out of police action; and/or (b) litigation arising out of employment actions. Proposals are due January 30, 2012. For further information, contact Barbara Burns at bburns@spokanecity.org or 509-625-6225.

Itron is a global provider of hardware, software, and services to the Smart Grid industry. We do business in over 130 countries and our annual revenues exceed $2.2 billion. We have a rare opening and are currently seeking a senior in-house attorney to join our legal department. The ideal candidate should have a minimum of six years of experience, both at a large law firm as well as in-house. The attorney will be responsible for: reviewing and drafting complex commercial agreements, including software licensing; negotiating complex legal, commercial, and financial terms; researching and advising on matters relevant to the company’s business, including intellectual property protection, general corporate compliance, and contracting; ensuring compliance at all times with the company’s legal, financial, and risk management policies and procedures; instructing and managing external counsel in the resolution of commercial disputes and litigation; preparing and delivering presentations to employees on legal topics of interest; and responsibilities as assigned. Desired traits are: strong intellect; excellent communication and interpersonal skills; ability to act and function both independently and as part of a team; results-driven, strategic thinking, agility, and customer service orientation; self-starter, effective at collaboration and building strong client relationships; “hands on” mentality, and the ability to work in a fast-paced environment. Candidates with the above qualifications should email a cover letter and résumé immediately to: Leslie.Fergison@Itron.com and apply online at www.itron.jobs. Itron Inc. is a leading technology provider to the global energy and water industries. Our company is the world’s leading provider.
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Ahlers & Cressman PLLC, an 11-lawyer construction law firm in downtown Seattle, is seeking an experienced construction law attorney with at least four years’ experience to perform construction contract review and drafting, litigation, arbitration, and dispute resolution. Ahlers & Cressman PLLC is a group of motivated, hard-working attorneys. Its lawyers believe that high-quality work results in satisfied clients and a prosperous firm. Compensation is negotiable based upon qualifications and experience. All inquiries will remain confidential. If interested, please send résumé and cover letter to: Chris Achman, Administrator, Ahlers & Cressman PLLC, 999 Third Ave., Ste. 3800, Seattle, WA 98104-4088, Fax: 206-287-9902; website: www.ac-lawyers.com, email: cachman@ac-lawyers.com.

Sound Transit seeks a creative attorney with a minimum of five years of experience to join its nine-attorney legal department. Anticipated work will involve one or more of the following categories of legal work: real property acquisition/litigation, MTCA cost-recovery litigation, utility relocation coordination, land use/permitting, and other duties as may be needed. The position reports to the general counsel, and the attorney must work collaboratively with other attorneys and staff and provide legal support for project managers, agency officials, and the Sound Transit Board. Qualifications: The position requires at least five years of relevant experience demonstrating superior intellectual ability, as well as the potential to master and eventually take over primary responsibility within the legal department for one or more of the designated categories of work. Ideal candidates will have experience and an intellectual interest in at least one of the designated categories of work in the context of Sound Transit’s planning, constructing, and operating high-capacity transit systems. Other desirable experience includes complex contract negotiations (including with or for other governmental entities or utilities), litigation, and state and local tax. The attorney filling the position should be an exceptional writer who approaches work and life with alacrity and good humor. The position requires membership in good standing with the Washington State Bar Association. Interested attorneys please send a cover letter, résumé, and writing sample to ruby.fowler@soundtransit.org. All submissions must be received by January 10, 2012.

Lateral partner: Smith Alling, PS seeks a lateral partner to join the firm’s sophisticated and diverse business, estate planning, real estate, construction, and litigation practice at its office in Tacoma. Successful candidates will have portable business, excellent credentials, at least 10 years’ experience, a good reputation in the legal community, and, most importantly, a willingness to be part of a collegial work environment. Smith Alling, PS is widely recognized throughout the Pacific Northwest for the superior legal work it performs on behalf of its corporate and individual clients. For confidential consideration, send résumé and cover letter to mmc@smithallling.com.

WSBA director of justice and diversity programs — The WSBA is seeking a lawyer to institutionalize and facilitate the WSBA’s commitment to diversity and continuing leadership in access to justice and public-service-related initiatives. The position manages the department’s operations; supervises three program managers; and provides strategic vision, leadership, and community building. For details and how to apply, visit us at www.wsba.org/about-wsja/careers/wsba-jobs.

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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 one staff work station. 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 VoiceIP is available. Contact accounting@aiken-lawgroup.com.


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Rates: WSBA members: $40/first 25 words; $0.50 each additional word. Nonmembers: $50/first 25 words; $1 each additional word. Blind-box number service: $12 (responses will be forwarded). Advance payment required; we regret that we are unable to bill for classified ads. Payment may be made by check (payable to WSBA), American Express, MasterCard, or Visa.

Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., February 1 for the March issue. No cancellations after the deadline. Mail to: WSBA Bar News Classifieds, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

Qualifying experience for positions available: State and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., “5-10 years”). Ads may be edited for spelling, grammar, and consistency of formatting. If you have questions, please call 206-727-8262 or email classifieds@wsba.org.

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DeWaundee C. Green — Kent, Auburn, Renton, Seattle, or elsewhere in the state. Contact JahWaundee at 951-490-8164 or jgood4@yahoo.com.
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Why I became a lawyer: Since I was in elementary school, I was enamored with the thought of becoming a lawyer. As I grew older, that dream seemed as unachievable as flying like Superman because my family was as poor as poor can be. Fortunately, I entered into adulthood as a community servant which paved the way for professional development. I was a police officer, which allowed me to obtain a bachelor’s degree. I then became an Army officer and was given the golden opportunity to attend law school through a military program. As I progressed into positions of increased public responsibility, I came to realize that becoming an attorney would place me in an enhanced position to serve my community and my country.

The future of the practice of law is extremely exciting. I am often in awe as I learn about the developments in the law. Gone are the days of the general practitioner. The ever-expanding and developing field of law is breathtaking.

One of the greatest challenges in law today is the sheer volume of legal disputes. It is impossible to spend the amount of time and effort on each case that we would like to, or feel that we need to.

If I were not practicing law, I would teach the Chamoru language and history at the University of Guam. The native language on my home island is quickly fading due to outside influence. I was fortunate to be raised in the traditional way.

This is the best advice I have been given: Never be content and never forget where you came from.

I would share this with new lawyers: Try to relax and make a conscientious choice to be civil with everyone.

People living or from the past I would like to invite to a dinner party: Mother Teresa and Adolf Hitler, just to experience the awkwardness in the room.

I am most proud of this: My public-service record and educational achievements, considering I was raised on public assistance and food stamps in a free housing area infested with drugs and gangs.

I am most happy when I’m with my wife and children, especially when we gather with our extended family on joyous occasions. Being with people I love and who love me is what makes me the happiest.

I would give this advice to a first-year law student: Use alcohol only in moderation, if at all.

What keeps me awake at night: Not much. If you live an honest life and have a strong faith, then you can sleep well at night. There are many bad things in this world; luckily we have many great people who dedicate their lives to protecting us from them.

Technology is the devil. All the latest technology tends to make us lazy, complacent, and antisocial. Put that tablet down, turn off your smartphone, and start to really live.

My favorite hobbies/interests: Woodworking and metalworking.

My favorite vacation place: Guam and the Commonwealth of the Northern Marianas Islands.

Currently playing on my iPod/CD player/record player: All the latest Chamoru music, Adele, Lady Gaga, Lady Antebellum, ‘90s grunge, Avett Brothers, Ray LaMontagne, Train.

This is the hardest part of my job: Being deployed frequently.

The best part of my job: All the wonderful people I get to work with and work for. The commanders, senior JAG officers, fellow JAG officers, and servicemembers that I have had the blessing to work with are all tremendous patriots and great Americans.

My name is Peter J. Santos, from the beautiful island of Guam. I am a 1992 graduate of Bremerton High School. I was a police officer on Guam for eight years before commissioning into the U.S. Army as a signal officer in 2001. From 2006 to 2009, I attended the University of Washington School of Law through the Army Funded Legal Education Program, and in 2010, I completed the Army JAG Officer Course. I have been deployed four times in support of OIF and OEF. I am married with five wonderful children. We are currently stationed at Fort Hood, Texas, where I work at the Office of the Staff Judge Advocate, 1st Cavalry Division. At the time of this submission, I am deployed to Ghazni, Afghanistan, as a rule of law attorney attached to the U.S. Provincial Reconstruction Team attached to Joint Task Force White Eagle, a Polish Army Brigade under their Black Division. My role is advisor and mentor to Afghan judges, prosecutors, and police in the establishment and sustainment of the Rule of Law, in accordance with their constitution, laws, and traditions.
A Life Worthwhile

One of my favorite movie scenes is from Woody Allen’s *Manhattan* (1979). Allen is lying on his couch, wistful and contemplative, speaking into a recorder:

Well, all right, why is life worth living? That’s a very good question. Well, there are certain things I guess that make it worthwhile. Uh, like what? Okay. Um, for me . . . oh, I would say . . . what, Groucho Marx, to name one thing . . . and Willie Mays, and . . . the second movement of the Jupiter Symphony, and . . . Louie Armstrong’s recording of “Potatohead Blues” . . . Swedish movies, naturally . . . *Sentimental Education* by Flaubert . . . Marlon Brando, Frank Sinatra . . . those incredible apples and pears by Cézanne . . . the crabs at Sam Wòs . . .

