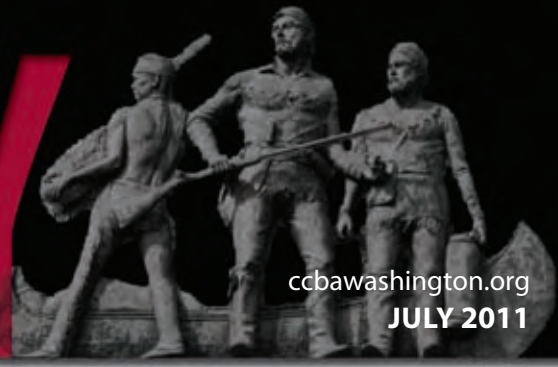


HEARSAY



ccbawashington.org
JULY 2011

OFFICIAL NEWSLETTER OF THE CLARK COUNTY BAR ASSOCIATION



Leave of Court: Judge Bennett Retires

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PRESIDENT'S MESSAGE

America's Got Talent



KURT RYLANDER
CCBA President

Judge Bennett is retiring. Words escape me. Through the vagaries of fate, Judge Bennett presided over most of the criminal felony trials that I handled. I no sooner (after a decade) feel I have a handle on how to try a case in front of that august personage, before I am informed that I am going to have to learn a new judge all over again. But the predominant feeling is of loss. The Bar is losing a wise, seasoned, and solid judge with this retirement. I always liked how he would open and read to the lawyers the pertinent statute we were arguing about in a not-too-subtle reminder to start with the basics before taking off on flights of legalistic fantasy.

One of the direct consequences of Judge Bennett's retirement is the opening of a Superior Court judicial position. Because of the recent upheaval of Bar management, these applicants are all highly concerned about the bar poll. Will there be one? Will it be on time? Who is doing it? These are all questions that have reached me by e-mail, fax, phone call, etc. over the past three weeks. While I will not list the names of the currently known applicants because the deadline to apply is not until June 30, I will tell you that it is a fine group of potential judges.

The Bar poll timelines, however, are VERY short. The full applicant list will not be known until July 1. Our Governor wishes to have the Bar results by July 18. A Federal holiday intervenes on July 4. By the time you get this magazine, we will be in the midst of the Bar poll. **SO ACT FAST.** When you receive your Bar poll envelope stop what you are doing! Fill it out and immediately send it back.

We want your feedback. We need your feedback. The next judge will likely be on the bench for 15 or more years, handling death penalty, divorce, child custody, medical malpractice, and intellectual property cases, among others. We want and demand the best. Because that is what we are losing.

Judge Bennett, thank you for your many years of service. Bar members, speak now or forever hold your peace. Judicial aspirants, if appointed, live up to the position you attain.

Upcoming CLE Schedule

Date	Area of Law	Topic	Speakers	Committee Chair
July 28, 2011	Intellectual Property	Intellectual Property 101	Karen Wetherell Davis Kurt Rylander Mark Beatty	Mark Beatty
September (tentative)	Mediation	Controversial Issues in Mediation	Richard Spier Steve Andersen Jane Clark	Jane Clark
October (tentative)	Real Property	Mortgage Loan Remodification Before, During & After Instead of Bankruptcy	Robert Russell William Black	Scott Matthews
November	Federal	Federal Court Civil Procedure		Jim Sellers
December	Ethics			

Judge Roger A. Bennett Retires



SUZAN CLARK

Hearsay Special Correspondent

The old adage “What happens in Vegas, stays in Vegas” seems to apply to some of the best stories local bar members could tell about Judge Roger Bennett on the eve of his retirement. Many local bar members share a long history with Judge Bennett and some were actually able to recount stories that were not subject to a mutual pact of secrecy.

Craig Schauer mann once laughingly told me that he is probably the only attorney in Clark County who has patted Judge Bennett on the butt. Schauer mann then explained that he and Judge Bennett played on the same high school football team in Bellevue, Washington.

Judge Bennett went on to graduate from the University of Washington. He remains a rabid Husky fan. He worked as a Sky Marshal after college and then attended University of Puget Sound Law School. Ernie Nicholson met Bennett playing intramural football at law school. Nicholson and Curt Wyrick went to work in the Clark County Prosecutor’s office after Bennett was hired as a deputy prosecutor.

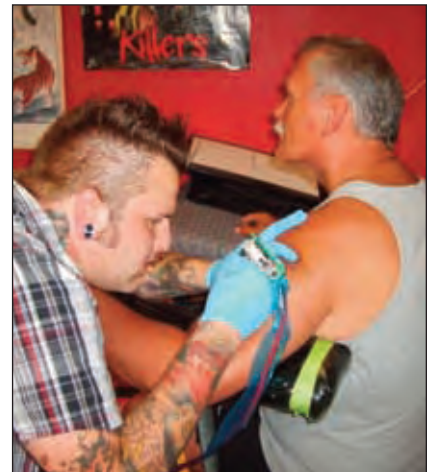
Nicholson tells of a trip to Ocean Shores with Bennett and Wyrick where they stopped off more than a couple of times to drink a beer in honor of Wyrick’s deceased dog, Joe. The three got to Ocean Shores a bit later than planned and literally missed the boat to go out fishing.



Bill Baumgartner and Judge Bennett were roommates for several years when Judge Bennett first came to Vancouver. The fact that Baumgartner has both represented Judge Bennett in a lawsuit and that Baumgartner represented Judge Bennett’s mother-in-law in a suit against Judge Bennett speaks volumes of the friendship between them. Baumgartner, an avid hunter, and Nicholson took Judge Bennett with them deer hunting in Klickitat County. Baumgartner and Judge Bennett got lost in the

woods trying to find their way back to Nicholson and their vehicle. Making their way through the dark woods with the light from a cigarette lighter, the pair eventually found their way back to Nicholson and the vehicle. Baumgartner noted that Nicholson seemed very motivated to shout to them to help them find their way out of the woods because Baumgartner had the keys in his pocket to the vehicle where all the beer was locked up. “I don’t think Roger ever left his own zip code after that,” Baumgartner chuckled.

Baumgartner also let slip that Judge Bennett has a tattoo. When Judge Bennett’s son Joe enlisted in the army, Judge Bennett promised him that if Joe succeeded in his goal of becoming a Green Beret Judge Bennett would get a tattoo. According to Baumgartner, Judge Bennett proudly sports a “Special Forces Dad” tattoo on his shoulder.



A great number of attorneys seem to have played softball with Judge Bennett at some point in his career. Judge Bennett is a fixture in the Young Lawyers vs. Senior Lawyers Softball game every year. Art Curtis, Baumgartner, Nicholson, and Jeff Barrar have all played on Bennett’s softball team at some point.

Curtis, freshly retired and strenuously working on improving his golf game, had nothing but praise for Judge Bennett, “He was an incredible chief criminal deputy and he transitioned to the role of judge seamlessly. Roger has one of the finest legal minds I have ever known.” Curtis admits to being a softball teammate of Judge Bennett’s and a neighbor in the Hockinson area of Clark County. Further questions by this interviewer led to the invocation of a mutual pact with Judge Bennett not to tell the best stories about each other.

Jeff Barrar is certain Bennett hired him as a deputy prosecutor largely because Barrar fit into the recently injured Lee Dane’s softball uniform and could play on Bennett’s team. Barrar says of his good friend, “He’s a great guy. He worked hard for every-



thing he's achieved in life and I think the world of him." While Barrar invoked the pact not to share the best stories about Bennett, he did recall a few funny moments. A few years back Judge Bennett went on the Atkins diet and lost a bunch of weight. Barrar walked in to Judge Bennett's chambers and the judge stood up to show off a pair of pants that he claimed he had not fit into since 1972. Barrar says of the moment, "He looks down and suddenly realizes

that the pants are so old they have big bell bottom legs!" Barrar was not sure what was worse: that the pants were made of polyester and way out of style or that the pants had hung in Judge Bennett's closet since 1972.

Judge Bennett has a very dry and witty sense of humor. Barrar recalls Judge Bennett passing a young new clerk a note at the end of a docket that said "It's Miller time," referring to a beer ad that probably aired before she was born. The clerk replied, "I don't understand, is that like credit for time served?"

