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**Voting with your dollars**

In his letter to the editor (May 2010 Bar News), Raymond Takashi Swenson makes a logical argument for privately funded group speech, subject to marketplace dynamics — a typical libertarian view. He does not address the current lack of public space individuals have to conduct free speech, which functions to shut out individual voices, creating a dangerous homogeneity in times of chaos and confusion. This is deadly enough to democracy, yet there is a graver issue that deserves our attention: the dual nature of money in politics. Money is a resource capable of being aggregated, and therefore useful in measuring support for an issue or candidate. But, it is also a medium for exchange.

With the ability to make unlimited contributions, corporations and extremely wealthy individuals may purchase the incomparable power of the government to further private ends. When politicians offer their public trust and authority for bid, all types of unprincipled, self-interested people will rise to the highest

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“One of the most obvious ways to ensure equality is to make sure our future lawyers . . . represent the diversity of our society.” (“Is Justice Blind?,” May 2010 Bar News, p. 16) What an irony it is that at the same time that the WSBA is announcing the winners of its diversity essay contest, none other than our first African American president blows the diversity concept clean out of the water. When President Obama had on his short list for Supreme Court justice a female judge graduate of the University of Texas Law School (Judge Diane Wood, 7th Circuit), he chose instead to replace the only non-Ivy League law school graduate on the Court with a Harvard Law School graduate. The president, diversity notwithstanding, chose whom he wanted, whatever his reasons. We should all follow the president’s lead.

It is time for the legal profession to get out of social engineering. “Diversity” is a lazy person’s way of making the justice system appear to be fair. It is the sheep’s clothing around the affirmative action wolf. We all can and should become more aware of cultural variations while remembering that in law (just as in medicine) there comes a point where the law (or medicine) is what it is no matter what the client’s (or patient’s) cultural background is.

Let’s get back to the concept of excellence regardless of personal characteristics. Our society and our legal system can afford nothing less.

William R. Clarke, Richland

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Voting with your dollars

In his letter to the editor (May 2010 Bar News), Raymond Takashi Swenson makes a logical argument for privately funded group speech, subject to marketplace dynamics — a typical libertarian view. He does not address the current lack of public space individuals have to conduct free speech, which functions to shut out individual voices, creating a dangerous homogeneity in times of chaos and confusion. This is deadly enough to democracy, yet there is a graver issue that deserves our attention: the dual nature of money in politics. Money is a resource capable of being aggregated, and therefore useful in measuring support for an issue or candidate. But, it is also a medium for exchange.

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levels of government. Money will have pushed aside ethical, thoughtful, socially conscious, or publicly minded politicians. The big engine of government will be put to work furthering private interests over public ones.

Speech, although capable of aggregation, is not also a medium for exchange. Rather than censoring any group’s speech, we should foster expanded public space in the media for individual use, distribute the costs of political campaigns democratically, and investigate the manner in which money is delivered and applied in politics, so that money is never used there as a medium for exchange.

A.E. McLaughlin, Spokane

Corporations are like rivers

A letter to the editor in the May Issue of Bar News (“In praise of free speech,” p. 7) takes issue with my letter to the editor appearing in the April issue and deserves a response. To adopt a stance of what amounts to Constitutional Fundamentalism fails to understand that the true preservation of constitutional rights demands an awareness of the impact of collective powers on individual freedoms. To equate the collective power of government in a representative democracy with that of mere business entities shows a lack of trust that governments can be responsive and trustworthy. The regulation of such private entities because of their power to sway campaigns for judicial and other elective offices through the expenditure of large amounts of money is reasonable and serves to enhance debate by equalizing voices.

In any case, to assume that corporations speak with a single voice representing the collective views of their stockholders is unwarranted. Corporations are not static entities in this investment climate. Short-term ownership and stock trades makes them more like a river in constant motion.

The richness of political discourse lies in variety and not in volume. To accept reasonable regulation by the government of election contributions in the interest of individual and minority voices and to recognize the very real power wielded by collective entities to jeopardize the democratic process is simply realism as opposed to a naive absolutism that wishes to confute all political speech regardless of the fictional personhood of the collective entity.

Thomas Mengert, Keyport

Enter TBR

Access to justice for our clients is a concern for all attorneys and judges. Each day cases are “bumped” that have been pending for years because of court congestion. In response, attorneys have been using ADR as a means by which our clients’ cases can be concluded. The two most common ADR methods are mediation and arbitration (RCW 7.04). Both have limitations. Mediation requires parties to compromise and find common ground — a goal which is sometimes unattainable. Arbitration doesn’t worry about common ground, but has limited rights of appeal.

Enter TBR — Trial Before Referee. (RCW 4.48).

While TBR does not permit a jury trial, it has all of the other features of a superior court trial including the entry of Findings of Fact and Conclusions of Law with full review on appeal. Temporary orders in divorce cases could be heard by telephone with the referee rather than having to note up a hearing before a commissioner. Discovery motions could be brought before the referee in a PI case. Will contests could be heard by the referee before all of the heirs die.

The forms needed for TBR are found at 10 Washington Practice §53 and the WSBA Family Law Deskbook §56.8. There is only one case, Barnett v. Hicks, 119 Wn.2d 151 that discusses TBR versus arbitration.

Think of TBR as the third leg of the ADR stool. TBR can be considered by attorneys, judges and court clerks as a possible ADR alternative for concluding our client’s cases in a timely manner.

Mike Misner, Gig Harbor

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h sure, my kids sometimes drive me crazy. Like after Kyra left for college last fall and I got around to cleaning out her dresser — I found food in her drawer from who knows when that had evolved into some sort of life form — and not a pretty one at that. Grossed me out. I still shudder when I open a dresser drawer.

But I love being a dad. I have four kids and, as I often tell them, while I’m proud of their accomplishments, I’m prouder of who they are and how their acts reflect their values. And while I could share a gazillion stories of how each has made me proud, let me take a minute to talk about an early memory about Nicholas, who is now 16.

When Nicholas was in lower school he would stick up for the weaker kids when others tried to pick on them. I loved that.

...while the law states that race cannot be used in determining peremptory challenges, that doesn’t stop the practice from happening.

Nicholas didn’t have to get involved — those weren’t his fights, the kids weren’t going to pick on him, and the kids he was defending weren’t his friends and were often kids that he really didn’t much care for himself. But somehow he knew that he had to get involved. Nicholas, at a young age, had learned the importance of sticking up for those who, because of their predicament, needed some help. He still has that value.

Arizona passed SB 1070 that requires its local law enforcement agencies to enforce federal immigration law. A key provision is the following: "For any lawful stop, detention or arrest made by a law enforcement official or agency of this state or a law enforcement agency of a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation."

The Arizona Legislature amended the law to include the following limiting language: “A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in the enforcement of this section except to the extent permitted by the United States or Arizona constitution.” Yeah, right.

Expecting Arizona law enforcement officers to not consider race, skin color, or national origin is as likely to succeed as asking the National Enquirer to pass on interviewing a space alien from Mars dressed as Elvis.

Does anybody really believe that race, skin color, or national origin won’t be used by law enforcement in determining whether reasonable suspicion exists that someone is an unauthorized non-citizen? The officer has a reasonable suspicion that I’m a non-citizen who is unlawfully in the United States, then my Washington state driver’s license is going to do me about as much good as my AARP card.

But there’s the rub — how will a law enforcement official ever make a determination that there is a reasonable suspicion that someone is an unauthorized non-citizen, especially if race, skin color, and national origin are excluded? Maybe the Arizona law is meaningless. But that’s unlikely. Instead, this is exactly the type of law that puts people of color at risk because while on its face it explicitly prohibits the use of skin color, it is a law directed at people of a particular skin color and where the people who are subject to abuses of the law will be powerless to stop those abuses.

A similar situation exists in the prohibition against using race as the basis for using a peremptory challenge during jury selection. A new study by the Equal Justice Initiative demonstrates how that prohibition, while explicit, is commonly violated. In its June 4, 2010, editorial, the New York Times explained: "Prosecutors routinely use peremptory challenges to remove blacks from juries, aware that all-white juries are statistically far more likely to impose the death penalty. In Jefferson Parish, La., the study says, blacks were removed from juries three times as often as whites. In Houston County, Ala., nearly 80 percent of blacks who qualified for jury service have been struck from capital cases by prosecutors." So, while the law states that race cannot be used in determining peremptory challenges, that doesn’t stop the practice from happening.
But there is the aspect of the law that goes to the core of our values — the assault on the principle that in our country, people aren’t subjected to different treatment because of the color of their skin.

There are a number of flaws with the Arizona legislation — a couple being that it’s not an effective use of scarce resources for local enforcement agencies and the complexities involved in immigration law will make it difficult for local law enforcement to handle correctly. Both of these reasons have led local law enforcement agencies to oppose the measure. But those are concerns for Arizonians — how they use their resources is their own business and if they want to squander their money, let them. And of course there is the objection to having to travel with certain papers if you leave our state to travel to another state. There was, and is, opposition from both liberals and conservatives to the Real ID program that the federal government is attempting to implement. The directive “show me your papers” is anathema to most within this country.

But there is the aspect of the law that goes to the core of our values — the assault on the principle that in our country, people aren’t subjected to different treatment because of the color of their skin. The use of skin color or ethnicity by our government to treat people differently goes against a fundamental American value. Our justice system is supposed to be color blind. We, as a society, hate the idea of someone being treated differently based upon their skin color and yet, of course, historically have done just that. We are doing it again — this time in Arizona. Where next?

The WSBA Board of Governors took up the issue of what, if anything, to do in reaction to the Arizona legislation. At its June meeting, it rightfully voted to prohibit WSBA staff or volunteers, while pursuing WSBA business, from traveling to Arizona except for core WSBA functions, i.e., disciplinary proceedings and even then, if staff members object, they don’t have to go. The Board rightfully took the position that we will not send our staff to a state where you are subject to having to prove your citizenship.

But the broader issue as to what, if anything, the Board of Governors should do regarding the assault upon the principle of equal treatment under the law has been deferred. The Board, by a vote of 8 to 6, deferred this decision until its September meeting and asked the WSBA Civil Rights Law Section, among other groups, to provide input. At its June meeting, the argument has already surfaced that this isn’t our concern, and that we should just mind our own business. Certain fundamental principles, however, are all of our concerns: the rule of law certainly being one of them, and a basic rule of law is that people will not undergo higher scrutiny under the law because of the color of their skin.

I always get worried when I hear the phrase, “It’s not our concern.” Those are some of the most dangerous words in the English language. Those words give license to the strong to prey upon the weak, foster the erosion of civil and human rights, and allow the degradation of humanity. That reality has been recognized time and time again. As guardians of the justice system, we, the legal profession, have a duty to speak up when we see an assault upon principles that form the very basis of our justice system in this country. By remaining silent, we implicitly countenance wrongdoing.

I want to be like Nicholas. I hope the WSBA wants to be as well. We should all want to come to the aid of others when they need our help, to not stand by silently while those in power take advantage of those with little, if any, such power. Our Association must take stances when there is an assault on fundamental legal principles. We, as an association committed to the rule of law, must use our voice to safeguard our country’s most cherished principles.

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

NOTES
1. I guess the Arizona Legislature, just to make sure they weren’t missing something, put in this last clause just in case the U.S. Constitution allows law enforcement officials to consider race, color, or national origin in enforcing laws. I hate to disappoint the Arizona Legislature (well, not really) but it doesn’t.
2. Edmond Burke acknowledged: “All that is necessary for the triumph of evil is that good men do nothing.” And of course Pastor Martin Niemoller said it eloquently and with remorse when he confessed: “They came first for the Communists, and I didn’t speak up because I wasn’t a Communist. Then they came for the trade unionists, and I didn’t speak up because I wasn’t a trade unionist. Then they came for the Jews, and I didn’t speak up because I wasn’t a Jew. Then they came for me and by that time no one was left to speak up.”
Legislation Lineup for Lawyers

by Senator Adam Kline and Representative Jamie Pedersen

The 2010 session of the Legislature was once again dominated by resolving the state’s budget crisis. As chairs of the House and Senate Judiciary Committees, we continued our efforts to preserve funding for Justice in Jeopardy initiatives in a time of large cuts to other parts of the budget. Our efforts were largely successful, with minimal cuts (less than one percent over the biennium) in state funding for trial court operations and the Office of Civil Legal Aid, and no cuts in the Office of Public Defense budget, aside from a minor reduction for temporary layoffs.

Despite the legislative focus on budget issues, the House and Senate Judiciary Committees had a busy docket during this 60-day session. House Judiciary was referred 90 new measures, while Senate Judiciary received 100 new measures. Of the new legislation and measures left over from the previous session, House Judiciary held hearings on 54 measures, and reported out 39 measures with a do-pass recommendation. Of those, 23 passed the Legislature and were signed into law by Governor Gregoire. In addition, Senate Judiciary was referred 6 gubernatorial appointments, of which 5 were heard and ultimately confirmed by the Senate.

The Judiciary Committees have broad jurisdiction, although there are differences between the subjects each committee handles. Both committees address legislation concerning: corporations and other business and legal entities; real property; tort law; probate, trusts, and estates; judicial branch agencies and the court system; civil and criminal procedure; and guardianship. Principal differences in committee jurisdiction are that family law issues are handled by House Judiciary, but not Senate Judiciary; and criminal law issues are handled by Senate Judiciary, but not House Judiciary, with exceptions.

This article provides summaries of the main bills of interest to attorneys that were considered by the House and Senate Judiciary Committees. Information about other legislation enacted in 2010 can be found on the legislative website, www.leg.wa.gov. More detailed information, including bill reports and bill history, can be found through the “bill information” link. A brief summary of all legislation passed, arranged by committee, can be found on the House and Senate websites www.leg.wa.gov/house/committees and www.leg.wa.gov/senate/committees. Judiciary Committee staff can be contacted at 360-786-7180 (House) and 360-786-7491 (Senate).

Criminal Law

ESHB 2424 — Protecting Children from Sexual Exploitation and Abuse
Prime Sponsor: Representative Al O’Brien

A new criminal offense is created for Viewing Depictions of a Minor Engaged in Sexually Explicit Conduct. This new crime and the existing crimes relating to depictions of minors engaged in sexually explicit conduct are segregated into first- and second-degree offenses, and rules regarding units of prosecution for these crimes are established. Affirmative defenses are provided for individuals assisting a law enforcement investigation, legislative staff, and employees of higher education institutions. The definition of “predatory” for purposes of sex offender sentencing is modified to include individuals providing home-based instruction.
HB 2625 — Bail for Felony Offenses  
Prime Sponsor: Representative Troy Kelley
A new chapter is established governing the pretrial release on conditions or detention of a person charged with a capital offense or an offense punishable by life in prison. This legislation is contingent on the passage of the proposed constitutional amendment regarding bail (see ESHJR 4220 below). A judge must detain a person charged with a capital offense or an offense punishable by life in prison if the judge finds by clear and convincing evidence that the person shows a propensity for violence that creates a substantial likelihood of danger to the community or any person and no condition or combination of conditions will reasonably assure the safety of any other person and the community. This legislation also establishes, for the time period of January 1, 2011, until July 31, 2011, a requirement that bail for a person charged with a felony offense must be determined on an individualized basis by a judicial officer.

2SHB 2742 — DUI and Ignition Interlock Requirements  
Prime Sponsor: Representative Roger Goodman
A number of changes are made regarding ignition interlock requirements and DUI offenses. The persons who may apply for an ignition interlock license are expanded, as is the employer exception to an ignition interlock license and the circumstances under which the court may waive ignition interlock license requirements. A person in deferred prosecution is no longer required to apply for an ignition interlock license, and certain conditions must be met before an ignition interlock requirement on a person’s driver’s license may be removed. Changes are made to penalties for violations of ignition interlock requirements and the definitions of “prior offenses” and “within seven years” for the purposes of DUI sentencing. The legislation also addresses the duties and liabilities of municipalities and counties when a person is under probation or supervision and required to use an ignition interlock device.

ESHJR 4220 — Constitutional Provision Relating to Bailable Crimes  
Prime Sponsor: Representative Mike Hope
An amendment to the state Constitution is proposed to give judges discretion to deny bail to a person charged with an offense punishable by life in prison if there is clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any person. Denial of bail under these circumstances is subject to limitations determined by the Legislature.

ESB 5516 — Drug Overdose Prevention  
Prime Sponsor: Senator Rosa Franklin
ESB 5516 provides protection from prosecution under the Uniform Controlled Substances Act to persons who seek or receive medical assistance for a drug-related overdose. This protection from prosecution applies to both a person who experiences a drug-related overdose, as well as any person witnessing the drug-related overdose who seeks medical assistance, if the evidence of the criminal offense was obtained as a result of seeking or receiving medical assistance. The legislation also authorizes any person to administer, dispense, prescribe, purchase, acquire, possess, or use Naloxone as part of a good-faith effort to assist a person experiencing, or likely to experience, an opiate-related overdose.

SSB 6192 — Restitution in Juvenile Cases  
Prime Sponsor: Senator Chris Marr
The portion of a juvenile offender’s disposition related to restitution may be modified as to amount, terms, and conditions for up to a maximum of 10 years after the juvenile’s 18th birthday. Restitution may include the costs of counseling reasonably related to the offense. A juvenile can petition the court to have his or her record sealed as long as the juvenile has paid the full amount of restitution ordered. Once the court orders that a juvenile offender’s record be sealed, the court’s jurisdiction regarding restitution ends.

SSB 6293 — Criminal Assistance in the First Degree  
Prime Sponsor: Senator Dale Brandland
The offense of rendering criminal assistance in the first degree is raised to a class B felony. If the criminal assistance is rendered by a relative who is under the age of 18 years, the offense is a gross misdemeanor.

SSB 6398 — Malicious Harassment Definition of Threat  
Prime Sponsor: Senator Adam Kline
The definition of “threat” for the purposes of the offense of malicious harassment is revised. “Threat” means to communicate, either directly or indirectly, the intent to cause bodily injury to any person, or the intent to cause physical damage to the property of any person, immediately or in the future.

ESSB 6476 — Sex Crimes Involving Minors  
Prime Sponsor: Senator Val Stevens
The offense of commercial sexual abuse of a minor is raised to a class B felony, promoting sexual abuse of a minor is raised to a class A felony, the seriousness levels and fines for these offenses are increased, and law enforcement authority to impound a vehicle used in these offenses is expanded. The legislation also makes a number of changes impacting minors involved in sexual abuse of a minor offenses, including designating them as victims under the Victim Compensation Benefits Program, and including sexually exploited children in the definition of child in need of services. Prosecutors are required to file a diversion for a juvenile’s first prostitution-related offense and the DSHS is required, upon referral, to connect a juvenile who has been diverted for a prostitution-related offense to services for children who have been sexually assaulted. In addition, the legislation requires crisis residential centers to have, or have access to, a person trained to work with sexually exploited children as a condition of licensing.

E2SSB 6561 — Access to Juvenile Offender Records  
Prime Sponsor: Senator James Hargrove
Criteria for the sealing of juvenile offense records are revised for class A and class B felonies that are not sex offenses. A juvenile may petition the court to seal a record of a class A felony that is not a sex offense if the juvenile has spent five years in the community with no new offenses and meets other statutory criteria. For a class B felony that is not a sex offense, the waiting period before a juvenile may petition for sealing is decreased from five years to two years.

SSB 6673 — Bail Practices and Procedures Task Force  
Prime Sponsor: Senator Adam Kline
A legislative work group on bail is established to review all aspects of bail and pretrial release. The work group must report its findings and recommendations to the Washington State Supreme Court, the governor, and appropriate committees of the Legislature by December 1, 2010.
Options from Group Health offer four plans to meet the needs of a wide range of Bar Association members, from large firms to sole proprietorships. Options is a new approach to HMO products and is designed for flexibility and affordability—three of the four Options plans allow you to use the provider of your choice. Options plans offer online services that can save time and money such as same day appointment scheduling, test results, pharmacy services and direct e-mail communications with your doctor.

