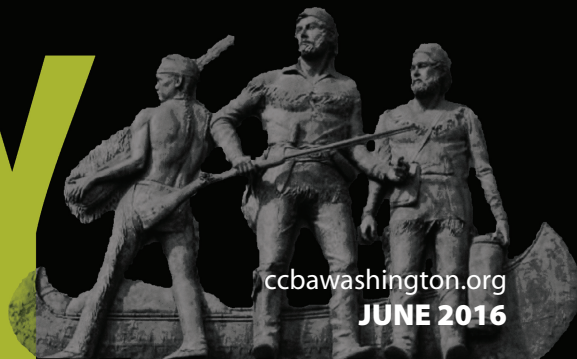


# HEARSAY




ccbawashington.org  
JUNE 2016

OFFICIAL NEWSLETTER OF THE CLARK COUNTY BAR ASSOCIATION



“I have a dream...”

page 5



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# CCBA BBQ



The much adored Annual CCBA BBQ is coming soon! All CCBA members and their staff are welcome to attend. This year will be better than ever with a bigger grill (and hopefully shorter lines)! The Honorable Chef Melnick will once again man the grill. Please plan to attend!

**July 22, 2016**

Public Service Center Plaza

**Noon - 1:00pm**

Sponsored by Schwabe, Williamson & Wyatt



# PRESIDENT'S MESSAGE



**RICK Mc LEOD**  
*CCBA President*

**“I have a dream...”**

**“The nature of injustice is that we may not always see it in our own times.”**

*– Justice Anthony Kennedy*

It's June, and I am in D.C. standing at the foot of the Lincoln Memorial, where Martin Luther King, Jr. spoke those words in August 1963, calling for an end to racial discrimination. Less than a year ago and not far from here, Justice Kennedy announced an opinion declaring that marriage was a fundamental right for all people, ending another form of discrimination.[1]

Twenty years ago, Andrew Koppelman was a visiting professor at the University of Texas teaching constitutional law. Hawaii had recently invalidated laws that prevented “same-sex marriage,” and Congress reacted by passing the Defense of Marriage Act (DOMA). Koppelman was openly opposed to DOMA. Based on a casual conversation in a hallway, he hired me to do a comprehensive analysis of anti-miscegenation laws and cases in this country right up to *Loving v. Virginia*. [2] My research took me to the Rare Book collection to review first hand collections of treaties, patent grants from various sovereigns, and early compilations of state laws. What I found was somewhat amazing:

First, while the most common prohibition was between whites and blacks, both were often free to marry the natives throughout the Americas. Black individuals had somewhat more latitude in some cases as certain states forbade whites from marrying Asian and Native Americans.

Second, there was patchwork recognition of interracial marriages in states outlawing such marriages. For example, if someone with landholdings in the South died while part of an interracial marriage in a Northern state, inheritances could turn on whether the marriage was recognized or not.

Third, anti-miscegenation laws came much later than one might have expected given the zeal with which they were defended in the 20th Century. That is, interracial marriage was not forbidden as some extension of European law to the colonies. Rather, most laws came about organically during the 1800's.



Finally, Texas specifically criminalized interracial co-habitation because some people were smart enough to avoid calling their relationship “marriage.” However, the statute only penalized the white partner -- until a Federal Judge declared the statute unconstitutional in view of the Equal Protection Clause of the 14th Amendment. Texas responded by providing for equal punishment for future violators.[3]

At the conclusion of the research, I agreed with Koppelman that “same-sex” marriage prohibitions could likely be challenged under the 14th Amendment. But, I thought it would be fifty years before the case would be won. Koppelman authored an amicus brief arguing that prohibitions were subject to intermediate scrutiny and thus invalid under the 14th Amendment in *Obergefell*. [4] Kennedy didn't dwell on the standard of review, implicitly holding that there could be no rational basis for denial of a fundamental right.

Alabama Supreme Court Chief Justice Roy Moore refused to recognize the *Obergefell* decision, and he ordered probate



judges to not issue marriage licenses to same-sex couples. On May 6th, he was suspended from his duties pending an ethics investigation, having previously been ousted from his position over a religious display at the courthouse.[5] Today, eleven counties in Alabama reportedly will not issue any marriage licenses to anyone.

Moore's legal counsel, Mat Staver, was recently identified as a significant force behind anti-LGBT legislation in at least twenty states, again, in direct opposition to Obergefell.[6] Mississippi and North Carolina are among the first battlegrounds in the second act of LGBT discrimination.[7]

This isn't surprising, a similar pattern of resistance followed the Civil War and lasted more than a century. For example, the Supreme Court sanctioned the "separate, but equal" doctrine that meant that as long as equivalent facilities were provided, it was permissible to keep non-whites out of the "white" bathrooms (and law schools).[8] Fighting for change, Heman Sweatt sued for admission to the University of Texas School of Law, which was an all-white school at the time. In a unanimous decision, the Supreme Court held that Texas' attempt to establish a law school for black students did not provide an equal education for Sweatt, and he was enrolled at UT.[9]

But, discrimination was not so readily vanquished. You see, Mr. Sweatt was enrolled as a class of one. I attended lectures in the same room that he did, a room designed for more than 100 students, but Mr. Sweatt sat alone. The facility was the same, but his experience hardly was.

