

A CHRISTMAS CAROL MISCAST

“I’m sorry for how . . .” she started to say before realizing the meeting was over. Shana was standing with her arms open and a smile on her face.

It took Andrea an unreasonable amount of time during the meeting to figure out who Shana Jackson was. How could she be so dense? She had met Shana just over a month ago. Seattle is not so big that you may only meet somebody like Shana once in your life, especially when you are both involved in community theatre.

Andrea had been a Seattle lawyer for over fifteen years following graduation from law school in California. She excelled academically in high school, but her passion was theatre arts and acting. Following high school, she enrolled at Whitworth University, where she received a bachelor’s degree in computer science and was often involved in theatre both at Whitworth and in Spokane community theatre.

After a swearing-in ceremony to the Washington Bar Association, Andrea Day Phillips worked for the King County Prosecuting Attorney’s office, handling misdemeanor prosecutions. As she became proficient in representing the State in criminal jury trials, she occasionally would co-counsel with veteran prosecutors in felony cases. She enjoyed her work and the people she met in the criminal justice system, and felt at home in Seattle, despite the dreary winters. But, after three years of criminal prosecution, she was ready for a change.

A friend from law school, who Andrea had stayed connected with, invited her to lunch at the dining room of the law firm where he worked in downtown Seattle. As she entered the elevator to the 50th floor of the iconic Columbia Center, Andrea figured this wasn’t just a social lunch to catch up. Williams and Williams, a Los Angeles law firm with a growing multistate presence, specialized in entertainment law, and was gearing up to take on more Seattle technology companies. Andrea’s profile as a lawyer with basic litigation experience, active in community theatre, and a degree in computer science made her a recruitment target. She did not hesitate to grasp the opportunity and was scheduled for a job interview the following week.

Andrea worked her way from associate to senior associate to junior partner, and there was every reason to believe she would one day become a senior partner. The firm was doing well in Seattle, attracting technology companies as its reputation grew. Andrea resisted transfers to other major cities where the firm had offices because she had created a network of clients in Seattle and had become notable in community theatre.

One rainy day in early September, Andrea received a call from the Seattle Arts Theatre Company advising her that the company would like her to be involved in a production of Charles Dickens’s *A Christmas Carol* based on an adaptation written by a talented local playwright, Paul David Benedict. The SATC playhouse was reserved for sixteen performances starting December 6 through December 21.

“Andrea, you are among the first we have contacted about this project, and we see many opportunities to use your talents,” the agent said.

Andrea protested that her work at the law firm in the last quarter of the year made committing to a new production problematic. She admired Dickens's artistic creation and had never been involved in anything as universally appealing as *A Christmas Carol*, so her initial resistance was blunted. After discussing the options to be cast as a character in the play or serve in other capacities, it was agreed she would be the stage manager and receive a stipend for her work.

Much of Andrea's work on the production was done on weekends and evenings. By early October, she had arranged lighting, sound, scenery, and costumes, calling upon local technicians she had known in her many years in theatre. The law firm supported her interest and time spent in community theatre, mainly because Andrea also attracted paying clients who consulted with her when it came time for contract negotiations or resolving disputes between producers and guilds.

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The headquarters of The Expedia Group is in a sprawling, innovative building overlooking Seattle's Elliott Bay with room for over 8,000 employees supporting several well-known brands in the travel industry. On November 21, a woman carrying a messenger bag walked into the building and served the company with a complaint and summons filed in Los Angeles Superior Court, naming Expedia Group as the defendant. The plaintiff was a Seattle travel agency that used Expedia's online services pursuant to a contract signed the prior year. The agency claimed Expedia had illegally allocated revenues and fees between the parties.

The company's chief legal counsel emailed the documents to Barkley Law Group, Expedia's outside law firm. The following day, James S. Halpert, senior partner at the Barkley Group, attended a meeting at Expedia with the CEO and chief legal counsel.

“The contract was signed here, the witnesses are here, and the agency suing us has an office in Seattle, so why are we in Superior Court in California?” the chief legal officer asked Halpert. Barkley lawyers had helped negotiate and approve the contract between Expedia and the travel agency. It was standard policy and practice for Expedia to demand jurisdiction and venue provisions in contracts that identified King County as the place of litigation or dispute resolution.

“Yes, I understand the question,” Halpert offered. “We intend to seek a change of venue by motion filed in Los Angeles. The motion will be based on the very things you mention, including the inconvenience to Expedia to litigate in California.”

