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Religious rights

Once again, in this month’s issue of NWLawyer [June 2015] the association president takes off on a rant of his own and proclaims “Transgender: Part of Diversity, Not a Pathology.” That’s quite an assertion. I was unaware of his degree in psychiatric medicine and background in professional mental health practice.

Moreover, in his second paragraph, he offhandedly disrespects and dismisses the first right of the First Amendment, the exercise of religious liberty, in favor of his lobby’s demands in general. Is this transparent politicization now official policy of the WSBA? And how would that be proper for an organization that requires mandatory membership?

If this were merely a letter to the editor, I would pass it off as just an item containing parts with which one may take issue. But is not Mr. Gipe purporting to speak for the lawyers of Washington state?

Perhaps the Board of Governors would consider devising a mechanism by which those of us who don’t go along with such conduct can obtain a prorated refund or reduction in our dues in instances where the bar leadership commandeers the WSBA for its exclusive and one-sided political purposes.

David D. Cullen, Olympia

I read with interest yet another article regarding the plight of the LGBT community and the legal issues related thereto — this one authored by the president of the WSBA. While he lauds the “enormous strides in the advancement and understanding of gay and lesbian equality” he decries the “increased pushback on gay and lesbian equality where fundamental gay and lesbian rights are pitted against a desire to discriminate under a claim of religious liberty...” I take serious issue with the unfounded assumption that faith-based professionals, including attorneys, who oppose the universal and unqualified acceptance of a chosen lifestyle which many genuinely regard as repugnant are motivated by a supposed “desire to discriminate” under the guise...
of “a claim of religious liberty.” May I remind the president and the LGBT community at large that religious liberty is also a fundamental right, and what good is a right if one cannot advocate that right in the market place of ideas and “push back”? Faith-based advocates have every bit as much right to promote their vision of an ideal community as the advocates of a different vision. Yet there seems to be a desire on the part of the LGBT community to force acceptance of their vision despite competing visions and philosophies. We live in a pluralistic society. There are very fundamental differences among us and maybe it’s time we just accepted that — across the board. Let homosexuals and their variants live their chosen lifestyle the best they can and let the faith-based community live their chosen lifestyle the best they can. But don’t try and force me to accept a lifestyle I find morally repulsive, any more than I must accept various other behaviors we as a religious community and society at large find repulsive, e.g., incest, bigamy, pedophilia, prostitution, drug dealing, child pornography, and bestiality to name a few. And yes, we “discriminate” against those who engage in such practices because they offend our sense of basic right and wrong — just like homosexuality and gender manipulation of any kind offends our standard of morality. And we have a right to say so!! As long as there is organized religion in this country there will be “pushback” no matter what advocates to the contrary do or how shrill their voices become.

Brian L. McCoy, Riverton, Utah

Law lit

Michael Heatherly’s “A Whale of an Issue” and Garrett Oppenheim’s “With Kings and Counselors” compelled me to walk across the street from my chambers to the Spokane Public Library and check out a book of Herman Melville’s shorter novels that contains “Bartleby the Scrivener.” The two articles in the June issue of NWLawyer also prompted me to think about other tales about lawyers and the legal system. One great book about a lawyer is To Kill a Mockingbird by Harper Lee. A great play that includes a dramatic court scene is William Shakespeare’s The Merchant of Venice. If you haven’t already, I recommend that you watch the fabulous 2004 movie version with Al Pacino as Shylock. The Merchant of Venice includes, to my knowledge, the first story of a woman lawyer. In order to save the life of Antonio, Portia dresses as a man so she can appear in a 16th-century court in Venice and argue for the strict construction of a contract.

Also, there is Bleak House by Charles Dickens. Law professors’ references to the case of Jarndyce and Jarndyce will go over the heads of attorneys and students who are not familiar with Bleak House.

There are thrillers about lawyers as well. One fast paced action novel, which is good for a long plane ride, is John Grisham’s The Firm.

The interesting books about lawyers are not limited to fiction. A true story I read with pleasure, before giving it to my oldest son as he was about to head off for his first year of law school, is Gideon’s Trumpet by Anthony Lewis.

The list of stories about lawyers and the legal system that are worthy of being on your reading list goes on. There is The Ox-Bow Incident by Walter Van Tilburg Clark, which recently prompted literature Professor Julienne Empric to lead a discussion among federal judges; there is The Trial by Franz Kafka; there is . . .

Judge Frederick P. Corbit, Spokane

“I became a lawyer because my grandparents were enslaved in the WWII internment camps, locked away without a voice. It is my mission to make sure people are heard and their rights are protected. To me, Advocacy and Results matter. Recently in court I argued that a client’s arrest was without sufficient cause. Although it was her second DUI in seven years, it was clear to me that her rights were violated. After my argument the judge dismissed the case. In my heart I know everyone deserves a voice.”

— LAUREN WEGENER
Attorney at Law

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The Transitions Issue

In the immortal words of Heraclitus of Ephesus, “The only thing that is constant is change.” And by immortal, I mean good enough to appear on Wikiquote, so that a bar association magazine editor looking for a pithy line could stumble onto it a couple thousand years later. Actually, this pronouncement isn’t all that brilliant by ancient-Greek-philosopher standards. It had probably occurred to even Heraclitus’ less reflective cohorts that, yeah, things sure do change all the time. Nevertheless, the sentiment rings as true today as ever, as we struggle to keep pace with the constant transformations in our professional and personal lives.

Hence this issue’s theme: Transitions. A while back, Managing Editor/Graphic Designer Todd Timmcke presented the idea of a transitions-themed issue to the WSBA Editorial Advisory Committee (EAC). Because the theme could be interpreted broadly, the EAC took off brainstorming all sorts of story ideas. For the most part, the types of transitions involved will be familiar: moving from associate to partner, from public to private practice, from practice to retirement. But one WSBA member’s transition stands out both for its rarity and its comprehensiveness. In “Transitioning into Greater Gender Diversity” (p. 22), Lucy K. Sharp examines both the highs and lows of undergoing gender transformation in the context of a legal career. Not long ago, the topic was so taboo that you wouldn’t even have been reading about it. Even today, when at least talking about the subject has become commonplace, many transgender individuals are reluctant to come out, especially in as traditional a setting as a conventional law firm, Sharp points out. But her article illustrates what we all can learn from the experience of someone “different” seeking to integrate into mainstream culture while retaining a sense of self. For example, who could have a better-informed view of how men and women are treated differently in the workplace and in general than someone who has lived as each? Who could have a greater appreciation for people willing to accept someone for who they are? And who could better describe the awkwardness of being in situations where even well-intentioned colleagues feel compelled to ask about the status of one’s sex organs? We think you’ll be enlightened by Sharp’s observations while admiring her willingness to share her story.

Elsewhere, in “Movin’ on Up” (p. 34), Tacoma lawyer Russell Knight provides insight on the pros and potential cons of the transition that fills many associate attorneys’ dreams: that of associate to partner. It’s a story of dream fulfillment, spiced with a dash of practical be-careful-what-you-wish-for advice.

Elijah Forde, WSBA Board of Governors member and Olympia practitioner, describes another fairly common career transition for lawyers: the leap from public employment to private practice. In “The Sunny Side of the House” (p. 20), he describes with refreshing frankness the personal and professional reasons he departed a generally gratifying but sometimes stifling state position and inherited a firm that practices in the same area of law, but from the opposite side.

Meanwhile, WSBA Editorial Advisory Committee member Shelley Simcox explores an entirely different type of career transition, one that most of us will experience eventually: retirement. While we tend to envision retirement as the well-deserved perpetual happy hour at the end of our career, in “Early Retirement Bucks Trends, Brings Challenges” (p. 46), Simcox examines the daily realities of permanent, voluntary joblessness.

On page 42, Mill Creek attorney Jensen Mauseth offers 10 lessons learned from another common career transition: the leap from practicing in a firm to going solo. If this is a move you’re contemplating, you’ll find helpful advice here, and the issues raised will help you decide whether this particular transition is the right one for you.

Rachel Bowe’s career transition, recounted in “Transplant Strategically” (p. 36), was geographical. She relocated recently from Minneapolis to Seattle. She provides personal and professional insight of use to attorneys moving to a new locale or otherwise facing a major change in their professional environment.

On page 17, Judge Raquel Montoya-Lewis of Whatcom County tells how she is transitioning from many years as a tribal judge to the state superior court bench. Aside from the technical and legal adjustments needed in shifting from one type of court to another, she outlines the differing cultural roles judges play in the two contrasting systems.

In keeping with Heraclitus’ observation, the only constant in this diverse menu of articles is the concept of change. But we think you’ll appreciate the variety of transitions experienced by your fellow bar members. NWL
Legal Education and Multicultural Practice

Introduction by Anthony Gipe

For this edition of the President’s Corner, I am bringing two perspectives on what cultural competency education is about. The first is from the deans of Washington’s three law schools, and they are talking about cultural competence and capacity in legal education. The deans remind us that we have to rethink what legal education means and continue to push beyond the formalistic black letter training and focus on the skills that allow attorneys to work better in a changing culture.

The second perspective comes from two alumni of the Washington Leadership Institute (WLI). As a point of privilege, one of my proudest achievements as a leader in the legal profession in Washington has been serving as a founding board member and faculty member for the WLI. Its goal has been to foster leadership development for attorneys and to promote minority attorney leadership and cultural understanding in the profession. I have remained involved in the WLI for the last 10 years, even when I went on to other leadership roles. However, for the 10th anniversary year of the WLI, these two WLI alumni have fulfilled the promise of the program, and their success demonstrates the principle that cultural competency in leadership development is essential for our future.

As we look to the future, the law schools, leadership programs, and CLEs all have a part to play in educating and readying lawyers to work in multicultural practice. The new APR 11 rules passed by the Supreme Court, which go into effect in January 2016, will now permit credit for CLE in this area (see article on p. 30). This systematic approach at all levels of professional training is what it will take to transform cultural competency in the profession for the future. — A.D.G.

Legal Education and Cultural Competency

by Dean Annette Clark, Dean Jane Korn, and Dean Kellye Testy

Put simply, cultural competency refers to the ability to interact effectively with people whose cultures and backgrounds are different from one’s own. Given that the clients whom lawyers serve are from such a variety of backgrounds, cultural competency is a vital skill for lawyers regardless of practice area. For instance, because racial and economic inequalities are structurally linked, a legal services lawyer serving the poor will undoubtedly have clients from many races and ethnicities. Likewise, because our markets are increasingly global ones, a corporate lawyer doing multi-million dollar deals will also likely interact with lawyers and clients from other nations, each of which has a distinct business and economic culture. Thus, it is imperative that effective legal education include cultural competency within the skills that graduates begin to acquire during law school.

Despite this obvious point, many programs of legal education have historically paid insufficient attention to assisting and encouraging their students in developing this vital skill set. Rather, “skills education” or “practice-readiness” too often refers narrowly to classic legal skills such as written and oral advocacy, critical thinking, legal drafting, negotiations, and the like — all of which are necessary, but not sufficient for graduates to be effective lawyers in a world of diversity and difference.

How, then, might legal education add cultural competency to its curricular, co-curricular, and extra-curricular educational opportunities? A robust literature exists on cultural competency in education, but we will summarize the major points. Cultural competency education includes at least four steps:

1. Developing awareness of one’s own culture, a critical first step so that students do not privilege their own culture as the norm.
2. Developing an appreciation for difference rather than
a fear, suspicion, or suppression of difference.

3. Developing a deep knowledge of other cultures.
4. Developing skills to work effectively across differences in cultures, histories, practices, perspectives, and worldviews.

There are many ways that law schools can and do seek to encourage students’ development along these four steps. Ten important ones include:

1. Building a broadly diverse community of students, faculty, staff, and alumni that interacts deeply and regularly enough to begin to see and appreciate cultural differences.

2. Offering courses and programs that provide educational opportunities on skills of working across difference, including courses in international and comparative law, race and law, law and inequality, and skills courses or workshops that address how to have “difficult conversations.”

3. Providing opportunities for law students to spend time in a different country or culture, or to work directly with clients from different cultures such as study-abroad programs, immersion courses, externships, and clinics.

4. Having a robust set of student organizations that support students’ identities and interests and that create collaborative educational programs with one another.

5. Calling out cultural competency as a learning outcome in the school’s mission and setting assessment and accountability structures to support that mission.

6. Providing regular educational opportunities for faculty and staff to develop their own cultural competency skills and setting clear expectations for their expertise in personnel systems (e.g., promotion and tenure standards, annual performance reviews).

7. Promoting opportunities for pro bono legal service and community service for students, faculty, and staff to enhance opportunities to know and serve people of different social and economic status.

8. Creating close working relationships and collaborative programs with minority bar organizations and other legal, business, and civic organizations that also value and promote cultural competency.

9. Facilitating interdisciplinary opportunities for students to pursue with other units on campus that also seek to educate students for cultural competency.

10. Having awards, other recognition programs, and art and library exhibits within our buildings that clearly celebrate cultural competency and diversity.

While each of our law schools has much work yet to do in these areas, we have also made significant strides in recent years. Here are just a few examples from many initiatives underway. UW Law requires a first-year course in international and comparative law that includes issues of cultural competency so that students learn early in their educations how to work across borders and differences. At Seattle University, the Social Justice Leadership Committee sponsored a recent workshop at which faculty worked through actual scenarios provided by students and shared strategies for engaging in difficult conversations in the classroom about race, gender, migration, disability, and sexuality. At Gonzaga, faculty and students hosted a discussion forum on the events in Ferguson, Missouri, and their repercussions, while another group, DiversiTea, meets regularly to build community.

In an effort to work collaboratively on increasing cultural competency among our students, our schools recently joined together in a grant proposal that would extend a Seattle University program, the Racial Justice Leadership Institute (RJLI), to students at all three schools. If funded, this year-long leadership development collaboration would help develop a lens for understanding racism, increase student skills around identifying and intervening in racist dynamics in law practice, and build shared analysis about the structural and interpersonal operations of racism.

As technology and globalization continue to rapidly make our world one with fewer and more porous borders, our students need and deserve to be fully prepared for that complex and connected world. We will serve them and our world well by ensuring that cultural competency is among the skills and values legal education prioritizes and endeavors to instill in our graduates. We anticipate a day in the near future when “cultural competence” will no longer be singled out, but rather will have become so central to the practice of law that it will be part of the definition of being a competent lawyer.

Annette Clark is the dean of Seattle University School of Law. She can be reached at annc Clark@seattleu.edu.
Jane Korn is the dean of Gonzaga University School of Law. She can be reached at jkorn@lawschool.gonzaga.edu.
Kellye Testy is the dean of University of Washington School of Law. She can be reached at lawdean@uw.edu.
Ten Years in Successful Leadership Development

by RaShelle Davis and Karen Denise Wilson

This year, the Washington Leadership Institute (WLI) is celebrating its 10th anniversary. With over 100 alumni of the program, WLI has distinguished itself as the premier leadership development program for diverse attorneys. Members of the first class of graduates in 2005 include Tracy Flood, Lisa Dickinson, and Gloria Ochoa—women who are trailblazers in Washington’s legal community as well as their local communities. Other alumni of the program have established themselves in leadership positions in public, private, and nonprofit organizations such as Nick Brown, general counsel to Governor Inslee; Erica Buckley, CEO of Buckley & Associates; and Shankar Narayan, legislative director of ACLU of Washington. The current class includes Sam Castic, an attorney for T-Mobile, and Assistant Attorney General Rania Rampersad.

Founded in 2005 by Ronald R. Ward (then-WSBA president), the WLI is a partnership between the WSBA and the University of Washington School of Law that recruits, trains, and develops minority and traditionally underrepresented attorneys for future leadership positions in the WSBA and the broader legal community. One of the primary goals of the WLI is to develop young attorney leaders, including minority attorneys, to foster community and leadership development that contributes to cultural diversity in the profession.

Each year, a new class of 12 WLI fellows is competitively selected from a statewide pool of talented applicants. The first year of the two-year fellowship involves an inventive curriculum delivered over eight monthly educational sessions and concludes with development and execution of a collaborative community service project.

The second part of the program requires each fellow to commit to one year of volunteer participation in the Washington State Bar Association or other law-related organization in the community. The program’s curriculum is developed by an advisory board of industry leaders and is designed to prepare fellows for a lifetime of leadership in their legal communities. Volunteers, all of who are Washington’s judicial, legal, business, political, and public policy leaders, deliver the curriculum. Through these collaborative, inspirational, and educational projects and trainings over the course of the two-year fellowship, WLI fellows graduate ready to serve their communities. Many of our region’s most impressive lawyer-leaders are graduates of this program.

Alumni Perspective — Karen Denise Wilson

In May 2011, I attended a social networking event for women-of-color attorneys. At the event, Justice Mary Yu (at the time serving as a trial judge in King County) and Judge Marci Anderson each separately said to me, “I want you to apply to the WLI.” It was more a declarative statement than an invitation. Six months later, I joined 11 other fellows in the 2012 WLI class. This was the first of many examples of how my interactions with the WLI advisory board, volunteers, and presenters have supported and, yes, pushed me to move beyond my comfort zone to seek leadership opportunities in the legal profession.

A key component of the WLI is the class service project, which is a collaborative effort to produce a legal tool for a particular community in need. My class created a resource guide for asylees in Washington. The service project exposed me to a new area of law and increased my own cultural competency by introducing me to the challenges and barriers that asylees face in Washington. From legal, mental, and physical health services to accessing schools and educational opportunities, our class compiled a resource guide to support asylees who hold a unique legal status. The resulting report has been translated and disseminated in communities and with social service agencies who serve asylees.

Alumni Perspective — RaShelle Davis

On a Friday night in the winter of 2012, I received a personal phone call from Judge Mary Yu (now Justice Yu) informing me that I had been selected for the 2013 class of the WLI. At the time, I knew it was a leadership development program and that I would earn CLEs, but I was not aware of how the program was going to help open doors to new opportunities. During the first month, we engaged in a career evaluation and personal assessment. It was this exercise that confirmed that I was prepared to take my career to the next level and, within a month, I accepted a new position in Governor Inslee’s Office as a policy advisor.

