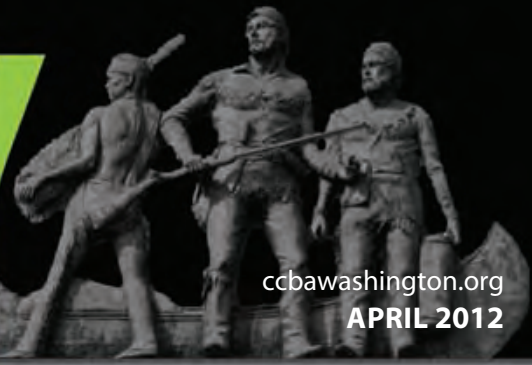


HEARSAY



ccbawashington.org
APRIL 2012

OFFICIAL NEWSLETTER OF THE CLARK COUNTY BAR ASSOCIATION



Judge Poyfair Exit Interview

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The Rule of Law in the United States



JOHN FAIRGRIEVE
CCBA President

The rule of law has been defined as the doctrine that every person is subject to the ordinary law within a particular jurisdiction.^[1] Most attorneys would agree that it is a central pillar of governance in the United States and that it is one of the strengths of our form of government. However, two questions become readily apparent: how do we determine a country's adherence with the rule of law, and how is the United States performing relative to the other countries of the world?

Fairly recently an organization was created that may provide information which will allow us to answer these questions. The World Justice Project (WJP) was founded by William H. Neukom, a former president of the American Bar Association. It is based on two complementary premises; first, that the rule of law is the foundation for communities of opportunity and equity; and second, that multidisciplinary collaboration is the most effective way to advance the rule of law.^[2] The WJP uses a definition of the rule of law based on four universal principles: that the government and its officials and agents are accountable under the law; that laws are clear, publicized, stable and fair, and protect fundamental rights, including the security of persons and property; that the process by which the laws are enacted, administered and enforced is accessible, fair and efficient; and that access to justice is provided by competent, independent, and ethical advocates and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.^[3]

The principal publication of the WJP is its Rule of Law Index. Published annually since 2008, the Rule of Law Index (Index) is a quantitative assessment tool designed to offer a detailed and comprehensive picture of the extent to which countries adhere to the rule of law in practice. The index considers nine factors ranging from open government and the absence of corruption to fundamental rights and access to civil justice to provide what the WJP believes is a comprehensive picture of a country's rule of law compliance.

The most recent Rule of Law Index was published in 2011.^[4] It examined adherence to the rule of law as it existed then in 66 of the world's countries. After an executive summary and a section describing the construction of the Index the report turns to highlights by region and country. The report notes that the United States "obtains high marks in most dimensions of the rule of law. The country stands out for its well-functioning system of checks and balances and for its good results in guaranteeing civil liberties among its people, including the rights of association, opinion and expression, religion, and petition. The civil justice system is independent and free of undue influence, but it remains inaccessible to disadvantaged groups (ranking 21st). Legal assistance is expensive or unavailable (ranking 52nd), and the gap between rich and poor individuals in terms of both actual use of and satisfaction with the civil courts system remains significant. In addition, there is a general perception that ethnic minorities and foreigners receive unequal treatment from the police and the courts."^[5]

Detailed country by country profiles follow the regional highlights section, and the profile of the United States shows that its global ranking on the nine factors the Index evaluates range from a high of 12th out of 66 countries concerning open government to a low of 21st out of 66 countries concerning access to civil justice.^[6]

The overall adherence of the United States to the rule of law as reported in the Index is heartening. However there is certainly room for improvement in the areas of access to civil justice and effective criminal justice, particularly as it relates to the perception that ethnic minorities and foreigners receive unequal treatment from the police and courts. For more information I urge you to read the full report, which can be found at www.worldjusticeproject.org.

[1] Black's Law Dictionary, Eighth Edition, page 1359 (West Publishing Company 2004).

[2] See www.worldjusticeproject.org, accessed on April 12, 2012.

[3] *Id.*

[4] See Agrast, M., Botero, J., Ponce, A., WJP Rule of Law Index 2011. Washington, D.C.: The World Justice Project.

[5] *Id.* at 23.

[6] *Id.* at 103.

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Judge Poyfair's Exit Interview



DON JACOBS

Hearsay Special Correspondent

Well, like it or not it happens to all of us. Getting old that is. You may feel like 25 (and, as your spouse probably says, still try to act like it at times) but those lines on your face and the gray hair starting back at you from the mirror don't lie. We may think we'll live forever but the odds against that happening are about the same as you ever buying a winning powerball ticket. One of my spouse's favorite sayings these days is, do the math. In other words, go get that life expectancy table from the Washington Pattern Jury Instruction handbook. Find your age and sex and then scroll across to see how many years you have left assuming you have an average life span. Yikes. Now granted, all of us are above average. This probably throws the bell curve off somewhat, but just try and convince us otherwise. I certainly feel above average, how about you? But average life expectancy for a male in our pre-Obama care world is probably in the high 70s. So when you've reached your high 60's, maybe you want to think about what you want to do with what you have left? And maybe you'd like to spend more of your days someplace where that yellow thing in the sky actually appears once in a while. Not a bad plan.

Which is exactly what our long time and beloved family law judge Ed Poyfair has decided to do at the young age of 68. Judge Poyfair has been on the bench since 1992. He's served Clark County for twenty years. Not a bad run. Before that he was in private practice for another twenty. His first job was with the Vancouver firm of Weber, Baumgartner and Heller. Then he left to form the firm of Poyfair and Mitchelson, which later became Poyfair, Mitchelson and English.

He's lived through many changes in the legal community. Think back to when Judge Poyfair got out of Law School in 1972. Typewriters, whiteout and carbon paper were the tools of the day. You'd dictate the letter and the secretary would slide three sheets into the typewriter. First the letterhead, then a sheet of carbon paper and then an onion skin sheet which became the file copy. Mistakes were corrected by whiteout. Too many whiteouts meant redoing the letter. You usually would suffer through two to three drafts before it looked right. It took a while. Often by the time you finished the project the client would call and make it obsolete anyway. There were no word processors. There were no computers. There was something called the Shepherds citator in the library you had to master to see if a case was still good law. There were no computers and no cell phones. But there were people in our profession who got the calling. The desire to give back to the community. Judge Poyfair was one of those people.

We've been very fortunate to have him on the bench for two decades. He first ran for Judge in 1979 and lost to Judge Robert Harris. He ran again in 1992 and defeated one of our current sitting judges for the seat. But just before he was to take the bench, Governor Booth Gardner appointed him to fill the seat of retiring Judge John Skimas. So he finished his term and then went on to serve his full four year term. During his time on the bench Judge Poyfair was re-elected without opposition in 1996, 2000, 2004 and 2008. Whenever a judicial poll was taken during his term Judge Poyfair was always ranked very high by the bar for his legal abilities and judicial temperament.



Judge Poyfair has been giving back to the community his entire career. He's coached youth soccer, football and basketball. He's served as president of the Clark County Bar Association. He's also been Stake President of the Vancouver Mormom Church. So it was no surprise when he told me his plans in retirement include doing volunteer work with veterans and the homeless. Judge Poyfair plans to pull up stakes and move to Arizona. But don't worry, you'll still see him around occasionally. He tells me he intends to spend four months a year back here doing family law mediations.

Judge Poyfair grew up in the northwest. He graduated from Hudson Bay and was the school's starting quarterback. He was also the only person ever to score a touchdown without being in the game. Apparently before he became the starter another teammate tore his jersey and the coach asked the bench sitters if one of them could lend their jersey. Never one to shrink from volunteering, Judge Poyfair surrendered his and it went on to score TD. He said it felt pretty good hearing the press box announce he'd scored a touchdown. Judge Poyfair's football career ended at the University of Utah. He was a walk on in spring practice until, as he says, it became obvious that he lacked

something in the speed department. Apparently some of the the guys holding the down markers were faster.

He gave up football and went on to receive a degree in psychology from BYU, followed by Lewis and Clark Law School. He also ended up having ten kids. This tribe then produced twenty nine grandkids. No wonder we need a new bridge. And no surprise he gravitated into family law. In 2008 he was appointed to be our first Chief Family Law Judge. That was also the year he received the very high honor of Family Law Judge of the Year from the Washington State Bar Association.

Judge Poyfair tells me he really liked being a judge and will have some regrets. One is working day in and day out with some

wonderful attorneys. Another is not being able to continue working with an outstanding judicial assistant, or as he refers to her, the brains behind the robe. He also says he'll miss the camaraderie and the collegiality involved with being a judge. And he'll miss interacting with the practitioners. But being a judge can be stressful. You have to make decisions that have life long consequences for families. Sometimes you have to make decisions contrary to your beliefs. So this spring, Judge Poyfair will finally hang up his black kimono for good and venture off to Arizona for some well deserved R+R. He's asked that I tell everyone thank you for what they have done for him in making his job such a pleasure. He will be missed.

