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An RPC 7.1 and 7.2 Compliant Comparison of Godzilla, a Lawyer and King Kong

Left to right: Godzilla, Mark Johnson and King Kong

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WASHINGTON STATE BAR ASSOCIATION
**Editor’s Note**

Linda Jenkins

*NWLawyer Editor*

When I practiced law, I sometimes told people that life happens in chapters. My next chapter starts now, as the 15th editor of the Bar’s official publication. I am one of only three women and the first woman of color to serve as editor of this publication, now in its 70th volume. Over those 70 years, this magazine has been through many changes in style, content, and title. Today, we’re known as *NWLawyer*, a name that suits us well, I think.

As your new editor, I bring my background in newspaper reporting and contemporary magazine writing to this publication.

I am a writer first and foremost, with a particular fondness for the storyteller role. I have many memories from my time as a small firm and solo attorney; I know that you have many stories, too. Our members have a wealth of experience and practice insight, and you can expect to see us highlight that in the pages of *NWLawyer*.

In this issue, Averil Budge Rothrock gives us an insightful, modern take on sexist remarks and the practice of law. Laura O. Lemire tells us about the future of big data and the many ways that it is changing the legal profession. For our sports fans, Jason Cruz crafts an in-depth analysis of fantasy sports legislation in Washington. Former WSBA President Salvador Mungia informs us about the latest Human Rights Commission’s ruling regarding transgender use of restrooms and other places of public accommodation. WSBA Governor Sean Davis discusses the many opportunities for attorneys to take leadership roles. Our Editorial Advisory Committee chair, Isham Reavis, gives us a cautionary tale about social media and ethics in criminal law. This month marks the third anniversary of the Oso landslide that claimed the lives of 43 people in Washington; former EPA attorney and Seattle University School of Law professor Clifford Villa introduces us to the legal issues and challenges of disaster law. Professor and former dean of Gonzaga University School of Law, Daniel J. Morrissey, considers the evolving image of Atticus Finch in his review of *Go Set a Watchman*.

Set aside some time to read André M. Peñalver’s illuminating account of Spokane civil rights attorney Carl Maxey, who is celebrated in the new PBS documentary *Carl Maxey: A Fighting Life*. Peñalver tells us about Maxey’s 1960s representation of convicted killer and prison escapee Charlie Will Cauthen. “[O]n occasion, a tired process in the right hands can work a miracle,” Peñalver writes.

*NWLawyer* is a product of the ideas and hard work of many, including WSBA staff, our writers, our editorial advisory committee, volunteers, and you. I hope that in this issue and those to come, you find something that informs and engages you, entertains you on a difficult day, or inspires you to get involved. Let us know what you think by sending your feedback to nwlawyer@wsba.org. NWL.

LINDA JENKINS is the *NWLawyer* editor and can be reached at nwlawyer@wsba.org.

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**Get published!**

See your name in lights (well, in ink, anyway) in *NWLawyer*! If you have an article of interest to Washington lawyers or a topic in mind, we’d love to hear from you. Need a topic? We have a list of subjects we’d like to cover. For a how-to guide on writing an article for *NWLawyer*, email nwlawyer@wsba.org. *NWLawyer* relies almost entirely on the generous contribution of articles from WSBA members and others.

**Father’s Day Reader Poll**

Are you an attorney and a father? Do you have a good story to share about how your father influenced your life? For our June issue, *NWLawyer* will be celebrating Father’s Day with experiences from our members. Send your stories and photos to nwlawyer@wsba.org. See the submission guidelines for more details.

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Important Conversations

Your Board of Governors is tasked with addressing the important issues of the WSBA and of our profession. Having served on the Board of Governors from the Fifth Congressional District from 2000 to 2003, and now as president, I can testify to the fact that the Board’s work is always filled with important topics that affect many of us. In this month’s column, I want to highlight for you two important conversations the Board is having, each of which you should know about.

The Escalating Cost of Civil Litigation
The WSBA Board of Governors formed the Escalating Cost of Civil Litigation (ECCL) Task Force in 2011. Its charter directed the Task Force to “assess the current cost of civil litigation in Washington State Courts and make recommendations on controlling those costs.” The increasing cost of litigation is a true access to justice issue. As the cost of taking a case to trial continues to increase, critical decisions based on cost are made about whether to pursue or defend legitimate civil lawsuits. Our system of justice works best when those decisions are based on the substance and merits of the dispute as opposed to the costs of the dispute.

The Task Force was comprised of attorneys, judges, and scholars, each offering his or her own special expertise and experience. After adding to its ranks with multiple subcommittees studying how we litigate cases, surveying our WSBA members, examining national research, and seeking input from WSBA sections, legal stakeholders, and many others, the ECCL Task Force presented its report and recommendations this past July. The ECCL Task Force Report and Recommendations addresses multiple issues of how courts and attorneys address litigation, and makes recommendations on how we can change the litigation landscape while preserving the fairness and independence of our justice system.

The Board of Governors is now engaged in a very important review of each of the recommendations. Just as the Task Force sought invaluable input during its work from WSBA stakeholders and groups involved with litigation, the Board is now both hearing presentations on the specifics of the report and taking testimony from any interested WSBA members. As an example, at the Jan. 29 Board meeting, the Board heard approximately three hours of comments on six issues addressed in the ECCL Report. It was a marvelous process where plaintiffs’ and defense attorneys shared their views in an exceedingly civil and professional manner, regardless of the fact that they may have disagreed with one another on the merits they were discussing.

What is clear is that there is no one perfect way to structure our civil litigation system. However, together, we as members of this great profession, regardless of whether we are attorneys or judges, can find ways to improve the system.

Here is the Board’s review schedule of the Task Force Report and the topics being discussed:

**Jan. 29, 2016**
- Initial Case Schedule
- Judicial Assignment
- Two-Tier Litigation
- Mandatory Discovery Conference
- Mandatory Disclosures
- Proportionality and Cooperation

**March 10, 2016**
- Presumptive Discovery Limits
- E-Discovery
- Motions Practice

**April 15–16, 2016**
- Pretrial Conferences
- District Court Recommendations
- Alternative Dispute Resolution

All WSBA members are invited to share their views. Everyone’s views are important. You can review the ECCL Task Force Report online at www.wsba.
The WSBA Sections Update

Another important conversation we’re having is about the operation of our 28 sections. Over 10,000 — a number equal to approximately one-quarter of all WSBA members — belong to at least one of WSBA’s sections. Sections are an integral part of the WSBA and provide important expertise, educational opportunity, networking, and leadership development to our members.

The WSBA has fiduciary, legal, and fiscal responsibility to the entire organization, including its sections. Over the years, WSBA historical policies and systems have created a mixed message to sections about their legal relationship with the WSBA. In some instances, it has led to a lack of alignment with WSBA fiscal policies. As you might imagine, it is not easy to exercise fiduciary responsibility with 28 independent-thinking sections led by deeply committed leaders. Each section has a unique set of bylaws, governance requirements, election processes, and methods of operation. Supporting 28 ways of doing business is inefficient. It takes time and energy away from our shared desire to provide communities for lawyers and others interested in particular areas of focus; to increase knowledge, networks, and resources; and to further the interests of our profession.

Last fall, the Board established a workgroup to review and make recommendations about WSBA policies and systems relating to sections for the purpose of maximizing core benefits for all section members, reducing barriers to member participation in sections, and providing all sections — regardless of their size or financial means — with better opportunities to thrive. Simply put, we can all do more and better with existing resources.

The workgroup has been looking at these issues since October. They have held public meetings and have solicited section leader feedback throughout the process. At the end of the year, the workgroup published discussion drafts, which have generated significant interest and feedback among section leaders and members. On Feb. 4, the workgroup held a lengthy input session attended by leaders of nearly every one of the sections; the discussion was candid and was exceedingly valuable.

Much has been learned. Much is left to be learned. At our Jan. 29, 2016, Board meeting, the Board authorized the workgroup to assess and revise its schedule and process for review, all with a focus on addressing how to reach the best recommendations. What is “best” involves looking at what is best for the more than 10,000 WSBA section members, each of the 28 section organizations themselves, and for the WSBA as a whole.

Much like the other important conversations at the Board each year, there are many views, some of which are conflicting. The discussion about sections will lead to better decisions with everyone providing their thoughts and recommendations. In consideration of what we’ve already heard, the workgroup will present recommendations at the March Board of Governors meeting about its process moving forward, including an expanded membership that includes section leader representatives, and an extended timeline for substantive recommendations. I heartily encourage you to join in the discussion.

For more information about the Sections Policy Workgroup, look at the information posted on the WSBA website at www.wsba.org/about-wsba/governance/sections-policy-work-group.

Both of these are important discussions and conversations. One deals with how many of us practice law and how we can improve access to our civil justice system. The other deals with how the WSBA can best support and provide administrative services for the WSBA sections, each of which is a crucial part of our Bar.
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The Battle Over Fantasy Sports Surfaces in Washington

Is DFS DOA in Washington State?

by Jason J. Cruz
he start of the 2015 National Football League season saw a huge ad blitz for fantasy sports spearheaded by DraftKings and FanDuel. The avid football fan could not escape commercials seemingly played on a loop throughout every game. The world of fantasy sports is no longer limited to a group of friends or co-workers getting together to compete against one another for bragging rights and a modest sum of money. Fantasy sports is now a huge industry across the nation promising lucrative payouts as lawmakers and regulators scramble to determine whether this new version is gambling. Washington state remains on the sidelines in the legalization of fantasy sports, but that could change with the introduction of new legislation.

Overview of fantasy sports and the emergence of DFS

There is confusion regarding the legal status of fantasy sports. Specifically, what is it and do fantasy sports and daily fantasy sports differ? Fantasy sports date back to the 1960s, but did not gain popularity until the 1990s. “Traditional” fantasy sports refer to season-long competitions where individuals compete with others over the course of a sports season, whether it be NFL, NBA, NHL, MLB, NASCAR, or any other type of sport. By 2009, Daily Fantasy Sports (or “DFS,” as it is widely known) were introduced and began gaining popularity.

DFS is an accelerated variant of fantasy sports. The difference is that, as the name implies, “daily” fantasy sports occur over shorter periods of times (i.e., one day or one week). In most iterations of DFS, a real-life player is assigned a DFS salary, and players are selected based on a salary cap. Depending on the DFS game, an owner with the most points for that day/week wins a predetermined amount of money.

According to a recent study by the Washington State Gambling Commission, 12% of individuals in North America play some form of fantasy sports. The average fantasy player spends $111 annually on fantasy sports, which equals a total market volume of $4.6 billion. The Fantasy Sports Trade Association reports that there were an estimated 51.8 million players in the U.S. and Canada in 2015.

**The UIGEA and fantasy sports**

The Unlawful Internet Gambling Enforcement Act (UIGEA), 31 U.S.C. §§ 5361-5367 (2006), prohibits any person engaged in the business of betting or wagering from accepting any credit or funds from another person in connection with the latter’s participation in “unlawful Internet gambling.” The definition of “unlawful Internet gambling,” per 31 U.S.C. § 5362(10)(A) of the UIGEA is “to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet” in a jurisdiction where applicable federal or state law makes such a bet illegal.

Despite this prohibition, the UIGEA explicitly provided a carve-out which fantasy sports activities are different in nature from “unlawful Internet gambling” and provided an exception when defining a “bet or wager.” Arguably, the crafters of this legislation in 2006 may not have contemplated the boon for DFS. Under this umbrella, DFS companies such as DraftKings and FanDuel operate.

DraftKings, a Boston-based fantasy sports operator, and FanDuel, a New York-based company, are fast-growing, well-funded gaming startups and arguably the two biggest in the ever-evolving industry of fantasy sports. The NBA, NHL, and MLB are investors in DFS companies. In addition, Comcast, NBC Sports and Fox Sports are among the number of major media companies intertwined with DFS.

DFS was in the news when a report in September 2015 stated that a DraftKings employee won $350,000 at rival FanDuel. This brought DFS companies under scrutiny by state regulators. Notably, Nevada determined that DFS was gambling and issued cease and desist letters to these companies, dictating that they needed to be licensed by the state. The Illinois Attorney General deemed DFS “gambling” and issued similar notices. In January, Texas concluded DFS was gambling, but did not demand that the companies cease from operating within the state.

The big battle over fantasy sports and DFS is in New York. In cease and desist letters dated Nov. 10, 2015, the New York Attorney General concluded that DFS companies such as DraftKings and FanDuel constituted illegal gambling under New York law. It cited that DFS customers within the state were “clearly placing bets on events outside of their control or influence, specifically on the real-game performance of professional athletes.” Moreover, their “wagers” were considered by the Attorney General’s office as a “contest of chance” where winning or losing depends on numerous elements of chance to a “material degree.” In response, DraftKings and FanDuel opposed the warnings and filed complaints seeking declaratory and injunctive relief. On Nov. 17, 2015, the New York Attorney General’s office responded by filing its own action against both companies.

The parties identify Washington state as a basis for their argument as to the interpretation of fantasy sports. In its complaint, the New York Attorney General stated that Washington and New York have “identical statutory definitions of ‘gambling’ and ‘contests of chance.’” New York identified Washington as having enforced the regulation through the Washington State Gambling Commission.

A preliminary injunction was issued by a federal court in the state preventing operation by DraftKings and FanDuel. However, the two companies have been granted a stay of the injunction pending an appeal. In a Jan. 4, 2016, statement...
THE CURRENT STATUS OF FANTASY SPORTS IN THE U.S.

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from DraftKings’ attorney David Boies, he maintained that DFS is not gambling, as the contests are controlled by the knowledge and skill of DFS players. Further, the only difference between a daily and a season-long fantasy contest is how long it lasts. He also stated that the control and influence a DFS player has to choose its roster is a skills-based exercise.

Of the states in which DFS is legal, Washington has always maintained that fantasy sports, including DFS, is not an authorized activity. The New York litigation referenced Washington state as being the sole example of a state which shut down an online gaming site. Washington State Gambling Commission shuts down Fantasy Thunder

Although DFS and fantasy sports are prohibited in the state at this time, Washington is the only state that has prosecuted a fantasy sports operator. In 2011, the Washington State Gambling Commission investigated and recommended prosecution of David Watkins for owning and operating an online gambling website in the state of Washington called Fantasy Thunder.

According to the 37-page report, an anonymous source sent a fax to the state gambling commission initiating the investigation of the Spokane-based company. Delving into the investigation and interviews conducted by the commission, Watkins operated a website which offered cash prizes contingent on entry fees for various NASCAR races. Individuals paid a fee to gamble on NASCAR races on the website. Watkins kept a portion of the fees.

After an investigation, the commission forwarded the case to the Spokane County Prosecutor’s Office for violations of the Revised Code of Washington. This included four counts of professional gambling in the first degree, 23 counts of transmitting and receiving gambling information, 87 counts of money laundering, 1 count of first-degree theft, 2 counts of second-degree theft, and 6 counts of third-degree theft. Watkins eventually pleaded guilty to one count of attempted transmitting and receiving gambling information and forfeiture of $100,000. He was also sentenced to 12 months of probation for his criminal conviction and ordered to pay court costs.

It appears from the investigation that Watkins charged an entry fee for participation for full and half-seasons. Watkins charged a $90 fee per player to enter one 18-week season and $170 if they wanted to play both 18-week seasons. He claimed that there were 300 to 400 participants involved in any given season and prizes were based on the number of participants for a season. Typical grand prizes were $5,000 for an 18-week season. Weekly prizes were $150. The most a user could win in a year was $12,500, according to Watkins.

Watkins stated that 60% of the fees collected were paid out to winners and the other 40% was retained by Watkins as website-related expenses and profits. The investigation revealed that Watkins may have run into financial problems with running the site, as he was unable to pay winners, according to interviews from the site’s users. This may have been the only reason he was investigated by the commission.

The commission’s takedown of Fantasy Thunder reflects the state’s enforcement of the laws against unlawful gambling. Here, it appears that Fantasy Thunder was conducting traditional fantasy sports and daily fantasy contests, as it offered both season-long and weekly prizes.