Besides providing career guidance and support, the WLI also provided introductions to practice and industry leaders, which helped expand my personal and professional network. I now have my own personal “board of directors” that consists of my fellow classmates and WLI faculty such as Justices Mary Yu, Steven González, and Bobbe Bridge; James Williams; and the Honorable Lorraine Lee, all of whom I can turn to for advice, guidance, and mentorship.

A key component of leadership in the legal community in the 21st century and beyond is a cultural competence that enables legal professionals to be effective with peers, clients, and community members from cultures other than their own. The WLI contributed to my cultural competence in two unique and important ways.

The makeup of each WLI class creates a dynamic environment rich with diversity and varying perspectives resulting in a practical exercise in cultural awareness. The lawyers in my class practiced in private, corporate, solo, and govern-
ment firms of varying size in Benton, Thurston, Pierce, Spokane, King, and Skagit counties. Our class included lawyers with origins from England and Jamaica as well as lawyers representing varying backgrounds of race, ethnicity, and sexual orientation. These diverse interactions — sharing internal challenges and working through them with my WLI fellows, who often shared and understood my perspective but also offered a different one — enriched my understanding of unique cultural identities, intersections, and views about difference in the context of the legal practice and the broader community.

Another remarkable impact for me was the level of investment of the WLI faculty leaders and level of intimacy in their presentations. Beyond course books and PowerPoint presentations, industry leaders shared personal stories and narratives, many of which dealt with issues that aren’t talked about in law firms and offices. These issues are certainly not talked about in law schools, such as how the language of race, sexual orientation, or gender impacts your interactions or capacity to succeed in the profession. It was really inspiring to hear and learn from the ways in which they were able to overcome those challenges and achieve leadership roles in their fields.

The WLI does more than just discuss promoting diversity in our profession; the leadership program makes meaningful and measurable progress on this vital issue. The WLI has also served as a model for other bar associations, leading the way to the establishment of other leadership institutes across the country.

RAshelle Davis is a policy advisor for Governor Jay Inslee on education, civil rights, and social justice issues. She serves on the WSBA Diversity Committee and the WSBA Young Lawyers Committee. She can be reached at rashelle.davis@gov.wa.gov. Karen Denise Wilson has been a deputy public defender with the Skagit County Public Defender’s Office since 2006. Previously, she was a civil rights analyst for the Seattle Office for Civil Rights. Wilson was elected as an at-large governor to the WSBA Board of Governors in 2013. She currently serves as the co-chair of the WSBA Diversity Committee, a member of the Budget and Audit Committee, and liaison to the WSBA Council on Public Defense. Contact her at bog@kdwilsonlaw.com.

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Some of you will remember a time when only a doctor could draw your blood. If a doctor came into your patient room today to draw your blood, you would either run for the door or say, “Bring me the phlebotomist or the nurse.” Forty years ago, Congress told the medical profession that they were not doing an adequate job of serving the public, and it is around this time that we saw the advent of the nurse practitioner and other medical professionals aiding in the delivery of medical services.

I use the medical analogy because the transition the medical profession underwent is much akin to the transition the legal profession is experiencing. As I have written about before in this column, in the future we will no longer be educating and regulating lawyers; rather, we will be educating for and regulating a legal services delivery market. While lawyers will always be the cornerstone of that delivery, there will be many other legal professionals and providers assisting in the delivery of legal services.

Washington state is leading the nation in this transformation with the advent of the Limited License Legal Technicians (LLLTs), a newly created license to practice law in a defined and limited scope created by our Supreme Court a little over three years ago when they adopted Admission and Practice Rule 28 (APR 28).

Last month, the first LLLTs took the first licensing exam in the area of family law and seven of the applicants passed, which is a 78% passage rate. In Washington state, we now issue three licenses to practice law: the license that more than 37,000-plus of us have; the limited practice officer license (the LPOs are licensed in a narrow scope where they can select and prepare real estate closing documents); and the LLLT license, which has a broader scope than the LPO but is still a defined scope intended to apply in various practice areas (family law is the first practice area that has been approved by the Supreme Court).

The LLLT is the first independent legal paraprofessional in the United States that is licensed to give legal advice. The Supreme Court’s LLLT Board has developed this program in conjunction with the WSBA (which is the regulatory agency for the profession acting under delegated authority of the Supreme Court) and the Board has been guided by what it terms the three A’s: Accessibility, Affordability, and Academic rigor.

LLLTs must complete an education that includes both community college level courses (completion of an associate’s degree with 45 of the 90 credits dictated by the regulations of APR 28) and law school level courses for the practice area education, with family law requiring 15 credits of study. Prior to licensure, the LLLTs must also complete 3,000 hours of work under the supervision of a licensed attorney; they must take three exams prior to licensure; and they must carry malpractice insurance. The first exam is on the core education and is completed by taking the Paralegal Core Competency Exam (PCCE); they must also pass an ethics exam and then a practice area exam for each area they would like to be licensed in that mirrors the Uniform Bar Exam, which includes a multiple choice section, an essay section, and a closed universe practicum exam.

The LLLT is the first independent legal paraprofessional in the United States that is licensed to give legal advice.

LLLTs have their own Rules of Professional Conduct (modeled on the lawyer RPC). They are held to the same standard of care as a lawyer and they will have the attorney-client privilege. Like all of us, they will be legal professionals in every sense of the word.

We are thankful that our Supreme Court stepped in and created the LLLT license. By doing so, the Court is maintaining control over the practice of law in our state and maintaining our status as a profession. We have learned from the experience of the doctors who resisted the changes, and, as a result, saw the nurse practitioner and some other medical professionals develop under a different umbrella (such as the nursing umbrella).

While the bar resisted the LLLT up until the Supreme Court’s adoption
of the rule, we now see that a culture of innovation has been created in Washington. Many people are now approaching the LLLT Board suggesting different areas where the concept of the LLLT might work.

For too long as a profession we have produced a one-size-fits-all professional, yet the needs of the consuming public have never been one-size-fits-all. We have convinced ourselves and the consuming public that only a lawyer can help them. But not every legal problem needs a lawyer, just as every medical procedure, like drawing blood, does not require a doctor.

As we have all experienced in our lives, sometimes there is more control in letting go. Our job as a profession now is to figure out which pieces to let go of and which we must maintain in order to ensure greater access and protection for the consumer. The consumer is already choosing other alternatives for their legal service needs such as LegalZoom and other online services; many also turn to unqualified and unregulated providers as their only recourse. We must work to ensure greater access to the system through expanded delivery models while keeping consumer protection at the core of our objectives and maintaining our status as a profession.

**PAULA C. LITTLEWOOD** is the WSBA executive director and can be reached at paulal@wsba.org.

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When I was first asked by my tribe, the Pueblo of Isleta, to sit as an associate judge for our tribal court, I was 30 years old and a baby lawyer by any measure. My mentor, Justice Pamela B. Minzner, said in her always-gracious manner, “I think it’s best that lawyers have a wealth of experiences before they sit as judges, but you have a chance to serve your community in a way that’s rare, so you should do it.” The first words out of my father’s mouth were, “Don’t do it, but I know you are going to anyway.” Both my father and my mentor’s words were prophetic — I did need more experience, but I did it anyway, beginning a now 17-year career serving various communities as a judge. As is true of many in the legal profession, I could not have predicted where this career would take me, and it took a significant leap of imagination to see myself sitting as a Superior Court judge for the State of Washington in Whatcom County.

As a tribal court judge, the position required that I participate in creating both the structure of the legal system and the substantive law that governed. Each tribe varies enormously, so some tribal court systems had volumes of codified law and others had very little. Some had appointed defense counsel for criminal defendants, while others did not; advocates might be licensed to practice law by the state or they might not. As a tribal court judge, I presided over all kinds of civil and criminal cases in multiple jurisdictions, sometimes having had very little time to acquire and assimilate the relevant tribal laws.

The transition to Whatcom County’s Superior Court has brought with it some remarkable surprises I did not anticipate, as well as challenges I did. Over the course of my first few months, I have presided over several civil bench trials, multiple criminal jury trials, countless plea and sentencing hearings, as well as criminal and civil motions calendars. Each time I have come across something new to me, procedurally or substantively, I have found myself able to do what most would see as fairly obvious: 1) turn to the Judge’s Benchbooks and AOC resources and 2) ask a colleague. For those used to practicing in Washington courts, these resources may seem unremarkable. For me, having come from systems in which the resources are extraordinarily variable and the isolation of judges common, these resources are nothing short of remarkable. During my first week on the Superior Court bench, my fellow judges and I went out for lunch, beginning a discussion about how we do the work we do that continues almost daily. For most of my career, I have worked in jurisdictions in which I was the only full-time judge. Having the ability to “phone a friend,” as it were, and access the wisdom of my colleagues, has been invaluable.

The resources available to Washington Superior Court judges continue to surprise me. As I have arrived at cases with issues that are new to me, I can...
easily access multiple cases analyzing similar issues, as well as statutes and court rules specifically addressing the issue. For me, one of the great joys of working in tribal courts was the ability to develop the law and the processes of the legal system. But that brings with it enormous pressures, as each tribe has different needs, resources, and cultures, all of which impact the direction the law and the legal system takes. In Superior Court, the judge can rely on the existence of a long-standing framework and, in most cases, law to address the issues that arise.

In any court system, the judge’s role is to serve as the decision maker, but I was struck recently by a comment from a colleague who sits on the Superior Court bench in a different county. He and I were talking about my recent transition, and, in particular, discussing the ways in which judges and the court system in general could (or should) respond to the public’s perception of the court system. We both found ourselves frustrated by how often we wish we had more information and more time. “Judges make decisions,” he said, “and we have to make countless decisions in a day. We cannot be problem solvers; I can’t solve the problems a family brings to the courtroom that are problems that may go back years. I have to focus on the discrete issue in front of me and decide those issues. I give my attention to that issue, ensure the parties all feel heard, and then make the decision on the basis of the facts and the law.”

Over the course of the last few months, I have been struck by that singular difference between my role on the Superior Court bench and my role as chief judge for tribal courts. The judge in the tribal systems where I have presided served a critical leadership role in solving community problems. As chief judge, I served multiple roles: court administrator, Clerk’s Office supervisor, grant writer, program developer, community needs assessor. As a result of serving multiple roles, I knew each community well and understood how the families who came in front of me in court interacted in the larger community setting. In Superior Court, the kind of background I might be used to having in tribal court might be seen as a reason for recusal; in tribal court, it was not only expected, but also my responsibility to understand the families in the context of the tribal community.

I was raised to understand that my individual goals and accomplishments served a larger purpose than my own personal success. My father raised me to introduce myself beginning by identifying my great-great-grandmother first and tracing my family tree to arrive at my name last; in the most traditional of settings, I was taught to use my formal Indian name, which identifies me by clan rather than by personal name. Introductions done in the traditional way can last a long time, and now, I only introduce myself in that manner in formal settings. But the lesson is one I bring with me to the Superior Court bench. My success in my professional life comes not only as a result of hard work and persistence, but also as a result of the persistence and survival of many before me, who worked hard as a group to make my path possible. I think almost every day about my great-grandmother, Mary, who was forced to board a train from New Mexico to Pennsylvania to attend Carlisle Indian School. She survived that boarding school and returned home; her commitment and dedication to education ensured my father’s and mine.

The scope of presiding in Superior Court is different from what I am used to; I am taught to look at each case and decision discretely, focusing on the individual issues raised in this hearing on that issue. It is a welcome change and an opportunity for which I am grate-
As I take the bench in Whatcom County Superior Court, I marvel at the resources we have available to serve our communities, as well as the incredible breadth of wisdom my colleagues bring to their jobs (and to their patient answers to my endless questions). I do miss the close relationships I had with families and the tribal communities I served. But during my swearing-in, I looked at the crowd of people and saw the most amazing cross-section of Whatcom County and Washington: children with their families, local politicians, community members of all affiliations, a sea of judges, representatives from tribes from all over the state, as well as Governor Inslee, his wife Trudi, and members of his staff. It served to remind me then and now that I have a unique opportunity to connect the lessons I’ve learned as a judge in tribal courts with my new role in Superior Court. I come to the Superior Court with a commitment to serving the community as both a decision maker and a problem solver, as well as enormous respect and thanks to those who have come before me and made it possible for me to serve.

Judge Raquel Montoya-Lewis serves as a Superior Court judge for Whatcom County. She was appointed by Governor Jay Inslee in December 2014 and ran unopposed in 2015. Prior to serving on the Superior Court bench, she combined judicial and academic careers, serving as chief judge for the Nooksack Indian Tribe and the Upper Skagit Indian Tribe and as an associate professor of law at Fairhaven College of Interdisciplinary Studies at Western Washington University. She is from the Pueblo of Isleta and the Pueblo of Laguna, two federally recognized tribes in New Mexico. She can be reached at rmontoya@co.whatcom.wa.us or 360-715-7467.

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When I was a young starry-eyed law student, I was ambivalent about whether I wanted to work in the public or private sector. I initially went to law school to be a social engineer of sorts. I had dreams of using my law degree to change the world. However, when I actually got to law school and was faced with the reality of paying all of those loans back, let’s just say I began to “re-conceptualize” what social engineering might look like in light of the reality of my staggering student debt. Consequently, I felt very fortunate to get a job offer from the Washington State Attorney General’s office while I was still in law school. I had never been to Washington before, I did not know what type of work I would end up doing, and I did not know whether I would like either the place or the work. However, I did know I needed a job, I needed to get away from my large, overbearing family (love you, Mom), and I would not be able to afford a decent lifestyle on the East Coast doing government work. Additionally, I wanted to litigate and I was promised a substantial amount of litigation experience early on at the Attorney General’s Office. So, shortly after graduation, with my heart full of hope and a U-Haul full of my stuff, I headed west.

I loved Washington outright from the moment I arrived. However, my experience in public service was more of a mixed bag. I loved my colleagues, the benefits were excellent, and the work environment was busy yet very relaxed. The best thing for me was that I was given a tremendous amount of responsibility for my own cases early on. In fact, I had my first jury trial within seven months of starting with the office. I remember calling my friends who took big-firm jobs and bragging because I knew they had only walked by the courthouse once or twice on the way to pick up lunch for a partner. For a time, I was happy. I looked at my job almost as an extension of law school. Except this time I was getting paid to learn, rather than the other way around. Then slowly, things began to change. I became increasingly frustrated with the bureaucracy that comes along with any large public agency. The lack of diversity was also a huge issue for me. It is difficult as a young ambitious person of color to look around and see no one in a position of authority who looks like you. The lack of diversity in leadership led me to reasonably believe that there was no path for advancement for me if I stayed. On top of all of that, I was expecting my first child and I had serious doubts about whether my very modest “post-education stipend” from the State would be enough to cover my student loan debt and the needs of my growing family.

When my friends and colleagues learned that I was planning on leaving, most people tried to talk me out of it. “There’s no loyalty in private practice,” “The benefits aren’t as good,” or my favorite, “You’ll be back.” I heard these warnings, but I had no intention of heeding them. And so with youthful confidence in myself and the future, I took yet another great leap into the unknown. Within a few weeks of my child’s birth, I landed a job at Lane Powell doing the same work I was doing at the Attorney General’s Office, but now I was representing self-insured employers rather than the Department of Labor and Industries. I was excited initially, but I knew early on that Lane Powell was not a good fit for me, either. I never really got the hang of living my life in six-minute increments or justifying my billing to clients, and I was not overly fond of feeling like I did not fit into the large-firm corporate culture.

In those dark moments at Lane Powell, I heard my public-sector colleagues’ voices reverberating in my mind. What
if they were right? What if transitioning from public to private practice was a bad idea? Did I in fact need to turn back? After some painful critical thinking about myself and my relative strengths and weaknesses, I determined that I was not going to go back, but I was also not going to be able to continue forward on the large-firm private-sector trajectory. The constant stress was taking a toll on my health, my emotional well-being, my family, and ultimately my work product.

As a wise woman once said to me, “You can’t put a sunny plant on the shady side of the house and expect it to thrive.” At this point, it was clear that public service was too shady. However, it was also abundantly clear that private practice in a large firm was far too sunny. I needed to find the right spot for me. I considered various in-house positions and, of course, I thought about dropping out of law altogether. Maybe it was time to pursue that teaching career I always dreamed of? Deciding I was not happy was the easy part. The much more difficult questions for me were, “Where do I want to go now?” and, “How do I get there?”

The answers ultimately came in the form of a phone call. An attorney in Olympia, whom I had actually litigated against, called and told me he was looking to retire and wanted to hire his replacement. I jumped at the chance to interview. I was hired that same day, and four years later I own the firm and could not be happier.

So what have I learned in my transition from public to private practice? It comes down to three main things:

- Transition can be difficult and painful, but that does not mean it is a bad thing.
- When transitioning out of public practice, take care to select your private firm option. A big firm might not necessarily be the right fit, but that does not mean private practice as a whole is not going to work out.
- Transition with your happiness, rather than money, in mind. If you are doing what you love you will be happy. If you are happy, you will do good work. And if you do good work, the money will come.

Transitions of any kind can be scary. Going from the relative safety and comfort of the public sector to the volatility and uncertainty of the private sector can be especially daunting. However, if you are in a public sector job and you are not happy, you have to ask yourself how much you are willing to risk for your happiness. For me, the answer was ... everything.
Transitioning into Greater Gender Diversity

WHAT MY GENDER TRANSITION SAYS ABOUT HOW TO CREATE A MORE TRANSGENDER-INCLUSIVE LEGAL COMMUNITY

by Lucy K. Sharp

For me, 2012 was a year of two transitions. I went from being a law student to a practicing attorney, I also went from presenting myself as a male to beginning my gender transition. Doing both at once was an intense experience, and capturing the full depth of that in a single article is simply impossible.

On the one hand, there were many positive experiences. The majority of attorneys I have talked to have been welcoming and supportive of my transition. I have had a chance to work on cutting-edge legal issues that affect not only my rights but the rights of the entire transgender community. The law itself is also evolving to be increasingly responsive to the needs of transgender people. The Washington Office of the Insurance Commissioner recently announced that health insurance carriers will no longer be permitted to discriminate against gender dysphoria in insurance coverage. This is a huge step forward in healthcare equality.

