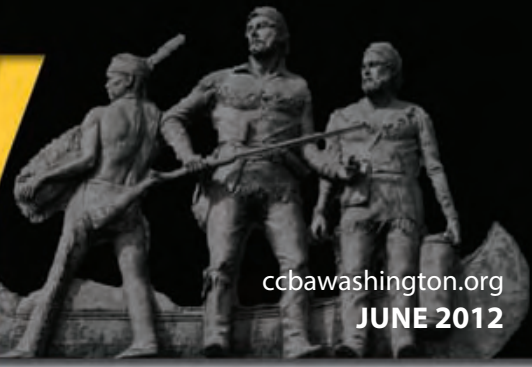


HEARSAY



ccbawashington.org
JUNE 2012

OFFICIAL NEWSLETTER OF THE CLARK COUNTY BAR ASSOCIATION



Local Heroes

page 5

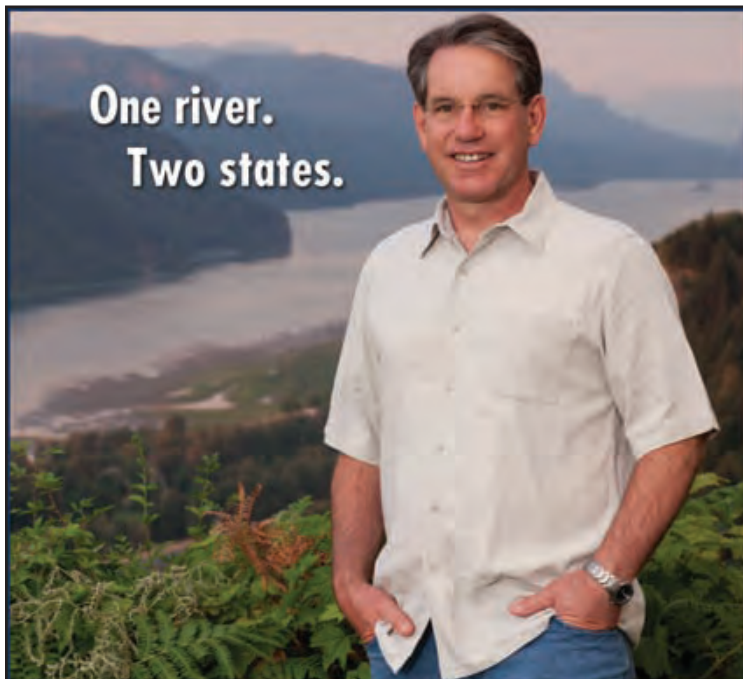
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PRESIDENT'S MESSAGE



JOHN FAIRGRIEVE
CCBA President

Dear fellow bar association members:

Fortunately I'm able to begin this column with a bit of good news. As I mentioned last month the Washington State Bar Association's (WSBA) Budget and Audit Committee made a series of budget recommendations in April to the WSBA Board of Governors (BOG) to close the estimated 3.6 million dollar budget gap caused by the successful referendum to reduce WSBA licensing fees. One of the committee's recommendations was to eliminate funding for reimbursement for expenses incurred by attorneys serving on WSBA standing committees, boards and task forces. The effect of this recommendation would have been that volunteer board, committee and task force members would no longer be reimbursed for travel expenses including airfare, mileage, lodging, and meals.

I am happy to relate that at its meeting in on May 22, 2012 the BOG voted against the recommendation to eliminate funding for the reimbursement of expenses for WSBA members voluntarily serving on WSBA committees, boards or task forces. This is particularly important for many of our peers who voluntarily serve in many capacities in the WSBA governance structure and regularly travel long distances to do so.

On a more local note the Clark County Bar Association (CCBA) will sponsor a judicial candidates' forum on July 16, 2012 at noon in the Commissioners' Hearing Room in the Clark County Public Service Center located at 1300 Franklin Street in

downtown Vancouver. All four candidates, Judge John Wulle and David Gregerson for Superior Court Department 2 and Judge Diane Woolard and Josephine Townsend for Superior Court Department 8, have agreed to attend the forum. Each candidate will be given an opportunity to make a brief prepared statement and will then answer questions from the audience. I invite you to attend the forum if you are available.

Finally, summer would not be complete without the annual CCBA Barbeque. We had originally planned on holding the barbeque on July 13 but due to a scheduling problem have moved it to Friday, July 20, 2012 at the Public Service Center plaza. Judge Rich Melnick has graciously agreed to act as our grill master, a role he has successfully performed for many years. Please plan on joining us if you are available.

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Local Heroes



DON JACOBS

Hearsay Special Correspondent

For those that don't do criminal defense, and that's probably most of us, the only prosecutor we can even name is Tony Golik, our elected DA. But 33 other lawyers toil away under Tony keeping the justice system in our fair county working properly. One of those is Alan Harvey, a thirteen year veteran of the office and the subject of our interesting member profile this month. Now some might say Alan Harvey? Interesting? Really? What makes him any more interesting than the rest of us? I mean, he's just another white middle age guy in a suit working for the government. (Sorry about the middle age crack there Alan, but do the math, you're half way to 96). Well, he did receive the infamous CCBA blooper award when he tried to skewer a juror with a courtroom exhibit. And he is currently in training to get his EMT license. Something he'll need when he gets accepted into the Ski Patrol this summer.