Likewise, I try to pause at this time of year and reflect on what has made life worth living for me. I prefer this to making New Year’s resolutions, which are susceptible to failure. Following is my current list, generated as I’m sitting here:

**Monty Python and the Holy Grail** • Playing Frisbee with a dog • Gift cards • Being in the band • Finding something good in the other side’s interrogatory answers • The World Cup • Flannel sheets • Junior, Edgar, Jay, Dan, and Lou • *Batman: Arkham City* • Spaghetti and meatballs • Fireflies • A new pair of glasses • The Mt. Baker Highway • The Mt. Baker Theater • Mt. Baker • The last day of law school • A fresh set of guitar strings • *Seinfeld* • The Space Needle • Driving • Letting someone else drive • The de Havilland Twin Otter • Regina Spektor • Missoula, Montana • Splash Mountain • Riding a horse • Jimmy Stewart • Jimi Hendrix • Hats • The ponderosa pine • Someone thanking you for helping them out • Bruce Lee • Astronauts • Mosquito repellent • Taking your kids to the zoo • Rising to the occasion • Kevin Calabro • Dive bars • The slam dunk • GPS • Hydroplanes • Whales • Mee Sum Pastry at Pike Place Market • Cowboy boots • The day each year when you don’t need a jacket anymore (usually in August around here) • The last-second comeback • The Toyota Land Cruiser FJ40 • Dark chocolate truffles • Cuban cigars • Bowling alleys • Gus, D.J. Jack, J.J., and Downtown Freddie • Payton, Kemp, Det, Sam, and Nate • Political scandals • *Dazed and Confused* (movie and song) • Mt. Rainier • Husky Stadium • The Kingdome • Mountain bikes • The day you find out you passed the bar exam • Strutting your stuff • A new car • Jack Daniel’s • Twitter • *Ren and Stimpy* • Hitting the nail on the head • Presidential elections • Putting your money where your mouth is • Orcas Island • Taking the long way home • Garlic bread • “L.A. Noire” • Jaco Pastorius • Coasting on a bicycle • Ice cream sandwiches • Asteroids (arcade game and astronomical phenomenon) • Cats (not the musical) • Mashed potatoes • Martin Scorsese • Surprise blue sky • Using a chainsaw • Facebook • A great head of hair • The Big Unit • Shaking it like a Polaroid picture • All-season radials • All-wheel drive • Finding a new favorite • Making it work anyway • Working up a sweat • Showing ’em who’s boss • Glacier, Yellowstone, and the Grand Tetons • “Rhapsody in Blue” • The pedal steel guitar • Good craftsmanship • Ghost towns • Wayne Gretzky • The 24 Hours of Le Mans • *Esquire* magazine • The giant croutons at Dahlia Lounge • Willie Nelson • B.B. King • Getting a check you forgot was coming • Beating the odds • Finding your wallet • A 60-minute massage • I Can Has Cheezburger • Almond Joy • Dave Niehaus • Music studios • *The Onion* • The Chuck Knox Seahawks (Largent, Krieg, Green, Easley) • Sue Bird • Suddenly, death overtime • Electromagnets • Amplifiers • The Ford Mustang • Nirvana (band and state of mind) • *All in the Family* • Getting the hang of it • Riding a motorcycle over the North Cascades • Cashews • Kasey Keller • Helen Keller • The iPod • Rainbow trout • A good new client • A nice watch • A great necklace • Owning less than you thought • The touchdown-saving tackle • The diving catch • The major upset • Les Paul (late great dude and guitar) • Antibiotics • Going the distance • Two dogs fetching the same stick • Squirrels • Submarines • *Spamalot* • Johnny Depp • Standing on top of a mountain • Pad thai • Finally getting it fixed • Finally getting it right • Boise, Idaho • American Legion baseball • The Brooklyn Bridge • Lowell George • Bleu cheese • Picasso at SAM • The Final Four • Fresh pavement • Salma Hayek • The first day of a family vacation • Naan • Elephants • Buckets of snow when you have nowhere to go • Floating on a lake • The Gorge Amphitheater • A brand-new household appliance • Sliding into second base • The Olympics (games and mountain range) • Leveling up • Sleeping in a tent • Sitting around the campfire • Remembering who wrote *Peter Pan* (J.M. Barrie) just in time at Trivia Night • Al Pacino • Nashville (the old part) • Eating a Kobe steak, in Kobe, with your best friend • Bears • *The Stanley Cup* • Michael Clayton • Hitting a jump shot • Italian bread • The double tall mocha • The Experience Music Project • Going somewhere you’ve never been before • Toughing it out • Swinging for the fences • Iced tea • Magnolia blossoms • Wile E. Coyote vs. Road Runner • *The Fender Jazz Bass* • *Mad* magazine • *The Monkees*.

Well, that about covers it. Actually, I could go on, but I’m out of space. If you have items from your own list of what makes life worth living, send them in. If I get enough, I’ll present a reader-submitted list in an upcoming Bar Beat.

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