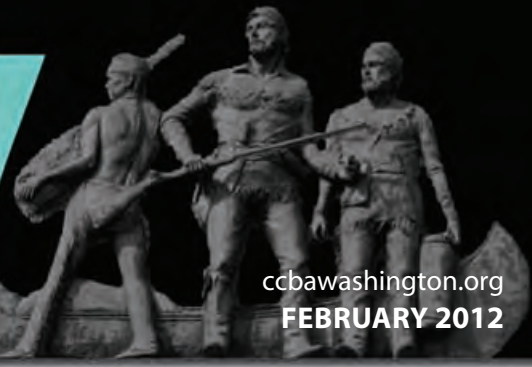


HEARSAY



ccbawashington.org
FEBRUARY 2012

OFFICIAL NEWSLETTER OF THE CLARK COUNTY BAR ASSOCIATION

Guitar Heroes

page 5



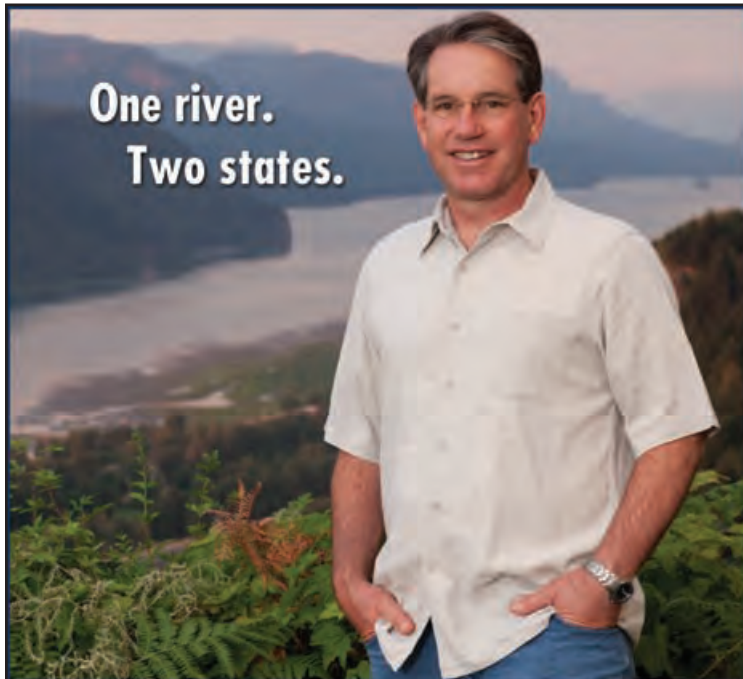
THIS MONTH'S ISSUE

President's Message	3	O Tempora! O Mores! The Flush Times of Alabama and Mississippi....	18
Guitar Heroes All.....	5	Double Hearsay	21
2011 - 2012 CLE and Nuts & Bolts Calendar	8	Hearsay Profile: Jean McCoy	23
WSBA Referendum proposes big changes;	9	Clark County Volunteer Lawyers' Program	24
TRIAL SKILLS: PRACTICAL DAY.....	11	Law Library News.....	25
Tech v. Law, No. 3	12	Attorney Bookkeeping Tips	25
Superior Court Bench/Bar Meeting Minutes	14	News You Can Use.....	25
Family Law Section Meeting	15	Legally Drawn.....	25
Inns of Court.....	15	SW Washington Lawyer Referral Service	26
Barrister's Ball Auction Bonanza!	16	Events Calendar	26
CCBA Monthly Board Meeting Minutes.....	17		

HEARSAY is published 12 times per year and is design edited by:
JEFF GOUGH, Creative Director • GOUGH CREATIVE GROUP
 360-818-4GCG • director@goughcreative.com

An annual "green" subscription is included with annual membership dues. Members may purchase a hardcopy subscription for \$48.00. Letters, news items, upcoming events and announcements are welcome. Articles by members are accepted. Submissions should be presented in Microsoft Word and may be edited for length, clarity and style. Submissions by members are published at the editor's discretion and space available. Views expressed in articles represent the authors' opinions, not necessarily the CCBA's. The publication does not purport to offer legal advice.

CCBA OFFICE HOURS: Monday through Friday, 12:00 p.m. to 4:00 p.m.



Don Jacobs will handle your cases in Washington... and Oregon.
 A past-president of the Oregon Trial Lawyers Association, Jacobs is available to take your cases to court in either state.



360-695-1624
don@nwinjurylawcenter.com
www.nwinjurylawcenter.com

RICHARD G. SPIER MEDIATOR



Highly experienced—full-time neutral since 1992

Business & commercial; personal injury;
 employment; real estate & construction

Listed for Mediation in
The Best Lawyers in America®

Member, Oregon and Washington Bars

503-284-2511

Fax 503-284-2519

rspier@spier-mediate.com www.spier-mediate.com
 2536 N.E. 28th Avenue ■ Portland, Oregon 97212-4916

No charge for travel time or travel expense in Oregon and Washington

PRESIDENT'S MESSAGE

Civics Education and the Health of Our Profession



JOHN FAIRGRIEVE
CCBA President

As I write this month's column winter appears to have finally arrived in the Northwest with its requisite rain, snow and wind. On the bright side the current storm system will probably lead to a heavy snowpack and a long spring ski season. That being said, there are three matters I want to bring to the bar association's attention this month.

First, as you are almost certainly aware, this year's Barrister's Ball will occur on Saturday, February 25. Part of the Ball will be a silent auction benefitting this year's charity, the YWCA SafeChoice Program. The SafeChoice Program advocates for, educates, and supports those affected by domestic violence. It works to collaborate with community partners to make resources, information, and education about domestic violence available to the public. You can find out more about the program at their website, <http://ywcaclarkcounty.com/help/safechoice>.

As many of you are aware, the state legislature is currently in session and is making decisions about substantial cuts in its budget. I understand that there is a good chance that the Clark County YWCA and its programs, including SafeChoice, will be negatively impacted by the pending budget cuts. With that in mind, I urge you to consider contributing an item or items to the silent auction.

Second, perhaps the high point of the Barrister's Ball is the recognition that we as a bar association give to three of our members to

recognize their achievements during the prior year. In particular, we recognize service to the profession with the Donald Simpson award; service to the community with the Ken Weber award, and finally poke a little fun at ourselves (and one of our members) with the Alan Harvey Courtroom Blooper award. Please consider taking a few minutes soon to think about your colleagues and to nominate someone deserving of one of the awards.

Finally, the American Bar Association (ABA) will hold its mid-year meeting this year February 1-7. As I mentioned in an earlier column I am a member of the House of Delegates, the legislative body of the ABA. The House of Delegate will meet on Monday, February 6 to discuss and vote on a number of resolutions which form the policy position of the ABA on numerous issues. There are over 25 resolutions that will be voted on spanning a range of legal topics from criminal law to intellectual property. A summary of the resolutions can be found at http://maestro.abanet.org/trk/click?ref=zpqri74vj_3-146fx315643x1497&. More information on the resolutions can be found at the ABA website, <http://www.americanbar.org/aba.html>, under the House of Delegates heading. Please contact me if you would like to discuss any of the resolutions. I can be reached at jpfairgrieve@msn.com or by telephone at (503) 957-6107.



Linda E. Frischmeyer
ATTORNEY

Over 25 Years Assisting to Achieve Employment Goals

Respectful. Clear. Helpful.