He'll be joining our own Judge Collier as part of the volunteers who make up the Mt. Hood Ski Patrol, one of the largest ski patrols in the nation. Alan and 70 other skiers tried out for the job and 32 made the cut. So if you get lost up on Mt Hood, break a leg on the slopes or get covered up in an avalanche, Alan may be the guy coming to your rescue. And he is currently holding down the post of Senior Deputy Prosecutor in the Major Crimes Unit. You know - murder, rape, robbery and kidnapping. Very serious and sobering stuff, but certainly not uninteresting. And he also holds down the post of president of the Clark County Prosecutor's Guild. This is the organization that negotiates with the Commissioners every year as to what part of the budget is going to help keep competent people in the DA's office. Alan helped form this with Tony Golik and two others back in 2009 when they realized the DA's hadn't received a raise in over four years and benefits were being cut.

So Alan isn't exactly an uninteresting guy to interview. And his path to this point has some interesting highlights as well. Besides his prowess on a set of skis, Alan can hold his own with a surfboard. Although it's been a few years, he used to paddle out on almost a daily basis when he lived a block from the beach in Ventura. He says he likes to ski more than surf though. No fighting for position on waves or dealing with angry locals trying to keep tourists out of the good surfing spots. Which is why he went to Boise for three years after graduating from the University of Texas at Austin. Not much snow in Austin. Not much water either, although he did take up distance swimming there. Alan just loves to ski. He remembers fondly being able to ski 100 days in a row in Boise. Alan survived in Boise by working a shift at the ski area as a waiter and cook and another shift at the local hospital as a unit clerk. This is where he first came to realize he liked helping injured people.



Alan's parent are british. They emigrated to the U.S. in 1956. Alan studied foreign relations at UT and was considering working overseas after he graduated. He even took the foreign service exam. But, after three years of skiing in Boise, he headed off to law school at the University of Idaho. He got his start doing criminal law as an intern in Idaho. The first case he helped on was a capitol murder that ended up with a hung jury. After graduating, he found himself working for a small firm in Kitsap county that held the public defender contract. Alan toiled away doing mostly criminal defense and a few Dom Rel cases before coming to Clark County in 1999. He's been with the county ever since. During that time he and his wife of twenty three years have been busy raising three kids while also managing full time careers. His spouse has a masters degree in business and finance from the University of Texas. Although not nearly as valuable as her husband's political science degree, it's helped with her long career at the Evergreen School District. Alan seems to love what he does. And he loves working in the major crimes unit. When asked what he liked most, he pointed to the camaraderie that comes with working with a team of talented lawyers. The least fun part? Losing a case is right up there. The feeling you didn't explain it well enough for the jury to understand. And having to explain to crime victims why they won't be prosecuting a case is no fun. Which is one of the reasons Alan enjoys being up on the mountain so much. It's a great stress reliever and he gets to do something else he loves.

July 20, 2012

Join us for the



CCBA

Annual Summer Bar-B-Que

12-1:30 pm

Clark County Public Service Center Plaza

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The CCBA Board will be providing \$50.00 gift cards
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Tickets are only \$5 each!

Give your staff a break and bring them along, everyone is welcome!

Call 695-5975 with questions

2012 CLE and Nuts & Bolts Calendar

Date	Topic	Speaker	Committee Member
September 12, 2012 3:00pm – 5:00pm RL at the Quay	N&Bs Family Law Trials	Scott Horenstein	Jane Clark
October 10, 2012 3:00pm - 5:00 pm RL at the Quay	N&Bs Handling Liens in Personal Injury Cases	William Robison	Jane Clark
November 14, 2012 3:00pm – 5:00pm RL at the Quay	N&Bs Health Care Proxies & Financial Powers of Attorney	Peter Fels	Jane Clark

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.

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New Attorney Swearing In Ceremony



LISA DARCO
CCBA Office Manager

The CCBA had the honor of celebrating the swearing in of 10 new licensees this month. An official ceremony was held on May 17th in Judge Richard Melnick's courtroom with Judge Melnick, Judge Daniel Stahnke, Judge Diane Woolard and Judge Greg Gonzales in attendance. The official oath was administered by Judge Stahnke. Judge Melnick gave the new licensees a word of advice, "Always return your phone calls!" A good reminder in the fast paced electronic society we find ourselves in. He also introduced Scott Weber, County Clerk.

Prior to the oath, John Fairgrieve, current president of the Clark County Bar Association, addressed the gathering that included family and friends of the new licensees. John encouraged everyone to take advantage of the tremendous benefits of being a part of the CCBA including discounted, high quality, local CLEs and the much lauded Hearsay magazine!

Crystal Lambert was also on hand to represent the Young Lawyers Section. Crystal encouraged the group to get involved with the YLS by attending their monthly happy hour and informed them of an upcoming CLE series. Everyone signed up for the YLS email update!



Following the swearing in, the new admittees were given the opportunity to recognize and thank the friends and family who accompanied them to the ceremony. Those who attended solo were reassured that we were all there to support them!

Congratulations to Ronald Baugh-Schlossberg, Lee Ann Dillbeck, Song Han, Brian MacKenzie, Brittany Stevens, Robert Stratton, Nancy Thorington, Aaron Wakamatsu, Ida Worden, and Jessica Zeikus. We hope to see all of you around Clark County in the very near future!

VLP Lunch For Some, Justice For All



DAVID GREGERSON
CCBA VLP Representative

Final score: North Korean missile launch program "0," Volunteer Lawyers Program boxed lunch launch "1."

On May 11, the VLP assembled and delivered over 175 boxed lunches to the downtown Vancouver legal and business community in its first major annual fundraising venture dubbed "Lunch for some, justice for all!" The VLP netted over \$3,000 to fund its continued operations. The Clark Co. Health Dept. reported no food borne illness outbreaks.

Lunches were ordered in advance at \$15/person. Many lawyers used the event to buy lunch for their office staff. Through the Herculean efforts of director Susan Arney, the VLP got much of the food and supplies donated by vendors in advance.

