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PERRY MASON IN TEHRAN: A FAMILY'S JOURNEY P.12

# NWLawyer



JUL/AUG 2013  
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## Legal Deals? P.7

*Ethics of Lawyer Online  
Daily Deal Advertising*

**TOP 10**  
BORDER-CROSSING LAWYER ISSUES P.42

**MENTORSHIP**  
WHAT YOUNG LAWYERS SHOULD KNOW P.16

**LITERARY LAWYER**  
20 SUMMER READS P.36

**GOOD HELP**  
ETHICS AND STAFF CONDUCT P.34

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**Window Cleaning,  
Wine Tasting . . .  
and Wills?** 7

*Ethics of Attorney Marketing  
on “Daily Deal” Websites*  
by Greg McLawsen



18

**Perry Mason in Tehran** 12

*A Family’s Journey from  
Iran to Washington  
Public Office*  
by Jamila A. Johnson



12

**Mentorship** 16

*What Every Young Attorney  
Needs to Know*  
by Joel Matteson



26

**Piercing the Lavender  
Ceiling** 18

*Taking a Look at Inclusivity and  
Gay Legal Professionals  
and Clients*  
by Peggy Nagae and  
Lonnie Lusardo

**A Tale of Two Courts** 26

*Officiating As a Pastime for  
Lawyers and Judges*  
by Judge John McCarthy



28

**Montana Sundays** 28

*A Reflection*  
by James R. Murray

5 **President's Corner**  
Is Stress Management  
a Legal Skill?  
by Michele Radosevich

64 **The Bar Beat**  
American Originals  
by Michael Heatherly

4 **Inbox**

25 **Online**  
A Side of Sidebar  
*What's Happening at  
the NWSidebar Blog*

30 **OnBoard**  
A Report on the Work of the  
WSBA Board of Governors  
by Michael Heatherly

34 **Ethics**  
Good Help  
*Lawyer Responsibility for  
Staff Conduct*  
by Mark J. Fucile

36 **The Literary Lawyer**  
20 Books for Your Summer  
Reading List

42 **Top 10**  
Top 10 Issues for Border-  
Crossing Lawyers  
by Douglas Pierce

63 **Beyond the Bar No.**  
Aimee Iverson

46 **2013 WSBA Annual Awards  
Dinner Registration Form**

47 **WSBA 50-Year Member  
Tribute Luncheon  
Registration Form**

48 **Need to Know**  
News and Information for  
WSBA Members

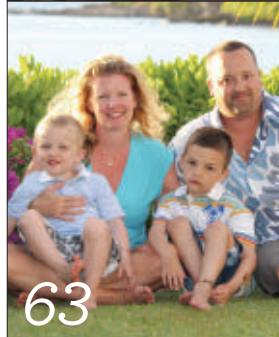
51 **Disciplinary Notices**

53 **CLE Calendar**

54 **Announcements**

57 **Professionals**

59 **Classifieds**



# NWLawyer

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**NWLawyer** will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

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### IMHO

I have been examining the monthly offering of *Bar News*, now *NWLawyer*, cover to cover, for the last 48 years that I have been a member of the WSBA. Without a doubt, "Humility," by Karen Koehler [June 2013 *NWLawyer*], is one of the 10 finest pieces of advice to grace the pages of your publication — or any bar journal — I have ever had the pleasure of reading. Thanks to the author for providing it, and thanks to you for publishing it.

*Madison R. Jones, Cedar Park, TX*

### Crime is Crime

Regarding Debra Boyer's article recommending that prostitution be decriminalized for all juveniles [June 2013 *NWLawyer*], one would think a goal is to discourage prostitution at all ages. If juvenile prostitutes are treated as persons in need of assistance, they will receive an unstated but clear message from society that prostitution is accepted behavior. The habits of youth become the customs of age, and young prostitutes will go on to be adult prostitutes.

Prosecution for juvenile crimes is a formal statement by society that prostitution is not acceptable. It is likely that short jail sentences evenly imposed act as a meaningful deterrent to crime, just as evenly enforced imposition of jail time for DUI offenders has operated in Washington to deter driving under the influence. But punishment of whatever nature should be evenly imposed. Juvenile prosecution is not perfect, but it does have the advantages of constitutional safeguards, individual decision making, and a public articulation of the concept that crime is wrong.

*Roger B. Ley, Astoria, OR*

# Is Stress Management a Legal Skill?

Lawyers have hard jobs. We have to know the law, which may sometimes require burning the midnight oil, but that's the easy part. Demanding clients, not-so-nice opposing counsel, and nagging worries about one's own performance are much more difficult to manage. A certain amount of stress may improve performance, but we've all had moments — or weeks, or months — when the stress was counterproductive.

Continuing legal education (CLE) was originally designed to help you know the law, but should it also be helping you address the stress that comes with practicing law? That's one of the questions that the Board of Governors will pose to the MCLE Task Force, which is currently being formed.

In preparation for the Task Force, I've been asking that question of lawyers at local bar events and at an online chat I did with Paula Littlewood, our executive director. The answers vary. Some think CLE is just about mastery of black-letter law; others see a wider role for continuing education. This discussion has crystallized my own views about the subject, and I share them in hopes of sparking more discussion.

The primary purpose of requiring continuing education, I believe, is consumer protection. The law changes over time as courts hand down decisions and change procedures. It would be malpractice to consult a 1997 version of the Civil Rules, or to reuse a brief written then, without updating your research. CLEs offer assurance to the public that their lawyer is aware of current rules and cases. And by assuring the public, lawyers also get a benefit. It is good for our business to be seen as competent.

The greatest threats to our competency, however, often arise from stress, our reactions to it, and our coping mechanisms. Alcoholism and substance abuse, as well as mental health problems, are often linked to practice errors/mismanagement. It is difficult to give clients even adequate service

everyday relaxation techniques can prevent or lessen the burnout itself.

I recognize that this is a tough prescription for some of us. In general, lawyers are not into "touchy-feely" events. Appeals to logic and duty are often more effective with us than appeals to emotion. But that's precisely the reason that stress gets us in trouble. We can often "stuff" our frustration and anger until they have actually damaged us.

The current CLE requirement is 45 credits every three years, 39 of them general credits. Taking a class about stress reduction every year still leaves plenty of time for black-letter law. It's not as if we all take all 39 credits in our area of concentration. It's fun to learn about what the U.S. Supreme Court is doing each term, even if we are unlikely to appear there. And understanding the Affordable Care Act makes us more politically literate, even if we don't practice health law. We can satisfy our curiosity about new areas without neglecting the areas in which we practice every day.

In summary, I think we should broaden the CLE requirements for the same reason we have the requirements in the first place — because they help make us better lawyers. I'd love to hear from you on this subject — whether you agree or disagree. Address your comments to [micheleradosevich@dwt.com](mailto:micheleradosevich@dwt.com). **NWL**



if you are struggling just to get out of bed and to the office.

Continuing education can help us understand and deal with stress *before* it has devastating effects on our clients and our practice. We have all experienced burnout at times. And sometimes it's persistent, not readily yielding to a weekend in the San Juans, or a good book, or whatever our favorite escape is. Learning how to recognize the trouble signs and take action can prevent worse problems. And learning



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# Window Cleaning, Wine Tasting ...and Wills?

## Ethics of Attorney Marketing on “Daily Deal” Websites

*Note: The opinions expressed are those of the author and are not endorsed by the WSBA.*

BY GREG MCLAWSEN

**M**OST OF US ARE NOW FAMILIAR WITH “DAILY DEAL” WEBSITES such as Groupon and LivingSocial, which sell steeply discounted vouchers for goods and services. While daily deal sites typically hawk treats from cupcakes to spa treatments, professionals — including lawyers — have experimented with offering their services through such sites. A Missouri attorney drew much attention a couple years ago when he ran a Groupon offering a will and durable power of attorney for \$99.<sup>1</sup> This article delves into the ethical issues for attorneys eyeing these uncertain waters.

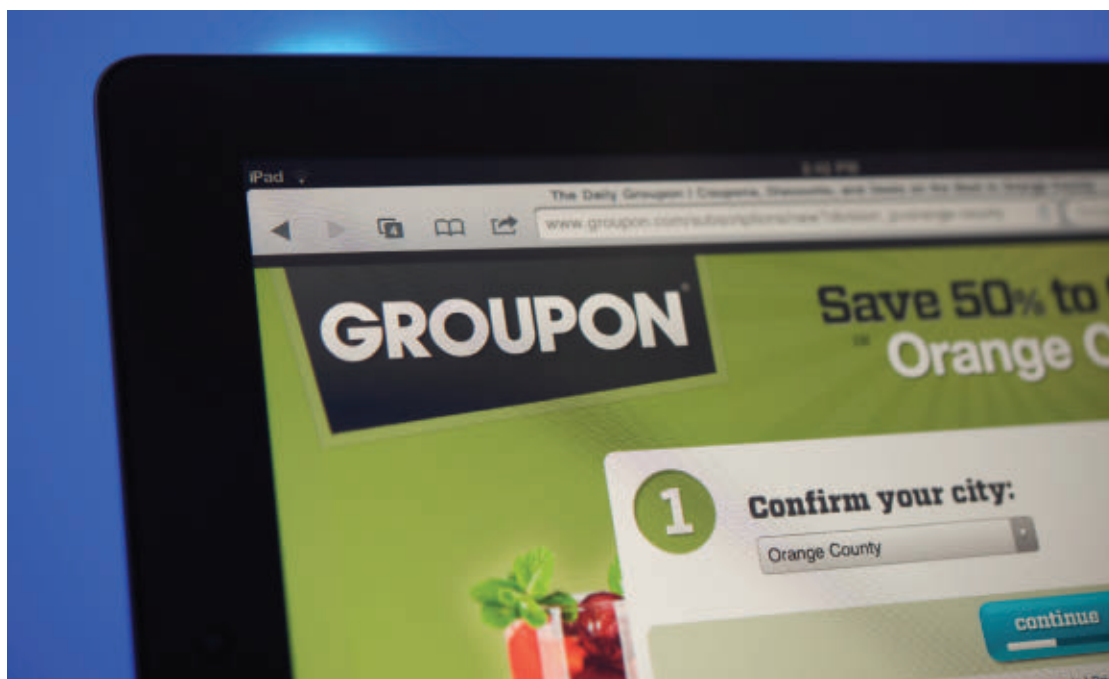
Daily deals represent a huge discount from the merchant — deeper even than the price tag suggests. The merchant typically agrees to offer a service at 50 percent off the sticker price, but the daily deal site takes a 50 percent cut of the reduced purchase price. Hence, the Missouri attorney might have earned as little as \$25 for drafting those two legal instruments.

From an ethics standpoint, the red flags are easy to spot: the percentage-based payment to the daily deal site looks like fee-splitting; the high cost-per-consumer looks like a kickback for client referrals; and the handling of funds seems out of compliance with trust accounting rules. Yet on close analysis, I believe daily deal sites are not the ethical booby traps they first appear.

Attorney use of daily deal sites is “fraught with peril,” warns the Indiana Bar ethics committee.<sup>2</sup> But bar ethics committees are almost evenly divided on the issue of whether daily deal sites may be used by attorneys. For use in bean-counting jurisprudence, here’s the roundup: Maryland, New York, North Carolina, and South Carolina all approve of daily deal sites, albeit with some strong warnings;<sup>3</sup> Alabama, Indiana, and Pennsylvania categorically disapprove of daily deal sites.<sup>4</sup> But smoke does not always indicate fire,<sup>5</sup> as it can be argued that the apparent peril is not what it seems.

### A Referral Scheme?

RPC 7.2(b) prohibits the use of for-profit referral services, but allows attorneys to pay the “reason-



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able cost” of advertising. Are daily deal sites camouflaged referral services, or does an attorney merely pay reasonable advertising costs?

Some jurisdictions conclude that the cost of daily deal marketing is too high to be a “reasonable” cost of advertising. Indeed, merchants pay daily deal sites a very high percentage of the consumer purchase price, usually 50 percent. An Alabama advisory opinion states bluntly that the “percentage taken by the site is not tied in any manner to the ‘reasonable cost’ of the advertisement.”<sup>6</sup>

Let’s assume that impermissible referral schemes can be identified on cost structure and price alone (though they cannot — read further). Even so, the high cost of daily deal advertising cannot be characterized as unreasonable. Who is best situated to determine the value of a marketing tool to a law firm? What would it mean for an attorney to elect an “unreasonably” priced means of communicating her services? The attorney investing her firm’s resources is the most skeptical individual on the planet when it comes to valuing the marketing tool. Most practitioners have spam filters full of unreasonably priced advertising — they are the ones we believe will deliver poorly for the cost.

The WSBA RPC Committee has been helpful in identifying what makes a for-profit referral scheme impermissible. In the Committee’s view, it is permissible for an attorney to pay the cost of “ministerial services” to communicate information about an attorney’s practice, but the service may not be paid for subjective appraisals that bolster an attorney’s profile.<sup>7</sup> Daily deal sites fare well on this test, since they do no more than post an attorney’s listing without providing an evaluation. Indeed, the Maryland Bar ethics committee opined that daily deal sites do not constitute impermissible referral schemes since “the website does not take any particular action to refer a prospective client to a specific product or service.”<sup>8</sup>

Focusing on the high, percentage-based cost of daily deal sites is also unfair because it disfavors attorneys in solo and small practice settings. The percentage-based pricing of Groupon means that a solo practitioner can instantly reach a large audience without upfront capital investment. Larger firms may have the ability to pay out of pocket for marketing campaigns, but the small fish rarely have this luxury. Sure, Groupon gets a windfall if the attorney’s campaign takes off, but

Groupon takes a haircut and shoulders the loss if the deal fizzles. The high premium charged by Groupon for this arrangement might sound familiar: using high percentage-based fees to offset the risk of providing services with no upfront fee. Contingent fees, anyone?

### Fee Sharing?

The percentage-based cost structure of daily deal sites also raises eyebrows because of the prohibition on fee-sharing with non-lawyers under RPC 5.4(a). This limitation, of course, is meant to safeguard the attorney’s independent professional judgment.<sup>9</sup> Naysayers, such as the Indiana Bar, have likened daily deal sites to fee sharing with a brokerage firm.<sup>10</sup>

Opinions from Maryland and North Carolina suggest that costs paid to the daily deal site are either a) shared fees, b) referral fees, or c) the reasonable cost of advertising.<sup>11</sup> Under RPC 7.2 alone, a dis-



junctive would make sense, because reasonable advertising costs are an express exception to the general rule against for-profit referral fees. But the fee-splitting prohibition in RPC 5.4 makes no exception for reasonable advertising costs. So the fee-sharing issues cannot be resolved merely by defending the reasonableness of the cost charged by daily deal sites.

The ethics question specific to RPC 5.4 is whether daily deal sites impede an attorney’s exercise of professional judgment. Here, the leading concern is that a representation might be foisted upon an attorney without the opportunity for her to exercise independent judgment. Could an attorney-client relationship be formed at the moment a consumer purchases the attorney’s daily deal? In that case, the attorney is on board literally before she knows it.

Maryland, New York, and South Carolina all agree that appropriate safeguards could protect the attorney’s exercise of judgment in undertaking a representation. When a consumer purchases a

voucher on a daily deal site, the terms of the purchase agreement may be modified by “fine print” language appearing with the offer.<sup>12</sup> Verbiage on the deal offer can make clear that before a relationship is formed with the attorney, a conflict check must be performed and the attorney must choose to take the case. Naturally, the monies collected must be returned if she does not take the case (see below regarding trust accounting issues), but the attorney is safeguarded from being dragged into a matter. So long as the attorney retains control over the decision to undertake the representation, it is unclear how a daily deal site would undermine professional independence.

### Trust Accounting?

When a daily deal is purchased, the consumer’s funds are transferred first to the advertiser, then to the attorney. Unearned attorney fees, of course, must be deposited into a client trust account per RPC 1.15A(a)(1). Are trust accounting rules violated where the client’s payment is in the possession of the advertiser?

Unlike other jurisdictions, in Washington flat-fee legal services are not subject to trust accounting.<sup>13</sup> Preparation of a will and representation in an immigration process are services routinely performed for a flat-fee cost. For such matters, it is permissible for an attorney to receive unearned monies via the daily deal site without regard to trust accounting rules.

What if the attorney chooses not to work with a prospective client who has already bought a flat-fee daily deal? A flat-fee client must be advised in writing that he “may or may not have a right to a refund of a portion of the fee” if representation is terminated before all work is performed.<sup>14</sup> Certainly the attorney would be required to completely refund the amount received, less a pro-rated amount for any work performed. (North Carolina opines that it would be categorically excessive for an attorney to retain the payment from an uncollected voucher.)<sup>15</sup> It appears the consumer would be able to then get the remaining portion of his original purchase price back from the daily deal site. Groupon, for example, will issue a complete refund of a purchased deal if the service provider refuses to honor the voucher.<sup>16</sup> So it seems a flat fee could be completely reimbursed to a prospective client if the need arose.

What of unearned fees? Funds could be deposited directly from the daily

deal site into a trust account, but prior to deposit they have been held by the daily deal site. This scenario seems potentially analogous to prepaid legal service providers. In exchange for a monthly fee, such services agree to pay for specified legal services for the consumer. Washington RPCs expressly endorse lawyers' participation in such arrangements.<sup>17</sup> By this analogy, the daily deal site is in the role of a third-party payer for legal services, rather than a mere custodian of a client's funds.