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BUSINESS LAW

2SHB 2576 — Fees for Entities and Programs Administered by the Office of the Secretary of the State
Prime Sponsor: Representative Phyllis Gutierrez Kenney

Various fee provisions in statutes governing corporations and other entities regulated by the Corporations Division of the Office of the Secretary of State (OSOS) are revised and fee revenue is redistributed to allow the Corporations Division to be self-supported by fees for the programs it administers. The annual license fee that applies to for-profit business entities is increased by $10, and certain other entity and organization fees established by statute are eliminated and the OSOS is required to establish these fees by rule. Fees for registrations under the Charitable Organizations Act are increased and the increased fee revenue is to be deposited in the Charitable Organization Education Account. A provision of the Trademark Registration Act is amended to allow the OSOS to cancel a certificate of registration of a trademark that was issued in error.

SHB 2657 — Dissolution of Limited Liability Companies

Prime Sponsor: Representative Jamie Pedersen

SHB 2657 revises the requirements for dissolution of a limited liability company (LLC), eliminating the concept of a “certificate of cancellation” for a dissolved LLC. The legislation creates a certificate of dissolution for LLCs to provide notice of dissolution and establishes procedures to allow a dissolved LLC to dispose of known claims. In addition, the legislation modifies procedures for how a voluntarily dissolved LLC may revoke its dissolution and the process for how a dissolved LLC winds up its affairs.

SHB 3046 — Dissolution of the Assets and Affairs of a Nonprofit Corporation
Prime Sponsor: Representative John Driscoll

The procedures for judicial liquidation of a nonprofit corporation are repealed and replaced with dissolution provisions from the Model Nonprofit Corporation Act, Third Edition, adopted by the American Bar Association. A superior court may dissolve a nonprofit corporation in an action brought by the attorney general, members, directors, or creditors of a nonprofit corporation, if certain criteria are met. Procedures for judicial dissolution are established, including provisions regarding the appointment of a receiver or custodian to manage the affairs of the nonprofit corporation during the dissolution proceeding. The act is prospective and only applies to actions or proceedings commenced on or after March 25, 2010.

PROBATE/TRUSTS/ESTATES

SSB 6831 — Estates and Trusts
Prime Sponsor: Senator Linda Evans Parlette

SSB 6831 creates a method to address certain wills and trusts that use formulas or terms tied to federal estate and generation-skipping transfer taxes while these taxes are repealed in 2010. A will or trust of a decedent who dies after December 31, 2009, but before January 1, 2011, will be deemed to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009, if the will or trust meets certain conditions. A proceeding may be brought under the Trust and Estate Dispute Resolution Act to determine whether the decedent intended for certain references to be construed with respect to federal law as it existed after December 31, 2009.

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HB 2735 — Representation of Children in Dependency Matters
Prime Sponsor: Representative Roger Goodman
In a child dependency proceeding involving a child who is age 12 or older, the Department of Social and Health Services (DHS) and the guardian ad litem (GAL) must notify the child that the child has the right to request an attorney. The DHS or the GAL also must notify the child of his or her right to petition the court to reinstate a previously terminated parent’s rights under certain circumstances. The Administrative Office of the Courts is directed to develop recommendations for voluntary training and caseload standards for attorneys representing children in dependencies.

SHB 3016 — Modifications and Adjustments of Child-Support Orders
Prime Sponsor: Representative Jamie Pedersen
The criteria for when the Department of Social and Health Services may seek to modify or adjust a child-support order are revised. Standards for modifications or adjustments are provided for both public-assistance cases and non-assistance cases. If testimony other than an affidavit is required in any modification proceeding, the court must permit a party or witness to testify by telephone or other electronic means, unless good cause is shown.

DOMESTIC VIOLENCE

ESHB 2777 — Domestic Violence Provisions
Prime Sponsor: Representative Roger Goodman
ESHB 2777 changes many aspects of the laws relating to domestic violence. The legislation modifies how prior felony and non-felony domestic-violence-related offenses are counted in sentencing, the maximum probationary periods that may be imposed, and factors that a court must consider in sentencing offenders. In the context of protection orders and no-contact orders, the legislation addresses a number of issues, including court jurisdiction over respondents who are non-residents, the rights of persons age 13 or older to petition for protection orders, and the ability of victims to move to modify or rescind a no-contact order. Other changes in the legislation affect treatment programs and services for domestic-violence perpetrators and victims, transmittal of information concerning revocation of concealed pistol licenses for persons subject to a protection order or no-contact order, and the right to control disposition of the remains of a murder victim.

OTHER CIVIL LAW

SHB 1913 — Process Server Requirements
Prime Sponsor: Representative Judy Warnick
Additional criteria are established for process servers who serve process for a fee. In addition to registering with the county auditor, process servers must be Washington residents at least 18 years of age or older. The residency requirement does not apply to those persons who are exempt from the registration requirement, and the registration exemption for employees of a registered process server is eliminated.

ESHB 2518 — Oath Requirements for Interpreters
Prime Sponsor: Representative Roger Goodman
Interpreters who are certified or registered

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by the Administrative Office of the Courts are not required to take an oath at the beginning of each interpreting session if the interpreter takes the oath upon certification or registration and every two years thereafter. Interpreters who are not certified or registered must continue to take the required oath at the beginning of each interpreting session.

HB 2861 — Allowing Court Reporters to Administer Oaths and Affirmations
Prime Sponsor: Representative Jay Rodne

State-certified court reporters are added to the list of persons authorized to administer oaths and affirmations and take testimony in proceedings.

2SHB 3076 — Involuntary Treatment Act
Prime Sponsor: Representative Mary Lou Dickerson

The Involuntary Treatment Act is amended to expand the factors that may be considered by designated mental health professionals and the courts when determining whether a person should be detained. The factors include information relating to behavior and symptoms, including information provided by credible witnesses, such as family members or others who have had significant contact with the individual or who are familiar with the individual's history. Notice of the discharge of a detained person must be provided to a designated mental health professional, and the Washington State Institute for Public Policy is directed to search for a validated mental health assessment tool. The legislation also amends the Sentencing Reform Act to require the court to determine whether a defendant has the means to pay legal financial obligations where the defendant suffers from a mental health condition.

ESSB 6202 — Vulnerable Adults
Prime Sponsor: Senator James Hargrove

A financial institution that reasonably believes that financial exploitation of a vulnerable adult has occurred or is being attempted may refuse to disburse funds from the account of a vulnerable adult or a suspected perpetrator of financial exploitation of a vulnerable adult, subject to notice and other requirements. Financial institutions must provide training on financial exploitation of vulnerable adults to employees, and the institution and its employees are immune from civil liability for certain good faith acts taken in response to the suspected financial exploitation of a vulnerable adult. The legislation also requires mandated reporters to expeditiously report to designated entities when there is reason to suspect a vulnerable adult's death was due to abuse, neglect, or abandonment.

ESSB 6286 — Liability of Cities, Diking Districts, and Flood-Control Zone Districts
Prime Sponsor: Senator Adam Kline

Flood-control zone districts, diking districts, and cities are provided immunity from liability for any non-contractual acts or omissions relating to the improvement, protection, regulation, and control for flood prevention and navigation purposes of any river or its tributaries. Flood-control zone districts may use covered volunteer emergency workers during an emergency, and may provide grant funds for authorized purposes to political subdivisions of the state that are located within the boundaries of the zone.

SSB 6395 — Lawsuits Aimed at Chilling the Exercise of the Constitutional Rights of Speech and Petition

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SSB 6459 — Inspection of Rental Properties
Prime Sponsor: Senator Steve Hobbs
SSB 6459 allows local municipalities to require landlords to provide a certificate of inspection of their rental property. Standards and criteria for the inspection program are provided, including procedures for providing notice to tenants and appealing inspection results. Courts are authorized to issue a search warrant for the purpose of allowing a code enforcement official to inspect any specified premises to determine the presence of an unsafe building condition or a violation of building regulations. Penalties are established for non-compliance, falsifying information in a certificate of inspection, and obstructing an inspection pursuant to a search warrant.

SSB 6590 — Law Enforcement Officer Conduct
Prime Sponsor: Senator Adam Kline
A new public policy is created which states that all commissioned, appointed, and elected law enforcement personnel must comply with their oath of office and agency policies regarding the duty to be truthful and honest in the conduct of their official duties. This legislation was in response to a Washington State Supreme Court case finding that, for the purpose of vacating an arbitration decision arising out of a collective bargaining agreement, there was no explicit, well-defined, and dominate public policy requiring termination of an officer found to have been untruthful.

SSB 6591 — Human Rights Commission
Prime Sponsor: Senator Adam Kline
The Human Rights Commission is given the authority to dismiss a complaint alleging unlawful discrimination without conducting a full investigation if the facts as stated in the complaint do not constitute an unfair practice under the Washington Law Against Discrimination. This authority does not apply to complaints alleging discrimination in real estate transactions, which will continue to require a full investigation.

ESB 6610 — Commitment of Persons Found Not Guilty by Reason of Insanity
Prime Sponsor: Senator James Hargrove
ESB 6610 revises the laws relating to commitment and supervision of persons found not guilty by reason of insanity. An independent Public Safety Review Panel is established to advise the courts and the Department of Social and Health Services (DSHS) regarding commitment status, movement, and furloughs, for persons committed as a result of a finding of not guilty by reason of insanity. The DSHS is authorized to place a committed person in a secure...
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Facility, subject to review and treatment requirements, if the person presents an unreasonable safety risk in a state hospital. The DSHS may petition for the conditional release or release of a person committed to a state hospital facility under specified circumstances, and a court may deny a person’s petition for release if the person suffers from a mental disease in remission. The legislation also imposes requirements regarding the supervision of persons on conditional release and notification when a conditionally released person undergoes a change in mental health conditions or does not comply with conditions of release.

SSB 6674 — Indemnification Agreements Involving Motor Carrier Transportation Contracts

Prime Sponsor: Senator Adam Kline

Motor carrier transportation contracts are added to the type of contracts for which indemnification is enforceable only to the extent of the indemnitor’s negligence. A definition of motor carrier transportation contract is provided, and intermodal shipping is specifically exempted.

ESB 6764 — Interest Rates on Tort Judgments

Prime Sponsor: Senator Randy Gordon

The interest rate on judgments arising from the tortious conduct of an individual or entity, other than public agencies, is changed to two percentage points above the prime rate. The interest rate on judgments arising from the tortious conduct of a public agency remains at two percentage points above the 26-week treasury bill rate. The new interest rate applies to judgments entered on or after June 10, 2010, as well as to judgments entered before that date that are still accruing interest.

Senator Adam Kline has served for 12 years as the senator for the 37th District of Washington. Before entering law school, he worked as a merchant seaman and as a newspaper reporter. He practiced law for 32 years before retiring in 2004 to work for the Laborers Union. Representative Jamie Pedersen has represented the 43rd Legislative District (central Seattle) since 2006 and became the chair of the House Judiciary Committee this session. Since 1995, he has practiced corporate law and worked on civil rights issues at K&L Gates LLP in Seattle. Senator Kline and Representative Pedersen would like to thank House Judiciary staff Edie Adams and Senate Judiciary staff Lidia Mori for their assistance with this article.
Did you ever wonder why so many of us pronounce “comfortable” as if the T came before the OR? Or “iron” as if the O came before the R?

Welcome to the crazy world of American English pronunciation.

We seem to mispronounce many of our words out of sheer laziness. We’re cumulative cutting the word “comfortable” down to three syllables instead of four, and getting “iorn” out in just a shade over one syllable instead of a laborious two.

Actually, it may not be laziness, but rather its opposite. Only people who are in a great hurry to get something said would be so intent on saving syllables and running words together.

“Jeatjet?”
“No, ju?”
“Nope — squeat.”

If you can follow that bit of dialogue, you’re an adept speaker (or listener) of breathless, rushed American English. (And if you can’t follow it, get in touch with me and I’ll explain it to you—but only if you haven’t eaten yet, so you can take me to lunch.)

Mispronunciation and My Pronunciation

Of course, eccentric pronunciation isn’t always mispronunciation. Regionalism has a lot to do with pronunciation, and this gets us away from issues of correctness and instead into the world of local color. Regional pronunciation can be a matter of personal pride. When I was in the Army, a couple of lifetimes ago, I was once playing eight-ball with a friend from the deep South. As you may know, the game of eight-ball involves one player’s trying to shoot down all of the striped balls before the other can shoot down all of the solid-color balls. After the break, my opponent announced, “I’ve got the strops.”

“Strops?” my Yankee friends and I asked. “What are strops? You mean those things you use to sharpen razors?” After we’d enjoyed a chuckle at his expense, our buddy replied, “You guys are laughing because you think I can’t say stripes. Well, I can: Stripes. Now let’s play pool. I’ve got the strops.”

We tend to admire that kind of personal pride, and so we generally respect regionalism. Even colorful regionalism can create problems, though. Some people pronounce an initial or terminal short “i” as “uh” (like the “u” in “tub”) rather than “ih” (like the “i” in “bit”). Such people tend to say “Uhiuh” for “Ohio” and “Muzzurah” for “Missouri”—and they tend to be from that part of the country. This can become problematic, however: One such person I know consistently pronounces “illegal” as “uhllegal,” which in practice makes the phrase “illegal activity” sound exactly the same as “a legal activity.” You can see the problem.

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But though well-spoken people tend to respect or at least tolerate regionalism, they tend not to respect your common garden-variety mispronunciation. You know, the kind of mispronunciation that is (fairly or not) associated with ignorance. Like leaving out the C in the middle of “Arctic,” or dropping the first R in “library” or “February.” There are whole categories of mispronunciations of this type; and notwithstanding the fact that they sound “ignorant” to the educated ear, they
don’t really seem to have much to do with how well educated the speaker is.

We’ve all heard, for example, well-educated people who stubbornly insist on pronouncing “nuclear” as if it were “nucular.” These folks are perfectly capable of saying “new” and “clear,” but put the two sounds together and they just insist on adding that “yoo” sound. Maybe they want it to sound more like “molecular,” because it seems related to that word. “Peremptory” is often mispronounced “preemptory,” and “bestial” as if it were spelled “beastial,” for the same reason. And we all know well-educated people who are so comfortable with the common prefix “ex-” that they use it with practically any word that starts with “e”: excape, expecially, expresso, and the dreaded ex cetera.

It’s comfort again. A lot of folks just like to pronounce a word in a way that feels comfortable to them, even if it’s dead wrong. The word reminds them of another word, the two words and their sounds link up, and an idiosyncratic pronunciation is born—and is thereafter repeated by enough others that it eventually reaches the point of critical mass, at which it becomes either ostracized as an error or accepted as correct, depending on who is listening.

I had a college housemate who always pointedly pronounced the first D in “Wednesday,” and I never thought anything was wrong with that, even though most people say “Wensday.”

Word-Stuffing

Mispronunciations are not always the result of being in a hurry, like “cumfterbul,” or “Cal-vary” for “cavalry.” Indeed, you can find a lot of words that are commonly mispronounced by adding a syllable: “joolery” for “jewelry”; “athalete” for “athlete”; “preventative” instead of “preventive”; “realator” instead of “realtor” (though Realtor® is a registered trademark of The National Association of Realtors, and should not be used as a generic word for “real estate agent” anyway). Here again, people who do not tend to think about the words they say probably adopt these mispronunciations because they sound and feel enough like other correctly pronounced words to make the wrong pronunciation feel more comfortable than with the right one.

Thus, more people seem to pronounce the adjective “loath” as if it were the same as “loathe” rather than correctly rhyming it with “both.” One still hears “sherbet” pronounced as if it were “sherbert,” probably because Herbert is a familiar name, while no one can think of a word that rhymes with or sounds like “sherbet” (but the growing popularity of “sorbet” may have solved this problem altogether).

Misplaced stress is another common category of mispronunciation: mischievous, formidable, and banal are examples of words whose correct pronunciation stresses a different syllable from the one many speakers expect. In the first case, “mischievous” accents its first syllable in the same way its root word “mischief” does, but some folks go astray by accenting the second syllable, and others go even farther, inserting a phantom syllable between the second and the third, to create the four-syllable “misCHEEVYous” — beguilingly impish-sounding, but wrong. “Formidable” really looks as if it ought to be pronounced “forMIDable,” and I could never figure out why it isn’t. “Banal” is more a case of preserving the sound of the original French word.
Then there’s the football mispronunciation. This phenomenon is best exemplified in the words “offense” and “defense.” Both are correctly pronounced with the stress on the second syllable ... except in football, which seems to have a special dispensation from correct pronunciation and has caused most of our country to embrace OFFense and DEEfense. To be fair, the saying “The best defense is a good offense” sounds a little silly when the words are pronounced correctly; but that recognition seems to have given football full license to mispronounce those two words whenever they are used, not just when necessary for rhetorical effect. Another footballism is Brett Favre’s stubborn insistence on mispronouncing his own name. Surely he’s noticed that the V comes before the R. Granted, Favre — a common French surname — is not easy on the American tongue or ear. But if the one-time Mariners manager Jim Lefebvre could Anglicize his name into “LeFever” (the B was silent), why couldn’t Brett Favre Anglicize his into “Faver” instead of “Farve,” which is completely unsupported by the plain spelling of the word?

**Speaking the Unfamiliar — and the Silent**

Sometimes people mispronounce a word simply because they’ve never heard it spoken before. One of the most frequently mispronounced English words is “flaccid,” which is seen in print more often than it is actually spoken. Indeed, it isn’t really seen in print all that often, either — or at least it wasn’t until the Baby Boomers hit their golden years, and we saw the rise (so to speak) of the cultural phenomenon known as Viagra. One’s natural inclination is to pronounce the word “flaccid” with two soft Cs, rhyming with “placid.” But in fact (and oddly appropriate to the word’s meaning) the first C is hard, the second soft: the pronunciation is “flaxid.” This seems strange to us, since “placid” is the word it most seems to resemble. But “placid” has only a single C, and the correct pronunciation of “flaccid” makes more sense when we recall other English words with a double-C: access, success, accident.

Of course, the English language doesn’t help matters much by giving us a plethora of words containing silent letters. “Often” is an oft-cited example. “Know” and “knife” are others. Most silent letters are vestiges of earlier pronunciations, often of foreign words. Tom Lehrer lampooned this feature of English by telling a story about a non-conformist friend named Henry, who spelled his name HEN3RY. “The 3 was silent,” Lehrer explained.

The jury is still out on whether some words should be pronounced as spelled or not. I had a college housemate who always pointedly pronounced the first D in “Wednesday,” and I never thought anything was wrong with that, even though most people say “Wensday.” I have also read in dictionaries that the L in “almond” is silent, but I’ve never said it that way, nor met anyone who did. Same with “folk.”

Probably the most notorious silent letters in English are the “gh” combination, as in “thought” or “high.” But “gh” is more than just another silent letter group. When combined with “ou,” it’s a formidably versatile, weapons-grade phoneme. Consider the different pronunciation of the same four-letter set in such words as tough, cough, through, plough, and though.

Which leads me to George Bernard Shaw’s famous word “ghoti,” an essential element of any consideration of English pronunciation. “Ghoti,” in case you don’t already know it, is pronounced “fish”: “gh” as in “enough,” “o” as in “women,” “ti” as in “nation.” The word “women” is a particularly baffling case: When we change “woman” to plural, we change the spelling of the second syllable, but, unac-
countably, it is the pronunciation of the first syllable that changes. This makes no sense, and is one of the top ten things I’d like to change about the English language. Though far be it from me to try to accomplish what Shaw and Lehrer could not.