In time, there would be Brown v. Board of Education[10] and the Civil Rights Act of 1964. Even then, school desegregation came to many places in the South only after more court battles. Anti-miscegenation statutes did not fall until Loving in 1967. Legal change may happen in a day, but attitude change is generational. After five decades, interracial relationships don't raise much of any eyebrow in most parts of the U.S. anymore.

Homosexuality hasn't always been the bogeyman it was in the 20th Century.[11] And, yet, our modern technological society can be traced to the achievements of a gay man. Alan Turing, a British mathematician, is honored as the founder of the general purpose computer and computer science. During World War II, Turing was recruited by MI6 to assist in cracking the German "Enigma" code. His success substantially shortened the war in Europe. But, Turing was a homosexual. After the war, his secret was discovered by police. To avoid prison, he submitted to chemical castration, which dulled his brilliant mind. He committed suicide in 1954 at age 42.[12]

By contrast, Werner Von Braun, the developer of the Hitler's V2 rocket, was quietly brought to the U.S. where he was a key player in the development of the U.S. space program, eventually building the Saturn V vehicle that would power the Apollo program.[13] Apparently, being a Nazi was less of a crime than being than gay.

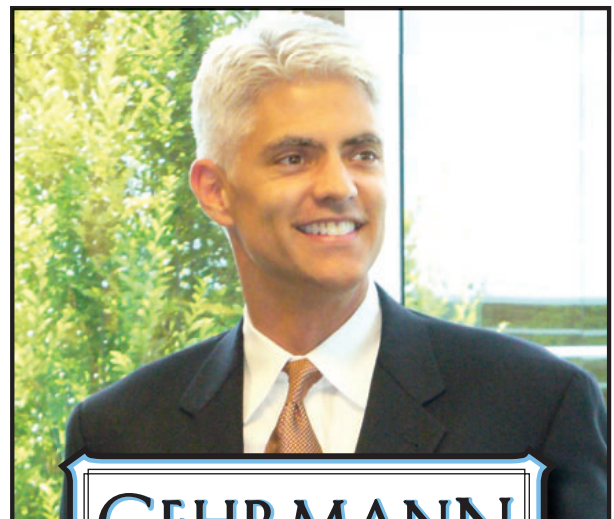
"Transgender" is the latest battleground for discrimination.

Lawmakers in the Deep South are repeating the intransigence of the post-Civil War era, often asserting that transgender people are "dangerous pedophiles" likely to be found stalking public bathrooms.[14] Sound familiar? It should, as these arguments were prominent in the marriage equality fight. Based on the progress in the gay rights movement, I predict that pernicious anti-transgender laws will be swept aside even more quickly than DOMA.

And what of the future? We stand at the brink of the Transgenic Age. Gene editing is not only reality, but it soon will be cheap as chips. We can transfer genes from plants to animals and vice versa, and we have begun modifying existing well-known viruses to attack cancer.[15] In twenty years, it will be possible, if not commonplace, to rewrite defective genes effectively "curing" diseases like ALS, MS, and MELAS long before they become debilitating. And once we are good at combating disease with gene therapy, it's a short hop to genetic enhancement.[16] I

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suspect that it won't be long before transgenic (and perhaps even cybernetic) discrimination becomes another battleground of the 21st century.

Epilogue: At the time I was proofing this column, patrons at a predominantly gay nightclub in Orlando, Florida, were being massacred by a small-minded, little man who was offended by the sight of men kissing. I awoke to the news coverage of the latest "Bloody Sunday." I had been less than 200 miles away two days earlier, but if I still had been there, I would have spent the day in line to give blood with hundreds of heterosexual

people that actually give a damn about their community. Appallingly, homosexuals are banned from giving blood under FDA regulations unless they have abstained from sex for at least a year. In other words, virtually all gay adults are banned from giving blood. That needs to change. Maybe science classes should be required to be in politics in a technological society.

Yes, I have a dream. I dream of a world where people don't engage in violence in the name of religion. Like John sang, "Imagine all the people . . . living life in peace." [17]

---

[1] *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015).

[2] *Loving v. Virginia*, 388 U.S. 1 (1967).

[3] The case was so unusual that he dedicated a near page-long footnote to discussing it. Koppelman, A., *Same-Sex Marriage, Choice of Law, and Public Policy*, 76 Tex. L.R., No. 5, p. 956, fn. 121.

[4] Koppelman, Andrew and Somin, Ilya, *Amicus Brief in Obergefell v. Hodges* (March 10, 2015). Northwestern Public Law Research Paper No. 15-12; George Mason Law & Economics Research Paper No. 15-10. Available at SSRN: <http://ssrn.com/abstract=2576429>

[5] Politics appears to be shady in Alabama, in every branch of government. <http://www.nytimes.com/2016/05/17/us/alabama-robert-bentley-michael-hubbard-roy-moore.html>. Indeed, last Friday, Alabama lost its Speaker to a twelve-count felony conviction. [http://www.al.com/news/index.ssf/2016/06/house\\_speaker\\_mike\\_hubbard\\_con.html](http://www.al.com/news/index.ssf/2016/06/house_speaker_mike_hubbard_con.html).