Judge Bennett hired me to work in the prosecutor's office in July, 1990. In the Fall of 1990, Judge Bennett was appointed to the Clark County Superior Court Bench. For the next 21 years I tried more than 25 jury trials in his courtroom. Practicing before him has made me a better lawyer. My fellow attorneys share this opinion.

Kim Nigg, his judicial assistant says, "Never show up late or unprepared and always be able to back up what you say or he will call you on it."

Clayton Spencer noted "If you go to a hearing [before Judge Bennett] well prepared, you will come out a better lawyer." Practicing in front of Judge Bennett is an ongoing education.

Of his time practicing before Judge Bennett Jon McMullen said, "I have learned an immense amount about the practice of law by watching and listening in his courtroom. It has been an honor to practice in front of Judge Bennett."



Young attorneys frequently are a bit in awe of Judge Bennett and a little intimidated by his intelligence and courtroom presence. Many attorneys spoke of Judge Bennett kindly pointing them in the right direction when they were struggling with an evidentiary concept or had the wrong form.

McMullen recalls a day when he took a fairly burly client in front of Judge Bennett to plead guilty to criminal charges. The client noticed a large silver skull ring on the Judge's hand and told McMullen "I'll be taking any punishment he hands out with a thank you because I would not want to piss him off. Did you see that ring?"

Occasionally the good judge subjected a few of the younger members of the bar to some good-natured hazing.

When he was a very new attorney, David Gregerson recalls waiting patiently for a few weeks for Judge Bennett to issue a written decision after an eviction trial. After many impatient calls from his client, Gregerson stopped by Judge Bennett's chambers for the 3rd time intending to ask Linda Conn (Judge Bennett's judicial assistant at the time) when he might expect the written decision. Gregerson ran in to the good judge himself and the judge asked if he was there about inquiring about the case. When Gregerson replied "yes" the judge bellowed "WELL GET OUT OF HERE!" and then quickly broke into a grin and said he had just dictated the opinion. Gregerson sighed with relief as he tried to regain his composure and some color in his face.



Judge Bennett observes pretty strict courtroom decorum and Nigg jokes that he agrees to fill in for the drug court judge "Only if he doesn't have to hug anyone!" She describes him as a great boss except that she supports the Cougars and he supports the Huskies. She and Judge Bennett's previous judicial assistant, Linda Conn let him think he runs the office, but Nigg says he is not allowed to be in the office unattended because he tends to be too accommodating when asked to schedule hearings and then forgets to write the hearings on the calendar. She says of their Cougar/Huskey feud "The only thing we agree on is that we both hate Pete Carroll." Nigg declined to offer any truly juicy stories, though she did admit he threw her a 40th birthday party that caused her to call in sick to work the next day for the first time in her life.

Judge Rich Melnick worked with Judge Bennett in the prosecutor's office and has served on the bench with him. In the 1980's the first appearance docket was quite short and the Chief Criminal Deputy generally went to court to handle the docket personally. Melnick noticed a defendant named Peter Parker listed on the docket. Being a comic book fan, Melnick wrote "a/k/a Spiderman" next to Parker's name on the docket. Bennett, apparently not a comic book aficionado, asked the

defendant if his true legal name was Peter Parker aka “speeder-man”. Judge Tom Lodge caught the joke and corrected Bennett’s mispronunciation of Spiderman, to the amusement of those in the courtroom.

I heard the beginning of a number of stories involving Judge Bennett. Many of the attorneys, former judges and colleagues I contacted stopped mid-sentence and laughingly invoked the code of silence. A high school prank involving fire extinguishers, a motor home parked somewhere alongside Interstate 5 and somehow misplaced, selling cacti to put himself through law

school are just a few of the tales that I was not able to flesh out.

Universally, every single person I spoke to in writing this article had the utmost respect for his superior legal reasoning and judicial temperament. Judge Bennett’s retirement from the bench and start of a new career in private practice marks the end of an era. Retired Judge Jim Ladley summed it up best “Roger-one word-“brilliant”-his retirement will be a huge loss to the Clark County Bench and SW Washington.”

Retrospective on a Career



SUZAN CLARK

Hearsay Special Correspondent

Then Chief Criminal Deputy Roger Bennett hired me in July, 1990 to work as a deputy prosecutor in the Clark County Prosecutor’s Office. I have had the pleasure of practicing in front of him for nearly 21 years since. I recently sat down with him to talk about his career as a prosecutor and a judge.

Bennett grew up in Bellevue, Washington and attended Newport High School. He attended University of Washington, graduating in 1975. From 1971 to 1973 he worked as a Sky Marshal for the U.S. Customs branch of the United States Treasury. At the time he was the youngest Sky Marshal in the United States. He worked for part of the time onboard flights as part of a program to combat hijacking. Part of his career he worked at the SeaTac Airport conducting baggage searches and simultaneously completing his undergraduate degree.

Bennett graduated from University of Puget Sound Law School in December, 1975. He played intramural football in law school. “Our team was great because our quarterback was a small college all-American player and several other team members played college football,” Bennett recalls.

Jim Carty, the elected prosecutor at the time, hired Bennett to work in the ten-attorney prosecutor’s office. Bennett recalls the office being more of a stepping stone into private practice, with most attorneys moving on to private practice within two years. He rose quickly through the ranks, trying a murder case his first year out of law school. Carty appointed Bennett assistant chief criminal deputy in 1981 and chief criminal deputy in 1984.

Bennett tried many cases in his time in the prosecutor’s office, but three stand out. He and Dennis Hunter tried Warren Forrest for one murder, though the police suspected Forrest of seven murders. Bennett remembers the courage of the two



women who escaped from Forrest, “One was beaten, stabbed, raped and buried alive. The other woman was tied to two trees and chewed her way through the rope binding her. She hopped away and flagged down a car to help her.”

Bennett and Hunter teamed up to try Jack Stein for murder and attempted murder. The first trial resulted in a mistrial. At the second trial, Stein was acquitted of the murder charge, but the jury convicted him of three charges of attempted murder in the first degree. Stein’s case was eventually reversed on appeal.

In 2004 I represented Stein on the retrial of the attempted murder charges. After reading thousands of pages of discovery and reviewing the transcripts of the two previous trials, I gained greater insight into Bennett’s legal abilities. Having tried more than 20 cases in front of him, I already had the utmost respect for his intelligence and judicial competence. Bennett and Hunter had to sift through a number of civil cases involving the estate of Stein’s late father and

an extensive police investigation to develop a cohesive case to present to the jury. The case they presented was so thorough and persuasive that the attorneys representing the State used the transcript of the first trial as a blueprint of how to present the case to the jury on retrial to gain convictions on all charges.

In 1990 Bennett and Art Curtis prosecuted Westley Allen Dodd for the deaths of three children. Dodd entered a plea to the criminal charges and the prosecution agreed to submit the case for one penalty phase instead of pursuing separate penalty phases on the separate criminal filings. Dodd was executed for his crimes on January 5, 1993.

Bennett was appointed to the bench shortly after Dodd's conviction in 1990. He has served on the bench since November 1, 1990.

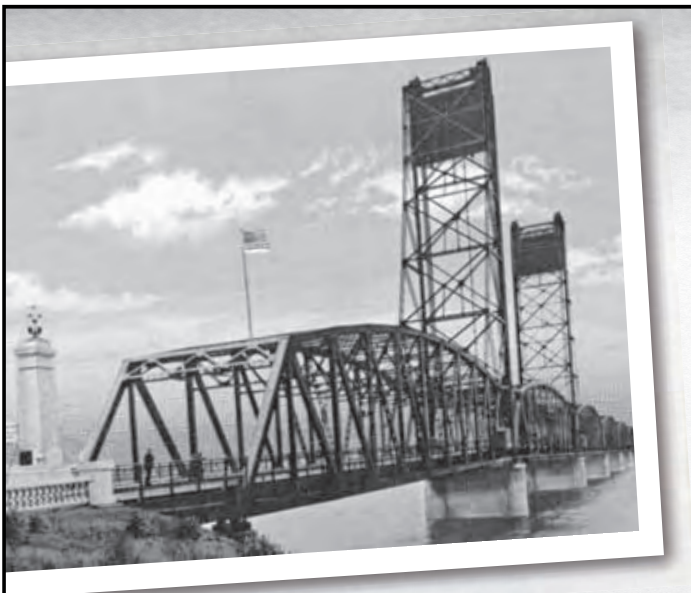
When asked how the practice of law has changed since during his career, Bennett noted, "It is a lot easier to be a prosecutor now because of DNA evidence, the child hearsay statute and recorded jail telephone calls." He believes the practice of law itself has changed little, but advances in science and technology have changed the way cases are prosecuted. The prosecutor's

office has grown in size since his tenure as chief criminal deputy and Bennett said, "We used to expect about one murder a year, now it seems more like one murder a month."