However, this appears at odds with how the daily deal transactions are actually structured. Groupon's terms stipulate that the merchant (here, the lawyer/firm) is the seller of the deal voucher, and that funds retained by Groupon are compensation for marketing, etc.<sup>18</sup> On those terms, it seems Groupon would be in the position of temporarily holding unearned legal fees belonging to the client, unlike a prepaid legal services provider that pays an attorney from the provider's own coffers.

It would likely be wise for an attorney to steer clear of accepting unearned legal fees through daily deal sites. Apart from the trust accounting issue, flat-fee

matters are simply better suited to daily deals than indeterminate representations. With flat-fee matters, it would be easier for the attorney to gauge the scope of her potential commitments and better plan on the front-end.

### Truthfulness

In addition to the ethics hurdles unique to daily deal sites, such communications must still comply with all general communication rules. For starters, the daily deal must actually be a deal: the voucher must represent the actual discount it purports to be.<sup>19</sup> A 50 percent discount on the flat-fee cost of preparing a will must actually be a 50 percent discount. This will be tricky in application, since firms that customarily charge flat fees may routinely (and appropriately) adjust the quote to the individual client.<sup>20</sup> Firms may have a more difficult time explaining a "sticker price" for their services than an auto shop pricing an oil change.

A deal listing should explain the preconditions that must be met before the attorney accepts a representation, including that a conflict check be performed, that the attorney be qualified to

accept the representation, and that the attorney chose to accept the matter. But North Carolina has opined that if an attorney — even at the time of the initial consultation — discovers she has underestimated the time for a flat fee, she has assumed this risk and must honor the daily deal voucher.<sup>21</sup>

### Yuckiness

The fact that an attorney might escape disciplinary sanction for using daily deal sites is hardly a ringing endorsement. Some might balk at the company one would share on such sites. Is the dignity of an attorney, or the profession itself, undermined by a marketing media associated with discounted donuts and beer tastings?

Those on high horses may want to recall our profession's call to reaching the underserved. Washington state in particular has focused enormous energy on equal access to justice, recently allowing limited license legal technicians.<sup>22</sup> Yet such developments come at a time when many firms struggle and record numbers of new attorneys find themselves unemployed. Discounted legal services — such

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Indeed, daily deal advertisements — such as for a flat-rate will — may bring individuals into their first contact with lawyers. The tackiness of an advertisement’s verbiage is most certainly in the attorney’s control, but it is difficult to see how making legal services affordable undermines professional dignity.

### Onward

For those who missed it, the WSBA RPC Committee was disbanded last year. (At press time, the Board of Governors is considering proposals for reconstituting a reformulated committee to address RPC questions.) The rapid growth of law practice technology and new media increases the need for attorneys trying to get their ethical bearings in new territory to get guidance. There is a cogent argument that attorney use of daily deal sites — at least on flat-fee matters — can be compliant with professional ethics. Yet without more authoritative guidance, attorneys will remain justifiably anxious. Only time will tell who wants to be the first penguin

to dive off the iceberg into the uncertain waters of daily deal marketing. **NWL**



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immigration law. His work focuses on representing families in the immigration system. Greg is active in the leadership of the WSBA Solo and Small Practice Section and the Washington Chapter of the American Immigration Lawyers Association.

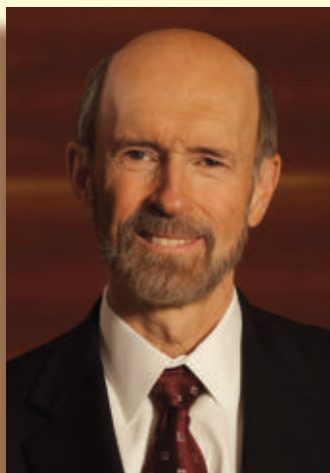
### NOTES

1. The original posting is available at <http://tinyurl.com/ajyb26e>.
2. Ind. St. Bar Assn. Legal Ethics Comm., Op. 1, 2012-JDH-1 (2012) (emphasis added), available at <http://tinyurl.com/7m8267e>.
3. Md. State Bar Assn. Comm. on Ethics, Dkt. No. 2012-07 (2012) (on file with the author); N.Y. State Bar Assn. Comm. on Prof. Ethics, Op. 897 (Dec. 13, 2011), available at <http://tinyurl.com/75usewx>; N. Car. Bar Assn. Eth-

ics Comm., Op. 10 (Oct. 21, 2011), available at <http://tinyurl.com/d6dphky>; S. Car. Bar Assn. Ethics Advisory Comm., Op. 11-05, available at <http://tinyurl.com/cs6lv4p>. An *ABA Journal* article once reported that the Missouri Bar had endorsed the use of Groupon by an attorney, but the bar later clarified via Twitter it had taken no formal position on the issue. An undated announcement is available at <http://tinyurl.com/cx4tsa>. See Amber Hollister, “What Hath the Web Wrought, Advertising in the Internet Age,” *Oregon St. Bar Bull.* (May 2011), available at <http://tinyurl.com/6kposeh>.

4. *Supra* n. 2 (opining that sites are not likely compliant); Ala. Bar Assn. Off. Gen. Counsel, Formal Op. 2012-01 (2013), available at [www.alabar.org/ogc/pdf/2012-01.pdf](http://www.alabar.org/ogc/pdf/2012-01.pdf) (opining that daily deal sites necessarily or potentially violate multiple RPCs); see Thomas G. Wilkinson, Jr., “Ethics Digest,” *Penn. Lawyer* (Nov./Dec. 2011) (reporting on a Pennsylvania Bar ethics opinion advising daily deal sites are impermissible).
5. Cooks amongst us may have experienced a wok filled with smoking oil; it reaches the flash point and ignites if, and only if, no extinguisher is on hand.
6. *Supra* n. 4.
7. Advis. Op. 2106 (2006), available at <http://tinyurl.com/a4xon3v>.
8. *Supra* n. 3.
9. RPC 5.4, cmt. 1.
10. *Supra* n. 4.
11. *Supra* n. 3.
12. See, e.g., LivingSocial Terms and Conditions § 6, available at [www.livingsocial.com/terms](http://www.livingsocial.com/terms) (stating that a purchaser is bound by the fine print identified in the deal copy).
13. RPC 1.5(f)(2).
14. RPC 1.5(f)(2). Note that RPC 1.15(f)(2) requires a written fee agreement with specific verbiage before undertaking a flat fee representation. To comply with the rules for accepting flat fees an attorney should ensure that the “fine print” terms of her daily deal listing include provisions required by the RPC; the client must agree to these terms before the fee is transmitted.
15. *Supra* n. 3.
16. Terms of Use, § 7, available at [www.groupon.com/terms](http://www.groupon.com/terms) (last visited May 6, 2013).
17. RPC 7.2(b)(2) (attorney may pay the usual charges for a legal services plan); RPC 7.3 (d) (attorney pay participate in plan notwithstanding the provider’s in-person solicitation of consumers).
18. Groupon Merchant Terms & Conditions §§ 1 & 2, available at [www.groupon.com/merchant-terms-and-conditions](http://www.groupon.com/merchant-terms-and-conditions) (last visited May 6, 2013).
19. See RPC 7.1 (communications about lawyer’s services must not be false or misleading).
20. See RPC 1.5(a) (factors to be considered in determining reasonable fee include time and labor involved, and time limitations imposed by client).
21. *Supra* n. 3.
22. See APR 28 (regarding limited license legal technicians).

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# Perry Mason in Tehran

*A Family's Journey from Iran to  
Washington Public Office*

BY JAMILA A. JOHNSON

This year the Honorable Susan Amini became the first judge of Middle Eastern descent in the state of Washington, and her son, Representative Cyrus Habib, became the first Iranian-American in the country to hold state office. At its root, this is a story about family. It is a story about adversity. And it is a story about how character can move mountains.

It begins in the blue glow of a television set in Tehran.

Many years ago — before bombs and hostage crises — the theme song of “Perry Mason” drifted through Amini’s childhood home. A studious girl, she enjoyed learning English at her Catholic school. But at home, the television screen served as her English teacher, and her favorite lesson plan was “Perry Mason.”

“I would watch and I was fascinated by how the jury system worked. The lawyers — they were heroes,” Amini recalls. She would learn idioms and improve her pronunciation, as the iconic Mason would say, “Ladies and gentlemen of the jury.” And she was inspired and imagined herself as a lawyer.

Amini’s childhood nights with “Perry Mason” stuck with her. She earned degrees from Tehran University in political science and international law, and then continued her studies at Cambridge University, where she earned a degree in English literature.

Amini immigrated to the United States during the Iran Hostage Crisis (1979–81). At first, she and her husband, Mo Habib, lived in Maryland, where she gave birth to their son, Cyrus Habib. But amidst the joy was true adversity. Four months after his birth, doctors discovered that Cyrus had developed a rare form of cancer, which took his sight in one eye. When Cyrus entered remission and learned to ride his tricycle with sight limitations, Mo Habib underwent cancer surgeries of his own. Despite these medical challenges, Amini’s supportive husband encouraged her to apply to law school.

“My mom started law school the same year I started kindergarten,” Habib ex-

This page: Mo Habib, Rep. Cyrus Habib, and Judge Susan Amini meet with Gov. Jay Inslee after Judge Amini’s appointment in May. Opposite page: Photos of Judge Amini and Rep. Habib throughout their careers and life.

plains on the Sunday before his mother's first day as a King County Superior Court judge. To him, it seems only fitting that they enter public service at the same time.

The students at University of Maryland School of Law were almost all men and the school had never admitted a law student who had graduated from a school outside of the United States. But there she was. She would bring young Cyrus to moot court practice competitions on weekends and study after he went to bed. She was well on her way to becoming the hero she had only dreamed about in Tehran.

Then Cyrus's cancer returned in full force. She spent day after day in the hospital at Johns Hopkins University at her son's side. "I remember seeing my mother reading law books in the hospital room. I remember the yellow highlighters," he recalls. This would be one of the last sights he would see, as he lost his eyesight completely by age eight.

"There was not a year during the '80s that someone in our family was not battling cancer," he reflects. But that was not the only pressure.

At that time, Amini's parents were living in bomb shelters under their home in Tehran. The uncertainty and the slowness of telephone communication weighed heavily on her. "The enormity of it was almost too much," she says.

But Amini finished law school, and the family packed up their two cars and drove to Bellevue, Washington, to escape the memories of a decade of struggle. Once in Washington, Amini joined the

Associated Counsel for the Accused, where she worked as a public defender in the district courts for five years. "It was important to me to make sure that people did not feel like they were getting something less than those who could afford an attorney," Amini says.

She would communicate constantly with her clients, handwriting them personalized notes on what to expect before court to instill a sense of confidence in

Teachers and administrators did not know what to do with him. They sought to protect him from injury and would keep him in at recess, refusing to let him play on the jungle gym with the other kids.

When Amini learned this, she found herself at the school insisting that Habib be treated like any other child. She spent hours with him on the playground teaching him how to navigate the jungle gym without his sight, so that he would enjoy recess just like everyone else. He never missed another recess.

She then realized she had to develop a complete knowledge of disability rights — and fast. Just as she had done at the playground, she showed up at the school and advocated constantly to ensure accommodations for her son that allowed him to succeed. She knew the school must have thought she was being difficult, but she didn't care. "If I didn't advocate for him, who would?" she said.

When the school did not provide a National French Test in braille, she held her ground, insisting that a proctor be able to read the test to Habib. When the school protested, she said

the only way she would back down was if they cancelled the test for all students. Begrudgingly, the school relented and tested Habib. Habib earned the highest score on the National French Placement Test in the country.

"I felt very alone when I was going through this. I didn't know any other parents of children with a disability," she explains.

Amini is an advocate — it pulses through her body and resides in her



the system. In 1994, Amini opened her own practice, and received a contract to provide public defense services for the City of Bellevue. She also began serving as a *pro tem* judge in almost every corner of the county.

In addition to her work on public defense, she took on family law and immigration cases and, of course, disability advocacy for her most important client — her son. At each turn, she saw school officials perplexed by Habib's blindness.

bones. After 19 years, her private practice, Amini Law, closed its doors so that Amini could put on the judicial robe. She was appointed to the King County Superior Court by Gov. Jay Inslee on May 2. Wrapping up her practice in the week before taking the bench, she ran across copies of the letters she had drafted in support of her son years ago. "I always felt like I was an equal participant. My mom gave me that," Habib says.

And that empowerment has stayed with him. Cyrus Habib went to Columbia University and then Oxford Univer-

sity. He was a Rhodes Scholar, a Truman Scholar, and a Soros Fellow. He obtained his J.D. from Yale Law School where he was editor of Yale's law review. "I was always really inspired by watching my mom," Habib explains.

But it is difficult not to be inspired by the quick-thinking and rapid-speaking Habib. His confidence and willingness to labor for large-scale justice is frequent. While in law school, Habib found himself advocating the way that his mother had advocated for him. At the time, the paper currency of 180 countries was de-

signed so that it could be recognizable to the blind. The United States Government had refused to do so, claiming that the price tag was simply too high.

Habib took action and wrote an amicus brief seeking a ruling requiring the Treasury Department to determine the best means of making money distinguishable by the blind. The solutions were not hard, and were used in those 180 countries: the Treasury Department could use raised ink, modify the size of certain bills, or produce a tactile mark to indicate a bill's denomination.

"Blind people in the United States suffer from a staggering 70 percent unemployment rate, and a disproportionately high percentage of those who are employed occupy jobs in the low end of the service sector," Habib wrote in an editorial in *The Washington Post* while at Yale. "There is no question that the catastrophic poverty of America's blind requires a solution. Why not begin by giving us access to money at the most atomic level?"

Much like his mother, Habib is seldom afraid to speak truth to power. On July 30, 2008, he followed his guest column in *The Washington Post* with testimony on tactilely distinguishable currency before the U.S. Congressional Subcommittee on Domestic and International Monetary Policy, Trade, and Technology. He testified that accessibility to currency for blind people should be considered as important as that of wheelchair ramps or braille in elevators.

"What I always knew I wanted was the vocabulary and the ability to make arguments to get a just outcome," Habib says, trying to identify the moment he decided he was going to practice law. Yale gave him those skills he wanted and the continued confidence to reach for large change. On May 31, 2011, Secretary of the Treasury Timothy F. Geithner approved the methods that the Department of the Treasury will eventually use to provide blind and visually impaired individuals with meaningful access to U.S. currency, which include a tactile feature, high-contrast numerals, and a currency reader program.

Today, Habib is an attorney in Perkins Coie's Technology Transactions and Privacy Group, where he uses technology to assist him in all areas of his legal practice. He was recently named Distinguished Lawmaker in Residence at Seattle University School of Law, and

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will be teaching there in the fall. And he is serving his first term as a state representative.

Considering his background, it is not surprising that the first bill Habib fought to pass in Olympia was in response to a parent in his district advocating for his five-year-old-son. The boy suffers with eosinophilia — an abnormally high number of a type of white blood cell that contain proteins designed to help the body fight infection. Treatments for eosinophilia include being fed a specialized medical food or obtaining a liquid through a feeding tube. Insurance plans in Washington consider the liquid form to be covered by insurance, but do not cover the solid medical food. “That the invasive feeding tube option is the only option covered by insurance is inhumane. These bills are important checks on the insurance industry,” Habib says. If Habib does not advocate for his constituents, who will?

On May 8, 2013, Governor Jay Inslee signed into law House Bill 1216, a bill that Habib sponsored, which aims to fix this disparity in coverage.

There is a heroism that exudes from Judge Amini, and perhaps that heroism is genetic. Perhaps it comes from the adversity the family went through in the 1980s. Whatever the source, Rep. Habib has the same magnetism and integrity that his mother has demonstrated throughout her life and her 23 years of practice.

While Washington has a few notable legal and political mothers and sons — like Jennifer Dunn and Reagan Dunn or Betty Fletcher and William Fletcher — there has never been a story quite like this: this story of family, adversity, and moving mountains. But maybe, just maybe, this is more aptly described as a story of heroes: the kind of heroes that can inspire a young girl in Tehran. **NWL**



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# MENTORSHIP

## What Every Young Attorney Needs to Know



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BY JOEL MATTESON

**J**UDGE RICHARD POSNER, A PROMINENT LEGAL THEORIST, ONCE STATED THAT THE “BASIC FOCUS” of law school should be on the training of practicing lawyers. Nevertheless, most law schools do little to prepare their graduates for the practical challenges of being a lawyer. While an increasing number of law schools are offering clinical training, most adhere to the traditional mode of legal education with its focus on scholarship, black-letter law, and appellate court decisions. Unfortunately, this approach leaves graduates unprepared for many of the challenges of real-world practice, such as running a business, accounting, marketing, developing professional relationships, and so forth.

As they travel along the steep learning curve of early-career practice, young lawyers need advice regarding matters that have nothing to do with black-letter law, such as developing practical skills and relationships and learning how to cope with the everyday demands of prac-

tice. Mentorship helps mentees get up to speed and develop real-world, practical legal and coping skills quicker and more effectively than they would on their own. Mentorship is especially important considering that, according to the WSBA 2011 membership study, nearly half of the Bar may be retired or working part-time in 5 to 15 years, leaving in their wake a significant “knowledge gap.”

Newer attorneys usually recognize their need for a mentor. According to one study, roughly four out of five newer attorneys wants a mentor, but only one out of five has a mentor. So how do younger lawyers bridge this mentoring gap and find a suitable mentor?