[6] See <http://www.rawstory.com/2016/04/cbs-news-investigation-finds-kim-davis-lawyer-behind-anti-lgbt-bills-in-20-states/>

[7] See <http://www.rawstory.com/2016/05/aclu-sues-mississippi-over-law-allowing-people-to-deny-service-to-same-sex-couples/>  
<https://www.washingtonpost.com/news/post-nation/wp/2016/05/09/north-carolina-justice-dept-face-monday-deadline-for-bathroom-bill/>

[8] *Plessey v. Ferguson*, 163 U.S. 537 (1896).

[9] *Sweatt v. Painter*, 339 U.S. 629 (1950).

[10] 347 U.S. 483 (1954).

[11] See [https://en.wikipedia.org/wiki/Homosexuality\\_in\\_ancient\\_Rome](https://en.wikipedia.org/wiki/Homosexuality_in_ancient_Rome).

[12] His story was dramatized in *The Imitation Game*. See [www.imdb.com/title/tt2084970/](http://www.imdb.com/title/tt2084970/).

[13] See [https://en.wikipedia.org/wiki/Wernher\\_von\\_Braun#Involvement\\_with\\_the\\_Nazi\\_regime](https://en.wikipedia.org/wiki/Wernher_von_Braun#Involvement_with_the_Nazi_regime).

[14] As opposed to Dennis Hastert, former Speaker of the House, now convicted felon. See [http://en.wikipedia.org/wiki/Dennis\\_Hastert](http://en.wikipedia.org/wiki/Dennis_Hastert). Or perhaps, Jerry Sandusky, the deceased Penn State coach, whose crimes may have been known to as many as six other coaches. See [https://en.wikipedia.org/wiki/Jerry\\_Sandusky](https://en.wikipedia.org/wiki/Jerry_Sandusky).

[15] <http://www.independent.co.uk/life-style/health-and-families/health-news/world-first-as-scientists-provide-proof-that-viruses-can-combat-cancer-10277315.html>.

[16] The second phase of the Human Genome Project, writing a complete synthetic genome, has begun. See <http://www.nytimes.com/2016/06/03/science/human-genome-project-write-synthetic-dna.html>.

[17] Lennon, J. *Imagine*.

## WANTED!!!

The Hearsay is in search of new and exciting material and new and exciting contributors! Please join us on the third Tuesday of every month at noon at the CCBA office! If you have a great idea to share, please don't hesitate to contact us.

**Call Lisa in the CCBA office at 695-5975**



# CCBA Board Meeting Minutes



**LE ANN LARSON**  
*CCBA Secretary*

## Minutes for the CCBA Board of Trustees Meeting May 4, 2016

**Called to order 12:05** (Larson, Mc Leod, Norton, Sampath, Dunn, Sleight) Lisa Darco present

**April 6, 2016 Minutes: motion to approve (NORTON/DUNN)** Approved

**Treasurer's Report for April 2016:** Report submitted for the month of April. Sampath discussed report.

### OLD BUSINESS

**a) Emeritus Members for Free (Norton)**  
Proposal to be presented in June

**b) CCBA Website, online payment bid options (Taylor)**  
Taylor not present. Will discuss in June.

**c) Quarterly Happy Hour Event (Sleight)**  
Looking at Grocery Cocktail or Warehouse 23. Potential dates are 6/22 or 6/29.

**d) Call to Duty Event (Mc Leod)**  
Has made a proposal to the VLP to co-sponsor and is awaiting their response.

**e) Proposed Employment Law Section (Mc Leod/Dunn)**  
The CCBA Board of Trustees received Bylaws from the proposed section. The Board of Trustees thinks this is a great first step and further organizational steps are needed.

**f) CCBA BBQ (Darco)**  
The date is set for 7/22 at the PSC Plaza. Judge Melnick will be cooking.

### NEW BUSINESS

**a) September Elections (Mc Leod)**  
1) Who was elected to a two-year, unexpired term, Norton or Spratt?

Will determine who took on Sleight's unexpired trustee position when he became VP

2) One three-year term open in September

Trustee Caron's position will be open. Expect letters of interest. Nominating Committee will be organized later.

### b) Barrister's Ball

1) Location/Date (Darco)  
Options: Heathman has a non profit price. Will look into Warehouse 23. Need a decision quickly as a deposit is needed to reserve the venue.

2) Charity (Mc Leod)  
Letter received asking for YWCA SafeChoice to be designated as the nonprofit benefitting from the Barrister's Ball. Traditionally used to alternate years with the VLP. The VLP has received the donation for the past 4 years. Discussion.

Motion to make SafeChoice Legal Clinic the recipient of funds that are raised at the 2017 Barrister Ball (Sleight/Sampath) Approved

**c) Bowling with the Judges, October event (Darco)**  
Darco will look for a sponsor(s). Middle of October is preferred.

**d) Golf Tournament (Mc Leod)**  
Camas Meadows or Green Meadows. Bids have been requested.

**e) Committee Chairs (Mc Leod)**  
Will put out a call in The Hearsay for a social committee chair.

**f) Revamping the Lawyer Referral Service (Mc Leod)**  
Some practice areas for which there are few to no inquiry calls.

**g) Volunteer Lawyers Program update (Darco)**  
Taylor submitted report to Darco in his absence. New VLP board was recently elected.