Bennett experienced few surprises as a judge. Coming from a background of criminal prosecution, Bennett was amazed at how many outstanding civil litigators practice in Clark County.

As a judge, Bennett loathes people who are late to court without a good reason. When asked what advice he would give new lawyers, he said "The same advice I got. Get a job at a prosecutor's office for the trial experience if you want to be a trial attorney. No overhead, they pay for your CLE's and you get lots of experience."

Bennett is ready for the new challenges of developing a generalized law practice in Clark County. He looks forward to being able to work when he wants and to having the freedom to choose the type of cases he takes on. He hopes that after a year of getting a practice established, he will have the freedom to work 20 to 30 hours a week and take the summer off. When asked if he intends to travel, he smiled and said "Maybe after I get my practice up and running."



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And Then There Were Two...

the second installment of a three-part series



JEAN McCOY

Hearsay Special Correspondent

With the appointment of our twenty-ninth judge in Clark County looming this summer, it is a good time to look back at the history of our Bench, its creation and our forefathers (really, it was men until 1987 and the appointment of Judge Barbara Johnson). In June's edition of Hearsay we reviewed the creation of Department One. In this second part of a series, we will explore the creation of Department Two, through the creation of Department Four. All references herein are taken from *A History of The Superior Court Judges of Clark County, Washington*, By Hon. Roger A. Bennett (1994; ed. 2011).

The Creation of Department Two



When we last left you, dear reader, it was 1955 and, sadly, Judge Hall has just passed away. However, Judge Hall was not alone at the end. Ten years previously, in 1945, the government powers created Department Two, the second permanent position on the Clark County Bench. The Honorable Eugene Cushing was appointed to the bench in 1945, and accepted the appointment on the condition he could complete his tour of duty with the Army. The first day on the job in Department Two, Judge Cushing heard twenty-eight divorce cases. Judge Cushing was born in Portland, but moved to Vancouver and graduated from Vancouver High School, going on to the University of Washington both for college and law school. Judge Cushing passed the bar exam in 1930 and worked in the Vancouver City Attorney's office. He was elected prosecuting attorney in 1934 and held that position until entering the armed forces in 1941 as a Major where he was assigned to the Military Justice section of the Judge Advocate General's office in Washington, D.C.

It seems history repeats itself almost every time a new Department is created – where to put the new recruit? At the time Department Two was created, the Courthouse contained only one Superior Court courtroom. Until the County built a new Courtroom on the fourth floor, Judge Cushing held court in the County Commissioner's hearing room. The years passed and after twenty years on the bench Judge Cushing was appointed by Senator Warren Magnuson to the position of U.S. Attorney for the Western District of Washington. Although Judge Cushing did not want the job, he did his duty for the State until 1970 when he went back into private practice in Seattle. In 1976 Judge Cushing decided to return to the bench and ran against an incumbent judge in King County on a platform of accountability

and tough sentencing. He won by a landslide and, much like our Judge Harris, was chagrined to be forced into retirement at the age of 75. Judge Cushing lived in Seattle and was an active member of the WSBA until his death in September 2004 at the age of 99.

Mike and Linda's Dad



Following Judge Hall's resignation from Department One in February 1955, three attorneys were recommended to then Governor Langlie by the Clark-Skamania Bar Association to fill the vacancy: Dale Read, Donald Simpson (son of Judge George B. Simpson) and J. Guthrie Langsdorf. Judge Langsdorf was chosen by the governor and was sworn in on March 17, 1955.

Judge Langsdorf was born in Idaho, but moved to Vancouver and is another graduate of Vancouver High School. He graduated from the University of Washington, both as an undergraduate and with his juris doctorate. Judge Langsdorf practiced in Vancouver continuously, but for five years of service during World War II which included some military law work, but the majority of his service was with the Army Air Force Intelligence Division. Judge Langsdorf's duties included overseas service in the China-Burma-India Theater of Operations where he served on the staff of General George E. Stratemeyer and was decorated with the Bronze Star. Upon his return to civilian life he resumed his law practice in 1946 and was very active in the Republican Party, the Clark-Skamania Bar Association and other civic organizations such as Boy Scouts, Vancouver Library Board and the St. Joseph Hospital Board. Judge Langsdorf remained on the bench until his retirement in 1976. Two of his children, Michael Langsdorf and Linda Langsdorf Johnson, made their father proud by becoming lawyers and practicing in Clark County. Judge Langsdorf passed away at home on March 14, 1994 at the age of 83.

Department Three is Born

Department Three was created eight years after a push in the Legislature to merge Clark, Klickitat and Skamania Counties into one judicial district with three sitting judges. As the work at that time in Klickitat and Skamania Counties was negligible, the result of the merger would be a third judge for Clark County. Governor Langlie vetoed the bill in 1955 due to the expense, despite Judge Cushing's testimony to the Legislature that Clark County had the highest case load per judge in the State with the

fewest help. This fact has remained historically true at times over the next half century. It wasn't until 1963 that the legislature passed a bill creating the third judicial position for Clark County and Judge Virgil V. Scheiber was appointed. Judge Scheiber was a University of Oregon graduate, but no one held that against him. After graduating from law school, Judge Scheiber worked for two years in Olympia with the State Department of Agriculture and two years as an insurance adjuster in Portland. In 1941 Judge Scheiber began practicing law in Vancouver and in 1963 was the first judge to occupy Department Three. At the time of his appointment, Judge Scheiber was a partner in the firm of Scheiber, Schaefer and Wynne. Upstart Duane Lansverk ran for this seat in the general election in 1964, but was defeated by Judge Scheiber. After six years on the bench, Judge Scheiber's health deteriorated and he passed away on January 23, 1970 at the young age of 60.

The Amphibious Navy Man



Many of those who practiced in Clark County through 1982 recall Judge Robert D. McMullen as a man who really cared about people. Judge McMullen was born in Vancouver in 1918 and went to Vancouver High School. His father was Dale McMullen, a deputy prosecutor who became Clark County Prosecuting Attorney, and later a State Senator. Judge McMullen went to

Whitman College in Walla Walla, receiving degrees in business and economics. After college he entered the Navy in 1942, serving with the Amphibious Corps in the Pacific. He was an officer and skipper of a Landing Craft Tank, making amphibious landings in New Guinea and the Philippines. Judge McMullen returned to Vancouver after the war and worked for the National Bank of Commerce before attending Willamette University College of Law. Upon his return to Vancouver in 1949, Judge McMullen partnered with his father in the firm of McMullen, Snider and McMullen. Judge McMullen served on the Vancouver City Council for six years and was elected Mayor in January 1966. In the summer of 1966 as Judge Cushing was appointed to U.S. Attorney, Governor Evans appointed Judge McMullen to Department Two. As the newest judge, Judge McMullen was forced to "rove" for courtroom space and didn't receive a permanent courtroom until September 1967. Judge McMullen was involved with Boy Scouts and coached Little League and Babe Ruth baseball for fifteen years. If you wanted to present a young man in a good light to the Judge, wearing a baseball cap didn't hurt. Judge McMullen retired in December 1982 and enjoyed retirement until his death in 1998 at the age of 69.

The White Salmon Connection

Upon Judge Scheiber's death in 1970, Judge Edward P. Reed was appointed to Department Three by Governor Dan Evans. Judge Reed traveled an interesting road leading to Clark County. He was born in San Diego and graduated from high school in Long Beach, California. Following graduation, Judge Reed enlisted in the Navy in 1943 and served as a torpedo man on a sub-tender in the Pacific during the war. Judge Reed was sent to Oregon State University in 1945 to pursue officer's train-



ing, but remained at the university when the war ended to pursue his business degree. Judge Reed attended Willamette University College of Law and during the summers raised his family working in sawmills and logging camps in White Salmon, Washington, where his parents had relocated after the war. Judge Reed first practiced in White Salmon, inheriting the practice of a friend, Ralph S. Barber. Judge Reed moved to Vancouver in 1965 and joined McMullen, Snider and McMullen. Three years later, Judge Reed left the firm and formed the partnership of Reed and Gallup. Judge Reed was very community minded and involved with both the White Salmon and Vancouver communities. In August of 1975 Judge Reed was appointed by Governor Evans to a seat on Division II of the Court of Appeals. Judge Reed remained at Division II for fifteen years, retiring in October 1990. After leaving Superior Court, Judge Reed stated he missed the contact with people, the juries, witnesses and attorneys, however he loved the academic aspect of sitting on the Court of Appeals. Judge McMullen passed away on April 8, 1999 due to complications from a heart attack at the age of 73.