Current status of fantasy sports in Washington state

The state gambling commission recognizes that many Washington citizens are participating in some form of traditional season-long fantasy sports league on a social level where individuals play for nominal amounts of money, with the funds being paid back to the participants. Thus, the commission is contemplating how to move forward with regulation, if any, of fantasy sports when it knows many individuals are already participating.

The prohibition on fantasy sports in Washington is based on the definition of a “game of chance,” (RCW 9.46.0225), and the prohibition of transmission of gambling information over the phone or Internet (RCW 9.46.240). It also
is predicated on the interpretation of “future contingent event” in the definition of “gambling” as outlined in RCW 9.46.0237.4

The underlying issue which is being pondered by Washington state lawmakers as well as on a nationwide level is the difference between skill and chance. Explaining the difference between the two in the context of fantasy sports is emerging as a central point in determining whether fantasy sports is gambling.

In 1971, the Washington Supreme Court determined whether gambling is synonymous with a “game of chance.”5 The Court held that the legislative history did not intend that the definition of gambling was synonymous with “game of chance” per statutory construction. But the evidence supported a finding that if the games (in this instance, card games which included forms of rummy and pinochle) are predominantly based on skill, they may still constitute gambling if the game depends on a material degree on an element of chance.6 The Court thus rejected the “predominant element test” which suggested that there be an evaluation as to whether or not skill predominates in a particular game. If it did, the activity may not be a game of chance.

Legislators propose fantasy sports legislation

In 2016, there are three proposed bills related to fantasy sports which seek to set the ground rules for the new landscape of the industry.

Senate Bill 5284, along with the companion bill, House Bill 1301, were introduced in January 2015 by Senator Pam Roach (R-31) as the bill’s primary sponsor. The bills would provide for a new section of the RCWs to allow for fantasy competitions, defining them as they are in the UIGEA. Perhaps the most important part of the bill is that it would declare fantasy competitions as “games of skill and are specifically exempted from any classification as gambling.” The bills did not make any headway in 2015, but remain alive for the 2016 legislative session.

In 2015, there were two hearings on SB 5284 before the Washington State Senate Commerce & Labor Committee.

On Jan. 30, 2015, a public hearing was held where Senator Roach testified that the bill would not seek to expand gambling but establish “sideboards” around fantasy sports. Notably, she testified that she considered DFS “a game of chance” and that DFS differs from season-long fantasy sports.

Testifying on behalf of the Fantasy Sports Trade Association, Noah Reandeau argued that DFS was a game of skill, which would push it outside of the argument that it is gambling.

On Nov. 20, 2015, the committee held a general discussion on fantasy sports contests. A proposed amendment was discussed which would limit the definition of fantasy sports to specific professional sports. It also indicated that each participant must not pay more than $50. All the money that would be paid for fantasy sports would be paid out and cannot be retained by someone running the league. This amendment has yet to be formally drafted within the present ver-
sion of SB 5284.

Rob McKenna, who represents DraftKings, FanDuel, and the Fantasy Trade Association in the state, testified at the hearing. The former state attorney general stated that there are thousands of Washington residents who would like to participate (in DFS) and fantasy sports operators agree that they should be regulated by the state.

When asked about the difference between traditional fantasy sports and DFS, McKenna stated the “two formats are nearly identical.” In explaining, he cited that players still have to assemble a team, fill multiple positions from different teams, and accumulate points. He acknowledged that the duration of the contests was the main difference. Thus, DFS incorporates skill rather than chance in its contests.

On Dec. 10, 2015, the Washington State Gambling Commission prepared a 41-page “Fantasy Sports Overview” which provided the current status of fantasy sports, DFS, and where it stands in Washington. It proposed several methods of regulation, including a recommendation for “low volume” season-long fantasy sports played for social purposes, which would allow wagering up to a certain amount of money that is all paid out to the participants. As for DFS and other fantasy sports online, the recommendation would be some type of licensing and/or regulation of the operators. This would include defining fantasy sports, Internet fantasy sports and set rules and regulations.

As SB 5284 is presently crafted, the current bill does not set up these definitions for DFS, online gaming, or licensing requirements or regulations.

A new bill, HB 2370, introduced in January 2016 by state representative Chris Hurst (D-31), would make fantasy sports a class-C felony and a violation of the Consumer Protection Act. The bill makes it unlawful “to offer for play, operate, or advertise a fantasy sports game in Washington.”

Hurst presented the bill in a Jan. 18, 2016, hearing before the State House Commerce and Gaming Committee. He believes that the UIGEA carve-out for
fantasy sports was never intended for DFS companies and it has “created the disaster that we have today.” Hurst also cited that problem gamblers and minors were concerns, as the present state of DFS cannot determine who is playing.

In addition to the legal and pragmatic concerns, the Washington State Gambling Commission testified about the fiscal concerns in enforcement of such a bill.

The reference to “advertise” in Washington state may prove to be an issue, as the ad blitz put on by DFS companies is nationwide and the current language of the proposed bill could feasibly mean that any DFS commercial aired during a national broadcast of a sporting event might be considered a violation of the proposed state law.

A lobbyist for the Washington State Association of Broadcasters testified at the committee meeting expressing these concerns. Hurst acknowledged that this particular section of the proposed law needed to be revised so it would be clear as to the intent.

HB 2370 seeks to define a “fantasy sports game” as “games of chance rather than skill and therefore constitute illegal gambling...” Eliminating all doubt that DFS can be legal in the state, the bill’s text reads that “in fantasy sports, the relative success of a participant is determined almost entirely by the element of chance rather than the element of skill.” Thus, the bill specifically outlines its concern with DFS companies and its supporters’ argument that DFS is predicated on skill rather than chance. It also addresses any ambiguity as to whether a game is dependent on a “material degree” of chance in the affirmative.

**2016 proposed bill legalizing DFS in Washington state**

While there are two bills which presumptively carve out DFS from legalization or regulation in the state, another bill, Senate Bill 6333, seeks to define fantasy sports contests as games of skill. Sponsored by Senators Doug Ericksen (R-42) and Brian Dansel (R-7), the proposed law introduced this year would add a new section to RCW 9.46 which would consider fantasy competitions as “games of skill and are specifically exempted from any classification as gambling.” The legislation offers a broader definition of
“fantasy sports competitions” as varying in length since they may last a full season or “only a week or a day.” At the time of this writing, there have not been any hearings on this proposed bill.

No endgame in sight
Despite efforts to eliminate DFS by a number of states, the amount of investment and ownership in DFS companies such as DraftKings and FanDuel makes the expulsion of these games nationwide unlikely. The more plausible outcome for DFS is state and potential federal regulation. But will DFS be able to operate in Washington state in the near future?

As the Legislature enters 2016, the legalization of fantasy sports will be scrutinized by individuals within the state and those around the nation as other states look at how Washington will handle the way it regulates or eliminates fantasy sports from the state. The proposed laws have their merits and flaws, depending on what side of the fantasy sports debate you are on. Either way, the legal issues regarding fantasy sports are real and should be addressed sooner than later.

Jason J. Cruz owns and operates Cruz Law, PLLC, in Seattle, where he focuses his practice on business and real estate law. Cruz is a board member of the Asian Bar Association of Washington and serves on the Publications Committee of the Business Law Section of the WSBA. He is also editor-in-chief of MMA Payout (www.mmapayout.com), a website dedicated to the legal and business aspects of the sport of mixed martial arts. He may be reached at jason@cruzlawpllc.com.

NOTES
4. RCW 9.46.0237 defines gambling as “staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person’s control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. The question is whether the “future contingent event” is the sporting event or the DFS contest itself.
6. Id. at 257.
7. Text of proposed State Bill 2370.
8. Text of proposed State Bill 6333.
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Sanctions for Sexist Remarks

Don’t Overlook Obnoxious, Demeaning Behavior

by Averil Budge Rothrock

In 1952, when no private firm would interview top Stanford Law graduate Sandra Day O’Connor for an attorney position, few lawyers might have imagined use of the professional rules to sanction an attorney for a disparaging display of sexism or gender bias. Today, thankfully, model rules are serving such a purpose. And these rules should be used by attorneys and judges to stop gender-focused criticisms in our profession.

In a Puerto Rican conference room in 2015, a full complement of 16 attorneys was on hand to depose an employee of a defendant in a class action lawsuit. As anyone familiar with the underrepresentation of women in the legal profession might guess, there were 12 male attorneys and only 4 female. The deponent paused to make some calculations in response to a question. One male attorney appeared to question whether the air conditioning was working, to which the deponent’s attorney — a woman — responded, “I don’t know but it’s hot in here.” The plaintiff’s attorney, a male, interjected: “¿Tienes calor todavía? [You’re still warm?] You’re not getting menopause, I hope.”

The following exchange ensued:

Ms. Monserrate (the disrespected): That’s on the record.
Mr. Salas (the aggressor): No, no, no, no.
Ms. Monserrate: You know that a lawyer here got in big trouble for a comment just like that.
Mr. Salas: Really.

No one else spoke at that moment. The deposition continued. But this was not the end of the issue. After the witness had been excused, a male attorney also representing the deponent noted Mr. Salas’s comment for the record and asked the court reporter to retain the audio recording, as follows:

The note for the record I’d like to make is that I asked the court reporter to preserve the audio that was recorded today. The court reporter agreed that she would review the audio and transcribe a relevant portion of the audio related to a comment that I heard Mr. Salas make to my co-counsel, Dora Monserrate, during the deposition today. That comment, in substance, was in response to Ms. Monserrate’s statement that the room was very hot. Mr. Salas responded that maybe that was because she was going through menopause.

Then Mr. Salas responded:

Let the record reflect that a comment of that nature was, in fact, made by me. It was not made with any bad intent. As soon as we took a break and I saw that counsel had been hurt or took the comment improperly, I tried to apologize to her. She told me that she didn’t want to talk to me. So that’s what happened. And let me state for the record that it was an improper comment. I didn’t mean to harm her in any way. I’ve tried to apologize to her right now, and that’s all I can do.


These rules are similar to Washington’s RPC 4.4, prohibiting an attorney from using means in the litigation “that have no substantial purpose other than to embarrass, delay or burden a third person,” and RPC 8.4(d) prohibiting an attorney from engaging “in conduct that is prejudicial to the administration of justice.” Washington rules go further, also prohibiting “a discriminatory act prohibited by state law on the basis...
of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities.” (RPC 8.4(g)). In addition to all of the above, Washington rules also prohibit a lawyer “in representing a client” to “engage in conduct that is prejudicial to the administration of justice toward judges, lawyers, or LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status.” (RPC 8.4(h)).

In resolving the motion for sanctions, Judge Besosa declined to accept Mr. Salas’s subsequent explanation that he made the comment “out of concern about Ms. Monserrate’s medical condition.” The Court demonstrated a firm grasp on reality, stating:

The Court unequivocally rejects Mr. Salas’s post hoc explanation. If Mr. Salas was genuinely concerned that Ms. Monserrate had a “medical condition” triggered by the room’s temperature, then he would have asked Ms. Monserrate in a more private setting and in a more respectful way whether there was anything he could do to alleviate her symptoms. Mr. Salas instead chose to tell Ms. Monserrate in the presence of fourteen other attorneys, eleven of whom were male, that he hopes that she is not menopausal. Credit goes to any judge or attorney who refuses to sweep sexism under the rug.

In reading this case, I was heartened to realize that recourse exists under the rules of professional responsibility to stop this behavior. I had not connected an overt put-down based on gender with a violation of the professional rules. Such a comment was boorish. It was mean. It was designed to seek an advantage. That seems clear. But it also was sanctionable. One needn’t overlook it. One needn’t pretend it was a joke (lacking all humor). One needn’t remain mute. Although no one else spoke at the time of the first exchange, perhaps out of shock, a male colleague spoke out to oppose the demeaning behavior at the conclusion of the deposition and preserved the evidence. Judge Besosa took that evidence seriously.
Judge Besosa’s opinion is thorough and reasoned, as one would expect of a legal decision. He examines the private nature of menopause and its implications of “issues relating to a woman’s age, fertility, psychological state, sexuality and physical condition.” Judge Besosa’s analysis led him to conclude that the remark was discriminatory in nature because menopause “occurs only in women, and predominantly in middle-aged women,” and therefore the remark singled Ms. Monserrate out on the basis of gender and age. The judge concluded that such discriminatory comments are damaging to the legal profession. He cited an ABA report concluding that discriminatory conduct in the form of “inappropriate or stereotypical comments” directed at female attorneys contributes to the underrepresentation of women in lead trial attorney roles. He concluded that behavior like Mr. Salas’s is “palpably adverse to the goals of justice and the legal profession.” Judge Besosa thus concluded that the behavior violated the rules of professional conduct raised by Ms. Monserrate. This is all very true. It also underscores what we all know: to make the remark was wrong.

Judge Besosa sanctioned Mr. Salas, requiring him to pay the attorney fees for bringing the motion for sanctions and to complete a continuing legal education course on professionalism. The judge found as mitigating circumstances that the incident was isolated, that Mr. Salas immediately and subsequently apologized and acknowledged on the record that his comment was improper and that Mr. Salas demonstrated regret to the Court.

In weighing what sanction to impose, the judge considered other authorities where sanctions were imposed for sexist or demeaning behavior on the basis of gender, including the following.

**Principe v. Assay Partners**

(586 N.Y.S.2d 182, 185 (Sup. Ct. 1992))

In this 1992 trial court decision from New York, an attorney was sanctioned for making repeated remarks during a deposition in front of numerous attorneys, the witness, and the court reporter, including: “I don’t have to talk to you, little lady”; “Tell that little mouse over there to pipe down”; “What do you know, young girl”; “Be quiet, little girl”; “Go away, little girl.” The comments were accompanied by disparaging gestures “dismissively flicking his fingers and waving a back hand...” The sanctioning court said, “It takes no great scrutiny to determine that the remarks made... are improper.” (Id. at 185). The court described the words as “a paradigm of rudeness,” reasoning that the words “condescend, disparage, and degrade a colleague upon the basis that she is female.” (Id. at 184).

In concluding that the remarks warranted sanctions, the court explained that “condemnation of such improper remarks springs from a growing recognition of the seriousness of gender bias and that bias of any kind cannot be permitted to find a safe haven in the practice of law or in the workings of the courts and the judiciary.” (Id. at 185). The court cited many articles and studies demonstrating that gender bias is a pervasive problem in the legal profession, and that such discriminatory conduct is improper. The court stated a standard of “a reasonable attorney” by which to measure the conduct, and concluded that given the rules applicable to professional conduct, the conduct was sanctionable because “any reasonable attorney must be held to be well aware of the need for civility, to avoid abusive and discriminatory conduct, to conduct proper depositions, to eschew obstructionist tactics, and to generally abide by the norms of accepted practice.” These standards provide a good measure for any court considering sanctions for disparaging remarks based on gender, or any other category of bias defined by Washington’s professional rules.

**Mullaney v. Aude**


The salient parts of this disturbing read include an attorney disparaging the plaintiff, who was suing her former boyfriend for infecting her with herpes, when she left her deposition to retrieve a document from her car. Defendant’s attorney (Mr. Harris) remarked that she was going to meet “another boyfriend” at the car. Both of plaintiff’s counsel (Mr. Bernstein and Ms. Green) told him his comment was in poor taste and asked him to refrain from further derogatory comments. This led to an exchange where the defendant’s attorney found a new target in plaintiff’s female counsel, as follows at 644-45:

> **Mr. Mullaney (the defendant):** It’s going to be a fun trial.
> **Mr. Harris:** It must have been in poor taste if Miss Green says it was in poor taste. It must have really been in poor taste.
> **Ms. Green:** You got a problem with me?
> **Mr. Harris:** No, I don’t have any problem with you, babe.
> **Ms. Green:** Babe? You called me babe? What generation are you from?
> **Mr. Harris:** At least I didn’t call you a bimbo.
> **Mr. Lipitz (co-counsel to Mr. Harris):** Cut it out.
> **Ms. Green:** The committee will enjoy hearing about that.
> **Mr. Bernstein:** Alan, you ought to stay out of the gutter.