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Judicial Poll Reveals Some Surprises



JEAN McCOY

Hearsay Special Correspondent

To assist CCBA Members in filling out their Judicial Poll ballots, on March 12, 2012 the candidates for appointment to fill the seat of Judge Edwin Poyfair gave their presentations to the Bar membership at the Public Service Center. Governor Gregoire is rumored to be conducting her final interview of the top two candidates on April 10th, and factoring into her decision are the judicial evaluation ratings from interested parties, which includes CCBA and the local St. Helens' Chapter of the Washington Women Lawyers. The deadline to deliver your Judicial Poll to CCBA was March 16, 2012 and the results were posted on March 22, 2012. Of our membership, 206 of us submitted their Bar Poll, which means 50% of our members filled out their ballots correctly.

On March 12, the candidate discussions began with Darryl Walker, an attorney in the County Prosecutor's office. Darryl has an impressive resume and discussed his background as attorney both on the public side, with jobs in County Prosecutor's offices in Washington and Oregon, and his experiences in private practice in Portland. Darryl was very well spoken. Based on the Bar Poll results, however, the members' lack of familiarity with him as an attorney in Clark County resulted in a majority of members listing "insufficient information" in the categories regarding his qualifications for the bench.

Josephine Townsend was the second speaker and discussed her reputation when she first came to Vancouver, straight from the hard streets of New York. Josephine admitted she was a "bulldog" when she first came to Vancouver, but experience and life in her current environment has resulted in more balance in her approach. Josephine is in private practice, and also acts as an Administrative Law Judge for the Washington State Department of Licensing. Josephine received the support of current sitting Judge Poyfair and promised to have respect for others and to be prepared for every hearing. Josephine's results in the Bar Poll showed that a majority of the members voting found her Qualified or greater in the different categories of Legal Ability, Judicial Temperament, Integrity and Relevant Legal Experience.

Greg Gonzales was the next speaker at the event. Greg is known mostly for his long association with past firm Weber Gunn, and he is now a sole proprietor. As Greg mentioned to the members, he is also the applicant with the most judicial experience. Greg has acted as the Municipal Judge for Battle Ground since 2005, and conducts Court hearings at least six times per month and has presided over a dozen trials. Greg stated he is passionate

about his work and about being a Judge. He was reminded by one member that the Family Law Code is found in Title 26 of the RCW, and Greg committed to read to learn. Greg was far and away rated by members as the most qualified to be appointed to this seat. Between 96 and 98% of those with an opinion voted Greg as Qualified or greater in each category. Greg was chosen as the applicant for this position by almost 65% of the member vote.

Camara Banfield followed Greg Gonzales to the podium and discussed her local roots and long-term goals. Camara grew up in Clark County, moved away for school, but moved back as an adult to build a supportive family community here. She is a Prosecutor in the Major Crimes Unit at Clark County, and was in the middle of a criminal trial on this day. Camara pledged to review documents ahead of time, to commit all her energy and apply herself to the learning curve, and to advocate for the rights of all. Camara discussed the last appointment process and meeting with the Governor as a "humbling" experience, but it pointed to where she needed to focus energy in moving forward. Camara's presence exudes energy and sincerity. Unfortunately, in the Poll at least a quarter of those responding believed they had insufficient information in which to make a judgment as to Camara's qualifications.

Bob Yosef was the last applicant to speak with the members regarding his qualifications for Judge. Bob recalled that he actually refereed for a soccer team Camara played on while in school, and reminded us that he has been practicing in Washington for 33 years, with a majority of that in Clark County. He has both criminal defense experience as a public defender in Clallam County, and criminal and civil practice in Clark County. The advice he most recalls being given is "Don't bring a knife to a gunfight". He said that while he whole heartedly does not believe in capital punishment, he believes he would fairly preside over such a case as a Judge. Out of the 206 responses in the Bar Poll, Bob received the second highest response with 10.7% of the membership making him their choice for this Superior Court position.

After the presentations, at least one member expressed the need for a new ballot, as their votes had changed. We have been very fortunate to have a stable Superior Court Bench for many years. It is likely we will see that stability shift and change over the next 5 years as some of our Judges seek a well deserved retirement. Thank you to the CCBA Board for having the foresight to arrange this gathering. We all learned something!

2011 - 2012 **CLE** and **Nuts & Bolts** Calendar

Date	Topic	Speaker	Committee Member
April 24, 2012 9:00am - Noon PSC	E Discovery	Stephanie Hines Mark Beatty	Mark Beatty
May PSC	Forensics		Suzan Clark
May 5, 2012 8:00am - 5:00pm Clark County Courthouse	N&Bs: Trial Skills Practical Day	Local Judges and Trial Attorney Mentors	Jane Clark
May 9, 2012 3:00pm - 5:00pm RL at the Quay	N&Bs Collecting on Judgments		Mark Beatty
June 13, 2012 3:00pm - 5:00pm RL at the Quay	N&Bs Adoption	Marie Tilden	Scott Matthews

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CCBA General Meeting and Lunch



KAITLIN LISANDRELLI
CCBA Member Services

The tone of the General Meeting was varied from that of the last few General Meetings. The CCBA is no longer in a financial crisis and the Board does not have to worry about merely keeping the CCBA alive. As such, the Meeting focused not on how to merely keep the CCBA afloat, but rather on the opportunities the organization has to move forward. So, after getting past the usual state of the bar, the members in attendance discussed the Barrister's Ball, CLE's, the implementation of a mentorship program, and overall membership participation.

The discussion about the Barrister's Ball centered on changing the format of the Ball. Over the years attendance at the Ball has declined. Many of the people who attended this year are the same people who attend every year. As such, it seems that a change in the event is needed. When presented with the question of how to change the Ball the members said they would like to see a lower price point for tickets. Other members suggested having a casino night instead of dinner and dancing, or having a karaoke night. The consensus seemed to be for a night with a more relaxed atmosphere and heavy appetizers instead of a formal dinner.

With the conclusion of discussion about the Ball, the members moved on to talking about the current CLE program. The new Nuts and Bolts series (N&B) has been a success, often bringing in nearly twice the amount of people as the regular CLE's. However, concern was expressed that the focus of CLEs is being shifted to the N&Bs series. The format of the N&Bs series differs from a regular CLE and not all CLE topics will fit into the format. Concern was also expressed over topics for CLEs becoming overly specialized discouraging attendance by attorney's who don't have need for such specialized information. Another concern with the N&Bs series is the location. The N&Bs CLEs are held at the Red Lion at the Quay every month with food provided. Some members felt that a less expensive location could be found for these CLEs. While the N&Bs series has been very successful thus far, there are still some kinks to be worked out.

After discussion of the CLE program finished, President Fairgrieve introduced the idea of the CCBA implementing a mentorship program. The idea of a program where more experienced CCBA members could mentor newer members was well received. One young lawyer in attendance mentioned how use-

ful he would find a mentorship program in our area. However, a mentorship program would be a huge undertaking. Using the Oregon State Bar's (OSB) program as an example, one member pointed out the amount of time and effort needed to start and sustain such a program. The OSB has a significant amount of paid staff support to implement the program including screening mentors and providing CLEs for both mentors and mentees. In light of the amount of work it would take to set up a program similar to the OSB's, it was suggested that a more informal pilot program be started here with more responsibility on the mentor and mentee to coordinate their own meetings. Even with this idea though, there was concern as to the amount of membership participation that could be counted on.

Participation by the members was a recurring theme throughout the meeting, whether it was lack of attendance at the Ball or at CLEs, or the concern that there won't be enough member support to implement a mentorship program. Overall, CCBA events have seen a decline in member attendance, and committees have seen a decline in the members who are willing to help. Some of the few members who attended the meeting suggested that there needs to be more value to membership. Currently members receive a Member Directory, access to the Lawyer Referral Service, discounts on CLEs, and invitations to all CCBA social events. The mentorship program that President Fairgrieve wants to implement would be a great benefit to membership, but members are needed to donate their time to help start the program. Another issue raised is that there is a lack of knowledge and transparency into the actions of the Board, and the lack of transparency is a factor in the lack of member participation. At this point it was suggested that an email blast informing the members of what's happening within the bar should be sent out. During the discussion of participation it became clear that lack of member participation is becoming a concern for the CCBA, and now that the CCBA is going to survive, the issue of participation needs to be resolved.

If you have any suggestions on how to encourage participation in the CCBA or opinions about any of the topics discussed at the meeting, please email the CCBA office. We would like to get your feedback on how to make the CCBA beneficial to you. As one attendee stated, if we don't figure out how to increase participation, there will be no forward motion within the CCBA.

The Clark County Bar Association is pleased to announce its

TRIAL SKILLS: PRACTICAL DAY

The CULMINATION of the Trial Skills Series

Saturday, May 5, 2012, 8:00 AM – 5:00 PM, at the Clark County Court House

Local Judges and Trial Attorneys will mentor small groups as they practice the skills covered during the Trial Skills Series. The cost is \$225 for CCBA members, \$315 for non-member attorneys, and \$225 for non-attorneys. Space is limited and preference will be given to those who have attended at least one of the Trial Skills Nuts and Bolts lectures. Lunch will be provided.