For many years, the WSBA had a formal mentorship program in its Lawyer-to-Lawyer Program. But as WSBA Executive Director Paula Littlewood explains, “It was difficult to get sufficient numbers of mentors to sign up for the program. Given the gap of knowledge between what is provided in law school regarding practice skills and what is needed as new lawyers enter the profession, the WSBA Board of Governors made a decision more than four years ago to invest heavily in on-boarding new lawyers into the profession through its New Lawyer Education (NLE) Program.” Through the NLE Program, lawyers in their first four years of practice may receive free and low-cost skills training courses.

In making this investment of resources, says Littlewood, “the Board recognized that a robust educational system for new lawyers would provide a systemic method for providing the necessary skills to become practice-ready.” Such courses are offered not only through the NLE Program but also through public service opportunities such as the statewide WSBA Moderate Means Program and the WSBA



Home Foreclosure Legal Aid Project. Participants in the Moderate Means Program may also request a mentor, if desired.

The WSBA also recently created a Mentorship Work Group that is exploring the issue of mentoring and ascertaining what mentoring opportunities are currently available throughout the state, as well as how best to support these efforts. The Work Group will make any necessary recommendations to the Board of Governors in 12–18 months.

Beyond that, young lawyers must take the initiative regarding their professional development. Often this means finding a mentor. Would-be mentees should adhere to the following advice for finding a mentor:

### Do Your Homework

Don't approach a prospective mentor with a vague agenda. Instead, figure out specifically what you want your mentor to help you with. Do you need advice on running your own business or developing a marketing plan? Do you need help with networking? Or do you simply want a sounding board or someone to call when you have a question? Having a clear sense of your needs and career goals — both short- and long-term — will make your time with your mentor more productive.

### Initiate Contact

The next step is to identify mentor candidates. University of Washington School of Law Assistant Dean Michelle Gonzalez suggests that would-be mentees select a mentor who has the experience and training that the mentee seeks to obtain over time. "The ideal mentor is someone you respect and wish to emulate," says Gonzalez.

Start by writing your potential mentor and explaining who you are, what you want, why you selected them, and when you are available to meet. You may need to follow your letter or email with a phone call if you don't receive a response after a couple of weeks. If your prospective mentor agrees to meet you, send them your résumé and a brief cover letter before the meeting so they will know more about you and your agenda. Like any relationship,

trust is essential, so agree that what you discuss is confidential. This will encourage you to be more open and honest with your mentor.

### Meet, Listen, Learn

There are plenty of suitable places to meet, just not at your mentor's office, where distractions abound. "A coffee shop is a totally acceptable place to meet," says Whatcom County Bar Association President Jim Britain. If you have done your homework, you will come to the meeting equipped with specific, well-thought-out questions. Listen carefully to your mentor's advice. You will quickly get a sense of whether there is sufficient chemistry to make the relationship work. Don't be afraid to think outside the box regarding ways to learn from your mentor. Gonzalez suggests that newer attorneys consider shadowing their mentor for a day at the office, with clients, or in court.

If the fit is right, consider putting your mentorship agreement in writing, so both sides have a clear understanding of what the goals are, how often and in what manner you will communicate, and what is expected from each person. If the fit isn't right, don't be afraid to move on to more productive relationships. After meeting, show your appreciation by writing a thank-you note and schedule any follow-up meetings.

And there's no need to stop at one mentor. Gonzalez recommends that newer attorneys consider getting more than one mentor, as each mentor brings to the table unique strengths, weaknesses, perspectives, and experiences.

### A Grassroots Approach

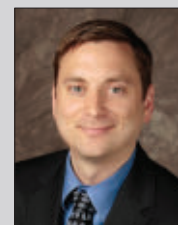
Without an official mentorship program, "it's up to young lawyers to organize at the local level," explains Britain. Local mentorship programs can provide a forum for matching mentors and mentees and can strengthen these relationships, which tend to wilt without structure and planning.

In Clark County, people from all professions created a local, grassroots mentorship community that features "Mentor Day," where prospective men-

tors and mentees meet and greet. The whole community makes a collective effort to foster mentorship during "Mentor Month." The Clark County Mentoring RoundTable serves as the community's mentoring center. The RoundTable gathers on one website ([www.clarkcountymentoring.com/about.php](http://www.clarkcountymentoring.com/about.php)) that links to various resources and mentorship programs. Clark County's Mentoring RoundTable illustrates one way that communities can promote mentoring at the local level.

Another way to promote local-level mentoring is by following the model developed by the Washington Leadership Institute (WLI). The WLI is a collaboration between the WSBA and the University of Washington School of Law. As Gonzalez explains, its purpose is to "recruit, train, and develop minority and traditionally underrepresented attorneys for future leadership positions in the Bar." As part of that effort, the WLI has created a mentorship blueprint that serves as a model for other grassroots organizations (Find the WLI mentoring guide at [www.thementoringlawyer.org/#!mentoringguide/c243u](http://www.thementoringlawyer.org/#!mentoringguide/c243u)). The blueprint sets forth guidelines for administering local mentorship programs, including establishing procedures for collecting applications, making sure applicants meet eligibility requirements, pairing mentors with mentees, creating mentorship plans, and conducting progress reports.

Each newer attorney should take it upon themselves to ensure that they receive the mentorship they need. If there isn't a mentorship program where you practice, consider starting one. When it comes to mentorship, the saying, "Be the change that you wish to see" is good advice. **NWL**



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# Piercing the Lavender Ceiling

Taking a Look at Inclusivity and Gay Legal Professionals and Clients

BY PEGGY NAGAE AND LONNIE LUSARDO

**O**VER THE YEARS, LGBTQ (lesbian, gay, bisexual, transgender, and queer or questioning) people have confronted a “lavender ceiling” — their presence has not only been disregarded but categorically denied, often with no legal recourse for discriminatory practices. As a growing number of corporate, political, and religious leaders recognize the value of LGBTQ inclusion, the need for a more inclusive approach is becoming institutionally essential for the future of law.

## Corporate Equality

Within the past few years, an implied social mandate has evolved to recognize sexual minorities. This change is evidenced in the exhaustive research conducted by national organizations, such as studies by the Human Rights Campaign (HRC), the largest civil rights organization working to achieve equality for LGBTQ Americans.

Some companies are relieved and others hold their breath while reading HRC’s annual Corporate Equality Index (CEI), a survey of corporations and other organizations, widely recognized as a national benchmarking tool on corporate policies and practices related to LGBT employees. A perfect score on the CEI recognizes legal organizations that recruit, hire, and support openly LGBTQ lawyers and staff in inclusive ways. The index is one important

source for LGBTQ lawyers considering employment options.

For the 2012 CEI, 1,737 companies were invited to participate, 481 submitted surveys, and 636 were rated. That number included the 200 top revenue-generating law firms. A total of 145 law firms participated. Of those 145, 71 law firms received perfect scores (100 percent), up from the 55 firms that earned perfect scores in 2011. This represents the largest number of perfect scores from any of the 30 industries surveyed. Only one Washington state firm, Perkins Coie, received a perfect score. The former Seattle-based firm K&L Gates, now headquartered in Pittsburgh, PA, and Portland-based Stoel Rives also received scores of 100 percent.

Going to the next level of development, however, means retaining and advancing LGBTQ attorneys and staff to all levels of the firm, from first-year

associates to senior partners, and from positions of little power to positions at the highest levels of the organization.

Achieving such heights can be quite challenging since, contrary to popular belief, no federal law prohibits discrimination based on sexual orientation. According to HRC, only 21 states and the District of Columbia prohibit such discrimination. Washington, Oregon, California, 13 other states, and the District of Columbia go beyond the typical prohibitions and cover discrimination based on gender identity, as well as sexual orientation. Gender identity is a person's sense of being male or female, a self-conception resulting from and related to a combination of genetic and environmental influences.

Regardless of HRC designation or state laws, every legal organization — no matter how large or small — can take steps to attract and retain highly talented LGBTQ attorneys and to represent LGBTQ clients. Law firms and legal organizations that have distinguished themselves as leaders in cultivating LGBTQ inclusion reap a significant return in productivity and financial benefits. Human resources staff and partners at such organizations report remarkable strides in recruitment, retention, improved morale, reduced costs, increased public relations value in their communities, and an enhanced sense of working toward social justice. Overall, however, a review of how effectively the legal profession fully embraces LGBTQ attorneys, judges, and staff reveals even more work is needed to build diverse and fully inclusive workplaces.

### Social Acceptance?

Mainstream sentiment around LGBTQ issues is shifting toward greater social acceptance, as evidenced in 2012 Washington state elections to support marriage equality. While many say the trend toward more acceptance of LGBTQ people is happening at an unexpectedly rapid pace, some attorneys, judges, and legal administrators suggest any change is likely to unfold at a slower pace.

“Data on the numbers of ‘out’ or ‘self-identified’ LGBTQ lawyers is hard to come by,” says Gary Gates, Ph.D., demographer and Williams Distinguished Scholar at the Williams Institute (UCLA School of Law). Gates

estimates that about four percent of all Americans self-identify as LGBTQ and that number will be fairly constant in all occupations. Among judges, lawyers, and others in a legal environment, he says, “An individual’s ability to be out is constrained by the social climate of where that person works. Conditions are likely to be different for a gay or lesbian attorney at a major law firm in Seattle than for one at a small practice in Walla Walla.” In law firms, he explains, LGBTQ employees “talk about self-care, specifically when, where, and

how to disclose their sexual orientation or gender identity to others. Some firms are well along on the issues, others have barely begun to look at it.”

As law schools churn out new cadres of diverse graduates each year, inspired younger professionals tend to look for workplaces that reflect their values, offer high salaries and provide career opportunities. To LGBTQ employees, a law firm’s non-discrimination policy may make the difference between a job and hitting the pavement for a few more months.



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## Policies Versus Practices

What many new hires may discover is that “the policies” are indeed inclusive, yet are not a predictable indicator of reality. Homophobic jokes and covert behaviors, such as sidelining a qualified LGBTQ attorney from a plum assignment, seem to go on with little or no consequences to violators, rendering the inclusive policy essentially bankrupt in practice. And that can lead to attrition, which can be very costly for law firms. The National Associa-

tion of Legal Professionals (NALP) and administrators in legal organizations of all sizes estimate “the average cost to replace an attorney at upwards of \$250,000 to \$350,000.”

Concerns of belonging and feeling valued (i.e., inclusion) may also influence being out and open in the workplace. In 2011, NALP estimated 2,087 attorneys in the U.S. (1.88 percent) are LGBTQ. Some researchers suggest the real numbers are significantly higher. The NALP statistics contrast with

*Employees who feel personally supported at work are more likely to attain their full potential — and are more productive in the process.*

nationwide population surveys that reveal up to eight percent “non-heterosexuals” in the overall population.

The percentage of out and open LGBTQ attorneys, moreover, is higher in larger municipalities. According to NALP, “60 percent of reported openly LGBTQ lawyers are accounted for by just four cities: New York City, Washington, D.C., Los Angeles, and San Francisco, with firms of 701-plus lawyers reporting 2.05 percent openly LGBTQ partners, compared with 1.44 percent among partners overall. The highest concentration of LGBTQ attorneys is among associates, at 2.43 percent.”

## On the Job

Few workplace variables advance individual performance and staff morale more than an environment where individuals feel empowered to bring their entire being to their jobs. Employees who feel personally supported at work are more likely to attain their full potential — and are more productive in the process. In a field where individuals and businesses often measure success in billable hours, LGBTQ inclusion is one more way to boost the bottom line.

What barriers do LGBTQ attorneys confront at law firms? A 2010 report issued by the Minority Corporate Counsel Association (MCCA), “The New Paradigm of LGBTQ Inclusion,” uncovered a multitude of issues. The report noted that 83 percent of LGBTQ attorneys said they had a high level of commitment to their careers and to their law firms as opposed to 89 percent of all lawyers. This means fewer LGBTQ lawyers may stay at firms and be considered for partnership. Many feel their identities are not acknowledged and their experiences are not fully understood. In short, even when LGBTQ attorneys are present in the workplace, it does not mean they experience all the rights and privileges of full inclusion.



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The MCCA study found that differences in job satisfaction also exist among LGBTQ attorneys themselves, with 84 percent of gay men committed to stay with their employer, in contrast with 80 percent of lesbians. Year over year, this means fewer lesbian attorneys stay to be considered for partnership and fewer may reach levels of leadership in their firms.

The gap between partners and associates is even wider, with 93 percent of LGBTQ partners reporting a high commitment to their careers and their law firms, but only 75 percent of associates reporting the same. In addition, LGBTQ women attorneys and attorneys of color reported higher levels of disparity than their gay white male counterparts.

*Fear is a key reason for not self-identifying and being out and open at work: fear of being ostracized, marginalized, discriminated against, detested, and shunned . . .*

Some workplace conditions may be career-limiting for LGBTQ attorneys to be out, causing some to “pass” as straight lawyers. Those who can look and act the part of someone from the dominant heterosexual culture and those who can conform and even assimilate may experience the greatest advantages. In turn, this suggests that LGBTQ attorneys who “pass” are less likely to fill out self-identification surveys, share their experiences in research reports, and otherwise speak out if inappropriate comments are made or outright discrimination occurs. Their voices are not heard and their numbers and experiences are not represented.

#### **Fear**

Fear is a key reason for not self-identifying and being out and open at work: fear of being ostracized, marginalized, discriminated against, detested, and shunned, being run through the rumor mill, or outright removal from working with certain partners, clients, or issues. These challenges are exacerbated by the lack of federal laws prohibiting employment discrimination based on

sexual orientation and gender identity and the failure to recognize same-sex relationships at the federal level.

The notion of “being out at work” is nuanced and often multilayered. Some attorneys may be out and open within their practice group but not elsewhere; others may come out to only a few colleagues until they are more comfortable and secure in knowing they will not be penalized for who they are. Associates may not feel safe if certain partners know their sexual orientation, so they do not

disclose to anyone. Even those who are fully out experience having to “come out” again and again as new attorneys and staff, clients, opposing counsel, and others churn around them. This can become awkward, and tedious.

“Most Americans have never been asked about their sexual orientation — ever,” says Gary Gates. Straight colleagues often take for granted the unconditional freedom to speak unreservedly about family interactions or dating experiences at work. Every min-



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ute an LGBTQ attorney spends trying to figure out how to avoid talking about a weekend's high points, using non-specific pronouns, or hiding experiences other employees talk about freely is lost energy and lost work time.

When it is not safe to be out and open, LGBTQ attorneys must hide a significant part of their lives and may have to pretend being someone other than who they are. When asked an innocuous question about their vacation, for example, they may have to give a generalized answer, lie, or avoid specifics about what they did and with whom. As one respondent in the Corporate Counsel study stated:

... I almost felt like I was walking a tightrope, and I knew I wouldn't do that for long. The stress of having to basically lie about what you did over the weekend, and with whom you did it was overwhelming. I only lasted at that firm about six months just because it was so overwhelming how anti-LGBTQ it was. In my exit interview, I decided to use that

as my opportunity to come out since I was leaving and one of the questions was, "What would you do to change the firm?" And I said, "Well, I think the firm should be more involved in [the] LGBTQ community," and the partner laughed at me and said, "Well, that's never going to happen."

### Transgender Concerns

While gay and lesbian attorneys face their share of barriers, transgender attorneys can face even more significant ones. One particularly sensitive issue involves insurance coverage for transgender employees — including coverage to pay for mental health counseling, hormone therapy, surgical procedures, and prescriptions during the process of gender reassignment. Many firms do not have the breadth of coverage needed.

Another issue is when an attorney is transitioning in place, the process becomes public for everyone to witness. The challenge may affect almost everyone. Some of the more contentious conflicts come down to the most basic

needs, such as what bathroom will the employee use during their transition. When an individual known to be female, for example, outwardly expresses (or appears) as male, yet the individual has not fully transitioned, how will co-workers and colleagues respond?

The process of gender reassignment is complex and potentially confusing. The changes and impact on the work environment could be difficult, including adapting to a new name and pronoun, understanding the stages of transition, psychological evaluation, hormone treatment, "cosmetic" surgery, and a "Real Life Test" prior to the final stages.<sup>1</sup> To help companies cope with potential workplace conflicts, sexual orientation training and transgender issues training has become a burgeoning industry.

### LGBTQ Clients

While it is important for firms to change institutional practices and individual behavior to include LGBTQ attorneys, it is equally important to make those changes when firms have LGBTQ clients. Client legal needs are often challenging. Those facing LGBTQ clients are not only challenging but often nuanced, complex, and invisible to law firms in which straight is the expected norm. Furthermore, it is risky to assume that a client who appears straight actually is. Given the intricacy of LGBTQ legal needs and the ambiguity of the law, some firms focus on representing LGBTQ individuals and families.

As mentioned, LGBTQ legal issues can be complex. For example, family-law-related challenges for same-sex couples may include custody and visitation disputes, rights of unmarried partners, or adoption. They may also include issues such as second parent's rights in adoptions, rights of civil union partners, divorce, and domestic partnership benefits, and may involve LGBTQ people in previous heterosexual marriages. While the risks of being out and open can be daunting for LGBTQ attorneys, how better to serve LGBTQ clients than having attorneys who can personally empathize with their clients' legal needs?

Immigration policies of bi-national same-sex partners may get even more complicated with a partner's death or their own demise. Immigration issues may include estate planning, end-of-life issues, or the surviving partner's rights to pensions and other benefits.