On appeal of the sanctions imposed by the trial court for the deposition conduct, the appellate court concluded that it “unequivocally rejects” the sanctioned attorney’s assertion that the behavior was not sexist or disruptive to the discovery process. The court declared that undermining attorneys through use of gender is an impermissible strategy sometimes termed “sexual trial tactics.”

As seen in the Puerto Rico case, the attorney in Mullaney attempted to defend his behavior with an *ad hoc* excuse. Mr. Harris argued that “babe” was not derogatory but a “sign of approbation” in reference to Babe Ruth and Babe Didrikson, a talented female athlete. Attorneys willing to demonstrate poor judgment and unrestrained sexism during a deposition where no referee or authority is present appear to become far less cavalier when their behavior is documented in court files and censure or sanction hangs above them. Fortunately for the profession, in these cases their fabricated justifications landed nowhere. Additionally, in this case the offending attorney’s partner urged the attorney...
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Attorneys should be armed with the knowledge that they need not feel forced to continue depositions in such degrading circumstances. No female attorney should ever suffer through such an intolerable test of composure. The cost of the behavior was not only a personal exaction on its target, but disrupted this attorney’s concentration and her ability to gather evidence for her client. The sanctionable behavior undermined the process of litigation and gained unfair advantage. We must educate ourselves and our colleagues so that we all know in advance that recourse to the courts is the best antidote to such violations of the professional rules. Continue the deposition, order the transcript, and seek that assistance.

In re Plaza Hotel Corp.
(111 B.R. 882 (E. Dist. Cal 1990))

In this bankruptcy matter, the bankruptcy judge affirmed disqualification of the debtor’s counsel based on a conflict of interest and made a point to condemn the gender discrimination it witnessed by the disqualified attorney against the female attorney for the United States Trustee. Apparently, in defending his right to continue as counsel, the attorney thought it would help if he referred to the attorney for the United States Trustee as “office help” “even when he knew that she was a lawyer and knew that she had presided over the section 341 meeting.” The attorney explained to the court that he did not respond to her request for full disclosure of his apparent conflict of interest because “she decided that she knew more than the court and that her job title was not sufficiently exalted.” (111 B.R. at 892). The bankruptcy judge took umbrage, remarking, “Gender-biased remarks are unworthy of counsel who appear in federal court, interfere with the orderly conduct of federal litigation in an atmosphere of equal justice, and are as sanctionable as the casting of racial or ethnic epithets and slurs among counsel.”

The judge found that the behavior reflected on the attorney’s ability to assist the debtor in discharging its duties to cooperate with the Chapter 11 Trustee and the United States Trustee and further supported disqualification. How satisfying to see this attorney’s improper gender attack backfire.

Conclusion
Fortunately, the vast majority of our Washington bar would never stoop to the levels seen in the examples above. And I do not suggest that attorneys run to the court for every slight or incident of poor behavior by counsel with whom they cross paths. But I do suggest that all attorneys keep these cases in mind. They can serve as a check on personal behavior. They can remind us to speak out when we see behavior that warrants an objection, even when not directed at us and no matter how stunned we might feel in the moment. And these cases can encourage us to use our professional rules to lift the conduct of all bar members. Airing of sanctionable behavior, and a firm renunciation of it by our judiciary, benefits all of us.

RPC 8.3(a) counsels that a lawyer “should” inform the Bar Association if he or she knows that another lawyer has committed a violation of the professional rules “that raises a substantial question as to that lawyer’s... fitness as a lawyer....” The above cases show that gender-biased attacks on female counsel reflect on fitness. Such behavior is “palpably adverse to the goals of justice and the legal profession.” It perpetuates lack of gender diversity in the profession and among chief trial counsel. It interferes with the orderly conduct of the judicial system in an atmosphere of equal justice.

I tip my hat to Ms. Monserrate and Judge Besosa, and all the other attorneys — advocates and judges — involved in these cases who stood up for their colleagues and for professionalism. NWL

Laddcap Value Partners, LP v. Lowenstein Sandler P.C.

This case arose from repeated inappropriate remarks by a more experienced male attorney toward an inexperienced female attorney taking her first deposition. These remarks over three days included an inquiry on the record whether she is married and why she is not wearing a wedding ring, stating that she has “a cute little thing going on,” stating that his defense of the deposition is “nothing personal, dear,” connecting her to Attila the Hun, and stating that she’s “gonna be one sorry girl” if she tries the case, all while making impermissibly speaking objections and testifying for the witness. During the deposition, the witness supported his attorney’s demeaning conduct by badgering her. The New York trial court, citing Principe v. Assay Partners, supra, granted the female attorney’s motion requiring that all future depositions take place at the courthouse before a referee.

to “cut it out,” unlike in the Puerto Rico case, where all observers remained silent during the exchange at issue.

The Maryland court explained the improper advantage gained by attorneys who demean co-counsel on the basis of gender and also bristled at the suggestion that such comments are within the bounds of acceptable “hardball” litigation. Finally, in affirming the sanctions the court applauded Ms. Green for the motion and its role in respecting and protecting the profession is important. As a profession, we must support and approve the efforts of our colleagues to expose and correct abuses. We should not expect or desire that fellow attorneys stay quiet or address such important issues in the hallway or not at all.

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AVERIL BUDGE ROTHROCK focuses her practice on appellate review in the Seattle office of the Pacific Northwest regional firm Schwabe, Williamson & Wyatt. She takes a special interest in the advancement of women in the legal profession. She can be reached at averillbrothrock@schwabe.com.
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A Profession of Leadership

The Importance of Collegiality

by Sean Davis

ostensibly, we are members of a profession that is malign, despised, and ridiculed, but it is a profession of leaders nonetheless. Jokes and commentary casting lawyers in a negative light are abundant. A few historic examples include: “A countryman between two lawyers is like a fish between two cats” (Benjamin Franklin); “It is the trade of lawyers to question everything, yield nothing, and talk by the hour” (Thomas Jefferson); “I have come to the conclusion that one useless man is called a disgrace, two men are called a law firm…” (John Adams).

These statements about our legal profession, some made by fellow members of the bar, speak to the shortcomings of our profession. But to a larger degree, statements like these speak to our visibility and responsibility to society. Our society has endowed attorneys with a host of tools vital to its very existence.

Naturally, that endowment imposes upon the profession a high degree of responsibility. We are regularly called upon when circumstances are at their worst and when stakes are highest: charged with guiding and informing decisions, often between two or more undesirable outcomes. Our willingness to speak up, remain silent, or provide influence through other means is a form of leadership: good, bad, or otherwise.

Attorneys as leaders

Obvious examples of the manner in which attorneys assume leadership roles are readily apparent. For nearly the past two decades, the highest office in our state has been held by a member of our profession. In business, attorneys lead. The CEO of Goldman Sachs, Lloyd Blankfein, is a graduate of Harvard Law. Entrepreneur Elizabeth Holloway Marston, who helped create the iconic character Wonder Woman, was a lawyer. Mahatma Gandhi practiced in Bombay, India, after studying law at University College London, and becoming an English barrister in 1891.

The ways that society recognizes our leadership also includes less formal situations. For example, there are those numerous occasions when non-lawyers seek an attorney’s opinion on important issues, simply because he or she is an attorney. “Hey, you’re an attorney, what’s your take on…” Given the nature of our profession, the response we provide tends to carry significant weight with the hearer. The value of an attorney’s perspective beyond technical legal advice is encapsulated in Washington’s Rules of Professional Conduct, especially Rule 2.1 (“Advisor”), which states:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.

That an attorney’s role as a counselor may include non-legal considerations, such as moral, economic, and social and political factors, that may be relevant to the client’s situation.

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... reaffirm our commitment to the rule of law and its fundamental importance for political dialogue and cooperation among all States and for the further development of the three main pillars upon which the United Nations is built: international peace and security, human rights and development. We agree that our collective response to the challenges and opportunities arising from the many complex political, social and economic transformations before us must be guided by the rule of law, as it is the foundation of friendly and equitable relations between States and the basis on which just and fair societies are built.

The mutual reinforcing of these principles can be seen by two stalwart leaders of our profession, who both applied them as revolutionaries: Thomas Jefferson and Thurgood Marshall.

Thomas Jefferson penned the Declaration of Independence and then immediately returned to his local bar to draft and implement a bill for establishing religious freedom in Virginia. Thurgood Marshall, likewise, provided a voice to the disenfranchised by challenging state-sponsored segregation and winning more cases before the United States Supreme Court than any other American at the time. Both Jefferson and Marshall used their unique position as lawyers to lead social change.

The importance of collegiality

Leadership by lawyers has been and always should be an essential element in increasing the vitality and integrity of the democratic process. However, the great preponderance of leadership by members of our profession doesn't immediately result in parchment with historical significance or large-scale social revolution.

A favorite movie of mine, before entering law school, was The Rainmaker. Matt Damon plays a fresh, nominally employed attorney, who is more often than not mistreated by every senior member of the profession. Those more seasoned in practice tell the young practitioner that they are doing him a favor, while they attempt to manipulate him for their benefit. (Spoiler alert: Matt Damon’s character leaves the profession.)

Unfortunately, in real life, this is how entering the practice of law can play out.

During my brief time as a member of the WSBA Board of Governors, I’ve heard many new attorneys recount instances of poor treatment by more experienced counsel, which appears to only have resulted from their inexperience. These accounts are not simply a matter of tactics, being applied within the confines of our adversarial system, or stringent standards from a managing attorney. For me, they have appeared to be examples of a lack of professionalism and respect for a fellow colleague.

Many smart, talented people are walking out on the profession and it is not simply because “they couldn’t handle it.” For many who left the profession, their decision was because they simply chose not to endure being treated as something less than a fellow attorney by others in their profession. The increasing number of those who join our profession only to leave less than five years later is alarming — especially when coupled with the fact that a majority of the attorneys in Washington are 55 or older and preparing to exit practice during the next five to 10 years.

Fortunately, at least in my own experience, life has tended not to imitate art. As a new trial attorney, I called my first witness and attempted to lay foundation for an important piece of evidence, a photograph. My more experienced opposing counsel astutely, and correctly, repeatedly objected to my attempts. After some quality time with the courtroom handbook on evidence, I laid the proper foundation and the Court accepted the photograph as evidence.

As we later recessed for the day, my opposing counsel stopped me on the way back to my office. He made a point of commending me on the great job I was doing. He need not have done so; he was not my “mentor,” our only relationship was by virtue of the present case, and he had no incentive to build me up with a compliment. He recognized that I was a new member of the profession and chose to engage me in a way that demonstrated leadership.

The simple gesture taken by my opposing colleague demonstrated an important principle: our clients may have a disagreement, our system may be adversarial, our work may be stressful, but we are nonetheless colleagues, equally part of the same highly-regarded profession. As an attorney, you are a leader and leading, whether it is helping the PTA, playing in a basketball league, or encouraging those around you. The “small” moments aren’t always so small.

NOTE

In Praise of Process
The Case of Charlie Will Cauthen
by André M. Peñalver

On Aug. 15, 1963, FBI agents caught up to Charlie Will Cauthen, a 26-year-old black man convicted of killing a white service-station operator in Pike County, Georgia. Cauthen had escaped his prison cell on March 26, 1959, three days before his scheduled execution. Outside the prison walls, he jumped on the first freight train that passed his way, a train that happened to be heading to Wenatchee. From Wenatchee, Cauthen made his way to the small town of Warden, about 100 miles southwest of Spokane. There, Cauthen had been working as a farmhand under the assumed name of Bob Williams.1

Now in custody in the Spokane County Jail, Cauthen was brought before Justice of the Peace Ellsworth Gump, who read him his constitutional rights. Cauthen insisted he was innocent, so Judge Gump assigned him an attorney, but the process was already underway to extradite Cauthen back to Georgia.2

The Speedy Process of Extradition
The procedure for extradition is found in Article IV, Section 2, of the U.S. Constitution, which requires any fugitive charged in one state and found in another state to “be delivered up” on demand of the executive authority of the state from which the fugitive fled. 18 U.S.C. § 3182 further requires that the demanding state provide a certified copy of an indictment or affidavit. Upon that simple showing, the asylum state “shall cause the fugitive to be delivered” to an agent of the demanding state.

Extradition does not allow for a factual inquiry. As the Court held in Biddinger v. Commissioner of Police, 245 U.S. 128, 132, 133, 38 S. Ct 41 (1917), extradition is a summary proceeding whose design “is, in effect, to eliminate, for this purpose, the boundaries of states, so that each may reach out and bring to speedy trial offenders against its laws from any part of the land.”

In Cauthen’s case, Georgia had more than a certified indictment or affidavit: it had a murder conviction entered by a Georgia jury. By extradition’s ordinary and speedy process, Cauthen’s fate seemed clear, whatever his claims of innocence.

Enter Carl Maxey
If Cauthen stood a chance, it would be in the hands of Carl Maxey, the attorney assigned to Cauthen by Judge Gump.3 Maxey — Eastern Washington’s first black attorney — had a well-earned reputation in criminal defense and civil rights.4

Despite Maxey’s outsized presence in Spokane, he was not from Spokane by birth. He was born in 1924 in Tacoma and immediately put up for adoption. At the age of two, his adoptive parents died, leaving Maxey to the Spokane Children’s Home. When the home’s board voted unanimously to exclude “colored children,” he was placed in a juvenile detention center and then sent to an Indian school in Idaho.5 In Maxey’s words, he had not just started from scratch, but from “black scratch.”6

Though the help of a Jesuit priest and his own determination, Maxey found his way to college and law school, where he earned Gonzaga’s 1950 lightweight collegiate boxing championship. He graduated in 1951 and immediately went to work on civil rights in Spokane. In his very first year, he threatened the Spokane School District with a lawsuit, thus persuading the district to hire its first black teacher in 15 years (and its second ever).7 In the years that followed, he took on all the subtle forms of segregation of the inland Northwest, from redlining in neighborhoods to slanted job hiring to informally segregated night clubs.8 Now, with the help of his co-counsel, Samuel Fancher, Maxey dug into Cauthen’s case.9

Justice in Pike County
Maxey and Fancher traveled down to Pike County, Georgia, to learn more about the court that had convicted Cauthen. The facts that emerged were all that one could fear from Southern justice. The jury was all white: although the county had a sizable black population, it had not had a black juror since Reconstruction. One Pike County judge explained that blacks were not “culturally ready” for jury service.10 At Cauthen’s trial, the state presented 15 witnesses. Cauthen’s court-appointed attorney, who had never tried a case, did not call a single witness. The trial lasted less than a full day. The jury deliberated for about 50 minutes — less time, Maxey noted, than a typical drunk-driving case in Washington.11

Based on such a “pitiful” process, Maxey argued that the conviction was unconstitutional.12 In December 1963, he argued his case in front of U.S. District Court Judge Charles Powell, petitioning the court for a writ of habeas corpus to secure Cauthen’s release. On Jan. 10, 1964, Judge Powell denied the petition but pro-
vided for the governor’s right to decide on extradition. Cauthen would remain in the Spokane County Jail until the governor made his decision.

Governor Rosellini
The question of what to do with Cauthen now arrived at the desk of Governor Albert Rosellini, perhaps as good an audience as Maxey could hope for. Like Maxey, Rosellini was born in Tacoma, and although he did not start from “black scratch,” he also knew something of adversity: he began working at the age of seven, and by age nine, he had worked at a door factory, a meat market, and a pharmacy.

When Rosellini was still a teenager, his father — a saloon keeper — went to prison on drug charges. Rosellini decided to go to law school. He worked his way through the University of Washington, boxing, butchering, and serving as a deckhand. Out of law school, he had his first taste of politics representing tavern owners and distributors in fighting Prohibition-era liquor laws. In 1938, at the age of 29, he became Washington’s youngest state senator and an energetic spokesman for the New Deal politics of his day.

Both as a legislator and after his election as governor in 1956, Rosellini embraced active, good government. He took on prison reform when Washington’s prisoners were still kept in manacles and using buckets for toilets. He pushed for the floating bridge that now bears his name. He built the UW Medical Center to support the medical school that he first proposed as a senator. And now he had to decide what to do with Cauthen.