Adjourned 12:40

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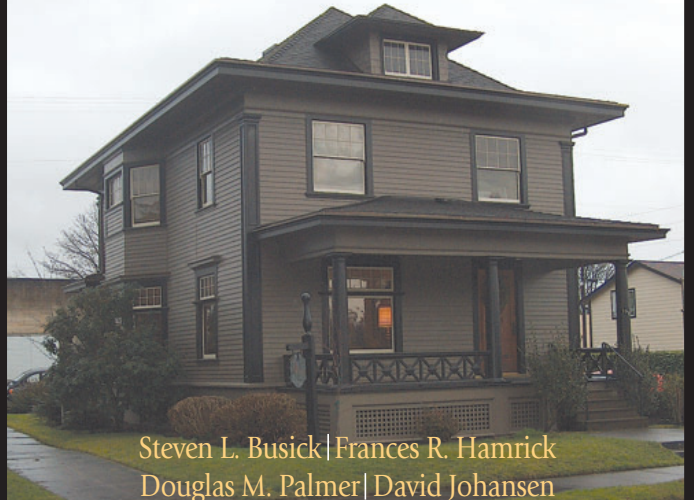


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# Bowling with the Young Lawyers



**AMBER RUSH**

*Hearsay Special Correspondent*

All I can say is we have some serious talent in Clark County in the bowling department – we almost beat the Crosley Lanes’ Young Bowlers (ages 6-10). At the very least we gave them a run for their money. A few beers and tater tots really helped to smooth things over. Here are a few of the conversation highlights from the evening:

*“Dude, I let my friend tase me over the weekend.”*

*“I just hate Shavasana.”*

*“His bowling balls could damn near drive through a residential zone.”*

*“I just played one of those virtual reality games... craziest thing I’ve ever done.”* Next bowler: *“Crazier than being tased?”*

*“I totally got a blood blister.”* Next bowler: *“From bowling?”* Answer: *“Yes.”*

*“Dry your hands, maybe that will help.”*

*“No big deal, just a god-man-gorilla throwin’ stuff.”*

*“Brad, I can smell your hand sanitizer from here.”*

These quotes really provide a good peek into the vibes of the evening. Needless to say, Clark County Young Lawyers love being out and about, chatting up the locals in the ‘Couve and competing in games with younger contestants with superior skill sets. The night was a huge success.



## CLE RECAP:

# Trust and Estate Planning: What you Need to Know to Avoid Family Fight Night Before and After a Client's Death



**HEATHER NORTON**  
*Hearsay Special Correspondent*

On May 11th attorneys gathered at Feral Public House as Caitlin Wong, Estate Planning and Administration attorney at Schwabe, Williamson & Wyatt, presented the ins-and-outs of avoiding conflict in Estate Planning and administration. Whether you are new to this practice area, or you've been at it for years, here are some of Caitlin's favorite tips to follow and traps to avoid.

### **Tip #1: Know the difference between goals and priorities.**

One of the most important things attorneys can do during the planning process is to listen carefully to ascertain the client's goals and priorities. It's important to remember, however, that there is a difference between the two. While all clients share the common goals of protecting themselves and providing for loved ones, they will generally have some specific goals in mind. It is not uncommon, however, for these goals to conflict with each other. This is where it becomes important for the attorney to help the client prioritize his/her goals. This will inform how the conflicts regarding client goals will be resolved within the documents. Most issues with documents arise when documents are drafted to address all the client's goals, but not their priorities.

### **Tip #2: Make use of non-intervention powers.**

RCW 11.68 allows the settlement of estates without court administration. This simplifies and expedites the administration of the estate. When drafting, remember to address whether the client does or does not wish for the personal representative to have nonintervention powers.

### **Tip #3: The "Small Estate Affidavit" is a handy tool.**

Governed by RCW 11.62.010, a Small Estate Affidavit is a tool that enables the transfer of property simply, quickly, and inexpensively. Caitlin reminded attendees that it can be a great way to move assets into a trust, if any assets escaped being retitled in the name of the trust. The Small Estate Affidavit is available if the total value of the property is less than \$100,000. It does not apply to real property. Oregon has a similar statute but the limitations are different-- \$75,000 of personal property and \$200,000 of real property. See ORS 114.515.

### **Tip #4: No probate? Remember you still need to resolve creditors claims.**

RCW 11.42 provides a mechanism for settlement of creditor claims without probate. It is very much like the claims settlement process in probate and also allows for the full and final resolution of all claims against the decedent.

### **Tip #5: Local newspapers save money.**

Caitlin suggested that when publishing notices in newspapers to satisfy statutory notice requirements, consider using a smaller local newspaper. Advertising in these papers can offer substantial cost savings to clients.

### **Tip #6: Proceed with caution when using will substitutes.**

While it is possible to avoid probate through the use of will substitutes (i.e. transfers not made by a will or trust), this approach will only work if the decedent does not have an estate tax filing requirement, has a limited number of desired beneficiaries, and is very careful about having all his or her property covered by a will substitute. Jointly owned property is of particular concern. When property is owned jointly, the survivorship interest generally passes automatically to the survivor upon either owner's death. This can be an easy way to avoid probate on the death of a first spouse if no estate tax would be due upon the death of the surviving spouse. However this method is not ideal for transferring property to children or non-spouse beneficiaries. Clients are drawn to the idea because it is inexpensive and seems "simple." But Caitlin explained that is simply not true. Transferring property this way can have gift tax consequences and are often a hot button issue in trust and estate litigation.