On the other hand, being a transgender lawyer, and a transgender person, remains difficult. Some transgender attorneys in the Seattle area, where I am situated, still feel the need to hide being transgender from their colleagues. Many other transgender people will avoid the legal field entirely. The importance of being visible as a community on influencing policy in federal, state, and local government as well in the private sector cannot be overstated.

So instead of focusing on the highlights of my transition, I wish to focus on areas where I experienced difficulties or barriers as a transgender woman during my transition in our legal community, including compliance with legal protections for transgender people, harassment, and accommodation of needs associated with my background as a transgender person.

Transgender Identity and Social Context

A transgender person is someone who identifies as a gender other than the one assigned to them at birth. Many transgender people choose to under-
go a gender transition, in which we cease to present as the sex we were assigned at birth and begin presenting as the gender we identify with. Additional legal processes are necessary to legally recognize a gender change. The process may, but does not always, involve physical changes such as hormone therapy, hair removal, or one or more surgeries.

During my transition, I switched from a masculine to a feminine style of dress, pierced my ears, changed my name from my birth name to Lucy Kimberly Sharp, changed the gender markers on my legal forms of identification, and underwent (and am still undergoing) the medical procedures which I felt would support my transition. The purpose of my physical transition has been to support the social one, as I personally felt I would be safer and better accepted if my body conformed to traditional notions of femininity.

More important than understanding the physical mechanics of a transition is understanding the broader culture transgender communities face. While individual experiences vary, transgender people as a whole still face intense structural oppression.

90% of transgender people report having faced harassment, mistreatment, or discrimination at work.\(^2\) 71% of us have hidden our gender identities, and 57% of us have delayed our transitions to avoid discrimination.\(^3\) 41% of us have attempted suicide.\(^4\) Transgender people are at a heightened risk of physical violence and particularly sexual violence, which 50% of us experience.\(^5\)

While these are national statistics, I do not believe Seattle is substantially different. While some trans-people I talk to haven’t had any problems, complaints of discrimination are common. Since arriving in Seattle, I’ve been the target of sexual violence because I am transgender. I’ve also had a transgender friend kill himself. Seattle may be somewhat better than some other places in some ways, but it is far from paradise.

Nor is the Seattle legal community insulated from this. Fear of discrimination may keep transgender people from entering the legal field. In the case of some transgender lawyers I know, fear of discrimination by other lawyers is a primary motivation for concealing that they are transgender.

This context is important when creating a welcoming legal environment for transgender people to practice. Because discrimination can be hard to observe in the moment, requiring literal mind-reading, transgender people may be forced to examine proxies in assessing how we are likely to be treated. It also affects the context in which interactions occur. Jokes at the expense of gender-variant people look a lot different when your friends are dying from widespread oppression.

**Legal Protections for Transgender People**

When I began my transition, I was relatively uninformed as to what my legal rights were, and how these would be handled in practice. The first law firm I worked at didn’t seem particularly well-informed, either. In hindsight, many questions could have been resolved by examining guidelines provided by the Washington Human Rights Commission,\(^6\) including information on a variety of issues such as restrooms, harassment, preferred pronouns and name usage. These rules provide a good starting point in handling a workplace transition.

During one particularly stressful moment in my transition I received a call in which my CEO told me he didn’t want me using my name, “Lucy,” anymore. I’d been coming out gradually...
to my colleagues, and among people I was out to, I’d requested that in private conversations between us they call me by my feminine rather than my birth (and then-legal) name. The CEO’s concern was confusion involving inconsistency between my name on my billing records and name in common usage.

Consulting with the guidelines provides an easy answer to this dilemma: “Employers should ask a transgender employee what name and sex-specific pronoun he or she prefers, and use them consistently. Legal company records should reflect the employee’s legal name.” Arguing over the issue was frustrating, since the ability to be called by my true name is an essential reason why I transitioned.

Following these guidelines can help build trust that any issues that arise during a gender transition will be handled appropriately and reduce potential friction.

**Gender Inequality**

Being a transgender woman, I do not just face gender identity discrimination but the same issues of sex discrimination that all women face. One week into starting at my firm, I’d already heard plenty of negative remarks about women and transgender people. So when I started preparing to come out to others at my firm, some of the first people I came out to were other female associates. One reason was so I could learn how they dealt with the kinds of comments I was dealing with. One woman told me that she was in the process of looking for another job — that’s how she was dealing with it.

I highlight this to emphasize that not only does our legal community have a long way to go in inclusion of transgender people, there is still significant work to be done on traditional issues around gender equality. The effect of this is magnified because people who experience a new kind of stigma later in life may be particularly affected by discrimination, because they are not yet used to handling the psychological consequences involved. I definitely felt this during my transition and I still haven’t adjusted to being treated with less dignity and respect because I am a woman.
During my transition, I spoke with the head of my firm’s employment practice about this issue. She noted that she had tried to deal with the issue within our firm, but she said that much like the Israelites, women at the firm would have to wander 40 years in the desert while we waited for an older generation of men to die off. She advised me not to take on the issue too much or feel like I had to be the “defender of all womankind.” My practice group leader similarly emphasized that I could handle the issue by working extra-hard as a transgender woman to ensure that no one would discriminate against me.

As attorneys, we should hold ourselves to a higher standard than expecting protected groups to bear the burden of harassment and discrimination. We have not only a moral, but a professional duty from RPC 8.4(g) not to tolerate forms of illegal discrimination in our environment. If gender discrimination and harassment are still occurring, rather than dismissing it as inevitable, we need to make greater efforts to understand why it still persists and eliminate it.

Intentions Aren’t Everything
Picture the following scenario: a first-year female associate and male partner go out for coffee and some conversation. The partner begins asking the associate questions about her genitals, whether she is satisfied with them, and whether she plans to have any plastic surgery to change their appearance or function.

I would hope that most people would immediately spot the inappropriateness of the situation and the questions in the abstract. However, I experienced this situation many times at my law firm, and most of the time it was from perfectly nice people who I genuinely respected.

The reason for this is that while people ordinarily think of genitalia as a private and intimate matter, it is not always treated that way in the case of transgender people. To many people, genitalia defines gender. One attorney illustrated this by framing a question about my surgery as, “Are you planning to become a complete woman?”

Robert Gellatly was inducted into the International Academy of Trial Lawyers on March 20, 2015 at its annual meeting in Santa Barbara, CA. The Academy limits membership to 500 Fellows from the U.S., and only invites lawyers who have attained the highest level of advocacy. A comprehensive screening process identifies the most distinguished members of the trial bar by means of both peer and judicial review. Mr. Gellatly was evaluated by his colleagues and the judges in his jurisdiction and was highly recommended by them as possessing these qualifications and characteristics.

Mr. Gellatly is also a Fellow in the American College of Trial Lawyers, and has been chosen by his peers as one of the Best Lawyers in America® for many years.
But to many trans-people, that linkage is not in effect, and the idea that our genitals define our gender may be offensive. In my view, my gender springs from how I identify, rather than what’s under my skirt. And if someone wouldn’t ask a genetically female person questions about her body, it’s a good rule of thumb that they shouldn’t ask me, either.

Similarly innocent but invisible assumptions may exist around gender roles. One well-intentioned partner and practice group leader advised all female associates (and only female associates) that they should be careful not to get married and move away with a man. Such comments can create the impression that a firm is not equally invested in female employees because we might leave to take care of our families. The irony of the situation was compounded by the fact that at our firm, it was male, not female, attorneys who had been moving away with their spouses.

Another potential area of unintentional harassment is stereotyping around the proper ways for people of a particular gender to present. In my first two weeks at work, a partner (who at the time did not know I was transgender) told me that I should try to talk in a more masculine way. While the comment was intended to be helpful, I sincerely wondered whether that meant he and other partners would value me less as I transitioned into a more feminine presentation.

The broader point is people can easily make remarks that do not intend offense but can create significant discomfort. This makes a sincere and nonjudgmental inventory into our own behaviors all the more important. As long as a young person questions about our body, the natural tendency will be to ignore the ways our own behaviors may be causing discomfort in others.

There’s no harm itself in this social norm. However, different people have different life experiences and may respond differently. People who have been through violent or traumatic events may go into fight-or-flight mode more easily than people who have not. For me, because of my life experiences around violence, a man rapidly entering my space without asking permission or addressing me triggers such a fight-or-flight response, which makes it more difficult to collect my thoughts and have the desired conversation. When I asked for an accommodation of men knocking before entering, a head of our employment practice told me this request wasn’t feasible. Other work environments (particularly in the nonprofit area) since then have been more sensitive to these issues, and I’ve been much happier and more productive as a result.

The point here is not that any specific rule needs to be adopted for entering offices. Not all transgender people experience violence, and the needs of those who do vary widely. But people with different life experiences may have different needs. Given the prevalence of violence perpetrated against transgender people, flexible norms around preferred styles of interaction can help more of us feel comfortable and at ease. It would be a shame if we had to limit ourselves to particular legal sectors to be accommodated.

**Going Places**

It has been an exciting, wonderful few years for transgender people and for me personally. There seems to be a general zeitgeist towards more openness, and more legal protections are available for trans-people than ever before.

However, trans-people still face significant discrimination and systemic obstacles to our success. Many transgender lawyers still do not feel comfortable coming out and those who do may face a set of obstacles in practicing law with the dignity and respect we all desire. Following the law regarding transgender identity, eliminating harassment based on sex and gender identity, and accommodating different needs can help show that our legal community is a safe one for transgender lawyers to practice openly.
As lawyers wield significant influence over society in writing and litigating the law and policy, it is an important civil rights issue to have transgender people able to practice openly. I hope that by working together, we will see a day where being transgender is not an obstacle to this important goal. NWL

Lucy K. Sharp works with Legal Voice researching LGBT issues. She may be reached at lucy.kim.sharp@gmail.com.


NOTES
3. Supra n. 2 at 63.
4. Supra n. 2 at 3.
7. Id. at 5.
New clients in my office often want to know how their case is going to turn out. I remind them that while I have created a crystal ball after two decades of practice, it isn’t always as clear as I would like it. I feel the same way about our future as lawyers, except I see where the future is taking us, but I’m not sure exactly how we are going to get there.

There are some trends today that will predict future outcomes. For example, today competition is getting tougher. The clients who are still willing to spend their money on lawyers are smarter consumers who want more for less.

For some big firms, this means billable hours are shifting to flat fee billing, alternative billing, or outcome-based billing practices. Law firms are losing business because companies are increasingly relying on in-house lawyers or using firms like Axiom who “loan” their legal teams to work collaboratively with companies in house.

For smaller firms, competition may take the form of companies like Rocket Lawyer and Legal Zoom, to name just two, in a market being filled with dozens of existing companies and legal startups. These companies are undercutting our prices to gain market share from small-firm and solo lawyers.

But, on the upside, the outcome of increasing competition is fresh innovation. And innovation coupled with exponential growth in technology is fueling the race to provide the best, fastest, and easiest legal access to the masses of consumers who need legal services. The companies that are using efficiency, innovation, and technology to lower the price point to allow more consumers to access legal services will be more competitive and earn an increasingly larger market.
share. It is worth noting that “companies” may include law firms as well as businesses that provide legal services.

This approach is being utilized by companies like LegalZoom that provide low-cost forms and companies like Avvo that provide access for consumers to lawyers and legal advice. They see the future.

Here is where the picture of our future comes into focus. With increased competition, technology, innovation, and efficiency, the trajectory we are on will make law increasingly accessible over time to most consumers. It is inevitable that as time passes, law will ultimately move towards being open source. Law will not be held by lawyers any longer. We will not be the gatekeepers. Law will be free, or at least free by comparison to today’s prices.

If this is the foreseeable endgame, then what path should we as a profession take to hold a market in the era of free access to the law? I believe we have two probable choices.

The Status Quo Specialization Model
We could allow the current legal market to be divided up among legal service providers who can afford to give away their services, leaving us with a clearly demarcated and protected area of law limited to trial and appellate work. In this scenario, legal service companies and legal service professionals take over the market to provide consumers with full access to legal services up to, but excluding, representation in litigation before a court.

Legal service providers will (and some already do) provide free or low-cost online access to statutes, WACs, case law, and research tools and help fashion search programs for law, case law, and rules. They create and make accessible DIY forms for any and every area of law, at every level of court, in every state. They provide tools and personal assistance to choose the right forms and help consumers complete the forms, file them, and serve them. They assist consumers investigate, create, and collect evidence, and much more. They will do it all for free or at a price average consumers can afford.

While these services alone, without imagining further, seem to cross over upon our hard-earned licenses to practice law, the future is not likely to protect our lawyers’ market when other providers can provide our services for dimes on the dollar and make them accessible to the masses of consumers who cannot afford a lawyer today. Neither the public nor the Legislature are likely to protect us. Not even the court system has stopped Legal Zoom or Rocket Lawyer from offering similar legal services. The shield of the “unauthorized practice of law” has been of little significance or protection to us thus far, and is only likely to lose more ground in the future.

But perhaps that is okay. We as licensed and skilled lawyers have our sacred niche that is ours alone. We are the only professionals who can litigate cases. Only we can argue a case before a court on behalf of our clients. Only we can try a case, direct and cross examine witnesses and experts, and give awe-inspiring opening and closing arguments. Only lawyers can brief and argue a client’s case before an appellate court and before the Supreme Court. This will always be our domain and no one will ever do it better than we do.

So then, perhaps we give up the rest of the legal market and lay claim to trial work that will always be ours. Why try to compete where we really aren’t built to win the low-cost war? Those who need our services will pay our prices for our skills as trial lawyers. Lawyers will be in demand by those able to pay and those lawyers at the top of their game will come at a very high price. The market will reward those in high demand and protect all who are members of the remaining specialized litigation monopoly. Our niche will be our fortress.

The Full Market Model
But there is another model to consider. What if we didn’t concede the larger legal market? What if we instead fundamentally retool our practices and partner with legal providers?

In this model, we learn from today’s legal provider companies. We offer forms for free on our websites. We slash the price for our services in order to make law accessible for the public. We commoditize law. We standardize our services and forgo bespoke and crafted services. We automate services so that no lawyer time is needed for some services. We hire LLLTs to do the work we once did, we invest heavily in technology to do our work for us faster, cheaper, and vastly more efficiently. We regulate and integrate in all other legal service providers. And we still maintain our crown jewel: trial and appellate work.

One of the main differences between these models is that in the first model (Status Quo Specialization Model), we don’t have to dramatically change our ways. We simply continue to function much as we do today and let the market forces make the changes. The market will shift around us and legal providers will acquire the vast consumer market share as they undercut our prices and supplant their services. In the end, only litigators will likely remain in business and successful.

By contrast, in the second model (Full Market Model), lawyers would make immediate changes to the way we practice. Our business model would change, our prices would voluntarily plummet, and massive investment in technology would help lower the cost of providing services. We would shift away from a profession built on customized service to a profession built on a commoditized product that is quickly and cheaply obtained by consumers at any economic level.

The legal market is full of forces that will shape us. For those who resist change, the first model may be the one that you adopt. For those with the ability and desire to change, to prepare for the shifting market forces, then the second model may be a better target.

For now, we still have an individual choice which model (or hybrid model) makes the most sense. But my crystal ball shows a future built on the choices we do make and will make with our eyes wide open or shut. NWL

Patrick Palace is the chair of the Future of the Profession Workgroup and immediate past president of the WSBA. Contact him at patrick@palacelaw.com.
Big changes are coming to MCLE requirements, making them more flexible and easier to tailor to a lawyer’s specific needs. The result of a year-long WSBA task force, the new APR 11 was adopted by the Supreme Court on April 2, 2015, and will take effect on Jan. 1, 2016.

The New Rule

The new MCLE rule allows greater flexibility in both format and content. The biggest change is elimination of the “live” credits requirement. There are three reasons for the change. First is the increased availability and quality of prerecorded web offerings. Gone are the scratchy cassette tapes that were difficult to listen to and required special equipment. Now a lawyer can access quality programs from a large array of providers without ever leaving her desk. The second reason is cost. The task force heard again and again from practitioners that the live requirement substantially increased their costs because live programs tend to take place in Seattle, Spokane, or Tacoma, and impose costs for gas, parking, and sometimes hotels. Finally, being able to view CLEs “on demand” should help lawyers better tailor courses to their needs. CLEs will no longer conflict with depositions, trials, or client meetings. Eliminating the live requirement means no lawyer should have to take a course she is not interested in simply because it is offered at the right time or at the right price.

Some current CLE providers argued against the change in the requirements on the grounds that live programs offer lawyers a chance to network and socialize. Live programs do this, but lawyers who highly value these networking opportunities are still free to attend live seminars. And the best live programs will likely be recorded and available to more lawyers.

Lawyers will also have more course options under the new APR 11. As in the old rules, a lawyer will be required to get 45 credits in the three-year reporting period, including six ethics credits, but more subjects will qualify for credit. Lawyers will be required to get at least 15 credits per period in substantive law and/or legal procedure. These are the classes that have always carried CLE credit — black letter law and skills training. In addition, lawyers will be required to get six ethics credits just as they do currently. But the other 24 credits each period can be earned through a variety of course subjects and activities.

Newly Approved Course Subjects Include:

Professional development. These are subjects that enhance or develop a lawyer’s professional skills including effective lawyering, leadership, career development, communication, and presentation skills.