The Decision
In the breathing space that Judge Powell created, a groundswell of support formed for Cauthen. Cauthen’s employer in Warden, John Zirker, publicly backed Cauthen, calling him “the best man I ever had on my farm.” Newspapers across the state told the details of Cauthen’s trial. Citizens of Warden orchestrated multiple letter-writing drives urging Rosellini to refuse extradition. The ACLU submitted a brief on Cauthen’s behalf. A petition of over 5,000 names demanded his release.

Weighing the low burden of extradition against the extraordinary facts that Maxey had uncovered, Rosellini finally announced his decision on March 16, 1964: he was denying the extradition request because there is “serious doubt as to [Cauthen’s] guilt,” and “public interest and the best ends of justice would be served by refusing extradition.” The only condition of Cauthen’s asylum was that he report periodically to a parole officer.

Governor Carl Sanders of Georgia fumed, “The burden of Cauthen’s guilt rests now upon the State of Washington. It is they who must assume the responsibility of [Cauthen’s] actions.” Pike County Sheriff J. A. Riggins called the decision “one of the dirtiest deals ever handled.”

In spite of Sanders’s dire warnings, Cauthen returned to Warden, changed his name to Bob Williams, married and had children, moved to Spokane, and became — in his lawyer’s words — “a good citizen of the state of Washington.”

A Final Thought
Lawyers dwell in process — rules, forms, deadlines, waiting periods — and the process often seems unnecessary and unwelcoming. At times, it seems utterly pointless. (Service by publication comes to mind.) Such might even be the case for an ordinary extradition. But on occasion, a tired process in the right hands can work a miracle. That was the case for Carl Maxey and Charlie Cauthen.
andré M. Peña Ver is an assistant United States attorney in Tacoma. He is grateful to Spokane journalist Jim Kershner for his research on Carl Maxey and Charlie Cauthen and to the Spokane Chronicle, Seattle Times, and Seattle Weekly for their well-stocked archives. He can be reached at ampenalver@gmail.com.

NOTES


3. Id.


5. Id.


7. Supra n. 4.

8. “Carl Maxey: Fighting to transform the law, 100 Years at Gonzaga Law,” available at www.law100.gonzaga.edu/transformation/carl-maxey.

9. Supra n. 6, at 116.

10. Id., at 115, 116.


12. Id., at 115.


14. Supra n. 2.


16. Id.


20. Supra n. 6, at 113.

21. See supra, throughout.


23. Supra n. 6, at 116.

24. Id., at 115.


28. Supra n. 6, at 119.
For the majority of people who are out at the mall, or a restaurant, or any type of public place, going to the bathroom does not result in a major conundrum. There is no angst, no uncertainty, no fear — well, except for a few service station bathrooms that put fear into anyone. If you are cisgender, you use the bathroom that matches your biological gender. The same, unfortunately, is not true for transgender women and men, who are faced with the question of whether to go to the bathroom or to hold it — neither being a great choice. Going to the bathroom means deciding which one to use. For a transgender woman, does she use the women’s bathroom and get harassed? Does she use the men’s bathroom — a bathroom of the opposite sex and one where she will be harassed? Or does she hold the need to go to the bathroom, resulting in discomfort, health risks, or emotional trauma?

The Washington State Human Rights Commission (HRC) has now answered the question: you use the bathroom, the locker room, the shower room, or the dressing room to which you gender identify. Whether you agree with the HRC or not (and having frontline experience with this, I know that there are a number of those who do not), this article will give all who represent stores, schools, gyms, service stations, hotels/motels, and other places of public accommodations the basic information you will need to properly advise your clients. These are questions that your clients (and the general public) will likely ask.

As for you employment lawyers, the HRC has promulgated new rules regarding employment practices involving transgender women and men — but that is a topic for another day and another author.

What are the new rules?
In short, Washington Administrative Code (WAC) 162-32-060 requires all places of public accommodation to allow their patrons/users/guests, etc., to use gender-segregated facilities to which they gender identify.
WAC 162-32-060 Gender-segregated facilities.

(1) Facility Use. All covered entities shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless or emergency shelters, that are consistent with that individual’s gender expression or gender identity.

In such facilities where undressing in the presence of others occurs, covered entities shall allow access to and use of a facility consistent with that individual’s gender expression or gender identity.

(2) Cannot require use inconsistent with gender expression or gender identity. A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual’s gender expression or gender identity, or request or require an individual to use a separate or gender-neutral facility.

(a) If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person’s gender expression or gender identity, the person expressing discomfort should be directed to a separate or gender-neutral facility, if available.

(b) Any action taken against a person who is using a restroom or other gender-segregated facility, such as removing a person, should be taken due to that person’s actions or behavior while in the facility, and must be unrelated to gender expression or gender identity. The same standards of conduct and behavior must be consistently applied to all facility users, regardless of gender expression or gender identity …

(4) Provision of options encouraged. Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing area, that are available to any individual desiring privacy.

Here are some examples. Maura, a transgender woman, is in a department store and has to use the bathroom — she uses the women’s bathroom. She is at her local gym and wants to change into her workout clothes and shower afterwards — she uses the women’s locker room and shower. John, a transgender boy, age 16, goes to a public high school. He uses the boys’ restroom and locker room. John goes to a water park during the summer and uses the boys’ locker facilities.

Could a lawsuit challenge the authority of the HRC to enact the new rules?

Given the nature of the WLAD and the deference shown to state agencies, a successful challenge is unlikely.

To start with, the Legislature itself mandated that the WLAD be construed liberally — that includes the definition of what constitutes a place of public accommodation. RCW 49.60.020 provides: “The provisions of this chapter shall be construed liberally — that includes the definition of what constitutes a place of public accommodation.” Tenino Aerie v. Grand Aerie, 148 Wn.2d 224, 255, 59 P.3d 655 (2002). Exceptions are narrowly construed. Id. at 247.

Next, any rule promulgated by the HRC is presumed to be valid. “Administrative rules adopted pursuant to a legislative grant of authority are presumed valid and will be upheld on review if they are reasonably consistent with the statute being implemented.” Gugin v. Sonico, Inc., 68 Wn. App. 826, 829, 846 P.2d 571 (1993). An administrative agency, however, does not have the authority to amend or change legislative enactments. Id. The agency may fill in gaps if the rules are necessary to implement the general statutory scheme. Id.

Legal Protections for Transgender People

The federal government has not yet passed laws protecting transgender people; however, some states have enacted such legislation. California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia all have laws that prohibit discrimination against transgender people. Their protections vary. For example, Nevada’s law bans discrimination in employment, housing, and public accommodations like restaurants, hospitals, and retail stores; Maine’s law covers those categories plus access to credit and education.

At least 200 cities and counties have banned gender identity discrimination including Atlanta, Austin, Boise, Buffalo, Cincinnati, Dallas, El Paso, Indianapolis, Kansas City, Louisville, Milwaukee, New Orleans, New York City, Philadelphia, Phoenix, Pittsburgh, and San Antonio, as well as many smaller towns.

The governors of Indiana, Kentucky, Michigan, New York, and Pennsylvania have issued executive orders banning discrimination against transgender state workers. Some cities and counties have also protected their transgender public employees through local ordinances, charter provisions, or other means.

When did “sexual orientation,” “gender identity,” and “gender expression” become part of the WLAD?

In 2006, the Washington Legislature amended the WLAD to include sexual orientation as a protected class. RCW 49.60.030(1)(b) provides that a person has the right to enjoy places of public accommodation and not be denied that right because of, among other things, sex or sexual orientation. RCW 49.60.215(1) makes it an unfair practice for any place of public accommodation to deny someone the use of that place based upon, among other things, sex and sexual orientation.

In 2006 the Legislature, in RCW 49.60.040(15), provided the definition of “sexual orientation.”

Sexual orientation means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, “gender expression or identity” means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth. RCW 49.60.040(15).

Can a business argue that it is not a place of public accommodation?

If the business is inviting the public to patronize its business, then the answer is no. RCW 49.60.040(10) provides a definition that is extremely broad, specifically identifying such facilities as housing or lodging for transient guests, places that sell goods and services, the stations and terminals for land, water, and air carriers, places where food and beverages are sold for consumption on the premises, places of public amusement and entertainment, sports, and recreation (whether those places charge a fee or not), places providing medical care, public halls, washrooms of public buildings and structures occupied by two or more tenants, public libraries, public educational institutions, nursery schools, daycare centers, and children’s camps. (Educational facilities operated by a bona fide religious or sectarian institution do not fall within the scope of the WLAD, as they are specifically excluded from the definition of RCW 49.60.040(10).) The Washington State Fraternal Order of Eagles in 2002 discovered the breadth of that term. In Tenino Aerie v. Grand Aerie, 148 Wn.2d 224, 59 P.3d 655 (2002) the Court upheld the trial court’s entry of summary judgment finding that the Washington Eagles was not a private organization. The Court upheld the trial court’s ruling, even though to become an Eagle, a candidate had to be sponsored by two members and be a male at least age 21 years old, be of good moral character, not connected to the Communist party, and profess a belief in a Supreme Being. Id. at 254. The Court reiterated that the legislature mandated a liberal reading of what constitutes a “public accommodation.” Id. at 255.

Any entity claiming that it is not a place of public accommodation has the burden of proving that it is a distinctly
private place of accommodation not sub-
ject to the WLAD. Apilado v. North Amer-
ican Gay Amateur Athletic Alliance, 792

Can the state Legislature revise
the Law Against Discrimination
to reverse the HRC’s rule?

The short answer is yes, the state Leg-
sislature always has the ability to amend
the authorization, states the WLAD. An
attempt to revise the HRC’s action, how-
ever, failed to pass the Senate in Febru-
ary and a similar bill did not receive a

hearing in the House Judiciary Commit-
tee. Thus there will not be any legisla-
tive action this term. There is talk that
an initiative might be filed seeking to
overturn these new rules.

What can the HRC do if
someone complains that a
place of public accommodation
violates the new rules?

The HRC has the authority to conduct
hearings to investigate complaints and
has the power to subpoena witnesses
and compel them to testify and require

the production of documents. RCW
49.60.140 and 150. The HRC will work
with the parties to see whether a reso-
lution can be reached. If the parties do
not agree to a resolution, then the HRC
has the authority to file a complaint
before an administrative law judge.
RCW 49.60.250. The HRC may seek
enforcement of an administrative law
judge’s decision in superior court. RCW
49.60.260.

What can a person do if
they believe that a place of
public accommodation has
discriminated against them in
violation of the WLAD?

A person who has been harmed by a
place of public accommodation discrim-
inating against them because of their
gender identification or expression has
the right to bring suit against the offend-
ing party to recover “actual damages.”
RCW 49.60.020(2) “Actual damages”
include mental anguish and emotional
Co. 19 Wn. App. 48, 57-58, 573 P.2d 389
(1978). In addition, plaintiff is entitled to
recover attorney fees and costs.

There is no longer any question
about which bathroom to use.

More importantly for your clients, there
is no question as to how they must con-
duct themselves in order to comply
with the law. They must allow their
patrons to use the bathrooms, locker
rooms, showers, and other segregated
facilities to which they gender identify.
Failing to do so will expose your clients
to an action by the HRC and an action
by the patron who was treated differ-
ently because of their gender identity
or gender expression. NWL.
We’re living through a data revolution. People often loosely (and incorrectly) refer to the idea that something is growing “exponentially,” but the sheer volume of data — about people, places, things, phenomena — actually is growing exponentially. As our lives are increasingly digitized and sensors of every type are proliferating, data comes from everywhere. In fact, more than 90% of the data ever created, since the first text on clay tablets, was created in the past two years. And it is important to recognize that “data” is not just numbers. Every tweet on Twitter (more than 500 million per day), every Facebook “like” (more than 3 billion per day), and every “selfie” and every other image digitally captured (also about 3 billion daily) is data. What is more, it is all cheap to store.

The creation of all of this data is just the beginning of the revolution. The power of “big data” is not in its mere creation, or storage, but in its analysis. In just the past few years, the availability of greater computer processing power and new analytical techniques have come together to enable researchers to extract valuable insights from big data. All aspects of our lives — from health, education, and housing, to employment — are being reinvented by big data discoveries. And the legal profession is no exception. Big data will provide lawyers with powerful new tools to reinvent the way we work and shape the law, particularly in the areas of privacy and civil rights.

What sets big data apart from traditional data analysis?

Big data differs from traditional data analytics in several key ways. Most obviously, big data analysis operates on massively large data sets. Some have described this work as finding a needle in a haystack. A traditional medical study, for example, might involve just dozens or perhaps hundreds of people, and a control group. A big data medical study, by contrast, would entail records from hundreds of thousands or even millions of people.

Unlike traditional data analysis, big data is quite mysterious. It’s not always clear what the needle will look like in the haystack. Big data analysis looks for patterns and may reveal unexpected facts or trends — or even secrets. These patterns can be subtle — so subtle that they cannot be discerned absent sophisticated analysis of a great deal of data. And yet they are real.

More than 10 years ago, Microsoft researchers applied nascent big data techniques to build a grammar checker. They pulled their data — text — from news articles, scientific abstracts, transcripts, and literature. They found training their grammar checker on increasingly large data sets made it more accurate. When trained with a corpus of 500,000 words, the grammar checker was about 75% accurate — not good enough. Only when the grammar checker was trained with one billion words were patterns revealed that enabled it to be 95% accurate. The fact that these subtle patterns cannot be discerned other than by advanced analytics lends to the air of mystery surrounding the business of big data.

Big data also allows for the analysis of widely disparate data sets. Data col-
This technology, which could be useful in to identify their best approach in every clients with statistical model capabilities. Big data is already making a difference data insights. One area where this big data decision-making models borne out of big data to model the future and make informed predictions about it, more so than traditional data analysis. The applications are endless. Which direction is demand for a particular product likely to go? Who is most likely to commit a crime? (Yes, data scientists and law enforcement officials are analyzing that.) When and where is a deadly accident most likely to occur? Who is most likely to need a particular service?

**How will big data reinvent the way we work?**

Big data will dramatically change the art and science of lawyering. Data analysis will become an integral part of the legal profession and big data will provide powerful tools to enhance our productivity. Here are just a few ways big data will change the way we work.

Lawyers will embrace big data technologies to model the future and make better decisions faster. Lawyers used to be able to make a career out of killer instincts. These lawyers knew, based on personal experience, luck, or both, the best approach to take to achieve great outcomes for their clients. Today, savvy lawyers and their organizations are less apt to take chances. They will determine the best approach by leveraging powerful decision-making models born out of big data insights. One area where this big data technology is already making a difference is patent law. Today, Juristat provides its clients with statistical model capabilities to identify their best approach in every aspect of the patent application process. This technology, which could be useful in other legal fields, can help patent lawyers customize strategies for their clients and obtain more predictable results.

Law firms and legal departments will look to data scientists for an edge. With the help of data scientists, they will use big data insights to be more agile and improve efficiencies. Many of the organizations we work in have already accumulated large amounts of data. Past employment records, performance evaluations, operational expenses, productivity reports, billing records, and marketing data may shine a light on business trends and predict future outcomes. General counsel, managing partners, and business managers will need expert help to extract insights about their own practices from this data. What secrets can be gleaned from seemingly disparate internal data sets that can be used to recruit and retain top talent, drive client satisfaction, and set billing rates? Firm marketing managers may also need help using this data to better understand the marketplace. Data scientists can also help firms identify new clients, spot social trends, and improve their brand by combining this information with other sources of data, such as social media information.