### **Tip #7: A special note about bank accounts.**

Caitlin explained that it is important to be very clear in your documents, and with co-owners or fiduciaries, when people are added to bank accounts. Is the intent for the account to pass to a co-owner or simply to add a fiduciary. Bank accounts are often mistakenly set up as joint accounts. Additionally, a power of attorney agent or guardian may need to move an account, or funds in an account, for ease of administration while caring for a disabled client. Caitlin says, this makes jointly "owned"



bank accounts a lawsuit waiting to happen. If a client wants to equalize the division of their estate, or make special gifts through beneficiary designations, Caitlin says to be sure to include that intent and language in the estate planning documents.

**Tip #8: Remember how community property rules affect your planning.**

Washington is a community property state. As such, property acquired during marriage and appreciation assets brought to the marriage belong one-half to each spouse, regardless of how title is held. Generally, all property acquired by both spouses while domiciled in a community property state is presumed to be community property—this includes wages and salaries earned during the marriage in the community property state. That said, each spouse is entitled to hold separate property. These properties include 1) property held at the time of marriage, 2) gifts, and 3) inheritance. At death, each spouse may leave their equal half share as they wish. It may be possible to transfer assets to a spouse at death through a community property agreement. A community property agreement can cause assets to vest in the surviving spouse as if title to the assets were held jointly with right of survivorship. This is helpful if the surviving spouse will not have a taxable estate, but can cause estate taxes at the death of the surviving spouse if the value of the assets exceed the federal or state estate tax exemption at the time of the survivor's death.

**Tip #9: One problem with beneficiary designations- your P.R. has no cash.**

Assets that have a designated beneficiary vest in that person upon the owner's death. Beneficiary designations supersede distribution directions in a Will or Trust. They can be a great way to avoid probate, but can also leave the personal representative or trustee without any liquidity if all the cash in the decedent's bank or financial accounts passes through a beneficiary designation.

**Tip #10: Know the rules regarding spouse issues.**

**Divorce-** Once a decree of dissolution is entered by a court, all provisions in the will in favor of the former spouse are revoked (RCW 11.12.051). Further, all beneficiary designations of nonprobate assets are revoked (RCW 11.07.010).

**Election against the Will-** In Washington, there is no election against a Will, as spouses already own one half of community property.

**Omitted spouse-** If a will fails to name or provide for a spouse who the decedent marries after the execution of the Will, then the omitted spouse receives the amount set forth in RCW 11.04.015, which is the amount a spouse receives if a decedent dies intestate. (RCW 11.12.095)

**Tip #11: Know what revocable living trusts can and cannot do.**

RLTs CAN save probate and professional fees, but . . . Caitlin believes that while these savings can be substantial in some states, like California, the savings in Washington and Oregon are minimal. Often, clients believe they will be saving their estate a lot of money by using a revocable living trust. Clients should be advised that in Washington, this might not be the case.

RLTs do NOT save estate taxes. Caitlin pointed out that advertisements for revocable living trusts often cite federal estate tax savings as the principal reason for their use. This is simply not true. As far as the IRS is concerned, it is irrelevant whether the decedent's assets are held in a revocable living trust or are held in the decedent's name and distributed via a will. If the decedent had control over the assets, they are subject to estate taxes.

RLTs DO avoid ancillary probate. If a client has real estate in more than one state, the use of a revocable living trust will avoid the ancillary probate in the states in which real property is owned.



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*\*Judging will be based on random yet-to-be-determined criteria thought up by the Hearsay committee. (Mostly, we just want to see you having fun!)*

RLTs DO provide a method for planning for disability. This is because RLTs can provide for the continuing management of assets without court intervention of conservators and guardians. Caitlin also pointed out, however, that this can also be accomplished through the use of a general power of attorney and that in some situations court intervention for conservators and guardians is actually desirable.

RLTs DO provide privacy. Since probate is a public proceeding, all the information of that probate is open to public view. The privacy afforded by a RLT is often appealing to individuals living in smaller communities, or to those who own a business or who have substantial assets.

**Tip #12: Watch out for life insurance proceeds.**

Caitlin explained that while life insurance proceeds are not subject to income taxes, they are subject to estate taxes. This can be a big deal for, say, a \$1 million life insurance policy. If subject to the federal estate tax, the policy would be taxed at 40% and would thus net only \$600,000. However, an irrevocable life insurance trust can be used to mitigate the tax. The life insurance policy must either be purchased by the trust (in which case it is not subject to estate tax from the start) or be transferred to the trust and held by the trust for three years prior to death. The trust must be the owner and the beneficiary of the policy. Typically, for married couples, the trust provides income and support for the surviving spouse, then passes tax-free to children.

**Tip #13: In drafting durable powers of attorney, "broad" is better.**

A simple Power of Attorney naming an attorney-in-fact or agent will allow the agent to handle all of the financial affairs of the principal. Washington allows for a durable power of attorney for financial purposes in RCW 11.94. The term durable simply means that the power is valid even though the principal is incapacitated. Caitlin explained that a general power of attorney document should be broadly written. It is important that it specifically address transfers to a revocable living trust, the ability to make gifts, the ability to deal with government programs such as Medicare, Medicaid and Social Security, and provide protection for the person acting on behalf of the principal.