Personal development and mental
Changes to MCLE Requirements that Take Effect Jan. 1, 2016 (Starting with Lawyers in Reporting Period Jan. 1, 2014–Dec. 31, 2016)

<table>
<thead>
<tr>
<th>MCLE Rules</th>
<th>Current Rule</th>
<th>New Rule (Jan. 1, 2016)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Credit Requirements</strong></td>
<td>Lawyers are required to earn 45 credits over three years.</td>
<td>No change — Lawyers are required to earn 45 credits over three years.</td>
</tr>
<tr>
<td><strong>Ethics Credits</strong></td>
<td>Lawyers are required to earn a minimum of 6 credits in ethics and professional responsibility</td>
<td>No change — Lawyers are required to earn a minimum of 6 credits in ethics and professional responsibility</td>
</tr>
<tr>
<td><strong>Black Letter Law — “Law and Legal Procedure”</strong></td>
<td>No requirement to earn credits in black letter law</td>
<td>Change — Lawyers are required to earn 15 credits attending courses in black letter law</td>
</tr>
</tbody>
</table>
| **Other Approved Subject Areas**  | Limited subject areas outside black letter law approved for MCLE credit.    | Change — The 24 remaining credits can be earned in the above categories, as well as in new subject areas that include:  
   • Professional development  
   • Personal development and mental health  
   • Office management  
   • Improving the legal system |
| **Credit Caps**                   | Credit caps on pro bono credits, self-study credits, and participation in law school competitions | Change — No credit caps |
| **Live Credit Requirement**       | At least half of all total credits must be “live.”                          | Change — No requirement for “live” credits                                            |
| **Presenter Prep Time Credits**   | Maximum 10 prep time hours per course, regardless of presentation time.     | Change — Maximum of 5 prep time hours per one hour of presentation time.              |
| **Writing Credits**               | No minimum length required to earn credit.                                  | Change — Minimum 10 pages required                                                   |
| **Mentoring**                     | No credit earned for mentoring.                                             | Change — Credits can be earned by mentors and mentees for qualifying mentoring activities |
| **Sponsor Application Deadline**  | Certain types of sponsors have to apply for accreditation at least 14 days in advance of a course or pay a late fee | Change — All sponsors must apply for accreditation at least 15 days in advance of course or pay a late fee |

**Changes to MCLE Requirements that Take Effect Jan. 1, 2016 (Starting with Lawyers in Reporting Period Jan. 1, 2014–Dec. 31, 2016)**

**Health.** These are subjects that enhance a lawyer’s personal skills, well-being, and awareness of mental health issues. This includes stress management and courses about, but not treatment for, anxiety, depression, substance abuse, suicide, and addictive behaviors.

**Office management.** These are subjects that enhance the quality of service to clients and efficiency of operating an office, including case management, time management, business planning, financial management, office technology, practice development and marketing, client relations, employee relations, and responsibilities when opening or closing an office. Lawyers have always invested in this type of training — now it will be eligible for credit.

**Improving the legal system.** These are defined as subjects that educate and inform lawyers about current developments and changes in the practice of law and legal profession in general, including legal education, global perspectives of the law, courts and other dispute resolution systems, regulation of the practice of law, access to justice, and pro bono and low-cost service planning.

In addition to courses, lawyers may receive credit for certain volunteer activities. Currently, the MCLE rules recognize pro bono work, judging law school competitions, teaching, and several other activities, and each is capped at a certain number of credits. Under the new scheme, this list is expanded to include approved mentoring programs, and instead of a cap on each individual category, there is an effective cap of 24 credits for all these activities and new course subjects combined. As long as a lawyer attends classes carrying 15 credits in substantive law/legal procedure and six credits in ethics, they may allocate the remaining 24 credits in any manner. And if they wish to allocate those credits to additional substantive law/legal procedure classes, they are free to do that as well.

Most of the other rules will not change. And, just as now, any lawyer may apply to the MCLE Board for credits for an activity or course. These changes are coming next January, so those lawyers who are in the 2013–15 reporting period will report under the old rules. Those reporting in following years will do so under the new rules.

**The Rationale for Change**

One of the fundamental premises on which the task force based the new rule is that Washington lawyers are not only engaged in the traditional lawyer-client representation, but that there is an increasing amount of lawyers in Washington whose career options or employment are in a myriad of different legal and non-legal professions. In addition, the Bar is
rapidly expanding with a large number of newer lawyers entering the profession while older lawyers are starting to retire. These newer lawyers are more diverse and more technologically savvy than previous generations of lawyers.

The new rule recognizes, in its requirements, that a lawyer who is not practicing law in the traditional sense is still licensed to practice while an active member of the Bar. The rule, therefore, attempts to strike a balance between the need to protect the public and the need of all lawyers who may or may not be practicing law but could do so at any moment in any given situation.

The rule is also an attempt to use education to prevent disciplinary problems. The task force recognized the importance of work-life balance and creating and maintaining good lawyer-client relationships and office practices. Allowing lawyers to use MCLE to address lawyer-client, stress management, or office management issues will more likely increase overall client satisfaction and assist in preventing the types of issues that lead to lawyer discipline cases and malpractice claims.

The new rule also recognizes the fact that the profession is self-regulating. The task force has a great deal of trust and respect for the membership and strongly believes that lawyers, in terms of both a profession and as individuals, are perfectly capable, and should be able, to choose the education that best suits their needs for their particular situation. Learning something relevant to one’s situation is one of the key factors for successful learning. The recommendations are designed to address the needs of all lawyers by trusting each lawyer to decide what he or she most needs to remain competent and fit to practice law.

**The Process**

The MCLE Task Force was charged with suggesting amendments to the MCLE rules in light of the changes in the areas of education and training, the rapidly changing legal services marketplace, and the widely varied needs of Washington lawyers and their clients in the 21st century. In order to accomplish their charge, the task force of about 20 members of the Bar Association met once a month for nearly a year. In between meetings, task force members studied MCLE-related articles, information relating to best learning practices, and evolving drafts of proposed APR 11 revisions. During the course of its work, the task force also heard from several different stakeholders and experts in related fields:

- Paula Littlewood, WSBA executive director, who discussed the future of the legal profession and the changes
taking place in the 21st century;
• Mark Johnson, malpractice lawyer with Johnson Flora PLLC and former WSBA president, who discussed malpractice claims and the fact that somewhat less than half of the claims result from substantive law knowledge errors and a significant number of claims result from administrative errors and client relations issues;
• Douglas Ende, WSBA chief disciplinary counsel, who discussed the underlying reasons for grievances and pointed out that violations of the RPC generally do not arise from a lack of understanding the RPCs. Rather, the data suggests that courses on improving the lawyer-client relationship would likely decrease the number of grievances;
• Peg Giffels, WSBA education programs manager, who discussed key factors for learning, primarily that the subject matter be relevant and include practical application as opposed to a pure lecture format;
• Michael Badger, WSBA LAP manager, who discussed the important correlation between a lawyer’s mental and emotional health and a lawyer’s career satisfaction;
• Mary Wells, WSBA LOMAP advisor, who discussed the importance of technology-related skills, employee relations skills, and practice management skills; and
• Supreme Court Justices Charles Johnson and Sheryl Gordon McCloud, who provided some insight into the matters important to the Court, such as making sure the rules are relevant to the lawyers of today’s world and meet the original purpose of MCLE — keeping lawyers competent to practice law.

The task force also sought and considered comments and feedback from the WSBA membership and CLE providers.

Thanks to the following members of the MCLE Task Force and WSBA staff for their hard work: Eron M. Berg, Hon. Marybeth Dingledy, John Fairgrieve, Michelle González, Elizabeth Hanley, Terri Malolepsy, Mary Mann, Allen Miller, Gregory Morrison, Aaron Okrent, Geoffrey Revelle, Todd Richardson, Sharon Sakamoto, John Shaffer Jr., Linda Strout, Thomas Waite, Colleen Yamaguchi, Gov. Robin Haynes, Kathy Todd, Robert Henry, and Jean McElroy. Special thanks to the first task force chair, Stan Bastian, who got the task force off to a great start prior to his appointment as a federal judge for the Eastern District of Washington.

NWL

Michele Radosevich practices at Davis Wright Tremaine in Seattle. She is a former WSBA president and chaired the WSBA MCLE Task Force. She can be reached at micheлерadosevich@dwt.com.
You're an Attorney First

In considering what aspects of your job will change, it is perhaps most important to remember what will remain the same. First and foremost, you’re an attorney. Your clients expect the same level of dedication you gave them as an associate. Continue to develop your legal skills in service to your clients.

Dedication to your clients is especially important as a partner because you are now expected to generate new business. The clients you were able to bring to the firm as an associate — other young professionals in their own fields — are some of your best resources for continuing to develop new business. As their businesses grow, so will the matters they bring to you for legal help. Continue to do good legal work for your clients and they will continue to refer business to you.

Financial Considerations

At its core, becoming a partner is a financial change. The nuances of this change will vary from firm to firm, but there are a number of common elements. First, as a partner, you will become an owner of the firm, and as a general rule, you have to pay for that ownership interest through a capital contribution. This is often a significant expense, so you should begin to plan for it well in advance of joining your firm as a partner. Your firm wants to make you a partner, so they will generally be willing to work with you on how the capital contribution is made and may allow you to pay over time.

If you leave the firm, you may get some or all of your capital contribution back, depending on the agreement you have with your partners. This issue, along with many others, is addressed in your shareholder or partnership agreement. Ask to review the agreement significantly in advance of making your decision to join the firm as a partner. This is an important contract that will govern many aspects of your partnership over your career.
Your compensation will also change. While you will have the opportunity to earn significantly more than you did as an associate, you will no longer have a guaranteed salary. In addition, “free” benefits you got as an associate, such as health insurance or an employer match to 401(k) contributions, will likely go away, and you’ll have to pay for these benefits from your allocation of the firm’s profits.

A common notion is that as a partner, you’re in control of how much you make by how much you choose to work and are able to collect. This is only partially accurate. As an equity partner, you share the risks and rewards of business with your partners. The better the firm does, the better you do. At the same time, in a difficult time for your firm or one or more of your partners, you’ll be pitching in to pay more of the overhead.

Along with changes to your compensation, your tax return will likely be more complicated. As an associate, your income was reported on a Form W-2 and was subject to federal withholdings. Most of your federal tax obligation was never deposited into your account, so filing your tax return (which you probably did online for free) was relatively easy to stomach. Your income will now likely be reported on Form K-1. Federal taxes are not withheld, so your first monthly distribution might appear impressive. However, you will be required to make quarterly estimated tax payments. Talk with your partners about how they budget for this quarterly obligation. You may also want to talk to a CPA about your overall tax situation, as there are a multitude of variables that can impact it as an owner of a business.

Own Your New Role
In addition to your work as an attorney, you now play an official role in managing your firm. You’ve already been exposed to some of this through working as an attorney within the inherent structure of a law firm. As an associate, you probably worked with a legal assistant and were one of his or her managers. This may have been daunting as a new associate because your legal assistant likely had significantly more experience than you did right out of law school. For controversial firm decisions, you may have been tempted to take an “I just work here” attitude.

You now have a new role in shaping the culture of the firm. Own that new role. You are a partner and owner of the company. The entire firm reflects on your practice and vice versa. While you may want to initially tread lightly in seeking dramatic change as a brand-new partner, if, after observing how the firm is managed, you believe firm policies or procedures should be updated, speak up. You now have a vote — and a responsibility — to make your firm the best it can be.

You’ll do this in part by participating in partnership decisions. If you were unaware of what went on in hours of partnership meetings as an associate, some decisions may initially seem trivial. Resist the temptation to get too worked up about decisions such as who gets which parking space or whether spouses are invited to the office party. Focus your attention on decisions impacting the long-term future and culture of the firm, such as whether to hire a new associate or legal assistant, whether the firm should expand its practice areas, or whether it should purchase and move to a different office building.

You will also be a more public face of the firm. Use this as an opportunity to lead by example. Your reputation in the legal community is not just yours — it extends to your firm as well. Just as you expect your partners to be zealous advocates for their clients and respectful to opposing counsel and the court, they also have that expectation of you.

Start From Day One
While the number of years you are an associate before getting an offer to join as a partner will vary based on a number of factors, your transition to a partner starts on day one. Some of the best advice I received as a new associate was to “think like a partner.”

I didn’t initially understand this, but in hindsight the most successful associates are those who recognize that every employee of the firm is a representative of it. Lead by example and treat your fellow associates well — they may become your fellow partners. While you won’t have an official seat at the table in terms of decision-making as an associate, use this time to develop an understanding of the culture and finances of your firm. That institutional knowledge will be beneficial when you become a partner.

As Professor Smoot aptly noted, some law school idealism may fade as you enter the practice. Use the opportunity of becoming a partner to rejuvenate that idealism. You have increased control of your firm culture and how you serve others. You’re now your own boss — you can run the practice you want, give back to the community, and still make the big bucks. NWL

Russell Knight is an attorney at Smith Alling, P.S., where he focuses on litigation of business, employment, and real estate disputes. He joined Smith Alling as an associate after graduating from law school in 2008 and was named a partner in 2013. Russell also serves as the Pierce County Representative on the Washington Young Lawyers Committee. He can be reached at rknight@smithalling.com.
As business in Washington booms, people are moving to this state in droves for the opportunities that await. The highway traffic alone is evidence of the bursting economy. Of course, the folks moving here are not alone. They are accompanied by their spouses, significant others, and families, which further fuels the undeniable growth spurt in the Pacific Northwest. Personally, I joined the rush late last year after Amazon recruited my significant other. We packed up our apartment in Minneapolis, Minnesota, sold the cross-country skis, and happily made the trek to Seattle, eagerly exchanging the frigid, arctic temperatures and flat terrain of Minnesota for the mild, if not a bit rainy, climate of the Puget Sound and scenic views of Mount Rainier.

As a lawyer with roots firmly planted in Minnesota, to say that I was nervous to begin anew in an unfamiliar legal market is a complete understatement. My friends and family were in the Midwest. My professional, academic, and social networks were in the Midwest. And the few clients I had mustered were in the Midwest. How would I ever start over? Client development was my primary concern, but I equally worried about becoming acquainted with and earning the respect of the innumerable, capable attorneys with whom I would inevitably work.

So, like a good lawyer, I prepared. I had heard about this notion of the “Seattle Freeze,” which suggests that breaking into the Seattle community can be challenging for transplants. As a Minnesota native quite familiar with a similar notion, “Minnesota Nice,” I knew I had my work cut out for me, so I got to work the moment we decided to move. I reached out to my own contacts, asked my friends and colleagues for personal introductions to their Washington contacts, connected with those...
individuals on the telephone, email, and social media before we moved, and followed up with each and every one of those connections after we moved. It was and continues to be an arduous effort, but I have seen my professional and personal network grow exponentially here because of it. So, to those of you lawyers who are new to the state of Washington, or to the law graduates embarking on their legal careers in another jurisdiction, I offer the following tips to you as you make this exciting transition in your career.

It’s a small world, after all — take advantage of it

We often comment about what a small world it is when we stumble upon the coincidental, personal connections we share with those we know or have just met. Indeed, social media platforms like LinkedIn and Facebook make the theory of six degrees of separation seem more like a theory of two degrees. Rather than simply remark about the surprising coincidence, take advantage of those potential connections. Take time before the big move to let people know you are relocating and eager to build your network in your new city.

Whether at the office or at a social function, remember to ask your coworkers, professional colleagues, friends, and family whether they have any connections to your new city and if they would kindly make an introduction on your behalf. After you move, continue to leverage your social media connections to request introductions to individuals you want to meet or organizations you hope to penetrate. After the introduction, follow up with a friendly note or phone call to further develop the connection. Continue to develop those relationships after you settle into your new market because those relationships will inevitably spawn new connections and, before you know it, you will find yourself in an interconnected web of personal friendships and professional connections that will serve as the foundation of this next phase of your career.

Do your research

When starting over in a new legal market, you will most certainly benefit by understanding the composition and market competitors in your practice area in the new market. For instance, if you are a private practitioner, research the leading law firms in your practice area, their sizes, and the scope of services provided. This is also an excellent way to identify the leaders in your practice area. Washington Law & Politics and NWLawyer are excellent sources of information. In addition, familiarizing yourself with the major industries and business trends in your new market will provide a valuable foundation when conversing with new acquaintances during networking events and when developing a strategic marketing plan for yourself. The Puget Sound Business Journal, Seattle Magazine, Seattle Metropolitan, and local newspapers should be among your go-to sources of information on the Washington business community.

Network and market yourself strategically

It goes without saying that lawyers must develop networks in both the business and legal communities to be successful. Providing exceptional client service and satisfying the needs of our internal colleagues, not to mention tending to our personal obligations, leave us with limited time to devote to marketing our skill sets, however. So every effort must count.

Begin by establishing your visibility. Bar organizations provide countless opportunities to meet fellow practitioners. Rather than limit your networking efforts to the comfort of your own practice area, push yourself to network with attorneys who concentrate in practice areas that complement your own practice. Beyond the bar, join one or two trade organizations that appropriately suit your knowledge and skill set.

Do not just mingle and mix, however. Make an effort to establish yourself as a valuable addition to the bar and business community. Seek a leadership position. Volunteer for presentation opportunities or offer to write a substantive article about a current and relevant topic to your practice area.

Develop a marketing strategy

Finally, develop a marketing strategy for your first year in the new market. Set specific goals for yourself (e.g., lunch with one prospective client each week, one speaking engagement every three months, write two articles for NWLawyer per year). Transcribe your marketing strategy and track your marketing activities to hold yourself accountable to achieving your goals.

Transplanting yourself from one legal market to the next is challenging. Plan for it, be strategic, and be diligent. I happily report that I recently accepted a terrific opportunity with Lane Powell PC after meeting and working closely with an esteemed Lane Powell practitioner on a conference planning committee. I have also had the pleasure of making several new potential client contacts through my marketing efforts in the local business community. Networking and preparation pays off. NWL
Making a Stellar Match

STRIKING SATISFYING BUSINESS DEALS

by Justin D. Farmer

Here in the United States, we rarely engage in the art of bargaining. It isn’t culturally common. The term has been relegated to discount shopping and quaint flea market weekends. And while we joke about driving a hard bargain, few of us actually know what that entails. Frequently, we fail to recognize the fine line between fair and harsh, and we commonly fail by forgetting how to effectively engage with our “opponent.”

So it’s no wonder that many people find business negotiations intimidating. Whether we are buying a car, putting an offer on a home, or striking a business deal — those foundations based in bargaining simply aren’t there. Together, however, we can fill that void. Specifically, let’s examine what buyers and sellers of small businesses need to know about entering, negotiating, and closing a sale.