# APPEALS

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LGBTQ workers have faced the range of legal disputes, from taking leave under the Family and Medical Leave Act, state-provided family and medical leave acts to healthcare decision-making laws. Employment discrimination based on sexual orientation and gender identity may also be workplace-related disputes, while criminal justice concerns, federal security clearance and other issues can prove to be more complex as they relate to LGBTQ clients.

For LGBTQ youth, legal disputes range from changes in educational

policies to dealing with bullying, foster care, and violence.

For LGBTQ elders, senior services and senior centers, long-term care issues, and income-support programs can be legal challenges. For low-income LGBTQ seniors, issues such as healthcare, housing, retirement, and estate planning need focused attention to respond to their particular needs. Advocates can help LGBTQ seniors arrange their affairs and name their beneficiaries to reflect their wishes and protect their partners.

## Conclusion

While out and open LGBTQ attorneys are increasing in numbers, law firms and legal organizations must change in order to achieve LGBTQ inclusion. Given the support from clients and the national LGBTQ legal landscape, now is the time to create LGBTQ-friendly legal organizations. Law firms must take active steps to recruit, hire, and retain talent, respond to clients' priorities, and serve the growing legal needs of LGBTQ people. **NWL**

*This is Part I of two articles on LGBT inclusion in the field of law. Part I deals with discriminatory practices against LGBTQ employees, especially in Washington state. Part II will describe the urgent need to create legal workplaces that are free of discrimination based on sexual orientation and what legal organizations can do to make their offices more inclusive where LGBTQ individuals feel as though they belong and their contributions are valued.*

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**PEGGY NAGAE**, owner of *Peggy Nagae Consulting*, specializes in diversity, executive coaching, and change. She serves as program



director for *The Center for APA Women* and is a former litigator and former president of *ABAW* and *The National Asian Pacific American Bar*

*Association*. **LONNIE LUSARDO**, owner of *The Diversity Collaborative*, is a cultural competency consultant and retreat facilitator. He is the principal founder of *Seattle Race Conference* and *Out in Front (Seattle)*, a leadership program for LGBTQ leaders.

## NOTE

1. MCCA, "The New Paradigm of LGBTQ Inclusion," p. 53.

# A Side of Sidebar

What's happening online at NWSidebar, the blog for Washington's legal community [nwsidebar.wsba.org]

## Tips on Studying for the Bar Exam

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## Four Procrastination Busters

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## Friday 5



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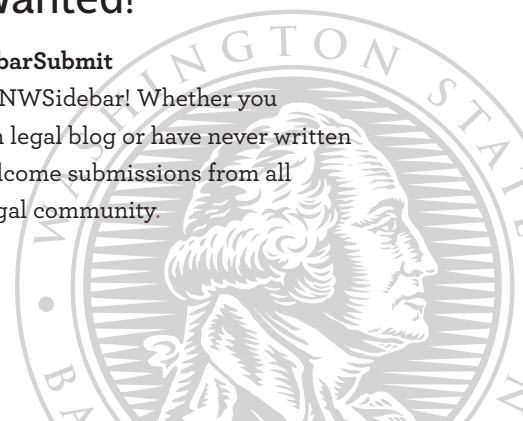




PHOTO BY PAT MCCARTHY

# A Tale of Two Courts

*Officiating As a Pastime for Lawyers and Judges*

BY JUDGE JOHN MCCARTHY

**W**HY WOULD YOU WANT TO OFFICIATE BASKETBALL? I was asked that all season long and I, myself, am really trying to understand why I agreed to be assigned to officiate 38 high school games in 64 days this past season. What was I thinking? Didn't I have enough going on in life? Wasn't I making enough key decisions at the courthouse?

A little history: I took up basketball officiating some 17 years ago when my former coach at the South End Boys and Girls Club, Jim McCuen, asked me to referee, even though my day job as a superior court judge was pretty intense, with lots of decisions. He was in charge of the Pacific Northwest Basketball Officials Association at the time. You owe your former coaches and when one of them asks you to do something, you agree without hesitation, so I took it up at his request. He knew I was familiar with the game and I had coached my three daughters and one son through grade school. He also knew I had given some of his officials some grief and was now extracting some payback by giving me an offer I could not refuse. I committed to refereeing both basketball and football, did it for the next 12 years, and gave it up about five years ago, when work and other commitments finally got in the way.

I was drawn back to it this past November when Darren Nelson, an older official

I had worked with who had 50 years' experience as an official, showed up in my court. He was selected to be the presiding juror on a case in my department, and after the trial, he encouraged me to come to a meeting and get back to officiating. I agreed, somewhat reluctantly, to attend just one meeting (he had been a diligent juror), and with some further encouragement by College Official Larry Berg and his keen instruction, I agreed to do one game at Life Christian in December. Well, it's a blur, but over the next two months, until early February, I officiated 38 high-school games all over the county for 1A, 2A, 3A, and 4A schools. They had me hooked and it was an intense run.

Officiating is challenging and fast and requires quick decisions on rules, violations, infractions, and fouls that happen instantaneously. It also requires a thorough understanding of those rules, a good sense of court smarts, refereeing mechanics, and teamwork with the other officials. It demands a lot of running and sprinting with teenage athletes. The physical demands were just what my aging body needed for a challenge (thank God for hot tubs).

I learned a long time ago that, unlike my day job in court, no one stands when I enter the basketball court and the striped shirt is not as respected as the robe. Every school and every team needs good refs, but many like to complain when the calls don't go their way, especially in a close, competitive game that is physical and fast. Officiating sports is a challenging endeavor and not for the faint of heart.

In reflection, my day job in superior court and my evening job on high school courts had some distinct similarities and differences. Some of the similarities are obvious:

1. Making lots of decisions — lots of close, tough, game-changing decisions.
2. Making fast decisions, like ruling on an objection at trial in the middle of a witness testifying and the jury waiting on your ruling.
3. Making your decision clear, distinct, logical, and understandable to the players (litigants), coaches (lawyers), and fans (public audience and



PHOTOS BY PAT MCCARTHY

Judge McCarthy officiating a 4A JV game in January 2013 between Bellarmine Prep of Tacoma and Curtis High School. The Curtis varsity won the 4A State title in March.

interested friends and family).

4. Determining a winner or loser based on how they present their case, how much they score and by applying the rules of the game (rules of law and evidence).
5. Calling violations of the rules and giving the ball to the other side for an infraction, calling fouls for illegal contact (objection sustained), flagrant fouls for flagrant conduct (contempt), and blowing the whistle (striking the gavel) for various rulings that keep the game moving to a final decision and ultimate winner.
6. Allowing alternating possession of the ball (direct/cross, redirect, etc.) for fairness and to give each side a chance to present their case.

What about the differences other than the attire (striped shirt vs. robe) and level of respect exhibited (standing when you enter vs. booing your call)? Some differences:

1. You can appeal my court decision to a higher court, but not my game decisions.
2. In basketball, no one goes to jail after the game if they lose. No one wins a lot of money if they get a victory, either.

During my season, I ran into many lawyers who are parents of athletes or who help coach. I have also run into many lawyers over the years who have a history of being trained members of an official

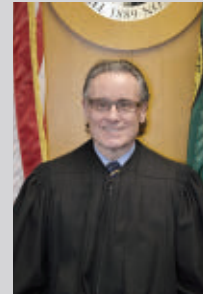
association for various sports at various levels, including but not limited to: Hugh Birgenheier, wrestling; Charles Talbot, soccer; Keith MacFie and Kevin Boyle, football and lacrosse; Gordon Hauschild, football; Tim Jones, lacrosse; Peter Kram, soccer; Judge Jerry Costello, soccer; Mike Turner, basketball; John Miller, football; and Jerry Ford, baseball. I've talked to some of them. They officiate for many reasons, including the exercise and balance it gives to their lives. It also gives them a great seat at a sport they love and, while they officiate, their mind is not on the law and their work.

Some officiate because they love the challenge of knowing the rules and making difficult decisions, but mainly they officiate because they want to be a part of what makes our communities tick and what helps young people be successful.

Youth sports need good officials. So, for those of you out there who are so inclined with an affinity to a sport, you can contact a local official association, get trained, get a uniform and flags, cards and whistles, and you too can make a difference. As trained and educated lawyers, many of you already have the right stuff and right frame of mind to make the

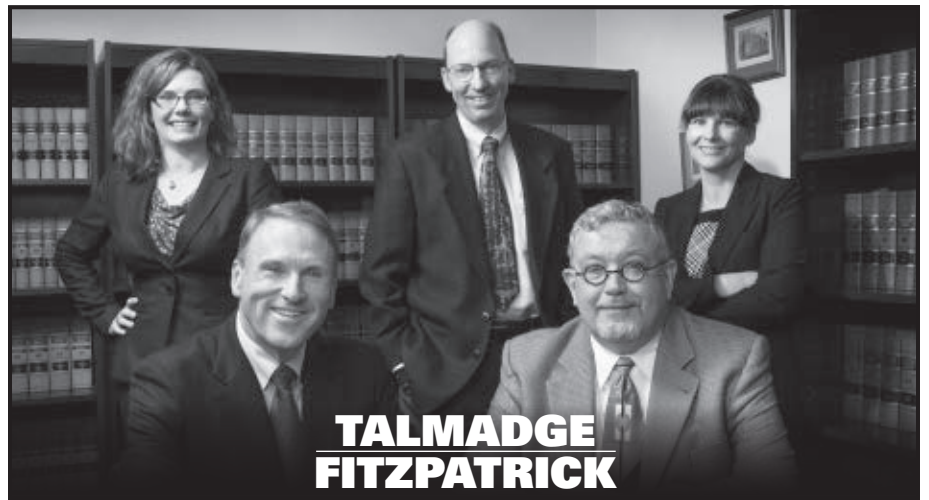
tough call. In mentally challenging and physically demanding sports, you can make a difference.

But I can guarantee you no one will stand when you step out onto the court or the field. **NWL**



**JUDGE JOHN MCCARTHY** has been a judge for 21 years, the last 17 in superior court. He has been a lawyer for 38 years, 17 years as a sole practitioner before becoming a judge. He

has served on the Commission for Judicial Conduct, as treasurer of the Superior Court Judges Association, and has been actively involved in education programs for judges and lawyers. Besides officiating, he is currently a volunteer on Mount Rainier and a competitive outrigger canoe paddler. Three of his four children are members of the WSBA.



Clockwise: Emmelyn Hart ♦ Randy Perry ♦ Sidney Tribe ♦ Thomas Fitzpatrick ♦ Philip Talmadge

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**Sidney Charlotte Tribe**  
Former Law Clerk,  
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Generally speaking, lawyers like to write and are pretty good at it — even when the subject doesn't directly relate to law. Occasionally we publish a WSBA member's creative writing on a subject other than law. "The Crows of Montlake" by Steven Reisler in the January 2013 issue is an example. Below is a non-fiction piece by WSBA member Jim Murray, an evocative reminiscence from his childhood on a Montana ranch and farm. — M.H., Ed.

# Montana Sundays



©ISTOCKPHOTO.COM/LIFESIZEIMAGES

BY JAMES R. MURRAY

**SUNDAYS ON THE MONTANA HIGHLINE WERE UNEVENTFUL.** We would drive 13 miles back to the farm after morning mass in Froid. I would worry the rest of the day about not doing my homework and Dad would worry about hail destroying our crops. On rare occasions, there was action. A late Sunday afternoon in 1966 was one of those memorable exceptions.

I was walking over to Aunt Ethel's house to use her outdoor toilet. Of course, we had an indoor toilet. By the time I was 12, so did Ethel. But she

still preferred the outdoor version, at least when it was not in the dead of minus-40-degree winter. I wasn't even supposed to use Ethel's outhouse, but I did whenever I could get away with it. I loved to watch the pee fly all the way down into the pit — four or five feet. With the right velocity and volume, one could generate an impressive amount of foam at the bottom.

This Sunday, however, I would not make it to the little white outhouse. As I got closer, I saw it from the corner of my eye. A Black Angus calf was lying on the ground near Ethel's back door. How had it escaped from the corral? And why was it lying on its side? As I approached it, I saw the bloat. Its gut was distended to twice its normal size. I was sure it was breathing, but its eyes were open and staring straight ahead. I stood over it for a minute or so, just feeling bad. *Maybe this will pass; maybe it'll be okay.* I worried later that it might have been my minute of musing that killed it.

My optimism has always been tempered by large doses of fear. On this day, I would once again turn this problem and these questions over to my dad. He would be drinking coffee at the kitchen table if he weren't out puttering around in the shop. I flew past the shop. Not there. The back door slammed as I ran into the kitchen. He was sitting with a cup of coffee in one hand, his pipe in the other (the tobacco long since cold). I could now transition this problem, get the weight of this off my back. Dad would make it all right.

"A calf is down in front of Ethel's house; it's bloated."

I was done. On many subjects such as the unfairness of homework assignments, or my urgent need for a Honda 90, I knew I could wax eloquently at length and Dad would nod patiently as if he were listening. But I had learned one thing about my gift of gab: on matters involving our cattle or crops, speak clearly and briefly, and then be quiet.

Dad looked directly at me but said nothing. He took one final sip of coffee and stood up without expression. Before we left the kitchen, he reached into his pocket. He took out his jackknife, checked it and put it back. He walked out the kitchen door with those long determined strides, me flying right behind him.

Dad had dropped out of the second

grade to work the ranch, the same “place” on which I was raised. In the evenings (if we were not watching Johnny Carson, which came on the air at 9:30 p.m. in eastern Montana), he would be at the kitchen table, sipping burned coffee so he could sleep well.

He would also be reading. He subscribed to an array of magazines such as *True West*, *Montana Stockman*, and *The Ring* (boxing, not auction), and one or more of these would always be open on the table.

There were also the many, but unpredictable, occasions on which I would see him walk into the living room and look up to the bookshelf above the davenport, toward the barometer (broken, but if you tapped it hard, it was reliable). Sitting next to it was a small but thick leather-bound book. It had been there for as long as I could remember and it remained there until the house burned down in 1976: *Diseases of Cattle*, first published by the United States Department of Agriculture in 1892.

It was a haunting book. I would rarely take it down myself, but if Dad left it on the table for even a short time, I would open it. It contained graphic depictions of every disease known to cows. There were detailed descriptions of remedies, cures, and veterinary procedures (or an admonition of when to shoot the animal if there was no hope.) I would inevitably, possibly intentionally, turn to the worst photographs in the volume — chapters such as “Stages of Pinkeye Leading to Death.” There were images of a cow’s eye rotting, decaying on the page. *Who in the hell actually took the picture of this?* I always wondered. But I knew that the next time I picked up the book, I would turn to the very same pages. I had never read the chapter on bloat.

We walked quickly past the shop, past the outhouse. We didn’t talk as we approached it. By now, a small chain of white bubbles was oozing from its mouth. Its eyes were still open. Dad knelt down and felt the stomach. “Very hard; grab the hind legs and we’ll move it onto its right side,” he said, ending the silence. In less urgent times or on other subjects, I would have asked a dozen “whys” before doing what I was told, but not now.

We moved it as quickly and smoothly as possible, and, for the first time,

a small guttural noise came from its mouth. “It’s alive,” I said, hoping for assurance.

“Run to the shop and get some rubber tubing — it’s hanging on the north wall. Right underneath it in the cabinet is a yellow can of defoaming agent. Get that, too.”

“Rubber tubing, yellow can, north wall, rubber tubing, yellow can, north wall,” I repeated to myself. I ran into the shop and felt a moment of panic. “Shit! North wall, north wall, which way is north? Okay, sun rises by Ethel’s house. That’s east. North is . . . there, I see it.” I raced back and Dad was standing over the calf, reaching into his pocket for the same jackknife he had carried for years.

“Here,” I panted, out of breath. “It must have gotten out and into the alfalfa field,” Dad said, more to himself than to me. “It’s wet down there and it could have been in it for hours. I think it’s too late for a tube.”

With that he opened his knife and put his hand on the left side of the stomach, between the last rib and hook bone, three to four inches below the edge of the loin. To my amazement, he held the knife to the calf and penetrated its side. He kept that knife very sharp, but I remember how much strength it appeared to take to work the knife through the skin. He opened a three-inch slit; immediately, gas poured from its side, sounding like air from a flat tire. I watched the stomach get smaller and smaller. I hoped it felt better, that the compression of its lungs and heart would abate. That it would stand up, find the hole where it had gotten out of the corrals, and run back to its mother.

But it didn’t move. “It’s too late. She’s dead,” Dad said. There was the slightest tinge of sadness in his expression, and that was enough. “It must have been in the alfalfa for hours. Once they go down, they only have a few minutes.” The nearest vet lived in Culbertson, almost 30 miles away. Dad removed the knife and wiped it off on the grass, folded it, and put it back in his pocket. “After supper, I’ll get the forklift and move it to the manure pile.” We walked back to the house together. Nothing was said. As soon as Dad poured himself a cup of coffee, however, I was out the door.

I returned and stood over it. Its eyes

were still staring. It looked the same. Some years later, I wondered if it had been dead the entire time — and whether Dad had known. Foam and blood had dried around the incision. Horseflies were already buzzing around the blood and onto her open eyes. I hoped no one would see the tears welling in my eyes. I screamed at the flies, shooing them away, “Leave her alone, you dirty sons-a-bitches!”

*I hate Sundays*, I thought. I knelt down on one knee and touched her, running the back of my hand over her slick hide. Finally, I stood up and walked back to the house. I still had to pee.