**English as Challenge**

No wonder English is a hard language for ESL folks to learn. My hat is off to all of the many people who have learned to pronounce English words and construct English sentences without having been born to it.

There are rigid rules of pronunciation in some countries. You can see a German word for the first time and have no clue what it means, but if you know German pronunciation, you can say it correctly, no matter how long and complicated it is. In English, however, the correct pronunciation of a word is often anyone’s guess, and sometimes legitimately a matter of opinion or personal preference.

There are two kinds of foreign terms in English: those that were imported wholesale or personal preference. The large number of English words that came from other languages — and the large number and diversity of languages they came from — accounts in large part for the idiosyncrasies of English pronunciation. And in American pronunciation specifically, the different accents of those using the words in “Melting Pot” America also contributed to the sound of today’s American English.

A uniquely American sense of drama in the spoken word reveals itself in our many unexpected and puzzlingly illogical approaches to the pronunciation of foreign and foreign-derived words. The fuchsia is named for the German botanist Leonhardt Fuchs, whose surname is the German word for “fox” and is pronounced more or less like “fooks.” The spelling of “fuchsia” lends itself to the pronunciation “fook-sia.” Who on earth decided it should be pronounced “fewsha” (as if the S were before rather than after the CH)? The Italian word *forte*, meaning force or strength, is pronounced something like “FOR-teh,” but when using the word to mean “my strong suit,” most Americans want to say “for-TAY,” and dictionaries tell us to say simply “fort.”

**Stop! Don’t Touch That Keyboard!**

Before you rush to dash off an e-mail to me saying, “But wait, Professor Bob, my dictionary says ‘beastial’ is an accepted pronunciation of ‘bestial,’ or lists ‘preventative’ as an alternative form of ‘preventive,’ or shows ‘sherbert’ as an alternate spelling of ‘sherbet,’” here’s something you should know. Dictionaries (most of them, anyway) are descriptive, not prescriptive; that is, they record how the language is being used, not what is correct. This was not always the case. People of my modestly advanced age remember going to the dictionary for judgments on correct spelling, pronunciation, and usage. But today, many dictionaries strive to catalog all variant usages, and do not distinguish between genuine variations and simple errors. Thus, the errors get codified into the dictionary along with the variations. Eventually, anything that comes out of anyone’s mouth, right or wrong, will be validated by inclusion in a dictionary.

But what we’re concerned with in this little examination of pronunciation is not what is correct but rather the phenomenon of pronunciations that are at odds with the spelling of the word. Indeed, we shouldn’t speak of “mispronunciation” in the sense that it is *wrong*, but in the sense that it doesn’t seem to reflect the *spelling* of the word. Beneath that assertion lies the recognition that a word is spelled the way it is for a reason, and that reason is so that we may know how to pronounce it. But by focusing on why words are so often not pronounced as they are spelled, we may be getting it exactly backwards.

The spoken word came before the printed word, and the purpose of the printed word was to try to represent the spoken word in a visual way. Character-based writing systems try to represent the *meaning* of the spoken word, while writing systems based on phonetic alphabets seek to represent the *sound* of the spoken word. But pronunciation evolves over time.

Pronunciations of words tend to change due to some of the circumstances we mentioned above. Two of the most common are regionalism and haste. Regional differences in pronunciation of even simple, everyday words are due chiefly to the evolution of the accents of those who initially settled an area, gradually tempered by the accents of others who joined them at later times and from other places. Haste as an agent of change in pronunciation is due to the fact that we usually don’t want to take the time to speak slowly. Sometimes, in fact, we can’t afford the time. “Colonel, the enemy is attacking from the right!” shouts the lieutenant. “Colonel” was probably originally pronounced much like it looks, and it’s easy to see how hurried lieutenants, over several generations, might have abbreviated the pronunciation of the word to “co’nel” — though it’s a little harder to surmise how the “r” sound we use today got in there.

In any event, the point is that pronuncia-
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tion evolves over time, and it can do that because the spoken word is fluid and flexible, and may be shaped according to individual and communal contexts. Not so with the printed word, which in its earliest manifestations was quite literally set in stone, and with the evolution of writing and printing technology has become even more rigidly bound by a sense of correctness. Because your spelling has to be correct or it will make you look like a fool, we tend not to allow the flexibilities in spelling we permit in pronunciation. Thus pronunciation evolves while spelling does not — leading us to recognize that our real concern when we consider pronunciation is that, in an increasing number of cases, the spelling of the word no longer reflects the pronunciation that it was once intended to replicate.

Looking at it this way may make us more forgiving of what we refer to as "mispronunciations." It may also help to recognize that while misspelling may make you look like a fool, it is not mispronunciation that makes you sound like a fool, but rather pronouncing things differently from those around you. You may, for example, say "bestial," or "flavid" when everyone else is saying "flasid." The fact that your pronunciation is the more "correct" and time-honored is not going to make you sound any less like a prig. But these are exceptions. In most cases, the pronunciation we regard as "wrong" is still the one less commonly heard.

The Ballad of Lady Mondegreen

Why is all of this important? One good reason is that, rightly or wrongly, people will judge you on your pronunciation. So you should make it your business to make sure you know the "correct" (or should we start saying "commonly accepted"?) pronunciation of a word you are planning on uttering—especially in a speech or a closing argument.

But another reason is that, if you are lazy about your pronunciation, people might misunderstand what you said. A lot of common misunderstandings of words and phrases arise from hasty pronunciation or mispronunciation, leading listeners to perceive and repeat the words in a different (but often weirdly logical) way. Alzheimer's Disease is often misreported as "Old Timers' Disease." People refer to a "card shark" instead of a "card sharp," or to "the spitting image" instead of "the spit and image." Authors striving for regionalism in writing rural dialogue have coined "would of" (as in "I would of come if I'd known"), but this is not a mispronunciation on the part of the speaker; it's a mishearing of "would've," a contraction of "would have." Tennessee Williams famously memorialized a mishearing of "pleurisy" as "blue roses" in The Glass Menagerie. A surprising number of people say "it's a doggy-dog world" based on a mishearing. It's a dog-eat-dog world, not a warm and cuddly and welcoming one—unless you're a hip-hop artist.

Prayers that are memorized and recited, often phonetically by children too young to understand the meaning of the words, have been a rich source of such misheard phrases. The 23rd Psalm encourages us that "Surely good Mrs. Murphy shall follow me all the days of my life." And Catholic kids hailing Mary have been known to be puzzled by the phrase "blessed art thou, a monk swimmin'." But it's a hymn, not a prayer, that gave us the best one: "Glady the Cross I'd Bear" invoked, for fidgety kids at Sunday service, an adorable cuddly friend, Gladly, the cross-eyed bear.

Indeed, songs are the greatest source of such mishearings, because sung lyrics are often hard to discern, especially when musically slurred or drowned out by instruments. Did you know that Santa Claus has ten reindeer? We know the traditional eight from Clement Moore's famous poem "A Visit from St. Nicholas" (aka "The Night before Christmas"). But the 1949 hit song "Rudolph the Red-Nosed Reindeer" gave us not one but two additional reindeer: One of course is Rudolph; the other is Olive, a hard-hearted creature who used to laugh and call him names.

In "Lucy in the Sky with Diamonds," there's a disarming moment when "Somebody calls you, you answer quite slowly, a girl with colitis goes by." Creedence Clearwater Revival's John Fogerty gives important information to his party guests when he sings, "There's a bathroom on the right." And no one has ever been able to explain why Jimi Hendrix interrupted "Purple Haze" to say "'scuse me while I kiss this guy."

There's a word for these misheard phrases, and that word also comes from a song—sort of. Actually, it came from the ears and mind of one Sylvia Wright, who recalled an old Scottish ballad, "The Bonnie Earl o' Murray," which was often read to her when she was a child. One stanza told the sad tale:

Ye Highlands and ye Lowlands,
Oh, where hae ye been?
They have slain the Earl o' Murray,
And Lady Mondegreen.

But what sounded like a double slaying turned out to be only a single assassination. The actual lines are: "They have slain the Earl o' Murray/And laid him on the green."

And that is why, thanks to Ms. Wright, phrases that are misunderstood because of their pronunciation are called Mondegreens— a fitting memorial to the evaporation of the dear lady who, far from being murdered with the bonny Earl, never existed at all.

Whatever else they may have done, these lazy pronunciations and mishearings have, at least, given us an occasion for laughter — and anything that does that can't be bad.
SEX OFFENSES
REQUIRE A DEDICATED DEFENSE

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A True Story: An elderly widower comes to an attorney’s office, asking the attorney to prepare a will which would leave his modest estate, consisting mainly of four bank accounts solely in his name, to his four adult children. The attorney drafts, and the client executes, a simple will consistent with these instructions.

Later, the client mentions that he has added his youngest daughter’s name to his bank accounts. The attorney confirms the change — the four accounts have, in fact, been converted to Joint Tenancy with Right of Survivorship (JTWROS) accounts in the name of the client and his youngest daughter. The attorney contacts the client to determine whether he understands the significance of the change. Does he realize that, upon his death, his entire estate will pass to his youngest daughter?

He doesn’t. The reason he added his daughter’s name to the accounts was because a teller at his bank told him that setting up a JTWROS account would “avoid probate.” The phrase “avoid probate” was like catnip to the client, since he had a firm, albeit vague, idea that “probate” involved a fate (taxes, delay, attorney fees, litigation, expense, pain, suffering, etc.) far worse than the death which precipitated it. He also liked the idea that his youngest daughter could write checks for him if he ever needed help, and that she would have immediate access to his funds to pay for funeral expenses when the time came.

But surely the change at the bank wouldn’t affect the terms of the will, would it? The helpful bank teller never mentioned his estate plan, and there was nothing in the papers he and his daughter signed which would lead him to believe that his will had been “trumped” by the designation on the bank signature card.

This is a true story. I was the attorney; the client was my father. Fortunately, the problem was discovered and corrected before my father’s death. Many others are not so lucky.

Taufen v. Estate of Kirpes. (Wash. App. Div. 3; April 10, 2010; No. 27799-2-III). Mrs. Kirpes was dying of cancer and wanted to get her affairs in order. Her will, executed shortly before her death, left her estate, in varying shares, to two Catholic nuns, to a Catholic church in Clarkston, Washington, and to her late husband’s cousins. She left her house to her longtime handyman and friend, Terry Yochum.

Shortly before signing her will, Mrs. Kirpes closed a joint bank account which was in her name and that of a former caregiver. She told her banker that the new account would be a joint account with Terry Yochum. Mrs. Kirpes made no mention of a survivorship provision. The banker, however, unilaterally designated the account as JTWROS. A few days later, Mrs. Kirpes transferred a substantial investment account to the JTWROS bank account. Upon her death, Mr. Yochum argued that the bank account ($231,624) passed to him pursuant to the JTWROS designation. The trial court, relying on the provisions of RCW 30.22.100 (3), agreed.

In April, 2010, the Washington Court of Appeals, Division Three, reversed, holding that the facts of the case demonstrated, by clear, cogent, and convincing evidence, that Mrs. Kirpes did not intend that the “right of survivorship” provision apply to her checking account or to the funds which were subsequently transferred to it from her investment account. (A Petition for Review has since been filed with the Washington State Supreme Court in Taufen v. Estate of Kirpes.)

Bank Teller or Estate Planner? The Taufen case is unusual in that the banker specifically remembered the account change and testified that she had checked the “right of survivorship” box on the signature card without authorization from the client. A more common scenario is that the identity of the banker setting up the account is unknown, or the banker “doesn’t remember” what was said. The only person who really knows what was intended is deceased, and others may be barred from testifying because of the Dead Man’s Statute (RCW 5.60.030).

Worse, the banker may be unfamiliar with, or indifferent to, the impact that checking a “right of survivorship” box has on the client’s entire estate plan. Most non-attorneys and even some attorneys don’t understand the difference between a joint account (which belongs to the depositor’s estate after death, per RCW 30.22.100 (2)) and a JTWROS account (which passes to the survivor, unless contrary intent is shown by clear, cogent, and convincing evidence, RCW 30.22.100 (3)).

The Taufen case notes that the Financial Institution Individual Account Deposit Act, RCW 30.22, was enacted mainly to provide consistency and simplicity in the relationship between the depositor and the financial institution and to protect financial institutions from becoming embroiled in disputes between and among depositors. Tragically, the Act provides a mechanism for
undoing the most carefully drafted estate plan, resulting in dispositions not intended by the decedent. The high standard of proof required to overcome the presumption that the decedent intended a right of survivorship disposition results in only a slim opportunity for a successful challenge. Financial institutions are generally shielded from liability by RCW 30.22.120. Few probate practitioners have not been confounded and frustrated by this problem.

A Few Modest Proposals. RCW 30.22 enables banks to engage in estate planning with no safeguards and no accountability. JTWROS accounts are favored by banks for their simplicity upon the death of the depositor, but may create chaos in the context of an estate plan. I therefore submit the following suggestions for change:

- **Abolish JTWROS Accounts.** Financial institutions won’t like it, but such a change would get bankers out of the estate planning business. Given the expected opposition from the banking industry, the chance of enacting such legislation is admittedly minimal.

- **Reverse the Presumption.** Under current law, there is a presumption, rebuttable only by clear, cogent, and convincing evidence, that a depositor who leaves money in a “right of survivorship” account intended that it pass to the survivor. My experience is that depositors rarely understand or intend such a result. The law should be changed to reverse the existing presumption to provide that, unless a survivor can show by clear, cogent, and convincing evidence that the decedent intended to leave the account to him/her, the account would be presumed for convenience only and funds deposited by the decedent would pass to the depositor’s estate.

- **Require Disclosure.** Financial institutions which offer “right of survivorship” accounts should be required to clearly explain, in a separate writing signed by the depositor in the banker’s presence: 1) that a “right of survivorship” designation will result in the account being transferred to the survivor upon death, regardless of the terms of the depositor’s will or other estate-planning device; 2) that the depositor should not ask or receive legal advice from bank employees regarding the type of account he/she selects; and 3) that the depositor should consult with an attorney regarding the type of account he/she establishes. A banker who sets up a “right of survivorship” account should identify himself/herself on the signature form.

Any of these changes would reduce the chaos, confusion, and uncertainty existing under the current law.

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NOTES
1. The banker testified that she knew the difference between a joint account and a joint tenancy with right of survivorship account, but did not discuss the difference with clients. She also testified that it was her standard practice to check the joint tenancy with right of survivorship box on the signature card anytime someone asked to set up a joint account.
2. One major bank in Washington uses a signature card which doesn’t even designate whether an account is “joint” or “joint tenancy with right of survivorship,” but merely refers to the contract of deposit. The contract of deposit consists of a thick pamphlet in miniscule type, which contains the following language buried in the middle: “[i]f two or more of you open an account together it will be conclusively presumed to be owned by all of you as joint tenants with right of survivorship”).
Return of the Diploma Privilege?

A time ago, you could practice law in Washington with a college degree from an approved school. As the WSBA reexamines its bar exam, is this bit of history relevant?

BY W. CLINTON STERLING

Right now, Washington is the only state in the union that administers a bar examination wholly bereft of at least one multistate component.

That, however, may change in the near future. The WSBA Board of Governors is looking into adopting an exam format that more closely resembles the approach taken by the vast majority of states. Options include adopting the Uniform Bar Exam (UBE), or some of its components, such as the Multistate Bar Exam (MBE), the Multistate Essay Exam (MEE), and the Multistate Performance Test (MPT). The Board will also be considering whether to adopt the Multistate Professional Responsibility Exam (MPRE), which is administered entirely separately from the other multi-state exams. [Editor's note: We have covered the WSBA Board of Governors' ongoing discussion of this topic in the "Board's Work" section of past Bar News issues.]

There are several reasons to consider changing the method of testing. First, since Washington is out of step with most states, Washington law schools find themselves at a competitive disadvantage in trying to attract students from out of state. This is because Washington law schools don’t prepare their students to take any components of the UBE, or must make extra time to do so. Second, it has been found that the UBE has a higher level of reliability in assessing applicant competence. Third, it is becoming clearer that there is more of a performance differential between ethnic and gender groups in the Washington exam than in the multi-state approach. Fourth, performance is increasingly seen as highly relevant to preparing students for the real world, and hence a performance evaluation is needed. Finally, using the UBE or its components will make the exam more portable for Washington graduates who wish to seek employment in other states.

All of these reasons are likely to lead the Board of Governors to adopt at least some portions of the uniform exam, pending approval by the Washington State Supreme Court. Furthermore, their concerns that legal approaches that are uniquely Washingtonian be included should be assuaged by the fact that the UBE is flexible enough to incorporate distinctly Washington features. In other words, some Washington-ness can be maintained in the exam, because the UBE is flexible enough to include the traditional Washington essay component or to allow Washington law to be covered in a separate course.

However, while all those issues are being mulled by the Board of Governors, one approach — which harkens back to the early years of the Washington Bar — does not seem to be on the table. A principle known as the "diploma privilege" allowed graduates of approved Washington law schools to be admitted to the practice of law in the state without having to sit for the bar examination. The privilege was common practice in the late 19th century, and even in the 1910s, 16 states, including Washington, continued to use it.

At the time, there were a couple of reasons for the adoption of the privilege. Some universities in the late 19th century considered it essential to the survival and growth of their legal programs, by both attracting students and raising the profile of the school. Other schools contended that "considering the nature of their programs and their regular and systematic examinations there was no need for an oral examination by or before judges as a condition for admission." It was also a way to encourage formal legal education as a replacement for training by "reading law" with a practitioner.

Still, by the turn of the 20th century,
opposition to the privilege, led by the American Bar Association, was growing for a variety of reasons. Concern arose that the privilege was used to favor some schools over others. Critics felt that uniform examination would raise the standards of the law schools, while conversely, maintaining the privilege permitted graduates of some inferior schools to avoid higher standards. Others argued that the privilege of legal practice should not be conferred without some independent and universal test administered by the state — otherwise there could be as many admitting authorities as law schools.

Washington’s use of the diploma privilege began in 1891 when the Legislature authorized the Supreme Court to determine the conditions for admittance to the Bar. Pursuant to that authority, the Court allowed graduates of state-authorized law schools (in any state in the union) to be admitted upon proof of graduation if he or she met the other requirements for admission (age, good moral character, course of study, etc.), although in 1895 legislation was passed requiring an applicant for admission to be examined. Through the next 25 years, the Legislature first limited the privilege to the “graduates of the law department of the University of Washington after a full course of two years study [who] shall be admitted without examination upon the production of their diplomas of graduation . . . .” and then extended it to the graduates of the law department of Gonzaga University as well. The Court’s admissions rules were more reticent, but by 1914, the rules specifically provided that applicants “may be admitted on motion” if they were graduates “of the law department of the State University.”

In 1917, the state Board of Bar Examiners was established, and at first the Board provided for a diploma privilege. However, it was not to last. Subsequently, the Board decided that, beginning in 1920, even law graduates of the University of Washington would be required to take the bar examination. A couple of reasons for the change were enunciated: it would put the graduates of all of the state’s law schools on an equal footing, and it would eliminate discrimination against graduates of schools from out of state. In 1921, however, the Legislature enacted legislation to reiterate its support for a diploma privilege. Clearly, the statute was on a collision course with the rules.
The clash came the following year, 1922, when Leon Hubbard Ellis, a graduate of the University of Washington School of Law, was denied admittance to practice law in the state because he had not taken and passed the state's bar exam as required by the Board. Ellis filed suit, demanding his right to admission be enforced. The case, In re Ellis, was heard en banc by the Washington State Supreme Court, which ruled against the application, holding that there is no de jure right to practice law in the state of Washington and that therefore the Board of Bar Examiners acted within its discretion in applying an exam requirement. In other words, the Board of Bar Examiners could certify, and the Court could admit — on diploma or not — but there was no rule, legislative or otherwise, that compelled them to do so.