At its most basic, there are three components to every negotiation: the buyer, the seller, and the object. Frankly, for the purposes of this discussion, the object doesn’t matter. Property, as it is understood in common parlance, has no opinion and does not influence the negotiations beyond its intrinsic value. Set it aside. That leaves the buyer and the seller. Now, before we delve into the nuances of each role, I want you to reorient your frame of mind.

Too often we think of negotiating as a competitive sport: Team A versus Team B — each side trying to “win” by the largest margin. That is a guaranteed way to sabotage a potential (and promising) partnership with resentment and ill-cooperation. The transition of a private practice is an extended negotiation that can easily take 12 months. Attacking the process with an excessively aggressive attitude will result in all parties feeling frustrated, stressed, and dissatisfied. It may even dissolve the deal entirely. Instead, change your perspective. View negotiating as a collaborative sport with two teams working together towards a common goal. Now you’re ready to dive into the nuances of turning a negotiation into the pursuit of a stellar match.

The Seller’s Perspective

As the seller, you have built your private practice from the ground up. You are rightfully proud of your creation and would like to see it continue beyond you. Therefore, it is vital that you not only find the right purchase price, but also the right purchaser. Either on your own or with the advice of a transition specialist, decide what that means to you. Because you aren’t peddling for pennies, it is in your best interest to be picky. The most important step in finding the right buyer is knowing what you want and knowing your ideal plan.

What is your exit strategy? Some people are very hands-off. They want to vanish with the conclusion of the sale. Others linger, supervising or shadowing their protégé for years. Your best option lies somewhere in between. Remaining present in a mentorship capacity for a set amount of post-sale time will both ease the transition of goodwill and add value to your sale without crowding the new ownership. Critically, though, is what you would prefer and what you are willing to do.

What is the range of your asking price? Selling your business isn’t an “or best offer” scenario. Have at least one professional appraise your business. Then discuss your comfortable price range and possible points for negotiation with a broker or transition specialist. You need to be realistic with yourself and transparent with your buyer. Neither of you is going to appreciate surprises down the road.

What kind of deal structure do you want? There are several ways money and ownership can change hands. Clean-cut cash payouts may seem alluring, but ex-
At the Table
All of this preparation is designed to orchestrate a well-matched pair, to puzzle piece the wants of both buyer and seller as snugly together as possible before any actual negotiations ever take place. In other words, by the time the buyer and seller meet to begin negotiations, both halves should already be aiming at the same general goal. As I said before, this is a collaborative game.

Now comes the second most important step after defining your own wants and needs: you must understand your counterpart also has their own sets of wants and needs. Egos need to be put away, something that is more easily said than done. For sellers, this means acknowledging your potential buyer is not just an employee collecting a paycheck, but an invested peer. For buyers, this means toning down your gunner instincts and respecting the seller's infused efforts and hard-won expertise. Wait until you've built solid rapport before delving into your grand schemes for change and improvement. Remember, that's their baby you're talking about.

Further, for sellers and buyers, when speaking to each other, take care with the way in which you communicate. Educate yourself and be able to speak the language of the deal at hand. Personal, non-digital, direct communication is best for developing personable relationships, but busy schedules don’t always permit face-to-face meetings. If you can’t meet in person, call. If you can't call, email, but do so timely and with intent. Just as nothing is more irritating than someone who doesn't listen, exchanging emails with someone who doesn’t read attentively can be equally aggravating. Recall your pre-school days and treat others the way you wish to be treated.

Like breeds like. If you bring enthusiasm, trust, respect, and a willingness to be flexible to the negotiation table, everyone else is likely to follow suit.

Four Seller Don’ts
1. Don’t wind down your business first.
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Reserve your place now.
Your business is worth more when it is fully functional and active. Winding down your business and then deciding to sell wastes time, energy, and value. Even if you aren’t sure you want to sell, talk to a specialist before winding down, just in case.

2. Don’t be greedy. Keep your asking price within a justifiable range. Artificially inflating your price will only chase away smart, savvy buyers—exactly the kind you want taking over your practice.

3. Don’t undermine the deal. Selling your business is as much a psychological transition as it is an economic one. Make sure you are mentally ready to sell. Otherwise your reluctance could inadvertently obstruct the transaction.

4. Don’t go it alone. There is no reason you have to do everything or even know how to do everything yourself. Selling a business is a big deal with lots of moving parts. Make the process as seamless as possible by consulting experts.

To learn more about making a stellar match and how to transition your practice, please join me at this year’s Solo and Small Firm Conference in Spokane, July 9–11. I will be speaking on a panel July 9 at 5 p.m. and will also have a booth set up throughout the conference. Please stop by and say hello. NWL

Justin D. Farmer is a lawyer, business broker, and entrepreneur. He is a graduate of the University of Washington’s Foster School of Business and the Seattle University School of Law. Farmer combines his passion for business, entrepreneurial spirit, and legal background in Private Practice Transitions, Inc. Visit www.privatepracticetransitions.com to learn more.
Top 10 Lessons I Learned Transitioning from a Firm to Solo Practice

by Jensen Mauseth

I got that “excited/scared” feeling. Like 98% excited, 2% scared. Or maybe it’s more... 98% scared, 2% excited. But that’s what makes it so intense!

— Oscar (Owen Wilson) from the motion picture Armageddon

I love that line because it exemplifies exactly what it feels like to leave a firm and go solo. It’s exciting and at the same time very scary leaving the protection of a firm, going solo, and being your own boss. There are times when you feel confident and times when you know absolutely nothing.

While I am sure every attorney who has made the transition felt the same way, each person’s situation and transition is unique. So rather than regale you with the specifics of my transition, I thought it best to provide the top 10 lessons I learned that apply to anyone transitioning from a firm to solo practice. And to make sure I’m not totally off base, I gathered input from a few friends who have done the same thing.

1 Have an entrepreneurial spirit
You are considering leaving the comforts of an established business and starting a new firm from scratch. That is a tall order. Before you make that leap, be sure that you personally have the drive and confidence to do it. There will be times when you feel everything is working against you or that the pile of work is just too tall. You need to have the confidence in yourself that you can make it through. And, depending on your background, you may be doing things you went to law school to avoid, like accounting! But don’t fret, there are a lot of resources and people to help along the way. It is also helpful to remember (and to continually remind yourself) that many people have successfully made the same transition, so the challenge is not insurmountable.

2 Accept not knowing all of the answers
Invariably, as a solo, your first potential client will ask you a legal question about which you have no idea. Or, at some point during a case, you will encounter an issue that is entirely new to you. You need to accept that possibility and be comfortable in your ability to find the answer or resolve the issue. As a solo, you no longer have the luxury of bouncing ideas off a colleague down the hall, nor do you have the safety net of a partner guiding you through a case. Rather, everything is on you and that brings a lot of pressure. Accept that reality and know how to work through the problem.

3 Build a network
Because you will not have a firm to rely on, you need to build a network. I like to think of this as my “virtual” firm. These are the people I go to whenever I have a legal or practice question. My network is comprised of friends, mentors, col-
Running a business is hard and full of details

There are no two ways about it: running a business is hard. But it can also be a lot of fun! At a firm, you likely did not deal in the minutiae of running the firm. On your own, you will. There is a long list of items that are taken for granted every day at a firm: client billing, software choices, equipment purchases, business licenses, accounting, banking, taxes, telephone services, website design, and many more. All of those details come to light when you are on your own because now you are responsible for all of them. It is truly amazing how much time is taken simply running the business versus working on client matters. You really can’t fathom it until you are in it. Thankfully, there are resources to help. The WSBA and other local bar associations are great places to start. They have resources that can help with the basics of starting a firm and help walk you through things like getting your business license, managing your IOLTA account, and obtaining malpractice insurance. And depending on the type of work you do, you may not need all of the luxuries you enjoyed at a firm.

Start small

Firm life can be nice because of the luxuries it provides (depending on the firm). You may have an office downtown with a view, a legal secretary, a receptionist, an unlimited supply of resources, and huge cases. As a solo, you will likely not start with any of those things. And that’s probably a good thing. You are responsible for paying for everything and making your living, so help yourself by not getting overextended. An office with a view may be nice, but it is also very expensive. Instead, start small, keep overhead low, and take cases you are comfortable handling. On your own, you are dependent upon yourself to make your living. Why make that harder for yourself by going big right away? Rather, build confidence and control in your ability to run your practice by starting small and building as you go. Only expand when you need to. By starting small, you can control costs and are not as dependent on a large book of business. You still need to pay your bills and yourself, of course, but with a low overhead you can maximize the utility of every dollar you earn and maintain flexibility.

Make a business plan

Every startup I know or have worked with has had a business plan. A solo law firm is no different. A plan helps coalesce ideas and puts to paper how the firm will make money, what expenses it will have, and who its clients will be. A business plan helps you to understand what it will actually take to run your business and where to focus your time and energy. The plan should have goals, milestones, and decision points to keep you on track, and they should be updated regularly to adjust with the growth of your business. It is also a good idea to have someone review your plan to determine whether it is realistic and provide feedback. It doesn’t matter if the reviewer is a family member, friend, or colleague. The point of the review is to clarify your plan, identify its weaknesses, and make it better.

Make a family plan

Going solo is a huge life choice. It will have an impact on you and your family, so discuss it with them. Let them know why you want to do it and let them share their concerns and support. Going solo will have an immediate impact on your income. Unless you have a rare case where you take paying clients with you, there will be a period of time where you will build your business and may have little to no income, so plan for that. Understand your monthly expenses and the minimum amount you need to first, get by, and second, to maintain your standard of living. Depending on your circumstances, you might have to adjust your standard of living. Try to save money before you leave the firm to build yourself a safety net for the transition and to cover your expenses while you build your income stream. Be honest with yourself. Going solo may not work, so identify the point where you will pull the plug and look for other work if it doesn’t pan out. Share the plan with your family and keep them updated on your progress.

Stay open to new opportunities

One of the hardest parts of going solo is building a book of business. However, opportunities come about in some of the most unusual fashions. Someone might ask you to help her with a problem that is outside your field of practice. Depending on your situation, you may take the opportunity to learn about that issue and expand your practice into that field. Or perhaps it is an ideal case to associate with a more knowledgeable attorney and learn from them along the way. Maybe someone is looking...
Try to leave on good terms
Lawyers leave firms and go solo for any number of reasons. Whatever those reasons are, try to leave on good terms. Leaving on good terms will not only maintain relationships and reduce potential conflicts, but it may also pay dividends. I know one person who left his firm to start a solo practice. Because he left on good terms, his former colleagues referred clients the firm could not take. But if you anticipate leaving on good terms is not an option, always take the high road. Even if the firm is not supporting (or is actively opposing) your departure, remember to remain professional and polite. If there is a possibility clients may follow you, regardless of the situation with the firm, make sure to consult with an ethics attorney regarding your options and to ensure that you comply with the professional rules of conduct regarding client notice, files, etc.

Have fun!
Going solo is an adventure. Have fun with it. Yes, it is hard, but it also has great benefits. You make your own schedule (most of the time), answer only to yourself, and choose how you want your practice to be run. That’s exciting (and scary) and provides plenty of options and opportunities. Remember, many people have made this transition work and you are not alone. Besides, if worse comes to worst, you can go back to a firm with a better understanding of how the firm actually operates, which can be a huge asset. NWL
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— Tom Lerner, Stokes Lawrence, P.S.

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Advancing WSBA’s Vision of a Just Washington
Early Retirement Bucks Trends, Brings Challenges

THINGS TO CONSIDER WHEN TRANSITIONING TO YOUR “GOLDEN YEARS”

by Shelley K. Simcox

As a baby boomer, I have, throughout life, been part of successive waves of “boomer” trends, from high unemployment to competition for law school seats. But finally, by retiring early, I bucked one boomer trend. After 26 years as a federal lawyer, and working five years before law school, I retired at nearly 57. That was the average retirement age in 1991 (Chris Weller, Newsweek, “Retiring Too Early Can Kill You,” March 8, 2015). Now it is 62, with baby boomers working longer than previous generations, due to preference or financial concerns.

Abrupt Departure

When my last employer, the Navy, offered early retirement, I jumped. I had been waiting, envying other federal employees who retired early years before I qualified. My reasons were deep-seated and varied, personal and professional.

My husband (already long retired) and I had revised our finances. With some belt-tightening, we decided, it could work. We would be happier, finally free to enjoy more quality time together before it became too late.

Upon acceptance, no changes of mind were allowed. Thereafter, two months of employment remained. That time flew. (I spent most of it avoiding records act violations by deciding which emails, files, and documents to save and where.)

The situation felt surreal. My emotions alternated between exhilaration, panic, hollowness, anticipation, resignation, anxiety, regret, happiness, calm, fear, disappointment, gratitude, sadness, relief, and disbelief.

For the most part, we are happier. Initially, I thrilled at no longer needing to rise to a 5:45 a.m. alarm, don professional garb, and ride a half-hour to work. It helped that I felt deserving of a long vacation. At first, that’s what it felt like.

However, retirement realities soon hit. More than three years later, the wisdom of retiring early sometimes seems questionable. Retirement affords a wonderful sense of freedom. Yet it also presents unanticipated challenges, some perhaps unique to lawyers (and maybe other professionals). Early retirement, especially when abrupt, increases such challenges.
**Emotional Adjustments**

Law school drilled into my brain the importance, intelligence, and professionalism of the legal profession. The Bar and continuing legal education reinforced this, as did jobs, bosses, media, literature, movies, relatives, friends, other lawyers, and clients. All along, law school and other authorities inculcated, or at least implied, that lawyers form a quasi-elite professional society, special and honored.

Suddenly, with full retirement, that status disappears. One returns to individual personhood, with likely nothing one must do as a lawyer or employee anymore. It feels strange, anti-climactic, hollow sometimes.

Grief develops — for all that one once was, hoped, or thought one might become. It is a type of death. A sense of expectancy for a shiny, fruitful, and satisfying career-driven future, or perhaps the big or important case always hoped for, is gone. Although I was never particularly connected, retirement brought on a disconnect. I matter less now, any importance being personal, not professional. Self-esteem can take a hit, fueled by “loss of occupational prestige,” according to research co-authored by Dr. Richard Robins, University of California, Davis (Sarah Cooke, “6 Reasons Not to Retire Early,” USA Today, March 15, 2015).

Previously perceiving myself as lacking a “Puritan work ethic,” in retirement I experience periodic guilt over not working. This leads to an anxiety-ridden effort to make work out of daily life (such as satisfying a robotic continued compulsion to check and write emails and sign petitions on my computer, as though those items have become my unpaid job).

Doing something enjoyable, such as reading a novel or watching a movie, no longer feels justified as a way to relax from the rigors of work, instead tending to produce guilt or anxiety over not doing something more productive. Rather than a panacea against anxiety, sometimes retirement instead seems to merely convert previously experienced anxiety tendencies into retirement-driven ones.

Most shocking is that time passes exponentially so much faster, often causing my head to spin in disbelief, sometimes approaching panic, that another week or year has raced by. Emotional adjustments were the hardest aspects cited by recent retirees in a study by Ameriprise Financial (www.businesswire.com, Feb. 3, 2015).

**Freedom Brings Responsibility**

Retirement affords more time to enjoy hobbies, including birdwatching and nature walks, even on sunny weekdays. At last, I have the time and energy to read that I want to. Obtaining a library card for the first time in years, I have read hundreds of the novels I love but felt too mentally drained to read while working. Retirement has left me with the mental energy to explore nonfiction subjects that interested me earlier in life, read memoirs and write my own, and return to the fiction and poetry writing I did when young.

However, reading, especially fiction or anything else largely aimed at entertainment rather than knowledge, often leaves me feeling guilty, or at least restlessly uncomfortable, as though I should be doing something more productive.

Once, reading reigned supreme in the litany of instructions by teachers and parents, its usefulness in youth only lauded and encouraged. As a youth, I felt it was part of my “job” to read. I luxuriated in it, back when it seemed so much time loomed ahead when anything could happen, that wasting the present hardly mattered.

A job provided a concrete focus, schedule, and structure, forcing me to work. A job provided an excuse — for not reading what I wanted or doing all the other wonderful things I thought I wanted to do and would someday.

Baby boomers may feel reluctant to retire because they feel ill-equipped to deal with “unscripted free time,” which may factor into many boomers’ retirement delays.

As Claire Messud wrote in the novel The Last Life, “It is a terrible thing to be free ... constraints are what define us, in life....” Retirement removes such constraints — albeit for me, more a mixed blessing than a “terrible thing.” The perpetual workplace, supervisory voice of authority dictating what I do with my days, has disappeared, making it my responsibility.

If nothing else, this requires adjustment. Working part-time for several years, as the trend has become for many boomers to do in “phased retirement,” could have eased the transition. Lawyers, in particular, appear to be choosing to transition gradually from practice to retirement. (Jenny Montgomery, “More Attorneys Choosing Gradual Retirement,” Indiana Lawyer, May 9, 2012.)

**Living On Less**

When I worked, my pre-lawyer poverty remained dimly in the distant past, feeling unreal and unlikely to return. I suffered from a false belief that law school permanently purchased my place in at least the middle class. The benefits of not having to go in to a job appeared to override the diminished financial state of retirement.

In most respects, that is so. But reduced financial circumstances, lacking the slightly romantic aura with which youth imbued them, are a bigger deal now. They have necessitated curtailing positive aspects of our lifestyle that I had envisioned actually increasing when retired, such as travel, bird-watching, and...
nature moseys. Restaurant prices have risen so much recently that we prepare meals at home more than ever, more than we preferred or envisioned. Increased dietary restrictions produced by medical advice coinciding with retirement have increased the expense and difficulty of both eating out and serving meals at home.

Numerous other unanticipated expenses resulting from unforeseen circumstances also coincided with retirement. In a January 2015 survey, 48% of retirees admitted they had not saved enough for retirement (Tom Hartmann, “Time to Tackle Too Hard Retirement Planning,” www.stuff.co.nz, March 5, 2015). That, then, appears to be a trend I have followed. Even several more working years would have allowed more contributions to my retirement account. Attending a good retirement course much earlier, seeking sound financial planning advice, and saving more would have made a positive difference. As it is, sometimes I feel I have regressed to a pre-law penny-pinching lifestyle I thought I had left.