Registration Deadline - April 25th

To register: Call the CCBA, (360) 695-5975, OR email: cle@ccbawashington.org, OR FAX this flyer back to the CCBA at (360) 737-6891 with your:

Name: _____ **Phone:** _____ **Bar #:** _____

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MENTORS

Judge Richard Melnick received a B.A. from Northwestern University and his J.D. from Lewis and Clark Law School, and has spent approximately 30 years as a prosecutor and as a judge. He has taught courses at Clark College and has lectured on such topics as ethics, search and seizure, trial advocacy, evidence, and constitutional law.

Don Jacobs (Civil Trials) has practiced personal injury and insurance law in the Portland/Vancouver area since 1979. He is currently a sole practitioner with offices in Vancouver and Portland, where he exclusively represents injured consumers.

Judge John F. Nichols received his BA from Seattle University and graduated Cum Laude from Gonzaga University School of Law. He was in private practice in Vancouver, Washington from 1975 to 1994; initially with Wilson & Nichols and then Nichols, Lane & Marshall. His practice emphasized real estate; business and family law. He was elected as the Clark County Bar Association President for the 1990-91 term and served for numerous years as Trustee and Secretary for the Clark County Bar Association.

Judge Robert Lewis is a graduate of Western Washington State College and the University of Washington Law School. After admission to the Washington State Bar in October, 1981, he worked for Eastside Defender Association in Seattle as a trial attorney. Judge Lewis practiced law in Camas from 1984-2004 with the firm of Knapp, O'Dell, Lewis and MacPherson. Although the firm had a typical small town general practice, his primary focus was criminal defense and family law. He was appointed to the superior court bench in November, 2004.

Suzan Clark obtained both her bachelor's degree and law degree from the University of Oregon, making her a proud "Double Duck." She began her legal career as a deputy district attorney in LaGrande, Oregon and later worked as a deputy prosecuting attorney in both Cowlitz and Clark Counties. In 1994 she entered into private practice emphasizing criminal defense, appellate work and family law. She has tried over 150 felony jury trials in Oregon and Washington as a defense attorney and she tried over 50 felony cases to a jury as a prosecutor in both Oregon and Washington. She has briefed and argued over 150 appeals to the Washington Court of Appeals, Divisions II and III, the Washington Supreme Court and the Oregon Court of Appeals.

CCBA Monthly Board Meeting Minutes

March 7, 2012



DAVID GREGERSON
CCBA Secretary

Board members in attendance: S. Clark, D. Gregerson, J.D. Nellor, A. Dunn, J. Fairgrieve, (presiding). Staff in attendance: L. Darco

1. Pending arrival of 5 board members to constitute a quorum, Darco gave a financial report and debriefing after Barrister's Ball. Discussion was held about the details of the event and what changes should be made to next year's event.

2. (12:30) Brian Kelly, our District 3 Governor to the WSBA, provided an in-person report on a proposed referendum affecting dues and nonmandatory programs. (Dunn arrives 12:38 PM). In tighter economic times, WSBA is feeling some pressure from members to curtail nonmandatory expenses. State bar dues are comparatively higher than in other jurisdictions. He reported on WSBA budget specifics and requests that CCBA take no position on the proposed referendum. The board gave feedback that members are legitimately concerned about excesses and less than optimal transparency.

3. Call to order 12:58 PM.

4. Discussion was held regarding the WSBA dues referendum. Members have concern over whether it is appropriate for CCBA to take a position on the referendum. The board finds no support for the proposed resolution.

5. Approval of previous meeting's minutes: On motion duly made, seconded, and passed unanimously, the meetings from the February 1, 2012 meeting are APPROVED.

6. Treasurer's Report: Nellor offered financials, both current and comparison to last year's. Pattern continues to be positive in comparison with past year, with substantial cost savings. Nellor will make a budget report at the general membership meeting. Key Bank signature changes have been made and will be delivered, moving old "Kaiser" account into a single cash account.

7. Old business:

a. March general meeting: Fairgrieve discussed proposed agenda items, which will include an opportunity for Brian Kelly on behalf of WSBA leadership and invitation to the dues referendum proponents.

b. Civic/Legal education and outreach. Fairgrieve tabled this issue pending production of additional information for discussion.

c. Office support and compensation: Now that Barrister's Ball is finished, committee will be formed to organize and then meet with CCBA staff to explore employee compensation issues.

d. Barrister's Ball: Net expenditure for the event was \$1,440, with \$3,200 raised in the auction for our designated charity. Committees will be formed for recommendations, review yearly awards criteria and history. Next year's date should be planned.

e. March 12 judicial applicants' forum: 3 of 5 have accepted. Camara Banfield may be in trial and requests permission to present written materials. Board consensus is to allow her to present written materials in her absence.

f. WSBA disciplinary counsel's office: discussion was held regarding a state bar complaint regarding a client within the modest means program.

g. Press Releases in Hearsay: discussion held and issue tabled until next month for discussion with Rylander.

8. There being no more business before the board, on motion duly made, seconded, and passed, the board meeting was ADJOURNED.

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CLARK COUNTY SUPERIOR COURT BENCH/BAR MEETING MINUTES

MARCH 13, 2012



JOHN FAIRGRIEVE
CCBA President

The meeting began shortly after noon. Persons present were Judge Robert Lewis, Judge John Nichols, Ann Christian, Emily Sheldrick, Jolene Sell, Suzan Clark, Kurt Rylander, Todd George, Tom Phelan and John Fairgrieve.

OLD BUSINESS:

1. Competency evaluations being conducted on criminal defendants by Western State Hospital (WSH): Ann Christian told the committee that currently there is only one out of custody defendant waiting to be evaluated. Ann expressed her concern that possible future cuts to the WSH budget may increase the already substantial amount of time it takes for WSH to conduct evaluations of defendants who are in custody.

NEW BUSINESS

1. Changes to guardianship statutes: Judge Lewis told the committee that in mid-July the statutes addressing guardians ad litem (GALs) have been amended to require that lay GALs must go through on-line training prior to certification. He further stated that existing GALs have a time frame by which they need to complete the training.

2. Language used in orders for ninety day commitments to Western State Hospital for competency restoration: Suzan Clark told the committee that she was concerned that the standard form order being used by the court to order criminal defendants to be committed to WSH for competency restoration does not accurately reflect case law in this area. John Fairgrieve stated that he would look into the matter and report back to the committee.

3. Criminal readiness docket issues: It was reported to the committee that readiness dockets have recently become very heavy with 60-70 matters on the docket regularly and up to 90 matters on one particular docket. The superior court has responded to the large dockets by splitting the docket into two separate dockets, one for

in custody defendants and another for out of custody defendants.

Ann Christian asked why the readiness dockets have been so heavy recently. Judge Lewis stated that one reason he believed the readiness dockets have gotten so large is that more attorneys are waiting until then to resolve cases. Suzan Clark stated that she believed that late offers from the prosecutor's office were contributing to the problem.

4. The nature of Judge Poyfair's superior court judge's position: A question was raised about whether Judge Poyfair's position had been specifically designated as a family law position. Judge Lewis and Judge Nichols said not necessarily. They told the committee that what a new judge does is often based on his or her background and skills and those of the rest of the judges on the bench at that point.

5. Felony criminal caseload: Ann Christian reported that the felony caseload seems to be much higher this year, with 235 cases assigned this January compared with 180 cases per month cases normally contracted in January.

6. Reserving slots on the change of plea dockets: Judge Lewis told the committee that some attorneys were "reserving" spots on change of plea dockets prior to their clients accepting a plea offer with the hope that they would do so. When the client does not accept the offer this wastes valuable space on the docket. Judge Lewis discouraged the practice.

7. Cost for Sexually Violent Predator (SVP) cases: Ann Christian told the committee that recent legislation has shifted the cost of SVP cases from the State DSHS to the Office of Public Defense effective 7/1/12. Counties will no longer have to process SVP invoices and seek reimbursement from the State.

8. Drug Court numbers up: Judge Nichols told the committee that the number of drug court participants is up, currently around 135-140 participants. He stated that heroin seems to be the current drug of choice and that there is more use of the drug offender sentencing alternative (DOSAs) program due to the loss of funding for other drug treatment programs.

9. Updating the local court rules: Emily Sheldrick raised this issue and asked the committee if there is support to review and update the local rules. Judge Nichols suggested that someone review the local rules to see if they needed to be updated, and Kurt Rylander suggested that the local bar be surveyed to see if its members believe the rules need an update. Emily also stated

that if the county is planning on going to electronic filing at some point in the future that the rules will need to be updated to address such a change. Suzan Clark told the committee that the Court of Appeals is currently accepting electronic filing for everything except briefs.

10. Next Bench Bar committee meeting: The committee will meet next on Tuesday, April 10, 2012 at noon in Judge Nichols' jury room.

Respectfully submitted,

John Fairgrieve

ELECTRONIC DEVICES IN THE COURTROOM

The following rules related to the use of electronic devices (including computers, cell phones, smart phones, PDAs, readers and pagers) apply in any courtroom presided over by Department 9 of the Clark County Superior Court:

(1) Business area (in front of the dividing bar, including the jury box):

Electronic devices shall not be used without the advance permission of the judge. Permission will usually be given only to effectively conduct the court's current hearings and business. Examples of uses that will normally be allowed upon request:

- (a) Checking calendars and schedules.
- (b) Use of a computer, projector, etc, during presentations to the court or jury.
- (c) Taking or reviewing notes related to the current hearing.