- Wage payment
- Independent contractors
- Confidentiality
- Nonprofits
- Non-compete
- Performance
- Challenging behaviors
- Leave laws
- Disability accommodation
- Drug testing

360.816.2475

linda.frischmeyer@landerholm.com

805 Broadway, Ste. 1000 • Vancouver, WA 98660

Available
for Consults

Washington
& Oregon
Licensed

Billing & Bookkeeping

using Timeslips & Quickbooks

- * Bank & IOLTA reconciliations
- * Payroll & related tax filings
- * WA tax filings & Federal return prep
- * Weekly & monthly services

Cynthia Bradley

(626) 795-5441

references available

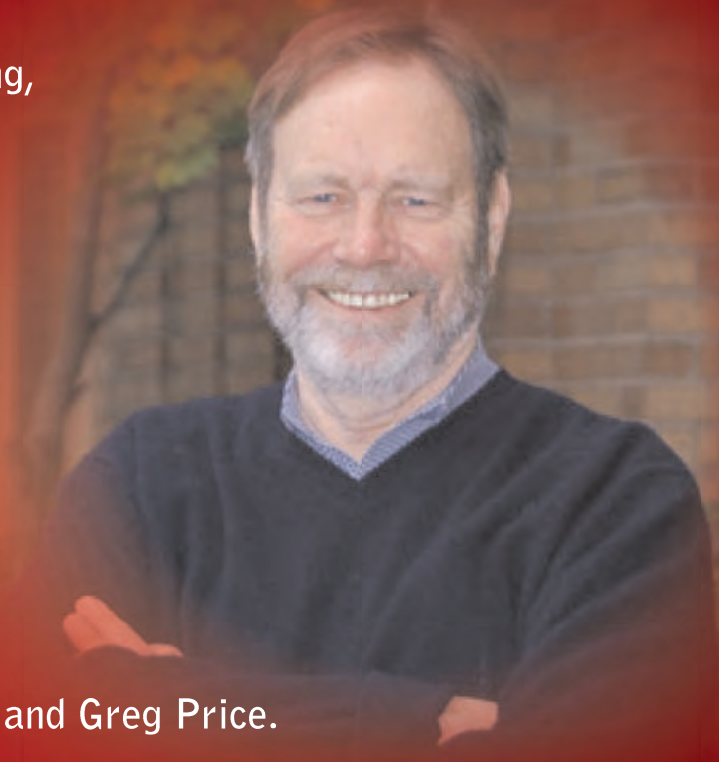
WILLIAM F. NELSON

Baumgartner, Nelson & Price, PLLC

Celebrating forty years of evaluating, settling, and trying claims of professional negligence and serious personal injury in Southwest Washington.

Many thanks to the more than sixty lawyers, judges and court personnel for the referrals that have made this celebration possible.

And special thanks to my partners of fifteen years - Bill Baumgartner and Greg Price.



———— Available for consultation or referral ————
on professional negligence and serious personal injury claims.

Martindale-Hubbell recognizes William F. Nelson as an AV rated attorney, the highest such rating available to any individual lawyer.



BAUMGARTNER, NELSON & PRICE, PLLC

112 W.11th Street, Suite 150

Vancouver, WA 98660

Phone: (360) 694-4344

wnelson@bnplaw.com | mthompson@bnplaw.com

www.bnplaw.com

Guitar Heroes All



DON JACOBS

Hearsay Special Correspondent

Welcome back once again to the continuing series of articles highlighting musical talent amongst our Clark County Bar colleagues. To date we've covered bass players, keyboard/pianists, and lawyers who blow saxophones. To repeat, if you have musical talent of any type, or know another CCBA cohort who does, please shoot me an email or call. This would include vocalists. There is no obligation and your call is confidential. Well, not really, I just like saying that. But I would hate to overlook an American Idol finalist or Grammy award winner in our midst.

So enough housekeeping - this month we have the anxiously awaited segment on guitar players. I thought this search would be the easy one. I mean, everybody plays guitar, right? Thousands of applicants were expected. Please reference the bass player article where the author claimed you couldn't swing a dead cat in Portland without hitting a guitar player. To date no one has proven this incorrect. Many of the folks contacted during the research for these articles did admit to playing a little guitar (and I don't mean the ukulele type), but not many wanted an article devoted to their prowess. Go figure. Guitar players are usually anything but shy. While the rhythm section of bass and drums are more in the supporting role, guitar players are typically the people out front, the stars. All the attention is on them, which can lead to some resentment from the rest of the band. Hence the old guitar player joke; "What do you do if you see a guitar player drowning? Throw him his amp." Guitar players need to have the courage to step out front and lead. This requires a bigger ego than most. Having been around guitar players for most of my adult life, I've heard other band mates describe them as nothing more than a life support system for an ego. Maybe that is a little harsh, but nobody watches the drummer or the bass player; all eyes are usually on the lead guitar. So you think I'd have more than just three to highlight for this segment. The three we do have, however, are real pros.

We start with our own former CCBA President Dave Ridenour. Dave is self taught and has been playing guitar since he was in the 5th grade. Dave also plays a little piano, drums and even the mandolin. He sings too. A 1978 graduate of Roseburg High School, Dave received a 12 string Ovation for graduation and his playing really took off from there. At first Dave admits the bands had more courage than skill. In fact he says a few were downright rotten. His first band was able to cobble together twenty songs and somehow got hired to do a political event for some dignitaries at a state senator's mansion in Eugene. The band was paid \$20 and all the food they could eat. Good money in those days. Dave says they were loud and bad (always

a good combination) and just barely knew the songs. He remembers everyone moving away from the band after they started playing. The equipment his bands had in those days wasn't top notch either. Dave recalls one of the band's lighting effects consisting of an aluminum Christmas tree color wheel with the standard four colors.



Dave got better, though. While at Willamette his bands performed at college dances, weddings and street parties. Dave recalls one of his bands auditioning for a job as the regular band at a roadhouse outside Stayton. They beat out three other bands and got the job playing three nights a week. Ever modest, to this day Dave still thinks they got the job because they were the cheapest. However, the band started drawing crowds every week. Dave figured out the performance and how they worked up the crowd was just as important as their musical skills. They started doing things like regularly leading the crowd in toasts. Then came funny outfits like caps and gowns and even dirty

sweat socks tied in their hair. (Thankfully no photos of this exist.) They did lots of crazy stunts to create a party atmosphere. The clientele and the owner loved it and the job went on for months. The patrons even started requesting certain originals the band played. Dave remembers having to sing one of their originals. "Dark Hairy Women" (got to be a story on this one), at least twice a night.

Law school was a little quieter, with Dave doing occasional open mikes. After law school Dave did a four year stint in Alaska where he formed a band with four lawyers and a surgeon. Dr. Death and the Ambulance Chasers became the band name. (Truly one of the best band names of all time.) They played VFWs, bars and New Year's Eve parties for several years. Other band names on Dave's resume include Pepper Grass, Wall Street and Class Action. Dave quit performing when he moved to Vancouver in the late 1980s. Now his musical passion is fed by recording. When Dave was in college at Willamette he took a class on recording and loved it. Dave's home now has a complete musical recording studio. Many nights find him holed up in his studio laying down tracks to create original music. Dave says he loves the magic that happens when his work creates a decent piece of recorded music.

Next on our list of pickers is Vancouver's own Bill Thayer. Bill also started playing guitar in the 5th grade. Bill came from a musical family, with his brother Danny a drummer of some renown in the Portland band scene. Also self taught, Bill considers himself more of a rhythm guitar player, although he says he does play some passionate leads in certain minor keys. Bill started performing with his guitar in law school. Duets in coffee shops, weddings and funerals were his venues. When he moved to Vancouver he started hanging out with an unsavory cast of young lawyers without wives or kids jamming with instruments for fun. This loose group eventually gelled into one of the more notorious Vancouver lawyer bands of the past half century. The Thundering Love Hammers were born (Clearly a serious challenge to Dr. Death and the Ambulance Chasers for one of the best band names of all time).