Judge Skimas the Innovator



The first occupant of Department Four was John N. Skimas who took the bench in 1971. Judge Skimas retired in November 1992 and is currently a mediator and arbitrator with United States Arbitration & Mediation of Oregon. Judge Skimas was born in Camas and went to Camas High School where he lettered in baseball, football and basketball. Judge Skimas attended Willamette University for two years and enlisted in the United States Air Force during the Korean War. He spent five years in the Air Force and was a navigator on B-29s. Later he spent ten years in the Oregon Air Guard as an intercept officer flying fighter jets. While in the Air Force, Judge Skimas was stationed on the East coast where he attended the University of Maryland and graduated with his Bachelor's Degree in Political Science in 1956. After college Judge Skimas attended and graduated from Willamette University College of Law and worked in Seattle as an insurance adjuster for a short time. Judge Skimas returned to Clark County and worked for the firm of Robinson and Landerholm until 1962. At that time, Judge Skimas and William Boettcher formed Boettcher and Skimas until 1967, when he practiced solo until appointment to the Bench. In 1968 Judge Skimas was president of the Clark County Bar Association. Again, as a new Department in 1971, Judge Skimas was a "judge on roller skates" until his third floor courtroom was completed.

Judge Skimas has had an important role and provided ground breaking influence in his time on the Bench. In the fall of 1974 Judge Skimas, along with the other three departments, developed and proposed a new calendaring system where each judge was responsible for a certain number of preassigned cases from the date of filing through disposition. At the time, the system was novel in the State of Washington, but it definitely worked

for Clark County at the time, and still does to this date. As of 1990 the Clark County Court Administrator provided statistics to show that although Clark County had six full-time judges and one full time commissioner, the County had a case load that was sufficient to justify ten full-time Superior Court judges. In the early 1980's Judge Skimas helped create the child support schedule that has been adopted across the State. Judge Skimas was the first Judge to bring the video court reporter system to his courtroom. His system was the first use of this technology west of the Mississippi River and it now exists in every courtroom. Other practitioners and judges have described Judge Skimas as

dignified, firm and fair. Now retired from the bench he is an excellent "neutral" and is in demand for his dispute resolution techniques.

As we end this Chapter of Clark County history, we look forward in August to continuing with the Judges who have served Clark County in the last twenty-plus years. In our next installment of the History of Superior Court, we will begin with one of my favorite Judges, Judge Tom Lodge, the fifteenth Judge of Superior Court. We are nearing closer, folks, to the unveiling of the twenty-ninth Judge – get Judge Bennett's rulings while you can!

CLARK COUNTY BAR ASSOCIATION CLE SERIES

Nuts & Bolts: What Every Practitioner Needs to Know

The Clark County Bar Association is delighted to announce that it will host a CLE series geared to the new members of the legal community titled ***Nuts & Bolts: What Every Practitioner Needs to Know***. The series will vary from one to three hours every second Wednesday of the month. Each session will feature knowledgeable attorneys in a particular area of practice, and focus on the basic issues and procedures confronting an area of law. The current list of dates and topics are as follows:

Date	Topic	Speaker	Committee Member
July 13, 2011	Advising Small Business	Arin Dunn Mark Beatty	Emily Sheldrick Mark Beatty
September 14, 2011	Wills and Estates		Carol McCaulley
October 12, 2011	Criminal Trial		Suzan Clark
November 9, 2011	Bankruptcy		Scott Matthews
December 14, 2011	Collecting on Judgments		Mark Beatty

Each one of the series is on \$50 or you can purchase a discount card and attend 6 of the 12 events for \$250. We'll meet at the Quay at 3:00 and be done in time for happy hour. Materials will be provided free for download for those who register three days before the seminar, or for a modest fee at the door.

Call 695-5975 to register

For firms with new associates, this series is a great way to support your local bar association and provide new associates with an introduction to the community and a broad set of useful legal skills and information.

SUPERIOR COURT BENCH/BAR COMMITTEE MEETING MINUTES

JUNE 14, 2011



JOHN FAIRGRIEVE
CCBA Vice President

The meeting began shortly after noon. Persons present were Judge John Nichols, Judge Robert Lewis, Ann Christian, Suzan Clark, Kurt Rylander, Clay Spencer and John Fairgrieve.

OLD BUSINESS:

1. Competency evaluations being conducted on out-of-custody criminal defendants by Western State Hospital (WSH): Ann Christian told the committee that the current backlog of out of custody criminal defendants waiting to be evaluated for competency, diminished capacity or insanity is about 217 cases. However, on a positive note, Ann reported that last week WSH sent four psychologists to Vancouver and that in a one-day period they evaluated seven defendants. There is a tentative plan to repeat this procedure in the future. WSH is also in the process of hiring and training a number of new psychologists to increase their staffing level and thus decrease the delay in completing evaluations.

2. Prosecuting Attorney's (PA's) office policy concerning the use of the Residential Drug Offender Sentencing Alternative (Residential DOSA): John Fairgrieve explained that the PA's office has adopted the following policy: The Prosecuting Attorney's Office supports the use of the residential DOSA program in appropriate cases with the understanding that if a defendant is terminated from the program prior to successfully completing it that at sentencing he or she will be given credit for time served only for any time spent in actual confinement or in an inpatient drug treatment program. Other time spent out of custody while on community custody will not count towards the defendant's credit for time served.

John also told the committee that the PA's office has adopted the following policy modification concerning Superior Court Drug Court: The Prosecuting Attorney's Office will support the

dismissal of charges in the case of criminal defendants charged solely with the simple possession of a small (user) amount of controlled substance with a criminal history of 0, 1 or 2 who plead guilty, opt into Drug Court, and successfully complete the Drug Court program.

Judge Nichols took this opportunity to review the process that the superior court will use with defendants who are sentenced using the residential DOSA option. The defendant will enter his or her change of plea in front of a judge who will then order a risk assessment and / or a chemical dependency screening and set sentencing over to a subsequent date. If the defendant qualifies for DOSA the judge will sentence him or her and then set the matter over to Judge Nichols' next Drug Court docket for entry of the judgment and sentence, signing of the drug court contract and other documents, and transfer of the defendant from his original attorney to a Drug Court attorney. The defendant's original attorney is required to appear in Drug Court the first time his or her client does so to facilitate the turn over of attorneys.

3. Persistent Offender cases: Last month Ann Christian asked if the PA's office had a policy about whether it would seek a pre-trial determination about whether a defendant's prior conviction or convictions constituted a strike or strikes for two or three strikes purposes. John Fairgrieve stated that the PA's office did not have a uniform policy on the issue, and that it would approach the question on a case by case basis.

NEW BUSINESS

1. Use of the terms In re Barr and Newton in Statement of Defendant on Plea of Guilty pleadings: Judge Lewis asked that defense counsel not use the terms In re Barr and Newton in a Statement of Defendant on Plea of Guilty without also explain-

ing in the form what proposition each of the cases generally stands for.

2. Newton pleas and subsequent sex offender treatment. Clay Spencer described to the committee a recent case he handled where the defendant entered a Newton plea and was required to successfully complete sex offender treatment as part of his sentence. The sex offender treatment provider subsequently reported to the court that the defendant did not successfully complete his treatment because he would not admit to having committed the offenses he pled guilty to.

While there was no consensus on a solution to the situation it appears that the cautious practitioner should discuss this issue with both the defendant and the planned treatment provider prior to any change of plea and sentencing.

3. Judge Nichols informed the committee that the current statute that essentially abolished the previously used bail schedule was not renewed and expires on August 1, 2011. He stated that the Superior Court Judges do not have a consensus about whether to adopt a new bail schedule or not and were seeking the input of the bar.