(2) Spectator area (back of courtroom, behind the dividing bar):

Electronic devices may be used, subject to the following restrictions:

- (a) The device must be silenced.
- (b) The provisions of GR 16, related to courtroom photography and recording, continue to apply to members of the media.
- (c) For all other members of the public, audio and video recording and photography in the courtroom is not permitted without court permission.
- (d) The use of the device must not disrupt or distract from the court's proceedings, or interfere with observation by others.

The judge retains the ability to control the courtroom at all times. Additional restrictions or prohibitions may be imposed when deemed necessary.

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Judge Robert A. Lewis

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What CCBA Members Are Doing About Town



RAISA JUDICATA
Guest Gossip Columnist



Lori Volkman is a media darling.

If you are a working parent, the thought of having the folks from NBC Nightly News show up at your house with not much notice to set up their crew for a live interview with your kitchen in the back ground would cause heart failure. I don't know what kind of tizzy went through the Volkman household when they found out, but Lori

Volkman from the Prosecutor's Office had Miguel Almaguer and his whole crew surround her dining table to talk with her for a report that would air on March 23 in front of bazillions of viewers. As we have noted in this column previously, Lori's blog at www.wittylittlesecret.com has garnered some fame and notoriety as she has (wittily) written about her husband's military deployment, and his triumphant return home, in between being a working lawyer-mom of two young children and all the daily horrors/wonders that can entail. But it was Lori's blog entry "Open Letter to Kari Bales", directed to the wife of the Staff Sergeant suspected of killing civilians in Afghanistan, which garnered more than 10,000 hits to her blog in three days and the subsequent intense media attention. Nothing exists in a vacuum, and it is very likely that Lori's compassionate blog, highlighting the quandary of the military spouse, and the subsequent positive attention has helped to shape public discourse on the issue. Who says one person can't make a difference? The interview and report can be seen at: http://dailynightly.msnbc.msn.com/_news/2012/03/23/10831829-military-wives-rally-around-karilyn-bales.

.....
With a membership of 415 active lawyers one or more of us will be laid low at one time or another. Some of the more spectacular or cringe-worthy accident recipients are recovering or back to

good humor, we are happy to report. Probably the most spectacular is the man vs. train accident Mike Langsdorf was involved in last year. The Amtrak passenger train was traveling over 60 miles per hour when it struck his vehicle. Mike looked both ways, but



Mike Langsdorf's Lexus protected him from the train as much as it could.

the sun was low in the horizon, and a train traveling that fast takes up a lot of ground in a short period of time. Mike could have died, but did survive to testify before the City Council regarding the need for slower trains traveling through City limits. Mike's recitation of the incident can be reviewed at <http://couv.com/issues/clark-county-today/attorney-survives-train-crash>. Carolyn Drew also had a horrific accident, but is back in the saddle and looking fabulous. She had a run-in with her running car and the car won. Rumor is that the Family Law Bar pitched in to help while she was out of commission. Larry Holzman is well on the road to recovery from hip replacement surgery. And before you ask, yes, he is too young for a hip replacement. A combination of faulty original equipment and a very active lifestyle left him in a lot of pain prior to the decision to operate. The couch in Larry's office is getting good use while he gets his stamina back. Last year also saw Judge Ladley with his broken knees, and Judge Harris with another broken neck! Judge Ladley doesn't let anything stop him and is continuing to help litigants settle cases left and right. Judge Harris was spied at the Barrister's Ball in February with another fashionable neck brace, but Mary Jo Harris says her husband was almost fully healed and would be free of it in several weeks. Hey, let's be careful out there!

Speaking of cringe-worthy, our next subject garnered the nickname “Jean, Jean, the Eviction Queen” in the last 20 years for such memorable cases as the biker gang member who caused a Memorial Day weekend stand-off ending with a SWAT team negotiation and eventual surrender, the 80-year old with two broken legs in a wheel chair, the very mean deaf lady who refused a sign language interpreter but still managed to swear at the Judge, and the occupant with a warrant who was then arrested by the Sheriff after losing his hearing and taken to jail. However, not much can beat evicting a chicken. In a recent case all the tenants vacated just before the Sheriff move-out date except for the chicken. Not knowing the name of the chicken, the “and all others residing therein” on the Writ of Restitution served to cover all legal bases, but then no one could catch the tenant to fully execute the Writ. The tenant continued to have free range of the property for another week and the eviction was finally manually executed by someone with a net. Word is that the former tenant is resting comfortably at a local farm and was not executed for defying the will of the Queen.



The tenant flaunts authority and runs like a chicken.

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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VIRTUAL ASSETS

by

MICHAEL WALKER - mwalker@samuelslaw.com and VICTORIA BLACHLY - vblachly@samuelslaw.com

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See our blog at www.wealthlawblog.com

Virtual assets may be something you see, create, or rely upon every day, yet they may simultaneously be something you never consider as valuable or worth incorporating into your or your client's estate plan. In a 2007 study, internet use in the age group over 71 was only 29%.^[1] However, internet use jumped to almost 80% among the Baby Boom generation and exceeded 90% for those 30 and younger. As the Baby Boomers grow older, virtual assets are certain to become a most significant factor in the estate planning process. In the aggregate, virtual assets have tremendous aesthetic, emotional and financial value.

Yet, when we die or become incapacitated, what happens to these assets? Who can gain access to this "virtual existence" when we're gone? And how can we plan for proper care and disposition of our virtual assets?

What are Virtual Assets?

With respect to electronics and the internet, "virtual" is defined as something that is "occurring or existing primarily online" or that is "being simulated on a computer or computer network."^[2] Accordingly, one's "virtual assets" are the electronic information stored on a computer or through computer-related technology. This includes banking and financial information, legal or financial documents, medical records, emails, photos, videos, music, websites, blogs social media accounts and business accounts. Oftentimes, these assets have sentimental value. If they have economic value they should be included in the estate for tax purposes. Another term used by estate planners to refer to these types of digitally-stored property and information is "digital assets."

Online Accounts

Online accounts are used to communicate, pay bills, conduct business, create online personalities, and even date. Because many individuals protect such accounts by limiting access to them only, accounts with protected passwords can create problems when the account holder passes away. As a result, online accounts are oftentimes left untouched. An individual usually owns the contents of his or her emails or social networking posts as intellectual property. Many accounts, however, are in the form of licenses rather than actual property, and these licenses generally expire upon death.^[3] Moreover, the terms of service of many sites require that the account holder grant the provider ownership of his or her content.^[4] Thus, transferability of the "ownership" of such

an account upon death is oftentimes prohibited by the site's terms of service.^[5] It is therefore important to read the terms of service of each site and service used. Yahoo!mail, Hotmail, Google Gmail, MySpace, Facebook, YouTube, and Flickr – all of these popular online account providers – have varying licensing terms regarding what happens to the account, who can access it, and the procedure for accessing upon the death or incapacitation of an account holder.

Websites

A website domain name (URL) is registered to an individual as a true asset that is transferable and that passes with the residue of an estate.^[6] Thus, the "owner" of a website must determine whether or not he would like the website to continue upon his death, and it is important that there be a plan as to how, when, and who carries out this desire. Moreover, one's website blog content firmly belongs to an individual under copyright law.^[7] The law provides that an individual can bequeath his copyright to others.^[8]

Administering Virtual Assets in a Decedent's Estate

While we are alive and competent, access to and possession of virtual assets poses no legal problems. However, at the death or incompetence of the owner, the fiduciary (personal representative, conservator or trustee) may find his or her authority under Oregon law non-existent or unclear. The reason for the ambiguity in the statutes is that electronic communication and storage has developed independently of the historical definitions of assets.

The law relating to virtual assets has been somewhat slow in developing. At this writing, only two state legislatures have promulgated statutes to specifically authorize fiduciaries to access a decedent's virtual assets.^[9] The Uniform Law Commission recently formed a virtual assets study group, but it is unexpected that ULC progress will meet the current demand for clarification of fiduciary authority.

In the interest of addressing these issues more quickly, the authors of this article recently convened an Oregon State Bar workgroup proposing legislative changes to expressly include virtual assets in Oregon's probate, protective proceedings, and trust codes. This proposal aims to empower fiduciaries in performing the obligation of identifying, marshaling and protecting virtual assets of a decedent, protected person, or trust beneficiary with greater efficiency and lower costs.

Until we have greater clarity specific to these virtual assets, the fiduciary in an estate or trust administration should adhere to the common practices and fiduciary standards required by existing law.

Integrate Virtual Assets into Your Estate Plan

If virtual assets in question are vital to one's overall estate planning, the failure of fiduciaries or family members to access these assets could create serious difficulties and unnecessary expenses. Hence, it is very important that sensible measures be taken to integrate virtual asset planning into one's overall estate plan. Here are some steps to consider in this process:

1. Identify all virtual assets.

Not all virtual assets are internet-based. For example, a great deal of electronic information may exist on the hard drive of one's home computer or laptop, or more portable storage devices such as flash memory drives, CDs, or DVDs. Home security systems are often accessed through keypad codes or passwords. In addition, personal or business smartphones may contain significant amounts of personal information as well as photos and videos.