The Love Hammers featured Bill on rhythm guitar, attorney Todd Rutledge on lead, Don Jacobs on drums, Tom Phelan on vocals and the only non lawyer, and probably the best musician of the bunch, Gary Alvarez on bass. Bill also did backup vocals.



The group was together for over a decade and played for mostly private parties in various venues around the Portland/Vancouver area. Grange halls, VFW posts, the Crossing, the Quay, the old Blitz Weinhard hospitality room and even a Horizon Airlines hangar for an airline employee party saw the group perform. Lots of lawyer functions, charity events and weddings heard the Hammers do danceable rock and roll tunes. Through a connection of his Bill became acquainted with Bob Bogle, the long time bass player for the surf rock group the Ventures. Bill was able to persuade Bob to do several gigs with the Love Hammers between his national tours with the Ventures.



The Hammers existed long enough that the players started to show signs of aging. You realize you've lost your cutting edge persona when people start referring to you as the Love Handles or the Ham Lovers. The band broke up when lead guitarist Todd Rutledge tragically passed away from cancer followed a short time later by bass player Gary Alvarez who succumbed to MS. Since the breakup of the Love Hammers, Bill has played sporadically with various local musicians in some special projects. About three years ago I was able to catch Bill playing at a local tavern in East Portland with his brother Danny. Bill has always been a solid rhythm guitar player. When asked what he enjoys most about playing, Bill says it's the feeling you get when everything clicks.

Our final guitar star and, without much argument, certainly the most proficient and experienced player is criminal defense lawyer Jack Green. Music runs in his family with his father playing the piano, organ and trombone. Jack started with the guitar around the age of seven and started taking some lessons at eight. At fourteen, he picked up his first electric and was self taught from there. A proficient musician, Jack can also play the piano, trumpet, bass and drums. In high school he played the trumpet in the concert band and sang in the jazz choir. Jack was the kicker on the school's football team until he blew his knee out in his senior year. The good news is the injury left him more time to practice guitar. College took Jack to the University of Washington in the early 90's. Seattle was full on into the grunge music scene at the time and Jack dove right in. His first band was the KGB. Other bands on his resume include Buddha Band, Looking Glass, Alive She Cried, 3rd World County, Love Stain, Atom West, and Super

Volcano. I should note that these weren't merely cover bands; Jack started all of these and even wrote the songs.

I asked Jack for some names of places he's played. He tells me there probably isn't a venue in the Seattle/Portland area he hasn't performed. He says his biggest crowd was probably at the



Crystal Ballroom in Portland. His bands have toured all over the west coast and have gone as far east as the Mississippi. In Law School he created the band Lark, which included Vancouver attorney Mike Green (featured in our first segment) on bass. Lark put out an album (at least that what we called them in my day) in 2008 called Pines, with eight songs created by Jack and long time friend Geoffrey Cecil. Mike Green handled the bass and drummer

Dan Holmes laid down the drum tracks. Released independently, you can hear the tunes by going to <http://thelark.bandcamp.com/album/pines-ep>. Great stuff with an early British pop feel to it. One of the songs on the album, "Miss You More" was used for the soundtrack on the movie Last Chance Harvey with Dustin Hoffman and Emma Thompson. Jack has

given up performing at this point and now concentrates on creating music in his home studio. He writes, records, does the mix and then sends it out to people he knows in the licensing business. In addition to the movie with Dustin Hoffman some of his work has been used for promotional clips for the TV show Gossip Girl. Who knows, the next time you hear a catchy clip on a commercial or movie trailer, you may be hearing Jack's handiwork.



FOR LEASE 907 Franklin



Great location between Courthouse and Esther Short. Good visibility & signage. \$1,800/mo. Two parking spots.

Electric/water/sewer/garbage all included. No charge for parking, common area maintenance, taxes or insurance. A little over 900 sq/ft with two nice offices, a reception area and tons of storage. All recently remodeled with new electric/windows/bathroom/light fixtures/carpet and paint. New HVAC and alarm system. All wired for phone and computer. One month security/damage deposit. Very charming landlord. Lease term one year or more.

Call 695-1624

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



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

MICHAEL SIMON

Phone: 360-696-3312 (WA)

503-283-3393 (OR)

Fax: 360-696-2122

michael.simon@landerholm.com

LANDERHOLM
Legal advisors. Trusted advocates.

2011 - 2012 CLE and Nuts & Bolts Calendar

Date	Topic	Speaker	Committee Member
March 13, 2012 3:00pm—5:00pm PSC	Employment Law	Emily Sheldrick	Scott Matthews
March 14, 2012 3:00pm—5:00pm RL at the Quay	N&Bs: Trial Skills Direct Examination, Cross Examination and Examination of Experts	David McDonald Jane Clark	Jane Clark
April PSC	E Discovery		Mark Beatty
April 11, 2012 3:00pm—5:00pm RL at the Quay	N&Bs: Trial Skills Trial Procedures	Honorable Roger Bennett (Ret.) James Senescu	Jane Clark
May PSC	Forensics		Suzan Clark
May 5, 2012 3:00pm—5:00pm RL at the Quay	N&Bs: Trial Skills Practical Day	Local Judges and Trial Attorney Mentors	Jane Clark
May 9, 2012 3:00pm—5:00pm RL at the Quay	N&Bs Collecting on Judgments		Mark Beatty
June 13, 2012 3:00pm—5:00pm RL at the Quay	N&Bs Adoption	Marie Tilden	Scott Matthews

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.

WSBA Referendum proposes big changes; calls on WSBA members to vote

Recently, a member referendum was filed with WSBA's Executive Director calling for a vote of the WSBA membership. It requests that the Board of Governors' decision to keep 2013 license fees the same for the fourth consecutive year be repealed, and that 2013 license fees be dropped from \$450 to \$325. On March 7, electronic ballots will go out to the Active membership, with paper copies sent to those without valid email addresses on file. Members will have until April 6 to vote. Passing or defeating this referendum requires a majority vote of those Active members voting. Below are some facts about WSBA's member referendum process, your WSBA license fee, and the potential impact of the proposed referendum.

WSBA's member referendum process is the avenue by which any Active member of the Bar can affect policy set by the Board of Governors. A referendum can reverse or modify a final action taken by the Board of Governors, enact a resolution, or amend the WSBA bylaws. Any Active member may file a petition for a referendum if it meets the criteria laid out in the WSBA Bylaws. To pass, a referendum requires a majority of those Active members voting.

The WSBA license fee of \$450 has been set the same for four consecutive years (2010-2103). The Board voted unanimously in 2011 to keep the fee the same, despite continued growth of the membership and budget pressure.

WSBA is both a regulatory agency and trade association. Washington is one of 32 states with a mandatory bar. The rest (18) pay a license fee to the Supreme Court and additional fees for a bar membership. WSBA serves nearly 30,000 active members and is charged with regulating the profession as well as providing valuable services and programs to members and the public.

Paying your annual license fee is the equivalent of obtaining a business license. Many other professions require an annual license fee to practice in our state. While a number of professions pay less, there are many that annually pay more. For instance, midwives pay \$525, chiropractors pay \$607, physicians and surgeons pay \$675. Dentists pay \$576 and auto dealers pay \$750.