Alas, the fuse almost failed to work. The croissants arrived the night before in frozen, unbaked form (surprise!). After months of

planning, a rag-tag, fugitive fleet of a dozen board members and staff convened on the morning of May 11 at the commercial kitchen facilities of Open House Ministries—oven working over-time— to staff the assembly line and get the last delivery out by 12:40 PM. No speeding tickets were reported.

Turkey, ham, beef..... lettuce and tomatoes..... wraps and croissants.....brownies..... grapes.....bottled water.....all boxed and put on ice in a dazzling array of picnic coolers until delivered.

VLP serves about 1,000 income-qualified clients per year. The VLP hopes to use the boxed lunch event as an annual fundraiser and welcomes any constructive feedback to make the event bigger and better next year.

Thank you to ALL who purchased lunches, volunteered, or otherwise contributed to the cause!

CCBA Young Lawyers Section – 2012 CLE Series

The CCBA Young Lawyers Section would like to invite you to their 2012 Brown Bag CLE Series! A “Young Lawyer” is defined as an attorney that has been in practice for 5 years or less or is 36 years of age or younger, whichever is later. Attorneys not meeting these criteria are still invited to attend. *Everyone is welcome!*

Location: Public Service Center, Commissioner’s Hearing Room, 6th Floor

Cost: \$70.00 – Full series for CCBA Member “Young Lawyers”

\$175.00 – Full series for CCBA Members

\$245.00 – Full series for Non-CCBA Members

\$10.00 – Individual CLE for CCBA Member “Young Lawyers”

\$25.00 – Individual CLE for CCBA Members

\$35.00 – Individual CLE for Non- CCBA Members

Date/Time	Speaker	Topic
July 12, 2012 Noon – 1:00 p.m.	Judge Diane Woolard and Jim Senescu	Vulnerable Adult Protection Order
August 2, 2012 Noon – 1:00 p.m.	Judge Richard Melnick	Local Rules of Clark County and Professionalism
August 9, 2012 Noon – 1:00 p.m.	Judge Barbara Johnson	Opening and Closing Arguments
August 30, 2012 Noon – 1:00 p.m.	Karin DeDona	Office Management and Billing
September 13, 2012 Noon – 1:00 p.m.	Judge Gregory Gonzales	Courtroom Decorum and How to Deal with Difficult Clients
September 20, 2012 Noon – 1:00 p.m.	Judge Daniel Stahnke	Interrogatories and Request for Production
October 4, 2012 Noon – 1:00 p.m.	Paul Henderson	Cross-Examination Techniques

Please RSVP by emailing ccbayounglawyers@yahoo.com

All payments must be made out to CCBA-YLS and should be sent to:
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CLARK COUNTY SUPERIOR COURT BENCH/BAR MEETING MINUTES

MAY 8, 2012



JOHN FAIRGRIEVE
CCBA President

The meeting began shortly after noon. Persons present were Judge Robert Lewis, Judge John Nichols, Ann Christian, Emily Sheldrick, Suzan Clark, Dave Kurtz, Clay Spencer, Todd George, and John Fairgrieve.

OLD BUSINESS:

1. Concerns about a Western State Hospital (WSH) psychologist: Suzan Clark reported that she had read in the media recently that the Pierce County Prosecuting Attorney's Office was no longer using Dr. Ray Hendrickson, a psychologist on the staff of WSH, as an expert in cases handled by their office. She asked if the Clark County Prosecuting Attorney's Office (CCPA) had adopted a similar policy. John Fairgrieve stated that the CCPA had not adopted a blanket policy in relation to Dr. Hendrickson and was evaluating cases where he is an expert witness on a case by case basis.

2. Criminal Readiness Docket: Judge Lewis reported that there were over 45 items on the docket for this Thursday and 98 items currently set for the June 7 docket. He suggested that attorneys with matters on the June 7 readiness docket take care of them as soon as possible.

3. Orders for 90 day commitments to WSH for competency restoration: In April Suzan Clark told the committee that she did not believe that the current order being used by the court to commit a defendant to WSH for competency restoration complies with due process requirements. See generally *Sell v. United States*, 539 U.S. 166, 180-81, 123 S. Ct. 2174, 156 L. Ed. 2d 197 (2003). Recently new statutes have gone into effect which change aspects of the statutory scheme allowing for involuntary commitment for competency restoration. John Fairgrieve told the committee that the prosecutor's office is modifying the orders it uses for involuntary commitments and planned on presenting them for review at the next judges / PA / defense bar meeting.

4. Redaction procedure for police reports and other materials to be provided to criminal defendants: There was a discussion about what the proper procedure is when defense counsel and a deputy prosecuting attorney cannot agree on what material should be redacted from discovery materials prior to the materials being given to a criminal defendant. CrR 4.7(h)(3) provides that "a defense attorney shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting attorney or order of the court." The consensus of opinion seemed to be that if the parties could not agree on what redactions should be made that the matter should be brought to the attention of the court for a decision.

NEW BUSINESS

1. Indigent Defense Provider Standards: Ann Christian told the committee that Indigent Defense Provider Standards were set to go into effect on January 1, 2013. A couple of issues that are still uncertain are the status of the misdemeanor / gross misdemeanor caseload standards (several cities are objecting to the standards) and attorney certification of compliance with the standards; specifically whether an attorney can certify compliance for a period of time or whether he or she will be required to certify compliance in each and every case.

2. Judge Gonzales' status: Judge Nichols reported that Judge Gonzales is going through his orientation and will mainly be covering former Judge Poyfair's caseload, including trials, for the foreseeable future.

3. Next Bench Bar committee meeting: The committee will meet next on Tuesday, June 12, 2012 at noon in Judge Nichols' jury room.