In 1933, the Legislature enacted the State Bar Act, which created the Washington State Bar Association and assigned to the Bar's Board of Governors the power to adopt rules, subject to approval of the Supreme Court, and to fix the requirements, qualifications, and procedures for admission to the practice of law. There was no provision for a diploma privilege. Nor was there such a provision in the Court's Rules of Admission to Practice, published in 1938.

Near the end of World War II, in the spirit of the G.I. Bill of Rights, the Washington State Supreme Court promulgated an additional rule of admission which allowed returning servicemen who had graduated from the law schools of either the University of Washington or Gonzaga University to be admitted without examination if they met certain requirements, one of which was completion of a six-month refresher course at one of the named universities. The Legislature reached a similar result in legislation, but since they did not require the mandatory refresher course, they were again on a collision course with the Court.

In Application of Levy, the Court again laid down the law when it ruled against the separate applications of two appellants by reasserting its decision in Ellis. The Court, in the end, was protecting its own judicial authority as a part of the separation of powers. But, by upholding Ellis, the Court was not unmindful of its responsibility:

Such a pronouncement seems rather startling, in view of the fact, known
to everyone, that the legislatures of all of the states, including our own, have repeatedly passed acts regulating admissions to the bar. Are such acts wholly ineffective? The answer to that question is that they are not, in so far as, under the police power, they provide minimum requirements. But the legislative power cannot be exercised in such a way as to deprive the courts of the power to require additional qualifications.15

Since the Court could hardly have been clearer, the matter seemed settled and, for all practical purposes, the diploma privilege was dead and buried. And yet in 1949, just four years after Levy, the Legislature gave it one last try when it passed legislation resurrecting the diploma privilege. This time, though, it was the governor, not the Court, who stood in the way.

Governor Arthur B. Langlie vetoed the enrolled legislation. In a brief message, he offered two reasons. First, he was concerned that waiving the exam would have the effect of lowering the standards of the legal profession and would therefore not be in the public interest. In particular, he felt that professional standards during the period when no examination was required suffered by comparison to standards in the legal profession after examinations became the rule.

Such a comparison clearly demonstrates that when a student knows that he has an examination ahead of him, to be given by a board composed of lawyers, he is much less apt to lay aside subjects once he has passed the law school examination, but on the contrary has kept up on the subject all during the remainder of his course.

In the same vein, the law schools themselves have been more keenly alert to their responsibilities when functioning under the constant reminder that the accomplishments of their students are subject to surveillance of an independent examining board.16

The governor also noted that the bill was unnecessary, since the Supreme Court already had the power to adopt the diploma privilege under existing legislation.
Governor Langlie vetoed the bill for policy reasons. Regardless of whether those reasons were sound, it is unlikely that the legislation would have passed constitutional muster before the same court that ruled in Ellis and Levy. In the end, the governor’s veto was truly the last gasp of the diploma privilege in Washington. At the time there were few states that still allowed the privilege, and the number has dwindled since then. Today, Wisconsin is the only state that still uses it.

Can the Washington diploma privilege be resurrected or make a comeback today? It seems highly unlikely. The Board of Governors is currently considering reforming the bar exam, not eliminating or supplanting it, and the issues that inspire the current effort are unlikely to be addressed by the diploma privilege. Furthermore, there does not seem to be any constituency for bringing the privilege back, with the possible exception of the current crop of Washington’s law students. The diploma privilege in Washington is now clearly a permanent part of the distant past.

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NOTES
1. Stevens, George Neff, Diploma Privilege, Bar Examination or Open Admission, 46 B. Exam’r 15, 17 (1977).
2. Laws of 1891, ch. LV, §10, at 97.
3. Rules of the Supreme Court, Admission of Attorneys, Rule II, 2 Wash. 695 (1891).
4. Laws of 1895, ch. XCI §3, at 178.
5. Laws of 1915, ch. 67 §3(b), at 242.
6. Relating to the Admission of Attorneys, Rule II, 82 Wash. xxxix (1914).
9. In re Ellis, 118 Wash. 484 (1922).
11. Rules on Admission to Practice, 193 Wash. 68a–83a (1938).
15. Id. at 614.
16. Id. at 1092.

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For more information, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Get More Out of Your Software!
As the WSBA enters its 77th year, Blast from the Past revisits what was on the minds of WSBA members from decades past. This article, from The State Bar Review, Volume II, Number 3, is reprinted as it first appeared in April 1936. In this article, two judges address and give advice to 53 recent admittees to the Bar.

Admitting Neophytes

At the time of admission of the fifty-three lawyers to the Bar, various Superior Court judges instructed the neophytes upon their obligations and duties. The Law Review has been favored with some of the instructions complete and only excerpts from others.

From the remarks of Judge Chester A. Batchelor, presiding in the Superior Court, King County, and from those of Judge J. B. Lindsley, Spokane County, the Review places them in this record as a permanent "precedent."

Judge Batchelor:
"Upon the day of my admission to the Bar, my father, an experienced lawyer and jurist, gave me a few practical suggestions. Because they have been helpful to me, I repeat them now. They are as follows:

1. Avoid leading questions on direct examination of your witnesses and thereby save yourself embarrassment by commencing your questions with the words, who, where, when or what. Instead of asking your witness if he did not then do a certain thing, ask him instead: ‘What did John Jones do?’

2. Avoid the use of the word ‘why’ in cross-examination, and beware of the lengthy, aimless cross-examination of adverse witnesses. Do not indulge in angry disputes with hostile witnesses.

3. Be courteous to the court and opposing counsel.

4. Cultivate poise and avoid displays of temper.

5. Be honest and straightforward in all your financial transactions.

6. Avoid, if possible, all personal litigation between yourself and clients or other attorneys.

7. Do not try to mislead the court or the jury as to either the facts or the law.

8. As a bird in the hand is worth two in the bush, so a good compromise is worth more than a judgment subject to the hazard of an appeal; and, finally,

9. Always remember that you belong to an honorable profession and that it is your duty to uphold its dignity and honor."

Judge Lindsley:
"Among an ancient people, it is said that a man who proposed a new law did so with a rope around his neck, signifying his willingness to be hung if it worked badly. If that rule prevailed with us, the number of public executions would enforce no other experience could, that wise maxim. The law is a science. It is no mere trade. It is not the road to wealth, and if it is pursued with that aim only, the one privileged to so engage manifests a total failure of appreciation of the character of the profession. Lawyers in their professional contacts hold larger trusts than all other vocations combined, and the record of the profession generally in its fiduciary responsibilities is the highest of all those engaged with personal relations.

"Integrity of character and fidelity to opinions and duty are the first requisites of a good lawyer. The property of a client which comes into his possession can neither be borrowed nor loaned. It is a sacred trust, to be constantly and scrupulously accounted for. You are licensed now to take up your professional duties and to a large extent the good opinion which the public should have of the Bar generally is in your hands, because a deviation of one from the path of good conduct brings to a degree, discredit upon the whole profession."
Lessons From the Press Box

What Sports Reporting Taught Me About Legal Writing

This article appears in the latest edition of De Novo, the official online publication of the Washington Young Lawyers Division. Go to www.wsba.org/media/publications/denovo/denovo0610.pdf to read more articles and for the latest on the WYLD.

BY ALLISON PERYEA

My dad (bless his higher-education-facilitating heart) paid my undergraduate tuition at the University of Washington. But I personally financed my Diet Coke habit — which fueled more late-night cram sessions than I would care to admit — by covering Husky sports teams for the UW Daily, the university’s student newspaper. For years, I wrote game previews, recaps, athlete profiles, and season analyses for the men’s soccer and baseball teams — though I am quite sure the coaches just thought I was some blond, hyper-aggressive groupie. I was also the Daily sports editor for two quarters, and (in between fraternity parties and bagel-and-cream-cheese lunches at the student union) found time to get a journalism degree. I had all the prerequisites to launch a career in sports journalism — but instead I went back to the UW for three more years of classes and a J.D.

At times I have wondered whether I threw away years of journalism training when I traded in the press box for the courtroom. The truth is that many of the writing skills I picked up as an athletics reporter translate directly to legal writing. Judges and clients are a lot like the average newspaper reader — they are busy people and want you to get to the point as quickly as possible without a lot of confusing or peripheral details. Meanwhile, attorneys — who love legalese almost as much as we love free muffins at CLEs — often deliver quite the opposite of what is desired: meandering prose loaded with passive voice, prepositions, and irrelevant factual and legal trimmings. It is as if we are competing to see who can say the least in the most amount of space.

With this in mind, I wanted to share a few of writing tips I learned in the newsroom that work just as well in the law office:

1. Do the legwork. When I was the beat writer for a Husky team, I was its No. 1 “fan” (I use quotation marks because I still kept my journalist’s detachment, which came in handy during heartbreaking losses). I knew everything: all the player bios, all the statistics, all the rivals, and all the playoff history. I spoke with every player and coach who would give me the time of day. I walked in the pouring rain (ruining my new Steve Madden boots, which in retrospect were hideous) to get quotes during a drenched soccer practice. I called players’ cellphones after away games — as they were boarding planes — to get first-hand material for the next morning’s recaps. All of this effort, though possibly excessive for a college-newspaper sports story, led to a more plugged-in, multi-dimensional article. I cared and it showed.

That same amount of investigative effort should go into a legal brief. Review past pleadings and communications, call up witnesses (regardless of whether you have spoken to them before or have a written summary of their recollection of events), and revisit documents disclosed during discovery. There is a good chance that you will come across facts that will support and strengthen your arguments.
2. Check and double-check your facts. During one UW baseball season, at least half the team was named Taylor. In one game recap, I managed to confuse all of these Taylors: the Taylor who hit a home run was identified as the Taylor who pitched a shutout, for example, and the Taylor who struck out during all four at-bats plate was identified as the Taylor who sat out with an injury. Our publisher — an older gentlemen who wielded The Red Pen of Shame, which he used to circle errors in past issues of the Daily — picked up on my mistakes. I had strayed from the number-one goal of a journalist (besides being employed): accuracy.

Accuracy should also be the top priority of a lawyer when drafting legal briefs. Accidentally including incorrect names, numbers, and other details leads to a lack of credibility and embarrassment when the need to correct these details arises. An attorney wants her written materials to be the judge’s cornerstone for a decision in her client’s favor — and this is difficult to accomplish if she cannot even get names right. Even if you think you remember name spellings and the like, double-check everything from original sources before filing.

3. Tell a story with a theme. In college, I covered countless Husky baseball games while shivering in the press box during early spring. Each of those games pretty much involved the same things: hitting, throwing, catching, and running. It could seem hard to distinguish one game from the next. To keep things interesting, I had to look at the bigger picture. Was there a historical rivalry between the Huskies and their opponent? Was the game a critical match-up in a drive for a post-season berth? Were there any players trying to regain momentum after a debilitating injury or performance skid? The answers to these sorts of questions revealed a theme that threaded though each inning, game, and season: creating a legacy, reaching for lifelong dreams, overcoming adversity. Inclusion of these themes into my game recaps made the difference between merely reporting a box score and recounting a compelling story about what unfolded on the field.

Though trial advocacy classes in law school taught us about including a theme and telling a story in the courtroom, we often forget to carry this over onto the written page. It may at times feel difficult to insert a compelling narrative into your
motion for fees and costs or response to a motion to extend the discovery cutoff. But, like any reader, a judge wants to be entertained and to see more than a recitation of relevant though disparate facts. To really get your point across, you need to tell the judge the whole story rather than simply the box score.

4. Include a top-notch “lede paragraph.” The most important part of a sports article is the “lede,” which is the first paragraph. A lede should accomplish three things: 1) encapsulate the main points of the story; 2) get readers interested in reading the rest of the story; and 3) accomplish the first two things as few words as possible. Here is a lede paragraph from a baseball recap I wrote:

With the score deadlocked in the 11th, UW left fielder Tyler Davidson sent home the go-ahead run with an RBI double that led the way to a 10–7 Washington victory over host California. The Huskies swept the weekend series against the Golden Bears.

These two sentences distilled everything the readers would learn in the rest of the story, gave them the most important information up front, and drew readers in with the promise of details about a high-scoring, extra-inning match-up.

The three aims of a lede paragraph are equally important when crafting an introduction in a legal brief. A busy judge should be able to read the first few sentences of a brief and know exactly what is going to follow. And any attempts to make it interesting — by injecting emotion or appealing to the judge’s desire to have justice done — will help keep the judge awake. To borrow a couple of overused phrases, a good introduction should both “get to the point” and “tell it like it is.” Here’s an example, from the response to a motion to extend the discovery cutoff (that even includes a sports analogy):

The purpose of the Defendant’s motion is to throw an already steeply uneven playing field even farther off balance. The Defendant, a giant national corporation with likely near-bottomless pockets to fund its defense, neglected to timely conduct discovery and failed to disclose experts before the discovery cutoff. The Defendant is making this motion to avoid responsibility for these failures and to further exploit the economic disadvantage of Jane Doe, a retired single woman whose only asset — her home — was stolen through fraud. The Defendant is asking this Court not only to ignore its blatant disregard for the case schedule but also to sanction an untimely barrage of expansive discovery requests and motions by the Defendant. This would prevent Ms. Doe, who respected the discovery cutoff, from having the time and funds to adequately prepare for trial.

That paragraph basically communicated everything I needed to say: the rest of the response just hammered it home.

5. Use simple, short words and phrases. A sportswriter does not want a reader to have to break out a dictionary just to make it through an article. So when there is a choice among synonyms, he picks the easiest-to-understand word or phrase with the fewest syllables. A soccer player does not head the ball “in the midst of” a crowd of opponents; he heads the ball “amid” a
crowd of opponents. He is not injured "due to the fact that" he pulled a muscle during last night’s game; he is injured "because" he pulled a muscle.

Lawyers, on the other hand, like to celebrate how smart we are by using big words and clunky phrases. In our legal briefs, the defendant does not owe “about” 1,000 dollars — he owes “approximately” 1,000 dollars. The plaintiff does not “have a red car” — she "possesses a vehicle that is red in color." But padding a sentence with additional syllables does not make a stronger argument — it makes a longer argument, which is more likely to lose the reader’s attention. Pick the simplest, shortest word or phrase to communicate the message.

6. **On that note: keep sentences short.** In journalism school I learned this rule of thumb: never write a sentence longer than 40 words. If you take a look at newspaper stories, you will note that writers favor brief sentences. Even as a lawyer I generally stick to this rule, as if the Word Count Police are looking over my shoulder at the computer screen, citation pads at the ready should I cross the 40-word line in the sand. But the more accurate rule is this: Keep your sentences as short as possible without getting choppy (i.e., maintain some level of variation in sentence length). Readers do not want to follow you on a comma-laden journey in search of a period. There are several ways to trim down a sentence: break up ideas into multiple sentences; take out unnecessary clauses and words; and use active verbs. Shy away from any tortuous language that is heavy on passive voice and prepositions.

It is surprisingly possible to fit the same amount of information in half the space if you focus on tightening up your sentences. Compare: “The Defendant, who filed corporate papers with the state in 2002 to start his business, built cars and trucks that were designed to look like vintage models” with this: “The Defendant incorporated his vehicle-building business in 2002.”

7. **Cut out unnecessary details.** I remember a night when I was editing the sports page (which was sorely lacking content that evening) and also had to cover a baseball game. My solution: write a long-winded narrative about a largely irrelevant game against a no-name, non-league opponent. I probably mentioned each single and every groundout that occurred. This got the Red Pen of Shame moving. This is because a baseball game recap should generally focus only on how runs were scored (or how runs were not scored, if pitching or fielding were instrumental in the outcome).

Similarly, when writing a legal brief, no facts should typically be included unless they directly support your legal analysis, clear up any possible confusion, or enhance your theme. In misrepresentation case involving property defects, for example, reference only those defects about which the seller made incorrect statements. If she disclosed that the electrical wiring was faulty, do not bother mentioning it. It is tempting to lump in all property defects, but that will just confuse issues. Often it makes sense to write the statement of facts last, so as not to bother with any unnecessary details. Alternatively, you can review your fact section and cull anything that does not drive your theme or analysis forward.

8. **Put the most important material at the top.** Journalists are taught to structure stories in an “inverted pyramid”
shape. This means that the most important information goes at the top, followed by information of decreasing value. This way a reader can stop reading the article at any point and still understand it, even though he may miss out on the details.

Lawyers should emulate the “inverted pyramid” style when drafting fact and legal argument sections. Put the most important facts and the strongest legal arguments at the top of the respective sections. If a judge sees unimportant facts or weak arguments at the beginning, it will give her the impression that the rest of the brief is equally unconvincing. Toss in “Hail Mary” arguments toward the end, if at all.

9. Make it accessible. A newspaper reader does not have to be an athletics enthusiast to be able to understand the sports section’s content. Sportswriters (with the possible exception of some bloggers, who peddle jargon and pseudo-insider’s knowledge in an attempt to look legitimate) make an effort to iron out wrinkles when an explanation of how or why something occurred gets complicated. For example, a series of mistakes by fullbacks on the soccer field that lead to goals scored can simply be described as a “defensive breakdown.” Similarly, a judge should not be forced to trip over descriptions of complex factual scenarios when it could be refined to the bare essentials. Instead of numbing the judge’s brain by listing every single transfer of an asset along with dates and all other non-juicy details, simply write: “Between 2004 and 2007, the property was repeatedly transferred among the husband and wife,” and then attach the relevant deeds to a supporting declaration. If you cannot fight the urge to get technical, unpack all of your tedium in a footnote.

10. Use exciting, active language. The difference between a just-okay sports recap and a good one is the writer’s use of imagery through language to get readers to visualize what unfolded on the field. Consider this paragraph: “No team scored in the first half, but the Huskies scored two goals in the second half. Jeff Hoover scored the first goal and C.J. Klaas scored the second goal.” Then take a look at this one:

After a scoreless first frame, sophomore midfielder Jeff Hoover put the UW on the board with a goal netted from 20 yards out in the 48th minute. Junior midfielder C.J. Klaas added the Huskies’ final goal about 14 minutes later on a breakaway when he tucked a 25-yard shot into the lower right corner of the box.

The second go-round, while conveying the same information, adds spice to the explanation of what happened. Lawyers can likewise add a kick to their written submissions to the court by breathing life into a staid presentation of facts. Compare: “The Defendant struck the plaintiff’s car, severely damaging it” with “The Defendant’s lifted truck slammed into the side of the plaintiff’s compact sedan, shattering the driver’s side window and shredding the metal door.” (Note that these details are useful rather than immaterial because they drive home the point that the crash was severe and feed a David-versus-Goliath theme.) Just be careful not to go overboard. The cost of colorful language is often additional length, and you do not want to give the impression that you are grandstanding or badmouthing when a straightforward recitation of facts will do.

Allison Peryea is the associate editor for De Novo, and a litigator at Rand L. Koler & Associates, P.S.. She can be reached at allison@kolerlaw.com.
William Lerach, Melvin Weiss, and the firm Weiss, Lerach, Bershad & Hynes were the most powerful and successful securities class-action attorneys on the planet in the 1980s and 1990s... In 2005, however, federal prosecutors indicted Lerach and many others for fraud...

But investors buy securities at prices distorted by misinformation they never heard all the time. Proof of individual reliance by large aggregate groups of investors was a major obstacle to securities class actions until Weiss devised his theory of “fraud on the market” in 1975.