Washington's license fees are on par, when looking at other state bar associations that perform regulatory functions. Of the 32 mandatory state bars in the country, Washington's license fees rank near the middle among those states with comparable membership size (e.g., Michigan, Wisconsin, Georgia). By comparison here in our region, Oregon also has a mandatory state bar with a license fee of \$492 annually, and Alaska's license fee is \$660.

Reducing the license fee to \$325 is equivalent to what was collected a decade ago when WSBA membership was 28 percent smaller with fewer programs and services offered. A cut in license fees of this magnitude equates to a 26% budget cut, or \$3.6 million, putting numerous programs and services at risk for cuts or elimination.

Please look for your ballot to arrive electronically or in the mail. Every vote counts. For more information on the License Fee Referendum, go to www.wsba.org.

Submitted by:
Debra Carnes | Chief Communications Officer
Washington State Bar Association | (206.733.5930)F
206.727.8321 | debrac@wsba.org
1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 |
www.wsba.org

HENDERSON LAW FIRM, PLLC

360.737.1478

Phender745@gmail.com



MEDICAL NEGLIGENCE

PERSONAL INJURY • WRONGFUL DEATH

Representative Jury Verdicts and Settlements:

- Failure to diagnose brain tumor — \$4.5 million
- Obstetrics malpractice — \$3.5 million
- Obstetrics malpractice — \$1.6 million
- Trampoline accident — \$1 million
- Electrocution at work -- \$900,000
- Motorcycle collision -- \$500,000
- Rear end MVC. Soft tissue injury -- \$230,000

*Available for referral or association
on serious injury, wrongful death and
medical negligence cases.*

MEDICAL MALPRACTICE
WRONGFUL DEATH
PERSONAL INJURY



Law office of:
JANE E. CLARK
ATTORNEY AT LAW

1014 Franklin Street
Franklin Suites, Suite 108
Vancouver, WA 98660

Available for Referral or Association

Vancouver 360.859.3823
Portland 503.974.4161
Email Jane@janeclarklegal.com

RIDER & ASSOCIATES, INC.
REPORTING & TRANSCRIPTION SERVICES

Rider & Associates Inc. provides superior court reporting services to the legal profession in Southwest Washington and the Portland, Oregon region. We have successfully served our clients since 1979 by offering many features and benefits tailored to your needs. We specialize in complex medical and technical terminology and offer the latest technology in both software and hardware applications to support the needs of a demanding industry. Rider & Associates, Inc. will guarantee the highest level of professionalism with personalized service and attention to detail.

Our Services Include:

- 7-10 day turnaround time without an expedite fee
- Full-Time Staff
- Realtime Reporting
- Computerized Transcription
- Caseview/Live Note
- e-Transcript
- Immediate Delivery
- Conference Rooms
- Scanning and Archiving of Exhibits
- Internet Realtime
- Realtime Captioning for Hearing Impaired



Affiliations:

- NCRA National Court Reporters Association
- WCRA Washington Court Reporters Association
- STAR Society for the Technological Advancement of Reporting
- MTIA Medical Transcription Industry Association
- AHDI Association for Healthcare Documentation Integrity
- AHDI-Washington Association for Healthcare Documentation Integrity of Washington
- AHDI-Oregon Association for Healthcare Documentation Integrity of Oregon



P.O. Box 245
Vancouver, WA 98666
Phone: 800.869.0864
Fax: 360.693.1037
E-mail: Teresa@RiderandAssociates.com
Web: www.RiderandAssociates.com

Conference Room available to rent

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

Call Lisa at: 695-5975



For 30 years we've helped bring peace of mind to over 20,000 clients during one of life's toughest times.

Respected



GEVURTZ Attorneys at Law
♦ **MENASHE**
The firm you want on your side
family law

OREGON ♦ S.W. WASHINGTON
503.227.1515 360.823.0410 GevurtzMenashe.com
Divorce • Children • Support

Visit us online at: ccbawashington.org

The Clark County Bar Association is pleased to announce its

TRIAL SKILLS: PRACTICAL DAY

The CULMINATION of the Trial Skills Series

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

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

To register: Call the CCBA, (360) 695-5975, OR email: cle@ccbawashington.org,

OR FAX this flyer back to the CCBA at (360) 737-6891 with your:

NAME: _____,

PHONE # _____, **BAR NUMBER:** _____,

and EMAIL ADDRESS: _____.

MENTORS

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

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

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

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

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

Tech v. Law, No. 3

Anonymity, Pseudonyms and Cyberstalking: Another Battle against the First Amendment



RICK McLEOD

Hearsay Special Correspondent

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

As I began to focus on a topic for this column (last August!), I learned that one of my past auguries had become reality. I was not overly surprised that the subject was being widely reported in technical press and raising the hackles of constitutional lawyers, either. Thankfully, this incident didn't happen in Clark County, but it could in theory, and such an event would no doubt cost the taxpayers an unjustifiable sum of money. So, I'll put a different column on the backburner for now, and turn to one of the primary battlegrounds of the Internet: the First Amendment.

A not, so long time ago in this very galaxy, the Washington Legislature enacted a criminal statute against "cyberstalking." The term "cyberstalking" doesn't have a generally accepted meaning; it's a relatively recent attempt to shoehorn what we consider the "traditional" form of stalking – which usually requires actually going somewhere, to a home or workplace, shadowing a person's movements – into digital communications.

While well-intentioned, Washington's statute likely won't withstand a First Amendment challenge due to the use of vague and overbroad terms that have repeatedly (and I do mean repeatedly) identified by the courts (particularly by the U.S. Supreme Court as being problematic:

RCW 9.61.260: A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication [defined as transmission of information by wire, radio, optical cable, electromagnetic, or other similar means ... includ[ing] ... internet-based communications] to such other person or a third party: (a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act

In case you didn't focus on the First Amendment in law school, the word "indecent" should automatically raise a red flag. I can't recall a single decision upholding a statute that attempted to criminalize "indecent" speech at least not since Miller.[1] When the Internet went mainstream, the Supreme Court struck down portions of the Communications Decency Act of 1996, which

specifically attempted to criminalize the transmission of "obscene or indecent" material to minors over the Internet. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997). Laws allegedly prohibiting "lewd" or "lascivious" speech typically fair no better.

Similarly, speech that is intended to "embarrass" any person probably can't be criminalized without improperly restricting an incredible amount of socially desirable speech. Speech that is deliberately intended to embarrass and humiliate is often highly valued in a democratic society. For example, would it be improper to embarrass a public official into resigning office (e.g., former U.S. Representative Anthony Weiner or former U.S. Sen. Larry Craig), or perhaps to deter private individuals from solicitation or DUI by posting details of arrests and arraignments? Probably not. This is "newsworthy" information by today's standards.[2] But, the value of embarrassing speech doesn't stop at news. Plainly, Jay Leno, Conan O'Brien and possibly most of the people at Comedy Central would be guilty of embarrassing several people in a single day.

So, how did the City of Renton approach applying this statute in 2011?

According to news reports, someone using the pseudonym "Mr. Fuddlesticks" used the animation website Xtranormal.com to create several (at least nine) video animations that portrayed certain public officials in a poor light.[3] These videos were posted to YouTube, which is a subsidiary of Google, Inc.[4]

In attempt to identify what appeared to be a leak inside the city government, the City of Renton issued a warrant for the violation of RCW 9.61.260, and on that basis, a subpoena was issued to Google to divulge the identity of Mr. Fuddlesticks. Almost immediately, the story went viral. Constitutional law professor Eugene Volokh discussed the issue on his website (<http://volokh.com/>) several times. It was also covered by Slashdot.com and Techdirt.com (both widely read by the technocrati), just to name a few.