Respectfully submitted,
John Fairgrieve

Tech v. Law (No. 4)

Free Speech (Again)



RICK McLEOD

Hearsay Special Correspondent

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

On November 22, 1963, John F. Kennedy was assassinated as his motorcade passed through Dealey Plaza in Dallas, Texas. Amidst the crowd, Abraham Zapruder captured this historic event with a hand-held 8mm camera, thereby creating a recording that likely has been subjected to more forensic analysis than any other.¹

Imagine a similar event occurring today, some fifty years later. Nearly everyone in the crowd would likely have a cell phone with a built-in megapixel camera, and many of those would be capable of making a high definition audio/video recording. One could easily imagine nearly every aspect of the event being part of the permanent record. Much of the raw footage would be uploaded to the Internet the same day (possibly even live), broadcast, tagged, and indexed using YouTube, Facebook, and a number of other services. 3D modeling software, ray-tracing algorithms, and spectrographic analysis could potentially recreate the original event in the most extreme detail.²

For the past few years, there has been an open battle between (some) police agencies and individuals that have used cell phone cameras to record arrests being made by the police. The specifics of each case vary. Some prosecutors have charged the cameraperson with “wiretapping” under state law, due to the recording of conversations among police and/or someone being arrested. Other cases have involved civil complaints resulting from seizure of cameras and/or deletion of the recordings.

These issues have not been squarely addressed by the Supreme Court, nor has every circuit weighed in on the issue.³ However, according to my research, every circuit court that has addressed the issue has affirmed (or not denied) that there is a First Amendment right to make video (and/or audio) recordings of the police when they are performing their duties in a public space. Further, in the event that a circuit split should arise, the Supreme Court often gives the Attorney General an opportunity to speak on issues of constitutional interpretation.

On May 14th, 2012, the U.S. Department of Justice set forth the position that there are significant constitutional protections that apply to “citizen-recording,” particularly the First, Fourth, and Fourteenth Amendments to the U.S. Constitution,⁴ and this statement may be expected to carry considerable weight in future disputes.

While this statement was specifically directed to an event in which a Baltimore police officer seized and deleted a recording, the analysis may save considerable public expense where procedures are enacted proactively. Of course, it’s also useful if you are currently representing a client that has become embroiled in such an incident.

If nothing else, you should at least remember this: Every citizen has a First Amendment right to record the public activities of the government and to communicate those activities to others. The DOJ breaks this down into finer detail that I’ll summarize below.

¹ In all, thirty-two people had cameras, but most were still. The silent Zapruder film is the best recording. Sound recordings from police radio were also used in analyzing the film.

² In 1987, NASA created accurate three dimensional models from 2D aerial photography and elevation data. See e.g., www-dial.jpl.nasa.gov/VESA.html; also www.youtube.com/watch?v=6RsXCbpJG54.

³ *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995); *Kelly v. Borough of Carlisle*, 622 F.3d 248, 262 (3d Cir. 2010); *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011); *ACLU of Illinois v. Alvarez*, slip op. No. 11-1286 (7th Cir. May 8, 2012) (enjoining enforcement of Illinois’ 50-year-old prohibiting audio recording as applied to persons openly recording police officers performing official duties in public).

NB: In *Fordyce*, the Washington AG declined to intervene on remand, effectively conceding that “that RCW 9.73.030 does not make criminal the recording of conversations held in a public street, in voices audible to passersby, by the use of a readily apparent device.” *Fordyce v. City of Seattle*, 907 F. Supp. 1446 (WD Wash. 1995).

⁴ See http://www.justice.gov/crt/about/spl/documents/Sharp_ltr_5-14-12.pdf. (“The guidance in this letter ... also reflects the United States’ position on the basic elements of a constitutionally adequate policy on individuals’ right to record police activity.”)

First and likely foremost, the DOJ concludes that individuals have a clear and established right to record the public activities of the police in their duties. This is a critical point because many prior cases have considered whether officers were entitled to qualified immunity for interfering with citizen-recording. The outcome turned on whether the right to record had been clearly established law prior to the act in question. The DOJ position appears to resolve this issue conclusively, and it severely curtails the ability of officials to invoke qualified immunity as a potential defense in the future.

Going forward, the DOJ holds that police should not attempt to interfere with recording activities, subject to a few narrow exceptions (e.g., the recording cannot interfere with an officer's official duties or jeopardize safety):

[Police Depts.] should instruct officers not to threaten, intimidate, or otherwise discourage an individual from recording police officer enforcement activities or intentionally block or obstruct cameras or other recording devices.

The DOJ also notes that police departments should establish significant and reasonable guidelines as to what is considered "interference." In other words, there needs to be an objective standard that can be used to differentiate legitimate concerns for public safety from the arbitrary use of dispersal orders, loitering charges, etc. to dissuade or prevent the public from making lawful recordings.

Second, when a citizen-recording is made, it generally becomes both the physical and intellectual property of the owner. Of course, seizure of physical property, especially from a bystander who likely has committed no crime, raises serious Fourth Amendment concerns.⁵

Thus, the DOJ holds that police should have specific policies describing circumstances in which a citizen-recording can be seized, but even then it advises that a supervisor should be present before making a seizure.

A supervisor's presence at the scene should be required before an officer takes any significant action involving citizen-recorders or recording devices, including a warrantless search or seizure of a camera or recording device or an arrest.

Third, recorded material should not be reviewed absent consent or a warrant.

Seizure of recording equipment does not automatically grant permission to review anything in the device. A cell phone likely contains a great deal of private information that is completely irrelevant to the event being recorded.

Fourth, recorded material should not be deleted without a court order.