On Monday morning, I was on the bus to school. The calf was already in the manure pile.

The manure pile was a couple hundred yards south of the barn, just east of the alfalfa field. It was a magnificent mix of dirt and droppings from annual cleanings of the corrals, combined with the bones of cows from past decades, and sometimes calves, that for one reason or another, had not made it to the next Montana winter. By each spring, the pile had new ebbs and flows to serve as a playfield for my cousin and me: it was a raceway for popping wheelies on our banana bikes, flying over its ever-changing contours.

“I’m Evel Knievel!” Kim yelled.

“God damn you, Kim, you know I called it first.” We would laugh, curse, and dare each other, as we rode over the femurs and the partially buried skulls — and over the Black Angus calf that died that Sunday afternoon. **NWL**



**JIM MURRAY** is the professional development leader of Dickstein Shapiro’s Insurance Coverage Practice in Washington,

D.C. He represents policyholders in insurance coverage and bad faith disputes. He is a member of the Washington, New York, and D.C. bars and can be reached at 202-420-3409 or 206-240-4695 and [murrayj@dicksteinshapiro.com](mailto:murrayj@dicksteinshapiro.com). He was raised on a farm and ranch in eastern Montana.



## WSBA Board of Governors Meeting May 31, 2013 — Seattle

BY MICHAEL HEATHERLY

**A**T ITS MEETING IN SEATTLE ON MAY 31, 2013, the Board of Governors elected the 2013-14 WSBA president-elect and a new at-large Board member. Other business included passage of new rules involving the Board's handling of political issues and a proposed court rule regarding shackling of juvenile court defendants.



### President-Elect/President

The Board elected Seattle lawyer Anthony Gipe as the 2013-14 WSBA president-elect. He will serve as president-elect for the fiscal year beginning in October 2013, when current President-elect Patrick Palace takes over as president. A year later, Gipe will be sworn in as president.

Gipe was an at-large representative on the Board from 2008-11 and has been involved in numerous WSBA and other Bar-related programs. He ran unopposed for the president-elect position, but answered questions from the Board and others immediately before the governors cast their secret ballots.

In describing his leadership style, Gipe acknowledged, "I do not have great and vast ideas," but said he has a knack for adopting the ideas of others and putting them into practical action. "My leadership skills run toward consensus building," he said. "We have to change to meet a changing profession," Gipe added, noting demographic shifts facing the WSBA, including the looming retirement of the "Baby Boomers" who make up a large proportion of the membership, and the challenges faced by the debt-burdened, often underemployed younger lawyers who will need to take their place.

When asked how he might reach out to WSBA members alienated by the Board's taking sides on controversial political issues in recent years, Gipe said his solutions would include broadening participation in Bar programs among WSBA members and increasing services for small-firm and solo practitioners, who make up the majority of the Bar membership.

Gipe is of counsel with Olympic Law Group, PLLC, where he practices in the areas of civil rights, employment, business and personal injury matters. He is a Gulf War veteran of the U.S. Navy, serving from 1988-94. He was a founding advisory board member of the WSBA Leadership Institute and the LGBT Lawyers Association of Washington (QLaw).



*From top to bottom: The WSBA Board of Governors meet on May 31 at the WSBA Conference Center in Seattle; WSBA Chief Disciplinary Counsel Douglas Ende addresses the Board; WSBA President Michele Radosevich presides; Gov. Kenneth Masters makes a statement.*

### At-Large Board Position

The Board elected Mt. Vernon lawyer Karen Denise Wilson as an at-large member of the Board. In a secret ballot, she defeated Jenny Marie Cochran, of Bellevue. Wilson will replace Tracy Flood, who is completing her three-year term on the Board.

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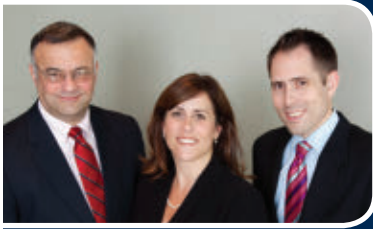
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Wilson has practiced as a deputy public defender with the Skagit County Public Defender since 2006. She was a civil rights analyst with the Seattle Office for Civil Rights from 2004-06. Before attending law school, she was a manager in the banking industry. In 2012, Wilson was a fellow with the Washington Leadership Institute.

### Handling Political Issues

The Board approved a proposed amendment to the WSBA Bylaws regarding the board's handling of political issues. The proposal had generated considerable debate at the April 26-27, 2013, meeting. The amendment would apply whenever the Board considered taking a position on "any issue being submitted to the voters or pending before the Legislature." Before the Board could vote to take a position on such a matter, it would be required to consider the matter in public session at a Board meeting, with notice being given to the WSBA membership. Also, the Board would have to first determine by vote that the matter was within the scope of General Rule 12.1, which allows the Board to take a position on political or social issues only if they "relate to or affect the practice of law or the administration of justice."

The proposal approved by the Board would require only the usual simple majority on the votes regarding GR 12.1 compliance and what position to take on the issue in question. At the April meeting, several Board members spoke in opposition to alternative proposals that would have required a supermajority vote.

### Juvenile Shackling

The Board approved a proposed juvenile court amendment that would prohibit the mandatory shackling of all juvenile court defendants in the courtroom, a practice followed in some counties. Under the proposed amendment, judges would have discretion to shackle defendants found to present a risk of violence or escape. At the April and May Board meetings, several Board members voiced support of the proposal, which was requested by the Council on Public Defense. Proponents of the proposal argued that mandatory shackling was unduly punitive for juvenile defendants in general.



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## Briefly

In other business, the Board:

- Approved a new WSBA Diversity Plan, which will be the foundation of the Bar's overall diversity efforts. The plan will apply to both member- and public-focused programs. The plan builds on previous WSBA diversity programming and incorporates information gathered in the 2011 WSBA membership study.
- Received an update on the Washington Leadership Institute, the WSBA-developed program now administered at the University of Washington Law School but still financially assisted by the WSBA. Past and present WLI fellows and advisors spoke in praise of the program, as did UW School of Law Dean Kellye Testy.
- Discussed a resolution by the King County Bar Association regarding the application of lawyer ethics rules to lawyers representing clients in jurisdictions, such as Washington, where state and federal marijuana laws are in conflict. The resolution is addressed to the American Bar Association and requests that "the American Bar Association urge[s] lawyer disciplinary authorities not to take disciplinary action against lawyers who counsel and assist clients about compliance with state and territorial laws legalizing the possession and use of marijuana." Although it was not up for vote at the May meeting, the King County Bar Association was seeking support of the resolution from the Board. However, based on their comments at the meeting, Board members sounded disinclined to support the resolution. While acknowledging that the ethical dilemmas created by the conflicting laws need to be addressed, Board members and WSBA disciplinary officials objected to the ABA being asked to interfere in state supreme courts' regulation of the profession. **NWL**

**MICHAEL HEATHERLY** is the editor of *NWLawyer* and can be reached at [nwlawyer@wsba.org](mailto:nwlawyer@wsba.org) or 360-312-5156. For more information on the Board of Governors and Board meetings, see [www.wsba.org/bog](http://www.wsba.org/bog).

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# Good Help

## Lawyer Responsibility for Staff Conduct

BY MARK J. FUCILE

**LAW PRACTICE HAS LONG BEEN A TEAM EFFORT**, with many key roles played by non-lawyer staff. Although the Rules of Professional Conduct are not directly applicable to non-lawyer staff, the RPCs instead impose supervisory duties on the lawyers who have management responsibility for staff. In this column, we'll first survey our supervisory duties for staff under the RPCs. We'll then turn to three areas that provide recurring illustrations: conflicts; trust accounting and billing; and litigation conduct.

Before we do, however, three preliminary points warrant comment.

First, although our emphasis is on the RPCs, lawyers and their firms are also responsible for staff errors that lead to malpractice claims. As the Court of Appeals put it in *Tegman v. Accident & Medical Investigations, Inc.*, 107 Wn. App. 868, 876, 30 P.3d 8 (2001), reversed on other grounds, 150 Wn.2d 102, 75 P.3d 497 (2003): “[A]ny deficiency in the quality of the supervision or in the quality of . . . [staff] . . . work goes to

the attorney’s negligence[.]”

Second, although our focus in this column is on supervisory duties, lawyers are also responsible for directly ordering staff misconduct. Under RPC 8.4(a), lawyers are prohibited for violating the RPCs “through the acts of another.” In *In re Dynan*, 152 Wn.2d 601, 609-10, 98 P.3d 444 (2004), and *In re Haskell*, 136 Wn.2d 300, 307-08, 962 P.2d 813 (1998), for example, the lawyers involved were disciplined for directing staff to, respectively, improperly alter fee petitions submitted to courts and improperly alter travel expenses submitted to a client.

Third, although we most often use the term “staff” to describe law firm employees, both the comments to the RPCs (see, e.g., RPC 5.3, Comment 1) and the ethics opinions (see, e.g., WSBA Advisory Op. 1996 (2003)) note that our supervisory duties also extend to independent contractors who work with us.

### Supervisory Duties Generally

Supervisory duties in the law firm or legal department context come in two

forms — one general and one specific.

First, RPC 5.3(a) requires law firm partners or those with “comparable managerial authority” to undertake “reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that . . . [staff] . . . conduct is compatible with the professional obligations of the lawyer[.]” The comments to RPC 5.3 explain that this general duty is oriented around implementing internal policies and procedures consistent with lawyers’ duties under the RPCs. Although nominally phrased in terms of “law firms,” corporate and governmental legal departments are included in the definition of “firms” under RPC 1.0(c). The ethics opinions (see, e.g., WSBA Advisory Ops. 2018 (2003) (legal department staff) and 2219 (2012) (examining the analogous provision — RPC 5.1(a) — addressing supervision of firm lawyers)) emphasize that what constitutes “reasonable efforts” varies with the particular circumstances involved.

Second, RPC 5.3(b) imposes a specific duty on a lawyer who has direct supervisory authority over staff to “make reasonable efforts to ensure that . . . [staff] . . . conduct is compatible with the professional obligations of the lawyer[.]” The Washington State Supreme Court in *In re Trejo*, 163 Wn.2d 701, 727, 185 P.3d 1160 (2008), noted that a supervising lawyer doesn’t necessarily need to know of or participate in the staff misconduct involved to violate RPC 5.3(b). Rather, the Supreme Court in *Trejo* emphasized that a *knowing failure to supervise* triggers a violation.

### Conflicts

Under the “firm unit rule,” RPC 1.10, a firm lawyer’s conflicts are generally imputed to the firm as a whole. The firm unit rule can come into play in two relatively common situations that have been extended to staff.

First, when a staff member joins a firm, the non-lawyer may bring a conflict to the “new” firm from an “old” firm just like a lawyer. For example, a paralegal or secretary working opposite a firm may join the firm while the matter involved is still being litigated. The United States District Court for the Eastern District in *Daines v. Alcatel, S.A.*, 194 F.R.D. 678 (E.D. Wash. 2000), allowed a firm to successfully screen a non-lawyer in this circumstance to avoid disqualification. When the RPCs

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were subsequently updated in 2006, the Supreme Court cited *Daines* and adopted a specific comment (Comment 11) to RPC 1.10 that includes staff within both the imputed conflict rule and RPC 1.10's screening mechanism.

Second, when a lawyer leaves a firm with a matter, the lawyer's conflicts generally leave with the lawyer, unless the firm remains involved in the same or substantially related matter and other lawyers remain at the firm who were privy to the confidential information of the client involved. Although the rule involved, RPC 1.10(b)(2), is framed in terms of "lawyers," the United States District Court for the Western District in *Oxford Systems, Inc. v. CellPro, Inc.* (45 F.Supp.2d 1055, 1065 (1999)), also examined whether staff members with confidential information remained behind when a lawyer who had principally handled a matter moved to a new firm and the old firm later took on a related matter on the other side. Relying in part on the fact that staff who had the client's confidential information remained behind, the District Court disqualified the old firm.

### Trust Accounting and Billing

Trust accounting and billing are tasks that are often handled by firm staff. Although lawyers are permitted to delegate these tasks, the responsibility for problems almost always remains with the firm.

In the *Trejo* case noted earlier, for example, a lawyer's secretary, who handled his trust account, stole client funds. The lawyer was suspended for three months, with the Supreme Court concluding (163 Wn.2d at 727): "[A]lthough he did not know about or participate in . . . [the secretary's] . . . check floating and misappropriation, he knew that he had completely abdicated all responsibility for complying with the ethical requirements of trust accounting to a non-lawyer assistant." Where a firm employee has stolen client funds, the firm's problems can extend well beyond regulatory discipline. In *Stouffer & Knight v. Continental Cas. Co.* (96 Wn. App. 741, 982 P.2d 105 (1999)), for example, the Court of Appeals affirmed the denial of coverage for a secretary's embezzlement of client funds under a "dishonesty" exclusion in the firm's malpractice policy. Similarly, in *Bank of America NT & SA v. Hubert*

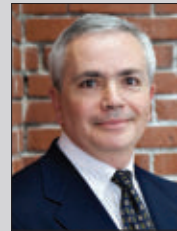
(153 Wn.2d 102, 101 P.3d 409 (2004)), a law firm was found liable to its bank when a paralegal used the firm's trust account for a check-kiting scheme.

In *re Vanderbeek*, 153 Wn.2d 64, 77, 101 P.3d 88 (2004), in turn, involved failure to adequately supervise a law firm office manager in client billing. The office manager added unauthorized charges to client bills and improperly manipulated both time and rates on client bills. The supervising lawyer was disciplined, with the Supreme Court commenting: "Because of . . . [the lawyer's] . . . failure to respond to client complaints, monitor . . . [the office manager's] . . . billing practices, and her 'willful failure' to learn more about her firm's billing system, the hearing officer concluded that the WSBA had proved that she violated RPC 5.3(a) and (b)."

### Litigation Conduct

*Richards v. Jain* (168 F.Supp.2d 1195 (W.D. Wash. 2001)) illustrates firm responsibility for staff litigation conduct. In *Richards*, a law firm's client in a stock option dispute with his former employer provided the firm with a disk that included virtually all of his emails from the five years that he had been a senior executive with the company concerned. The firm lawyers handling the case gave the disk to their paralegal and asked him to search the disk for any useful information. Although the client's position involved regular contact with the company's inside and outside counsel, the

firm lawyers did not instruct the paralegal on what to do if he discovered any attorney-client communications on the disk. By the District Court's later count, there were 972 such messages on the disk. The District Court disqualified the firm for improperly invading privilege. In doing so, the District Court focused on both the lawyers' use of the attorney-client communications without first litigating waiver and the failure to instruct the paralegal. As the District Court put it (at 168 F.Supp.2d 1199 n.2): "Equally shocking to the Court is the failure of . . . [the lawyer] . . . to explicitly alert . . . [the paralegal] . . . that the [d]isk might have confidential or privileged materials and to caution him to stop his work if such were discovered." *NWL*



**MARK FUCILE** of *Fucile & Reising LLP* handles professional responsibility, regulatory, and attorney-client privilege matters and law-

firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a co-editor of the *WSBA's* Legal Ethics Deskbook and the *OSB's* Ethical Oregon Lawyer. He can be reached at 503-224-4895 and [mark@frllp.com](mailto:mark@frllp.com).

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# 20 Books for Your Summer Reading List

SELECTED BY STEPHANIE PERRY

Summer has finally arrived in the Pacific Northwest, and whether you're heading out of town or planning a staycation in your own backyard, you'll want some top-notch summer reading within arm's reach. We've put together a list of 20 hot titles that everyone's talking about, so you can start planning your reading list now.

## FICTION



### 1. *Life After Life*, Kate Atkinson

What if you could live your life again and again, until you got it right? That's the intriguing question posed by *Life After Life*. First born in 1910, Ursula Todd lives (and dies) again and again until the "right" choices lead her to a history-making decision. An intricate portrait of 20th-century England and an engaging thought experiment into the alternate lives we all might have led.

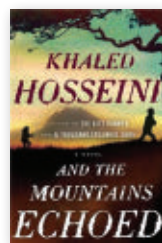


### 2. *Vampires in the Lemon Grove*, Karen Russell

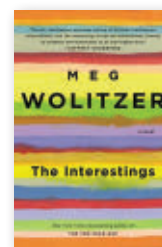
The critically acclaimed author of 2011's *Swamplandia!* returns with a new short-story collection full of magic and whimsy. A depressed teen discovers that the universe is communicating with him through objects left behind in a seagull's nest. A massage therapist discovers she has the power to heal by touching the tattoos on a war veteran's body. And in the collection's title story, two vampires in a sun-drenched lemon grove try desperately to quench their thirst for blood.

### 3. *And the Mountains Echoed*, Khaled Hosseini

This is the third novel by Khaled Hos-



seini, author of *The Kite Runner* and *A Thousand Splendid Suns*. Set in Afghanistan, the story begins as an impoverished father gives away his daughter to a wealthy man in Kabul, setting in motion a chain of events that spans 60 years and crosses continents. Separated by circumstance, war, betrayal, and death, the family is nevertheless bound together by love, and readers everywhere will recognize the common themes that unite the human experience.



### 4. *The Interestings*, Meg Wolitzer

In the summer of 1974, five precocious teenagers at a summer arts camp become best friends. Meg Wolitzer's coming-of-age tale follows them from adolescence to middle age, as their talents, fortunes, and happiness rise and fall over the years. An exploration of friendship, envy, the relationship between art and money, and growing up, this novel is also a snapshot of an era that will feel familiar and true to members of that generation.