**Fraud on the Market**

Fraud on the market assumes that most investors buy publicly traded securities in reliance on the integrity of the market price. The price is based on all public information regarding a company and its business. If an investor pays market price, then he is rebuttably presumed to have relied on all public information that influenced the price, including misinformation he never heard or knew existed. No defendant ever overcame the presumption in a MW case.

The U.S. Supreme Court approved the theory in 1988. In 2005, however, the Court admonished MW for going too far and mixing reliance or “transactional causation” with damage or “loss causation.” The Court said that paying an inflated price for a security does not necessarily cause damage. Whether there is damage is determined by rearward-looking ex ante analysis. It is complicated because securities markets are often fueled by speculation, rumor, and innuendo in their natural state. Furthermore, stock prices may fall today but rise tomorrow, erasing damage.

**Expert Reliance**

A rearward-looking ex ante analysis requires an expert, and MW used one of the best. John Torkelson had two Ivy League degrees and a successful career as an investment banker. But the circle of greed ensnared many from all walks of life, and Torkelson was no exception. Torkelson lost his career when investigation revealed he worked for illegal contingent fees that were misrepresented in court.

**Americas’s Most Victimized Investor**

MW represented many legitimate private and institutional investors who were truly damaged. But MW also paid $11.4 million to three lead plaintiffs in 150 MW cases. The repeat players bought securities they hoped would fall in value. The goal was to lose money. It was not so much defrauding as seeding the market. MW did not pick the best representatives. Steven Cooperman, for example, had been a successful Beverly Hills ophthalmologist but performed unnecessary eye surgeries, col-

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**Circle of Greed: The Spectacular Rise and Fall of America’s Most Feared and Loathed Lawyer**

By Patrick Dillon and Carl M. Cannon (Broadway Books, New York, NY, 2010)

reviewed by Nigel S. Malden

W illiam Lerach, Melvin Weiss, and the firm Weiss, Lerach, Bershad & Hynes (MW) were the most powerful and successful securities class-action attorneys on the planet in the 1980s and 1990s. They led the charge in the biggest fraud cases against the worst corporate actors, including Lincoln Savings & Loan and Enron. At its peak, MW filed 50 percent of all securities class actions in America and 75 percent of those filed in California. Over 25 years, MW recovered $45 billion for its clients.

In 2005, however, federal prosecutors indicted Lerach and many others for fraud, perjury, and obstruction of justice. How and why is an interesting, true story with characters and plot twists worthy of a John Grisham novel.

**Greed Is Growth Industry**

Lerach started as a corporate defense lawyer but quit because the work panged his conscience. He was from Pittsburgh and wanted to serve the working class. If Lerach had a chip on his shoulder, it was because his father lost everything in the stock market crash of 1929.

Weiss was already a securities icon when he met Lerach in 1976. They had instant chemistry and agreed that Lerach would open and run an MW office in San Diego. Weiss always said their business model was built on corporate greed, a “high-growth industry.”

**Fraud 101**

The 1929 stock market crash was blamed on lax securities regulation. Congress and the Securities & Exchange Commission (SEC) responded with tough new laws and regulations, including the Securities Act of 1933, the Securities Exchange Act of 1934, and SEC Rule 10b-5. Their purpose was “to substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a higher standard of business ethics in the securities industry.”

Securities fraud is usually easier to prove than state common law fraud, which has “nine essential elements,” including the justifiable reliance on an intentional material misrepresentation of fact that proximately caused damage. The securities laws, however, bar affirmative misrepresentations and omissions and half-truths.

The common law fraud plaintiff must prove that he justifiably relied on the defendant’s misrepresentation, i.e., that it influenced his course of action. Ordinarily, one cannot rely on misinformation one never heard.
lected $500,000 per year in disability benefits from 18 different insurance carriers, and was the prime suspect in a $17.5 million art theft. Cooperman had served as lead plaintiff in 38 class actions by 1993, prompting a federal judge in Texas to call him “one of the unluckiest and most victimized investors in the history of the securities business.”

Kill Bill
The Private Securities Litigation Reform Act (PSLRA) of 1995 erected new barriers to filing securities class actions in federal court, including stricter pleading requirements and immunity for forward-looking statements. The PSLRA also changed the way lead plaintiffs were selected from who filed first to who suffered most damage.

Lerach felt he was being targeted by “backdoor tort reform” and complained directly to President Clinton. The president’s subsequent veto of the PSLRA was overridden by Congress. President Clinton warned that, by defanging securities class actions, Congress had thrown the sheep to the wolves.

The Missing Monet
Lerach shuddered when he heard that Cooperman was convicted of insurance fraud in 1999. The Picasso and Monet Cooperman reported stolen had turned up in his storage locker five years later. By then, Lerach knew that Cooperman could not be trusted.

Lerach was right. Cooperman began cooperating and wearing a wire. The prosecutors were aware of Cooperman's credibility problems but were impressed by his meticulous documentation.

Constitutions
Lerach secured a $7.3 billion settlement in the Enron case in 2005. It was a triumphant moment. Within months, however, the MW indictments began. Many, including Lerach, eventually pled guilty. MW was fined $75 million. Weiss was sentenced to 30 months and fined $10 million. Lerach was sentenced to two years and fined $7.75 million. Lerach admitted some illegals but, curiously, not scienter.

When the crash of the U.S. stock market became public knowledge in the fall of 2008, it was already old news. The real crash, the silent crash, had taken place over the previous year, in bizarre feeder markets where the sun does not shine and the SEC does not dare to tread.  The bond and real estate derivatives markets where geeks invent impenetrable securities to profit from the misery of lower and middle class Americans who cannot pay their debts. The smart people who understand what was or might be happening were paralyzed by hope and fear; in any case, they were not talking.

Recent events may show that Lerach was right about something else. The class action may be the only legal weapon powerful enough to neutralize massive, complex securities frauds perpetrated by corrupt actors with no conscience.

Lerach cooperated fully with the book's authors and summarized his lesson this way: When you take powerful interests by the
The WSBA Professionalism Committee has created the Random Acts of Professionalism Program as a way for lawyers and judges throughout the state to recognize and honor their colleagues who have conducted themselves in a highly professional manner. The program is simple — any member may recognize another member. Recipients receive a certificate of recognition, copy of the WSBA Creed of Professionalism, and letter of congratulations from the chair of the Professionalism Committee. For details about the program and how to submit a nomination, see www.wsba.org/professionalism or e-mail judithb@wsba.org. Look for the best among your peers and submit a nomination!

**Nigel S. Malden is an attorney in Tacoma.**

**NOTES**

1. *Circle of Greed* suggests that Lerach's story about his father’s 1929 loss is fiction.
4. Half-truths and omissions are usually actionable under state common law only if the parties have a fiduciary or other special relationship. *Liebersgell v. Evans*, 93 Wn. 2d 881 (1980); *Dates v. Taylor*, 31 Wn. 2d 896 (1948).
5. Reliance can be “unreasonable” but “justifiable” because the intentional tortfeasor is barred from blaming the credulity of his victim. *Boonstra v. Stevens Norton, Inc.* 64 Wn. 2d 621 (1978); “No rogue should enjoy his ill gotten plunder for the simple reason that his victim is by chance a fool.” *Prosser & Keeton on Torts*, 5th Ed., pp. 750–52 (1984).
10. Howard J. Vogel beat Cooperman by serving as class representative in more than 90 MW cases, making him “the most defrauded man on earth.”
11. “Forward-looking statements” predict or project possible future events.
12. Prosecutors were furious, however, when they discovered that Cooperman continued to receive disability benefits in prison by using government employees to unwittingly courier monthly claim forms.
13. *Scienter*, or malevolent intent, is an essential element of any fraud claim.
14. Lerach lectured at Stanford Law School in 2002 that “underneath this veneer of prosperity and profit (lies) widespread accounting rot, falsified profits, inflated asset values, and executive chicanery which (will) collapse the system.”
The Board’s Work

WSBA Board of Governors Meeting
April 23–24, 2010
Port Angeles

BY MICHAEL HEATHERLY

The Board of Governors’ actions at the April 23–24, 2010, meeting in Port Angeles included voting to endorse a judicial “recusal rule” relating to political contributions and to retain the existing age/years in practice criteria for membership in the Washington Young Lawyers Division. The Board also voted to continue with Casemaker, WSBA’s free-to-members legal research services, for an additional year and watched a demonstration of a new online procedure for filing grievances with the Office of Disciplinary Counsel.

Regarding the recusal rule, the BOG, in March, had debated a proposed new Code of Judicial Conduct provision that would require a judge to recuse himself from a case upon a party’s motion showing that a party had provided financial support to the judge’s campaign for election. The rule would apply where a contribution exceeds 10 times the state limit for direct contributions. Under the current limit of $1,600 per election cycle per donor, a judge would be required to recuse himself if a party had contributed more than $16,000 for the primary or general election, or $32,000 for both a primary and general election.

At the April meeting, the Board voted to endorse the proposal, which was then to be considered for enactment by the Supreme Court. The statewide associations representing superior, district, and municipal court judges have endorsed the proposal as well. The BOG suggested two provisions of its own to the proposal. The additional provisions would apply the rule in cases where contributions were made by a party’s counsel or by a non-party entity that filed an amicus curiae brief in the case.

Also at the April meeting, the governors took action on an issue that has been debated a number of times over the years: the age/years in practice criteria for membership in the Washington Young Lawyers Division (WYLD). Ultimately, the Board voted to retain the current rule, which allows WYLD membership for active lawyers under 36 years old or within their first five years of membership in any bar, whichever is later.

The Board considered but voted down alternative proposals, which included eliminating the age criterion but increasing the years-in-practice limit to seven or 10 years. Proponents of the longer limit argued that many lawyers, including those who join the bar later in life, benefit from the longer period of mentorship available through WYLD membership. However, proponents of the shorter limit replied that the increased number of WYLD members that would result from the proposed change would delay the transition of that organization’s leaders into leadership positions within the WSBA in general, and that with the current criteria being so long, an individual could be a partner at a law firm and still be a “young lawyer.”

Meanwhile, the BOG approved a WSBA staff recommendation to negotiate a one-year contract extension with Casemaker, the vendor through which WSBA members can perform free legal research via the WSBA website. The existing five-year contract with Casemaker expires July 31, 2010. Staff evaluated WSBA members’ needs for the program and interviewed representatives from Casemaker and two competitors before recommending a one-year extension with Casemaker. Staff members are continuing to assess another issue involving legal research: the sought-after ability to provide direct links from online WSBA CLE materials to the legal sources cited in the materials. They are working to evaluate whether Casemaker or another vendor would be most appropriate to provide that service.

Also at the April meeting, the Board watched a live demonstration of a new system that allows grievances to be filed online as an option to traditional paper filing. The program launched April 5 and 25 percent of grievances since then were filed online, Chief Disciplinary Counsel Doug Ende reported. A survey showed that only one other state, Virginia, has an online filing system.

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Michael Heatherly is the Bar News editor and can be reached at barnewseditor@wsba.org or 360-312-5156. For more information on the Board of Governors and Board meetings, see www.wsba.org/info/bog. For more information on issues addressed by the Board, visit the WSBA website at www.wsba.org and click on “News Flash” under “WSBA News and Information.”
You are cordially invited to attend

The 2010 Washington State Bar Association’s Annual Awards Dinner and Business Meeting

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

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

[Form section for credit card information]

Please list the names of all attendees and indicate meal choices. Be sure to include yourself.

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

Send to: WSBA Annual Awards Dinner
Attn: Emily Robinson
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
Tel: 206-239-2125 • 800-945-9722, ext. 2125 • Fax: 206-727-8310 • emilyr@wsba.org

□ If you need special accommodations, please check here and explain below.
_________________________________________________________________________
_________________________________________________________________________
Opportunity for Service

Northwest Justice Project
Board of Directors

*Application deadline: September 1, 2010*

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Northwest Justice Project Board of Directors (two positions, commencing January 2011) or a partial term (ending December 2011). An incumbent is eligible for reappointment to one of the three-year terms, and a written expression of interest and résumé is required for an incumbent seeking reappointment.

The Northwest Justice Project is a statewide not-for-profit law firm funded by the state of Washington and the federal Legal Services Corporation to provide free civil legal services to low-income people throughout Washington. Board members play an active role in setting program policy and assuring adequate oversight of program operations and must have a demonstrated interest in, and knowledge of, the delivery of high-quality civil legal services to low-income people.

For more information, e-mail casart@nwjustice.org or lisag@nwjustice.org. Please submit letters of interest and résumés to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

WSBA Board of Governors 2010 Election Results

The Board of Governors elected the 2010-2011 president-elect and at-large (A) governor at their June 4, 2010, meeting in Wenatchee.

**2010–2011 President-elect:** Stephen R. Crossland

**At-Large (A) Governor:** Tracy S. Flood

Congratulations to the following WSBA governors-elect. The governors-elect will take office at the close of the WSBA annual meeting on September 23, 2010, and will hold office for a term of three years until September 2013.

**2nd District:** The certified election results from the May 18 ballot counting names Philip Buri as governor-elect in the 2nd District.

- Eligible voters: 1,417
- Ballots cast: 296
- Return rate: 21%
- No selection: 7
- Philip Buri: 198 votes, 67%
- Carrie Coppinger Carter: 68 votes, 23%
- Matthew Daheim: 30 votes, 10%

**7th-Central District:** The certified election results from the May 18 ballot counting names Judy Massong as governor-elect in the 7th-Central District.

- Eligible voters: 3,540
- Ballots cast: 351
- Return rate: 10%
- No selection: 21
- Thomas R. Dreiling: 148 votes, 42%
- Judy I. Massong: 203 votes, 58%

**9th District:** Susan Machler, unopposed, is governor-elector in the 9th District.

WSBA-CLE Annual Member Appreciation Online Summer Sale, July 1–16

It’s the biggest sale event of the year on recorded WSBA-CLE seminars on CD — the 50/50/50 Sale — from July 1 through 5:00 p.m. on July 16. Save 50 percent on 50 selected programs on CD, and remember that 50 percent of your required CLE credits each reporting period may be from A/V programs like these. You must place your order and pay online to enjoy Summer Sale prices. Go to www.wsbadce.org starting July 1 and save!

“Foundations of American Democracy” Civics Pamphlet

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

LOMAP and Ethics Traveling Seminar

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

Casemaker Online Research

Casemaker is a powerful online research library provided free to WSBA members. To access Casemaker, go to the WSBA website at www.wsba.org and click on the Casemaker logo on the right sidebar or go to www.mywsba.org and click on Access Casemaker in the left sidebar. Your login requirements are your WSBA number and your mywsba password. For help using Casemaker, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, juliesa@wsba.org, or call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

Get More out of Your Software

The WSBA offers a hands-on computer clinic for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are of-
FYInformation

Staff Welcomed to New WSBA-CLE Conference Center

On June 8, the new WSBA-CLE Conference Center was introduced to WSBA staff in a ribbon-cutting ceremony. The ceremony, led by CLE Director Mark Sideman, Executive Director Paula Littlewood, and Deputy Director for Finance and Administration Julie Mass (l. to r. in photo above left), was a long-awaited event and a first step in providing greater CLE services to the WSBA membership. The WSBA-CLE staff (photo above right) are excited to welcome everyone to this new home for WSBA-CLE programs, starting in late June. The Conference Center, located in the Century Square Building in downtown Seattle just two blocks from the WSBA offices, includes a webcasting studio supporting programs to be streamed live over the Internet for members around the state and around the world.

ferred. The July 12 clinic will be held from 10:00 a.m. to noon at the WSBA office and will focus on Casemaker, CourtTrax, and other online research resources. The July 15 clinic will meet from 2:00 to 4:00 p.m. and will focus on using Microsoft Word in the law office. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

Monthly Job Search Session

These free informational sessions take place the second Wednesday of each month from noon to 1:30 p.m. at the WSBA office. There will be no meeting for July. The next meeting will be August 11. For more information, call 206-727-8267 or e-mail danc@wsba.org.

Lawyer Services Solution of the Month: Taking a Vacation?

If not, why not? All work and no play make you grumpy and inefficient. Vacations are good for you and your family, so plan now to get out of town. And turn off your cell phone while you’re there! If you feel guilty about even contemplating time off, call the Lawyers Assistance Program at 206-727-8268.

Weekly Job Finders Strategy and Support Group

Unemployed? Discouraged — or trying not to be? Our weekly job group focuses on job search basics such as résumés, cover letters, and informational interviewing. The group meets on Monday mornings from 10:30 to noon, and new groups begin every eight weeks. Contact Dr. Dan Crystal at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org if you are interested in this group.

Facing an Ethical Dilemma?

Members facing ethical dilemmas can talk with the WSBA’s professional responsibility counsel for informal guidance on analyzing a situation involving their own prospective ethical conduct under the RPCs. All calls are confidential. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Every effort is made to return calls within two business days. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Search WSBA Ethics Opinions Online

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

Assistance for Law Students

The Lawyers Assistance Program offers counseling to third-year law students attending Washington schools. Sessions are held in person or by phone. Treatment is confidential and available for depression, addiction, family and relationship issues, health problems, and emotional distress. A sliding-fee scale is offered ranging from $0–30, depending on ability to pay. Call 206-727-8268, 800-945-9722, ext. 8268, or visit www.wsba.org/lawyers/services/ lap.htm.

Help for Judges

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

Learn More About Case-Management Software

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

Upcoming Board of Governors Meetings
July 23–24, Leavenworth • September 23–24, Seattle • October 29–30, Vancouver
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/2009_2010meetingschedule.htm.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in June 2010 was 0.223 percent. Therefore, the maximum allowable usury rate for July is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

WSBA Professionalism Committee Tip of the Month: The “Nike” Tip
We’ve all heard “Just Do It” — the slogan used by Nike in what is perhaps its best-known advertising campaign. But sometimes “Just Don’t Do It” is better advice. No matter how badly you want to respond to someone’s insult, slight, put-down, or rudeness, “Just Don’t Do It.” If another’s poor behavior doesn’t affect your client’s case, then just let it slide right on by. This tip also applies when someone’s behavior seems to be stalling the solving of a problem. There is generally no need to let them know that what they are doing isn’t effective problem-solving. Instead, keep pointing them in the direction of your desired outcome. People who are rude or insulting, or who aren’t effective problem-solvers, are not good students when others try to “educate” them about the errors of their ways. So take the high road and “Just Don’t Do It.”

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ETHICS AND LAWYER DISCIPLINARY INVESTIGATION AND PROCEEDINGS
Stephen C. Smith,
former Chairman of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawai‘i, and Guam.

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MEDICATION
Mac Archibald

Mac has been a trial lawyer in Seattle for almost 40 years. He has tried a wide range of cases including maritime, personal injury, construction, products liability, consumer protection, insurance coverage, and antitrust law.

Mac has 15 years of mediation experience. He has mediated over 1,000 cases in the areas of maritime, personal injury, construction, and commercial litigation.

Mac has a reputation as not only being highly prepared for every mediation, but also for providing as much follow-up as is necessary to settle a case.

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Mediation Services
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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 discipline reports should be read carefully for names, cities, and bar numbers.

**Disbarred**

**David R. Hellenthal** (WSBA No. 18311, admitted 1988), of Spokane, was disbarred by order of the Washington State Supreme Court, effective March 24, 2010, following a default hearing. This discipline was based on conduct in four matters involving lack of diligence, failure to communicate, trust account irregularities, failure to protect clients’ interests, commission of a criminal act, violation of a court order, and violations of duties imposed by or under the Rules for Enforcement of Lawyer Conduct.