First Amendment scholars across the country echoed the same theme: the statute is unconstitutionally overbroad if interpreted

as Renton desired. Prof. Volokh went a step further. In his view, the prosecutor's application was so improper that the request for a warrant should have been denied in the first instance:

A search warrant can only be issued if there is probable cause to believe that it will uncover evidence of a crime; since the material described in the affidavit can't be made criminal under the cited statute, given the First Amendment, the warrant ought not have been issued. The government is not permitted to use its coercive power to identify the author of this constitutionally protected video.

Had the video been arguably obscene, then it might be a different story. But, the third part of the Miller test requires that the work "taken as a whole, lacks serious literary, artistic, political or scientific value." Plainly, allegations of government malfeasance and/or corruption have serious political implications.

The following week, a Seattle attorney sought to quash the warrant. The judge then stayed the warrant, and requested briefing on the issues raised. Two days later, the City of Renton withdrew the warrant, essentially ending this aspect of its investigation.

While I was working on this article, a somewhat similar case involving the use of Twitter and a weblog came to my attention. In *U.S. v. Cassidy*,^[5] an ardent Internet publisher was accused of violating the federal stalking statute, 18 U.S.C. § 2261 (2)(A) which reads:^[6]

Whoever ... (2) with the intent ... (A) to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or

intimidate, or cause substantial emotional distress to a person in another State ...; uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person ...

On December 15, the judge determined that the statute constituted a content-based restriction as applied to Cassidy.^[7] Content-based restrictions are presumptively unconstitutional and must pass the highest test – "strict scrutiny" – to survive. As the Supreme Court noted recently, even socially repugnant speech is protected by the First Amendment.^[8] The judge additionally noted that publishing information via Twitter or blog is quite different from telephonic harassment, as the "target" is not forced to "read the tweets," but must be a willing participant. Even so, the court punted on the question of facial invalidity as its determination required dismissal of the indictment.

As in the case of Mr. Fuddlesticks, the Washington statute is vulnerable to similar unconstitutional application. More importantly, there are circumstances where an actual harm (e.g., revealing the identity of a whistleblower or political dissident) doesn't require a criminal prosecution, just a subpoena to an Internet Service Provider.

As long as RCW 9.61.260 remains on the books in its current form, the danger remains that it might be misused to threaten or harass the unwary and therefore squelch public comment on issues of public concern, and that is anathema to the core values enshrined in the First Amendment.^[9]

[1] In *Miller v. California*, 413 U.S. 15 (1973), the Court established the now famous "three-part test" for obscenity. Subsequently, *F.C.C. v Pacifica Foundation*, 438 U.S. 726 (1978) concerned a civil sanction for transmission of George Carlin's classic sketch "Filthy Words" (a/k/a Seven Dirty Words You Can't Say On Television) over broadcast radio.

[2] Political pundit Michael Kinsley published a column late last year noting that how this has changed.

[3] It is my understanding that the poster was ultimately identified through other means.

[4] For those who ducked out of U.S History, anonymous accusations against the government have a distinguished pedigree in this country; indeed, it played a part in igniting the American Revolution. See e.g., *Common Sense*, originally published by Thomas Paine under the pseudonym "Englishman."

[5] *U.S. v. Cassidy*, Case No. 8:11-CR-00091-RWT (D. Md. 2011)

[6] NB: "any interactive computer service" was added in 2006.

[7] See <http://s3.documentcloud.org/documents/274948/twitterstalkingmotion121511.pdf>.

[8] See e.g., *United States v. Stevens* 130 S.Ct. 1577, 1585 (2010) (involving depictions of animal cruelty); *Snyder v. Phelps*, 131 S.Ct. 1207, 1219 (2011) (involving anti-gay protest conducted near veteran's funeral).

[9] I am aware of a reported conviction of a minor under RCW 9.261.260, however, this was part of a plea involving facts indicating "unauthorized access." In my view, it would have made an interesting test case for the facial validity of Washington's statute. See <http://blogs.findlaw.com/blotter/2011/07/wa-girl-12-sentenced-for-facebook-cyberstalking.html>.

NOMINATE YOUR FAVORITE ATTORNEY

Every year at the Barrister's Ball, The Donald Simpson Award for Professionalism, the Ken Weber Award for Service to the Community, and the Alan Harvey Courtroom Blooper Award, are given to acclaimed and deserving local attorneys. Who will receive these awards this year? What acts of service, of consummate professionalism, of courtroom acrobatics deserve the ultimate recognition. Inquiring minds want to know.

You can nominate one attorney for each award, or potentially even one attorney for all awards (which would really be something). Please nominate your candidates by contacting Lisa at ccbamanager@ccbawashington.org.

CLARK COUNTY SUPERIOR COURT BENCH/BAR MEETING MINUTES

JANUARY 10, 2012



JOHN FAIRGRIEVE
CCBA President

The meeting began shortly after noon. Persons present were Judge Robert Lewis, Ann Christian, Emily Sheldrick, Jolene Sell, Suzan Clark, Heather Beasley and John Fairgrieve.

OLD BUSINESS:

1. Competency evaluations being conducted on criminal defendants by Western State Hospital (WSH): Ann Christian told the committee that another “competency fest”, where a number of psychologists and / or psychiatrists from WSH travel to Vancouver to conduct competency evaluations on criminal defendants, is scheduled for February 2. Otherwise the situation has not changed significantly since last month.

2. Prosecuting Attorney’s (PA’s) Office Policy for Redacting Information from Criminal Discovery: Ann Christian reported that she has not heard any complaints that material beyond that outlined in the PA’s office policy is being redacted from discovery in criminal cases.

3. Felony DUI cases in Drug Court? It was reported that no meeting has yet been held between drug court team members and representatives of the PA’s office to discuss the issue. Ann Christian did forward copies of material describing Multnomah County’s DUII Intensive Supervision Program (DISP) to John Fairgrieve for the PA’s office to review.

4. There was a brief reminder that the 2012 Barrister’s Ball is scheduled for February 25. Nominations were again solicited for the three awards historically awarded at the Ball: The Donald Simpson award for service to the profession; the Ken Weber award for service to the community; and the Alan Harvey Courtroom Blooper award. Anyone who is interested in assisting with putting on the Ball should contact Lisa Darco at the Clark County Bar Association (CCBA).

5. Judge Lewis gave the committee an update on the 2012 Mock Trial program in Clark County. The competition will take place on Wednesday and Thursday, February 22 and 23. There will be

three rounds a day, beginning at 12:30, 2:45 and 5:00 for a total of thirty trials. 90 raters are needed to cover the trials. He asked that attorneys interested in being raters or otherwise assisting in the program contact him.

Judge Lewis also mentioned that the mock trial state finals will be held at the Thurston County Courthouse the last Friday and Saturday night in March, the 30 and 31st. The top 22 teams in the state will compete in four rounds of competition. Attorney raters are needed for this competition as well. Again, attorneys who are interested in acting as a rater should contact Judge Lewis for further information.

NEW BUSINESS

1. Criminal Justice Issues for 2012: Anne Christian told the committee that there were a number of criminal justice issues that she would like to see considered in the coming year:
-Alternative resolutions in criminal cases, principally as a result of the impact of limited resources on the system. She suggested that the way driving while license is suspended in the third degree are handled would be a good place to start. Ann is also concerned about the caseload of attorneys providing indigent criminal defense services in misdemeanor and gross misdemeanor cases being above state standards.

-An early offer program in criminal cases where the PA’s office would make its best offer early in the process with a short period of time for acceptance. Anne said such programs are in existence in Multnomah and Washington counties in Oregon.