Not all electronically accessed information relates to an "asset." It is now very common for many regular monthly bills (such as utility bills) to be paid electronically. Most credit card, bank loans, and mortgage accounts allow electronic access and bill paying capabilities. Hence, it is essential that a list of such "virtual liabilities" be maintained as well.

2. Choose appropriate personal representative, trustees and / or advisors.

Not everyone is computer and internet savvy. If a person's estate is complex and has a great many virtual assets, a technophobic fiduciary is likely not the best choice. If family politics requires that an individual without technical or computer skills be named as personal representative and / or trustee, then the will or trust could name either a co-fiduciary or informal advisor to help administer the virtual assets. In a trust setting, the Oregon version of the Uniform Trust Code contains a provision relating to trust "advisors" in which an individual is appointed to perform particular tasks on behalf of the trust.^[10] Hence, one might consider appointing a "virtual asset trust advisor" if the circumstances require.

3. Provide specific virtual asset authority in the will or trust

Consider including instructions in wills and trusts to give the fiduciary specific authority over virtual assets. Particularly because the contemplation of virtual assets in the estate planning process is a relatively new issue, a trust or will that grants specific authority to a fiduciary could be particularly important if one's estate contains a significant number of virtual assets.

4. Create a Virtual Asset Instruction Letter ("VAIL")

A "Virtual Asset Instruction Letter" or "VAIL" will list all of your online accounts and other virtual assets, and will provide

web addresses, user names, and passwords to give your designated representative the ability to identify and access these accounts. The VAIL should also contain the decedent's instructions as to what is to be done with these assets. However, it is important to keep in mind that, under the laws of most states, unless the VAIL is incorporated into the terms of one's will or trust, any such instructions may not be legally binding. That's not to say that the VAIL would not be an extremely helpful resource; it's just important to realize that the VAIL is not the place to designate the beneficiary of any asset or issue instructions that must be legally binding. Place the VAIL in a safe location, such as a safe deposit box or a home's fire-proof safe, which can only be accessed by your legal representative. In addition to placing the VAIL in written form, one might consider saving the VAIL to a flash memory drive or CD which can make your representative's access to these accounts more efficient. In addition to containing instructions as to particular assets, the VAIL could set forth a decedent's wishes as they relate to administering their virtual presence after they are gone.

5. Consider how virtual assets should be disseminated

If a virtual asset is a bank or investment account, your will or trust should (presumably) control who will receive these assets at your death. However, what about access to family photos or genealogical information? One might want to specifically instruct your executor or trustee to replicate and distribute these items so that they pass to multiple intended beneficiaries.

Commercial Services

("Electronic Wills" and Other Snake Oil Gimmicks)

A new cottage industry has sprung up to provide a type of "online safe deposit box" to store your virtual assets and provide a means by which designated individuals can gain access to your virtual assets. A few words of caution are in order. First, be careful and make sure you're dealing with a reputable company. Giving someone the keys to your digital existence would be a goldmine for someone bent on stealing your identity. Second, remember that giving someone access to information about an asset is not the same as giving that asset to that individual. Your will or trust should ultimately control who should inherit your assets, not an online service provider. There may be complex legal and tax issues that need to be taken into account in designating beneficiaries of virtual assets. For example, one online service provider refers to an "electronic will." In most states, a will requires certain formalities (typically a written instrument signed before two witnesses), and the absence of these formalities can render one's good intentions legally invalid.

There are many online companies which provide what is essentially an "online safety deposit box" for passwords and account information. Legacy Locker, DataInherit, and Entrustet are among many companies referred to as "digital afterlife planning sites" – but such representations may lead to future litigation.

Conclusion

While it may be tempting to marginalize issues relating to virtual assets as relevant only to individuals that lead highly “digital” lives or those who maintain intellectual property or creative assets in some type of electronic media, the growing reality is that individuals use numerous electronic devices in order to access information about assets and debts, to communicate for business or personal purposes, and to generally function in modern society. According to a recent article in the Wall Street Journal, state treasurers around the United

States currently hold \$32.9 billion of unclaimed assets.^[11] This new existence will have a profound effect on estate planning as well as fiduciary administration and litigation. Being aware of the various challenges and planning in advance with a VAIL and similar instruments will help to reduce or eliminate the risks of losing important information left for those charged with managing an estate. If virtual assets are any part of one’s legacy or estate, then steps should be taken to protect them.

[1] Leigh Estabrook, Information Searches that Solve Problems: How People Use the Internet, Libraries and Government Agencies When They Need Help, Pew Internet & Am. Life Project and Graduate Sch. Of Libr. & Info. Science, U. of Ill. At Urbana-Chapman, 2007.

[2] “Virtual,” Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/virtual>

[3] Evan Carroll, A Legal Perspective, Digital Beyond, June 30, 2009, <http://www.thedigitalbeyond.com/2009/06/a-legal-perspective/>

[4] Robert E. Calem, What Happens to Your Online Accounts When You Die?, Techlicious, June 29, 2010, <http://www.techlicious.com/how-to/what-happens-to-your-online-accounts-when-you-die/>

[5] Id.

[6] Sarah AuMiller & Peggy Hoyt, Estate Planning for Your Online Identity, Wealth Counsel, June 9, 2010, note 7, <http://estateplanning.wealthcounsel.com/bid/44803/Estate-Planning-for-Your-Online-Identity>

[7] Id.

[8] 17 U.S.C. § 201(d) (2006) (“The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession”)

[9] See, Idaho Code Ann. § 15-5-424 (West 2011) (authorizes personal representative to “take control of, conduct, continue or terminate any accounts of the protected person on any social networking website, any microblogging or short message service website or any e-mail service website”); Okla. Stat. Ann. Tit. 58, § 269 (West 2010) (stating that “[t]he executor or administrator of an estate shall have the power, where otherwise authorized, to take control of, conduct, continue, or terminate any accounts of a deceased person on any social networking website, any microblogging or short message service website or any e-mail service websites”)

[10] See, e.g., ORS 130.735 (2009). ORS 130.735 specifically states: “A trust instrument may appoint a person to act as an adviser for the purpose of directing or approving decisions made by the trustee, including decisions related to distribution of trust assets and to the purchase, sale or exchange of trust investments. The appointment must be made by a provision of the trust that specifically refers to this section. An adviser shall exercise all authority granted under the trust instrument as a fiduciary unless the trust instrument provides otherwise. A person who agrees to act as an adviser is subject to Oregon law and submits to the jurisdiction of the courts of this state.” See, also, 12 Del. C. § 3313 (Delaware’s trust advisor statute)

[11] Saabira Chaudhuri, The 25 Documents You Need Before You Die, Wall St. J., July 2, 2011, <http://online.wsj.com/article/SB10001424052702303627104576410234039258092.html>

Author Biographies

Michael is a partner at Samuels Yoelin Kantor LLP. Michael’s practice includes estate planning for a wide variety of clients, and includes sophisticated tax planning for high net worth individuals. Michael’s practice also includes business and transactional work, family-owned businesses, multi-generational succession planning, corporations, limited liability companies, mergers and acquisitions, and other complex business transactions.

Victoria is a partner at Samuels Yoelin Kantor LLP who works on a wide range of litigation issues, with a primary focus on fiduciary litigation for individual trustees, corporate trustees, beneficiaries, and personal representatives, including trust and estate litigation, will contests, trust disputes, undue influence, capacity cases, claims of fiduciary breach, and financial elder abuse cases, as well as guardianships and conservatorships.

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Spotlight on Volunteers

Lawyers Program:

SafeChoice Domestic Violence Clinic



JILL H. SASSER

Hearsay Special Correspondent

The SafeChoice Domestic Violence Clinic is a partnership between the YWCA of Clark County and the Clark County Volunteer Lawyers program. The clinic is held at the YWCA on the second and fourth Monday of each month. The clinic generally serves three to six clients per night. Volunteer attorneys provide pro bono legal assistance, primarily with dissolution and custody issues. The only requirement to be seen at the clinic is that the client must be a survivor of domestic violence.

Suzan Clark is a regular clinic volunteer. Suzan decided to volunteer at the clinic because, in her words, “access to the courts for domestic violence victims is an important part of stopping further violence. We see many people, mainly women, from all walks of life.” During her time volunteering at the clinic, Suzan has helped women from Russia, Ethiopia, Sudan, Vietnam, Laos, China, Japan, Mexico. Suzan says, “Helping victims understand that they have choices other than enduring ongoing violence in the home is extremely rewarding. I worked for over a year with a women in the work release program helping her get her children back. She served her time on a drug conviction, succeeded in drug treatment, got away from her abuser and established a life for herself and her children.”