Staying Put

For years, we relegated to the future the decision of where to retire. Retiring went hand-in-hand with growing old, which was unpleasant to ponder; important decisions were easy to delay.

Through the years, when we thought about it at all, we vacillated between moving back to the small, old Indiana house my husband inherited; moving to Florida or Arizona (possibly as “snow birds”); relocating near my brother in the Bay Area, mother in Michigan, or brother-in-law near St. Louis; and a foreign location, as we had loved living in Germany years ago.

Somehow, we gave short shrift to staying in our house near Silverdale, where we enjoy a relatively low mortgage payment and a creekside, semi-rural environment. Instead, it seemed rather fun and hopeful to dream about all the possibilities that might still await us in retirement if we did nothing to foreclose them.

Then, suddenly, I had retired. And our procrastination — along with inertia, concern about moving expenses and the physical work of a move, fear, ignorance, indecisiveness, practicality, reluctance to dispose of household items, emotional attachment to this area — left us staying put.

Then, suddenly, I had retired. And our procrastination — along with inertia, concern about moving expenses and the physical work of a move, fear, ignorance, indecisiveness, practicality, reluctance to dispose of household items, emotional attachment to this area — left us staying put.

Staying put follows another recent baby boomer trend (“More U.S. Baby Boomers Staying Put,” Mark Mather and Beth Jarosz, Population Reference Bureau, June 2013). In the long run, that appears the most practical, viable option for us. For now, it seems the cheapest and least stressful. Yet the issue feels unsettled.

Our longing for a warmer, drier climates lingers. A foreign environment, with new adventures, still beckons. Continuing to live far from family and friend, as we age and travel becomes more difficult, produces anxiety, doubt,
uncertainty, even guilt.

Other dreamed-of comforts (which may increasingly turn into necessities), such as an uncluttered condo where someone else performs maintenance — safer for older people with mobility issues — entice. Buying our house 15 years ago, we based our decision largely on proximity to my workplace, not anticipating remaining here after retirement; thus, we did not adequately consider the desirability of a single-story home or a full bathroom on the lower floor. Such concerns are driving another trend, as retiring boomers who choose not to relocate are adapting their homes to their current needs (Ann Carms, “Boomers Near Retirement Changing Housing Trends,” The Seattle Times, March 15, 2015).

Time may tell whether we decided right. A decision right in some respects (financial) may turn out wrong in others (emotional). Sometimes I wonder if the abruptness of retiring early sentenced us to staying, when more time might have produced a different, perhaps more satisfactory, long-term result.

The Body Matters

In retirement, exercise, diet, and other health issues predominate, consuming ever-increasing time and energy. After retirement, development of various medical problems led my doctor to recommend additional exercise and supplements, and going on the “Paleo diet.” Although I lost weight, my blood work improved immensely, and my reflux disappeared, the diet is pricey and limited.

“Keep still!” parents and teachers admonished in childhood. Now the mantra has changed to “Keep on moving!” which my chiropractor and the media exhort. I do, walking briskly daily, rain or shine. I also started lifting weights and do other medically recommended exercises.

Admittedly, I feel better than I have in years, much as I did at 25. However, maintenance requires constant vigilance, often feeling like an unpaid job. My retirement health issues appear partly due to long-term stress and the sedentary, increasingly technology-based nature of my law jobs, especially in later years when computers decreased the need to move (and for me, increased stress), while squeezing walks and fruit snacks into work breaks proved inadequate.

Retirement can contribute to declining mental and physical health (Sarah Cooke, “6 Reasons Not to Retire Early,” USA Today, March 15, 2015.) Early retirement may harm health more or bring problems on sooner.

According to the Newsweek article, a study in Work, Aging & Retirement found that jumping ship at 60 increased dementia risk by 15 percent. About Health, March 8, 2015, cites a 2008 study in a multinational European Prospective Investigation into Career and Nutrition (EPIC), finding that waiting an extra five years to retire coincided with a 10 percent drop in mortality.

Apparently, I have so far bucked that trend. Recently, my doctor congratulated
me on my improved health, declaring that retirement agrees with me. In that respect, it does.

**Work Vacillation**
Vacillation over whether to maintain an active law license and whether to work again has kept me on an emotional roller coaster. One week, I eschew law forever; the next, I contemplate returning to work. Fortunately, this is finally diminishing.

Even as it increasingly appears I will never practice law again, I cannot bear to forfeit my license; too much effort went into obtaining and maintaining it, it feels too much a part of my identity, and I may need to return to work.

Right after retiring, I applied for several legal positions. The openings occurred shortly before my husband and I departed on our longest driving trip ever. One employer called for an interview the day after we left. (At least it assuaged my ego.) Since then, while occasionally perusing job ads, rarely have I applied, although some jobs tempt.

Could I, after tasting retirement “freedom,” revert to the regimen of a daily job with office working conditions, lack of freedom to travel, the ultimate control of a boss — and the need to become adept with the latest technology?

Sometimes, starting my own practice still beckons. However, with today’s networking and social media emphasis, I doubt I could prove competitive — or even that interested. Besides, an unsuccessful youthful effort to start and run a small magazine largely dashed my entrepreneurial tendencies.

Just in case, I continue to attend CLEs, maintain my active license, and keep up on law by professional reading. I may need or want to return to work in some form.

**Freedom Reigns, but No Panacea**
Because of the freedom retirement affords, I am glad I retired, and grateful I could retire early. However, retirement is not the panacea I envisioned. A less abrupt, better planned retirement could have cushioned against some of the uncertainties. A wealth of retirement information is now available to help, including the WSBA website, which provides useful retirement transition information in its Resources and Services section.

Shelley K. Simcox, a retired federal lawyer, lives near Bremerton with her husband and tabby point Siamese cat. Her varied Army and Navy practice (active duty, then civilian) in recent years emphasized environmental, real estate, and contract law. She enjoys bird-watching, nature moseying, reading, writing, television, and diverse music. She serves on the WSBA Editorial Advisory Committee. Reach her at shelleyron@wavecable.com.
Closing a financing or sale is never easy. Negotiating terms and drafting deal documents is challenging under the best of circumstances. But companies often make matters worse for themselves by stumbling over issues that increase costs, hurt negotiating leverage, delay closings, and even kill deals.

Business attorneys, whether finance experts or not, can help clients avoid these costly stumbles. This article describes three steps in-house counsel and outside counsel can guide clients through to ensure that financings and merger and acquisitions (M&A) deals go more smoothly.

**Three Steps**

There are probably as many ways to approach “transaction readiness” as there are finance attorneys. I prefer a proactive approach that includes all or some combination of these three steps: 1) creating a deal-ready virtual data room; 2) checking it against a detailed due diligence list; and 3) mocking up a “Schedule of Exceptions” — a document required to close most financings and acquisitions. For smaller companies, simply building a data room is a big accomplishment. If resources are tight, steps 2 and 3 can wait.

**STEP ONE: CREATING A DATA ROOM**

Creating a data room is like piecing together a giant puzzle. For investors or buyers, the data room is a highly organized repository that creates a detailed picture of a company.

**Data Room Selection**

Familiarize yourself with two or three top virtual data room platforms and compare their strengths. Pay close attention to how fees are calculated and how they will grow as documents and users are added.

Minimum requirements include:

- State-of-the-art security, availability, stability, and redundancy
- Capacity to quickly upload and download large documents
- Intuitive user interface
- Flexible administrator controls to add and remove users and groups of users and assign varying degrees of user privileges within the data room
- Tools to see who is using the data room and what they are downloading
• Auditing tools to track and retrieve usage information.

**Legacy Data Rooms**

Many companies already have a virtual data room for sharing and managing documents internally. Whenever there’s a legacy data room, there’s often pressure to re-purpose it as the deal data room.

The better practice is to maintain a deal data room that is separate from a company’s day-to-day operating data room. A deal data room will contain highly sensitive documents — board deliberations, employment agreements, option grants, confidential settlement agreements, and other documents requiring confidential treatment. A deal data room should also have tighter administrative controls to protect its integrity and organization.

The extra cost of maintaining separate data rooms can be a tough sell, but it’s often the better approach.

**Data Room Organization**

A data room should be organized so that any intelligent lawyer or investment banker can find any company document he or she needs.

A detailed data room organization chart, prepared in conjunction with this article, can be found on the WSBA’s Corporate Counsel Section webpage. See “Organizing Your Company’s Data Room” under the “Educational Materials” tab at www.wsba.org/legal-community/sections/corporate-counsel.

Counsel who have never closed a financing or M&A deal should also first study a “due diligence request list” from a large deal to appreciate the range of documents needing a home in the data room. Templates can be found online or, better yet, obtained from your favorite M&A attorney.

Caveat: most due diligence request lists are overbroad and include requests that are not relevant for every company. Companies respond to irrelevant requests with a simple “N/A.” A data room likewise should not contain irrelevant folders.

**Populating a Data Room**

Once you have organized the data room, it’s time to begin uploading documents. The sample data room org chart referenced above (Organizing Your Company’s Data Room) will be very helpful in identifying the documents you need to upload. Use clear and consistent document naming conventions so documents alphabetize correctly and are readily identifiable.

Once the easily located documents have been uploaded, the process will become more like a scavenger hunt. Many missing documents can be tracked down with the help of company insiders. Others can be created or recreated with a little legal ingenuity and elbow grease.

**Finding and Fixing More Serious Problems**

With most small and medium-sized companies, you will eventually encounter more serious challenges: gaps reflecting weaknesses in governance and business processes and controls. Every company has its issues and this process will definitely uncover them. Counsel should help prioritize fixes without being alarmist.
Specific problems might include:

**Missing and Incomplete Contracts.** Companies with inconsistent contract negotiation and management processes often can’t produce acceptable copies of key contracts. The best available version might be missing a signature or two, or one or more exhibits. Cleaning up loose ends like these requires effort, but clients are usually supportive.

**Corporate Governance.** Counsel should expect the unexpected in the area of governance — lapsed entities, missing entity formation records, non-appointed officers, improperly elected board members, boards that do not meet or keep minutes, and actions by officers lacking required board approvals. Governance lapses can be challenging to solve even for experienced counsel, but again, most clients are quick to recognize the need. Consider bringing in more experienced help as appropriate.

**Policies and Procedures.** In recent years, regulatory requirements and evolving best practices have imposed ever-increasing expectations on businesses of all sizes and across most industries. Many companies are now expected or required to have privacy policies, security and data handling policies, quality management and change control policies, and other regulation-specific policies and procedures. Designing and implementing these during a deal due diligence process can be distracting and can raise legal and regulatory red flags. Earlier is usually better.

**Stock and Option Issuance Problems.** Stock issuances and option grants require specific processes and documentation. Companies that handle these matters without professional help often fall short, causing equity ownership questions that can raise doubts about a company’s “cap table” — a crucial company document detailing who owns how much of each class of stock.

Specific documentation gaps to be alert for include missing board approvals for stock issuances or option grants, missing option grant agreements, promised but unfulfilled equity grants, and missing documentation from prior financings. As with other potentially sensitive gaps, it may help to bring in more experienced counsel to clean up equity ownership documentation issues.

**Intellectual Property Assignments.** Intellectual property (IP) assignment issues come in several forms.

First, with newer companies, counsel should ensure that founders purporting to have contributed IP to the company have actually signed formal IP assignments.

Secondly, companies commonly fail to obtain advance invention assignments from new employees, independent contractors, and consultants. Any individual who is writing code, designing products, producing marketing or branding materials, or doing almost anything else creative is probably making intellectual property.

In many cases, IP is owned by its original creators. So companies should consider getting IP assignments from virtually every person and entity they hire or contract with. Many buyers and investors will insist on seeing assignments for every employee and contractor. And timing

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is important, since a request for an IP assignment after an employee’s hire date usually requires new consideration.

Lastly, all patents claimed by a company should be backed by assignments to the company, whether the inventors are still company employees or whether the patents were acquired in an acquisition. Patent assignment documentation is complex and usually must be filed with the U.S. Patent and Trademark Office (PTO). Competent patent counsel should be asked to look for and help fix any apparent gaps.

Trademark Registrations. Counsel should ask the client for a list of all names, marks, and slogans currently in use and then independently check them against the company’s website, advertising, and packaging. Reconcile any discrepancies and then, at a minimum, run the list through the PTO’s Trademark Electronic Search System (TESS), Google, and other online resources to see which are registered, which are not, and which ones might be in conflict with other marks.

This process often reveals the need for additional trademark registrations. In some cases, it may also identify potential conflicts that need to be addressed with third parties or worked around. It’s generally easier to negotiate a “coexistence agreement” with a third party well before trying to close a financing or other transaction.

STEP 2: CHECKING THE DATA ROOM AGAINST A DUE DILIGENCE REQUEST LIST

Once the client’s most obvious documentation gaps have been identified and corrected and the data room is looking complete, it’s time to kick the tires even harder.

Hopefully the data room was organized with at least passing reference to a proper due diligence request list. At this point, checking the data room more closely against one is certain to turn up additional issues.

Missing documents are likely to be increasingly more esoteric than during the initial scavenger hunt. They might include missing ISO audit reports, wage and hour compliance analyses, open source software schedules, and product design history files.

As noted earlier, due diligence requests usually include irrelevant requests. But counsel and client should not confuse irrelevant requests with requests that are simply annoying or difficult. In bigger deals, acquirers are particularly stubborn about requiring very hard-to-produce documentation, especially if they want to ratchet up payment holdbacks or escrow requirements.

STEP 3: DRAFTING A SCHEDULE OF EXCEPTIONS

The third and final step for checking the completeness of a data room and flushing out potential deal issues is to mock up a Schedule of Exceptions, also called a “Disclosure Schedule.”

A Schedule of Exceptions details all of a company’s warts: every active litigation matter, loan covenant violation, regulatory blemish, property lien, security interest granted, alleged IP violation, delinquent large customer account, and so on. Most also include definitive lists of assets, leased or owned properties, lists of patents, trademarks and copyrights, and other key items.

To understand how a Schedule of Exceptions is written, it is necessary to briefly consider some other concepts.

Purchase and Sale Agreements. The main document in every financing or sale deal is a Stock Purchase and Sale Agreement (PSA), Asset Purchase and Sale Agreement (APA), or a similarly named document. In addition to outlining transaction terms, a proper PSA or APA will contain many pages of “representations and warranties.”

Representations and Warranties. Find a PSA or APA from a large deal and read through its “Seller’s/Company’s Representations and Warranties.” As you read, highlight any statement you can’t say for sure is supported by documents in the data room, along with any other statements that touch on a potential “skeleton” in the client company’s closet.

After reading through a full set of representations and warranties, you will see their close relationship to the Schedule of Exceptions.
Exceptions. In them, you will have seen statements like:

4.13(c). No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.13(b) of the Disclosure Schedule.

This text tells counsel that Section 4.13(b) of the Disclosure Schedule must list certain types of permits and that Section 4.13(c) must disclose any revocation, suspension, lapse, or limitation of those permits.

And if Section 4.5(a) of a PSA reads “… and the company is aware of no pending or threatened litigation except as set forth in the Schedule of Exceptions…,” then Section 4.5(a) of the Schedule of Exceptions must list the company’s pending or threatened litigation matters.

To mock up a Schedule of Exceptions for a client, first cut and paste all of the “Company’s/Seller’s Representations and Warranties” from the most robust PSA or APA you can find. Then, as to each item and sub-item:

- Insert a check mark of some kind after each statement known to be true for your client (e.g., “… the Company is in compliance with all laws and regulations concerning data privacy…”), or
- Concisely disclose the extent to which any statement is not true (e.g., “Disclosure: The link to the Company’s privacy policy was broken during the first half of 2015…”), or
- Provide the specific information called for (e.g., a list of the company’s active trademarks).

To produce a clean Schedule of Exceptions, deal counsel often then delete the original representations and warranties text and leave only the negative disclosures, the specifically requested information, and the original numbering.

Creating a mock Schedule of Exceptions will not interest every client. But for those with a transaction on the horizon, it’s a great process for identifying final data room gaps and highlighting potentially damaging disclosure items while there’s still time to fix or mitigate them.

Summary

These steps for improving transaction readiness can position a company to seize financial or strategic opportunities quickly and confidently. Benefits in a financing might also include a higher valuation and less haggling over investor preferences. In a sale, your client might enjoy greater up-front compensation versus delayed earn-outs, and less onerous escrow requirements.

Absent an imminent financing or sale, advocating for all three steps might be a tough sell. A hesitant client might be more receptive to a piecemeal approach — building a data room one folder at a time and prioritizing areas of greatest risk and greatest opportunity. Logical starting points are often governance, finance, IP, contracts, and regulatory.

However approached, improved transaction readiness is a worthy goal for many clients and the processes outlined here offer counsel a framework for helping clients identify important weaknesses and prioritize corrective actions. NWL.

Paul Swegle is general counsel of Numera, Inc. He serves on the WSBA Business Law Section’s Securities Law Committee and has previously served on the WSBA Rules of Professional Conduct Committee.

In the course of several in-house counsel roles, Swegle has worked on deals totaling more than $11 billion. He is a former SEC enforcement and corporation finance attorney and he served two appointments as special assistant United States attorney. Contact him at pswegle@gmail.com.

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S
mitty has been my friend for 58 years.
He was a young man in his early 40s and I was just 18 when we first met at Gonzaga University. He was my pre-law faculty advisor. Since that time, he has not only been my friend, teacher, mentor, and counselor, but also my law partner and inspiration. Almost exactly 20 years ago when I became a judge, Smitty spoke at my investiture about the intersection of our lives. He spoke of the fact that we were both born in the state of Wyoming, raised by single mothers from poor families. Declaring that the word “poor” was not likely politically correct, he said he chose to use that word anyway—an interesting comment from someone who was always so “correct” in all he did.