-The possibility of the PA’s office making early offers in cases charging a class C felony which would not involve jail time. Anne stated that Washington County, Oregon has such a program.

John Fairgrieve stated that the PA’s office would be interested in exploring Anne’s proposals in the coming year.

2. Guardianship Monitoring Program: Judge Lewis announced that the Guardianship Monitoring Program is nearly caught up at this point.

3. Prisoners not being brought over for court on the morning criminal docket: Judge Lewis told the committee that in the past week jail staff has not brought over certain prisoners for court appearances, orally alleging that the prisoners in question were too sick to appear in court. However, no affidavits or other documents were submitted to the court to support the contention that the prisoners were sick, and thus there was no record in the court file of the factual basis for the prisoners not appearing in court. John Fairgrieve stated that he would address the issue with the sheriff's legal advisor.

4. Judge Lewis reported that Judge Johnson and Judge Rulli were recently elected unanimously as Superior Court Presiding Judge and Assistant Presiding Judge respectively for the 2012 year.

5. Therapy Dogs in Court: Judge Lewis told the committee that in general the approach of the superior court bench concerning allowing therapy dogs in court is that there is a presumption that they will not be allowed in the courtroom. However, he stated that a party could file a motion in a particular case explaining why in that case the therapy dog's presence in court is necessary and that the court would then rule on that motion.

6. Next Bench Bar committee meeting: The committee will meet next on Tuesday, February 14, 2012 at noon in Judge Nichols' jury room.

Respectfully submitted,

John Fairgrieve

Family Law Section Meeting



CHRIS BOYD

Family Law Section President

The Family Law Section held our monthly meeting on January 11, 2012. Dru Horenstein presented on the issue of alternative uses for QDROs (Qualified Domestic Relation Orders). Dru explained how QDROs could be used to create a security interest for collection of child support or spousal support as well as collecting back support and fees from parties delinquent in child support or spousal support (via contempt). I have no doubt that Dru would happily answer any questions.

Our meetings are in the reserved lounge section of Tommy O's, 801 Washington Street, Vancouver. Typically, these are on the second Wednesday of the month. Our next meeting will be Wednesday, February 8th. The cost of the meeting will be \$13.00 for lunch plus \$5.00 for one CLE credit for CCBA FLS members. If you are not a member of the CCBA and FLS the cost is \$13.00 for lunch and \$10.00 for the CLE credit. Please RSVP by the Friday just prior to our Wednesday meeting by

sending your payment to our section's Treasurer, Meredith McKell Graff, 3214 NE 42nd Street, Suite B, Vancouver, WA 98663.

Our officers are: President, Chris Boyd; Treasurer, Meredith McKell Graff; Secretary, Stephanie Ellis.

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

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

Very Truly Yours,
Chris Boyd

Inns of Court

Our next meeting is February 15, 2012, 5:00 - 6:30 at Little Italy's downtown, and every third Wednesday of the month after that. For questions or membership information please contact Kristen Parcher at kristen.parcher@clark.wa.gov or Scott Horenstein at scott@horensteinlaw.com.

Barrister's Ball Auction Bonanza!

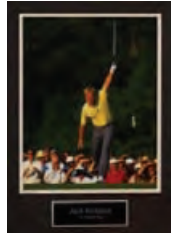
The silent auction at this years' Barrister Ball, February 25, 2012 at Pearson Air Museum, is set to be a bonanza of desirable attractive items. Sponsors and donators have committed to a wide assortment of delectable, from Portland Symphony tickets to Gourmet Cooking baskets, from specialty vodkas and other alcohols to massage and acupuncture (which might be useful together).

As a big bonus, this year the Bar will also be featuring some amazing autographed memorabilia sure to tickle a bidder's fancy, such as....

An autographed picture of the crew of the Starship Enterprise.



An autographed picture of Jack Nicklaus



A drumhead autographed by Aerosmith



A James Bond movie poster signed by EVERY James Bond



An autographed picture of Pele in his signature kick



These could all be yours. And many, many more items.

We are creative about protecting intellectual property



- Patents
- Trade Secrets
- Licensing
- Trademarks
- Unfair Competition
- Counseling
- Copyrights
- Litigation
- Due Diligence

406 West 12th Street
Vancouver, WA
(360) 750-9931
www.rylanderlaw.com



RYLANDER & ASSOCIATES PC
Trial & Patent Attorneys

It's not over until it's over.

Our family law appeals dream team has over 125 years of combined experience, uncanny appellate strategies, and the results to prove it.

GEVURTZ Attorneys at Law
MENASHE
The firm you want on your side
family law

Offices in S.W. Washington and Oregon 360.823.0410 503.227.1515
GevurtzMenashe.com



Eric Larson Paige De Muniz Craig Cowley Mark Johnson Roberts Robin Wright Bill Howe

CCBA Monthly Board Meeting Minutes

January 4, 2012



DAVID GREGERSON
CCBA Secretary

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

1. Call to Order, 12:10 PM.
2. Approval of previous meeting's minutes: On motion duly made, seconded, and passed unanimously, the meetings from the December 7, 2011 meeting are APPROVED.
3. Treasurer's Report: P&L and balance sheets for December, 2011 and year offered and reviewed. CCBA is definitely in stronger financial position that last year and is on same trajectory for future.
4. Old business:
 - a. Kaiser balance – still pending transfer into general fund.
 - b. Check signing – Rylander will be removed from signing authority, with Nellor added. Board members will coordinate going to Key Bank to execute.
 - c. Insurance policy: Rylander is meeting with an agent next week for a presentation on some coverage options. Will report back to committee.
 - d. Directory: L. Darco reports that Jeff Gough has provided a bid for \$2,800, down from last year's \$3,600. Advertising space is available to help offset costs.
 - e. Barrister's Ball. L. Darco reports on social committee meeting status. Auction items are being eagerly sought, as well as sponsorships by lawyers and non-lawyer vendors.
5. New business
 - a. LRS Survey: L. Darco reports some calls with dissatisfaction

- b. Membership Status: L. Darco presents list of former members who have "dropped off" from membership. Board members will reach out individually to rally re-enlistment.
- c. Website: A. Dunn reports on status of website, with pending corrections and updating, and on abandoning CCBA logo. On motion made seconded and PASSED, CCBA is dropping the prior logo featuring the Ft. Vancouver fort tower, and adopting the "pioneer" logo from above the courthouse entrance. Committee is asked to provide a concrete proposal with an increased budget at the next monthly meeting. (A. Dunn leaves 12:52)
- d. March General meeting: J. Clark reports we will have membership meetings in March and September, as per last meeting's bylaws amendment.
- e. CCBA annual budget: K. Rylander reports that last year's budget was cumbersome because of using two different computer programs, recommends doing it all within Quickbooks. Motion duly made, second, and PASSED.
- f. Mentorship, civic/legal education and outreach. On motion duly made, seconded, and PASSED, these issues are TABLED until next month until J. Fairgrieve is present.
- g. Office support and compensation: to be discussed in committee meeting at date and location TBD.

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

<p>Riverview Tower 1 block North of Esther Short Park Close to Clark County Courthouse Excellent Views of Columbia River</p>	<p>Cana Realty Group, Inc. 900 Washington St., Suite 850 Vancouver, WA 98660 www.canarealty.com Office: (360) 696-9551 Stephanie@canarealty.com</p>
<p>Executive Suites (208-224 sq. ft.) Office Space (1,460-2,298 sq. ft.) Contact Stephanie Boyce for Information, Floor Plans, and Tours. Comfort, security and luxury are just a few words that describe the Riverview Tower. We look forward to hearing from you!</p>	

ASSOCIATE ATTORNEY

Vancouver law firm is seeking a licensed Washington State attorney having a minimum of two years litigation experience. The candidate should have consumer bankruptcy experience and have either experience in, or the willingness to develop, a couple other areas of law. Basic knowledge of Microsoft word, Excel, and Outlook required.