In a number of cases (including Sharp),⁶ police have seized a cell phone or video camera and have deleted one or more recordings from the device. However, deleting a citizen-recording without legitimate authorization likely constitutes a "taking" under the Fifth Amendment. Moreover, deletion may create an even deeper legal quagmire. For example, assume that the recording documents criminal activity (whether by the police or another actor) or even exculpatory events, then the deletion may constitute spoliation of evidence and possibly even obstruction of justice.⁷

For example, a New York jury recently acquitted a student who had been filming the Occupy Wall Street protest:

Arbuckle [was] charged with disorderly conduct for standing in the middle of the street blocking traffic, [allegedly] after police had repeatedly told protesters to get out of the street. That's the story told in the criminal complaint against Arbuckle, and it's the story that the officer who arrested him told again under oath in court on [May 14]. The protesters, including Arbuckle, were in the street blocking traffic, Officer Elisheba Vera testified. The police, on the sidewalk, had to move in to make arrests to allow blocked traffic to move.

[However, Vera's testimony] bore no resemblance to photographs and videos taken that night. Arbuckle's own photographs from the evening place him squarely on the sidewalk. All the video from the NYPD's Technical Research Assistance Unit, which follows the protesters with video-cameras ... showed Arbuckle on the sidewalk.⁸

⁵ *Menotti v. City of Seattle*, 409 F.3d 1113, 1154 (9th Cir. 2005) (stripping SJ grant of qualified immunity to officer stating "in the ordinary case, seizures of personal property are unreasonable within the meaning of the Fourth Amendment" absent a proper warrant or exigent circumstances).

⁶ See http://www.justice.gov/crt/about/spl/documents/Sharp_SOI_1-10-12.pdf. ("On May 15, 2010, while in the Clubhouse at the Pimlico Race Course, Plaintiff Christopher Sharp observed Baltimore City Police Department ("BPD") officers forcibly arresting his friend. Mr. Sharp used his cell phone camera to video and audio record the officers' conduct. Several officers, in succession, approached Mr. Sharp and ordered him to surrender his camera phone. ... Mr. Sharp surrendered his phone to an officer who indicated that he needed to review and possibly copy Mr. Sharp's recording as evidence. This officer left the Clubhouse with Mr. Sharp's phone. When the officer returned with Mr. Sharp's cell phone, he ordered Mr. Sharp to leave the premises. As Mr. Sharp left the Clubhouse, he discovered that officers had deleted all of the recordings on his cell phone, including the two recordings of his friend's arrest and at least twenty personal videos.")

⁷ Remember, spoliation generally creates a presumption that the lost evidence was detrimental to the party that destroyed the evidence. This could be key in arguing reasonable doubt in defending a criminal charge. Note that an attempt to "delete" a digital recording may do nothing more than remove the directory information that allows easy display of the recording. Forensic analysis may reconstitute some or all of the original recording as in the case of Carlos Miller.

⁸ See http://blogs.villagevoice.com/runninscared/2012/05/in_the_first_oc.php.

More troubling, there have been cases where an officer has (seemingly) deleted contradictory evidence:

Carlos Miller, an accredited photojournalist covering the Occupy Miami eviction, was arrested by Miami-Dade police, who deleted several videos from his camera before they returned it to him. Miller recovered some of the deleted files and has posted them to YouTube. They support his version of the events of that night, in which he was subject to arbitrary arrest. The deletion of a journalist's arrest-video seems a move calculated to obscure guilt on the part of the police.⁹

In Seattle, citizen-recordings recently exonerated a person that was photographing the May Day protest.¹⁰ Of course, public tax money is necessarily wasted when police retaliate against bystanders exercising Constitutional rights,¹¹ or possibly this:

Two men claim in court that Chicago police battered, strip-searched and falsely charged them of crimes they did not commit because they used cellphones to videotape a police officer who was driving on the wrong side of the road when he hit and injured a motorcyclist.¹²

While it is hoped that such incidents are outliers, the DOJ's position should provide further incentive against abuses, as it likely removes qualified immunity as a future defense to some claims that might be brought by an aggrieved citizen-recorder.

Moreover, since these are rights are grounds in the U.S. Constitution, they will trump both state and federal laws that don't fall within a proper exception (e.g., customs hall or security zone where photography may be properly forbidden). Of course, there are still open contours to be defined (e.g., the bounds of "jeopardizing officer safety" and the tension between interfering with officers vs. interfering with citizen-recorders), but here the DOJ suggests that there is a duty on the police to establish reasonable guidelines and to train their officers accordingly beforehand. As you might imagine, a dispersal order that would prevent any recording won't be objectively reasonable in most situations.

Even with a clearly established policy, compliance may prove challenging until it becomes as ingrained as Miranda.¹³

Big Brother may be watching, but he is also being watched.¹⁴

Comments to rxm@klarquist.com. Nothing herein represents the opinion of anyone in particular, possibly not even me, but certainly not my employer/clients.

⁹ Doctorow, C., <http://boingboing.net/2012/02/07/journalist-arrested-covering-o.html>. The case against Miller has not been resolved. Nevertheless, he says that he will seek civil damages against the police.

¹⁰ Sullivan, J. Charge dropped against man arrested in May Day protests, Seattle Times, May 15, 2012, <http://blogs.seattletimes.com/today/2012/05/criminal-charge-dropped-against-man-accused-of-assaulting-seattle-police-during-may-1-protests/>.

¹¹ Haynes, B., *Las Vegas police agree to pay \$100,000 to beaten videographer*, Las Vegas-Review-Journal, March 22, 2012, <http://www.lvrj.com/news/las-vegas-police-agree-to-pay-100-000-to-beaten-videographer-143726156.html>.

¹² Bouboushian, J., *Chicago Cops Accused of Abuse – Again*, Courthouse News Service, June 7, 2012, <http://www.courthousenews.com/2012/06/07/47204.htm>.