**Matter No. 1:** Two sisters hired Mr. Hellenthal on September 4, 2007, to set up a co-guardianship for their mother. One sister (“Client A”) paid Mr. Hellenthal $1,200, in two checks: a $200 check for filing fees and a $1,000 check, which was an advance fee payment. Unbeknownst to the clients, the Supreme Court suspended Mr. Hellenthal from the practice of law for 18 months, effective September 6, 2007. Client A learned of his being an attorney. Client B called him back and asked for a refund. Mr. Hellenthal said he did not have the money and never gave Client B the papers she signed. Client B paid other lawyers a total of $1,600 to complete work for which she had paid Mr. Hellenthal $4,500.

**Matter No. 2:** Client C, who had a power of attorney for her mother, hired Mr. Hellenthal to appeal a Social Security decision regarding overpayment of her mother’s monthly benefits and to have Medicaid recalculate the amount of co-payments made to the nursing home in which her mother resided. Client C paid Mr. Hellenthal $2,187.50 to handle her mother’s legal matters. Mr. Hellenthal properly appealed the overpayment determination made by Social Security and asked Medicaid to recalculate their co-payments. The Social Security benefits were reinstated from March 2007 forward pending the outcome of the appeal. A telephonic hearing on the issue of calculation of the Medicaid benefits was set for March 12, 2007. Mr. Hellenthal did not appear at the hearing. The administrative law judge (ALJ) left a message for Mr. Hellenthal the day of the hearing. When Mr. Hellenthal did not return the call by the end of the day, the ALJ entered a default and dismissed the appeal. Mr. Hellenthal did not tell Client C that he had not attended the hearing or that the appeal had been dismissed, and he did not request that the dismissal be vacated.

In May 2007, Mr. Hellenthal instructed Client C to pay her mother’s nursing home $4,738.01, an amount charged to Client C’s mother due to the problem with the Medicaid co-payments. Client C paid this sum from her mother’s trust, which had been filed with the court. Mr. Hellenthal depleted and overdrew the trust account, which remained overdrawn until its closure in October 2007.

**Matter No. 3:** In May 2007, Client B consulted with Mr. Hellenthal about selling her deceased brother’s house and getting her mother on Medicaid. Another lawyer had already handled the probate, appointed a personal representative, and filed nearly all the necessary paperwork to close the deceased brother’s estate. Client B paid Mr. Hellenthal a total of $4,500, which Mr. Hellenthal failed to deposit into his trust account. In August 2007, Mr. Hellenthal had Client B sign some papers with respect to her brother’s estate, but did not file any of the papers with the court. Mr. Hellenthal did not inform Client B of his September 6, 2007, suspension. She learned of it after reading a newspaper article on September 13, 2007, and contacted Mr. Hellenthal to ask about the status of her brother’s estate. Mr. Hellenthal told her that he had not filed the papers and would get back to her. Mr. Hellenthal left a message on Client B’s answering machine in November 2007 stating that he had a strategy for completing the work without his being an attorney. Client B called him back and asked for a refund. Mr. Hellenthal said he did not have the money and never gave Client B the papers she signed. Client B paid other lawyers a total of $1,600 to complete work for which she had paid Mr. Hellenthal $4,500.

In October 2007, Client C picked up her client file at Mr. Hellenthal’s home, during which time Mr. Hellenthal told her that it was his “strategy” not to attend the March 12, 2007, hearing. Client C’s new lawyer subsequently filed a motion to vacate the dismissal based on ineffective assistance of counsel. Client C’s mother died shortly thereafter and, because her estate was not probated, the issue was never resolved. Had the appeal been successful, Medicaid would have paid the nursing home the $4,738.01 that Mr. Hellenthal instructed Client C to pay from her mother’s supplemental needs trust.

**Matter No. 4:** In May 1998, Ms. D amended her Living Trust Agreement to name Mr. Hellenthal and Mr. E as co-successor trustees. She specified that they must reach a consensus before taking any action in relation to the trust, including disbursements of trust assets. Ms. D died in April 2007, and Mr. E and Mr. Hellenthal became co-trustees for the trust. Mr. E opened a bank account in the name of Ms. D’s trust. Before Mr. Hellenthal became an authorized signer on the account, he billed the trust for administrative fees through Mr. E. Between December 2007 and May 2008, Mr. Hellenthal made several urgent requests for payment, often demanding advance payments. During this period, Mr. Hellenthal was paid approximately $10,000 in administration fees.

By mid-April 2008, Mr. Hellenthal had added himself to the trust’s account. Between May 2008 and August 2008, without the knowledge or approval of Mr. E, Mr. Hellenthal made 17 withdrawals from the account totaling $25,000 using counter checks. Many of the checks were made payable to himself or “Cash” and contained a statement on the memo line that they were for a “Trustee Advance.” Mr. Hellenthal had no entitlement to the funds he withdrew and had not accounted for them. In August 2008, Mr. E closed the account and moved the remaining funds into an account to which Mr. Hellenthal did not have access. In September 2008, Mr. Hellenthal cashed a $2,000 check, even though the account had been closed. Following a petition by Mr. E, the superior court removed Mr. Hellenthal as co-trustee of Ms. D’s trust and ordered him to repay the trust $27,000, disgorge all fees he received for his services to the trust, pay attorney fees and costs, and submit to Mr. E all documentation relating to the trust in his possession. Mr. Hellenthal has neither complied with the court order, nor cooperated in a subsequent investigation by the Bar Association.

Mr. Hellenthal’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,
consult with the client about any relevant limitation on the lawyer's conduct, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses; RPC 1.15(d), requiring a lawyer from depositing or retaining funds belonging to the lawyer in a trust account except for funds to pay bank charges, funds belonging in part to a client or third person and in part to the lawyer, and funds necessary to restore appropriate balances; RPC 1.16(d), requiring a lawyer, upon termination of representation, to take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, 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 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; RPC 8.4(i), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(j), prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear; 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.

Joanne S. Abelson represented the Bar Association. Mr. Hellenthal was not represented either in person or through counsel. Lewis W. Card was the hearing officer.

Disbarred

Paul Richard Lehto (WSBA No. 25103, admitted 1995), of Issaquah, Michigan, formerly of Snohomish County, was disbarred, effective March 24, 2010, by order of the Washington State Supreme Court following a default hearing. This discipline is based on conduct involving failure to abide by a client’s decisions, lack of diligence, failure to communicate, trust account irregularities, failure to maintain records of client funds, improper withdrawal from representation, failure to respect rights of third party, commission of a criminal act, dishonest conduct, violation of attorney's oath, non-cooperation in discipline investigations, and unfitness to practice law.

Matter No. 1: In August 2000, Clients A hired Attorney B to represent them in the lawsuit. Attorney B withdrew from the representation in March 2002 and Mr. Lehto appeared in July 2003. Mr. Lehto continued to represent Clients A through the dismissal of the lawsuit in February 2006. Attorney B claimed that, as of June 2004, Clients A owed him legal fees and costs of $24,369.04. He sent one or more letters to Mr. Lehto regarding their outstanding bill, but Mr. Lehto did not respond. Attorney B informed Mr. Lehto and Clients A that he was willing to accept $17,500 as full payment of the outstanding bill. In August 2005, Clients A issued a check to Mr. Lehto in the amount of $17,500 to pay Attorney B. Mr. Lehto told them he would take care of the matter. Mr. Lehto did not deposit the clients’ check into a trust account or disburse any funds to Attorney B. Instead, Mr. Lehto deposited the check into his business account and used the funds to pay his own personal and business expenses.

In February 2006, Attorney B filed a lawsuit against Clients A for the outstanding legal fees and costs. Without informing them, Mr. Lehto filed a Notice of Appearance on behalf of Clients A to appear as their counsel in Attorney B’s lawsuit. Mr. Lehto did not file an Answer to Attorney B’s lawsuit. Attorney B filed a Motion for Order of Default, which was noted for a July 12, 2006 hearing. Mr. Lehto failed to inform Clients A about the Motion for Order of Default, failed to respond to the Motion, and failed to appear at the July 2006 hearing. On July 12, 2006, the court entered an Order of Default against Clients A. In August 2006, Attorney B filed a Motion for Final Default Judgment, which was noted for a September 13, 2006 hearing. Mr. Lehto failed to inform Clients A about the Motion for Final Default Judgment, failed to respond to the Motion, and failed to appear at the September 2006 hearing. On September 13, 2006, the court entered a Default Judgment Order against Clients A in the amount of $27,180.36. Mr. Lehto did not inform Clients A about the Default Judgment Order.

In December 2006, after Clients A learned of the default judgment while trying to buy a house, they went to Mr. Lehto’s last known office address. Mr. Lehto was no longer there. Clients A contacted Mr. Lehto by telephone. Mr. Lehto promised to have Attorney B’s judgment vacated, but failed to take steps to do so. Clients A tried to contact Mr. Lehto again by telephone and by e-mail, but Mr. Lehto did not respond.

In September 2007, Clients A paid Attorney B $7,500, which he accepted in full satisfaction of his judgment. Mr. Lehto did not refund Clients A’s $17,500 or provide to them an accounting of the funds.

Matter No. 2: In 2002, Mr. Lehto contacted a nonprofit auto safety and consumer advocacy organization (CARS Foundation) on behalf of Client B. Mr. Lehto asked the CARS Foundation to loan Client B funds to obtain safe, reliable transportation pending resolution of Client B’s lawsuit against a car dealership. The CARS Foundation agreed to loan Client B $3,500, provided Client B repay the entire amount of the loan plus 10 percent simple interest out of any settlement received before Client B, his attorney, or others were paid, within one year after the case settled. Client B signed the loan agreement. The loan agreement also contained a statement, which was signed by Mr. Lehto, in which Mr. Lehto agreed that the CARS Foundation would be reimbursed from any settlement prior to the release of any other funds.

Client B’s case settled in December 2005. In February 2006, Mr. Lehto received a settlement check in the amount of $48,885, which he subsequently deposited into his trust account. In March 2006, Mr. Lehto transferred $20,000 from his trust account into his business account and disbursed $16,954.84 from his trust account to Client B. Mr. Lehto sent an e-mail to the CARS Foundation president stating, “I can cut a check as soon as I am provided a figure.” The Foundation president sent Mr. Lehto an e-mail stating the amount owed on Client B’s loan. Mr. Lehto did not send a check or any other payment to the CARS Foundation. In June 2006, Mr. Lehto sent an e-mail to the CARS Foundation stating that he would send a check within a day or so, but he failed to do so. For 17 months, Mr. Lehto did not respond to letters or telephone messages from the CARS Foundation demanding repayment of Client B’s loan. In February 2007, Mr. Lehto called the CARS Foundation and asked how much Client B owed. The Foundation president sent Mr. Lehto an e-mail stating that the amount owed was $4,966. Mr. Lehto did not send a check or any other payment to the CARS Foundation. In May 2007, the Foundation president sent Mr. Lehto an e-mail stating, “I haven’t heard back from you since then [February]. What is happening?” Mr. Lehto responded by e-mail, “Your money is there so I asked for checks to be fedexed here so I can cut a check.” A few minutes later that same day, Mr. Lehto sent another e-mail stating, “I don’t believe that there is [sic] any funds for interest from my client or from me…. So, what will likely happen is that I can send you a check for the original amount at end of loan without interest. The interest on the funds went to legal services for the indigent in Wash. State.” Mr. Lehto’s May 2007 e-mail was his last communication with the CARS Foundation. He did not send a check or any other payment to the CARS Foundation.

Failure to Cooperate: In May 2006, the Association received two Trust Account Overdraft Notices (TAONs) regarding Mr. Lehto’s trust account. Mr. Lehto failed to respond to the Association’s requests for information regarding the trust account, failed to produce records in response to the Association’s subpoena duces tecum, and failed to appear for a deposition that was originally scheduled for September 2006 and then continued to November 2006 at Mr. Lehto’s request.

On December 1, 2006, the president of the CARS Foundation filed a grievance against Mr. Lehto with the Association. Mr. Lehto failed to respond to the grievance, failed to produce records in response to the Association’s subpoena duces tecum, and failed to appear for a deposition.
Mr. Lehto’s conduct violated former RPC 1.2(a), requiring a lawyer to abide by a client’s decisions about the objectives of representation and to consult with the client as to the means by which they are to be pursued; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring that a lawyer keep a client reasonably informed about the status of a 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; former RPC 1.14(a), requiring all funds of clients paid to a lawyer or law firm be deposited in one or more identifiable interest-bearing trust accounts and no funds belonging to the lawyer or law firm be deposited therein; former RPC 1.14(b)(3) and current RPC 1.15A(e), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; former RPC 1.14(b)(4), requiring a lawyer to pay or promptly deliver to the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive; former RPC 1.15(d) and current RPC 1.15A(f) and 1.16(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests upon termination of representation, including giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned; RPC 4.4(a), prohibiting a lawyer, in representing a client, from using a means that has no substantial purpose other than to embarrass, delay, or burden a third person; RPC 8.4(b), prohibiting a lawyer from using a means that has no substantial purpose other than to embarrass, delay, or burden a third person; RPC 8.4(b), prohibiting a lawyer from using a means that has no substantial purpose other than to embarrass, delay, or burden a third person; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(f), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects (here, theft); RPC 8.4(g), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(h), prohibiting a lawyer from committing an act which reflects disregard for the rule of law; RPC 8.4(k), prohibiting a lawyer from violating his or her oath as an attorney; 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; and RPC 8.4(n), prohibiting a lawyer from engaging in conduct demonstrating unfitness to practice law.

Marsha A. Matsumoto represented the Bar Association. Mr. Lehto did not appear either in person or through counsel, James M. Danielson was the hearing officer.

**Bradley R. Marshall** (WSBA No. 15830, admitted 1986), of Seattle, was disbarred, effective October 1, 2009, by order of the Washington State Supreme Court following an appeal. This discipline was based on conduct involving forcing settlement contrary to clients’ wishes, charging unreasonable fees, conflicts of interest, trust account irregularities, failing to properly account to a client funds paid by the client, violating the Rules of Professional Conduct, making misleading statements to clients and disciplinary counsel, and engaging in conduct prejudicial to the administration of justice. For more information, see *In re Disciplinary Proceeding Against Marshall*, 167 Wn.2d 51, 217 P.3d 291 (2009).

In October 2000, Mr. Marshall agreed to represent two former members of a Masonic organization in bringing a lawsuit against their chapter. He sent a written fee agreement to the clients, which was for joint representation for a flat “non-refundable fee” of $15,000. In January 2001, Mr. Marshall filed a lawsuit against the Masonic chapter (chapter) and against another defendant on behalf of his clients (Clients A and B). In February 2001, Mr. Marshall agreed to represent a third individual (Client C), also a former member of the chapter, who paid him a $7,500 flat fee. Despite Client B having previously objected to adding Client C to their lawsuit, Mr. Marshall joined Client C as a plaintiff via amended complaint. Mr. Marshall did not advise any client in writing or obtain a written waiver. The chapter filed an answer, filed counter claims against all three plaintiffs, and filed third-party complaints against Clients’ A and C’s husbands, who were also former members of the chapter. The chapter also brought a lawsuit against all three plaintiffs. Mr. Marshall agreed to represent Clients A and C’s husbands for a flat-fee payment from both men totaling $19,000 and without obtaining consent in writing from any of his clients concerning a potential conflict of interest. All relevant lawsuits were consolidated in December 2001.

In April 2002, Mr. Marshall negotiated a settlement on behalf of Clients A, B, and C as to two individual defendants named in the litigation (not the chapter). Each client was to receive $12,500. The money was paid and deposited in Mr. Marshall’s trust account. In June 2002, at a mediation proceeding, counsel for the chapter, and representing another former member of the chapter (Client D) in the lawsuit. Client D was paying Mr. Marshall on an hourly basis. Client D initially paid Mr. Marshall $1,000 on June 13, 2002. Mr. Marshall did not deposit any portion of the $1,000 into his client trust account. Over the next few months, Mr. Marshall billed Client D at an hourly rate of $175 per hour. Client D paid all of the invoices in full. In January 2003, Mr. Marshall met with Client D and agreed to complete her representation for a flat fee of an additional $5,000. He also agreed to prepare an amended fee agreement, which he never prepared. On January 27, 2003, Client D sent a $5,000 cashier’s check to Mr. Marshall’s office along with a handwritten note indicating it was for completing her case per their agreement.

In March 2003, Mr. Marshall represented Clients A and D in the lawsuit against the chapter. He did not represent Clients B and C, who still refused to pay the additional fees. The jury awarded $3,500 each to Clients A and D. Although Mr. Marshall agreed to represent Client D for the $5,000 flat fee, he sent her an invoice dated April 1, 2003, charging her $21,787.50 for professional legal services between March 10, 2003, and March 29, 2003. Through a different attorney, Client D challenged the invoice. Mr. Marshall filed an attorney’s lien for $21,787.50 and then filed a lawsuit against her. Mr. Mar-
shall dropped the lawsuit after Client D filed a grievance against Mr. Marshall. At the hearing against him, Mr. Marshall claimed his demand to clients for additional payments was for costs. However, his costs after January 21, 2003, through the completion of trial totaled $53,929.

Mr. Marshall's conduct violated former RPC 1.2(a), requiring a lawyer to abide by a client's decisions concerning the objectives of representation and to consult with the client as to the means by which they are to be pursued; former RPC 1.5(a), requiring a lawyer's fee to be reasonable; former RPC 1.7(b), prohibiting a lawyer from representing a client if the representation will be materially limited by the lawyer's responsibilities to another client, a third person, or the lawyer's own interests, unless (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client, and (2) each client consents in writing after consultation and a full disclosure of the material facts; former RPC 1.14(a), requiring that all funds of a client paid to a lawyer be deposited into an identifiable interest-bearing trust account and that no funds belonging to the lawyer be deposited therein; former RPC 1.14(b) (3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; former RPC 8.4(a), prohibiting a lawyer from violating or attempting to violate the Rules of Professional Conduct; former RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; former RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and former RPC 8.4(f), 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.

Christine Gray and Scott G. Busby represented the Bar Association at hearing. Scott G. Busby represented the Bar Association on appeal. Kurt M. Bulmer represented Mr. Marshall at hearing. Mr. Marshall represented himself on appeal. James M. Danielson was the hearing officer.

\section*{Suspended}

Jody Patrick Brion (WSBA No. 25761, admitted 1996), of Anchorage, Alaska, was suspended for three years, with two years of suspension stayed, effective April 28, 2010, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order from the Alaska Supreme Court. This discipline is based on conduct involving failure to act with reasonable diligence and promptness in representing a client; Alaska's RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, explain a matter to the client in a manner reasonably necessary to permit the client to make informed decisions regarding the representation, promptly inform the client of any decision or circumstance that requires the client's informed consent, and inform the client in writing if the lawyer does not have malpractice insurance pursuant to the rules; Alaska's RPC 1.5, prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses and requiring the lawyer to communicate the basis or rate of the fee, if a fee will exceed $1,000, to the client in a written fee agreement; and Alaska's RPC 1.15, requiring a lawyer to hold property of clients or third persons separate from the lawyer's own property and to keep funds of clients or third persons in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or the third person.

Joanne J. Abelson represented the Bar Association. Mr. Brion represented himself.

\section*{Reprimanded}

Vicky J. Currie (WSBA No. 24192, admitted 1994), of Tacoma, was ordered to receive a reprimand on March 12, 2010, following approval of a stipulation by a hearing officer. This discipline is based on conduct involving failure to diligently represent a client, failure to communicate, and unreasonable fees.