Having an Oregon license is a plus. The candidate will be expected to fully manage his or her own cases including having direct client contact. This position provides the opportunity for a candidate with initiative and a willingness to work hard, to quickly develop as an attorney.

We offer a competitive benefits and compensation package.

Please respond to this ad by forwarding your cover letter and résumé.

ccba_ad101@ccbawashington.org

O Tempora! O Mores! The Flush Times of Alabama and Mississippi

— and how the More Things Change They Remain the Same

DOUG FOLEY

Hearsay Special Correspondent

In his **First Oration against Cataline** written in 63 BC, Marcus Tullius Cicero, a lawyer, senator and prolific writer, poured out his despair over the lax attitude of his fellow citizens to the dangers of the Republic posed by Lucius Sergius Cataline. Cicero wrote four Orations damning Cataline in an effort to impress his contemporaries of the imminent threat posed by this ambitious rival of the Republic. **O Tempora! O Mores! Senatus haec intellegit.** O the times! O the customs! The Senate is aware -- but nothing is done.[1] Cicero is singularly credited with mobilizing the forces of the Senate and the Republic against that conspirator Cataline who had designs on the constitutional structure the Romans uniquely developed after the founding of the City.

As we all know, Cicero also hated that other tyrant on the make, Julius Caesar, with his aggrandizing illegal war in Gaul and his lust for a Diadem. Although Cicero did not physically wield a knife when Caesar was murdered on the floor of the Senate on the Ides of March in 44 BC, he was more than impressed at the diligence and dispatch of the assassins – and is counted at least as an indirect member of the conspiracy to kill Caesar. Before Caesar (a self proclaimed descendant of Venus) entered the political scene and became a threat, there were other plots against the Republic. Years before Cataline, Cicero also faced down another would be tyrant and near destroyer of the Republic, Lucius Cornelius Sulla, who let Cicero keep his head only because when he interrogated the young Cicero, he found him entirely amusing – and, therefore, perhaps not much of a threat. (Maintaining a sense of humor is, in fact, a timeless asset).

Cicero was quite the character, and his numerous writings ring relevant about vigilance in the face of tyranny and are instructive and enjoyable reading today. But despite being witty and even entertaining – at his core he was a stoic and, at the very end, he readily consented to a beheading in the street when he was arrested in Rome in 43 BC one year after the death of Caesar, while he was being carried conspicuously on a litter -- rather than fleeing for his life -- after the collapse of the anti-Julian conspiracy. (Alas, he had finally chosen the side that history did not favor.)

O Tempora! O Mores! Is every generation doomed to repeat the mistakes of the last generation?

As we view our own times and our own issues we see problems, struggle for solutions and we wonder, often, ever if we will be able to extricate ourselves from grease pots that we occasional tread into. And, like Cicero, perhaps at some point we need to simply stoically accept our lot – because like all life which has to terminate badly – other things just might have to end a bit to our disliking as well.

Philosopher Georges Santayana who could have been writing about our profession quipped: “Plus ça change, plus c'est la même chose.” The more things change the more they remain the same. Since Santayana lived to be almost 90 years of age, he had time to take a good existential whiff of his subject – life itself – and draw this famous conclusion.

Well, take heart, despite your cares, things have always been so -- and somehow the sun rises and sets regularly, regardless of all concerns and despite the vicissitudes of life that intersect and distort the efficient practice of law. We all know that a walk through history and time can be as short as a simple stroll around the corner -- if the subject is the law and the foibles of human character.

James Baldwin was a frontier attorney in the early 19th Century. In 1853 he wrote a marvelous and humorous summation of American legal practice in a book titled **The Flush Times of Alabama and Mississippi** that should be recommended reading for neophytes and curmudgeons of the law alike. The issues that we see in his book facing the practice of law on the frontier in that time frame are startling – if only due to their familiarity with our times – and, as one can argue like the philosopher Santayana -- perhaps all times.

O Tempora! O Mores! In reading Baldwin's book, we might conclude that he was a man of our era, though we are separated by more than a Century and a half. He lived in a heated and financially perilous epoch that sounds more than merely familiar to our own. In his book he observed that land had been changing hands (now one would say flipping) at a “frightening pace” and “prices went up as morals went down on the other side of the transaction” in what he described as a financial see-saw of frenzied and dishonest activity. With banks chartered for hard specie

only, nonetheless the bank directors loaned out on promissory notes of the stockholders on the basis of “ten to one” – the “one” as he noted, being “fictitious.” It didn’t matter if the funds were endorsed by “Falstaff of Falstaff on his own proper credit, or money borrowed from Shallow.” And, as he wrote, all of these directors who instigated the plan when the real estate bubble burst, “when they thought of what they had got, and what they might have got, they were astounded at their own moderation.”

Sounds familiar? The only thing missing was the funky wall street slicing, dicing, hypothecating and bundling of modern mortgage securities into toxic packages that eventually explode in the hands of suckers who bought these securitized products -- or in the coffers of those failed, comatose institutions called Fannie and Freddie who now look to the ultimate suckers to bail them out – the American taxpayer.

Thus, with this all too familiar background to a boom bust economy, we can all comfortably slip into ***The Flush Times of Alabama and Mississippi*** and enjoy the idiosyncrasies of law then known to James Baldwin -- and even our own bar alike.

If the Bible is the last refuge of a scoundrel, then perhaps the Constitution is the first and last refuge of the cornered lawyer. Now, does this also sound familiar? Here are Baldwin’s observations of the frenzied defenders of the Constitution who crossed his path on the frontier of America. As Mr. Baldwin observes about Constitutional arguments:

“Nor do I recollect any question being debated that did not resolve itself into a question of constitution – strict construction – the constitution being a thing of that curious virtue that its chief excellency being in not allowing the government to do anything; or in being a regular prize fighter that it knocked all laws and legislators into a cocked hat except those of the objector’s party.”

And what younger lawyer doesn’t feel that there is a certain crust to the profession, where he or she is somewhat disadvantaged because their face is too fresh, and they haven’t grown the ties that might professionally assist their practice? Yes, “street cred” was an issue even in 1853. As a young lawyer on the frontier,

Baldwin experienced the same awkwardness before the Judiciary felt by any younger lawyer. He also complained that the older lawyers hugged the legal system, and even collated among themselves -- but refused to distribute -- the opinions of trial judges unless it was to their advantage – and only at the last moment.

In complaining about the times and customs, Baldwin wrote that things could be so desperate for the younger lawyer, that he might even have to rely upon the truth of his case to win – a tactic, Baldwin sardonically reported, that sometimes even worked! Of course there was usually a Court of Errors and Appeals (also known among the younger lawyers as the Court of High Errors and Appeals) – “but winning there was as distant a dream to the younger lawyer as the notion of Heaven itself.”

Toward the end of his career, Baldwin himself became part of the old guard on the frontier – but never forgot his roots or his empathy for young lawyers. That empathy, however, did not extend to bar examinations. He finally found his way into being an examiner – administering tests with oral examinations to questionable applicants who claimed they had read enough law to qualify. One of his favorite questions to the young applicant was to ask how a lawyer should go about the business of evicting a holdover tenant after the termination of his life estate. (A flavor of who is buried in Grant’s Tomb). Remarkably, most applicants would be flustered by the question, search their recollection and offer up a random passage from Blackstone that was never much on point.