### 5. *The Woman Upstairs*, Claire Messud

Nora Eldridge is an elementary school teacher who long ago stifled her dreams of being an artist and became the "woman upstairs," the reli-



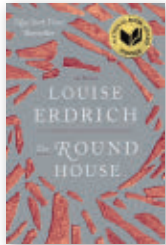
able spinster neighbor. Then, Nora meets the glamorous and cosmopolitan Shahids — her gifted new student Reza Shahid and his parents: Skandar, a Lebanese professor in Boston for a Harvard fellowship, and Sirena, a beautiful Italian artist. As Nora's relationship with the family deepens, she finds herself falling in love with Sirena and obsessed with the entire family; you can guess this isn't headed for a happy ending.



### 6. *The Orphan Master's Son: A Novel*, Adam Johnson

This 2013 Pulitzer Prize winner is an epic, richly imagined page-turner set in North Korea. Pak Jun Do is the son of a lost mother (a singer kidnapped to Pyongyang) and an influential father who runs a work camp for orphans. Government officials reward the boy's loyalty and keen instincts, and Jun Do rises to become a state-sanctioned kidnapper of Japanese citizens. A high-ranking commander is arrested by the state, and Jun Do assumes the commander's identity — and falls in love with the commander's wife, the legendary actress Sun Moon. Tensions rise between the U.S. and North Korea over nuclear development and North Korea's seizure of a young American woman; when a U.S. delegation arrives in North Korea to negotiate her freedom, Jun Do puts a desperate plan into motion. Equal parts brilliant, farcical,

and haunting, this may take you all summer to read, but it's well worth it.



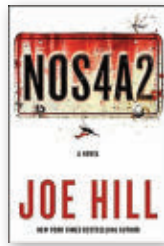
**7. *The Round House*, Louise Erdrich**

Critically acclaimed author Louise Erdrich's latest novel takes place on the Ojibwe reservation in North Dakota. In the spring of 1988, Geraldine Coutts is sexually assaulted. Deeply depressed, Geraldine is reluctant to discuss what happened, either to the police or to her husband, Bazil, and 13-year-old son Joe. But details of the crime are exactly what they need to sort out some crucial legal issues: whether the attack happened on tribal lands (and therefore in tribal jurisdiction) or not, whether the suspect is white (and therefore cannot be judged in tribal court) or not. While Bazil, who is a tribal judge, struggles to obtain justice, Joe becomes frustrated with the official investigation and sets out with three friends to find his own answers. A complex and beautifully written coming-of-age story.



**8. *The 5th Wave*, Rick Yancey**

Fair warning: this apocalypse-survival science-fiction novel is technically for young adults, although it's threatening to become a crossover hit like *The Hunger Games*. A catastrophic alien invasion shatters life as we know it in a series of "waves": the 1st Wave is an electromagnetic pulse that destroys our technology, the 2nd Wave demolishes the coastlines and their populations, and a horrific plague kills most of humanity in the 3rd Wave. In the 4th Wave, the aliens disguise themselves as humans, hiding in plain sight. Sixteen-year-old Cassie Sullivan lost her little brother in the chaos of the 4th Wave, and is trying to find him on her own — until she runs into Evan Walker, a handsome but mysterious boy who seems just a little too perfect.

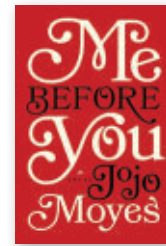


**9. *NOS4A2*, Joe Hill**

Another spooky selection, NOS4A2 (get it?) is a novel of supernatural suspense from bestselling horror author Joe Hill. Victoria McQueen is a girl with a special gift for finding lost items. One day, she encounters Charles Talent Manx, who lures children into his 1938 Rolls-Royce Wraith (its license plate reads NOS4A2) and abducts them to a terrifying place he calls "Christmasland." She manages to escape him — the only child ever to do so — and Manx is arrested. Flash forward to the present, where Manx, back on the loose and hungry for revenge, has kidnapped Victoria's young son Bruce. Now, the adult Victoria must face her fears and return to Christmasland to rescue her son.

**10. *Me Before You: A Novel*, Jojo Moyes**

Louisa Clark is a timid, working-class



girl who's never left the small English village where she lives with her tightly-knit family. Money is tight, so Louisa takes a desperately needed job as a caregiver to Will Traynor, an arrogant, moody attorney who is wheelchair-bound after a tragic motorcycle accident. Will is used to a privileged life — high-powered deals, extreme sports, adventure travel — and his new helplessness has left him bitter and depressed. Pragmatic and anything but introspective, Louisa slowly charms the surly Will, and finds herself charmed by him in return. Can she convince him that life is still worth living? Keep a box of tissues nearby when you read this charmingly funny tearjerker.

**11. *The Orchardist: A Novel*, Amanda Coplin**

Amanda Coplin's debut novel is a haunting fable of the American west, set in Washington state at the turn



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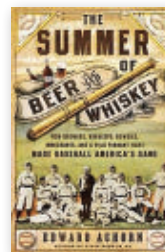


of the 20th century. Haunted by the disappearance of his younger sister 40 years earlier, William Talmadge seeks solace in the careful tending of his rural apple orchard. Then Jane and Della arrive: two terrified, starving, and heavily pregnant teenage sisters who have escaped a brothel and its abusive proprietor. Slowly and patiently, William cultivates their trust, but a series

of tragic events leaves Jane's baby daughter, Angelene, in his care while Della embarks on a lifelong journey to face her own demons.

### NONFICTION

**12. *The Summer of Beer and Whiskey: How Brewers, Barkeeps, Rowdies, Immigrants, and a Wild Pennant Fight Made Baseball America's Game*, Edward Achorn**



Back in 1883, beer garden proprietor Chris von der Ahe knew almost nothing about baseball when he risked his life savings to create the franchise that would become the St. Louis Cardinals. Von der Ahe bought the team for one reason: to sell more beer. Then he put together a group of ragtag professional clubs to create a maverick new league, reinventing big-league baseball to attract Americans of all classes. Sneered at as “the Beer and Whiskey Circuit” because it was backed by brewers, distillers, and saloon owners, their American Association brought Americans back to enjoying baseball with Sunday games, beer at the ballpark, and a dirt-cheap 25-cent tickets. In *The Summer of Beer and Whiskey*, Edward Achorn brings to life a classic American story that sports fans will appreciate.



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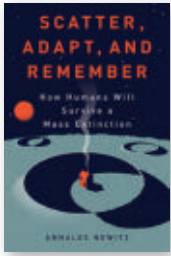


**13. *Big Data: A Revolution That Will Transform How We Live, Work, and Think*, by Viktor Mayer-Schönberger and Kenneth Cukier**

“Big data” refers to our rapidly growing ability to crunch huge amounts of information, analyze it instantly, and draw profoundly surprising conclusions from it. This emerging science can translate all kinds of information into searchable formats and unearth new insights. Big data will change business, health, politics, education, and science in the coming years, but it also poses entirely new threats, from the end of privacy as we know it to the prospect of being penalized for things we haven't even done yet, based on big data's ability to predict our future behavior. Learn what big data is, how it will affect you, and what you can do to protect yourself — and your clients — against its dangers.

**14. *Scatter, Adapt, and Remember: How Humans Will Survive a Mass Extinction*, Annalee Newitz**





In its 4.5 billion-year history, life on Earth has nearly been erased multiple times by asteroid impacts, ice ages, toxic methane, and mega-volcanoes. We know another global disaster is eventually headed our way, but can our species survive it? This speculative popular science book focuses on humanity's long history of survival, as well as new threats that we may face in years to come. Most importantly, it explores how today's scientific breakthroughs will help us avoid tomorrow's disasters. Learn why, although disastrous events are inevitable, our chances of long-term species survival are better than ever.



**15. Full-Rip 9.0: The Next Big Earthquake in the Pacific Northwest, Sandi Doughton**

Scientists have identified Seattle, Portland, and Vancouver as the urban centers of what will be the biggest earthquake, aka a "mega-quake," in the continental United States. The Cascadia subduction zone is 750 miles long, running along the Pacific coast from Northern California up to southern British Columbia, and it's overdue for a massive quake. In this just-released book, *The Seattle Times* science reporter Sandi Doughton introduces readers to the scientists who are dedicated to understanding where, when, and how big the mega-quake will be — and what we can do to protect ourselves.



**16. Storm Kings: The Untold History of America's First Tornado Chasers, Lee Sandlin**

*Storm Kings* is a riveting tale of supercell tornadoes and the eccentric, weather-obsessed scientists whose discoveries created the science of modern meteorology and developed the National Weather Service. From

Ben Franklin's early experiments to homesteading life in the Midwest, Sandlin uses memoirs, letters, eyewitness testimonies, and archives to recreate some of the most devastating storms in America's history.

**17. Gulp: Adventures on the Alimentary Canal, Mary Roach**

Best-selling and beloved science writer Mary Roach returns with a new adventure — our own digestive systems. It turns out our alimentary canals



are pretty amazing, but they don't often get the credit they deserve. From taste-testing pet food to reaching into a live cow stomach, Roach never shrinks from exploring the fascinating (and frequently off-putting) mysteries of human and animal digestion. Her tireless curiosity, and her love for terrible puns, make this a highly entertaining read, but take our

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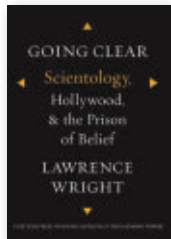
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## The Literary Lawyer

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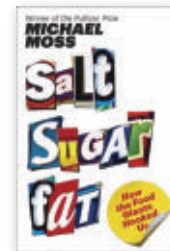


### 18. *Going Clear: Scientology, Hollywood, and the Prison of Belief*, Lawrence Wright

Pulitzer Prize-winning author Lawrence Wright returns with a riveting, comprehensive history of Sci-

entology. Based on over 200 personal interviews with current and former Scientologists and years of archival research, Wright brings to light the inner workings of the Church of Scientology, focusing on its two central figures: the brilliant, troubled science-fiction writer L. Ron Hubbard, whose restless, expansive mind invented a new religion, and his successor, David Miscavige, tasked with preserving the church after Hubbard's death. Wright examines what fundamentally makes

a religion a religion, and whether Scientology is deserving of this constitutional protection.



### 19. *Salt Sugar Fat: How the Food Giants Hooked Us*, Michael Moss

Each year, the average American eats 33 pounds of cheese (triple what we ate in 1970) and 70 pounds of sugar (about 22 teaspoons a day). We ingest 8,500 milligrams of salt a day, double the recommended amount, and almost all of that comes from processed food. Pulitzer-Prize-winning investigative reporter Michael Moss shows how food scientists use cutting-edge technology to calculate the "bliss point" of sugary beverages or enhance the "mouthfeel" of fat by manipulating its chemical structure. He talks to concerned snack-food executives who confess that they could never produce truly healthy alternatives to their products, because the industry could not exist without salt, sugar, and fat. With the processed food industry in the U.S. accounting for \$1 trillion a year in sales, can we break our addiction to junk food before the looming obesity crisis reaches a tipping point?



### 20. *Connected: The Surprising Power of Our Social Networks and How They Shape Our Lives — How Your Friends' Friends' Friends Affect Everything You*

Feel, Think, and Do, Nicholas A. Christakis, M.D., Ph.D. and James H. Fowler, Ph.D.

REVIEWED BY MARIO CAVA

Every practicing attorney needs to read *Connected*, by Nicholas Christakis and James Fowler. In fact, it should be required reading in law school. As the legal landscape continues to evolve in the electronic climate, attorneys have focused their attention on building wireless, paperless practices, resolving matters of electronic discovery or au-



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thentication of emails, instant messages, text messages, blogs, and social networking. Professional networking sites, like Avvo and LinkedIn, and private social networking sites, like Facebook, increase the power of our personal and professional connections. At the same time, lawyers must maintain a work-life balance, stay connected with close family and friends, and establish a healthy social identity and online presence.

*Connected* is timely because it addresses the socio-psychological implications of social networking in the electronic age, in addition to social networks on an interpersonal level. The authors identify two primary characteristics of social networks — how they are structured (connection) and how they function (contagion). Next, they outline a series of rules for social networking: 1) we shape our own networks; 2) our networks shape us; 3) our friends affect us; 4) our friends' friends' friends affect us; and 5) the network has a life of its own. While the rules seem simple at first, the authors give entertaining and informative examples of how they are applied in the real world, revealing how our social networks are changing us.

*Connected* is an artfully written, organized, and practical piece of reading for the general public. My one minor criticism of the work is that it does not provide more specific examples of how lawyers are impacted directly by their online marketing on social media sites, or how their specific relationships with colleagues or prospective clients are adversely impacted by online activities (such as sharing content or linking to legal articles or blog entries).

While this book is not written specifically for lawyers, it touches upon social media issues that lawyers may overlook. Whether we are making friends with colleagues and opposing counsel, or trying to build a book of business, lawyers need to consider their roles as members of various online communities and the community at large. Do you have many social contacts who are loosely connected? Are you the person who organizes networking events or social gatherings? Or are you someone with many connections, but who relies on others to take the lead on planning events or coordinating group projects? From the moment I picked up this book, I knew that it wasn't the number of contacts that mattered,

but the quality of the relationships and where you stand in relation to the people on your contact lists.

*Connected* provides lawyers important information about the multi-directional nature of social connections and how those connections impact our personal and professional lives. Like it or not, your online communication methods affect what you feel, believe, and how you practice law. *Connected* will dramatically change the way you view your online presence. **NWL**

MARIO CAVA is an attorney with the Law Offices of Kelley J. Sweeney and Employees of Liberty Mutual Group, Inc. He is a member of the WSBA Editorial Advisory Committee. He can be reached at [mario.cava@libertymutual.com](mailto:mario.cava@libertymutual.com).

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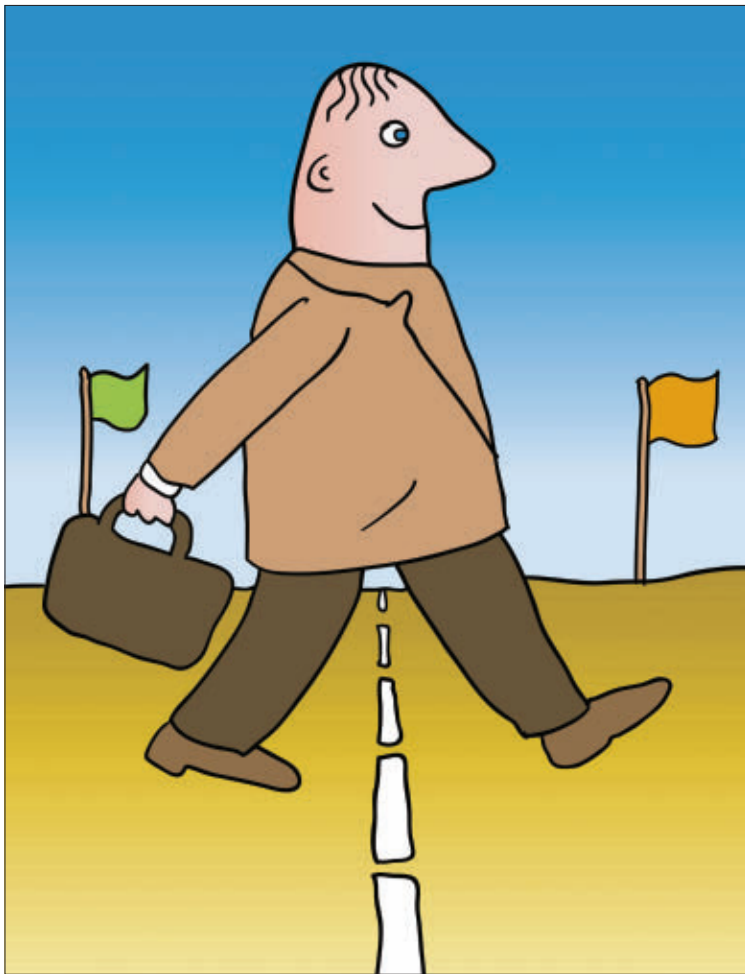
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# Top 10 Issues for Border-Crossing Lawyers



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BY DOUGLAS PIERCE

**T**HOUSANDS OF ATTORNEYS have taken advantage of the reciprocity rules that have been expanded in the past two decades. For me, the benefits of being a bar member in more than one state far outweigh the liabilities. There are many issues to consider before getting that second bar number. Here are 10 factors of being a border-crossing lawyer that you may not have thought about.

## 1. Twice as many rules

Most state's civil, criminal, and evidence rules are loosely based on the federal. However, that makes it all the more vital to grab your rule book when doing a summary judgment motion or prepping for a hearing. The differences are subtle, and dangerous. To analogize, the X-rays of most people's skeletons look very similar, but with flesh and external features added, we are all very different on the outside. If you abhor rule and motion practice, then perhaps one bar number is enough for you, and that great case that just came in your door making it tempting to get licensed in the second state should be referred out.

## 2. Twice as many judges to get to know

It is sort of taboo to admit the idea that judges are very different. However, it is a fact that different judges will give you different rulings on the same issues. "Discretion" is just that: leaving many issues up to the ideas, morals, and even political bent of the person in the robe. As such, in order to advise our clients to the best of our abilities, we must get to know the temperaments and styles of the judges we practice in front of, and when you have more than one bar number, that means you will need to get to know not only one set, but two.