¹³ After an egregious incident, New Haven CT created a citizen-recording policy, but still faces issues. See e.g., Bass, P., *IA: Top Cop Trampled Citizen's Rights*, New Haven Independent, March 3, 2011, http://www.newhavenindependent.org/index.php/archives/entry/ia_by_the_book_top_cop_trampled_citizens_rights/; Bass, P., *Cops Roll Out Citizen Video Order*, March 4, 2011, http://www.newhavenindependent.org/index.php/archives/entry/citizen_video_policy_unveiled/; and Bass, P., *Sgt. Arrests Video-Taker; IA Probe Begins*, June 4, 2012, http://www.newhavenindependent.org/index.php/archives/entry/sgt._probed_after_arresting_video-taker.

¹⁴ Indeed, there's an app for that! The NYCLU just released "Stop and Frisk Watch" for Android phones. See Leitsinger, M., *App records, reports controversial police 'stop and frisk' practice*, June 8, 2012, http://usnews.msnbc.msn.com/_news/2012/06/08/12124572-app-records-reports-controversial-police-stop-and-frisk-practice.



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The Nuremberg Trials: War, Rememberance and Personal History

DOUG FOLEY

Hearsay Special Correspondent

Many who have been through traumatic events are reluctant to discuss what they have endured. Others, like my father, talk constantly about their experiences – and this is his therapy. I have heard the account of his suffering many times. My father was a POW beginning in 1944 and for much of his internment, a slave laborer in the Rabštejn valley in Czechoslovakia, working in an underground aircraft factory. The SS guarded and controlled this factory. Caves run deep within the gorge that created the Rabštejn valley. In these caves he performed forced labor for the Germans, assisting in the production of ME109 aircraft motors. These caves were only recently opened to the public by the present day Czech Republic as an exhibition of Nazi atrocities. Wracked by hunger and disease, he recalls a hallucination he had within the caves. He concluded that he had died and gone to Hell. He remembers looking at his fellow prisoners and feeling sorry for them since they were unaware that they already were dead.

A memorial, pictured below, stands to the prisoners of the Rabštejn Valley which explains the cruelty and murders that were committed at this labor camp. On it reads the story of the executions that occurred at the end of the War. At that time over 80 people were shot, murdered by the SS guards at the factory. My father escaped the killing on a fluke. The Russian air force discovered the entrance to the work camp in the caves. The Russians were bombing it at the moment that he was being walked to work. The guards conferred, then took his group away and finally abandoned them at Děčín, a nearby town. The following day, May 8, 1945, the War officially ended. However, all of the prisoners who had made it into the caves before my father's work detail were executed. We learned this remarkable information nearly 50 years after this crime had been committed on our return to the Czech Republic to find the hidden slave camp within the gorge.

In Děčín, my father and the abandoned POWs found a truck. They had been set loose by the Germans in an odd no-man's land between the Russians and American lines. Fortunately, the truck had enough gas to drive as far as Prague. They left Děčín, hoping to find the Americans in the west. On their way to Prague, they encountered a few of the advancing Russian. My father, and his fellow prisoners, were all emaciated. They weighed no more than



Fred Foley at Rabštejn, 1996

85 pounds. One of the Russians my father met had a captured German. Using gestures and a few broken phrases, the Russian soldier asked my father if he wanted anything from that German soldier. My father indicated "food." The German was forced to hand over a chocolate bar and a wooden box filled with cigarettes. Later, my father felt a sense of guilt taking these last provisions from this German, knowing how much he had suffered from privation during his own captivity. We still have that wooden box, a small reminder of the misfortunes of war.

At the time of this encounter, Stalin had placed a hold order on all captured Allied soldiers, but the message had not arrived at the front and the Russians allowed my father's group to pass. History

has all but decided to forget the fact that thousands – unknown thousands of Allied soldiers -- including perhaps as many as 20,000 American GIs were held by the Russians after the war. They were never released and they perished in Soviet captivity.¹

As they drove their truck into Prague, it was clear the Second World War was not quite finished, despite the formal cessation of hostilities. Partisans came out of hiding, stopped their truck, ordered them off the streets and informed them that they had just driven past SS headquarters. One of them waved his pistol and told them that the Czechs were in the process of killing every remaining SS holdout – and warned the POWs that they had better get off the streets or they might be the last soldiers killed in the War. Six years of occupation was ending, and it was time to clear accounts with the SS. That particular Partisan bragged that he had killed an SS soldier the day before. The soldier had attempted to escape by strapping a baby to his chest. The partisan gleefully recounted that he had shot the SS soldier in the head, he fell – and the baby was unhurt.

My father and his group were eventually repatriated, and met the advancing Americans near Pilsen. He made it back to the States, and was at Barnes Hospital in Vancouver for the next two years fighting pneumonia, tuberculosis, lung lesions and rheumatic fever – the product of nearly seven months of forced labor and starvation. He is alive today, nearly 89, and in remarkable good health and good spirits.

In the Holocaust, millions of Jews, Poles, Slavs and other so called Untermenschen were destroyed - and the deep, dark vortex that resulted in those mass murders swallowed many others, including the remaining prisoners of the Rabštejn Valley. The crimes of Nazism were not isolated to a Dachau, Auschwitz, Buchenwald and the other infamous Konzentrationslager. They occurred at the Baugnez Crossroads, near the village of Malmédy where 72 American POWs were shot, at Normandy where 18 Canadian paratroopers were executed by the Germans and in thousands of instances of similar senseless carnage.