“Venue is in King County, Washington, by agreement of the parties,” the chief legal counsel replied. “Why isn't that sufficient? Aren't we entitled to an award of attorney fees for having to even bring the motion?”

Halpert nodded and said, “Unfortunately, the contract says the venue for litigation is any place the travel agency has an office. After the contract was signed, they opened a small office in Los Angeles.” His disclosure caused heads to snap around the room.

“How did we ever agree to that provision?” the CEO demanded. Before Halpert could answer, he added, “What if the plaintiff opened an office in Mexico or Australia, would we have to litigate there?”

As the tension in the room increased and more answers demanded, Halpert calmly disclosed that the Barkley Group had allowed a new lawyer in their Los Angeles office to work on the contract and the lawyer did not understand the importance of a venue provision. Halpert apologized for the mistake and said his company would defend the litigation and not charge Expedia the cost of filing a motion for a change of venue.

After the meeting, the CEO instructed the chief legal counsel to find a law firm to replace Barkley Law Group as outside counsel to represent Expedia on matters considered beyond the scope of in-house counsel.

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Three days before Thanksgiving, while working with set designers at the theatre, Andrea overheard a conversation between the director and a production company representative. They were talking about one of the characters in the play.

She worked her way across the stage as the representative said, “So, are we saying young Scrooge dated a Black woman in 1843 England?”

“Dickens didn’t elaborate on ethnicity, but we are in 21st-century Seattle,” the director said without answering the allegation.

“This is not a modern adaptation of *A Christmas Carol*,” the company representative said. “Look at your costumes!” he added, pointing at costumes on portable hangers.

Andrea’s presence was evident as the two people argued about casting a character, who she assumed was Belle, a character in the *Ghost of Christmas Past* section of the play. “Do you mind if I listen as this is sorted out?” she asked.

Without replying to Andrea, the director said, “Look, Kisha Ross is doing a great job, has memorized her lines, unlike others in the cast, and the costume fits perfectly. She also can speak in a flawless British accent. We are two weeks away from opening night.”

Before the representative could respond, Andrea moved closer and said, “I agree with the director; we invite problems if we make changes because the actor playing Belle is Black. A reporter from the *Seattle Times* has already watched a rehearsal, and they will ask uncomfortable questions if we change the cast.”

The producer’s representative looked at Andrea and the director and said, “Look, I’m not speaking on my behalf, I’m telling you what the production company wants. People are talking if you know what I mean. The show must go on but without her.”

The director said, "I'm not going to support this decision, and if your company insists, then your company must explain things to Kisha Ross. I suggest you talk with her agent and pay for her time," and walked away in disgust.

Andrea watched the director walk backstage, turned to the representative, and asked, "So the decision has already been made?"

"Actually, the decision was made this morning and we already talked to Kisha."

"How did she take it?" Andrea asked in a lawyerly tone of acceptance.

The representative replied, "She was very graceful and professional. Her agent, not so much," he added.

"Your company should hope that terminating her does not take on a life of its own," Andrea offered.

The representative nodded, "If there is any trouble it will not come from Kisha Ross," he said.

"Why do you say that?" Andrea asked.

The representative replied, "Kisha said that she thought a Black actress playing Belle would have let the audience know that Old Mr. Fezziwig was a bit of a tramp, referring to Belle's father in the original story."

Andrea laughed and noticed the representative could not suppress a smile.

She went backstage and found the director, who was still in a foul mood. She asked, "So, will the understudy take the lead as Belle?"

"That would be my default position. She is white and almost as accomplished as Kisha Ross. She needs to lose a few pounds if she wants to fit into the costume," the director said with a tone of spite.

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On a blustery day in early December, Expedia Group contacted Williams and Williams, expressing interest in preliminary discussions about forming a relationship at some point in the future. The Seattle senior partner, Peter Derr, quickly saw an opportunity and set up a meeting with the company's CEO and chief legal officer at the firm's Columbia Center office the following week. Derr did not include any other firm members in the meeting, understanding that the discussion was sensitive and merely so Expedia could get a feel for the law firm.

The following week, Expedia's CEO contacted Derr again and said they wanted to take the discussion to the next level, talk about fees and Expedia's expectations about how a transition from one law firm to another could be accomplished efficiently.