### 3. The possibility of earning twice as many air miles

The size of our states in the Pacific Northwest makes this issue a somewhat minor one, as a one-state attorney can travel as much, or more than, a two-state one. Nevertheless, it is an expense that should be considered. Going to Moses Lake or Yakima from Coeur d'Alene is not much different than from Tacoma, but getting the second bar number makes it possible. If you enjoy telling your brother's wife's cousin at a family reunion at Lake Chelan that you can't help him with his divorce because your Oregon license doesn't hold any authority up in apple country, then think hard about getting the second bar number.

### 4. Twice the bar dues

We have the obligation to pay dues for the ongoing right to advise and represent clients. If you want two bar numbers and be "active" on two state bar rolls, you need to pay twice. Agree with it or not, but it is a fact.

### 5. Twice as many bar functions

Some attorneys are more socially active than others. So this item might be a plus for some and a minus for others. If you consider attending CLE lunches, annual awards dinners, and bar meetings to be fun and enjoyable, then do the paperwork and pay the fee. If it is an ugly burden for you to have to "press the flesh" with the same people you just filed a motion to compel against asking for fees and sanctions, then maybe the second ticket will just mean twice the number of social events that you won't be seen at.

### 6. Twice as many lawyer "friends"

When two-state licensing meant taking two bar exams, using a *pro hac vice* avenue to appear in court was much more common. By definition, in order to be admitted *pro hac vice*, you needed a local attorney to vouch for you. Now co-counsel is more the norm. Working very closely with other attor-

neys, covering for each other in court, and plain old professional camaraderie is far easier.

### 7. Twice as many lawyer "not so friends"

Let's face it; some lawyers are just hard to get along with. If you are going to get a second ticket, you will have to deal with the difficult opposing counsel in the additional state.

### 8. Your bar number in the new state may make you look like a rookie again.

In Washington, if your bar number has only four digits, in Idaho and Oregon only three, your experience is obvious. But if you practiced in one state for a few years before adding the second state, your new high number is not so telling. The fact is that you are seen as a "new attorney" all over again.



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## 9. Very different state supreme courts to think about

Washington and Oregon are political blue states, Idaho's red. It was reported that Washington was the first state to have a woman governor, both federal senators female, and a majority of women on its state supreme court, all at the same time. On Jan. 14, 2013, with the swearing in of Justice Sheryl

Gordon McCloud, the court has for the first time a majority of women and a female chief justice. The Gem State has not seen women break the glass ceiling with as much speed as the Evergreen State, currently having an all-male court, and two female justices in its history. The Beaver State's statics are in the middle. When thinking about the costs of an appeal and the odds of success, the legal socio-political differences must be considered.



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## 10. Variety is the spice of life ... or ... one is enough.

In sum, many lawyers are finding dual licensing to be rewarding professionally, personally, and financially. Others are finding it is not worth it for just as many reasons. The laws of supply and demand are also at play in the evolution of bar membership. As such, because of the time and money that are involved with having tickets in two (or more) states, it is a professional decision that should not be taken lightly, and not without much consideration. When the question was, *Do I want to take another bar exam?*, the answer regarding two-state licensing tended to be simple: *Not worth it.* Now, the cost-benefit analysis is greatly different, but means that much consideration should still be made, because the factors are just as earnest. **NWL**



DOUGLAS PIERCE practices in Coeur d'Alene, Idaho. He graduated from Assumption College in Worcester, MA, and

received a master's in education from the University of Missouri. He earned his J.D. from Western New England College School of Law. He is a member of the WSBA Editorial Advisory Committee. Contact him at [dpierce@jvwlaw.net](mailto:dpierce@jvwlaw.net) if you have an idea for the Top 10.

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Join us on **Thursday, Sept. 26, 2013**, at the Grand Hyatt in Seattle for an evening of inspiration as we celebrate the accomplishments of the 2013 WSBA award recipients! All members of the legal community and guests are invited to attend. See page 46 to register and for further details.

The 2013 Award Winners are:

**Angelo Petrus Award for Lawyers in Government Service**

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**Award of Merit**

Rebecca Roe, Kristin Houser, Adam Berger, and Bill Rutzick  
Attorneys at Schroeter Goldmark & Bender

**Courageous Award**

Carl Maxey  
Spokane Civil Rights Lawyer and Leader,  
Awarded Posthumously

**Excellence in Diversity Award**

Fé Lopez  
Director of Alumni Relations and Annual Fund, Seattle University School of Law

**Lifetime Service Award**

Donald Madsen  
Associated Counsel for the Accused

**Norm Maleng Leadership Award**

Judge T.W. "Chip" Small  
Superior Court Judge, Chelan County

**Outstanding Judge Award**

Judge Sharon Armstrong  
Retired senior judge in King County

**Outstanding Young Lawyer Award**

Jacob Brennan  
Associate Attorney at Herman Herman & Jolley, P.S.

**Pro Bono Award**

Brian Buckley  
Partner at Fenwick & West

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Please join us on **Thursday, Sept. 26, 2013**, at the Grand Hyatt in Seattle for an evening of inspiration as we celebrate the accomplishments of the 2013 WSBA award recipients. All members of the legal community and guests are invited to attend.

Reception: 5:30 p.m. (no-host bar) • Dinner/Program: 6:30 p.m. • Grand Hyatt • 721 Pine St., Seattle

To download the registration form as a PDF and submit via email, go to [www.wsba.org/awards](http://www.wsba.org/awards).

Name \_\_\_\_\_ WSBA No. \_\_\_\_\_

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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 Sept. 13, 2013 (refunds cannot be made after Sept. 14). Seating will be assigned.

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

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# The WSBA 50-Year Member Tribute Luncheon

Please join us on **Friday, Oct. 4, 2013**, at the Sheraton Seattle Hotel for a luncheon honoring the careers of WSBA members who have been members for 50 years. All members of the legal community and guests are invited to attend.

Reception and Registration: 11 a.m. (no-host bar) • Lunch/Program: noon • Sheraton Seattle • 1400 6th Ave., Seattle

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Registration is \$45 per person (table of 10 = \$450). To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Reservations and payment must be received no later than Sept. 26, 2013 (refunds cannot be made after Sept. 27). 50-year members and one guest are complimentary.

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\_\_\_\_\_ (no. of persons) X \$ \_\_\_\_\_ (price per person) = \$ \_\_\_\_\_ TOTAL

Please list the names of all attendees and indicate meal choices. Be sure to include yourself. Meal choices are: pan-roasted organic chicken, roasted wild salmon, and mushroom trio in a puff pastry (vegetarian).

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**Deadline: Aug. 9, 2013, for Sept. 19, 2013, Interviews**

On Sept. 19, 2013, the WSBA Judicial Recommendation Committee (JRC) will interview attorneys and judges interested in being appointed by the Governor to fill potential vacancies on the Washington State Supreme Court and Court of Appeals. The JRC's recommendations are reviewed by the WSBA Board of Governors and forwarded to the Governor for consideration when making appointments. To be considered for an interview, complete and submit the questionnaire posted on the JRC webpage at [www.wsba.org/jrc](http://www.wsba.org/jrc) by Aug. 9. For further information, visit the JRC webpage.

### Northwest Justice Project Board of Directors

**Application Deadline: Sept. 5, 2013**

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the Board of Directors of Northwest Justice Project (NJP). Three attorney-positions commence in January 2014. One incumbent is eligible for reappointment.

NJP is a 105-attorney statewide not-for-profit law firm providing free legal services to low-income people from 13 offices. Board members set program policy and assure 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. NJP's Board is a working board. Board members are expected to attend quarterly meetings in Seattle normally on the last Saturday of January, April, July, and October, and serve actively on at least one Board committee. Board members are also expected attend the Goldmark Luncheon in February, and attend an annual one-day Board retreat. Travel expenses are reimbursed.

For more information, email César Torres, NJP executive director, at [cesart@nwjustice.org](mailto:cesart@nwjustice.org), or Russell J. Speidel, Board Development Committee chair, at [russ.speidel@speidellaw.com](mailto:russ.speidel@speidellaw.com). Submit letters of interest and résumés to: Bar Leaders Division, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email [barleaders@wsba.org](mailto:barleaders@wsba.org).

### New WSBA President-elect, Board Members Elected

Congratulations to Seattle attorney **Anthony Gipe**, who was elected as WS-



Anthony Gipe

BA's 2013-14 president-elect by the WSBA Board of Governors at its May 31 meeting. A former at-large BOG member, Gipe served in the U.S. Navy, received his J.D. from the University of Washington, and is currently of counsel to the Olympic Law Group, PLLC. He was a founding member of the Washington Leadership Institute Advisory Board and QLaw. He will take office as president-elect in September 2013 and as president in September 2014.

The Board also elected **Karen Denise Wilson**, a Mount Vernon public defender, as an at-large governor. Wilson joins three other new Board members who were elected by their districts in April: **James Andrus**, of Newcastle, a corporate lawyer with K&L Gates (District 9); **Phil Brady**, of Tumwater, who is regulatory projects coordinator at the Washington Department of Financial Institutions (District 10); and **Brad Furlong**, a general practitioner in Mount Vernon (District 2).

These governors will serve three-year terms starting in September 2013. They will be profiled, along with our new president-elect, in the October issue of *NWLawyer*.

### Paper Form 1 Fee Increase for CLE Sponsors

On Aug. 1, 2013, the MCLE course accreditation application fee for paper Form 1s will increase to \$100. All sponsor paper Form 1s that are post-marked or delivered on or after this date will be assessed the new \$100 fee. The online Form 1 course accreditation application fee will remain at \$50. The increase will cover the extra time and resources required to process paper applications. The decision was made at the WSBA Board of Governors meeting on April 26, 2013.

Sponsors who currently submit paper Form 1s are encouraged to submit Form 1s online as a less expensive alternative. It is a quick and easy process for submitting Form 1s, as well as attendance reports. VISA, MasterCard, and American Express cards are accepted for pay-

ment. Another option, for sponsors that do not have one of these cards, is to use a "purchasing card" from one of the three credit card vendors. This form of company charge card allows goods and services to be procured without using a traditional purchasing process. Many government agencies and other companies use these in place of credit cards.

For more information about submitting Form 1s online and to access the sponsor MCLE website to set up a sponsor online account, go to [www.wsba.org/mcle](http://www.wsba.org/mcle) and click on the "CLE Accreditation" LEARN MORE button. If you have any questions, please contact the WSBA Service Center at 206-443-9722, 800-945-9722, or [questions@wsba.org](mailto:questions@wsba.org). Ask to be connected with an MCLE analyst.

### MCLE Notifications Mailed to Members in the 2011-13 Reporting Period

The WSBA recently mailed notifications to the 7,959 active lawyers, foreign house counsel, and administrative judges due to complete MCLE credits by Dec. 31 of this year and to certify credits no later than Feb. 1, 2014. Each notification includes a roster of the credits that the WSBA has on record for you. Members are encouraged to review the roster for incorrectly reported credits, missing credits, and duplicate courses. Correcting and updating records will allow you to determine the number of credits that still need to be earned before the end of the year in order to avoid a late fee. Keeping online records updated will ensure that a correct MCLE Certification form is printed in September for the license packet and posted for online certification beginning in October. Contact the WSBA Service Center at 206-443-WSBA (9722), 800-945-WSBA (9722), or at [questions@wsba.org](mailto:questions@wsba.org) if you have questions.

### WSBA Court Rules and Procedures Committee 2013-14 Agenda

During its Oct. 1, 2013-Sept. 30, 2014, term, the WSBA Court Rules and Procedures Committee is scheduled to review the the Criminal Rules for Superior Court (CrR) and the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ). Suggestions regarding these rules or questions about the committee should be directed to Elizabeth Turner at 206-239-2109 or email [wsbacourtrules@wsba.org](mailto:wsbacourtrules@wsba.org). Interested individuals are

encouraged to participate in the work of the committee. For more information and a schedule of committee meetings, see <http://bit.ly/iP2pNg>.

### Facing an Ethical Dilemma?

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



### Search WSBA Advisory Opinions Online

WSBA advisory opinions are available online at [www.wsba.org/advisoryopinions](http://www.wsba.org/advisoryopinions). You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Advisory 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.

### LOMAP Lending Library

The WSBA Law Office Management Assistance Program (LOMAP) Lending Library is a service to WSBA members.



We offer the short-term loan of books on the business management aspects of your law office. How does it work? You can view available titles at [www.wsba.org/resources-and-services/lomap/lending-library](http://www.wsba.org/resources-and-services/lomap/lending-library). Books may be borrowed by any WSBA member for up to two weeks. LOMAP requires your WSBA ID and a valid Visa or MasterCard number to guarantee the book's return to the program. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend call-

ing first to check availability of requested titles. To arrange for a book loan or to check availability, contact Peter Roberts at [peter@wsba.org](mailto:peter@wsba.org).

### Just Starting a Practice?

Think "outside the box" and consider purchasing "Law Office in a Box®." For \$119, you receive an hour of consultation time plus everything you see here: <http://tinyurl.com/3rn75hj>. Questions? Contact Peter Roberts at [peter@wsba.org](mailto:peter@wsba.org), 206-727-8237, or 800-945-9722, ext. 8237.

### Individual Consultation

The WSBA Lawyers Assistance Program provides individual consultation services for those struggling with depression, work stress, addiction, and life transition, among other topics. The initial consultation appointment costs \$20, and any additional sessions are on a sliding scale based on your financial situation. Consultations are an opportunity for assessment of the problems you may be facing, identifying useful tools you may utilize to address these issues, and referral resources to find the right resources for you. Our licensed counselors can offer up to six consultation sessions. We also provide consultations with job seeking and can offer informational and referral resources on a range of topics. Contact 206-727-8268, 800-945-9722, ext. 8268, [lap@wsba.org](mailto:lap@wsba.org), or go to [www.wsba.org/lap](http://www.wsba.org/lap).

### Seeking Peer Advisors

Would you like to provide support to another lawyer in your community addressing topics such as mental health and self-care, alcoholism and addiction, or guidance in one's practice? Lawyers are often uniquely able to be resources to one another in these areas. The WSBA Lawyer Assistance Program (LAP) is launching a new initiative to reconstitute its peer advisor network. The goal is to build a robust network throughout the state. Skills trainings are being developed and planned. To participate or learn more, see <http://bit.ly/104fpwN>, contact [lap@wsba.org](mailto:lap@wsba.org), or 206-727-8268 or 800-945-9722, ext. 8268.

### Weekly and Bi-Monthly Job Search Group

On Wednesday, July 10, from noon to 1:30 p.m., the Lawyers Assis-



tance Program's Bi-monthly Job Seeker Group will host a panel presentation, "What You Really Need to Know About Solo Practice," featuring WSBA Solo and Small Practice Section leaders. Join us for an insightful discussion about the many challenging aspects to consider when starting a solo practice. Topics to be addressed include: the pros and cons of a solo

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## Need to Know

practice, what it really takes to have a successful solo practice, getting started, how to get clients and promote yourself in a competitive market, and more. RSVPs are not required but are always welcome; the group meets on the sixth floor of the WSBA offices. For questions, contact Heidi Seligman at [heidis@wsba.org](mailto:heidis@wsba.org) or 206-727-8269. The Weekly Job Search group provides strategy and support to unemployed attorneys. The group runs for eight weeks and is limited to eight attorneys. We provide the comprehensive WSBA job search guide "Getting There: Your Guide to Career Success," which can also be found online at [www.tinyurl.com/7xheb8b](http://www.tinyurl.com/7xheb8b). If you'd like to participate or to schedule a career consultation, contact Dan Crystal at [danc@wsba.org](mailto:danc@wsba.org), 206-727-8267, or 800-945-9722, ext. 8267.

### Solo/Small Firm Support Group

The WSBA Lawyers Assistance Program is now offering a new group service, the Solo/Small Firm Support Group. This is a weekly drop-in group for attorneys wanting to address the major challenges facing professionals in solo or small-firm settings. It takes place on Thursdays from noon to 1 p.m. in the WSBA Lawyers Assistance



Program offices on the 11th floor of 1325 Fourth Ave., Seattle. For questions or more information, contact Heidi Seligman at 206-727-8269, 800-945-9722, ext. 8269, or [heidis@wsba.org](mailto:heidis@wsba.org).

### Taking a Vacation?

If not, why not? All work and no play will 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 cellphone while you're there! If you feel guilty about even contemplating time off, call the WSBA Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268, to schedule a confidential consultation.

### Casemaker Online Research

Casemaker is a powerful online research library provided free to WSBA members that can be accessed from the WSBA website at [www.wsba.org/resources-and-services/casemaker-and-legal-research](http://www.wsba.org/resources-and-services/casemaker-and-legal-research). As a WSBA member, you already receive free access to Casemaker. Now, you can enhance that member benefit by upgrading to Casemaker+ with CaseCheck+. Just like Shepard's and KeyCite, CaseCheck+ tells you instantly whether your case is good law. You can find information about this service on

the Casemaker website, or call 877-659-0801 and a Casemaker representative can talk with you about the benefits of switching to their premium product. For help using Casemaker, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

### 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. LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Peter Roberts at [peter@wsba.org](mailto:peter@wsba.org).



### Mindful Lawyers Group

A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on Mondays at the WSBA Lawyers Assistance Program office from noon to 1 p.m. For more information, contact Sevilla Rhoads at [srhoads@gsblaw.com](mailto:srhoads@gsblaw.com) or go to <http://wacontemplativelaw.blogspot.com>.