Finally, lawyers will harness the powers of big data to size up their clients, opponents, and witnesses. Many lawyers claim they are excellent judges of character, which can be an incredibly helpful skill in every area of law. But are we better than Facebook at accessing an individual’s personality traits and preferences? Turns out, the answer is likely not. By analyzing individuals’ likes on Facebook, researchers could evaluate people on five major psychological traits: openness, conscientiousness, extraversion, agreeableness, and neuroticism. With just 10 likes, the researchers’ big data model would know someone as well as a work colleague; with more than 70, the model would get to the level of a friend or roommate; and with more than 300 to the level of a spouse or close relative. Lawyers will turn to big data to evaluate others when it matters most preparing for voir dire, evaluating potential clients, and sizing up witnesses and experts. Relying on big data analytics to predict people’s preferences or predict behaviors could dramatically improve outcomes for their clients.

**How will big data shape the law?**

Big data discoveries and innovation make headlines nearly every day. But there are many unsettling aspects about the big data revolution. Consumer protection and civil rights advocates, lawmakers, privacy watchdogs, and legal scholars are wary of big data analytics. In the coming years, big data will shape the law by driving new regulations, legislation, and case law, particularly in the areas of privacy and discrimination.

Traditional privacy law was not developed with data analytics in mind. Privacy laws today focus largely on controlling the collection and retention of personal data, requiring organizations to inform people about data collection and its purpose, and getting consent to collect data for that specific purpose. But because big data often operates by creating data sets from many smaller collections of data, or combining widely disparate data sets, people are in the dark about what information has been gathered and how it’s being used.

Regulators, lawmakers, and consumers are pushing organizations to be more transparent about how they are applying data analytics to people. The Federal Trade Commission (FTC) recently opined that the issue will become more urgent, and Commissioner Julie Brill publicly launched a “call to arms” for technologists, seeking input from thought leaders in academia, policy, and business on creative ways to give consumers meaningful information about how companies are using their data. As big data innovations transform the world around us, we will likely see more consumer privacy protections, in some combination of legislation, policies, and self-regulatory codes of conduct.

Anti-discrimination laws were not developed with data analytics in mind either, but consumer protection and civil rights laws may offer protection as they apply to the potential discriminatory effects of big data practices. These laws, such as the Fair Credit Reporting Act (FCRA), Title VII of
the Civil Rights Act of 1964, and the Genetic Information Nondiscrimination Act (GINA), may provide protections against the concerns raised by advocates who fear big data will be used to harm low-income and underserved communities. Researchers have pointed out that even if organizations are very careful, there is potential for incorporating bias and error at every stage of big data analytics. And whether intentional or not, big data technologies could be used to discriminate against vulnerable groups or have a disparate impact on a protected class.

Regulators and organizations around the world are worried that potential discriminatory uses of data will derail the powerful, beneficial innovations of the big data revolution and are taking steps to prevent discrimination. In January 2016, the FTC published a report titled “Big Data: A Tool for Inclusion and Exclusion.” This report contains practical guidance for organizations to avoid mistakes and errors when engaging in big data analytics. This guidance, along with greater transparency from organizations regarding the use of data, will help minimize the risks big data presents. That said, it is likely we’ll see regulatory investigations and cases in the coming years that clarify how well existing laws protect individuals from discrimination resulting from big data analytics.

In summary, it’s important to understand the power of big data. It can transform our lives in countless, positive ways. But it has potential for misuse. As lawyers, we have an important role in ensuring big data technologies, whether in our hands or our clients’, are used responsibly.

Laura O. Lemire is an attorney in Microsoft’s Regulatory Affairs group in Redmond. She advises on privacy and security matters worldwide and shapes policies and regulations for new technologies. She is a graduate of Seattle University School of Law and the University of Michigan. She can be reached at lauralem@microsoft.com.
The Dawning of Disaster Law

by Clifford J. Villa

Disaster law. You may never have heard of it. You might reasonably wonder whether such a thing really exists. But consider: have you ever helped a client recover from a fire or flood? An earthquake or landslide or tornado or hurricane? If you have seen such things in your practice or personal life, or can imagine their consequences, wouldn’t it be something if you, as a lawyer, could help a client recover to a stronger place after a disaster? Or perhaps help a client to respond more effectively during a disaster? Or even better, prevent a disaster from happening in the first place?

Can you prevent a disaster from happening? We tend to think of disasters as natural phenomena, a so-called “Act of God” — one that just happens, leaving behind tragedy and loss. But to take one recent, tragic example in the state of Washington: the Oso landslide on March 22, 2014. Did the landslide have to happen, or might it have been precipitated by improper timber harvesting at the top of the slope? And if the landslide was inevitable — gravity wins, after all — was it inevitable that 43 people would die? Could this tragedy have been prevented by application or enforcement of zoning codes, perhaps?

In the growing law and literature of disaster law, which largely emerged in response to Hurricane Katrina in 2005, disasters are defined not by reference to any natural phenomena but in reference to effects and the efforts needed to recover. Thus, a landslide of the same magnitude of Oso that occurs within the vast interior of Alaska, affecting no one, is not disaster. If a tree falls in the forest … that’s what trees sometimes do.

The legal literature, law, and national policy of disasters have also moved away from concern for “natural disasters.” What is “natural,” after all? Was the Oso landslide “natural” or was it the result of timber harvesting, residential development, or other human endeavor? For that matter, was Hurricane Katrina a “natural” disaster? Hurricanes occur in nature, but was there something about man-made climate change that helped fuel Katrina’s fury? Was there something
about siting an American city upon the restless Mississippi River delta, or the weak levees to protect the city, or the decimation of protective wetlands that led more directly to the tragedy in New Orleans after the hurricane winds had passed? Questions like these have led some policymakers and commentators to conclude that “there is no such thing as a natural disaster.”

What really matters, what unites disasters of all stripes, including earthquakes in Japan, tornadoes in Oklahoma, oil spills in the Gulf of Mexico, and the terrorist attacks on 9/11, is how you respond during the disaster, how you recover from it afterwards, and how you prepare — or better, prevent — the next disaster from happening. This is what disaster theorists, including Professor Dan Farber at Berkeley Law, term the “disaster cycle.” In simplest terms: readiness, response, and recovery.

Conventional wisdom usually conceives of a lawyer’s role in the disaster cycle as limited to the recovery phase. And probably for good reason: this is where investigations are conducted, insurance claims submitted, and lawsuits filed. In the recovery phase, people want to know, “Who is to blame for this?” and, “Who can I sue?” Such lawsuits may then proceed and continue for years and even decades, as in the litigation following the 1989 oil spill from the Exxon Valdez, for example. Lawyers prosecuting such cases may face significant questions of causation and damages. On the other side, lawyers defending such cases may find little reliance upon common law constructs such as “Act of God,” which in modern expression requires not only a “natural phenomena,” but effects “which could not have been prevented or avoided by the exercise of due care or foresight.” See, for example, Section 101(1) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Outside of the recovery phase, lawyers may also find significant roles in the response phase of disasters. The response phase may be conceived as beginning in the immediate or imminent occurrence of the disastrous event. When the earthquake hits, the tornado strikes, the hurricane makes landfall, private entities, local responders, and agencies on all levels of government may need immediate legal advice in order to understand the nature and limits of their response authorities. For example, which agency or agencies would have jurisdiction for an oil spill on the Columbia River? Could the U.S. Coast Guard follow an oil spill in the Salish Sea into Canadian waters? What is the proper role of military forces, including the National Guard and U.S. Army, to maintain civil order? Does a relief shelter have to make accommodations for household pets or religious practices? Does the Fourth Amendment still apply to private residences after a community has been evacuated? Can grocery stores donate food without risk of liability if someone gets sick? Can volunteers assist search-and-rescue operations without proper training? The potential list of problems faced is endless.
legal questions during the response phase may continue endlessly. For this reason, response organizations are increasingly seeking the assistance of legal counsel during response efforts, helping client agencies and entities make good, defensible decisions and minimizing damages, liabilities, and even loss of life.

Before any disaster strikes, the best that anyone might do would be to help prevent it from happening. Short of prevention, the readiness phase of the disaster cycle seeks to prepare organizations and individuals in order to respond most effectively and recover quickly. Much about readiness is simply common sense, from locating the nearest exits in a movie theater to making a home disaster kit. Readiness may also be about good business practices, such as maintaining off-site copies of client information if your law offices are flooded. In some cases, readiness may also be a matter of law, as certain industrial facilities are required to maintain Risk Management Plans under Clean Air Act Section 112(r). Smart lawyers may help their clients to understand all elements of readiness applicable or available in their sectors.

Beyond the disaster cycle, another element that helps define disaster law is a unique body of law and policy. In terms of code, the principal federal statute in disaster law is known as the Stafford Act. The Stafford Act establishes the familiar process you may hear on TV of state governors requesting a federal disaster declaration in the wake of a flood, fire, or other calamity. Upon the request of a state governor — or more recently, a tribal executive — the Stafford Act authorizes the president to declare a “major disaster” and “emergency,” which, in turn, trigger different legal implications. In general, an “emergency” may be declared immediately after, or even in anticipation of, a catastrophic event. Federal emergencies may be declared, for example, in anticipation of a hurricane making landfall or to ensure security for a presidential inauguration. The declaration of a federal emergency authorizes immediate, but limited, federal funding in order to “save lives and to protect property and public health” (Stafford Act Section 102). By contrast, the declaration of a “major disaster” triggers much broader federal authorities, including resources to help individuals, companies, and local governments rebuild their lives, businesses, and communities. Good lawyers may need to understand the implications of disaster declarations, as well as the resources and limitations of each. For example, following the unprecedented oil spill from the Deepwater Horizon into the Gulf of Mexico in 2010, many states requested federal disaster declarations. Those requests were denied, however, because federal assistance was not needed where the responsible party, BP, was already liable under a different federal statute, the Oil Pollution Act, and was funding the response efforts directly as required by the federal law.

In addition to applicable federal statutes, there is a unique body of federal policy applicable to disasters, including the National Response Framework, the National Disaster Recovery Framework, and the National Preparedness System. Each of these national frameworks is readily available to the public via FEMA.gov. While the National Disaster Recovery Framework is triggered by a disaster declaration, the frameworks for response and preparedness are “always in effect,” to promote a continual readiness to respond to sudden events.

One of the elements required by the National Response Framework is use of the Incident Command System. As described by FEMA, the Incident Command System (ICS) is a “management system designed to enable effective, efficient incident management by integrating a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure.” In essence, ICS helps private entities and agencies on all levels of government to come together quickly and efficiently in order to meet common objectives, such as search and rescue, evacuation, temporary housing, debris removal, and decontamination. By federal order, the use of ICS is required
for all government entities receiving federal funding, which essentially includes all states, tribes, public schools, and universities. Lawyers may directly serve within an ICS structure as a “legal officer,” providing advice to the incident commander or other components of the organization. (For a more thorough discussion of ICS and the emerging role of legal officers, see my article, “Law and Lawyers in the Incident Command System,” available in the digital commons at http://digitalcommons.law.seattleu.edu/sulr/vol36/iss4/2.)

The use of ICS is specifically required by many local codes and state statutes, including RCW 38.52. This also serves as an important reminder that the federal statutes and policies described in this article may find important analogues or supplements in the applicable law and policies of states, tribes, and municipalities. Lawyers engaging in any aspect of disaster law, as in any other practice area, will be well advised to conduct their own careful research and analysis. As yet, few law schools offer dedicated courses in disaster law. However, the website of the ABA Committee on Disaster Response and Preparedness offers a rich collection of materials in this subject area specifically for lawyers, including publications such as A Lawyer’s Guide to Disaster Planning. NWL

Cliff Villa is currently an assistant professor at the University of New Mexico School of Law. Before returning in 2015 to his hometown of Albuquerque, he served for almost 20 years in the Seattle office of the U.S. Environmental Protection Agency, where he provided legal counsel to the EPA emergency response program. He also served on the adjunct faculty at Seattle University School of Law, where he developed and taught the first class on disaster law offered at Seattle U. You can reach him at villa@law.unm.edu.

Bright idea! Advertise in NWLawyer — the WSBA’s official publication!

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Last September, John Mogan and Ashley Duboe robbed a bank, as one does when young and in love. The couple then posted photos of themselves cavorting with wads of stolen cash. They were promptly arrested, of course.

Or take young Floridian Steven Mulhall, who stole the nameplate from the Honorable Michael J. Orlando’s door, then posted a photo of him posing with the sign on his girlfriend’s Facebook page. He was arrested, too.

More prosaically, countless men and women post pictures of themselves with guns on Facebook, MySpace (yes, still), and whatever else kids are using these days, even though some of those same men and women are prohibited from possessing said guns by reason of a prior conviction. Some of them get arrested, too.

None of these tales should surprise us. As a fish takes to water, as a new foal stands and gallops within an hour, humanity had only to behold the Internet before discovering an inherent and astonishing capacity for doing dumb things online. We are born to it. As bystanders, we may shake our heads at those who exercise this birthright. But as lawyers, sometimes we must represent them.

So your client has posted something unwise on Facebook. Your life will be easier if this post does not become government’s Exhibit A. Can you suggest taking it down? Distressingly, the answer is unclear.

Social media is still new legal territory, and there is little body of law on the subject. RPC 3.4(a) prohibits a lawyer from unlawfully obstruct[ing] another party’s access to evidence or unlawfully alter, destroy[ing] or conceal[ing] a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.

Ethics opinions have begun to converge around the proposition that, RPC 3.4(a) notwithstanding, lawyers can advise their clients to shield potentially damaging social media posts. A 2013 New York County Lawyer’s Association ethics opinion held a lawyer could counsel a client to remove social media posts. A 2014 Philadelphia Bar Association opinion reached a slightly different conclusion, holding that a lawyer could not counsel removing a post, but could advise a client to shield it from public view with privacy settings. And the 2014 Social Media Ethics Guidelines of the New York State Bar Association’s Commercial and Federal Litigation Section provides:

A lawyer may advise a client as to what content may be maintained or made private on her social media account, as well as to what content may be “taken down” or removed, whether posted by the client or someone else, as long as there is no violation of common law or any statute, rule, or regulation relating to the preservation of information.

But before you advise a client to take down a damaging post, two notes of caution.

First, each of the opinions mentioned above focused on civil litigation, not criminal prosecution, and the duty to preserve discoverable material under the civil rules. If a post is taken down but its substance preserved, the preservation duty is satisfied. However, the question has not yet been addressed in the criminal law context.

Second, the cited opinions conclude a lawyer may ethically advise a client to take down a post, that is, do so in compliance with the rules of professional conduct, but do not address whether other substantive laws dealing with destroying or concealing evidence would prohibit the conduct. Two such laws are 18 U.S.C. §§ 1512 or 1519. Both statutes prohibit not only destroying records, but also concealing records. Section 1512 prohibits:
corruptly ... alter[ing], destroy[ing], mutilate[ing], or conceal[ing] a re-
cord, document, or other object, or attempt[ing] to do so, with the in-
tent to impair the object's integrity or availability for use in an official
proceeding ....”

Section 1519 prohibits:

knowingly alter[ing], destroy[ing], mutilate[ing], conceal[ing], cover[ing] up, falsify[ing], or mak[ing] a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case....

Neither statute requires that an investigation has actually begun. Further, both § 1512 and § 1519 also prohibit merely concealing evidence, and courts have accepted acts as simple as asking a co-worker to remove a file from a desk as concealment. Removing a Facebook post in connection with a potential investigation, or even shielding it through privacy settings, could be seen as concealing the post.

There are arguments to be made that a lawyer should be able to advise a client to take down damaging posts ethically and legally. Both of the evidence tampering statutes discussed have mental state requirements — that concealment be done “corruptly,” or with an “intent to impede, obstruct, or influence” the proper conduct of an investigation or proceeding. If a lawyer merely follows the growing body of ethical opinions that would allow advising a client to take down social media posts, it is harder to argue he or she acts with a culpable mental state. Also, the ethics opinions conclude advice to take down or make private social media posts, so long as the posts remained available through subpoena, is consistent with RPC 3.4(a) — which prohibits unlawfully concealing evidence. If so shielding a post is not concealment for RPC 3.4(a) purposes, it could be argued it should not count as concealment for § 1512(c) (1) or § 1519 purposes, either.