He commented that we had both worked during undergraduate and law school—considered a virtue by those of us who did so. He was dean of Gonzaga Law School (beginning in 1955) and a professor while I attended. We remained friends and in close touch for the next few years. In 1965, he was appointed U.S. Attorney for Eastern Washington. With the change in administrations in Washington, D.C., I had the good fortune to become his law partner in 1969 when he joined with Eldon Reiley, Gene Annis, and me in private practice. Two years later, we joined Scott Lukins, Gary Randall, and Lynn Seeley to form a larger firm.

After a couple of years, Smitty returned to teaching on a part-time basis. In 1975, when the law school needed his talents, wisdom, and ability to negotiate through difficult circumstances, he again became dean of Gonzaga School of Law.

In both tenures as dean, he tackled issues that required his skills of diplomacy and collaboration. When he became dean for the second time, the American Association of Law Schools had indicated that it would not look favorably on an application for membership, but by the fall of 1977, he had been successful in removing impediments to that membership. The Association’s membership committee was amazed at how far he had been able to move the law school in such a short time. In 1978, having accomplished his goals as dean, he resigned to again teach on a full-time basis. But he was offered a position as U.S. magistrate judge for the Eastern District of Washington, a position he assumed in 1978. “The man with the quintessential judicial temperament” began his judicial career.

As such, when the Ninth Circuit Court of Appeals conducted a study to determine what percentage of trial lawyers would take a civil matter before their local magistrate, 95% said they would bring such before him without reservation. This was by far the highest result in the circuit. The next highest district recorded only a 65% result.

After completing his term as magistrate, Smitty returned to teaching at Gonzaga until he retired at age 81 in 1995. He completed a teaching career that spanned 55 years. He touched the lives of thousands of law students—and, consequently, thousands of lawyers throughout the nation—and leaves an indelible mark on the legal profession in Washington.

It would be superfluous and unnecessary for me to speak of all of Smitty’s redeeming qualities. And it would take far more space than is available.

When Smitty spoke at his mother’s funeral, he said that she was successful and her life reflected that success because she received and generated so much love. The same is true of Smitty.

Always soft-spoken, articulate, and professional at the highest level, he represented the best example of what a lawyer should be. If Atticus Finch ever existed in person, he was Smithmoore P. Myers. He was always prepared and possessed a wonderful sense of humor that came through when least expected, even occasionally when he was teaching a dull class like federal jurisdiction.

When the Spokane County Bar decided to acknowledge lawyers who demonstrated the highest professional conduct, Smithmoore P. Myers was the first recipient of the award that was named in his honor. It mirrored the Professionalism Award that was also awarded to him by the WSBA. The Spokane County Bar’s Smithmoore P. Myers Profession-
The Smithmoore P. Myers Award is given each year at a dinner on or near Myer's birthday. At his 90th birthday, he expressed concern that someday he would get old and not be able to attend this celebration, which he enjoyed so much. He was immensely pleased with this recognition.

The WSBA awarded him its Award of Honor and Merit in 1990. His alma mater has honored him with the Gonzaga Law Medal, the Distinguished Alumni Merit Award, and named him dean emeritus of Gonzaga School of Law.

One cannot think about Smitty without thinking about his beloved, Sandy Sandulo Myers. By their own acknowledgement, theirs was an extraordinarily long courtship. They first met in 1957, when Smitty went into the clerk’s office at the federal court. They started dating in 1959, but did not marry until Smitty’s mother died in 1982 at the age of 96. They ended their engagement of 24 years a few months later when they were married in the Gonzaga Chapel by their good friend Fr. Frank Costello S.J.

They never had children, but they had dozens of “kids.” I was proud to be one of them. While we all knew him as Smitty, he was Professor, Dean, the Honorable, Magistrate Judge, and the “reasonable man,” but for Sandy there were two terms she used regularly, “darling” and “himself.” When you were with the two of them, you were with the ultimate loving couple. It was typical when sitting next to “himself,” Sandy would tell a story about him, reach up and stroke his cheek. He in turn, would take her hand and smile lovingly at being the recipient of one of her Sandyisms.

They loved their garden, they loved the Oregon coast, they loved to have visitors, they loved books, they loved to have lunch and dinners with friends. And at their favorite restaurants, they knew every employee from the owner and the chef to the busser and all of the servers.

But most of all, they loved each other. And we are fortunate that our friends have preserved their essence in many photos. There is one in which they have been captured perfectly in their autumn years — holding hands while strolling through the brilliant fallen leaves of the south hill, their backs to the photographer — two loving people enjoying each other and their beautiful world as they move away in the late afternoon sun.

Smithmoore P. Myers was preceded in death by his beloved, Sandy, who passed away March 10, 2013. Smitty passed away on May 13, 2015, at the age of 101.

Dear friend, Smitty, our lives are richer because of your having been a part of them. You will live forever in our hearts. NWL

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Jerry Moberg was elected to the WSBA Board of Governors in September 2012. He represents cities, school districts, and counties in litigation for Canfield & Associates, a third-party administrator of several public risk pools in Ephrata. Prior to that, Gov. Moberg was a solo practitioner, served as a superior court judge in Grant County, and practiced at firms in Spokane and Moses Lake. He is currently on the board of the Samaritan Hospital Ethics Committee. He received his bachelor’s and law degrees from Gonzaga University.

1 Why did you want to serve on the WSBA Board of Governors?
When I ran for office, the WSBA was at an important crossroads. The license fees were significantly reduced by referendum and my sense was that many attorneys were unhappy with the direction of the WSBA. We faced a large population of citizens with unmet civil litigation needs. As an older and experienced lawyer, I felt it was the right time to step in and provide my input. (And I thought it would be cool to be called “Governor.”)

2 What is the most important lesson you have learned about WSBA members since you’ve been on the Board?
My time on the board has confirmed my belief that Washington is blessed with a large group of talented, honest, and dedicated lawyers with a grand diversity of opinions. I have learned that there is no “consensus” of thinking among lawyers. Lawyers in Washington work hard to make a living and provide their clients with the best representation possible. They want the WSBA to provide them with practical support that will help them better serve their clients.

3 What decision or accomplishment are you the most proud of from your service on the Board?
I am most proud of the work the Board has done in an effort to implement the LLLT program and the preliminary work we are doing on reducing the cost of civil litigation. It is estimated that nearly 80% of citizens with civil legal needs are unrepresented or underrepresented. As lawyers, we need to change our thinking and create strategies that will allow us to serve this segment of the public in ways that make economic sense. The use of LLLTs, unbundled legal services, low-bono law firms, and streamlining of court procedures are needed reforms. Frankly, the practice of charging clients fees they cannot afford and then kicking them out the door when they can no longer pay is a poor business model. The Board needs to press forward and assist lawyers in developing new strategies in the future that will allow them to meet the needs of the public while still making a decent living. If we don’t, non-lawyer services like Legal Zoom and Rocket Lawyer will slowly replace lawyers in a large number of markets. Reducing the cost of civil litigation and providing new, lower-cost means to resolve disputes are an important step in the right direction.

4 What has been the most difficult decision you had to make as a governor, and why?
I would not consider any decision I have made during my term as difficult. We generally have a lot of background information on the issues and the discussions among the governors are usually informative. I think some decisions have been unpopular, but not difficult. The Board represents a large body of thoughtful lawyers with varying viewpoints and, as a governor, it is important to avoid taking positions on issues that are primarily political or do not directly involve the administration of justice.

5 Can you share one thing we may not know about you?
I attend a Cross-Fit training class at 5 a.m., four days a week, and I love doo-wop music.

Take 5 lets you learn a little more about your Board of Governors. If you have further questions for Gov. Jerry Moberg, he can be reached at jmoberg@jmlawps.com.
I have recently transitioned from male to female and feel I am finally living as my true self. After years of struggling to accept who I really am inside, now I’m now struggling with what feels like sexism — not being listened to or taken seriously professionally because I am a woman. Do you have any resources to help me in dealing with sexism in the workplace?

I wish that I could say that I was surprised, that we don’t live in a society with disparate, biased treatment any longer. But I am not and we do. Joan C. Williams and Rachel Dempsey lay out four basic patterns of bias towards women in the workplace in *What Works for Women at Work*.

- **Prove It Again!** (and again and again)
- **The Tightrope** (can’t teeter towards too-masculine or too-feminine styles)
- **The Maternal Wall** (assumption that kids matter more than work to women, or that something is wrong with her if they do not)
- **The Tug of War** (women judge each other harshly and compete to get by)

Not all women report all types of bias, but out of the 125 they interviewed for the book, only four reported encountering none of these. I also recognize that you may be experiencing additional bias from folks if they know that you are a transwoman, i.e., transphobia. Author and transwoman Julia Serano talks about the specific experiences of sexism and transphobia in *Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity*.

On solutions for dealing with sexism in the workplace, there is controversy. Some say women need to ask for what they need better and “lean in,” while others view that as buying into the boys’ club. Some say the answer is changing society, or at least office culture, to be more accepting of the strengths women bring. Sheryl Sandberg’s *Lean In* is a discussion of this issue.

Women work in a political minefield. Take a look at these books and find ways to surround yourself with like-minded, supportive, empathic people, because even though it looked like the final destination a while ago, I suspect you have just started on your next life journey.

I’ve been a stay-at-home father for the last 10 years. In re-entering law, it appears marketing has changed dramatically. Can you give me a clue where to start when marketing my new solo practice?

The marketing you do when you re-enter a market is the same as you would if you had been working all along, with a couple exceptions. First, the vehicles for marketing have multiplied, so while you will still network in person, you need to have an online strategy as well. Check out *Personal Branding in One Hour for Lawyers* from the WSBA LOMAP Lending Library or buy it from the ABA. Another difference is messaging your return to the law authentically and positively. This comes from exploring who you are, how you help people, and why. Check out the *Primer Application by Google*, which breaks down marketing into digestible lessons on content, PR and media, and search advertising. Some people struggle with the “selling” part. If it feels sleazy to you, look at *The Reluctant Rainmaker* and *Selling Within Your Comfort Zone* (also in the LOMAP library) to get to an authentic message about why you are doing this, who you help, and how you help them.

When I graduated and passed the bar exam last summer, I didn’t have a plan. There are no job prospects. Now, deferments are used up, forbearances look sparse, and I am at my wits’ end. How do I find a job?

You’ll find the right position through great diligence and perseverance. Looking for work is inherently demoralizing. Add a tepid economic recovery and a changed associate track, and you have a tough row to hoe. But successful job hunters fortify themselves against the gloom and persevere by reaching out to more than the traditional sources. They network their tails off by making a schedule and meeting people for coffee or lunch often. They create a really awesome résumé and cover letter that speaks to their character and passion. They ask for help. They join the Weekly Job Group at the WSBA and use it to make an action plan and move forward in the hunt. And they may get gap filler jobs or open their own practices. Some even discover they have an entrepreneurial spirit and thrive in their own practice. If you have been doing all this, then take heart that you are doing the right things and that a better result is in the works. If not, start today. Strive to keep optimism in your pocket, because gloom is your greatest enemy. Please email me if you need some résumé review, advice, or a pep talk. NWL
Here are some of you who probably remember Elias A. Wright, or have known someone like him — the person so dedicated to their career that retirement is not an option. In a Seattle Times article published May 2, 1965, staff writer John J. Reddin profiled Mr. Elias Wright, painting a colorful, almost cartoonish picture of a man many had grown accustomed to seeing as a fixture in the law scene of downtown Seattle.

Reddin compared Wright to the fictional character Ephraim Tutt, who starred as the spirited champion-of-justice in a popular series of legal thrillers penned by the American lawyer and author Arthur Train. The comparison seems to be based not only on Wright’s dress code but also his character; in Reddin’s words, the stereotypical picture of an “old legal workhorse” and “tough old tiger,” which Reddin admits was most likely “a mask to cover a generous and basically sentimental spirit.”

“Elias Wright might have stepped from the pages of an old Saturday Evening Post,” Reddin wrote.

There’s no arguing Wright was certainly a character. In his storied past, Wright grew up in a sod home in Nebraska, took a job as a railroad hand to earn the $75 it cost to enroll at the University of Nebraska Law School, and worked as a railroad fireman on the Union Pacific, courting his wife by “tooting on the whistle cord as the train passed through Oberlin, Ohio.” Stories like this make it easy to understand how he turned out to be the kind of guy who, like all the best grandpas, makes churlishness look so charming.

It sounds like Wright was also something of a style icon, using his dress as a statement that reminds me of the journalist Tom Wolfe, who became famous in the early 1960s almost as much for his trademark Southern-gentleman-style white suit as for his articles. As you can see in the picture, Wright was known for sporting a long Prince Albert coat and what Reddin calls a “William McKinley-type haircut.”

In a way, Wright was a walking time capsule for a certain era of the legal profession that in 1965 was in threat of becoming bygone, and his refusal to retire could be seen as a type of symbolic standoff. Whether or not he was being divisive, Wright definitely encapsulated the spirit of the country’s original cast of lovably idiosyncratic lawyers.

Emily Wittenhagen is a freelance editor with a background in agriculture. She attended the University of Maine, where she earned a degree in creative writing and French. She holds an editing certificate from the University of Washington and is a certified community herbalist. Reach her at emily.wittenhagen@gmail.com.
Located at Lincoln and East Fourth Street in Port Angeles, the Clallam County Courthouse was built in 1914–1915, replacing an older wooden courthouse built in 1892. It was officially dedicated on June 14, 1915. A 1979 expansion, connected to the historic courthouse by an enclosed bridge, now houses many of the official functions, including courts, public records, and a jail. The courthouse now houses the Clallam County Museum and the county’s Parks, Fair and Facilities Department.

Designed by architect Francis Grant, the three-story courthouse is built in the Classical Revival style with a bell/clock tower. The interior is arranged around an atrium, open to a second floor balcony, and lit by lead-glass skylights. The atrium is faced with marble and scagliola plaster. Double curved stairs at each end lead up to the second floor.

The courthouse features a combination bell/clock tower that rises to 82 feet. The tower clock was manufactured by the E. Howard & Co. of Boston and installed in 1915 by Joseph Mayer, a Seattle clockmaker and jeweler. The massive clock system — the four faces are each 8 feet, 4 inches (2.54 meters) in diameter — was not originally intended for Clallam County. It was manufactured in 1880 and shipped all the way around Cape Horn to Seattle. However, no buyer claimed it, and the clock was warehoused at the Seattle docks for 29 years. Discovered in storage by architect Francis Grant, it was purchased by the county for $5,115. When installed, it was connected to a four-foot-tall, one-ton iron bell. Unlike most bells, the clapper for the Clallam County Courthouse bell strikes it from the outside, rather than the inside, giving it a distinctive tone. The clock/bell tower is featured on the seal of Clallam County.

The tower and clock were renovated in winter 2010–2011 as part of a $1.025 million courthouse restoration project. The roof supports 126 solar panels, which were installed in 1979 and replaced in 2011. The panels generate approximately one-fifth of the power consumed by the facility.

Although women certainly have had an impact on Washington law throughout the past 125 years, their impact at the Supreme Court has been much more recent. In fact, during the majority of Washington’s first century, the Washington Supreme Court didn’t have a single female justice and, obviously, no female chief justice. But that would change. Two remarkable — and extraordinarily talented — women would break the pattern and chart a path for others.

As the Washington State Bar Association celebrates its 125th anniversary, it is a good time to recall two legal pioneers: Washington’s first female Supreme Court justice, Carolyn Dimmick, and Washington’s first female Supreme Court chief justice, Barbara Durham.

Justices Dimmick and Durham were rarities, but they had much in common. Both were born and raised in Western Washington. Both served in the King County Prosecutor’s Office and, among other things, handled morals cases. Both were engaged in the private practice of law as well as public service. Both served as trial court judges and at the appellate court level. These two future state supreme court justices served both as district court judges in King County and as King County Superior Court judges. And both had a fondness for Seattle over Olympia.

Justice Durham and Justice Dimmick recognized the different roles and responsibilities one assumed as a trial court judge as compared to an appellate court justice. Both women understood and respected the difference between the judicial and legislative branches of democratic government, and the threat to democracy when the distinction evaporates.

Justice Carolyn Dimmick
Justice Carolyn R. Dimmick was the first woman to serve on the Washington Supreme Court. Upon taking office, Justice Dimmick became the 14th woman to serve on any state court of last resort in the United States.

Justice Dimmick’s judicial career started in 1965 when she was appointed to the King County District Court. At that time, she was only the third woman in Washington to be serving in the state judiciary.

A decade later, on Jan. 16, 1976, following appointment by Governor Dan Evans, Dimmick was sworn in as a King County Superior Court judge, joining 36 men and two women serving on the King County trial bench.

In 1981, about 90 years after Washington became a state, Governor Dixy Lee Ray appointed Dimmick to the Supreme Court. This was the same year in which President Reagan appointed Sandra Day O’Connor to the United States Supreme Court.

Four years later, in January 1985, Justice Dimmick resigned from the Washington Supreme Court. That spring, President Reagan appointed her to the United States District Court for the Western District of Washington in Seattle, where she continues to serve today.

Justice Barbara Durham
Justice Barbara Durham was the first woman to serve as chief justice of the Washington Supreme Court and the second woman to serve on the Supreme Court. Justice Durham also was the first (and only) Supreme Court justice to serve at all four levels of Washington’s court system (district, superior, court of appeals, and supreme).

Justice Durham’s judicial experience began in 1973, when she was appointed as a part-time district court judge for Mercer Island. Three years later, she was elected to the King County Superior Court, where she served as a trial court judge until 1980.

In 1980, Justice Durham became the first woman to serve on the Washington Court of Appeals (and the first woman in Washington to serve on an appellate bench) when she was appointed to the position by Governor Dixy Lee Ray. The Court of Appeals had been created in
1969 with 12 judges (presently, the Court of Appeals has 22 judges).

In 1985, Durham was appointed to the Supreme Court by Governor John Spellman to fill the seat vacated by Justice Dimmick’s resignation.

In 1995, Justice Durham became Washington’s first female chief justice when she was elected to the position by her fellow justices. Justice Durham served as chief justice of the Washington Supreme Court from 1995 to 1998. She retired from the Court in 1999.