### Upcoming WSBA Board of Governors Meetings

**Sept. 26–27, Seattle**

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 Pamela Wuest at 206-239-2125, 800-945-9722, ext. 2125, or [pamelaw@wsba.org](mailto:pamelaw@wsba.org). The complete Board of Governors meeting schedule is available on the WSBA website at [www.wsba.org/bog](http://www.wsba.org/bog).



### Usury Rate

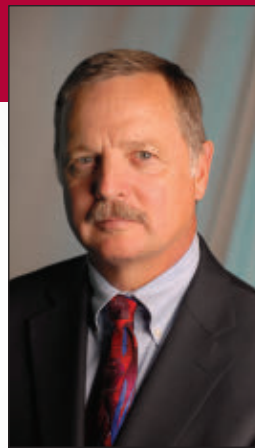
The average coupon equivalent yield from the first auction of 26-week treasury bills in June 2013 was 0.081 percent. Therefore, the maximum allowable usury rate for July is 12 percent.

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See your name in lights (well, in ink, anyway) in *NWLawyer*! If you have an article of interest to Washington lawyers or have been meaning to write one, see page 4 for article submission guidelines. *NWLawyer* relies almost entirely on the generous contribution of articles from WSBA members.

Questions?  
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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. Links to relevant documents can be found by viewing the online version of *NWLawyer* at <http://nwlawyer.wsba.org> or by looking up the respondent in the lawyer directory on the WSBA website ([www.wsba.org](http://www.wsba.org)), and then scrolling down to “Discipline History.” As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

## Disbarred

**John Christian Siegel** (WSBA No. 29866, admitted 2000), of Federal Way, was disbarred, effective 5/10/2013, by order of the Washington State Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation) and 8.4 (Misconduct). Jonathan Burke represented the Bar Association. John Christian Siegel represented himself. Daniel Andrew Brown was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Stipulation to Disbarment; Disciplinary Board Order Approving Stipulation; and Washington State Supreme Court Order.

## Suspended

**Clifford King B’Hymer** (WSBA No. 5544, admitted 1974), of Clarkston, was suspended for one year, effective 5/10/2013, by order of the Washington State Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.1 (Competence), 1.4 (Communication), 1.5 (Fees), 3.2 (Expediting Litigation), 5.3 (Responsibilities Regarding Non-lawyer Assistants), 8.4 (Misconduct). Scott G. Busby represent-

ed the Bar Association. Clifford King B’Hymer represented himself. Terence Michael Ryan was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Recommendation; and Washington State Supreme Court Order.

**Eric A. Jones** (WSBA No. 31048, admitted 2001), of Seattle, was suspended for nine months, effective 5/10/2013, by order of the Washington State Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.5 (Fees), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 1.16 (Declining or Terminating Representation) and 4.4 (Respect for Rights of Third Person). Jonathan Burke represented the Bar Association. Eric A. Jones represented himself. Carl Jerome Carlson was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Stipulation to Suspension; Disciplinary Board Order Approving Stipulation; and Washington State Supreme Court Order.

## Change to Disability Inactive Status

**Belinda Armijo** (WSBA No. 32362, admitted 2002), of Tacoma, stipulated to transfer to disability inactive status, effective 1/28/2013. This is not a disciplinary action.

**Erasmus John Compatore** (WSBA No. 19376, admitted 1990), of Seattle, stipulated to transfer to disability inactive status, effective 5/14/2013. This is not a disciplinary action.

**Krista Lee Fletcher** (WSBA No. 24685, admitted 1995), of Phoenix, stipulated to transfer to disability inactive status, effective 5/14/2013. This is not a disciplinary action.

**Ronald Anthony Gomes** (WSBA No. 31074, admitted 2001), of Lacey, stipulated to transfer to disability inactive status, effective 5/14/2013. This is not a disciplinary action.

# Giving to the Washington State Bar Foundation is an easy choice for me.



**Teru Olsen**

*Associate*

*Ryan, Swanson & Cleveland, PLLC*

*Admitted 2008*

“I’m proud not only to be a donor, but to serve as a trustee of the Washington State Bar Foundation. The Bar Foundation gives members like me the choice to support WSBA programs I care about, like the **Moderate Means Program**. My gift – together with the donations of more than 5,000 of my fellow lawyers – is providing needed legal help to people all across Washington beyond the reach of other types of aid. I’m proud to support great programs like this, and to do it in a way that takes pressure off of WSBA license fees. That’s a win-win we can all celebrate.”



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# CLE Calendar

CLE seminars are subject to change. Please check with providers to verify information. To announce a seminar, send information to [clecalendar@wsba.org](mailto:clecalendar@wsba.org). Information must be received by the first day of the month for placement in the following month's calendar.



## Antitrust and Consumer Protection

### Consumer Protection

Sept. 24 — Seattle and webcast. CLE credits pending. By the WSBA Antitrust and Unfair Business Practices Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

## Business Law

### Litigation Section Midyear Meeting and Seminar

Aug. 23 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

## Criminal Law

### 20th Annual Criminal Justice Institute

Sept. 19-20 — Burien. CLE credits pending. By the WSBA Criminal Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

## Elder Law

### Annual Fall Elder Law Conference

Sept. 27 — Seattle and webcast. CLE credits pending. By the WSBA Elder Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

## Employment Law

### Employment Law for Plaintiff's Attorneys

July 10 — Seattle and webcast. 6.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

## General

### 8th Annual WSBA Solo and Small Firm Conference

July 18-20 — Vancouver. 16.75 CLE credits, including 2.25 ethics. By the WSBA Solo and Small Practice Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### Civility and Cross-Cultural Communication

Aug. 15 — Seattle. 7.5 CLE credits, including 2 ethics pending. By Seattle University School of Law and Robert's Fund; 206-398-4140 or <http://www.robertsfund.org/events/civility-and-cross-cultural-communication-cle.html>.

## Intellectual Property

### Intellectual Property Fundamentals for the Business and Transactional Attorney

Sept. 12 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

## Litigation

### Litigation Section Midyear Meeting and Seminar

Aug. 23 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

## Practice Management

### 8th Annual WSBA Solo and Small Firm Conference

July 18-20 — Vancouver. 16.75 CLE credits, including 2.25 ethics. By the

WSBA Solo and Small Practice Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

## Trust and Estates

### Estate Planning Fundamentals, Forms, and Ethics

Aug. 1 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

## Webcast Seminars

### Employment Law for Plaintiff's Attorneys

July 10 — Seattle and webcast. 6.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### Estate Planning Fundamentals, Forms, and Ethics

Aug. 1 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

### Litigation Section Midyear Meeting and Seminar

Aug. 23 — Seattle and webcast. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

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Sept. 27 — Seattle and webcast. CLE credits pending. By the WSBA Elder Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; [www.wsbackle.org](http://www.wsbackle.org).

**RANDALL | DANSKIN, P.S.**

is pleased to announce that,  
effective January 2013,

**Jenaé M. Ball**

became a principal of the firm.

Ms. Ball is licensed to practice in Idaho and Washington, and focuses on labor and employment law. She formerly practiced law at K & L Gates and Paine Hamblen. Ms. Ball is a graduate of Gonzaga University School of Law.

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**FLOYD, PFLUEGER &  
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is pleased to announce that

**Amber L. Pearce**

has become a partner of the firm.

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**ETTER, M<sup>C</sup>MAHON,  
LAMBERSON, CLARY &  
ORESKOVICH, P.C.**

is pleased to welcome

**Jacob R. Brennan**

as a new associate with the Firm.

Mr. Brennan is a 2010 graduate of Gonzaga University School of Law and practices civil litigation, business and employment law, real estate and contract disputes, medical malpractice and professional disciplinary proceedings, criminal and other complex legal matters.

Mr. Brennan is the 2013 recipient of the WSBA Outstanding Young Lawyer Award, is a Scholar of the American Bar Association Young Lawyers Division, serves as the Treasurer for the Spokane County Bar Association Young Lawyers Division, and is Chair of the Washington Veterans Will Clinic.

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**SEBRIS BUSTO JAMES**

is pleased to announce that

**Nate Bailey**

has joined the firm as an associate.

Nate joins the firm from Stoel Rives LLP, where he represented employers in labor and employment matters.

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## PLAUCHÉ & CARR LLP

is pleased to welcome

### Peter H. Dykstra

as the newest partner in its Seattle office.

Peter brings a successful background in water rights, conservation transactions, natural resources, and government relations to his practice. In addition to counseling clients in these areas, he will be developing the firm's ecosystem services practice. Most recently, Peter served as the Pacific Northwest Regional Director for the Wilderness Society.

### Robert M. Smith

as a senior associate.

Robert has represented private and public clients in environmental, land use and litigation matters including assisting clients in all aspects of California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), zoning, land use, and antitrust claims.

### Jessica F. Anderson

as an associate.

Jessica is a 2011 graduate of University of Colorado School of Law, where she was the Articles Editor of the *Colorado Journal of International Environmental Law & Policy* (CJIELP).

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## REED M<sup>C</sup>CLURE

*Attorneys at Law*

is pleased to announce

### Jason E. Vacha

has become a Shareholder of the firm.

The firm has also added

### William H.P. Fuld

and

### Caroline S. Ketchley

as Associates.

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## INTEGRATIVE FAMILY LAW

is pleased to welcome

**Sharon Friedrich**

**Lisa A. DuFour**

and

**Krista E. Stipe**

to our firm.

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Ms. Friedrich brings 19 years of practice experience from both public and private sectors before joining Integrative Family Law in 2012. She has a steadfast devotion to family law and the clients she serves.

---

Ms. DuFour has been with Integrative Family Law since 2012 and brings 15 years of experience with her to the firm. She is also a frequent contributor as a writer and speaker in forums for legal education.

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Ms. Stipe joined Integrative Family Law in February 2013. She graduated from Seattle University School of Law, *summa cum laude*, in 2006. Her practice focuses on family law, adoptions, and estate planning.

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## LANDERHOLM, P.S.

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▶ **My greatest talent as a lawyer is** helping the client figure out how to accomplish what she wants to accomplish despite what often seem to be daunting legal and regulatory impediments. Sometimes the advice has to be that it isn't possible to do what the client wants to do, but I do everything I can to find alternatives that are not legally problematic or risky.

▶ **My career has surprised me by** providing me with the opportunity to learn something new every day. I get to experience and learn about so many areas of the law — constitutional, education, labor and employment, intellectual property, corporate, contracts, campaign finance, and the list goes on.

▶ **The best advice I have for new lawyers is:** Don't be afraid to say you don't know. The client is paying you to be the expert, so it never feels quite right to tell a client you don't know. But I have found that the client is much more appreciative of an honest admission that you don't know, but that you will do the research to be able to answer the question.

▶ **The most rewarding part of my job is** working with educators. I have such great respect for teachers and school employees. The work they do is so important for the future of our democracy, but they have to perform that work in crowded classrooms with inadequate resources and for inadequate pay.

▶ **The worst part of my job is** having to deliver bad news. It is always hard to tell clients that there is no remedy for their problem. It is easy to want to be the fixer and to rescue a client from a bad situation. It is still difficult for me to not become emotionally invested in other people's problems, but I work very hard to remember that it isn't my problem — it is critical to keep the proper perspective.

▶ **During my free time,** I love to exercise. I am obsessed with high intensity at-home workout programs (ever hear of the Insanity workout?) Regular exercise is key for me to stay sane, no matter how stressful things can be.

▶ **I absolutely can't live without** coffee. I am absolutely addicted. Coming in a close second is my Surface tablet. Not only can I carry my work with me wherever I go, I can watch Netflix when I need a break!

▶ **I create work/life balance by** making sure I take time off when I can to spend with my family. One of the great things about my job is that I do have some control over my schedule and if I want to take a day off when my kids are sick or have a day off from school, I usually can.

▶ **I worry about** what the ongoing cuts to education, government, and the courts are doing to the future of this state and the country. I do not think the cuts have been a shared sacrifice but instead have disproportionately affected the most vulnerable residents of our state and country.



## Aimee Iverson

### WSBA No. 28610

▶ **I am happiest when** I am outside in my yard, gardening and hanging out with my kids and dogs.

▶ **Nobody would ever suspect that** I have a secret dream to skate in a roller derby league.

▶ **Aside from my career, I am most proud of this:** Being a role model for my two sons. I hope that they are learning that they, too, can find something to feel passionate about and be happy in its pursuit.

▶ **This makes me roll my eyes:** People who have to always get the last word in. It usually isn't worth hearing.

▶ **My worst habit is** constantly checking my work email at all hours of the day and night. I still need to work on establishing better habits to attain reasonable work/life balance.

▶ **If I could pick a superpower, it would be** mind-reading. I have no time or patience for guessing games.

▶ **If I have learned one thing in life, it is** be careful what you wish for. You will surely get it and it usually isn't anything like you thought it would be!

▶ **I would like to learn** another language. My high-school French isn't enough and I regret not taking the time to learn a language that I could actually use!

### MY NAME IS AIMEE IVERSON

and I am the general counsel of the Washington Education Association (WEA). I assist the WEA with all aspects of corporate law, including nonprofit corporation governance issues, labor and employment law, and campaign finance law, as well as other regulatory requirements. I also oversee a legal services program that provides legal assistance to WEA members who face employment disputes with their school district employers. I can be reached at 253-765-7021.

# American Originals

**They say you can't be a hero in your hometown. I've always taken that to mean that the people you grew up with are never going to be overwhelmed with your greatness because they've seen your imperfections. I propose a corollary:**



You can't fully appreciate something that's close to you until you see it through a stranger's eyes. This hit home for me in college, when a foreign visitor put me in touch

with my feelings for two fellow Americans: Willie Nelson and Jack Daniels.

I was a journalism major at the University of Washington, and the visitor was Daniel, a post-grad student from Switzerland who had traveled here to study chemistry and absorb American life. We had each started as dormies but escaped before the end of our UW careers. My dorm roommate was a piranha and Daniel's was a drug dealer. And I mean those both literally. The day I moved into the dorms, my assigned human roommate was nowhere to be found, but in the middle of our room was a double-sized aquarium containing a restless piranha. And Daniel's roommate — well, let's just say he had a lot of brief visitors between midnight and 6 a.m., plenty of cash despite not having a job, and no evidence of ever attending class. Eventually we moved out, and Daniel and I shared an apartment featuring wooden floors and large windows on two sides, the kind of place real estate agents call "sunny."

As you might expect of a Swiss chemistry student, Daniel was meticulous and reserved — yeah, a nerd. But he was the kind of nerd who was so nerdy that he was kind of hip, and that's before it was hip to be so nerdy, a phenomenon so popular now that it has its own TV shows and movies (e.g., "The Big Bang Theory"). When we'd head down to, say, the Fabulous Rainbow Tavern, he would bust out his Euro club-hopping ensemble, which featured slacks, loafers, a button-up silk shirt, and a tan leather jacket — the sleek Italian kind, not the American-biker kind. Meanwhile, I'd be in my Levi 501s, bright yellow Seattle Sonics t-shirt, thrift store flight jacket, and Nikes. Musically, Daniel listened to whatever happened to be playing on AM radio, which was

pretty bad, as I recall. In contrast, I was an FM radio and album guy. I couldn't get enough Little Feat, Elvis Costello, and, in particular, Willie Nelson.

Now, there are some unflattering things you can say about Willie Nelson, especially involving his relationship with cannabis (too much) and taxes (not enough). But musically, the guy is a national treasure. Still performing and popular today at age 80, from the mid-1970s to mid-1980s he was revered



by both country music fans and proto-hipsters. In 1978 alone, he put out three classic albums: *Waylon & Willie* (with the late, great Waylon Jennings), *Willie and Family Live*, and *Stardust*, a collection of pop standards that pre-dated the "American songbook" epidemic of recent years. I had Willie's music on constant rotation, often strumming along on my own guitar. Having turned 21, another thing I sometimes had on rotation was a bottle of Jack Daniels, the official distilled lubricant of musicians, and the best of whatever cheap cigars were available at the U-District Safeway that day.

Initially Daniel was impervious to the charms of my all-American entertainment choices. Then one night I came home after being out with other friends and found him sitting somber and alone in the living room. *Stardust* was playing on the stereo, and a less-than-full bottle of Jack Daniels sat on the coffee table.

Alongside the bottle a candle burned, furnishing the only light in the room. Daniel had just learned that his girlfriend in Switzerland, whom he had hoped to marry when he returned, was seeing someone else.

"I love this Willie Nelson," he said, "and the Jack Daniels. They're so . . . American." Suddenly, I felt like a character in a Hemingway novel, a member of the lost generation, an expatriate reminded of something precious from back

home. I had always taken Willie and Jack for granted. But now I saw them differently through the eyes of someone who had grown up without them. It was an odd time for it, but I was never prouder to be an American.

"Yeah," I said. "I love them too. But what's with the candle?" Daniel explained that he had lit it as soon as he found out about his girlfriend. He planned to keep it lit whenever he was home and allow himself to mourn the end of the relationship. When the candle was gone, he would not

think of her again. *Wow*, I thought. *That's a Willie Nelson song right there.*

As it turned out, I never saw that candle again. Blending his European charm with a little Tennessee whiskey and outlaw country music, Daniel had no problem getting back into the swing of things romance-wise. Then, a few months later, he returned to Switzerland. Sadly, I haven't seen him since. But I often think of him when a Willie Nelson song pops up or someone forces a sip of whiskey on me. Like the Red-Headed Stranger himself says: "It's been so long now, but it seems now it was only yesterday/Gee, ain't it funny how time slips away." **NWL**

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