**HEATHER NORTON** is a sole practice attorney whose firm focuses on Estate Planning and Guardianship. She recently established Clark County's first entirely virtual estate planning practice at [www.EstatePlanningMadeAffordable.com](http://www.EstatePlanningMadeAffordable.com). The purpose of her practice is to build meaningful client relationships while providing personalized estate planning in a way that is convenient and affordable. Heather can be reached at [heather@EstatePlanningMadeAffordable.com](mailto:heather@EstatePlanningMadeAffordable.com)

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# Local Attorney Competes in Australia

Attorney Sue Phillips Hammann and Amelia Carter, Mark Carter's lovely wife, traveled down under to Adelaide, Australia, to compete in the 2016 World Club Crew Dragon Boat Races in early April. Catch-22 is the local dragon boat team which practices on Vancouver Lake. Sue got back into dragon boating this past August, after a few-year hiatus. She sent a message to her neighbors to try dragon boating, and Amelia jumped at the opportunity to try something fun and different. Amelia soon became a favorite paddler on the team leading paddlers in campfire songs while paddling around the lake! The trip to Australia was a dream trip for Sue and Amelia. Sue and her husband Fred traveled around Australia for a month, seeing such sights as the Sydney Opera House and the Jenolan Caves. Amelia indulged her passion for scuba diving and was able to view Leafy Sea Dragons, only found off the coast of South Australia. Amelia is the daring one, holding a Diamond Python at the Cleland Wildlife Park outside of Adelaide. This spring is the perfect time for anyone to come and check out dragon boating on Vancouver Lake. Come watch the Ospreys hatch near the dock, and the bald eagles fishing. For more information about Catch-22 email Sue at [susan@suephillipslaw.com](mailto:susan@suephillipslaw.com).



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for details



# Tort Damage Caps Back in Style in Oregon

**JESSE JACOBS**

*Hearsay Special Correspondent*

The Oregon Supreme Court (*Horton v. Oregon Health and Science University*, 359 Or. 168 (2016)) has overturned previous precedent and held that a statute limiting a state employee's tort liability is no longer unconstitutional. The Court overturned its previous decision on Article I, section 17 (right to trial by jury) in *Lakin v. Senco Products, Inc.* and the "bright line" common laws causes of action analysis in regards to Article I, section 10 in *Smothers v. Gresham Transport, Inc.*--but expressly did not address any other statutory caps. The question that now will likely get litigated ad nauseam is whether or not Oregon's ORS 31.710 \$500,000 statutory limit on noneconomic damages applying to many tort cases (excluding, for instance, third party actions for individuals receiving workers' comp benefits) remains unconstitutional--as *Lakin* was the seminal case holding that such statutes are unconstitutional.

As Article I, section 17 is not currently a likely path for addressing statutory damage caps, whether or not the \$500,000 cap is constitutional is probably something that will be determined with an analysis of the "remedy clause" (Article I, section 10) of Oregon's constitution (though there are other theories being explored). The Oregon Supreme Court has indicated that this analysis will turn on such things as whether or not the cap creates an "insubstantial" remedy and whether or not there was some legislative "quid pro quo" in creating or finagling a cause of action. Gone, however, is the limitation of

the "remedy clause" to common law causes of action that existed in 1857.

So where does all this leave a practitioner with an Oregon case? Well, off in the mists. Practitioners should remember to raise and preserve any constitutional issues. Additionally, any application of ORS 31.710 will apply only after a jury renders a verdict and the jury is not to be informed of the limitation. The Oregon Supreme Court has just remanded a case to the Court of Appeals that has opened the door for a decision on ORS 31.710 based upon the *Horton* Court's view of Article I, section 17 and, potentially, Article I, section 10. *Rains v. Stayton Builders Mart, Inc.*, 359 Or. 610 (2016). However things shake out, there are a growing number of resources in this area and practitioners unfamiliar with the territory should reach out early and often.



**JESSE JACOBS** is an attorney at NW Injury Law Center ([NWInjuryLawCenter.com](http://NWInjuryLawCenter.com)). An active WSAJ Eagle and OTLA Guardian, Jesse focuses his practice on representing injured plaintiffs in Oregon and Washington. He is a proud WSU Cougar and graduate of Seattle University School of Law. He is licensed in Oregon and Washington. Jesse can be reached at [jesse@nwinjurylawcenter.com](mailto:jesse@nwinjurylawcenter.com)

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# Fighting for Equal Justice in Washington, D.C.

**JESSE JACOBS**

*Hearsay Special Correspondent*

Washington State's own Equal Justice Coalition (EJC) took to Washington, D.C. to advocate for increased funding for civil legal aid. Besides our own local CCBA member Loren S. Etengoff (Legal Foundation of Washington Past President), the bipartisan delegation rounded out with Jay Doran (LFW Communications and Advocacy Directory), Bill Hyslop (WSBA President), Caitlin Davis (LFW Executive Director), Sal Mungia (Equal Justice Coalition Chair), Washington State Senator Ann Rivers, Cesar Torres (Northwest Justice Project Executive Director) and Associate Chief Justice Charles Johnson. Taking part in the ABA's annual ABA Days in Washington, D.C. the EJC advocated to increase funding to the Legal Services Corporation (LSC).