Several of the attorneys present who do criminal defense work stated that they wanted a new bail schedule adopted.

Judge Nichols posed two questions to the PA's office

-Does the PA's office want the court to adopt a bail schedule?

-How should suspects arrested over the weekend be treated? Are they entitled to a hearing concerning release prior to making first appearance on Monday morning?

John Fairgrieve stated he would address the issue in the PA's office and return with feedback for the committee.

4. Bar Preference Poll for Judge Bennett's Position: It was announced that the Clark County Bar Association would be conducting a bar preference poll of those attorneys who have asked to be considered by the governor for appointment to Judge Bennett's position when he retires in August. Applications are due to the governor by June 30 and the governor's office wants the results of the preference poll no later than July 18.

5. Therapy Dogs in the Courtroom: It was reported that the Superior Court Bench has no uniform policy on permitting therapy dogs in the courtroom during trial. Judge Lewis stated that he addresses the matter on a case by case basis.

6. Next Bench Bar committee meeting: The committee will meet next on Tuesday, July 12, 2011 at noon in Judge Nichols' jury room.

Respectfully submitted,

John Fairgrieve

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Tech v. Law

The Open Wireless Dilemma



RICK McLEOD

Hearsay Special Correspondent

Rick McLeod is an attorney with the intellectual property firm of Klarquist Sparkman, LLP

Wireless connections dominate the modern communication infrastructure. Cell phones, PDAs, and laptops are designed with wireless communications in mind. Even desktop computers and televisions have wireless capability, in part, because of convenience. It is far cheaper than ripping out walls or snaking new wire in the millions of old buildings, and it likely is cheaper running copper wire in new construction, too.

However, unlike a physical jack located inside a home or business, a wireless connection is effectively open to the world. Anyone with the right equipment can interact with a wireless access point at the most primitive level, and, sometimes, even the technically unsophisticated have access to all the tools needed to breach a “protected network.”

This raises a complicated question of legal significance: should the Wi-Fi world be “open” or “closed?” Open access points offer significant convenience and service to the public (like roads), but at the same time, open access points can be misused for nefarious purposes to the detriment of individuals and society as a whole (like roads).

Open Networks are Useful: A Personal Anecdote

Last year, I took my mother to her favorite restaurant (which happened to be located in a small coastal town) for her birthday. I had a client call scheduled for that afternoon, but with cell phone and laptop in hand, I did not anticipate any problem. But when we arrived, I discovered that I couldn’t get a cell phone signal, not just near the restaurant, but anywhere in the town. To make matters worse, all the pay phones had been removed from the gas stations, convenience stores, etc. Fortunately, as my brother drove down the main drag, I picked up an open Wi-Fi connection at a café, and I was able to email the client that I would be late for the call.

Of course, in the city, free open wi-fi is somewhat ubiquitous; you may find it available in cafés, hotels, restaurants, and even car dealership service areas.

Open Networks Are Bad: The Tragedy of the Commons

Any open resource may fail due to the “tragedy of the commons” – through over exploitation or abuse – and Internet access is vulnerable to some peculiar problems due to its ephemeral nature. This is further complicated by the fact that it may be difficult or even impossible to determine who is actually misusing the resource at the very moment that the “bad” acts are occurring; let alone days or weeks later.

Stealing Bandwidth: Data Caps and Overage Charges

Data caps have been a first line of defense for ISPs following the explosion of streaming video on the Net. While data caps are most visible in the mobile phone market, cable-based and smaller ISPs have sometimes imposed data caps up-front or as a remedial measure against “data hogs.”

In many plans, subscribers that exceed the data cap for a given period may be billed at a premium rate for the excess data transfer. Plainly, causing a third party to incur a data cap charge can be easily classified as an actual theft (assuming that the owner objects). A bandwidth cap (or throttling) is a little more subtle because the ISP imposes a maximum transfer rate, but does not cap data per se. For many types of applications (e.g., electronic mail, Facebook, Titter), an individual subscriber would be unlikely to be impacted by the use of others, even on a daily basis.

However, streaming video is rapidly becoming the single most common form of data on the Internet. Indeed, in 2011, Netflix alone accounted for 22% of all data transmitted.¹ Again, that’s one company transmitting more than 20% of all data on the Internet!

Malware, Spam, and Copyright Infringement

Wireless connections are ideal for introducing spam and/or malware (malicious software) into the Internet. Spammers can connect through a wireless point virtually anywhere because the payload they want is for the recipient to make a phone call to Nigeria, etc. They only need a short term connect to start a massive spam campaign.

1. See <http://www.csmonitor.com/Innovation/Latest-News-Wires/2011/0518/Netflix-streaming-makes-up-22-percent-of-Internet-traffic>.

Copyright infringers have generated a cottage industry in copyright enforcement in the past two years. More than 100,000 Doe defendants have been named in copyright suits mostly in Illinois, Texas, and D.C. district courts over the past year. Many of these cases involve adult material, and many homeowners are bullied into settlement by the threat of being accused (or associated with) downloading such films. Many of these defendants turn out to be senior citizens, who use the Internet for email, Netflix, etc. and have no idea how filesharing works, but are nevertheless terrified of what their friends might think.

Criminal Activity

As the Net has matured, a range of activities have been regulated or prohibited outright, occasionally by operation of pre-existing statutes (e.g., gambling, distribution of obscene material, copyright infringement). Naturally, those who actively engage in illegal activity are motivated to make detection and tracking more difficult, and thus, wireless connections are ideal; law enforcement and private parties may never identify the perpetrator of the illegal activity, or worse may falsely accuse an innocent party.

Earlier this year, the FBI stormed into a residence early in the morning in a search for child pornography. According to reports, the homeowner was not treated well. His arrest was widely reported, but the aftermath not so much – the real culprit was a neighbor that used the innocent homeowner’s access point.²

The US Attorney in charge of the case suggested that this would have never happened if the homeowner had just used a password on his router:

This case serves as a warning to all users of wireless Internet service. Ensure your system is password-protected — there are those who may breach your privacy and use your service for criminal purposes. Such usage may, in turn, cause well-intentioned law

enforcement officers to follow the trail of evidence of that crime right into your home.

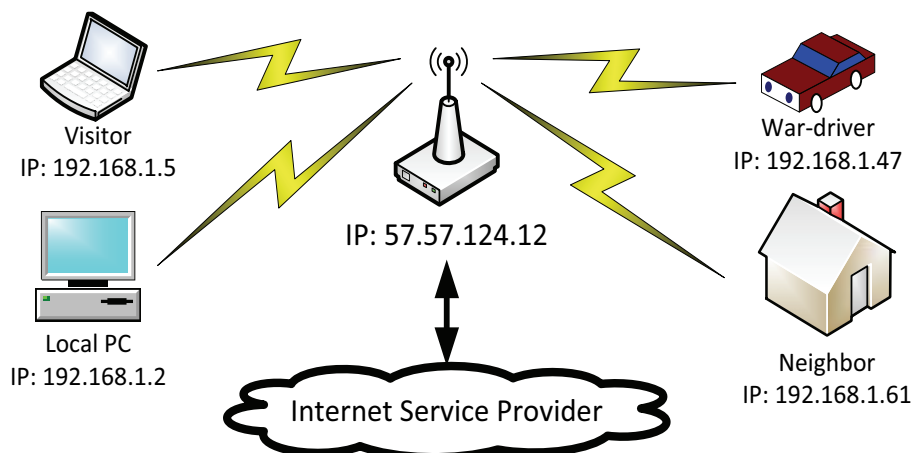
This is a troubling view, in part because it is based on a false premise – that a password would have prevented the neighbor’s unauthorized use.

The Mythical “Secure Access Point”

Unfortunately, this only highlights how little this attorney knows about Internet access. Industry standard communication protocols that have been implemented include Wired Equivalent Privacy (WEP), Wi-Fi Protected Access (WPA), Wi-Fi Protected Access II (WPA2) and WPA Pre-shared Key (WPA-PSK). As industry standards, equipment makers and consumers can rely on interoperability between access points (e.g., wireless routers) and access cards (e.g., Network Interface cards), but standards also set the bars for attackers as well. Unfortunately, the bar is always falling.