On November 23, 2004, a client hired Ms. Currie to file a Chapter 13 bankruptcy to prevent the foreclosure of his home, which he had been notified would be sold at a foreclosure sale on December 3, 2004. The client also received notice that another property he owned, a duplex, would be sold at a foreclosure sale on February 11, 2005. The client was behind on his car payments. He told Ms. Currie that he wished to keep his vehicle. On December 2, 2004, Ms. Currie filed a Chapter 13 bankruptcy on the client's behalf. On December 15, 2004, Ford Motor Company sent Ms. Currie a letter inviting the client to reaffirm the automobile debt. Ms. Currie did not forward this letter to the client or respond to this letter. On February 14, 2005, Ford made a motion for relief from the bankruptcy stay so that it could repossess and sell the client's car. Ms. Currie did not file a response. Ford's motion was granted, and the client's car was repossessed.

Ms. Currie referred the client to a mortgage broker, who agreed to sell his duplex to buyers she had found. On April 7, 2005, another notice of trustee's sale was issued on the client's home, setting a foreclosure sale date of May 27, 2005. The client made an oral agreement to sell his home through the mortgage broker, with the understanding that he would be given a lease option to buy back the house at a later date. The client went to independent counsel, who advised him against the transaction. The client decided to go through with the sale anyway.

On April 18, 2005, Ms. Currie filed a request for voluntary dismissal of the client's bankruptcy, which was granted. The client's duplex sold on April 22, 2005. The client's home sold on April 28, 2005. On April 25, 2005, Ms. Currie sent an invoice to the client's title company requesting a $1,500 "finder's fee" for referring the client to the mortgage broker. Ms. Currie also requested and received an additional $2,000 for attorney's fees from the client's escrow. Ms. Currie did not inform the client about the finder's fee or that she was requesting an additional $2,000 in attorney's fees. The client sued Ms. Currie in state court. As part of the settlement in that matter, Ms. Currie paid $20,000 to the client.

Ms. Currie's conduct violated former RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; former RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, promptly inform the client of any decision or circumstance that requires the client's informed consent, and inform the client in writing if the lawyer does not have malpractice insurance pursuant to the rules; former RPC 1.5, prohibiting a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses and requiring the lawyer to communicate the basis or rate of the fee, if a fee will exceed $1,000, to the client in a written fee agreement; and Alaska's RPC 1.15, requiring a lawyer to hold property of clients or third persons separate from the lawyer's own property and to keep funds of clients or third persons in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or the third person.

Joanne J. Abelson represented the Bar Association. Ronald C. Gardner represented Ms. Currie. Susan H. Amin was the hearing officer.

\section*{Reprimanded}

Paul D. Jacobson (WSBA No. 26939, admitted 1997), of Redmond, was ordered to receive a reprimand plus two years' probation by order of the Disciplinary Board on March 30, 2010, following approval of a stipulation. This discipline is based on conduct involving trust account irregularities and failure to properly supervise a non-lawyer assistant.

In 2002, Mr. Jacobson opened the Jacobson Law Group, which focused primarily on providing criminal defense work as a contractor, with one associate handling a small number of general cases. Prior to opening Jacobson Law Group in 2002, Mr. Jacobson's practice was almost exclusively criminal defense and he had little, if any, exposure to trust accounting. He delegated the IOLTA setup and operation for Jacobson Law Group to his staff. Although Mr. Jacobson signed all trust account checks, he relied upon his staff to determine what disbursements were appropriate and to draft the checks for his signature. Mr. Jacobson did not properly supervise his staff in either the setup or the operation of the IOLTA account. As a result, client ledgers were not maintained for individual client balances, and the checks drawn on the IOLTA account did not always identify the client on whose behalf the funds were being disbursed.

In 2005, during the investigation of a grievance, the Bar Association opened an investigation into the adequacy of Mr. Jacobson's trust account prac-
ties. During the period from November 2002 through October 2007, a variety of bookkeeping errors went undetected due to the lack of client ledgers and the resulting inability to incorporate a set of client ledgers into the monthly reconciliations as a means of detecting errors. These errors included errors in the disbursements to the Jacobson Law Group for fees, at times disbursing the fees before they had been fully earned, and at times failing to remove earned fees from the account. Similar errors were made in disbursements to third parties and in payment and reimbursement of costs.

Over a period of years, these errors accumulated, and while the errors were serious, no client or third party complained; due to the deficiencies in the trust account records, Mr. Jacobson had no way of knowing of the errors. To ascertain that all client funds had been properly accounted for, it was necessary for the WSBA auditor to reconstruct a set of trust account records, including individual client ledgers. The auditor’s reconstruction covered the period from November 19, 2002, when the account was opened, to November 30, 2009. The failure to identify each disbursement by client made this reconstruction problematic. Mr. Jacobson and his staff cooperated with the WSBA auditor in obtaining the documentation necessary to identify the clients on whose behalf disbursements had been made.

Upon completion of the trust account reconstruction, it was determined that the account was short by $1,189.45, and Mr. Jacobson placed his own funds in this amount into the account to bring the account current and balanced. Mr. Jacobson also paid his own funds of $161.14 to the Legal Foundation of Washington, which represents the amount of interest that the WSBA auditor had identified should have been earned had all funds been properly maintained in the trust account and had the bank properly transmitted earned interest to the Legal Foundation. In addition, the WSBA auditor assisted Mr. Jacobson and his bookkeeper in setting up a proper set of trust account records, including individual client ledgers.

Mr. Jacobson’s conduct violated former RPC 1.14(a) and current RPC 1.15A(c), requiring that all funds of clients paid to a lawyer or law firm be deposited into one or more identifiable interest-bearing trust accounts and no funds of the lawyer be deposited therein; former RPC 1.14(b)(3) and current RPC 1.15A(b)(2), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into possession of the lawyer and render appropriate accounts to his or her client regarding them; and RPC 5.3(b), requiring that a lawyer having direct supervisory authority over a non-lawyer make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.

Randy V. Beitel represented the Bar Association. Leland G. Ripley represented Mr. Jacobson.

Reprimanded

John Michael Unfred (WSBA No. 20729, admitted 1991), of Salem, Oregon, was ordered to receive a reprimand on April 20, 2010, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Oregon Supreme Court. For more information, see the Oregon State Bar Bulletin (November 2008), available at www.osbar.org/publications/bulletin/08nov/baractions.html, as follows:

On October 12, 2008, the [Oregon] disciplinary board reprimanded Salem attorney John Michael Unfred for violations of RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep client reasonably informed and promptly comply with reasonable requests for information) and RPC 1.5(a) (charging a clearly excessive fee).

Unfred undertook to represent a dissolution client in April 2006, agreeing to charge her at a discounted rate pursuant to a contract that Unfred had earlier entered with the client’s employee assistance program. During the representation, which lasted approximately one year, Unfred billed the client at the undiscounted rate. In June 2007, after becoming dissatisfied with Unfred’s inactivity on her case, the client fired him, complained to the bar and demanded that he return her entire retainer. Unfred did so.

For several months after Unfred was retained, he was active on the client’s case. However, after January 2007, the client telephoned and emailed Unfred with questions and requests for action, but received only occasional, non-substantive responses from Unfred’s paralegal.

Unbeknownst to the client, Unfred was not receiving her telephone calls and emails. Unfred’s paralegal was intercepting them and then failing to pass them along to him. Unfred was unaware that the client was trying to contact him until she fired him in June 2007.

Unfred did no work on the client’s case between January 2007 and June 2007, nor did he communicate with her during this time.

By billing the client at the undiscounted rate, Unfred charged a clearly excessive fee, even though he ultimately refunded her entire retainer. Unfred also failed to adequately supervise his staff and failed to act diligently on his client’s case, effectively leaving her dissolution unattended for several months. Mitigating circumstances in this case include the absence of dishonest or selfish motive, personal or emotional problems, a cooperative attitude toward disciplinary proceedings, and a timely good faith effort to make restitution or rectify consequences of misconduct.

Unfred was admitted to practice in Oregon in 1989. He had no prior disciplinary record.

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

Admonished

Christopher P. Bartow (WSBA No. 29559, admitted 1999), of Ellensburg, was ordered by a Review Committee to receive an admonition, effective February 10, 2010. This discipline is based on conduct involving revealing information related to the representation of a former client.

In 2008, Mr. Bartow represented a client in a parenting plan and domestic violence protection order matter. He withdrew following an adverse ruling. Mr. Bartow billed the client for outstanding fees. The client disputed the bill. Three months after he withdrew from the case, Mr. Bartow entered a restaurant while his former client was meeting with his new lawyer. It was mid-day and the restaurant was crowded. Mr. Bartow sat down at the table, uninvited, and stared at his former client in a way that appeared to others as an attempt to intimidate the client. Mr. Bartow asked the client when he was going to pay him, mentioned the amount of his outstanding bill and commented to his new lawyer, “Good luck getting your money.” Mr. Bartow’s wife, who is also his legal assistant, also asked the former client when he was going to pay Mr. Bartow. The former client was embarrassed by Mr. Bartow’s discussion of his client secrets. Additionally, the secrets were disclosed in a public setting where they could be overheard by others.

Mr. Bartow’s conduct violated RPC 1.9(c)(1), prohibiting a lawyer or former firm who has formerly represented a client in a matter from using information relating to the representation to the disadvantage of the former client except as the Rules would permit or require with respect to a client, or when the information has become generally known; and RPC 1.9(c)(2), prohibiting a lawyer or former firm who has formerly represented a client in a matter from revealing information relating to the representation except as the Rules would permit or require with respect to a client.

Erica W. Temple represented the Bar Association. Mr. Bartow represented himself.

Admonished

Erasmo John Compatore (WSBA No. 19376, admitted 1999), of Seattle, was admonished by order of the Disciplinary Board, effective April 30, 2009, following approval of a stipulation. This discipline is based on conduct involving failure to take steps to minimize the risks of avoidable disclosure of client confidences.

In January 2007, a client hired Mr. Compatore to represent her in her dissolution case. She agreed to compensate him on an hourly basis. By the end of August 2007, the client was 60 days
overdue on payment and owed Mr. Compatore over $8,000. Mr. Compatore began having weekly discussions with her and advised the client that, unless she brought her legal fees current and paid $30,000 advance fees for the upcoming mediation/trial, he would be forced to withdraw. The dissolution trial was set for March 2008.

In September 2007, the client and her estranged husband made two payments toward her legal fees totaling $11,500. Between September 14, 2007, and December 26, 2007, the client’s legal fees continued to accrue, and she made no payments. Mr. Compatore knew that he was about to incur more fees because several experts’ depositions were scheduled for the last week of December. On December 26, 2007, Mr. Compatore sent the client a Notice of Attorney Withdrawal, along with a letter demanding that she pay him the $7,000 currently owed, plus $30,000 trial advance fees, by January 6, 2008, or his withdrawal would become effective January 7, 2008. He filed his Notice of Attorney Withdrawal on December 31, 2007. No timely objection was filed with the court or served on any party.

On December 31, 2007, the client told Mr. Compatore that she would deposit $10,000 into his account by January 2, 2008, and that he could expect the additional funds by the end of the week. Mr. Compatore agreed to hold off on his withdrawal and gave the client until January 18, 2008, to pay the balance of the trial advance fees. The client’s family caused $10,000 to be wired into Mr. Compatore’s account. Mr. Compatore agreed to remain the client’s counsel until January 18, 2008, because the client’s deposition was set for January 11, 2008. He advised opposing counsel that he had agreed to represent the client until January 18, 2008, so that he could resolve any issues arising out of the deposition and made clear to the client that if he did not receive the balance of his trial advance fees by January 18, 2008, then he would no longer represent her after that date. The client made no further payments and his withdrawal became effective after January 18, 2008.

On January 23, 2008, the client filed an objection to Mr. Compatore’s withdrawal. In her objection, the client advised the court that she could not pay Mr. Compatore any further fees and argued that he should be forced to represent her and wait to be paid until the end of the case, at which time she hoped the court would order her estranged husband to pay her legal fees. The client’s objection also included numerous specific allegations that Mr. Compatore had provided incompetent representation. Mr. Compatore filed a response to the client’s opposition in which he noted that the client had not timely filed her objection, and thus his withdrawal had already been accomplished by operation of law. The only issue before the court at the time was whether Mr. Compatore’s withdrawal from the client’s representation had already become effective by operation of law. However, Mr. Compatore’s response also specifically rebutted the client’s allegations that he had not competently represented her, detailed the client’s lack of cooperation with his office and his belief that the client was not truthful, and had fabricated a nervous breakdown and PTSD diagnosis. Mr. Compatore served opposing counsel with an unredacted copy of his response, rather than filing it under seal or protective order. On February 8, 2008, the court denied the client’s objection to Mr. Compatore’s withdrawal. The client subsequently hired another lawyer and ultimately entered into an agreed Decree of Legal Separation.

Mr. Compatore’s conduct violated RPC 1.6, prohibiting a lawyer from revealing information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted under the rules.

Leslie C. Allen represented the Bar Association. Mr. Compatore represented himself.

Non-Disciplinary Notice
Suspended Pending the Outcome of Disciplinary Proceedings

Jesse E. Yarbrough (WSBA No. 16921, admitted 1987), of Tacoma, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1 (Conviction of a Crime), effective May 12, 2010, by order of the Washington State Supreme Court. This is not a disciplinary sanction.
SALMI & GILLASPY, PLLC
is pleased to announce that
Elizabeth K. Rhode
has rejoined our firm in our new Oregon office.
Liz's practice will continue to focus on complex litigation with an emphasis on construction defect, property damage, and other insurance defense work. With a B.S. in Civil Engineering and recent experience as in-house staff counsel for a large insurance company, Liz's unique background enhances her ability to work with clients, counsel, and experts on legal and technical matters.

The Firm's practice will continue to emphasize defense of construction, commercial, and bodily injury claims, insurance coverage, and business planning and litigation.

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has joined the firm as of counsel.
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WATT, TIEDER, HOFFAR & FITZGERALD, L.L.P.
is pleased to announce the addition of
R. Miles Stanislaw, Esq.
as a partner in the firm's recently opened Seattle office.
Mr. Stanislaw is widely recognized as one of the premier construction trial and claims attorneys in the United States with a practice now devoted almost exclusively to the representation of general contractors. He has specialized in high stakes, "we-gotta-win-this," bet-your-business kinds of cases.

Miles has won more than 25 multi-million dollar verdicts, arbitration awards, and settlements representing a broad spectrum of construction clients doing business throughout the United States. In addition, Miles has successfully defended contractors in some of the biggest construction defect cases in the country. He has served as lead trial counsel on cases in Alaska, Hawaii, Washington, Oregon, California, Arizona, Idaho, Montana, Colorado, Kentucky, Florida, and New York, and been specially admitted to practice in several additional states. His project experience includes highways, bridges, jails, dams, luxury hotels and residences, hospitals, high-rise buildings, reservoirs, schools, pipelines, factories, airports, and processing plants.

Contact Miles at WTHF-Seattle:
1215 Fourth Avenue, Suite 2210, Seattle, WA 98161
Tel: 206-204-5800 • Fax: 206-204-0284
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Information must be received by the first day of the month for placement in the following month’s calendar.

CLE Calendar

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

Bankruptcy Law

Bankruptcy Law: Special Cases — Dealing with Difficult Issues
July 22 — Seattle and webcast. 6.5 CLE credits pending, including 5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

Ethics

Conduct Prejudicial to the Administration of Justice
July 14 — Teleconference with online PowerPoint, 1 ethics credit. By Rubric CLE; www.rubriccle.com 206-714-3178.

Family Law

Mental Illness, Personality Disorders, and Client Management
July 14 — Seattle. 1 ethics credit. By McKinley, cle@mckinleyirvin.com; 206-625-9600; www.mckinleyirvin.com.

Creative Internet Sleuthing for Person and Asset Location
August 10 — Seattle. 1 ethics credit. By McKinley, cle@mckinleyirvin.com; 206-625-9600; www.mckinleyirvin.com.

Civil Rights

July 30 — Seattle. CLE credits pending. By the WSBA Civil Rights Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

Owning and Operating a Winery, Brewery, or Distillery

WDTL Annual Convention

Discovery Skills Boot Camp: Checkmate or Stalemate?
August 4 — Seattle and webcast. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

WSAJ Annual Meeting and Convention

Health Law

What Every Attorney Needs to Know About Trauma
July 28 — Seattle. 6 CLE credits. By Tanya Ruckstuhl-Valenti, 206-375-7690; www.therapistseattle.net.

Intellectual Property

2010 High Technology Protection Summit
July 23–24 — Seattle. CLE credits pending. By UW School of Law; 206-543-0059; wcle@uwashington.edu; www.law.washington.edu/casripl.

Mediation

40-hour Professional Mediation Training
June 28–July 2 — Olympia. 37.5 CLE credits, including 5.25 ethics credits. By the Dispute Resolution Center of Thurston County; onlewis@mediatethurston.org; 206-956-1155; www.mediatethurston.org.

Personal Injury Law

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

Property Law

Advanced Commercial Leases and Remedies

Solo and Small Firm

5th Annual WSBA Solo and Small Firm Conference
July 15–17 — Vancouver, WA. 14.75 CLE credits, including 3.5 ethics credits. By the WSBA Solo and Small Practice Section and WSBA-CLE; presented in cooperation with the Clark County Bar Association; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

Webcast Seminars

Bankruptcy: Special Cases — Dealing with Difficult Issues
July 22 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

Discovery Skills Boot Camp: Checkmate or Stalemate?
August 4 — Seattle and webcast. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

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

Trial Lawyer’s Guide to the Washington Consumer Protection Act
August 24 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.
Classifieds

Donating: Am Jur 2d edition 1981. Full set in very good condition. Beautiful green covers. Perfect for your office or library. E-mail inquiries to Classifieds@wsba.org with "Code 725" in the subject line.

Events

“What Every Attorney Needs to Know About Trauma,” Good Shepherd Center, Seattle. July 28, 2010. 6 CLE credits. This program will present the latest neurobiological research about the cause, effects, and effective treatment of post-traumatic stress disorder, as well as differentiation between stress and trauma. New practitioners, as well as experienced attorneys, will benefit from the knowledge and information provided by the co-presenters, psychotherapists who specialize in the treatment of trauma. Call 206-375-7690 for more information, or visit www.therapistseattle.net to register.

Family Law

25-year-old family law practice for sale located in Tacoma, Washington. Long-established phone number and Internet URL. All equipment and supplies available for immediate occupation and lease of building. 3,500 square feet, private parking. Perfect for new firm or satellite office. Call 253-229-0019.

For Sale

Brightwood/Welches Mt. Hood cabin. 1/4 interest in 1.719 sq. ft., 2 bed/2 bath retreat house. Quiet woods setting. Fully furnished. Sleeps up to 10. Large deck, backs to BLM land. Golfing, skiing, hiking close by. $63,000. Tax assessed total value $277,027. Call 503-703-7331, or e-mail torreeo@aol.com for information.

25-year-old family law practice for sale located in Tacoma, Washington. Long-established phone number and Internet URL. All equipment and supplies available for immediate occupation and lease of building. 3,500 square feet, private parking. Perfect for new firm or satellite office. Call 253-229-0019.

Positions Available

CLE seminar specialist — The Washington State Bar Association Continuing Legal Education (CLE) Department is expanding and moving into a new conference facility with webcasting capabilities. This position will be a key addition to the team to help lead the development of high-quality virtual and onsite legal education programs. This role works with member volunteers in providing guidance and support in educational programming, leading the development of an educational strategy, and project planning for various legal practice sections. This position also provides collaborative management and oversight of all of their event, project, and production activities, delivering education in an organized, comprehensive fashion. Previous successes working and supporting the endeavors of work teams is crucial. This position is also responsible for a percentage of the department’s overall revenue plan. For position details and how to apply, visit www.wsba.org/jobs.