Operating as an independent nonprofit, the LSC is the single largest funder of civil legal aid for low-income folks in the country. Washington State's recipient of LSC funds (about \$6.6 million) is the Northwest Justice Project. While the LSC now receives about \$385 million in federal funds, funding is down

8% from 2010 and roughly 95.2 million people qualified for aid during 2014. While the EJC was hoping to get that up to \$475 million, the chances of that happening anytime soon are slim as Congress is delaying a new budget until after the election.

Civil legal aid is crucial for folks living at or below 125% of the federal poverty level when faced with critical legal issues. Aid is needed for such things as keeping a roof over their head, resolving family law issues, getting consumer justice, and getting assistance as military and veteran families. With a rising number of eligible folks and decreasing funding, all this results in a real access to justice issue for anyone too strapped for cash for us pricey attorneys.

While an increase in funding may be a while off, the trip did allow the opportunity to help educate our nation's leadership on the needs of us Washingtonians. The crew also got a chance to pose in front of our nation's capital adorned in its finest scaffolding.





# Hearsay Profile: Brad Thayer

**Home:** I currently live in the St. Johns neighborhood in Portland, Oregon, with my fiancée, Becca Gard. I was born and raised in Vancouver, Washington.

**Age:** 31

**Profession:** I'm a plaintiff's personal injury attorney.

**Hobby:** I like hiking and getting outdoors. I'm an avid Blazer fan. Eating is fantastic. Other interests include going to concerts and playing basketball, the drums, and Settlers of Catan (among other board games).

**Last Book Read:** My favorite book, Cat's Cradle by Kurt Vonnegut.

**Legal Philosophy:** At this point, everything is new – so, I try to ask questions when something doesn't seem right. Thankfully, I work in a highly collaborative atmosphere with attorneys who are not only great attorneys, but great people. As a young attorney, I'm consistently motivated by the Socrates quote: "All I know is that I know nothing" to keep learning as much as I can with an end goal of being able to help the folks that come to us in need. Whether or not that quote is paradoxical is another matter...

**Latest Accomplishment:** In May 2016, I cycled 55 miles as part of the Reach the Beach fundraiser for the American Lung Association. I rode in honor of my best friend's father who passed away from lung cancer in 2012 (Vancouver attorney Richard Lowry). I had not ridden a bike in many, many years prior to the one 20-mile test ride I did the week of the race!

**Why I Do What I Do:** It's genuinely fun. As a kid I saw my dad, Bill Thayer, thrive in and love the plaintiff's practice. Even still, I couldn't have predicted just how much I would enjoy it when I rolled up my sleeves and dug into it. Obviously, it's new and I have a ton to learn and experience – but, I have my own case load and clients and it's been everything I'd hoped it'd be and more.

**Profile:** I earned a Bachelor's degree in journalism with a minor in sociology from Western Washington University in 2007. I lived in Spain from 2009 to 2011 teaching English. I earned a juris doctorate, cum laude, from Willamette University College of Law in 2015. While in law school, I clerked at Garrett Hemann Robertson PC in Salem, Oregon, and a judicial externship at the United States District Court for the District of Oregon with the Honorable John V. Acosta. I joined Schauerermann Thayer Jacobs Staples & Edwards PS in 2015. I passed the Washington bar examination in July 2015 and the Oregon bar examination in February 2016.

**Beverage of Choice:** Non-Alcoholic: Watermelon agua fresca. Alcoholic: A Scotch-style beer.



Brad and former Portland Trailblazer Nicolas Batum

# Lawyers as Peacemakers

**BRANDON CAMPBELL**

*Hearsay Special Correspondent*

Five local attorneys and a local divorce consultant were spotted in Seattle on May 20 and 21, 2016 at a Lawyers as Peacemakers training by Lead Trainer, Woody Mosten, a California lawyer and mediator who is a world-renowned author and lecturer, and Associate Trainer, Kevin Scudder, a Seattle lawyer and mediator who is a frequent writer and blogger about collaborative practice. The takeaway from this training per these attorneys was that “dissolving a marriage really can be a peaceful process.” Curious CCBA members should follow up with one of these five for more information.



Left to Right: Juliet Laycoe, Nancy Retsinas, Associate Trainer Kevin Scudder, Lead Trainer Woody Mosten, Katie McGinley, Marie Tilden, Eric Hoffman, and Divorce Consultant Kathleen Zumpano, MA, LMFT.

The 2016 WSBA Solo and Small Firm Conference, which will be held at the Washington State Bar Association in Seattle, WA on Friday, July 22 & Saturday, July 23. This year. The, main classroom presentations will be webcast—which means you

can attend this year’s program without incurring travel, meal or lodging expenses! Landerholm is sponsoring a group viewing station which will take place at the offices of Schmitt Reporting and Video; those wishing to attend the viewing station location should forward their registration confirmation email with intended group viewing location (Vancouver ) to shanthir@wsba.org.

The Solo and Small Firm Conference continues to provide excellent CLE value. For \$365 (\$265 for new lawyers admitted to practice in Washington for fewer than four years who register for in-person attendance) the Conference offers 11.5 CLE credits (6.5 Other +4 Ethics + 1 Law and Legal Procedure). Please register for this conference by going to [wsbacle.org](http://wsbacle.org) and enter 16555 in the search field.