Vickie Kesala, another clinic volunteer, finds it inspiring to “see people who often have never met each other unite to support and assist another person they have also never met because they believe in empowering women to overcome difficult circumstances. There is no economic motivation, just doing right by another human being because it is worth doing. It is a good balance against some of the self-dealing actions we see day to day as lawyers.” In addition, Vickie also loves the opportunity to “witness the transformation of a woman that sometimes occurs as a result of our efforts. Sometimes you can literally see it in the way a woman's body language changes. She becomes less shut down, less withdrawn, less fearful and less uncertain. As she receives information and respect from people who treat her like a person



Clinic volunteer attorneys Katie McGinley and Jill Sasser and volunteer paralegal Lisa Peterson

of worth who can and should make good decisions for herself, the backbone straightens, shoulders go back, head raises, tone of voice becomes more authoritative and confident. She might say, “I thought that he could xyz, but actually he can't” or “I can provide for my children without his help.” She has reclaimed her power over her own life and we played a part in supporting that transformation. I have seen this happen in ten minutes or over a six month period. Even a small movement in that direction is inspiring. It makes our time and effort worthwhile.”

Finally, Sidney Dolquist is another clinic volunteer. According to Sidney, there are a few things she knows how to do: “I rescue dogs, train, evaluate and show horses and know how to get to the courthouse. When someone asks for help, whether it's helping collect a horse or trying to get an emergency restraining order, it's my duty as a human being to try and fix the problem. This is why I volunteer at the YWCA Legal Clinic and the Clark County Volunteer Lawyers' Clinic. Most of the clientele have never met a lawyer or had to navigate the halls of the courthouse. I can help them do that. The rewarding aspect of the Y clinic is that there is continuity and familiarity with the clients. I see women who first come in, silent, traumatized, unable to

focus and translate what has happened to them. Then you watch them slowly heal, become more confident, conversational and empowered. This is my goal as an attorney, to empower victims of abuse and give them the keys to the courthouse. I have watched women transform, sometimes slowly, sometimes quickly. They inspire me in a very simple way: Good trumps evil, even though it can take awhile in the court system.”

The clinic is in need of additional experienced family law volunteer attorneys and donations to purchase family law software or to assist the clients served by the clinic. For more information, please contact Annette Newkirk at 906-9133 or at anewkirk@ywcaclarkcounty.org.



Clinic Director Annette Newkirk, attorney Kathryn Smith and paralegal Lisa Peterson



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Total			

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Stephanie K. Hines graduated *magna cum laude* from Lewis and Clark Law School in 2002. After 10 years at Perkins Coie, she is of counsel at Aubertine, Draper, Rose, LLP in Portland. She has over nine years of experience practicing complex commercial litigation. She has represented clients in a diverse range of disputes, including matters involving antitrust, consumer protection, securities, fiduciary duties, business torts, intellectual property, and international arbitration claims. She is the 2012 Chair of the Oregon State Bar Antitrust Section Executive Committee, and a member of the Sedona Conference Working Group on Electronic Document Retention and Production.

Through her litigation practice, she has developed expertise in addressing electronic discovery issues and concerns relating to electronic document retention and management. Her current practice focuses on representing clients in antitrust litigation, providing legal counsel to businesses on antitrust compliance, and serving as special counsel to state attorneys general in antitrust and consumer protection cases.



Mark Beatty, of Vancouver's Rylander Associates, PC, is a registered patent attorney. His practice includes intellectual property protection, acquisition, application, prosecution, licensing and litigation, representing clients in court, before juries and on appeal. He has drafted and prosecuted patent applications in the mechanical, software, and electrical arts, among others, as well as trademark and copyright registrations for a wide range of clients. He drafts and reviews intellectual property licensing and technology transfer agreements and consults with clients on a wide range of business and intellectual property issues. Mark is a graduate of the U.S. Naval Academy, is a qualified Naval Nuclear Engineer, and worked as an engineer and project manager for SEH America, a silicon wafer manufacturer in Vancouver, WA, while attending Lewis & Clark Law School.

1. Overview
 - a. Nature and scope of electronic documents and data
 - b. E-Discovery "big picture"
2. Preservation Obligations
 - a. Pre-litigation
 - b. Ongoing
3. Federal Rules
 - a. FRCP
 - b. Washington Federal Local Rules
4. Washington State Rules
 - a. How Washington differs from Federal Rules
5. Additional Issues
 - a. Spoliation
 - b. Rules of Evidence
 - c. Managing Electronic Discovery Issues Cooperatively

Capital Punishment as a Means to Encourage Others

Lessons from the British Navy, the Trial of Admiral Byng and the Acerbic Pen of Voltaire

DOUG FOLEY

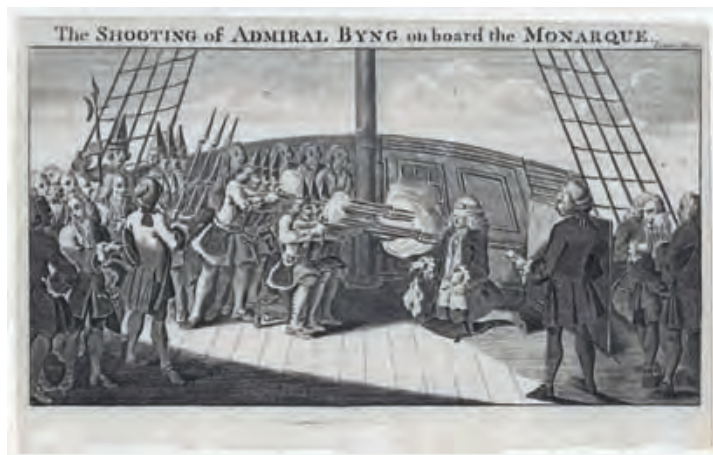
Hearsay Special Correspondent

We owe much to the British Navy. It has accented world history and salted our speech. The expression “Three squares a day” originates from the square wooden plates used in the British Navy; “Don’t let the cat out of the bag” is a direct reference to that shipboard enforcer of discipline known as the cat ‘o nine tails; and “Toe the line” refers to sailors forming up at a crease in a plank when presenting for inspection.

From its beginning as nothing more than a band of state sponsored pirates plundering Spanish treasure ships under the Crown’s Letters of Marque and Reprisal, to the defeat of the Spanish Armada, the annihilation of the French fleet in the battle of the Nile, and its modern flash of success in the Falkland conflict, the British Navy has been a centuries old and, at times, unparalleled source of global power projection. Napoleon Bonaparte, a meticulous (but later in life reckless) strategist, when finally captured and held prisoner on a British ship of the line, marveled at the efficiency of British sailors who silently and purposefully moved about the rigging of their ship, in distinction to the comparatively disorganized French sailors who often clambered about their sails while calling out needless and random orders.

During this age of wooden ships and iron men, the French and British perennially found themselves as competitors and enemies on land and sea and throughout the globe. The British Articles of War dictated capital punishment for any officer who failed to exert all efforts in facing an enemy – and there were no other alternative punishments under this uncompromising code. For the British, failure was simply not an option. The version of the Articles of War that were in effect in 1756 resulted in what is likely the most controversial legal event in British Naval history – the trial and execution of Admiral Byng.

John Byng joined the navy at age 13 – a suitable age for any young man to begin the journey of learning a trade in the 18th Century. His father was an admiral, and so he took the family career path that finally found him in a rear admiralship by 1756. The Island of Minorca had been a British possession since 1708 when captured by the British. The French invaded the island in 1756, landing 15,000 men on the island at the western end, threatening the British fort St. Philip at Port Mahon on the east of the island. Byng was immediately ordered from the Channel into the Mediterranean to land



marines, protect the fort and repulse the French. Byng was poorly equipped and, at first, he protested his inability to prepare properly – but, nonetheless, he finally set out with ten ships that proved an inadequate force against the French. Byng arrived at the east coast of Minorca on May 19. However, before he could land his troops, the French Navy suddenly appeared. The Battle of Minorca started the following day. The beginning of the battle was favorable for Byng – he had the weather gage. However, his ships encountered the French at an angle – not in the classic British line – and several of his ships, including his own Flagship, were not engaged in the battle. His leading ships – as well as some of the French ships -- were badly damaged and the French were able to sail away after what was, essentially, a draw in the engagement. Byng failed to give chase to the French ships. Byng called a council aboard his ship and consulted with his captains on their next move. The nearest port for repairs and where the wounded could be cared for was at Gibraltar. Byng, after consulting his captains, decided to sail to Gibraltar, obtain extra forces and then return to Minorca to continue the efforts to save the British fort and battle the French. However, when he arrived at Minorca, he found that the reinforcements he had expected instead relieved him of his command -- and he was ordered back to England. Meanwhile, the beleaguered British fort at St. Philip was forced to capitulate. Minorca was lost. The British public was outraged. The Admiralty clearly needed a scapegoat and villain to explain the failure of the British Navy against the hated French. Byng was placed into custody on his return to Britain.