These arguments have yet to be tested: as noted, social media law is new and unsettled. So proceed with caution, seek advice when necessary, and keep WSBA’s ethics hotline (206-727-8284 or 800-945-WSBA, extension 8284) handy. NWL

NOTES
5. 18 U.S.C. § 1512(c)(1).
7. Under § 1512, “an official proceeding need not be pending or about to be instituted at the time of the offense.” 18 U.S.C. § 1512(f) (1). Under § 1519, it suffices that the concealment be “in relation to or contemplation of any such matter or case.”
8. E.g., United States v. Lessner, 498 F.3d 185, 198 (3rd Cir. 2007) (“Lessner’s admission to calling Verderame and asking her to remove a folder from her desk, even if not to destroy the folder, was an admission to knowingly ‘conceal[ing]’ documents”).
Where have you gone, Atticus Finch?

Go Set a Watchman
by Harper Lee
Harper, 2015, 288 pp., hardcover, also available in paperback and ebook

Reviewed by Daniel J. Morrissey

When critics would attack lawyers as being greedy and servants of the rich, defenders of the profession had a good answer: “What about Atticus Finch?” (Never mind that he was a fictional character.) This response was particularly pronounced among legal educators who wanted to attract high-minded young people to careers in the law. From his creation in the early 1960s, Atticus also served much the same purpose of a moral exemplar for those who argued that even in the pre-Civil Rights era there had been white southerners who defended African-Americans from the injustices of Jim Crow laws.

With the publication of Go Set a Watchman, however, we now have attorney Atticus in his later years presented as quite less than the noble figure of To Kill A Mockingbird. In that classic of 20th-century American literature, countless high school students have read about Atticus defending a black man accused of rape in the rural south of 1935. Watchman is set two decades later in the post-Brown v. Board of Education era. While still the epitome of the Southern gentleman, Atticus is now portrayed as having the upper-crust racial prejudices of his time and culture; yes, blacks are human like us, but to grant them full participation in southern society would degrade a great civilization.

There has been tremendous controversy over how these two books fit together. Watchman, it seems, was Harper Lee’s first literary effort that she submitted for publication in 1957. Her editor suggested that she revise it. Three years and several drafts later, and through his guidance, it appeared in print as Mockingbird, the great novel of the Civil Rights movement. Two years later, it was made into an acclaimed motion picture starring Gregory Peck as a truly memorable Atticus. A draft of Watchman, however, lingered in a safe deposit box. It was purportedly rediscovered recently by Lee’s lawyer, as her client languished in a nursing home, and published with her approval.

Is it plausible that Atticus the patriotic racist of Watchman is the same person as the seemingly altruistic lawyer of Mockingbird? And if so, what does that say about the idealized version of the American lawyer that the profession loves to propagate along with the parallel assertion that there were always righteous Southerners who advocated for the full equality of the black minority?

In Watchman, Atticus’s daughter Scout, who narrates Mockingbird as an insightful six-year-old, is now a grown woman living in New York City and going by her proper name, Jean Louise. She returns home to Alabama for her annual visit, where her father is an arthritic 72. He is still practicing law, but with a junior partner, a childhood friend of Jean Louise who now wants to marry her. Much of the book describes events during the grown Scout’s visit that are in line with the mores of that era’s southern gentry. Those experiences often give way to nostalgic flashbacks of Scout’s teen years surrounding World War II. In one such incident about a discarded pair of falsies that Scout wore to a school dance, Atticus’s reaction is telling: “You don’t seem to understand that down here Negroes are still in our theaters?” “Honey, you don’t seem to understand that down here Negroes are still in our theaters.”

The book moves to the climactic chapter, where Scout confronts her father about his actions and he defends them with justifications that are all too typical of the racial attitudes of his time and region. He declaims about Jefferson’s precept that citizenship should be linked to education and invokes states’ rights as enshrined in the 10th Amendment. He then asks his daughter: “Do you want Negroes by the carloads in our schools and churches and theaters?” “Honey, you don’t seem to understand that down here Negroes are still
in their childhood as people.” “Would you want your state government to be run by people who don’t know how to run them?”

Is this the same Atticus who fiercely defended Tom Robinson, the African-American falsely charged with rape in *Mockingbird*? In *Watchman*, Jean Louise remembers the result there in the case as an unprecedented acquittal, but in *Mockingbird*, despite Atticus’ devastating cross examination of Robinson’s two accusers — Bob Ewell and his daughter Mayella — Robinson is convicted.

Perhaps Lee switched the trial’s outcome to set off the chain of events that leads to the unforgettable conclusion of the *Mockingbird* novel. There Robinison is killed trying to escape from jail, and while Atticus rails at the injustice of all this, Bob Ewell seeks revenge against Atticus for discrediting him. He attacks Scout and her brother Jem returning from a Halloween party, but they are rescued by the mysterious Boo Radley, a recluse scorned by the community. Radley then joins Robinson as the story’s second mockingbird — whom it would be a sin to kill, because unlike predatory birds, it exists only to give pleasure to others.

It seems that Lee and her editor skillfully set aside the original story to achieve this dramatic ending. Yet the important question remains — did the younger and seemingly heroic Atticus of *Mockingbird* have the same racist attitudes as the older attorney of *Watchman*? The answer appears to be yes. To be sure, Atticus in *Mockingbird* soundly condemns as “white trash” those of his race who cheat blacks. Yet some years ago the renowned legal commentator Monroe Freedman pointed out that Atticus did not object to the all-white jury in *Mockingbird*. And the defense attorney’s closing argument there perhaps best gives way how he condones the prejudiced status quo.

For Atticus, only before the law are all equal. While forcefully admonishing the jury of that, he goes out of his way to argue that such acceptance does not apply in other areas. To assure them that he favors no other applications of that principle, Atticus disparages Eleanor Roosevelt and others who were then advocating the full benefits of citizenship for all Americans with this comment: “Thomas Jefferson once said that all men are created equal, a phrase that the Yankees and the distaff side of the Executive Branch in Washington are fond of hurling at us. There is a tendency for some people...to use this phrase out of context, to satisfy all conditions.”

Atticus then goes on in his remarks to the jury to demonstrate what he believes is the folly of that assertion.

*Mockingbird* makes clear that Atticus has agreed to serve as Robinson’s lawyer out of his sense of fidelity to the law — the very institution that accords him his high stature as a leading man of his community. This notion of the lawyer as possessor of special privileges has deep resonance in American jurisprudence. De Tocqueville famously observed in the early 19th century that lawyers were the aristocrats of young America’s classless society, and more recently, Dean Anthony Kronman of Yale Law School in his book *The Lost Lawyer* has called them the civic statesmen of our country.

Noblesse oblige is thus perhaps just as much a motivation for the Atticus of *Mockingbird* as empathy for the human dignity of his client. That such an attitude is mere self-promotion was expressed with cynical insight by another major figure of mid-century American fiction, Holden Caulfield, that profoundly dissatisfied teenager of *The Catcher in the Rye*.

When his younger sister suggests that he become a lawyer like their father, Holden replies, “Lawyers are alright, I guess — but it doesn’t appeal to me. I mean they’re alright if they go around saving innocent guys’ lives all the time, and like that, but you don’t do that kind of stuff if you’re a lawyer. All you do is make a lot of dough and...look like a hot-shot. And besides, even if you did go around saving guys’ lives and all, how would you know if you did it because you really wanted to save guys’ lives, or because you did it because what you really wanted to do was be a terrific lawyer.”

So does *Watchman* strip away the honor of Atticus and reveal his famous integrity as self-delusion? Lawyers are fond of believing that they have a higher calling than, say, “rapacious businessmen.” Yet the question remains: with their privileged knowledge and skills, do they serve any greater purpose than others who are also imbedded in the corrupt or banal culture of their times?

And *Watchman*, like *Mockingbird*, happens to appear at a particularly pronounced “race moment.” We live with terrible events in places like Ferguson, Staten Island, and Charleston. In addition, the pervasive income inequality now apparent in America is at least partially race-based. So we rightly ask, “Do black lives matter?” What would it take to have a genuine conversation about that? One almost despairs of the possibility.

Yet the title *Go Set a Watchman* may provide hope. It appears in a sermon that Jean Louise hears at her Alabama Methodist church and is from Isaiah, the most piercing prophet of the Hebrew Scriptures. His message, carried over by Jesus and Paul, was that sense of true human equality that we all have embedded in our most authentic selves. In her confrontation with her father, Jean Louise tries to force this recognition on Atticus and its corollary that white southerners must treat blacks with simple decency. When Atticus merely responds by saying, “I love you,” Jean Louise answers, “I despise you and everything you stand for.”

Despite that heated exchange, father and daughter have a reconciliation of sorts the next day before Scout leaves for New York, where she accepts her father as a fellow member of the flawed human race. After *Watchman*, however, Atticus is no longer the facile answer to society’s tendency for some people…to use this phrase race-based. So we rightly ask, “Do black lives matter?” What would it take to have a genuine conversation about that? One almost despairs of the possibility.

**Daniel J. Morrissey** is a professor and former dean of Gonzaga University School of Law. He can be reached at morrissey@gonzaga.edu.

**LITERARY LAWYER** provides a venue for WSBA members and others to discuss law-related books and books not-so-law-related. Your book reviews are welcome. Email nwlawyer@wsba.org with your review or to request a guide on how to write one. This column is edited by WSBA Communications Specialist/Writer/Editor **Stephanie Perry**, who can be reached at stephaniep@wsba.org.
The WSBA’s Annual Awards have a new name. The APEX Awards!

APEX stands for Acknowledging Professional Excellence. As always, our awards celebrate people — attorneys and community members — who represent the legal profession’s core values: integrity, professionalism, diversity, service, justice, and courage.

You can learn more about the name change and our design process this month on our blog, NWSidebar (http://nwsidebar.wsba.org).

If you know someone who is making a positive difference in the legal profession, please consider nominating him or her for a 2016 award. You’ll find more information and the nomination form at www.wsba.org/awards. The deadline for submissions is April 15.

This year’s recipients will be honored at the WSBA APEX Awards in Seattle on Sept. 29.
We hope to see you there!
At its Jan. 28–29 meeting in Seattle, the WSBA Board of Governors adopted the WSBA values and guiding communication principles, passed a revision of the WSBA appointments and nominations process, identified four topics for further generative discussion, heard the recommendations of the Escalating Cost of Civil Litigation (ECCL) Task Force, and passed a motion regarding the Sections Policy Workgroup. The Board passed a resolution extending its full support and congratulations to former Board member Llewelyn G. Pritchard as the 2016 recipient of the American Bar Foundation Fellows Outstanding Service Award in recognition of his “distinguished lifetime career of achievements that have contributed to noteworthy success in improving access to justice, human rights, diversity, and equality.” The Board also recognized Randy Beitel, retiring WSBA managing disciplinary counsel, for his 28 years of service.

**WSBA Values and Guiding Principles**

The Board adopted a code of conduct and accountability measures to assure civility, respect, and trust among Board members, staff, volunteers, and others who participate in WSBA affairs. Three documents — “Guiding Communication Principles,” “WSBA Values,” and “Conflict Resolution Practices & Policy” — will serve as guiding principles and best practices for a high-functioning Board. The three documents will be available to Board members and online with public session materials.

President-elect Robin Haynes noted that the documents highlighted the guiding values of the entire Bar and the principles would bring a level of trust and respect in all communications. WSBA Director of Human Resources Frances Dujon-Reynolds expressed appreciation to the committee.

**Appointments and Nominations Process**

President-elect Robin Haynes introduced a proposal to delegate to a seven-member Nominations Committee the Board’s authority to make WSBA committee and board appointments, as well as nominations for Supreme Court boards and for external appointments. In the past, the entire Board reviewed and acted on these appointments, spending time discussing and reviewing the process of the nomination teams, including looking at the current composition of the groups and the applicant pool. Delegating this work would streamline procedures and make Board meetings more productive, leaving more time for generative discussions and higher-level policy work.

Governors and members of the audience expressed concerns that information regarding appointments remain open to the public. President-elect Robin Haynes noted that the Nominations Committee will maintain open communication and public opportunities for input. President Bill Hyslop stated that the new process can be reviewed as needed in the future.
Generative Discussions
Generative discussions aim to involve governors in higher-level discussion about WSBA issues. The Board considered a number of generative discussion topics suggested by governors and members of the audience, arriving at four topics for the coming year:

- Law school effectiveness and student loan debt
- Maximizing the return obtained on current programs for the benefit of WSBA members
- Mentorship
- The graying of the Bar/second season of service/transitions

Committees comprised of governors and WSBA staff were appointed for each of the generative discussion topics, tasked with planning further discussion and reporting back to the Executive Committee for scheduling on future BOG meeting agendas.

The Board continued public session on Friday, Jan. 29. There was a moment of silence in remembrance of former WSBA President Dale Carlisle, a recipient of the WSBA Lifetime Service Award, who died on Jan. 14, 2016.

ECCL Recommendations
The Board heard the ECCL Task Force Report and Recommendations. The task force was formed by the Board in 2011 to assess the current cost of civil litigation in Washington state courts and make recommendations regarding reducing costs. The focus was on the types of litigation typically filed in district and superior courts. The task force was charged with surveying neighboring and similarly-situated states and reviewing reports and recommendations from other organizations.

The task force report was presented by chair of the Task Force Russ Aoki and Isham Reavis of Aoki Law, along with past Governor Ken Masters. 45 lawyers and members of the legal community assisted with the report, although only 17 people could vote on the final report. The task force met several times over five years. The recommendations were sent to the stakeholders of over 30 organizations.

The task force received extensive public comments on its 12 recommendations. The Board addressed the first six recommendations at this meeting:

1. Initial case schedule
2. Judicial assignment
3. Two-tier litigation
4. Mandatory discovery conference
5. Mandatory disclosures
6. Proportionality and cooperation

Members of the audience provided extensive comments and task force members responded to questions and clarified points of discussion. President Hyslop thanked Chair Aoki and all those who contributed to the task force’s work. He also thanked members of the audience for their comments and for working together to achieve the best result. The task force will present the next three recommendations at the Board’s March 10 meeting in Olympia.

Sections Policy Workgroup
The Board passed a motion to authorize the Sections Policy Workgroup to review its process and review the current timeline for review and recommendations. The motion stated:

The WSBA Board of Governors has heard, and fully appreciates, the substantive feedback in response to the working proposals generated so far by the Sections Policy Workgroup. The Board of Governors wants to assure all WSBA members that the Sections Policy Workgroup will take the time necessary, and make any further adjustments to the schedule and/or process, to ensure the best decisions are made for the WSBA as a whole.

Linda Jenkins is the editor of NWLawyer. She can be reached at nwlawyer@wsba.org. For more on the WSBA Board of Governors and future meeting dates, see www.wsba.org/board.
Join the conversation

NWSidebar
the blog for Washington's legal community

nwsidebar.wsba.org
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 or by looking up the respondent in the lawyer directory on the WSBA website (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**

Raymond V. Gessel (WSBA No. 13787, admitted 1983), of Kent, was disbarred, effective 12/08/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.8 (Conflict of Interest: Current Clients: Specific Rules), 1.15A (Safeguarding Property), Francesca D’Angelo acted as disciplinary counsel. Raymond V. Gessel represented himself. Robert M. Stein was the hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to Disbarment; and Washington Supreme Court Order.

**Resigned in Lieu of Discipline**

Alan F. Hall (WSBA No. 1505, admitted 1974), of Edmonds, resigned in lieu of discipline, effective 1/11/2016. 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: 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law), 5.8 (Misconduct Involving Disbarred, Suspended, Resigned, and Inactive Lawyers), 8.4(b) Criminal Act, 8.4(c) Dishonesty, Fraud, Deceit or Misrepresentation, 8.4(l) ELC violation. Scott G. Busby and Sachia Stonefeld Powell acted as disciplinary counsel. Stephen Christopher Smith represented Respondent. The online version of NWLawyer contains a link to the following document: Resignation Form of Alan F. Hall (ELC 9.3(b)).