Made possible by a contribution from the WSBA Solo & Small Practice Section, this year the conference features, among many excellent speakers, national presenter Barron Henley (a founding partner of Affinity Consulting Group, )who will provide timely insight on:

- Essential Web Services for Lawyers – Cloud Computing, . . . .
- Ethics, Security and Options
- Champagne Technology on a Beer Budget
- Speech Recognition Technology
- Better Methods for Drafting Complex Documents (this concurrent session will not be webcast)

Please consider attending this year’s program either in person or by Webcast.

## Conference Room available to rent

The CCBA’s office conference room is available for meetings and depositions at reasonable rates.

Call Lisa at:  
**(360) 695-5975**



# Clark County **VOLUNTEER** Lawyers Program

**Mark Your Calendars – The Date is Set – Battle of the Lawyer Bands will be Thursday, September 8th.**

Our premiere event of the year – this event is a fundraiser for the Volunteer Lawyer Program – your support of your favorite band through donations will go towards the determination of the winning band and will help provide services for low income persons who otherwise have to face their legal issues without the assistance of an attorney.

Watch for our concert poster and information on our website, coming soon.

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**

## **MAY 2016**

Lou Baran, Brandon Campbell, Ed Dawson, Brian Grambow, Tanya Green, Marlene Hansen, Lincoln Harvey, Scott Horenstein, Scott Matthews, Michael Reid, Rob Russell, John Vomacka, Lisa Ward

### ***Statistics for MAY 2016***

Clients Served 42      Volunteer Attorney Hours 46

## **CCBA HAPPY HOUR**

**Join us on July 13, 2016 at Warehouse '23**

*(coming soon to the space formerly occupied by the Red Lion Restaurant)*

for our first but hopefully not our last CCBA Happy Hour!  
Stop by between 5pm and 7pm to enjoy the view and some networking with other CCBA folks. You're on your own for happy beverages!



If you're interested in being a part of the CCBA Social Committee, please plan to show up at 4:30! We're looking for folks with great ideas who are willing to help us keep improving the social component of the CCBA.

**Hope to see you there!**

## NEWS YOU CAN USE



**LISA DARCO**  
*CCBA Office Manager*

### New Address:

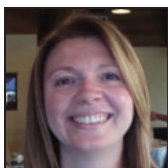
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## BOOKKEEPING TIPS



**EMANUELA SANDRI**  
*Attorney Bookkeeping Services, Inc.*

### QuickBooks — Open Window List Feature

The Open Window List feature in QuickBooks is a quick, one-click access to any open QuickBooks window, which allows you to quickly find features and functions that you were previously using.

You can find the Open Window List on the left side of the program. If not visible, access the feature by clicking View menu, Open Window List.

Another way to view all of the open windows in QuickBooks can be found under the Window menu.

To quickly close all open windows, click Close All under the Windows menu.

## LAW LIBRARY NEWS



**MARIA SOSNOWSKI**  
*Law Librarian*

### Law Library After Hours Access Cards

Did you know that attorneys can purchase an after-hours keycard to access the law library? This allows you to enter the law library when the building is open but the library is closed. (Public law library hours are 9am-3pm Monday to Friday. The building is open at least 2 hours before and after that.) The fee is \$36 per year. If you're interested please contact the law librarian for an application.

### FOR SALE Through July 2016

The law library is taking blind bids on the following items:

1. **Guide to Surviving Debt from NCLC**
2. **Social Security Handbook 2015 from Bernan**
3. **Determining Economic Damages binder plus CD Rom from James**
4. **Defending Drinking Drivers Revision 31 2015 from James**
5. **Defending Drinking Drivers Revision 30 2014 from James**
6. **8 Ways to Avoid Probate from NOLO**
7. **Consumer Bankruptcy Law and Practice 2012 – NCLC with 2013 supplement**

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

**Advertise Next Month's Hearsay**

*For rates and space availability, Call Lisa @ 360.695.5975*





# UPCOMING EVENTS

## SOCIAL

**June 23, 2016**

YLS Social and Elections  
Shanahan's 5:00pm

## MEETING

**July 6**

CCBA Board Meeting

## SOCIAL

**July 13, 2016**

CCBA Happy Hour  
WareHouse '23 5:00pm - 7:00pm

## MEETING

**July 19**

Hearsay Meeting

## SOCIAL

**July 22**

CCBA Member BBQ

## SOCIAL

**September 8**

CCVLP Battle of the Bands

## SOCIAL

**September 9**

CCBA Golf Tournament  
Club Green Meadows

## SOCIAL

**September 11**

Young Lawyer vs Senior Lawyer  
Softball Game @ Prairie Field

## MEETING

**September 12**

CCBA Annual Meeting  
Noon – 1:00pm  
Fort Vancouver Artillery Barracks

## SOCIAL

**October 20**

Third Annual Bowling with the Judges

## 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 238 CLIENTS IN THE MONTH OF MAY

Administrative Law .....	19
Bankruptcy .....	1
Business & Corporate .....	6
Consumer .....	17
Criminal .....	14
Debtor/Creditor .....	6
Family Law .....	42
General Litigation .....	45
Labor & Employment .....	14
Real Property .....	30
Taxation .....	3
Wills & Trusts .....	19
Worker's Comp .....	21
International Law .....	1

**SAVE THE DATE**

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of his 47 years of practice*



  
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