Byng was brought up on charges and was tried by court martial. A public campaign began against him in the press. The French version of the battle made it to Britain before Byng’s own account and it was published in the London papers. The French rendition, of course, made Byng appear incompetent – and worse, a coward. Byng’s own version of the battle and explanation of his desire to obtain reinforcements and reengage the enemy after the initial skirmish was significantly edited by the London press in an astounding exercise of yellow journalism. In this climate, Byng was tried under the Articles of War which mandated capital punishment for officers who did not do their “utmost,” either in battle or in pursuit of an enemy.[1]

The court martial found that Byng had not acted cowardly – but did convict him of failing to pursue the French fleet, and in allowing the

engagement to be broken. The decision of the officers of the court martial was intractable and carried no discretion in meting the punishment since the Articles of War absolutely mandated death as a result of their finding. An inflexible rule required an inflexible punishment. However, in an attempt to ameliorate their decision, the officers sitting in court martial did, in fact, recommend to the Lords of the Admiralty to request King George II to exercise his prerogative of mercy. Four members of the court martial also petitioned Parliament, seeking to be relieved from their oath of secrecy in order to speak on Byng's behalf to further plead his case to remove the mandatory death sentence. The House of Commons even passed a measure to allow this to occur – but the House of Lords rejected the proposal.

William Pitt the Elder was the Prime minister at the time of this incident and was fully aware that the Admiralty could be blamed for Minorca due to the inadequate forces that Byng had at his disposal. Pitt petitioned the King for a commutation of the sentence of death. Complicating matters for Byng, the Prime Minister and the King were at political odds with each other over the question of whether the King should maintain his hereditary right as Elector of Hanover since that position was complicating British policy on the continent. Predictably, the King refused Pitt's petition for clemency – and Byng's fate appeared to be sealed. Meanwhile, sentiment began to turn in Byng's favor – and the public began to believe that the Admiralty was, in fact, at least partly to blame for the loss of the island. A half hearted rescue plot was even hatched by sympathetic friends in the Navy, but never developed past the planning stage. Remarkably, even the French commander at the battle of Minorca weighed in with his own protest, asserting that Byng had committed no dishonor in the battle.

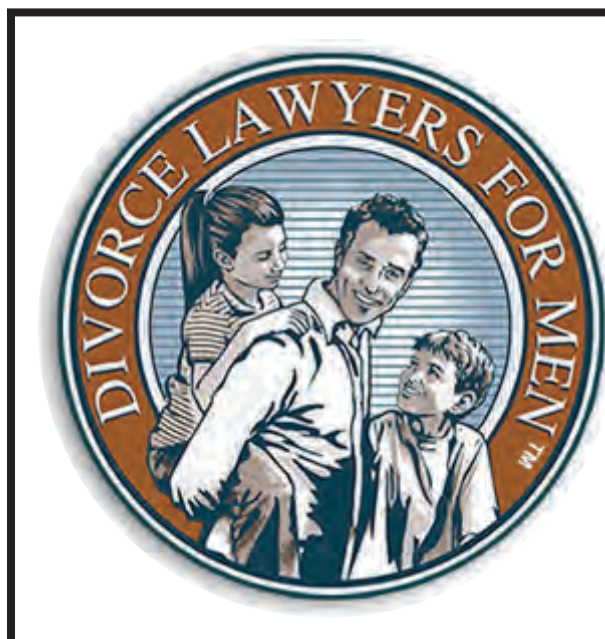
The developing new sentiment about Byng and the Admiralty – and the efforts of his allies and the public -- were to no avail. On

March 14, 1757, he was taken to the quarterdeck of the HMS Monarch for his execution. Byng declined a blindfold. The officers in charge finally prevailed on him to take the blindfold, asserting that it would be “easier for the men” to shoot him if they did not have to look into his eyes. Byng consented, but stipulated that he must give the signal for the execution by dropping a handkerchief. The agreement was struck, and he was taken to the quarterdeck where he kneeled on a pillow. A contingent of marines aimed their rifles at his heart, and when he dropped his handkerchief, Byng was killed.

In his novel, *Candide*, Voltaire satirized the killing of Byng. In that book, *Candide* witnesses the execution of a British admiral by firing squad and after the deed is told that “in this country, it is thought well to kill -- from time to time --an admiral to encourage the others” (*Dans ce pays-ci, il est bon de tuer de temps en temps un amiral pour encourager les autres*). Byng's family attempted to clear his name and have the court martial declared void and efforts even continued into the 20th Century – but the British Parliament never revisited the question. Supporters of the execution point to Lord Nelson who commanded the British fleet at the battle of Trafalgar on October 21, 1805 against the combined Spanish and French fleets. Nelson's famous words signaled to his fleet before battle were: “England expects that every man will do his duty.” Nelson was mortally wounded by a musket ball while fighting at close quarters with the enemy ships. His statue famously stands atop a column in Trafalgar square in London. There are no monuments to Byng.

The power assumed by the state to kill its citizens through the exercise of law will always be a subject of controversy – and, certainly, the power of the state to kill its citizen soldiers caught in the fog of war will continue to be all the more hotly debated.

[1] As enacted in 1749, the 12th Article of War stipulated: “Every Person in the Fleet, who through Cowardice, Negligence or Disaffection, shall in time of Action withdraw or keep back, or not come into the Fight or Engagement, or shall not do his utmost to take or destroy every Ship which it shall be his Duty to engage, and to assist and relieve all and every of His Majesty's Ships or those of his Allies, which it shall be his Duty to assist and relieve, every such Person so offending, and being convicted thereof by the sentence of a Court Martial, shall suffer Death.”



FAMILY LAW ATTORNEY

Morris-Sockle, PLLC, d/b/a Divorce Lawyers For Men, is seeking to contract with local attorneys for the joint representation of Family Law clients in Clark County. Each attorney will maintain their current office, and manage the litigation of each case on which they associate with Morris-Sockle, PLLC for joint representation of the client. Morris-Sockle, PLLC will provide all marketing, initial client telephone contact, billing, bookkeeping, and administration. The local attorney must have at least one full year of Family Law experience, and have a thorough knowledge of the local rules. This is a professional relationship for good lawyers that need additional client case load. The local attorney must be in a position that they can adequately handle the representation of additional clients, and have a support staff person.

If you are interested or have additional questions, contact frank@morris-sockle.com 360-866-7393.

I am for the Child

submitted by the CASA Program of YWCA Clark County

Right here in our community, there are abused and neglected children who live in the shadows of our lives. She may be the little girl in your son's kindergarten class who had to move homes and change schools three or four times in the last year. He may be the lonely child at the park who doesn't join the game.

The child welfare and court systems are full of compassionate attorneys, judges, social workers and foster families, but the intense need can strain the system to the point where they are simply unable to protect the rights of each child. According to recent statistics, each year more than 748,000 children are placed in foster care nationally. Over 720 children and teens are involved with the child welfare and court systems in Clark County alone. So the little girl who has already suffered in an abusive home, enters the overburdened foster care system; she may be moved several times in the first few months. Or the two siblings who lost their mother to incarceration are split up and living on different sides of the county.

This isn't just a problem; it is nothing short of a violation of their human rights. A child cannot defend his or her own rights, but a CASA volunteer can!

Clark County CASA trains and supports volunteers to speak out and act as advocates for the best interests of abused and neglected children. They are trained to work within the child welfare and court systems and are appointed by judges to individual cases. With the help of a CASA volunteer, a child is half as likely to languish in the foster care system, and much more likely to find a safe and permanent home.

In fact, CASA programs have been so effective that there are now more than 70,000 volunteers serving almost 1,000 programs in almost every court system in the United States. It is an outstanding reflection of the kind of change that's possible when the public, private and nonprofit sectors join forces.

Today 30% of the younger children in Clark County courts do not have access to a CASA volunteer; most teens don't have a CASA. That's 178 children who don't have that advocacy. We are dedicated to ensuring that every child in the foster care and child welfare system has a qualified CASA volunteer looking out for their best interests. Especially needed are volunteers of color, as African American and Latino children are overrepresented in the child welfare and court systems.

Every child has a right to thrive, to be treated with dignity, and to live in a safe, loving home. Every child deserves a fighting chance.

Once grown, these former foster children could be our future doctors, teachers and leaders. Coming through a period of vulnerability and fear, the child can come to understand his potential and his rights. She will believe in herself. That is our opportunity and our challenge.

You can help us meet that challenge by volunteering or donating to CASA. We need 40 more volunteers to help the 178 children without a CASA, and funding to support at least one more staff supervisor for the new volunteers. Visit www.ywcaclarkcounty.org or call 360 696 0167 for more information, or to make a donation.

ASSOCIATE ATTORNEY

Vancouver law firm Marsh, Higgins, Beaty & Hatch is seeking a licensed Washington State attorney having a minimum of two years litigation experience. The candidate should have consumer bankruptcy experience and have experience in or willingness to develop, a couple other areas of law.

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HEARSAY PROFILE

RICK MCLEOD

HOME: Lots of different places.¹

AGE: Younger than the stars, but just barely

PROFESSION: Iconoclast, Writer, Defender of Free Speech

HOBBY: Learning, doing and teaching (preferably in that order) , especially if it involves Halo.

LAST BOOK READ: Hitchens, Christopher, *god is not Great: How Religion Poisons Everything*, (possibly Thomas Paine and the Rights of Man by the time this is printed)

LEGAL PHILISOPHY: : *Fiat justitia ruat caelum* – Do justice, and let the heavens fall

LATEST ACCOMPLISHMENT: Lighting up the darkness...no matter how slightly.