Once considered secure, a WEP password can be broken using a “brute force” attack by a single modern desktop computer in about a minute. In short, WEP is not much more secure than not having a password. The other schemes are not a panacea either because most people use extraordinarily weak passwords.³ The Net itself provides a cloud-based cracker that will automatically cipher more than 100 million potential passwords in under an hour for less than \$20.⁴ The vast majority of passwords used by the general public will be within this list

More recently, data breaches have been visited upon Sony (several in fact), Citibank, and others.⁵ In some case hundreds of thousands of user ids and passwords were published across the Internet.⁶ As a result, an academic study was able to confirm that a very large number of users not only used weak passwords, but that they also used the same userid/password combinations for Facebook, banking, and everything else.⁷



2. See e.g., <http://www.buffalonews.com/city/communities/west-side/article369806.ece>.

3. See <http://blogs.wsj.com/digits/2010/12/13/the-top-50-gawker-media-passwords/> (reporting that “123456” and “password” were the most used passwords at the Gawker media site); concur http://www.pcworld.com/article/230692/lulzsec_email_hack_proves_were_lousy_at_picking_passwords.html; <http://www.ibtimes.com/articles/157548/20110604/fbi-lulzsec-hackers-sony-password-security-in-fcus-weak-complex-reuse-passwords-karim-hijazi-botnet.htm>

4. See <http://www.wpacracker.com/faq.html>.

5. See http://www.pcworld.com/businesscenter/article/229351/sony_hacked_again_how_not_to_do_network_security.html

6. See <http://www.troyhunt.com/2011/06/brief-sony-password-analysis.html>

7. See <http://www.pcmag.com/article2/0,2817,2386533,00.asp>.

The point here is that “password security” in the Wi-Fi world is really “security theater” in many cases. In reality, using a password to prevent unauthorized access to a wireless router is closer to a “no trespassing sign” than an actual deterrent.⁸

Practical Implications for Lawyers and Clients

It is not uncommon for law firms, regardless of size, to use wireless LAN services, and even provide access for visiting clients and attorneys. Client businesses may also provide wireless services for their customers, on-top of an internal wireless LAN that interconnects the computer vital to the business operation.

First, build a sound network infrastructure. Ideally, use only wired connections for users of internal services if this is practical. After all, if there is no wireless access point, wireless access to your network will extremely expensive.⁹

If this isn’t an option, then it is critical that there is a firewall between the “internal” and “external” services and that any internal access point, if any, should have very strong password protection at the very least.¹⁰ Note that writing a password in a conspicuous place (e.g., on a post-it note, taped under the keyboard, etc.) defeats the purpose. The password should also be unique (i.e., not used for any other purpose), and preferably replaced as appropriate for staff changes.

Second, don’t leave the access point on during non-business hours. Think of the Internet like a utility service. If you turn off the lights when you leave for the day, include the wireless router(s) in that checklist. The ideal time to crack a router is when the effort won’t be noticed – after hours.

Third, document and implement an “Acceptable Use” policy for the network/access point. Last time, I discussed what it might mean to “exceed authorized access/use” of a computer system. Recently, the Ninth Circuit has given any expansive reading to this term in the Computer Fraud and Abuse Act.¹¹ Violation of a formal policy may also support termination “for cause,” but there’s conflict in this area especially when employers allow for non-specific “personal use” of business resources. Importantly, having a clear policy in effect may insulate the business/firm from indirect liability for the misuse of its network.

Musing on the Future

War rages across cyberspace. Some powerful interests want an Internet subscriber to be liable for every bit that is sent or received over his connection ignoring the realities described above.¹² Whether they ultimately succeed or not may depend on whether the legal community as a whole has considered the implications of adopting broad vicarious liability for a medium that can be subverted in a matter of minutes.

8. Indeed, there is currently a lot of competitive research to develop password crackers using readily available processors originally designed rendering 3D graphics in video games. See e.g., <http://erratasec.blogspot.com/2011/06/password-cracking-mining-and-gpus.html>

9. Even then, wires can be tapped, so it’s important that you know where the wires.

10. See http://en.wikipedia.org/wiki/Password_strength for background on what currently qualifies as “strong.”

11. U.S. v Nosal, ___ F.3d. ___, slip op. (9th Cir., April 28, 2011). See <http://www.ca9.uscourts.gov/datastore/opinions/2011/04/28/10-10038.pdf>

12. See e.g., http://www.huffingtonpost.com/aaron-swartz/wyden-again-halts-the-int_b_869281.html.



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Family Law Section Meeting



ELIZABETH CHRISTY

Family Law Section President

The Family Law Section's June meeting was the final meeting before summer break. I am pleased to announce our new officers for next year are Chris Boyd as President; Jennifer Kirkman as Secretary; and Meredith McKell Graff as Treasurer. I loved serving our section for the past two years but am very confident in our future officers!

June's meeting topic was "When Your Client Needs Financial Planning: how an investment firm, a bank, and an independent financial planner can help." We had Andy Nygard with Edward Jones, Jennifer Rhoads, Director of Wealth Management with First Independent Bank, and Mark Martel with Martel Wealth Advisors Inc. present to the group.

Our next meeting will be September 8, 2011. The topic and location are TBD.

If you would like to attend a CCBA FLS meeting and do not currently receive the email updates, please email our new president, Christopher Boyd, at cboyd@vancouverlaw.net.

Remember to visit the blog for updates and announcements: <http://ccbafamilylawsection.blogspot.com/>

Best Regards,
Elizabeth E. Christy

We are proud to welcome John P. Ashworth & Robert B. Lowry to Kell Alterman & Runstein.

John Ashworth is named partner, and Bob Lowry is named of counsel, further strengthening our legal services team with these AV[®] rated lawyers.



John Ashworth's practice focuses on environmental law and business litigation. He has earned a strong national reputation by successfully representing clients involved in multimillion-dollar federal and state Superfund sites and related cleanup litigation. Last year he was named one of Oregon's top environmental lawyers by *Chambers USA: America's Leading Lawyers for Business*. He earned his J.D. from New York University School of Law in 1982, is admitted to practice in Oregon and Washington, and was previously with Bullivant Houser Bailey for 29 years in Portland.



Bob Lowry's practice focuses on environmental law, also including national recognition regarding multimillion-dollar federal and state Superfund sites and related cleanup litigation, and commercial litigation, with an emphasis on fraud and civil racketeering cases. He has prosecuted and defended a range of matters through trial and appeal in federal and state courts. He earned his J.D. with great honors from Northwestern School of Law at Lewis & Clark College, is licensed to practice in Oregon, practices with special permission in other jurisdictions, and was previously with Bullivant Houser Bailey in Portland for 26 years.

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What CCBA Members Are Doing About Town



RAISA JUDICATA
Guest Gossip Columnist

If you attended the 2011 Vancouver School District Foundation fundraising luncheon on June 2nd at the Hilton Vancouver, you saw a very moving video presentation, followed by a student “Flash Mob”. For those of us who are technological and sociological “immigrants” as opposed to



Linda Frischmeyer, Jill Sasser, Jessica Dimitrov and Kathryn Holland show off their purchases at the VSDF luncheon.

“natives” (eg. under the age of 20), a Flash Mob is “a group of people who assemble suddenly in a public place, perform an unusual and sometimes seemingly pointless act for a brief time, then disperse, often for the purposes of entertainment and/or satire”.¹ The middle schoolers who put themselves out there dancing among the tables to Katy Perry’s song Firework were certainly not doing anything pointless, as the Foundation brought in \$110,000 in donations at the luncheon. Attendees have been to countless charitable events, but the quality of the message and the youthful exuberance of the dancers brought moisture to more than one eye (even Larry Holzman succumbed). Our own Dru Horenstein, Dave Christel and Steve Hill are current Board members and Table Sponsors included Rylander and Associates, PC, Pabst, Holland & Reynolds, PLLC, Miller Nash, LLP, Landerholm, PS, and Todd & Dru Horenstein. You can still donate at www.vsdfoundation.org.