**Suspended**

Michael D. Johnson (WSBA No. 40983, admitted 2008), of Port Orchard, was suspended for three years, effective 12/08/2015, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5A (Safeguarding Property), 3.2 (Expediting Litigation). Debra Slater acted as disciplinary counsel. Michael D. Johnson represented himself. Scott M. Ellerby was the hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to Suspension; and Washington Supreme Court Order.

**Reprimanded**

Harold Hudson Franklin Jr. (WSBA No. 20486, admitted 1991), of Renton, was reprimanded, effective 10/30/2015, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records). Natalie Skvir acted as disciplinary counsel. Harold Hudson Franklin Jr. represented himself. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Discipline; Notice of Reprimand.

**Reprimanded**

Janet A. Irons (WSBA No. 12687, admitted 1982), of Bellevue, was reprimanded, effective 11/18/2015, by order of the Chief Hearing Officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 3.4 (Fairness to Opposing Party and Counsel), 8.4(i) Moral Turpitude, Corruption or Disregard of Rule of Law. Erica Temple acted as disciplinary counsel. Anne I. Seidel represented Respondent. The online version of NWLawyer contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; Notice of Reprimand.

**Admonished**

Robert E. Caruso (WSBA No. 29338, admitted 1999), of Spokane, was ordered to receive an admonition, effective 9/15/2015, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 5.1 (Responsibilities of a Partner or Supervisory Lawyer). Debra Slater acted as disciplinary counsel. Robert E. Caruso represented himself. David A. Thorner was the hearing officer and the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Admonition; Admonition.
Opportunities for Service

**WSBA Presidential Search**

**Application Deadline: May 2, 2016, 5 p.m.**

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2017–18, who will serve as president-elect in 2016–17. The WSBA member selected will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2017–18 WSBA president will be accepted until 5 p.m. on May 2, 2016, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 13, 2016. Applications and endorsement letters should be sent to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 3, 2016, Board of Governors meeting in Seattle. Following the interviews, the Board will select the president. Although prior experience on the WSBA Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2016, following selection. A one-year term as president-elect will begin at the WSBA APEX Awards Dinner on Sept. 29, 2016. The president-elect is expected to attend two-day board meetings held approximately every six to eight weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2017, at the WSBA APEX Awards Dinner, the president-elect will assume the office of president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar’s legislative activities. Appropriate time will need to be devoted to communication by letter, email, and telephone in connection with these responsibilities.

The duties and responsibilities of the president are set forth in the WSBA Bylaws. The Bylaws can be found at [www.bit.ly/bylawswsba](http://www.bit.ly/bylawswsba). For further information, contact Sue Strachan at barleaders@wsba.org or 206-733-5903.

**Call for Applications for WSBA Board of Governors At-Large Position**

**Application deadline: April 20, 2016, 5 p.m.**

One of the three at-large positions on the WSBA Board of Governors is up for election. Under WSBA’s Bylaws, the purpose of this position is to increase diversity and representation on the Board, and the position is to be filled by a WSBA member who has “the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represents some of the diverse elements of the public of the State of Washington.”
The Board of Governors will interview candidates and elect the at-large governor at their meeting on June 3 in Seattle, and the governor’s three-year term will begin at the end of the September 29-30 Board meeting. For more information about the position and how to apply, see our website at www.wsba.org/elections. The WSBA By-laws are posted at www.bit.ly/bylawswsba. Applications will be accepted until 5 p.m. on April 20, 2016. Letters of endorsement will be accepted through May 13, 2016. If you have questions, please contact WSBA Diversity Program Manager Joy Williams at joyw@wsba.org or 206-733-5952.

WSBA News

Open Sections Night
Open Sections Night highlights WSBA sections and their membership to new and young lawyers looking to get more involved in the legal community. On Jan. 22, the WSBA conference center was packed with over 75 new lawyers and law students who networked and asked questions and discover how section membership would benefit their legal career. Thank you to the 22 sections who joined us for Open Sections Night and took time to explain the value of their individual sections to the new and young lawyer community. At the end of the night, there were 45 section signups on-site and many connections made between new legal professionals and section leaders. View more photos from the event on NWSidebar, the WSBA’s blog. See photos on p. 49.

Call to Duty Day of Service
Legal professionals of all experience levels answered the call to serve Washington state veterans and families in need of pro bono services for WSBA’s January Day of Service held on Jan. 23. 55 volunteer legal professionals began their day at a seminar to learn skills specific to serving veterans. That afternoon, those new skills were put to use serving families in need of pro bono service during a two-hour legal clinic. WSBA’s Call to Duty Day of Service was put on in partnership with the King County Bar Association, Starbucks, and the Washington State Bar Foundation. Together we served 26 clients and helped with 34 legal issues.

2016 License Renewal and MCLE Information
Presuspension notices mailed. If you have not completed all mandatory portions of your license renewal, including MCLE requirements, if applicable, you are delinquent and are at risk of suspension. You may complete licensing requirements, including MCLE certification, either online at mywsba.org or by using the License Renewal and Mandatory Continuing Legal Education Certification forms. Visit wsba.org/licensing to learn more.

Celebrate the Best: Nominations Now Being Accepted for the WSBA APEX Awards
Nomination deadline: April 15, 2016
The WSBA is seeking nominations for its APEX Awards (Acknowledging Professional Excellence), which celebrate the best in integrity, professionalism, diversity, service, justice and courage. Do you know someone who is making a positive difference in the legal community or the legal profession? Please consider nominating him or her for a 2016 WSBA APEX Award. You’ll find the list of awards and the nomination form on the WSBA website at www.wsba.org/awards. Winners will be selected at the June 3 Board of Governors meeting and notified shortly thereafter. The awards will be presented at the WSBA APEX Awards Dinner in Seattle on Sept. 29. Help us recognize the best in the profession and legal community — submit your nomination today.

Join the WSBA New Lawyers List Serve
This list serve is a discussion platform for new lawyers of the WSBA. In addition to being the best place to receive news and information relevant to new lawyers, this is a place to ask questions, seek referrals, and make connections with peers. To join, email newlawyers@wsba.org.

Washington Young Lawyers Committee Meeting
The Washington Young Lawyers Committee meeting will be held on Sat., April 2, at Larson Berg & Perkins in Yakima. For more information or to attend, email newlawyers@wsba.org.

Take the Call to Duty Pledge
The WSBA Call to Duty initiative is designed to inform, inspire, and involve you in meeting the legal needs of veterans and their families. Take the Pledge and commit to serving Washington veterans in 2016. As part of the pledge, we will support you by providing resources both legal and non-legal to serve veterans; education and CLEs; and the chance to answer the various calls to duty in serving veterans. You can sign up to take the pledge at www.mywsba.org/CallToDutyPledge.aspx.

ALPS Attorney Match
Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. This resource allows attorneys to set up a profile and indicate whether they are looking for or available to act as a mentor. Mentorship programs that meet requirements are now eligible for MCLE credits. The WSBA provides information and links to the ALPS Attorney Match online system as a service to the legal community. For more information, email mentorlink@wsba.org.
Save money.
Annual subscription options include new lawyer, solo practitioner, and group rates and offer significant savings over print prices.

Increase your research capabilities.
Run word-search queries across primary law and deskbooks simultaneously.

Drill down deeper.
All cited cases, statutes, and administrative codes are hyperlinked. Click the link and read the full text!

Access WSBA seminar coursebooks.
The All-Publications Library and Practice Area Libraries include selected current coursebooks and access to an archive of hundreds more – not available electronically anywhere else!

For more information or to subscribe:
http://Washington.casemakerlibra.com
Questions? Email support@casemakerlegal.com or call 1-844-838-0790.
New MCLE Rule Takes Effect in 2016
The new MCLE rule, which took effect on Jan. 1, 2016, gives lawyers the opportunity to customize their continuing education to best meet their needs. Lawyers will be able to take advantage of new MCLE-approved course subjects and activities to address important topics like lawyer-client issues, office management, personal and professional development, and stress management. The increased flexibility is designed to create more meaningful learning opportunities to support excellent lawyer-client relationships and office practices, improving work-life balance, job satisfaction, and career stability.

At least 6 credits must be in ethics and professional responsibility. At least 15 credits must be from attending approved courses in the subject of law and legal procedure. The remaining 24 credits can be earned in the above categories, as well as in new subject areas and activities that include professional development, personal development and mental health, office management, improving the legal system, or participating in a structured mentoring program approved by the MCLE Board. There is no live credit requirement. The new rule can be found at www.wsba.org/licensing-and-lawyer-conduct/mcle/apr-11-rules-and-regulations.

WSBA Board of Governors Meetings
March 10, 2016, Olympia; April 15–16, Bremerton
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

Volunteer Custodians Needed
The WSBA is seeking interested lawyers as potential ELC 7.7 volunteer custodians. An appointed custodian is authorized to act as counsel for the limited purpose of protecting a client’s interests whenever a lawyer has been transferred to disability inactive status, suspended, disbarred, or disappears and no person appears to be protecting the clients’ interests. The custodian takes possession of the necessary files and records and takes action to protect clients’ interests. The custodian may act with a team of custodians and much of the work may be performed by supervised staff. If the WSBA is notified of the need for a custodian, the WSBA would affirm the willingness and ability of a potential volunteer and seek their appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. Contact Sandra Schilling at sandras@wsba.org, 206-239-2118 or 800-945-9722, ext. 2118 or Darlene Neumann at darlenen@wsba.org, 206-733-5923 or 800-945-9722, ext. 5923.

Legal Community
Council on Public Legal Education Flame of Democracy Award — Call for Nominations
The Council on Public Legal Education is accepting nominations for its Flame of Democracy Award, given to an individual, organization, or program in Washington state that has made a significant contribution to increasing the public’s understanding of law, the justice system, or government. The mission of the CPLE is to promote public understanding of the law and civic rights and responsibilities. The deadline for nominations for the 2016 award is June 1, 2016. Nominations should be made in the form of a letter (maximum 500 words) describing the nominee’s work and how it addresses the mission of the CPLE. The letter should also include the name of a reference who can provide additional information about the nominee. Supporting material may also be submitted. Self-nominations are encouraged. All nominations will be kept confidential. Nominations should be addressed to Kelly Kunsch, Seattle University School of Law, 901 12th Avenue, Seattle, WA 98122-1090. Email submissions may be sent to kunsch@seattleu.edu. Learn more at www.lawforwa.org/civics-washington/council-public-legal-education.

Foster Pepper Claims 2015 Seattle Lawyers Basketball League Title
On the eve of the 32nd season of the Seattle Lawyers Basketball League, Foster Pepper (10–2) won the 31st annual 2015 Seattle LBL title, recapturing the hardware it has won three times prior in 1989, 2003, and 2013. The Queen Anne Community Center hosted the 31st Seattle LBL Championship on May 28, 2014. R&G (4–8), co-captained by Blake Marks-Dias and Chris Schenck, limped into the tourney as the bottom tourney seed, having won only two regular season games.

R&G sought to avenge two regular season losses to the No. 1 tourney seed, Foster Pepper (10–2). Although some sharp 3-point R&G shooting kept the game interesting in the first half, two of the LBL’s wily veterans, captain Jack Zahner and Mayor Mike McGinn led their six younger teammates (all born just before Zahner and McGinn) to a dominating victory, 70–56.

Foster Pepper team members and their respective law schools are Bryce Blum (George Washington ’13), Scott I. Jamieson (Pepperdine ’08), George M. Jordan III (Seattle ’10), Hon. Michael P. McGinn (UW ’92), Tyler O. Rogers (Seattle ’09), Ryan Rourke (Seattle ’15), David Weaver (Santa Clara ’05) and Jack Zahner (UW ’94). Captain Zahner works at Foster Pepper, Blum is
If you are an active WSBA member in District 2, 9, and 10, vote starting March 15 for one of the WSBA Board of Governors candidates running from your district. Visit www.wsba.org/elections for more information and a link to the Meet the Candidate page, which features videos from the Candidates Forum.

Live CLE credits are no longer required — WSBA recorded seminars are more valuable than ever!

Breaking news: Effective Jan. 1, 2016, Washington lawyers may earn all their required CLE credits from recorded seminars.

Go to wsbacle.org

Choose from hundreds of recorded seminars on Washington black letter law, ethics, and law practice management.

WSBA recorded seminars are:

- **High-quality** – focused on Washington law and taught by Washington practitioners.
- **Current** – available within a month of the live seminar.
- **Immediately accessible** – complete your online purchase and download or stream your recorded seminar right away.

**Video:** streamed directly to your computer via the Internet.

**MP3 audio-only:** downloaded directly to your computer. From there, burn it to a disc or save it to a mobile device for credits on the go.
Northwest Dispute Resolution Conference

**Early bird registration deadline: March 17**
The Northwest Dispute Resolution Conference will take place at the William H. Gates Hall, University of Washington School of Law, on March 24–25, 2016. For 22 years, the conference has offered an opportunity for attendees to learn new dispute resolution skills and share ideas with colleagues. This year’s conference includes several nationally recognized speakers, such as Nina Meierding, presenting “Advanced Mediator Skills: Ethical Pitfalls and How to Best Avoid Them or Work Through Them” and “It’s Not My Fault: Mistakes Were Made, But Not by Me”; Randy Kiser, presenting “Attorney/Client Overconfidence: Facts, Causes and Correctives” and “Ethical Dilemmas in Mediation and Settlement Negotiations” and Ken Cloke, presenting “Conflict Revolution or Apology, Forgiveness” and “The Art of Asking Questions.” Several sessions will offer practical skills for lawyers who represent clients in mediation and in arbitration. 10.25 CLE credits (including 5.25 ethics credits) are pending. Register at www.wsba-adr.org/page/northwest-dispute-resolution. For questions, contact the conference coordinator Kathy Kline, kkline@uw.edu, or conference co-chairs Nancy Highness (royalalle@aol.com) and Kathleen Wareham (kathleen@kathleenwareham.com).

**WSBA Lawyers Assistance Program (LAP)**

**The “Unbar” Alcoholics Anonymous Group**
The Unbar is an “open” AA group for attorneys that has been meeting for over 25 years. Meetings are held Wednesdays from 12–1:30 p.m. at the Skinner Building at 1326 Fifth Ave., 7th Floor. If you are seeking a peer advisor to connect with and perhaps walk you to this meeting, the Lawyers Assistance Program can arrange this and can be reached at 206-727-8268.

**WSBA Connects Offers Free Counseling**
WSBA Connects provides free counseling in your community. All Bar members are eligible for three free sessions on topics as broad as work stress, career challenges, addiction, anxiety, and other issues. By calling 800-765-0770, a telephone representative will arrange a referral using APS’s network of clinicians throughout the state of Washington. We encourage you to make the most of this valuable resource.

**Drop-In Job Search Group**
Join our weekly job group held every Monday at the WSBA offices. It’s a chance to network with other attorneys and learn job search skills. We cover methods of looking for work online, networking, elevator pitches, cover letters and résumés, and ways to identify the best path for oneself within the law. Whether you are new to practice, making a mid-career transition, or are thinking about leaving the law, you are welcome to participate. Email Dan Crystal at danc@wsba.org. RSVP is required.

**The “Blues” or Depression?**
Many lawyers are depressed, but don’t realize it. Symptoms include sad mood, loss of pleasure or interest in activities, weight gain or loss, sleep problems, feeling restless or slowed down, fatigue, trouble thinking or concentrating, and thoughts of death. Un- treated, it can cause serious work dysfunction and more. Talk to your doctor or call WSBA Connects at 800-765-0770.

*Need to Know*

a Foster Pepper alumnus, and the balance of the team is affiliated through basketball.

WSBA to assist members in interpreting issued, ethical rule, subject matter, or key

You can search opinions by number, year

issued, ethical rule, subject matter, or key

word. Advisory opinions are issued by the

WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

**WSBA Law Office Management Program (LOMAP)**

**LOMAP Lending Library**
The WSBA LOMAP and LAP Lending Library is a service to WSBA members. We offer the short-term loan of books on health and well-being as well as the business management aspects of your law office. How does it work? You can view available titles at www.wsba.org/resources-and-services/lomap/lending-library. Books may be borrowed by any WSBA member for up to two weeks. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, contact lomap@wsba.org.