The 22 major Nazi war criminals were tried at Nuremberg from November 20, 1945 to October 1, 1946. But with the depth of the crimes, the unquestionable guilt and horror that was unleashed by an enterprise bent on World domination – why did the Allies bother with a trial? And why not simply order summary executions – even in the same manner as the SS had on so many occasions during the War? The guilt of many of the Nuremberg criminals was beyond question. For Kaltenbrunner, Streicher, Keitel, Goering, Frank, Sauckel, Rosenberg, Ribbentrop and others -- the conclusion was foregone. Everyone knew even before the prosecution had been initiated that they unques-

tionable were guilty and had the blood of millions on their hands. They, and many others, were responsible for an orgy of violence paralleled only by the barbarity of a Stalin and Mao who also killed millions -- and by those lesser, modern mass murderers who ambitiously emulated their sadism in more recent times -- such as Pol Pot or Ratko Mladic.

But any summary execution of Nazi officials and army officers – as proposed by Stalin at Yalta -- was out of the question. The Nuremberg war crime trials had significance greater than any traditional criminal trial when the question is simply whether the defendant has guilt. Rather, the trial of the major war criminals, as well as the trials of the Nazi doctors and judges that followed – were more profound and fundamental in purpose than merely determining individual crimes and punishments. These trials wrote history, and provided an in depth account and irrefutable documentation of the enormity of Nazi crimes and directly from the testimony of the defendants who took the stand in their own defense of the indefensible. Furthermore, in the sense of jurisprudence, these trials also accomplished something quite remarkable and unprecedented in setting a world standard for judging the conduct of the peace-breakers and killers of innocents. The fact that such a world stage for war crime trials can be politicized or even misused in the future is, ultimately, no argument against the standards that were set. The major war criminals, pictured above, were charged with the following crimes:

1. Participation in a common plan or conspiracy for the accomplishment of a crime against peace
2. Planning, initiating and waging wars of aggression and other crimes against peace
3. War crimes which included enslavement of POWs and forced labor of prisoners.
4. Crimes against humanity which included the mass executions of all whom the Nazis considered undesirables.

The brutalization of the prisoners of the Rabštejn Valley is covered by the 3rd charge. The execution of the Rabštejn prisoners meets the 4th charge. However, nowhere in the Nuremberg trials are the specific crimes committed in the Rabštejn Valley even mentioned. The wholesale extermination of the Jews and the well known campaigns of carnage that swallowed millions of others overshadowed such smaller scale acts of barbarity.

Every atrocity will never be known, and every victim will never be counted. Every crime committed could not be tried. Nonetheless, the Nuremberg trials were for all those who were inhumanely treated, for the millions of innocent men, women and children who were murdered -- and will forever remain a lasting testament and standard of how civilization must deal with the uncivilized.

¹*The Iron Cage*, Nigel Cawthorne. [ISBN-10: 1857021010]. In June 1992, Russian President Boris Yeltsin admitted that Americans had been imprisoned in Soviet labor camps. The US Government knew of this as well, but failed to demand the return of captured American prisoners from the Soviets after the war.

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What CCBA Members Are Doing About Town



RAISA JUDICATA
Guest Gossip Columnist



Kids take over the Courtroom!

April 26, 2012 was Take Our Daughters and Sons to Work® Day. Who would have thought that Congress would have the time, but on March 28, 2012 the Senate signed a Resolution specifically recognizing the program for taking kids aged 8-18 into the workplace and celebrating its 20 year milestone. The program was originally begun in New York City in response to research showing that by the 8th grade some girls were dropping out of school specifically due to low self esteem and lack of confidence. Giving girls positive role models and a look at the future was an attempt to curb the problem. Sons were added to the program in 2003 to give them the same encouragement. There is actually a "Take Our Daughters and Sons to Work" Foundation (www.daughtersandsonstowork.org) whose goal is to help all kids examine their opportunities and reach their full potential. On this day some local kids role played in Judge Melnick's Courtroom while he was off the Bench. The best part of the day? Lunch! (Sometimes I feel that way too).

So, it is now official that Judge Gonzales will not have competition in the upcoming election; this is good news for someone just settling in. Seeing his enthusiasm for the job, his prior expe-

rience on the bench, and witnessing the overwhelming support the Judge received in the preference poll and at his swearing in, it would have been a difficult run for an opponent. Or maybe it was that hug our Presiding Judge Johnson gave him at the swearing in that blessed him (and that had Judge Nichols grumbling HE had never received a hug on HIS swearing in!)



Judge Gonzales at his "after party" with fiancée Molly.

Randy Grove may not have to run very fast to keep up with his clients, but on April 16, 2012, Randy ran the 26.2 miles that makes up the Boston Marathon. Over 22,000 people ran in the Marathon and Randy finished in the top third of his division. By the end of the race, the temperature was about 85 degrees. The winner, Wesley Korir from Kenya finished the race in 2 hours and 12 minutes and won \$150,000.00. I think if you asked Randy, he would say he was just happy to finish!



Look at that smile! Randy must be anticipating his victory!

We all know better than to have our phones on in the courtroom, right? (or at least silenced...) All of us have been caught at one time or another. A certain employee of the Sheriff's Department admitted that when testifying as a witness (and

actually on the stand) his cell phone went off and to add to his embarrassment, he couldn't shut it off quickly. Guess who was the Judge? Maybe Judge Lewis' policy on Electronic Devices will help, or maybe people will still forget what is in their pockets. In case you have not seen the policy check it out next time you are around Judge Lewis' courtroom. In the Jury Box and on the judge-side of the dividing bar there is to be no use of electronic devices, including computers, smart phones, PDA's, readers or pagers, without advance permission of the Judge. In the back of the courtroom, in the spectator area on the other side of the bar, electronic devices may be used if silenced, and as long as there is no audio or video recording or photography. The other Judges are not yet jumping to make their own written policies, although each has a different idea of how they like to handle the use of computers and smart phones. The best practice prior to trial or hearing is to ask the courtroom bailiff for direction if you will be using a computer or using a smart phone to take notes or display your case records. This is also a good time to think about reminding your clients and witnesses to silence their cell phones before you sit down in Court. Oh... and having a ringtone with the song "I've Got Friends in Low Places" if it goes off in Court may not be the best idea.