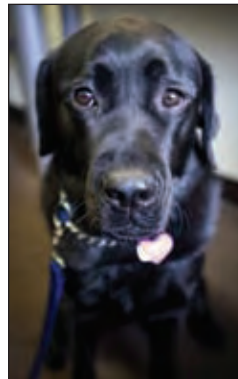
Local attorneys Don Russo, Dustin Klinger and Shawn Elpel were rock stars at the WSBA Real Property Probate and Trust Midyear held June 10-12 at Skamania Lodge. Don was on a wonderful panel regarding “Managing the Difficult Client” where attendees obtained wisdom on the “Four C’s”: Communication, Candor, Care and Completion. Clients are better managed when you remember and act on each of the “C” words. Dustin spoke to a rapt audience on

Loan Opinion Letters, alerting us to new issues since the economic collapse (attorneys who gave substantive nonconsolidation opinions in certain Circuits could now be liable for misrepresentation), and directing us to the Model Opinions for Oregon and Washington that should be reviewed if and when you are asked to issue your next Opinion Letter. Shawn then polished off the informative weekend, speaking from personal case experience regarding the new caselaw being made regarding priority (or not) of mechanic’s liens on real property. Lawyers are now having to fight over the crumbs left where there is not enough equity to pay everyone who worked on a project. It is nice to see local practitioners included in the faculty of prestigious regional seminars. If you are interested in their materials, and materials for the whole seminar, contact www.wsba.org.



Don Russo was a highly rated speaker at the RPPT Mid-Year.

The Judges are going to the dogs? According to The Columbian, Tabitha the therapy dog has been banned from Clark County courtrooms, as use of such dogs is being deemed “undignified” and a “gimmick”. Tabitha, a Labrador Retriever mix, came to Clark County in March after two years of screening and training to assist abused and traumatized children who may be scared and reluctant to speak. Tabitha can sit with children in investigation rooms, walk them to court and greet them at the Children’s Justice Center, but are not allowed inside the Courtrooms. There is anecdotal evidence that Tabitha has made a difference in the lives of children who are forced to relive bad events as part of the courtroom drama.



Tabitha the Therapy Dog is highly trained (and adorable)!

However, the Judges are concerned that in the courtroom Tabitha will be a distraction, or her presence could show preferential treatment to the child witness. Tabitha will be allowed in the courtroom only if an expert in child psychology testifies that having the dog is the only way to elicit the child's testimony. The Bench believes a good prosecutor can overcome a child's fear of testifying and a dog is not normally necessary. But are the prosecutors as adorable? What do you think? Let Raisa know!

Speaking of Judges, with candidates lining up for the Governor's appointment for Department One, rumor has it that the new judge may be sent over to the Family Law Annex first thing for duty in the trenches. Do Judges ever successfully emerge unscathed from the Annex? One hasn't yet, but only time will tell. On that note, be warned that the CCBA has until July 18th to submit Bar Poll results to Governor Gregoire for appointment of a Judge to finish the term in Department One. As the final applications are not required for submission until June 30, 2011, it doesn't leave much time for the poll. Be sure to vote quickly when you receive your poll so the Bar Poll Committee can do its work!

Your esteemed colleague Raisa Judicata can't be everywhere. If you have a tidbit of news you would like the world to know, send a note to raisajudicata@gmail.com. Raisa usually checks in the first Monday of every month. Remember, it is your ethical duty to support your member organization with juicy gossip and goings on.


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GETTING TO KNOW: **MARK SAMPATH**

"Getting to Know" is a monthly feature designed to better acquaint the membership with our local attorneys, judges and other people of interest to the Clark County bench and bar. This month's subject is Vancouver Attorney, Mark Sampath.

Where did you grow up and how did you end up in Vancouver?

I grew up in Lynchburg, Virginia. After going to college at William and Mary and getting my MBA at American University in Washington D.C., I spent 10 years as a fund manager in Stamford/Greenwich, Connecticut. After getting burned out, I retired from that career and my family and I moved out to Vancouver in 2003 because of a desire to move to the Pacific Northwest.

What or who inspired you to practice law?

After reading "Crimes and Nature" by Robert Kennedy Jr. regarding the impact of deregulation on the environment, I initially decided to go back to law school to focus on environmental law. After I entered law school, I saw how many other students were focused on environmental law who had such passion and related environmental experience and how few positions were ultimately available and decided that it was better to focus on areas of law that would leverage my prior work experience.

What would you be doing if you were not an attorney?

Given my background, I would probably have either gone back into the investment banking business, but in private equity investments, or into management consulting focused on medium-sized businesses, with a focus on sustainability.

Who inspired your practice style or courtroom demeanor?

I am fortunate to rent office space in the same office house with the retired Hon. Judge Ladley. He has been very generous with his time in discussing the practice of law with me. He has greatly inspired me in terms of how I aspire to conduct myself as an attorney and my practice style.

You are one of only a handful of minority lawyers in Clark County. What, if any, unique situations or challenges has that presented?

To be honest, as a solo practitioner I have not encountered any issues with being a minority attorney in Clark County. Attorneys have treated me like any other newbie attorney. To my knowl-

edge, clients have not made any distinction regarding my fitness to represent them based on my being a minority. I just don't see it as an issue, and honestly, the issue has never crossed my mind. During my stint as a summer associate at a Portland corporate law firm while in law school, I was much more aware of the issue as I was the only minority at the firm, either as a summer associate or a full-time attorney.

Any suggestions for achieving greater diversity on our bar and bench?

To a certain extent, it is really a random issue in that minority attorneys have to decide that they would rather practice here than in Portland. That also means that they probably have to be predisposed to operating as a solo-practitioner. With regards to the bench, it would be great if the local bar chapter and its members, to the extent they can and it is appropriate, helped to identify promising minority attorneys and encourage them to consider a judicial career.

How do you balance work with the demands of having a family?

My family comes first; I try to manage work around my kids. I make this clear to all of my clients and they seem to understand and appreciate that. My wife has a busy, successful career herself and given she sacrificed her career during my prior career to stay home with the kids, I am a "Mr. Mom." I usually get my kids up and ready for school and after dropping them off, I start my work day. I leave the office most days to pick them up from school and to help them with homework and get them activities. I usually then work some at night and on the weekends. I give all my clients my cell phone number and they can call me pretty much anytime I am at home to discuss their legal issues or any concerns they have.

Describe your level of ambition.

As it relates to my career as a lawyer, my level of ambition is high in the sense that I want to conduct myself professionally, to give back to my community, and to have my clients walk away know-

ing that I did my best for them and conducted myself with the highest level of ethics. In my first career, my ambition to make money and to be successful was high. At this point in my life, it is more important to spend time with my wife and kids. I am not as interested in billing a great number of hours or trailblazing some new path.

What advice would you give an attorney beginning a practice?

Seek out other attorneys in Clark County and talk to them. Ask them for advice; most attorneys in Clark County are happy to help if you have done your homework and have put some thought into what you want to know. If you are starting a solo practice, keep your overhead low so that you can be flexible with how you run your business. Ask other attorney for sample forms so that you are not reinventing the wheel. Finally, join the Inns of Court. It is a great way to meet attorneys and Judges, learn about practicing in Clark County, and helps reinforce the value of good legal ethics from the outset of your career.

Describe your dream client/case:

A dream client/case is a medium size business client who is interested in doing some sort of acquisition or asset divestiture, has a number of contracts to negotiate, and has hopes of eventually doing either a private placement/eventually going public. They would need my legal help for all of those issues and could use my business experience to help evaluate their business and to help them in making strategic business decisions. Hopefully, they can afford to pay their legal bills.

What has been the biggest lesson of your legal career?

Trust your intuition and judgment in deciding whether to take a client on or not. It is much better to turn down a client you think

is a headache waiting to happen than to take the client because you feel you need the business or because you feel you can manage the issues with your client.

What is the best piece of advice you have received along the way?

Treat everyone you deal with as a lawyer with honesty and respect. Strongly advocate for your client, but don't misrepresent the facts. I don't think there is any distinction on these issues between your work as a lawyer and as a person; if anything, the obligation is even higher as a lawyer. It may be naive, but it is the way I view it.

What activities do you enjoy in your spare time?

My wife and I are wine lovers and I serve as a Board member on the Columbia-Willamette Enological Society ("CWES"). I also volunteer every Saturday as a life mentor for a non-profit program called Minds Matter in Portland. We mentor Portland inner-city high school kids who are very intelligent and maintain great grades but face great challenges because of their economic situation and/or family dynamics. I also love to work-out and play basketball a few times a week.

Favorite vacation destination (or dream vacation destination)?

New Zealand. My wife and I spent a month in Australia and New Zealand a number of years ago and we fell in love with the natural beauty and diversity of the land and its amazing people. The friendliest, most generous people we have ever met.