**Casemaker Online Research**
Casemaker is a powerful online research library provided free to WSBA members. Read about this legal research tool on the WSBA website at www.wsba.org/casemaker. As a WSBA member, you already receive free access to Casemaker. Now, we have enhanced this member benefit by upgrading to add Casemaker+ with CaseCheck+ for you. Just like Shepard’s and KeyCite, CaseCheck+ tells you instantly whether your case is good law. If you want more information, you can find it on the Casemaker website, or call 877-659-0801 and a Casemaker representative can talk with you about these features. For help using Casemaker, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

**Learn More about Case-Management Software**
The WSBA Law Office Management Assistance Program maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact lomap@wsba.org.

**Usury Rate**
The average coupon equivalent yield from the first auction of 26-week treasury bills in February 2016 was 0.474%. Therefore, the maximum allowable usury rate for March is 12%.

**USURY RATE**

<table>
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<th>Effective Date</th>
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<tr>
<td>March 1, 2016</td>
<td>12%</td>
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Cle Calendar

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

BUSINESS LAW

Northwest Securities Institute
April 29–30. Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Business Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

Business Law Section Midyear
May 27. Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Business Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

CONSTRUCTION LAW

Construction Law Section Annual Midyear Seminar
June 10. Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Construction Law Section; 800-945-WSBA or 206-443-WSBA.

CONSUMER LAW

Consumer Law Intensive CLE

ELDER LAW

Navigating Elder Law Systems: Advising Clients in a Complex World
March 4. Seattle and webcast. 6.75 CLE credits, including 1 ethics. Presented by the WSBA in partnership with the WSBA Elder Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

ENVIRONMENTAL/LAND USE LAW

Environmental and Land Use Law Section Midyear Meeting & Conference
May 5–6. Cle Elum. CLE credits pending. Presented by the WSBA in partnership with the WSBA ELUL Section; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

ESTATE PLANNING

Trust & Estate Litigation
Apr. 22. Seattle and webcast. 6.5 CLE credits, including 1 ethics. Presented by the WSBA in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

FAMILY LAW

Family Law Annual Midyear Meeting and Conference
June 24–26. Vancouver, WA. 15.5 CLE credits. Presented by the WSBA in partnership with the WSBA Family Law Section; 800-945-WSBA or 206-443-WSBA.

GENERAL PRACTICE

Collaborative Law Training

Washington Law and Practice Refresher Day 1: Research and Ethics
March 17. Seattle and webcast. 8 CLE credits, including 4.5 ethics. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

Washington Law and Practice Refresher Day 2: Black Letter Law
March 18. Seattle and webcast. 7 CLE credits, including 1.25 ethics. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

Northwest Dispute Resolution Conference
March 24–25. Seattle. 10.25 CLE credits, including 5.25 ethics. Presented by the WSBA ADR Section, the University of Washington School of Law, the KCBA ADR Section, Washington Mediation Section, and Resolution Washington. http://wsba-adr.org/page/northwest-dispute-resolution.

Marijuana Law

APRIL

Lawyers Assistance Program Day
April 12. Seattle and webcast. 4.25 CLE credits, including 1 ethics). Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

Health Law
May 20. Seattle and webcast. CLE credits pending. Presented by the WSBA in partnership with the WSBA Health Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

INTELLECTUAL PROPERTY

Intellectual Property Institute
March 11. Seattle. 6.75 CLE credits, including 2 ethics). Presented by the WSBA in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

Legal Lunchbox Series

March Legal Lunchbox: Cross-Cultural Lawyering
March 29. Webcast only. 1.5 CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbcle.org.

April Legal Lunchbox: Health & Wellness/Personal Development
April 26. Webcast only. 1.5 CLE Other credits. Presented by the WSBA; 800-
NEW LAWYER EDUCATION

New Lawyer Education Boot Camp: Intellectual Property
March 22. Seattle and webcast. 5.75 CLE credits. Presented by the WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbciale.org.

Immigration Law

REAL PROPERTY

RPPT Annual Spring Seminar

RPPT Annual Midyear Meeting and Conference
June 17–19. Cle Elum. 12 CLE credits. Presented by the WSBA in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA.

SENIOR LAWYERS

Annual Senior Lawyers Conference
May 6. SeaTac. CLE credits pending. Presented by the WSBA in partnership with the WSBA Senior Lawyers Section; 800-945-WSBA or 206-443-WSBA. www.wsbciale.org.

Classifieds

Positions Available Ads are Online

Job Seekers and Job Posters, positions available ads can be found online at the WSBA Career Center. To view these ads or to place a position available ad, go to http://jobs.wsba.org.

To Place a Print Classified Ad
Rates, Deadline, and Payment: WSBA members: $50/first 50 words; $1 each additional word. Non-members: $60/first 50 words; $1 each additional word. Email text to classifieds@wsba.org by the first day of each month for the following issue (e.g., Jan. 1 for the Feb. issue.) Advance payment required. For payment information, see http://bit.ly/NWLawyerAds. These rates are for advertising in NWLawyer only. For questions, email classifieds@wsba.org.

Law Firm for Sale

Eastern Washington law firm for sale. A stable tri-counties, eastern Washington law firm ideally located in a prestigious setting, with an excess of $500,000 annual revenue. This is an excellent opportunity with capacity for substantial growth in revenues. Contact 800-837-5880 or edpoll@lawbiz.com.

Services

The Coach for Lawyers, LLC is committed to helping lawyers have a successful career and a meaningful life. Services are provided by John Allison, an experienced lawyer, trained professional coach, and author of a new book, Transforming the Practice of Law. For more information, call John at 707-357-3732 or visit www.coachlawyers.com.


Nationwide corporate filings and registered agent service. Headquartered in Washington state. Online account to easily manage 1–1,000 of your clients’ needs. www.northwestregisteredagent.com; 509-768-2249; sales@northwestregisteredagent.com.

Contract attorney available to help you leverage your services and maintain a more even workload in your business and real estate practice. Litigation research and writing support, issue analysis. Experienced, capable and prompt. Willing to negotiate flexible payment arrangements. Contact Florine Gingerich at 425-772-9564 or florine.gingerich@gmail.com.

Certified personal property appraiser/estate sale and liquidation services: Deborah Mallory, The Sophisticated Swine LLC. Appraisal and Estate Sale Service, CAGA appraiser with 28 years of experience in estate sales, appraisals for estates, dissolution, insurance and donation. For details, call 425-452-9300, www.sophisticatedswine.com or dsm@sophisticatedswine.com.

Contract attorney, experienced in research and writing, drafts trial and appellate briefs, motions and research memos. Trial preparation, summary judgment work, editing and cite-checking. Prompt turnaround times, excellent references. Elizabeth Dash Bottman, WSBA #11791, 206-526-5777, ebottman@gmail.com.

Legal research and writing attorney. Confidential legal research, drafting of pleadings, formatting, and citation checking for trial- and appellate-level attorneys. Professional, fast, and easy to work with. Call Erin Sperger at 206-504-2655. Sign up for free case law updates at www.LegalWellSpring.com; erin@legalwellspring.com.

Gun rights restored! Your client lost gun rights when convicted of a felony or DV misdemeanor, but in most cases can restore rights after a three- or five-year waiting period. AV-rated lawyer obtains Superior Court restoration orders throughout Washington. David M. Newman, The Rainier Law Group. Contact: 425-748-5200 or newman@rainierlaw.com.

Appraiser of antiques, fine art, and household possessions. James Kemp-Slaughter ASA, FRSA, with 33 years’ experience in Seattle for estates, divorce, insurance, and donations. For details, see http://jameskempslaughter.com; 425-943-7964; or Comptonhouse65@gmail.com.

Effective brief writer with 20-plus years of civil litigation experience and excellent...
references available as contract lawyer. Summary judgments, discovery motions, trial preparation, research memos, appeals. State or federal court. Lynne Wilson; lynnewilsonatty@gmail.com or 206-328-0224.

Make your web copy shine! Freelance writer, and attorney of 15-plus years, ready to perfect your: web content, blog posts, newsletters, marketing materials, white pages, eBooks, etc. 100% professional and reliable. Almost a decade of professional writing/marketing experience. Dustin Reichard; dustin@dustinreichard.com or 206-451-4660. Please visit www.dustinreichard.com for more information.

NW Mobile Techs. Specializing in Apple-related support (Mac, iPhone, iPad) and law solutions (Daylite, PIP). Also proficient in supporting Windows environments and networks. Have you considered going paperless in your office? Have you had a security audit recently? Consult with us: 206-683-6975; info@nwmobiletechs.com; www.nwmobiletechs.com.

Office space to be available for sublet in a beautiful, 22nd floor suite at 1111 Third Avenue, in downtown Seattle. Reception is included, with paralegal support available on a contract, as-needed basis. This 107 sq. ft. space includes north-facing and Puget Sound views, use of a large exterior conference room, newly remodeled common areas (including on-site gym, locker room, and bicycle storage), and a warm, collegial group of experienced criminal defense lawyers. Contact ian@gordonsaunderslaw.com or robert@gordonsaunderslaw.com for more details.

Two office spaces available beginning 3/1 at 600 Stewart, next to federal courthouse, each with secretarial space in Seattle. Conference room, Internet, copier, and other amenities included. $1,750/month. Share a collegial, professional work environment with three attorneys with bankruptcy and business practices. Contact Nate at nate@riordan-law.com or Alan at ajw@seanet.com.


Executive and virtual office suites available now! Downtown Seattle, Safeco Plaza Building, 32nd floor. Join our network of attorneys! Includes fiber Internet, receptionist, conference rooms, kitchen facilities, notary services, fitness center. Support services such as telephone answering, copier, fax also available. Starting at $60/month. 206-624-9188 or offices@business-service-center.com.

Professional multi-tenant building on South Hill in Puyallup has 520 sq. ft. space for lease. Includes private office with reception area and additional small room for storage. High street visibility, excellent signage, huge parking lot. $14.50 sq. ft. + NNN; 360-413-7756, owner.

Large office space to be available for sublet in a beautiful, 22nd floor suite at 1111 Third Avenue, in downtown Seattle. Reception is included, with paralegal support available on a contract, as-needed basis. This 188.5 sq. ft. interior office space includes use of a large exterior conference room, newly remodeled common areas (including on-site gym, locker room, and bicycle storage), and a warm, collegial group of experienced criminal defense lawyers. Contact ian@gordonsaunderslaw.com or robert@gordonsaunderslaw.com for more details.


Western view partner office in downtown Seattle. Professional and collegial environment. Receptionist services, conference rooms included. Support staff station also available. Cross referrals possible and encouraged, particularly for attorneys with practices emphasizing employment, family law, or general litigation. Office, $1,550. Workstation, $400. One-year lease required, flexible thereafter. Contact audra@amicuslawgroup.com or 206-624-9410.

Eastside office space. Three unfurnished offices and secretarial station available for rent in the law office of Sebris Busto James 14205 SE 36th St., Bellevue. Includes use of conference room and kitchen. Quick and easy access off I-90 (Eastgate exit) and free parking. Contact Dawn Seeley at 425-454-4233.

Western Puget Sound view downtown Seattle. Up to three window offices ($1,300) and up to two interior office spaces ($400) available May 1. 17th floor of Puget Sound Plaza. Cross referrals and tax software sharing possibilities with professional and collegial group of tax/business attorneys and CPA. Reception and conference room included. Potential for earlier move-in date. Contact rholmes@mhfmlaw.com or 206-382-2426.

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is pleased to announce that

**Mike E. Brandeberry**  
(former Chief Counsel for the Federal Home Loan Bank of Seattle)

has joined the firm as a partner

and

**Katie J. Kendall**

**April B. Mackoff**

have joined the firm as Associates.

The firm continues to focus its practice on general business, corporate, real estate, construction, and land use matters.

**Brisbee & Stockton LLC**

is pleased to announce

**Sheri C. Browning**

became a partner of the firm on January 1, 2016. Sheri is an experienced trial lawyer who will continue to focus her practice on providing advice on matters involving professional negligence. This includes the defense of professional litigation and licensing Board matters on behalf of physicians, hospitals, lawyers and other professional practitioners.

**Eisenhower Carlson PLLC**

is pleased to announce that

**Neil A. Dial**

has become an Equity Member of the firm. Neil is an experienced litigation attorney who represents businesses and individuals in all aspects of civil litigation.

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**Song Mondress PLLC**

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**Michelle J. Robert**

has joined the firm as an Associate.

Ms. Robert will practice in ERISA and employee benefits law, representing retirement and health plan sponsors, fiduciaries, and institutional service providers in both the private and public sectors. Ms. Robert received her J.D. from Georgetown University Law Center, where she also received an LL.M. in Securities & Financial Regulation. Her undergraduate degree is from the University of Colorado at Boulder.

**Sebris Busto James**

is pleased to announce that

**Darren A. Feider**

and

**Judd H. Lees**

have joined the firm as Shareholders and will continue their practices of labor and employment law and litigation.

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COA No. 7147-9-I (2014) (residential burglary, attempting to elude, and two violations of no-contact orders)

State v. Gensitskiy,
COA No. 71640-9-I (2014) (six counts of child molestation, rape of a child and incest)

State v. Green,
182 Wn. App. 133, 328 P.3d 988 (2014) (manslaughter 1)

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I became a lawyer because I wanted to help people. I started law school at 31 after a career in media. I wanted a new challenge.

Before law school, I was a newspaper reporter, assistant at a publishing house, contract administrator at a movie company, television media buyer, and a writer.

My career has surprised me by evolving as my goals and priorities change. I’m a former practicing attorney and a writer who loves magazines and connecting with other writers. I couldn’t have invented a better fit for me than editing NWLawyer.

The most rewarding part of my job is providing a way for other writers to share their experiences, legal knowledge, and writing talents with NWLawyer’s readers.

The most memorable trip I ever took was when I spent two years in Europe, based in Edinburgh, working and traveling around with a backpack and a well-worn copy of the Let’s Go travel guide.

I look up to the many leaders here at the Bar. I served on a WSBA committee when I practiced law. Watching attorneys from different backgrounds and generations standing together to protect clients and improve our systems has been a powerful experience for me.

I absolutely can’t live without my “personal board of directors”: friends and mentors who support my work and encourage me toward my goals.

I enjoy reading all the time. I read nonfiction, novels, a few blogs, local newspapers, and every magazine in the world (it seems). Right now, I’m reading The Girl Who Wrote Loneliness by Kyung-Sook Shin, and Puget Sound Whales for Sale: The Fight to End Orca Hunting by Sandra Pollard. At bedtime, I’m reading The Kingdom of Wrenly series by Jordan Quinn to my kids. They love it.

These things make me smile: banter, seeing my dad play with his grandkids, people who love their pets a lot.

My favorite place in the Pacific Northwest is: It’s hard to choose, but it’s Whidbey Island. Someday I see myself tottering around Coupeville with my book bag and a little dog.

I’m concerned about being an inspiration for young women of color, including my daughter. I hope that my being here as the first woman of color to serve as editor of the Bar’s official publication in its 70-year history will open a door of possibility for young people to see themselves in law or media careers.

I am happiest when I am in my big reading chair. I have a room in my home that is a work space, creative space, and (mostly) kid-free zone just for me.

I care about many issues including the health of our planet, quality public education, and inclusion for all abilities.

Friends would describe me as creative, observant, and curious.

Aside from my career, I am most proud of my twins. They’re awe-some. I’m also very proud of myself and my husband for managing the first few years with them.

If I could pick a superpower, it would be to have endless energy. I’m an idea person and I love having multiple projects going.

My first car was a Plymouth Horizon. It was silver and I called it Auggie.

I have been telling others not to miss the next issue of NWLawyer.

My name is LINDA JENKINS and I’m the editor of NWLawyer. I’m a 2008 graduate of Seattle University School of Law and I was a Dean’s Scholar at the University of Southern California Annenberg School for Communication and Journalism, where I earned a B.A. in journalism. I’m also a travel and lifestyle writer and a novelist. I’m married to a U.S. Navy veteran who now works in the aerospace industry, and we have six-year-old twins.

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