WHY I DO WHAT I DO: All that is required for evil to triumph is that good men do nothing.² The people who are trying to make this world worse are not taking a day off. How can I? Light up the darkness.³

PROFILE: The perfect chameleon; unnoticed in any environment.

BEVERAGE OF CHOICE: Guinness (GIGFY), Bushmill's or Jameson's (at least 18 years old), or my blueberry wine.



REFERENCES

1. Russell Nash, *Highlander* (1986)

2 . Paraphrasing Edmund Burke, *Thoughts on the Cause of the Present Discontents* (1770)

3. Bob Marley, by Robert Neville, in *I Am Legend* (2007)

Clark County VOLUNTEER Lawyers Program

Susan Arney, Executive Director
Ashley Belisle, Program Coordinator
Administrative: 360-823-0423
E-mail: susana@ccvlp.org

We are having our first FUND RAISER!! We need your help. We will be selling box lunches for you and your staff to be delivered to your office on May 11th. Our Board of Directors will be preparing the lunches and delivering them. Proceeds from the lunches will help with the costs of running the programs we have.

To order your box lunches please see our website – www.ccvlp.org – on the home page. You will find an order form and payment options. Your support is truly appreciated.

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 FEBRUARY

DIRECT REPRESENTATION

Mark Carter, Tresa Cavanaugh, Sidney Dolquist, Peter Fels, Phillip Foster, Brian Leahy, Scott Matthews, Robert Russell, Todd Trierweiler

BANKRUPTCY:

Peter James, Anna Waendelin

YWCA SAFECHOICE DV CLINIC:

Christie Martin, Katie McGinley, Jill Sasser,

FAMILY LAW:

Ivan Culbertson, Ed Dawson, Sidney Dolquist, Lori Ferguson, Susan Hammann, Lincoln Harvey, Robin Krane, Dean Langsdorf, Scott Matthews, April Wright

GENERAL LAW:

Phil Foster

HOMELESS COURT:

Shon Bogar, Chuck Buckley, Jeff Courser, Erin Culver, Brian Parker, Abby Powell, Mark Sampath, Diane Sweet, Anna Waendelin

HOMELESS SHELTER:

Peter Fels, Gavin Flynn, Dustin Klinger, David Feeney

HOUSING JUSTICE PROJECT:

Ed Dawson, David Gregerson, Evan Hull, Scott Matthews Ben Wolff, Phil Wuest

STATISTICS FOR FEBRUARY

Cases Placed for Representation	5	Volunteer Attorney Hours	263
Clinic	# of Clients	Clinic	# of Clients
Family Law Advice Clinic	17	Family Law Paperwork Clinic	15
Bankruptcy Clinic	8	General Law Clinic	3
Homeless Shelter Clinic	7	Homeless Court Referrals	6
Housing Justice Project Clinic	8	Housing Justice Project Courthouse	14

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NEWS YOU CAN USE



LISA DARCO
CCBA Office Manager

The Southwest Washington Lawyer Referral Service has new hours. Calls will be answered Monday, Wednesday and Friday between 11:00am and 4:00pm. When you refer a client to the Southwest Washington Lawyer Referral Service please use their designated phone number - **(360) 695-0599**.

New Addresses:

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5502 NE 44th St.
Vancouver, WA 98661

Ashawna Sauter

Beacon Paralegal LLC
16420 SE McGillivray, Ste 103
Vancouver, WA 98683

Randall Stewart

1409 Franklin Street, Ste. 102
Vancouver, WA 98660

The Volunteer Lawyer Program has a new website!
Visit them at: www.ccvlp.org

LAW LIBRARY NEWS



MARIA SOSNOWSKI
Law Librarian

Updates on forms kits

We have updated the eviction by landlord kit. If you purchased a kit updated in October 2011, we can provide you with a free update to one of the forms. If you purchased a kit earlier than that, there have been multiple changes made since the last major overhaul in 2008 so you would be well served to purchase a new kit. The garnishment kit is also going to be rewritten this summer, as there are major changes in a bill that has already passed both houses and is awaiting signature by the governor. Keep an eye on the law library website, www.clark.wa.gov/law-library/index.html to see when the new kit is available.

FOR SALE through April, 2012

The law library is taking blind bids on the following item:
Representing the Elderly Client - CD Rom only, through 2011-2012 supplement.

Give your bid to the law librarian through the end of April. Bids must indicate your name, phone number, amount, and item(s) on which you are bidding. Winners will be notified in early May. We reserve the right to withdraw an item from bidding.

ATTORNEY BOOKKEEPING TIPS



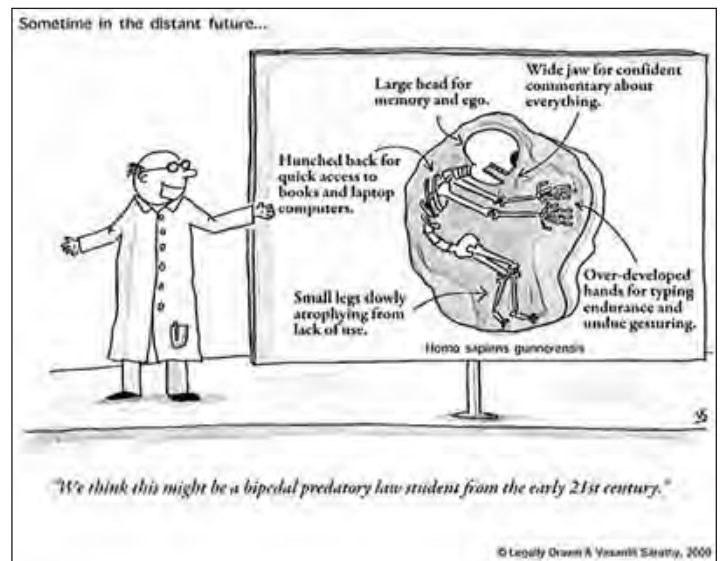
EMANUELA SANDRI
Attorney Bookkeeping Services, Inc.

Deductibility Guidelines — Meals

The Internal Revenue Service has specific guidelines for deductions for food and business meals. The following chart is a really good quick reference.

Lavish and extravagant portion of business meal	0%
Meal with employee, business discussed (before, during or after)	50%
Meal with employee, no business discussed	0%
Meal with customer, business discussed (before, during or after)	50%
Meal with customer, no business discussed	0%
Meal with customer during business travel, no business discussed:	
Customer's meal ,	0%
Taxpayer's meal	50%
Employer's cost of dinner for employees working overtime (if deemed de minimis)	100%
Lunch ordered in for staff meeting (if deemed de minimis)	100%
Dinner for customer and spouse, no one else present	0%
Transportation to and from restaurant for business meal.....	100%
Company picnics and holiday parties	100%

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UPCOMING EVENTS

MEETING

April 24, 2012

CLE: E-Discovery
Public Service Center 9:00am - Noon

CLE

April 25, 2012

Registration Deadline for
Trial Skills Practical Day

MEETING

April 26, 2012

Hearsay Committee Meeting
CCBA Office - Noon

MEETING

May 1, 2012

CLE Committee Meeting
CCBA Office 12:00pm

CLE

May 2, 2012

CCBA Board Meeting
CCBA Office – Noon

CLE

May 5, 2012

Nuts & Bolts CLE: Trial Skills -Practical Day
Clark County Courthouse 9:00am - 5:00pm

CLE

May 9, 2012

Family Law Section CLE & Lunch
Tommy O's - 11:30am

CLE

May 9, 2012

Nuts & Bolts CLE: Collecting
on Judgements
Red Lion at the Quay 3:00pm to 5:00pm

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.

To participate, members pay a small one-time annual fee. (The service is free to the public.) For more information, call the CCBA at 360-695-5975.

THE SWLRS REFERRED 259 CLIENTS IN THE MONTH OF FEBRUARY

Administrative Law	22
Bankruptcy	6
Business & Corp	5
Consumer	16
Criminal	23
Debtor/Creditor	15
Family Law	51
General Litigation	68
Labor & Employment.....	14
Real Property.....	20
Wills & Trusts	8
Worker's Comp	9
International Law	2
ADA	0

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Advising Property Owners,
Condominium & Homeowner
Associations for 20 years.



The focus of Mike Simon's law practice is representing condominium and homeowners associations, government condemnations, individuals and businesses with land use, real estate, and civil litigation matters. He approaches each issue through its details, reviewing and interpreting the most complex documents to formulate the best approach to representing his clients.

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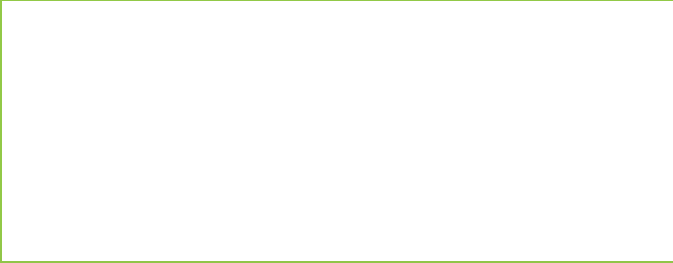


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