In 1999, President Clinton nominated Justice Durham to the U.S. Court of Appeals for the Ninth Circuit. Justice Durham, however, withdrew her name.

Justice Durham understood that one of the most essential functions of democratic government was to protect its citizens. Accordingly, she was a strong advocate for victims of domestic violence.

Making Strides
Justice Durham and Justice Dimmick understood that a law degree was empowering. Ultimately, however, it is the individual who makes the difference.
The South Hill Rapist

BY DOUGLAS PIERCE

The late 1970s and early 1980s in the upper-middle class section of Spokane simply known as the South Hill saw a terror cut right from the pages of Victorian London: a serial rapist whose modus operandi was simple—approach from behind, drag his victim into nearby shrubs or bushes, and viciously rape them. Often, he would keep his victims quiet by placing or shoving a cooking mitt of some kind, often leather, into their mouths. He would try and converse with his victims, threatening them if they talked, then leave them. The police were taking hits for not being able to catch, or on a certain level even admit, there was a serial rapist in Spokane. There would eventually be over 40 rapes attributed to the serial rapist dubbed “the South Hill Rapist.”

Spokane on Edge

Depending on the citizens’ perspective, either the police finally decided to do something or they caught a lucky break. In early 1981, a school janitor reported a suspicious vehicle near the location and time a rape occurred. Running the plates, the police found it was registered to Gordon Coe, a senior editor of one of Spokane’s two daily newspapers. Victims had reported that the offender was younger in age and fingers quickly pointed to Coe’s son, Frederick “Kevin” Coe, a spoiled mid-30s bohemian/vagabond type whose résumé included disc-jockeying, real estate, and living with his parents. A tracker was placed on the car and Kevin was put at the scene of the next rape. His alibi? He was part of the task force his father had set up to try and catch the rapist, and that is why he and his car were often at the area of rapes.

Spokane would be dragged into the closets full of skeletons of a native family that had about as many dark secrets as one could have. Mrs. Coe, who today would likely be diagnosed as bipolar with schizophrenic episodes, testified on her son’s behalf and tried to hire a hit-man to kill and/or maim the prosecutor and judge. The daily news theorized and blasted about Kevin’s mental and personality disorders because of his claims of grandiose accomplishments and obfuscation denials. Coe has vehemently maintained his innocence for the past three decades, except for confessing to one rape during a psychosexual evaluation. He later stated he lied so he would not go to prison but receive treatment instead.

In 1981, Coe was placed on trial for the rape of six women. He was found guilty of four, and sentenced to life-plus-75-years. When he appealed, the Washington Supreme Court tossed out all but one rape, and in the end, Coe was sentenced to 25 years. From the day he entered prison, Coe said he would walk out a free man, and never attended a single parole hearing. Twenty-four years later, at the conclusion of serving that sentence, he was sentenced to life in a mental hospital under a law that was created specifically for him and one other convicted rapist: the Community Protection Act of 1990.

At its most academic, the South Hill Rapist case and Freddy Coe, aka Kevin Coe, gave Washington two legal issues or precedences: the inadmissibility of testimony proffered after hypnosis and the legal-psychological theory that a jury could, regardless of what is accomplished in the judicial process, send a person to a mental institution for life.

Hypnosis as Junk Science


“The defendant [Coe] first challenges the admission of the identification testimony of the previously hypnotized victims as directly contrary to the holdings of this court in the prior Coe decision and two other cases. We have announced our rules regarding the admissibility of testimony by previously hypnotized witnesses in three companion cases, State v. Martin, 101 Wash.2d 713, 684 P.2d 651 (1984); State v. Laureano, 101 Wash.2d 745, 682 P.2d 889 (1984); and State v. Coe, supra.” The Martin court continued: “[A] person, once hypnotized, should be barred from testifying concerning information recalled while under hypnosis” (Martin, 101 Wash.2d at 722, 684 P.2d 651). The court also prohibited the admission of “testimony by a witness as to a fact which became available following hypnosis ...” (Id. at 714, 684 P.2d 651). The court established a separate rule regarding the admissibility of testimony as to facts recalled prior to hypnosis. A party seeking to admit such testimony has “the burden of establishing what the witness remembered prior to the hypnosis” (Id. at 722, 684 P.2d 651). The proponent should have some independent verification of the witness’ pre-hypnotic memory, such as a record preserved prior to hypnosis (State v. Martin, at 722-723, 684 P.2d 651).

The second case, State v. Laureano, specifically excluded a lineup identification made after hypnosis, even though the witness had given a description to the police prior to the hypnosis.

“[W]e hold that all posthypnotic testimony should be rejected, and only the prior recall of the witness, properly preserved and documented (as set forth in State v. Martin), should be allowed in evidence” (State v. Laureano, 101 Wash.2d at 753, 682 P.2d 889). The court held the process of hypnosis itself necessarily affects everything the witness recalls.
about the incident thereafter and stated, “[t]he plain fact is that such testimony is not and cannot be reliable” (Id. at 752, 682 P.2d 889, quoting Diamond, “Inherent Problems in the Use of Pretrial Hypnosis on a Prospective Witness,” 68 Calif. L. Rev. 313, 348–349 (1980)).

In the third opinion, the prior Coe decision, the court stated: “The unreliability of hypnosis as a means of restoring memory makes the use of hypnotically aided testimony unacceptable in the context of a criminal trial ... Thus, testimony as to facts recalled during hypnosis would be inadmissible” (Coe (1988), 836–838).

**Community Protection Act**

The second issue regarding the Coe cases is the implementation of the Community Protection Act of 1990 codified at RCW 71.09 et. seq. The purpose of the statute was stated as “the legislature finds that a small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for the existing involuntary treatment act ... In contrast to persons appropriate for civil commitment under chapter 71.05 RCW, sexually violent predators generally have personality disorders and/or mental abnormalities which are unamenable to existing mental illness treatment modalities and those conditions render them likely to engage in sexually violent behavior...” (RCW 71.09.101).

Simply and objectively put, when the judicial system fails to protect citizens, the Legislature gave the attorney general and/or county prosecutors a second chance to indefinitely detain an individual who is found to be a sexually violent predator. There are two subjective perspectives on this statute. The first is that it is double jeopardy and unconstitutional. It takes crime and punishment out of the hands of the judicial system and its officers, putting it in the hands of bureaucratic psychologists and academicians. The second is that since a mental institution is not prison, it is not punishment. The practice of removing the very minute portion of society who must be removed due to their violent and brutal sexual practices is not punishment, but simply protecting society from domestic sexual terrorists of the worst kind. As Rob McKenna, the attorney general who led the fight to have Coe moved from Walla Walla to McNeill Island, stated, “These folks represent a little over one percent of the sex offender population of Washington state. These are the worst of the worst.” In short, individuals such as Coe cannot be allowed to participate in society. As such, there must be a hybrid of sorts that is not penal in nature, but keeps them from terrorizing and brutalizing innocent women going about their daily lives.

Regardless of individuals’ or various groups’ perspectives, or society’s perspective as a whole for that matter, Kevin Coe’s case is either an example of complete and total injustice — not to mention the State’s trampling on the Constitution regarding due process, checks, and balances, or any other portion of an eighth-grade civics class’ curriculum — or an example of the State’s ability to tie up one hole in the “net of justice” that violent sexual predators were able to slip through, thus protecting society.

In conclusion, it is not without irony that the only time Kevin Coe allegedly confessed was during a psychosexual evaluation, and that was to one rape, and he later stated that the confession was a ruse so he would be sent to a mental institution and not prison. In the end, of course, he got both. Perhaps that is what was best for the victims, society, and Coe himself.

**Douglas Pierce**

practices in Coeur d’Alene, Idaho, and is a member of the law firm of James, Vernon & Weeks. He is a member of the WSBA Editorial Advisory Committee. He can be reached at dpierce@jvwlaw.net.
by Kurt Kruckeberg

It was a thrilling year: Wilde’s *The Picture of Dorian Gray* was published in *Lippincott’s Monthly Magazine*; John Philip Sousa’s rousing hit “You’ll Miss Lots of Fun When You’re Married” gained popularity in many a parlor; and, of course, Jacques Loeb published his first major work on tropism, *Der Heliotropismus der Thiere und seine Uebereinstimmung mit dem Heliotropismus der Pflanzen*. Who could forget that? It was also the WSBA’s first year, and a year of exciting cases at the Washington Supreme Court — from bull-slaughtering locomotives to Nettie Parnell’s house of ill fame. Here are just a few.

**The Public Nuisance of Nettie’s House of Ill Fame**
*Coffer v. Territory*, 1 Wash. 325, 25 P. 632 (1890).

“This case is *sui generis*.”
So begins the court’s opinion about Nettie Parnell and Mary Coffer’s house of ill fame. Nettie, who leased the house from Mary, was indicted for maintaining a nuisance by operating a brothel on C Street in Tacoma. Nettie pleaded guilty, and the Court directed the Pierce County sheriff to abate the nuisance. The sheriff (an elected official no doubt carefully attuned to the public’s desires) apparently made no attempt to abate the nuisance until long after Nettie had turned the house back over to Mary, who continued to operate the house for illicit purposes. Rather than shut the house down entirely, the sheriff placed a “keeper” in Coffer’s house to monitor activities, at an alleged expense of five dollars per day. Mary evidently did not want to pay the keeper’s daily expenses, so the case arose from the sheriff’s attempts to collect the expenses from Mary.

The Court held for Mary. Mary had no formal trial, so the court decided it could not assume she was following in Nettie’s footsteps, “though they may have been of like character.” The sheriff’s “keeper” had no more right to invade Mary’s house than any other stranger; “in so doing, he was a mere trespasser, whatever may have been [Mary’s] character or reputation.”

**A Game of Faro at the Grotto**

Washington law provided that playing faro or monte for money — or permitting such dastardly card games to be played on your property — was a misdemeanor, punishable by a fine of up to $500. J.H. Foster was accused of knowingly and willfully allowing games of faro to be played for money in his building, known as “The Grotto,” on Yesler Avenue in Seattle. Foster pleaded guilty and the lower court sentenced him to pay a fine of $500 plus costs of $20 and ordered that Foster be jailed until the fine and costs were paid. Foster appealed, arguing that the total fine exceeded the statutory maximum and that the order to have him jailed was void because the court did not fix a definite period of imprisonment.

The Washington Supreme Court affirmed the lower court’s sentence. The
Court determined that the $20 in costs were separate from the $500 fine and therefore did not exceed the statutory maximum. The Court also determined that Foster’s period of imprisonment was not indefinite. It was fixed under Section 1125 of the Washington Code, which provided that when a defendant is sentenced to pay a fine and jailed because of his inability to pay, the defendant should be imprisoned one day for every two dollars of the total amount owing. Lesson learned: playing faro in the Grotto can land you in the hoosegow.

**Good Fences Make Live Stock**


For those interested in animal husbandry, check out a pair of opinions filed on the same day where the court first upholds and then strikes down Washington’s “fence law” that made railroad companies strictly liable to owners of livestock for the full value of animals that were killed or maimed by passing trains, unless the railroad company had fenced their tracks with “a good lawful fence.”

**Chronic Mania Divorce**

Hickman v. Hickman, 1 Wash. 257, 24 P. 445 (1890).

The sole question presented in this case was whether the Territorial Legislature acted validly when it made “incurable chronic mania” grounds for divorce where the mania had lasted for 10 years or more. In a divorce action, a lower court judge held that the Legislature’s act was contrary to public policy and therefore unconstitutional. The judge ordered that the couple should not be granted a divorce. The Washington Supreme Court reversed the lower court, writing that the Legislature could authorize the granting of divorces for any causes that the Legislature deemed sufficient — chronic mania or otherwise.

**Smoking Opium: An Inalienable Right?**

Territory v. Ah Lim, 1 Wash. 156, 24 P. 588 (1890).

In a fascinating 3–2 decision, the Court determined that there is no inalienable right to smoke opium. Ah Lim was indicted for smoking opium, and he demurred, arguing that the statute that makes smoking opium a misdemeanor was a violation of his inalienable rights to life, liberty, and the pursuit of happiness.

The majority disagreed, writing, “It is common to indulge in a great deal of loose talk about natural rights and liberties, as if these were terms of well-defined and unchangeable meaning. There is no such thing as an absolute or unqualified right or liberty guaranteed to any member of society.” The majority wrote that smoking opium, in particular, is a “recognized evil” in the country and that “it is an insidious and dangerous vice, a loathsome, disgusting, and degrading habit, that is becoming dangerously common with the youth of the country.” The majority ultimately held that if the state concludes that a habit is detrimental to the moral, mental, or physical well-being of one of its citizens to such an extent that the citizen becomes a burden on society, then the state has the right to restrain the citizen from committing that act.

Justices Scott and Stiles strongly dissented. They believed that the statute unconstitutionally impinged the rights of individual citizens. In their judgment, the statute should prohibit only opium use that causes injury. Without requiring a prosecutor to prove injury, “a single inhalation of opium, even by a person in the seclusion of his own house, away from the sight, and without the knowledge of any other person, constitutes a criminal offense under this statute.” The dissenters argued that the individual right of self-control should be limited only to the extent necessary to promote the general welfare. Here, where the Legislature drew no distinction between “a single act and a continued habit” or “the use and abuse of any article or substance,” the dissenters would have reversed the lower court and discharged the defendant.

The record does not reflect whether Nettie Parnell and Mary Coffer filed an amicus brief in support of Ah Lim. NWL

Kurt Kruckenberg is a real estate attorney at Hillis Clark Martin & Peterson P.S. in Seattle. He is a member of the WSBA Editorial Advisory Committee. Contact him at kurt.kruckenberg@hcmp.com or 206-470-7640.
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**Disciplinary Notices**

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of NWLawyer at [http://nwlawyer.wsba.org](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**

Donald Frederick Mansfield (WSBA No. 6553, admitted 1976), of University Place, was disbarred, effective 4/03/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 8.4 (Misconduct). Kevin Bank acted as disciplinary counsel. Donald Frederick Mansfield represented himself. Octavia Y. Hathaway was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review; and Washington Supreme Court Order.

**Resigned in Lieu of Discipline**

Eric Lee Fredrickson (WSBA No. 44759, admitted 2012), of Tacoma, resigned in lieu of discipline, effective 4/03/2015. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 3.2 (Expediting Litigation), 3.4 (Fairness to Opposing Party and Counsel), 8.4 (Misconduct). Natalea Skvir acted as disciplinary counsel. Eric Lee Fredrickson represented himself. The online version of NWLawyer contains a link to the following document: Resignation Form of Eric Lee Fredrickson (ELC 9.3(b)).

**Suspended**

William Robert Brendgard (WSBA No. 21254, admitted 1991), of Vancouver, was suspended for one year, effective 3/23/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.4 (Communication), 1.5 (Fees), 1.15A (Safeguarding Property). Natalea Skvir acted as disciplinary counsel. William Robert Brendgard represented himself. Donald Bruce Condon was the hearing officer. Keith Patrick Scully was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Suspension; and Washington Supreme Court Order.

**Admonished**

Adolfo Ojeda-Casimiro (WSBA No. 29946, admitted 2000), of Duval, was ordered to receive an admonition, effective 3/24/2015, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records). Kevin Bank acted as disciplinary counsel. David G. Estudillo represented respondent. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Admonition; and Admonition.

**Interim Suspension**

Robert Jeffery Wade (WSBA No. 33679, admitted 2003), of Seattle, is suspended from the practice of law in the State of Washington pending the outcome of supplemental proceedings, effective 4/16/2015, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Atwood was the hearing officer. David Martin Schoeggl was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Reprimand; and Notice of Reprimand.

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Mac has over 20 years of experience mediating cases in Washington, Oregon, and Alaska. He has mediated over 1,500 cases in the areas of maritime, personal injury, construction, wrongful death, employment, and commercial litigation.

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

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Aaron Wakamatsu  WSBA No. 44810
Law School: Willamette University College of Law

Before law school, I was a junior bowling coach for two years and a high school sports statistician for six years. I averaged about 207 in my final years as a junior bowler.

My greatest talents as a lawyer are finding the core issues and working efficiently.

The best advice I have for new lawyers is to network and find experienced attorneys who are willing to be your mentor. Heck, it could be a fellow attorney to grab a drink with at the end of the day.

The most rewarding part of my job is getting a desired outcome for my client. Seeing the joy on the client’s face always makes me smile.

I create work/life balance by working on my food blog (www.foodreviews.aaronwakamatsu.com), filming YouTube videos (www.youtube.com/user/awakamat), and hanging out with friends.

If I could have tried one famous case, it would be Furman v. Georgia.

During my free time, I eat at the Portland food carts and work out at 3 a.m. Nocturnal workouts are surprisingly therapeutic.

The most memorable trip I ever took was in June 2014. I met up with friends in Anaheim, CA, for VidCon (an event to meet YouTube celebrities). It was basically three days of nonstop filming with friends to promote each other’s YouTube channels and simply get away from real life. Considering that I had been burnt out at work just prior to the trip, it was a much-needed getaway.

I absolutely can’t live without spicy food — ultra-spicy food.

My favorite place in the Pacific Northwest is Portland, Oregon. There are so many great food carts to eat at. The coffee and beer selections are also amazing.

Nobody would ever suspect that I am a YouTube entertainer. For years, I was an extremely shy individual who hated public speaking of any type. I didn’t even want to see myself on TV or a computer screen. On YouTube, I do food reviews and food challenges, but I also eat very spicy peppers and sauces (yes, there are products that are hotter than ghost peppers).

Friends would describe me as loyal — and a bit crazy.

This makes me smile: Husky puppies.

If I had a time machine, I would go back in time to learn more about the Wakamatsu Fish Market in Wailuku, Maui, Hawaii. My relatives on my father’s side ran the market, and it was known for sakuraboshi, best described as fish jerky with teriyaki sauce. The family members who knew the most about the inner workings of the market (my great grandmother, grandfather, and great-uncle) have since passed away. It would also be great to have one more helping of that sakuraboshi.

If I have learned one thing in life, it is to write something down, especially if you might forget what it is.

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