Benton County: The Benton County Prosecuting Attorney’s Office is accepting applications for a deputy prosecuting attorney II or III in its Civil Division. This is a full-time, non-bargaining position with benefits. Starting salary range: $4,953–$6,265 per month, DOE and DOQ. Must have a law school degree and be admitted to Washington State Bar. At least two years of legal experience required. Prefer applicants with litigation and trial experience. Seeking applicants with strong work ethic and organizational abilities that will allow applicant to work with limited supervision. Experience with municipal law, foreclosure, bankruptcies, property tax, and/or condemnations is preferred, but not required. To apply, send résumé and cover letter to: Andy Miller, Benton County Prosecutor, 7122 W. Okanogan Pl., Kennewick, WA 99336, or by fax to 509-222-3705. Selection based on qualifications, background check, and oral interview. This position will remain open until filled. EOE.

Legal Ease, L.L.C., exclusive — Highly esteemed boutique Seattle law firm seeks top-tier senior litigation associate with four-plus years’ experience to join its work-life balanced group. Salary is $135,000–$155,000 to start. The successful candidate will have impeccable academic credentials and lateral or recent complex civil or niche civil litigation experience with a large law firm or boutique. Please submit your inquiry and résumé in strict confidence to Lynda Jonas, Esq., at LJONAS@legalease.com.

Opportunity available for a workers’ compensation attorney. Candidates must have: Washington workers’ comp experience; litigation and trial experience necessary; ability to positively interact with clients, DLI personnel, Board of Industrial Insurance Appeals, and healthcare providers; capability to handle a mature case load. This is a full-time po-
some of the Northwest’s finest law firms. Practical experience in corporate, business/transactional, real estate and land use, litigation (general, commercial, and complex), intellectual property, and estate planning, among other areas, generates immediate consideration, provided candidates also possess exemplary academic credentials from a quality educational institution, superior writing skills, and excellent interpersonal attributes. Current or recent experience in a leading law firm is also necessary. Qualified candidates interested in exploring new opportunities are encouraged to forward a confidential résumé and cover letter for immediate consideration to Greg Wagner, Principal, Pacific Law Recruiters, at gww@pacificlawjobs.com. Visit our website: www.pacificlawjobs.com.

Clement & Drotz is seeking an associate attorney with minimum two years of litigation experience to join our small but growing construction defect and tort defense practice. Successful candidates will have experience with and the ability and desire to handle multi-party document-intensive litigation including written discovery, taking and defending depositions, writing briefs, and arguing motions. Admission to the Oregon State Bar is a plus, but not required. If you are interested in joining our close-knit firm, please e-mail your cover letter and résumé to jdrotz@clementdrotz.com. All inquiries will be kept in the strictest of confidence.

Hoffman, Hart & Wagner has an immediate need in its Portland office for an associate with a minimum of two years’ Washington litigation experience for our general insurance defense practice. Deposition attendance and civil motion writing experience preferred. Candidates must have a strong academic record and excellent research and writing skills. Washington Bar admission is required. If interested, please e-mail a cover letter, résumé, and transcript to jotr@jehhw.com.

Legal Ease, L.L.C., exclusive — Well-regarded, Seattle-based law firm is losing one of its best foreclosure/collections attorneys due to relocation. The firm seeks a well-qualified replacement ASAP. Generous compensation package and outstanding working environment offered. Prospects for this opportunity must have prior experience in the foreclosure, collections, and/or real estate finance litigation arena. Condominium and/or HOA experience is an additional plus. All inquiries will be handled in strict confidence. Please submit résumé in Word format to Placement Director Lynda Jonas Esq., at LJONAS@legalease.com.

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

Timeshare company located in Olympia seeks title attorney. Minimum 10 years’ experience working with negotiation and deeding of properties. Position manages relationships with resorts and dispute resolution. For a more detailed description, contact jobspst@hotmail.com.

Socius Law Group, PLLC seeks a senior-level real estate/business transactional associate. The successful candidate will have at least three years of real estate transactional experience, with business transactional experience a plus. The successful candidate will also ideally have some of his/her own clients, but a full or partial book of business is not required. Socius offers a team-oriented work environment that focuses on exceptional client service and service to our community. The firm affords its employees balance between career and personal/family life. The annual billable hours expectation is 1,500, with incentive bonuses for those who exceed the minimum. Please e-mail cover letter, references, and résumé to hiring@sociuslaw.com.

An industry-leading law firm is currently recruiting for an escrow attorney for our Seattle-area office. Our firm represents financial institutions in matters related to licensing, servicing, mortgage banking, consumer finance, title insurance, real estate finance, and the enforcement of mortgage loans. The ideal candidate will have at least five years in the industry and will be licensed in the state of Washington. Experience in mortgage closing, escrow, or title insurance is required. Strong customer service, verbal, and written skills are a must. The firm is technologically advanced and applicants should be adept at MS Word, Office, and Excel. The escrow attorney will oversee the department and its managers, be responsible for hiring, training, and managing all staff, and is responsible for ensuring proper procedure and timelines are met within all the department locations. Salary DOE with full benefits, including health insurance and paid time off. Please send a Word-formatted résumé to EastsideEscrow@gmail.com with the job code “Escrow Manager” in the subject line. EOE.

Large northwest regional law firm headquartered in Spokane, Washington, seeking law firm administrator for its 51-attorney/50-staff person law firm. Duties will include carrying out and supervising all business and administrative functions of the firm, including financial management, human resources management, information systems, marketing, and facilities management. Qualifications: B.A. or B.S. and accounting experience required. A minimum of five years’ experience in an office management position, preferably with a public services firm. Excellent knowledge of accounting procedures and information systems. Excellent interpersonal relation skills. Excellent oral and written communication skills. Experience in interaction with firm board and committees. Salary: +/- $80,000 depending on experience and qualifications. Qualified applicants should submit cover letter and résumé to: Law Firm Administrator Position, PO Box 4, Spokane, WA 99210-0004, or online to: lawfirmad2010@yahoo.com.

Partner — busy corporate, transactional, real estate practice. We are a small, highly successful practice working too many late nights. Don’t get us wrong, we enjoy what we’re doing, but we’re doing too much of it. We have come from larger firms and we’ve learned that having your own book of business gives you options to create a practice that works best for you. Leaving behind the big overhead structure was the best thing we ever did. Do the math yourself. What did you earn? People who get this simple math will love working with us. We’re looking for someone who could sustain himself/herself, but has some
capacity to take the lead on some of our overflow workload. If you have a 50 percent book and are interested in doing exciting work for great clients, give us a call. Our primary needs are corporate, transactional, real estate, tax, and commercial litigation. If you’re interested, contact us at stevek@kdg-law.com.

**Emery Reddy PLLC**, a workers’ compensation and employment litigation firm in downtown Seattle, is seeking a part-time paralegal with a minimum of five years’ experience in litigation support and/or specific experience in workers’ compensation and employment matters. The duties include: attorney scheduling, calendaring deadlines, client management and communications, and drafting of legal documents. The applicant should be available to work a daily, part-time schedule, with possibility for full-time work. Competitive pay. Please e-mail résumés to Patrick Reddy at reddyp@emeryreddy.com.

**Davis Grimm Payne & Marra**, www.dgpm-law.com, an established downtown Seattle boutique law firm focusing on labor and employment law on behalf of management, is seeking an associate with a minimum of four years of litigation experience. Experience in matters related to the NLRB, PERC, and/or collective bargaining would be particularly desirable. Ideal candidates will also have a strong academic record, management-side work experience in labor and employment law, or prior work experience in the fields of human resources or personnel administration. Candidates having existing clients and strong motivation to market and continue building their own clientele are preferred. We work hard for our clients and are proud to do so. We offer excellent compensation and benefits, and the chance to progress as quickly as your ambition and skills will allow. Joining Davis Grimm Payne & Marra represents an outstanding long-term opportunity for the right candidate. Send résumé to hiringpartner@davisgrimmpayne.com or Hiring Partner, Davis Grimm Payne & Marra, 701 Fifth Ave., Ste. 4040, Seattle, WA 98104; www.dgpm-law.com.

**In-house counsel — Kirkland, WA.** Yarrow Bay Holdings, a leader in the Puget Sound land development industry, seeks an attorney to act as full-time in-house counsel. The position will involve providing land use advice and representation for the company’s development projects; coordinating and organizing matters related to the company’s affiliated entities; and advising on legal compliance, best practices, and mitigation of risk in company operations. In-house counsel will work closely with outside counsel on a variety of land use, transaction, and litigation matters. The ideal candidate has significant land use experience, and exposure to related aspects of real estate development, with solid negotiation and advocacy skills. The company is seeking a problem-solver who enjoys working in a fast-paced, high-energy environment, has a sense of humor, and is a team player and self-starter. Strong academic credentials, attention to detail, and excellent organizational and writing skills are also required.

Requirements: Candidates must possess a J.D. from an accredited law school and be a member of the Washington State Bar Association. Minimum of two years’ legal experience required. Yarrow Bay Holdings offers a competitive salary and outstanding benefits including health, vision, dental, and a retirement plan. Please send résumé, law school transcript, writing sample, and references to kross@yarrowbayholdings.com, or mail to Yarrow Bay Holdings, Attn.: Kim Ross, 10220 NE Points Dr., Ste. 120, Kirkland, WA 98033.

**U.S. Courts — 9th Circuit.** Bankruptcy judgeship, $160,080/year. Recruiting for one vacancy on the Bankruptcy Court, Western District of Washington, Seattle. Full announcement and application at [www.ca9uscourts.gov](http://www.ca9uscourts.gov) or contact personnel@ce9uscourts.gov. Applications due 5:00 p.m., 08/05/2010; EOE.

**Family law attorney — Seattle: McKinley Irvin** is an AV-rated, 14-attorney law firm focused on complex divorce and family law matters. We are seeking an attorney in our Seattle office with a minimum three years’ family law experience to join our busy and growing firm. This position is for our Seattle office. The right candidate will have well-rounded family law experience, observe the highest standards of professionalism, produce exceptional work product, be an effective negotiator and litigator, and deliver attentive client service. We offer an aggressive salary and benefits package, excellent administrative support, an outstanding group of professionals to work with, and the opportunity for mentoring, advanced
Family Law Attorney — Tacoma: McKinley Irvin is an AV-rated, 14-attorney law firm focused on complex divorce and family law matters. We are seeking an attorney with a minimum three years’ family law experience to join our busy and growing firm. This position is for our Tacoma office. The right candidate will have well-rounded family law experience, observe the highest standards of professionalism, produce exceptional work product, be an effective negotiator and litigator, and deliver attentive client service. We offer an aggressive salary and benefits package, excellent administrative support, an outstanding group of professionals to work with, and the opportunity for mentoring, advanced training, and career growth. Please forward cover letter, transcript, résumé, writing sample, and three professional references to tgilbertson@mckinleyirvin.com. All responses will be treated confidentially. Please visit our website at www.mckinleyirvin.com for more information about our firm.

Growing trust and fiduciary management firm is seeking an attorney to join our group of experienced professionals as a trust officer. Responsibilities will include administering a variety of fiduciary arrangements, including trusts, guardianships of the estate, LLCs, estate settlement, and family foundations; managing diverse assets; managing client and professional relationships; providing in-house legal counsel; and providing advice and assistance to clients’ attorneys. Qualifications: 1) must be a member of the Washington State Bar Association; 2) must enjoy working with people and be able to interact in a gracious manner with a diverse group of clients and their legal and financial advisors; 3) must be a self-starter; 4) must be a team player; and 5) must adhere to the highest ethical standards. Please respond to Northwest Trustee & Management Services, PO Box 18969, Spokane, WA 99228-0969. www.nwtrustee.com.

Owens Davies Fristoe Taylor & Schultz, P.S., a 10-person Olympia firm, is seeking an associate attorney with a minimum of two years’ experience, preferably in a major law firm setting. The ideal candidate will be well-grounded in the general practice of law with emphasis in real estate, commercial transactions, and litigation. Please respond with cover letter, résumé, and references to rphillips@owensdavies.com.


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

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

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

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

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

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

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

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

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


Insurance — lawyers professional liability, general liability, and bonds. Independent agent, multiple carriers, 16-plus years’ experience. Contact Shannon O’Dell, First
Governmental forensic accountant — Susan Busbice, CPA. 18 years’ government financial reporting. Trial prep experience. References available. sb1911@comcast.net 541-791-2194 office; 541-981-0288 cell.


Contract attorney with very reasonable rates available for research, brief writing, and document review. Experience in both transactional law and litigation. Excellent research and writing skills. Great academic credentials, judicial clerkship, and published law review article. Scott Beetham, 425-289-2509, scott@beethamlaw.com.


Choice Insurance Services, 509-638-2558; 1-888-894-1858; www.fcins.biz.

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I became a lawyer because my father was a small-town lawyer.

The future of the practice of law is virtual.

This is the best advice I have been given: Tell the truth.

I would share this with new lawyers: Know and obey the RPCs.

Traits I admire in other attorneys: Honesty, hard work, putting clients first.

I would give this advice to a first-year law student: Study hard and learn to write.

People living or from the past I would like to invite to a dinner party: John Marshall, Martin Luther King Jr., Sandra Day O’Connor, and George Clooney (well, maybe I’d just have George).

I am most proud of this: Raising my children in a small town.

I am the most happy when I’m at the beach with family.

My favorite non-job activity: Movies.

Best stress reliever: Exercise.

What I had for lunch: A club sandwich.

I would never eat: I eat everything.

I am currently reading Breaking Blue by Timothy Egan.

My favorite vacation place: Lake Chelan.

One of the greatest challenges in law today is cost.

If I were not practicing law, I would be the hostess of “Diners, Drive-ins and Dives.”

Technology is everywhere.

Currently playing on my iPod/CD player/record player: New Hendrix CD.

If I could live anywhere, I would be back in my house in Forks. I miss it.

I can’t live without shoes!

What keeps me awake at night: Nothing.

If I could change one thing about the law it would be the cost.

This is the best part of my job: My colleagues.

On November 7, 2000, Judge Susan J. Owens was elected the seventh woman to serve on the Washington State Supreme Court. She joined the Court after serving 19 years as District Court judge in Western Clallam County. She also served as the Quileute Tribe’s chief judge for five years and chief judge of the Lower Elwha S’Klallam Tribe for more than six years. Justice Owens loves baseball, and her children, Sunny and Owen. She also loves Olympic National Park, Lake Ozette, and everything about the West End of Clallam County.

This profile was requested by WSBA Editorial Advisory Committee Member Tina Bondy. To learn more about “Briefly About Me” or to submit your own, go to www.wsba.org/lawyers/brieflyaboutme.doc.
Purr-severance

Some people, men especially, just don’t get the whole cat thing. I’ve met guys who practically French kiss their dogs but think petting a cat is creepy. Of course, the stereotypical view is that dogs are brave, tenacious, and gregarious, while cats are paranoid, flighty, and self-possessed. Our family reared three dogs, all of which displayed the valiant traits of their species. We also had four cats, which admittedly lived up to some of the negative feline stereotypes. Nevertheless, one of the most courageous, resolute, and sweetest creatures I have ever encountered was one of our cats, Jackie. Jackie was our four-legged Jim Valvano, reminding us, “Don’t give up. Don’t ever give up.”

One evening years ago, I received a cell phone call from my then-wife, an inveterate animal lover. She had been driving near our home and heard the unmistakable wail of a wounded cat. Pulling over, she discovered in a ditch along the road a gravely injured feline. She called to ask if I would mind her taking the cat to a vet, meaning we would be paying the bill. Having a weakness for animals myself, especially for those in distress, I told her to go ahead.

It turned out the cat, a barely full-grown male, had multiple pelvic fractures. The injury had disrupted his spinal nerves, paralyzing his rear half. He would die soon without surgery. The vet informed us she could repair the fractures, but it was possible the nerves were permanently damaged, in which case the cat would remain paralyzed and probably still die before long.

We didn’t deliberate long before authorizing the surgery. A day later, we went to the vet clinic to see the cat. Despite being groggy and immobilized, he lifted his head and started purring as soon as we approached his cage. The staff had supplied him with a handful of Sugar Crisps, apparently a secret favorite of cats. He had already begun nibbling on them, a good sign of recovery. We took to calling him Jackie because of his resemblance to a friendly barn cat of that name who had lived on my in-laws’ dairy farm.

A day or two later, we took Jackie home and installed him in a bathtub with a heating pad. His back legs and tail remained paralyzed but his front end worked well, and he was alert and sociable. Sadly, after a few days he stopped eating and became lethargic. We returned him to the vet, who discovered that the wired-together pieces of his pelvis had collapsed. She consulted with a feline orthopedic specialist, who agreed to attempt a more extensive repair with sturdier surgical hardware. It was Jackie’s only hope. At this point we had invested too much, financially and emotionally, to say no.

Jackie survived the second operation and we brought him home again for rehab. At first he could do no more than lean against the side of the bathtub for a few minutes at a time. It was like having a cardboard cutout of a cat rather than a real one. But gradually he was able to get around a little by walking with his front legs while we held up his lower body, using a hand towel as a sling. Even without standing up, he discovered he could make his way around the house by clutching the carpet with his front claws and dragging himself along. In our family room we had one of those old-fashioned oval rugs with colored bands. Jackie learned to circumnavigate it ferociously, like a slot-car on a track.

Although he seemed happy and healthy overall, we grew skeptical that Jackie would ever recover the use of his rear legs. Then, maybe a month after his accident, we were sitting with him when we noticed the very tip of his tail curl slightly. It was the first time any part of his lower body had moved since the accident. We figured that if the nerves serving the end of his tail were intact, it was possible those serving his legs might be also. Indeed, as if by magic, Jackie gradually began moving his legs over the next several days. One step at a time — quite literally — he started to walk. At first he could only stumble a foot or two at a time. But within nine months or so, he had probably 90 percent of the mobility of a normal cat. By a year and a half after the accident, the only visible sign of his injury was a barely perceptible limp affecting one hind paw.

Jackie became an adept tree climber and mouse catcher and was readily accepted into the household by our other three cats. Although wary of strangers, he was the most affectionate of all the cats with our two kids and me. He spent many evenings sprawled in my lap watching movies and ball games with me on the living room couch after everyone else had gone to bed.

Valiant, lovable Jackie had seven great years with us before subtle, slowly progressive complications of his injuries caught up with him. He had digestive and urinary problems that were manageable until they worsened in conjunction with advancing age. Eventually, the difficulties became terminal and we had to let him go to the big catnip field in the sky.

Even today, when I find myself frustrated and ready to give up on something, I think about Jackie. If an eight-pound cat left paralyzed in a ditch has the desire and courage to bring himself back to life, how can a grown man quit on something just because the going got tough? Who knows when one more hour of effort or one more day of patience might turn a seeming disaster into a surpassing success? I’ve written here before about the canine heroes in my life. But Jackie taught me that spirit and tenacity can be a cat thing, too.
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Fox Bowman Duarte is Washington’s largest DUI defense firm. With more than 100 years of combined legal experience, our eight trial lawyers have an encyclopedic knowledge of DUI law. On a regular basis, we’re called upon to educate judges and other attorneys about our state’s complex DUI laws and procedures. Find out more at foxbowmanduarte.com.

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If someone you know is facing a driving offense in the Puget Sound area, we’ve got it covered. We appear in courts from Bellingham to Camas--from Spokane to Ocean Shores, but the Puget Sound is home to us.

Ms. Callahan is the author of the widely acclaimed *Washington DUI Practice Manual Including Related Driving Offenses*, part of Thomson West’s *Washington Practice Series*™, a treatise relied upon by judges, prosecutors and defense attorneys across the state. When it comes to driving offenses, she’s not only on the map, she’s written it.

*If someone you know needs us, we are right here. Day or night, every day of the year.*

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