During the mid-December meeting, Peter Derr introduced Andrea to the Expedia officers and indicated she would primarily be responsible for the Expedia account should Expedia

select Williams and Williams to replace the Barkley Law Group. The chief legal counsel said he knew of Andrea's reputation in the legal community. "I suggest you meet with our chief compliance officer, Shana Jackson, to discuss details of making this transition," he said. "We will have her call to schedule a meeting with you."

Andrea asked if this meeting could wait until after Christmas since she was involved in a Christmas theatre production and the final performance would be next week. The CEO agreed a post-Christmas meeting would be acceptable.

"I would be interested in how you propose to handle the pending California litigation that has brought us to this point," the CEO asked Andrea. "We are currently paying the Barkley Law Group to defend the case and bringing your firm into the matter means Expedia is paying your hourly rate to get up to speed. I ask, not as a complaint about your fee, but with the hope you will coordinate with your Los Angeles office to make a smooth transition," he continued.

"I don't think the defense of that claim will cost you anything," Andrea replied. "The failure to follow client instructions on the dispute resolution venue is patent malpractice. They are aware of their failure. I will tell Berkley's firm they can either turn your claim over to their malpractice insurance carrier, and pay their policy deductible, or they can agree to pay my firm to defend the California claim on your behalf. The last thing they want is a malpractice lawsuit filed against them in King County."

Expedia's chief legal counsel thought momentarily and said to the CEO, "She is right. We will not pay Barkley for their work on that case, and let Andrea do the rest." The meeting concluded, but there was one last meeting before finalizing the change of legal counsel.

After the last performance of *A Christmas Carol*, Andrea's legal secretary received a call from Shana Jackson and scheduled an appointment for the last week in December.

A compliance officer ensures a company operates within legal and ethical boundaries, overseeing compliance with laws, regulations, and industry standards. They become the internal guardian of a company to mitigate potential risks. Andrea was not surprised that meeting with the CCO was a step in the process of substituting legal counsel in not just the California litigation but all representation in the future.

Andrea searched for information about Shana Jackson on the Expedia website and in SEC filings but found very little information. She was not surprised because many companies and even law firms were placing the privacy of lawyers, especially women lawyers, ahead of promotion to attract clients. She found basic resume information about Shana Jackson's education and professional experience. Doing the math, she determined that Shana was at least a dozen years Andrea's junior. The woman was on a fast track to success.

The phone announced that Andrea had a visitor. She went to the conference room and walked in as a Black woman in a tailored light gray business suit with a single-breasted blazer stood up and offered a hand. She wore two-inch heels and stood a couple of inches

taller than Andrea who took her hand and studied a face that looked familiar, but she could not say why.

“Welcome to our law firm Ms. Jackson,” Andrea began as she motioned for the woman to sit down. “I have been looking forward to meeting you,” she continued as she sat in the chair next to her guest, trying to figure out where she had seen the woman before.

After a few pleasantries, Andrea said, “Ms. Jackson, have we met before?”

“Yes, and you can call me Shana,” she replied. “Or you can call me Kisha.”

Andrea stared at the woman and suddenly realized she was Kisha Ross, who was supposed to play Belle in *A Christmas Carol*. At the same time, she remembered why Shana had been cut from the cast. The expression on Andrea’s face said it all, but not quite all.

“I’m sorry for how you were . . .” Andrea started to say before realizing Shana was standing with her arms open and a smile on her face.

Andrea stood up, and the two women hugged briefly.

“You used a stage name,” Andrea concluded as the two women parted and sat down.

Shana nodded. “My family name is Ross, but I took my husband’s name when we married. Kisha is my middle name.”

“Can I ask you about what happened after you were let go from the cast?” Andrea asked.

“Yes, and so you know I was told that you were among those who objected to the production company interfering with the director’s decision to have a Black woman play Belle,” Shana replied.

“Did you ever get a call from the media about why you would not be in the cast? To my knowledge, there was never any publicity,” Andrea said.

“I told them the decision was about creative differences and nothing more,” Shana replied. “If you think about it, there is a reason that Dickens would have assumed Belle was a white woman.

“How do you mean?” Andrea asked.

“It was greed that pushed Belle away from Scrooge. Dickens did not intend for race to be an issue between them,” Shana explained. “He wanted readers to understand how young Scrooge made moral decisions that drove him away from love, family, and his community. A Black woman would have brought ambiguity to a decision that Belle identified when she told Scrooge that he had made gold an idol in his life.”

Andrea thought for a moment and said, “You may be right. But I’m sorry for a casting decision that should not have happened.”

“No worries,” Shana replied. “We can leave that with the Ghost of Christmas Past.”