Tell us your favorite joke.

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When's the last time you used profanity?

Probably last night while I was watching the Daily Show with Jon Stewart. That said, I made a promise to my daughter Oriana that I would try not to use profanity and I have significantly cut down on the "sailor talk."

You're President for enough time to make only one executive decision. What is it?

Push for a bill that deals with the issues of hunger and homelessness. Not to sound too liberal, but in my opinion the true greatness of a country is not how the most fortunate live but the ability of the least fortunate to live a life with dignity; that means a safe place to live and food to eat. Those of us that have prospered often underestimate their good luck and hidden advantages, overestimate their own skill and intelligence and assume that the playing field is equal. I just don't feel that to be reality.

What's a common and accepted practice for lawyers in Clark County nowadays that you think we'll look back on with regret?

It is more of a thought about how lawyers practice in general, not just in Clark County. I think at some point in the future, we will look back at the way we bill, mostly on an hourly basis, and decide that a better way to bill would be on more of a flat fee basis depending on the type of legal matter. Almost as if clients could order off a menu for legal services and have some predictability on what the work would cost. Outside of that, I don't think I have been practicing long enough to even know what all of the common and accepted practices are, let alone what might be wrong about them.

What would you attempt to do if you knew that you could not fail?

Buy some property in the Dry Creek Valley in California, open up a winery, and make and sell Zinfandel and Syrah wines.

What type of products do you never go cheap on, for the sake of quality?

Food. I think anything you put inside your body should be fresh and healthy. We never try to go cheap on the food that we and our kids consume.

Describe a few pet peeves of yours.

My absolute number one pet peeve is dishonesty. Your honesty and ethics are what define you. And it is not just what you do and say to others, it is what you do when no one is watching. Another pet peeve is being on time. I always try to be on time and I think it is important out of respect for another person's time to be punctual. Finally, I am a bit anal about cleanliness. I like things to be organized and clean. This often creates conflict between my daughter and I.

What do you know now that you wish someone had told you 10 years ago?

Don't stress yourself out worrying about things that you cannot control. If you can control it, fix it and don't complain about it; if you cannot fix it, then don't stress about it because it is out of your control. It will be what it will be.

What childhood event shaped or scarred you the most?

I grew up in Southern Virginia in the Reverend Jerry Falwell's home town in the mid-1970's. As a minority, I was subjected to a lot of racism and religious intolerance because I was not Christian and because I was the only person from India in my school and other kids did not seem to differentiate me from African Americans or other minorities. Those years really shaped my view of the world and how I want to treat people.

Think of one of your least favorite people in the Clark County bar and, without naming him or her, describe what makes that person so unappealing.

In general, it would be a person who is arrogant and dishonest. Someone who compromises their ethics and operates without a sense of what is inherently fair.

No one has taken up the invitation yet..... will you be so bold as to let your mother know how much she means to you, in the form of a haiku?

Mom is always there
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Statistics for May include 58 clients seen in advice clinics, 25 in Family Law, 18 in Family Law paperwork review clinic, 3 in the Bankruptcy clinic, 4 in the General Law clinic and 16 in Housing Justice Project clinic. We placed 7 cases with an attorney for direct representation. There were 126 hours of volunteer attorney time donated.

PLEASE NOTE OUR NEW E-MAIL ADDRESS:

susana@ccvlp.org If you have tried to e-mail me and it bounced back it is because our old address expired. To renew it they wanted the account number, password and picture ID of the person who set it up. It wasn't me. So, we now have a new domain name, new email address and will one day have a website.

I am looking for success stories. If you have a VLP client you have assisted, either in clinic or by representation, and you feel it was a success, would you please send me a few paragraphs describing the case, what you did and why it was a success. When I publish the stories, I do not include any names.

Thanks, Susan

**MANY THANKS TO ALL THE ATTORNEYS AND
 PARALEGALS WHO STAFFED THE ADVICE CLINICS,
 HOMELESS CLINICS, PROVIDED REPRESENTATION,
 AND VOLUNTEERED IN THE HOMELESS COURT IN
 THE MONTH OF MAY.**

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MARIA SOSNOWSKI
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New Moderate Means Program starting up

In keeping with its 2011-2013 Strategic Goal to "enhance the culture of service" among its membership, the Washington State Bar Association has launched a statewide lawyer-referral program to expand access to legal services for citizens of moderate means (those whose income falls between 200 and 400 percent of the federal poverty level).

This Moderate Means Program is an extension of several already established local programs that serve to provide greater access to justice for those of moderate means. Working in partnership, the WSBA will recruit and train attorneys, the state's three law schools will provide intake and referral services, while participating attorneys agree to charge sliding scale fees based on the client's income.

You can find out more about this new program at <http://www.wsba.org/moderatemeansguidelines.htm> and sign up as a participating attorney at <http://www.mywsba.org/>.

NEWS YOU CAN USE



ELENA QUINTANA
Hearsay Special Correspondent

The Clark County Volunteer Lawyers Program has new email addresses:

Susan Arney is now at susana@ccvlp.org and her assistant **Ashley Behsle** is at ashleyb@ccvlp.org

Brian Walker has moved to a new address at 900 Washington Street, suite 790, Vancouver, WA. 98660



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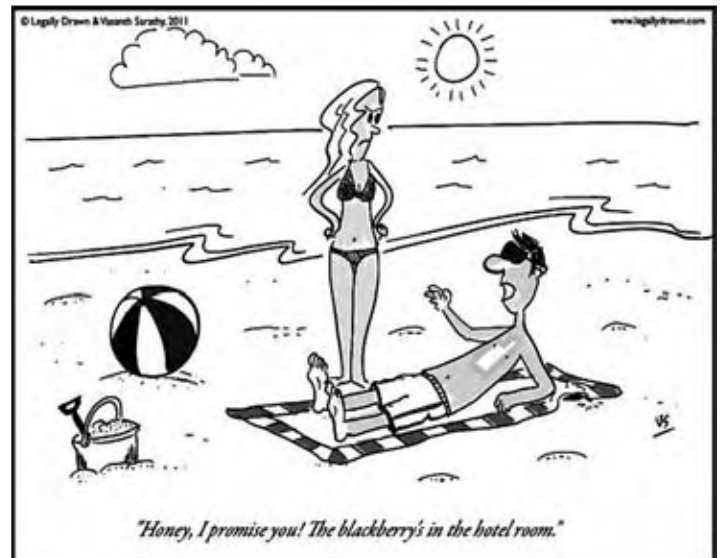
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IRS Mileage Reimbursement Rate Increase

Effective July 1, 2011, the IRS mileage reimbursement rate increases to 55.5¢ per mile.

The IRS mileage reimbursement rate for January 1, 2011, through June 30, 2011, is 51¢ per mile.

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UPCOMING EVENTS

MEETING

July 6, 2011

CCBA Hearsay meeting; CCBA office, 11:30 am. CCBA Board Meeting; CCBA office, 12:00 pm

MEETING

July 12, 2011

Superior Court Bench Bar Meeting; 12:00 pm

MEETING CLE

July 13, 2011

Nuts & Bolts CLE, Advising Small Businesses, Red Lion at Quay, 3:00 to 5:00pm

SOCIAL

July 15, 2011

CCBA Barbeque – Public Service Center Plaza 1300 Franklin – Our Chef: Judge Rich Melnick. 12:00 to 1:30 pm

MEETING

July 19, 2011

CLE Committee Meeting, CCBA office, 12:00pm

MEETING

July 21, 2011

Web Site Committee meeting, Nellor/Retsinas/Crawford, 12:00pm

MEETING

July 28, 2011

CCBA CLE Intellectual Property 101, Public Service Center, 9:00 am.

MEETING

September 8, 2011

Family Law Section Meeting

SOCIAL

September 23, 2011

CCBA Golf Tournament – Cedars at Salmon Creek – Watch for details

SW WASHINGTON LAWYER REFERRAL SERVICE

The CCBA's Lawyer Referral Service is a program designed to help the general public find attorneys appropriate for their needs, while at the same time providing a source of new client business exclusively to our members.

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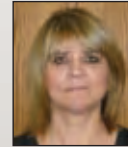
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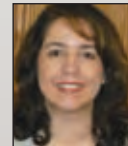
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