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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MILA AND CHRIS BOYD



HOME:	HE SAID: Wherever Mila is.	SHE SAID: Vancouver
AGE:	Younger than Mila	No comment.
PROFESSION:	Attorney & Part-Time Husband.	Attorney & Actor
HOBBY:	Running, soccer, flag-football, skateboarding, oh, and quality time with my wife	Running, soccer, singing, cooking, hanging out with Chris, hanging out with our furry friends (other than Chris)
LAST BOOK READ:	The Hobbit, The Hunger Games	Musicophilia, The Help
LEGAL PHILOSOPHY:	Try not to cry in front of clients	Listen, listen, listen
LATEST ACCOMPLISHMENT:	See “Legal Philosophy”	Doing the splits (albeit, they were better 15 years ago!); Partnership with Stan.
WHY I DO WHAT I DO:	I love the people I work with. I enjoy helping clients through a very traumatic event in their lives.	Sounds cliché, but I do it because I like helping individuals and families.
PROFILE:	Friendly and very laid back.	Friendly, outgoing, like a challenge, Love animals!
BEVERAGE OF CHOICE:	Cerveza with Mila	Bourbon with Chris



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LUNCH FOR SOME, JUSTICE FOR ALL! was a big success. For our first attempt, we sold 175 lunches. Thanks so much to all who participated. A special thanks to the Board of Directors who worked in the kitchen and prepared all the lunches and then delivered them on time to each of you. It was a lot of work but also a lot of fun.

One major glitch – the croissants were to be delivered Thursday evening because they were pre sliced and frozen. We were letting them thaw overnight. They came Thursday about 4 pm and I thought they the boxes did not look right. So I opened one and discovered I had little balls of frozen dough and no oven. A frantic call to the supplier and it all worked out in the morning.

Many thanks to our sponsors – The Law Firm of Gregerson & Langsdorf for the major donation, Dragonfly Café for the pasta salad, Corwin Beverage for the bottled water, Treat for the brownies, Sysco for the other food, and Open House Ministries for the use of the kitchen.

Also thanks to the many donors who gave in lieu of a box lunch. All was very appreciated.

Thanks, Susan

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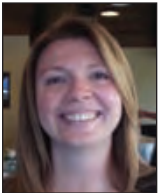
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June 21, 2012

Web Site Committee Meeting
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MEETING

July 4, 2012

CCBA Board Meeting
CCBA Office - Noon

MEETING

July 10, 2012

Superior Court Bench/Bar Meeting
Courthouse - Noon

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July 12, 2012

Young Lawyers Section CLE
Public Service Center - Noon

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July 12, 2012

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Main Event Sports Grill - 5:00pm - 6:30pm

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July 20, 2012

CCBA Annual Summer BBQ
Public Service Center Plaza - Noon - 1:30pm

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Bankruptcy	3
Business & Corp.....	3
Consumer	15
Criminal	12
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Family Law	52
General Litigation	59
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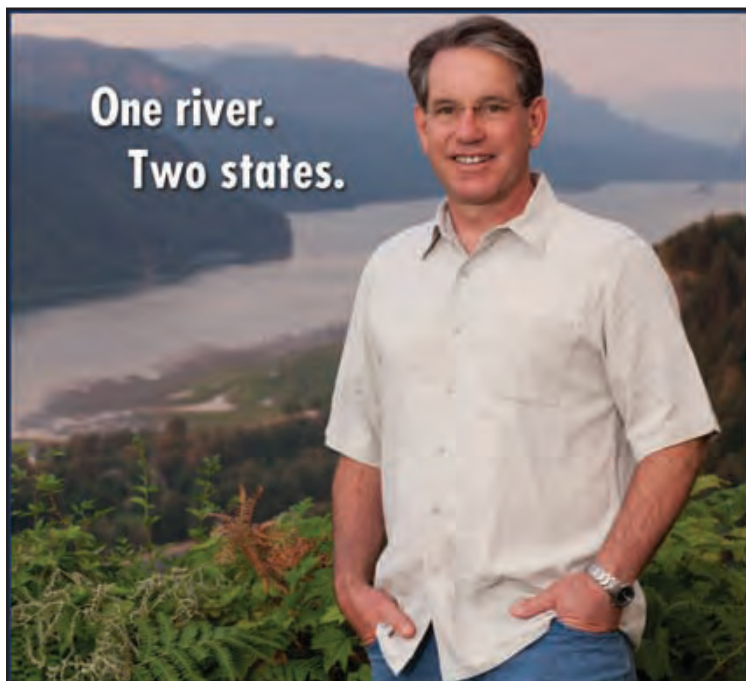
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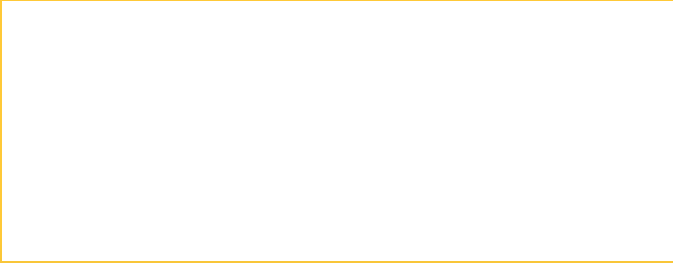


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