Baldwin wheels out story after story and one humorous anecdote after another that involve the quirks and failures of due process resulting from financially strapped courts, as well as justice delayed and subverted by stalling lawyers who worked harder on their bottles than their cases and lawyers who felt the truth too small a commodity to traffic in the pursuit of winning.

The Flush Times of Alabama and Mississippi is as much a mirror as a history lesson. The times seem to remain the same, perhaps, only because human nature has not much changed in the millennia that lawyers have.

[1] A good translation of this great appellation in context is: “Shame on the age and on its principles! The senate is aware of these things; the consul sees them; and yet this man [Cataline] lives. Lives! Yes, he comes even into the senate. He takes a part in the public deliberations; he is watching and marking down and checking off for slaughter every individual among us. And we, gallant men that we are, think that we are doing our duty to the republic if we keep out of the way of his frenzied attacks.”



MOCK TRIAL

The Clark County District Mock Trial Tournament will be held at the courthouse on Wednesday and Thursday, February 22 and 23rd.

The Clark County Bar Association is pleased to announce its
THIRD LECTURE in the Nuts and Bolts Trial Skills Series

Direct Examination, Cross Examination and Examination of Expert Witnesses

by Attorneys **David McDonald** and **Jane Clark**

Wednesday, March 14th, 3:00 – 5:00 PM,

at the Red Lion at the Quay

The cost is \$50 for CCBA members, \$70 for non-member attorneys, and \$25 for non-attorneys. This will get you 2 CLE credits and the speakers' prepared materials to download. There is an extra fee if you want to pick up the materials at the door.

☞ Food, drinks = the best available ☜

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

NAME _____ PHONE # _____

BAR NUMBER _____ EMAIL _____

David T. McDonald (Criminal Trials) received his JD from the Northwest School of Law at Lewis and Clark College in 1986. After stints at Multnomah Defenders, Inc. and then Metropolitan Public Defender Services, Inc., David went into private practice as a criminal defense attorney, appearing in state and federal courts in Oregon and Washington. A representative case load includes representation of individuals facing allegations of Murder in the First Degree, Assault of a Child in the First Degree, Unlawful Possession of Child Pornography, Child Sexual Offenses, Controlled Substances Offenses, Assault in the Second Degree, Felony Property Crimes, Mortgage Fraud, Money Laundering, Violations of Supervised Release and Probation and DUII. He also represents individuals in front of administrative boards and the Oregon State Bar. He writes and speaks extensively. His honors and awards include: Best Lawyers in America-Criminal Defense 2008, 2009, 2010, 2011, SuperLawyer-Criminal Defense Law 2009, 2010, 2011, the President's Award Oregon Criminal Defense Attorney's Association, 2010, the President's Award Oregon Criminal Defense Lawyers Association, 2004, and the American Jurisprudence Award from the Lawyers Co-Operative Publishing Company, 1986.

Jane Clark (Civil Trials) has 20 years of experience handling personal injury and Medical Malpractice actions. She is licensed in Washington, Oregon, England and Wales. She is an adjunct professor at Portland State University where she teaches a class on Psychology and the Law. She is on the board of trustees for the Clark County Bar Association and chair of the CCBA Continuing Legal Education Committee.

The focus of Jane's practice is representing plaintiffs in medical malpractice cases and personal injury cases. Jane is also a mediator in the area of Personal Injury and Medical Malpractice, and is a member of the USA&M mediation panel.

What CCBA Members Are Doing About Town



RAISA JUDICATA
Guest Gossip Columnist

Bob Kabacy is not just your average tax and estate planning attorney. He lives in Clark County and splits his time between the Portland and Vancouver offices of Kell, Alterman & Runstein, L.L.P. He has written a book called *Last Wishes*, a practical how-to book regarding how to handle estate planning and end of life events. Even cooler, he is a magician who has met and performed with David Copperfield. But the best of all (for those of us in love with our iphones) is the app (application for those of you not in on the slang) he created called “Tax-Calc Now” that can be used on your mobile phone to make on-the-fly estate and inheritance tax calculations, gift tax calculations, and other calculations relating to trusts, present value, future value and life expectancy. Pretty cool for Vancouver. If you work in these areas and are interested, check it out at <http://www.taxcalcnow.com/>.



Bob Kabacy and fellow Trust and Estate lawyers Jessica Dimitrov and Jill Sasser discuss death and taxes.

So the big announcement is that Judge Poyfair is retiring after 20 years on the bench, leaving the Department 4 position open for the elections this November. The filing deadline is May for the August primary, and David Gregerson informed Raisa herself that he is interested in the position. What about Carin Schienberg and Suzan Clark – long rumored to be interested in a Superior Court Position? Time will tell. Some totally terrific trivia about Judge Poyfair is that he ran in the 1992 general election, defeating now Judge James Rulli, and was then appointed to Department 4 by Governor Booth Gardner between the retirement of Judge Skimas and the beginning of Judge Poyfair’s

elected term. Judge Poyfair is a Hudson’s Bay Eagle and graduate of Lewis and Clark Law School. The Judge’s first job as an attorney was with the firm of Weber, Baumgartner and Heller for a year, when he formed his own firm with Bob Mitchelson, later adding Don English to the partnership. Judge Poyfair has always been a compassionate adjudicator, fair-minded and hard working. He has been an asset to our Bar and our Bench and will be missed!



Judge Poyfair, circa 1992 in his official “Judge” photo.



The Weber Gunn Team

Well, 2012 seems to be the year for retirements and separations. We understand that effective February 1, 2012, Weber Gunn, PLLC will expire, and its parts will reassemble into Roe & Greene, PLLC (Alison Greene and Mike Roe), and separate entities for the other folks in that building. As of last report, everyone will be office sharing. With large regional firms in Vancouver shrinking or disappearing all together, soon Clark County will be a compilation of mostly small and solo practitioners. This makes it all the more important to support your local Bar Association and the CLE and Social opportunities it provides to stay connected. Bought your ticket to the Barrister’s Ball yet?

And finally, with all the Christmas and first of the year hoopla, Raisa missed the interesting tidbit about Judge Lewis’ decision overturning sanctions levied against the local bar Top Shelf by the liquor control board for serving beer to a minor. In Superior

Court Case No. 10-2-04113-7, Judge Lewis ruled that the sting which resulted in the citation was unlawful because the liquor control board was not acting in any power of law and because the minor was asked to break the law by entering the bar. Bill Baumgartner represents Top Shelf, and stated that the teen was deceptively mature looking, and the sting was a set up and a trick. Knowing Judge Lewis, his decision was well reasoned and precise. The case is now headed to the Court of Appeals and the appeal has been perfected. Rumor has it that the state Attorney

General's Office is holding off on litigating other similar liquor board cases pending the outcome of the Court of Appeals decision. A toast to Judge Lewis!

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.

Helping attorneys on their injury cases— *I can help you get prompt settlements or verdicts on your injury cases*



GEHRMANN

LAW OFFICE

- ◆ My office can advance all costs
- ◆ Attorney fee sharing, as per RPC's
- ◆ Associate with confidence—
Over \$3M in actual paid
damages obtained for 2011.

Grant A. Gehrman

Attorney at law

www.vancouverinjurylaw.com

360.253.3667

Advertise in next month's HEARSAY
Call Lisa Darco at 360.695.5975 for rates and availability.

HEARSAY PROFILE

JEAN MCCOY



HOME: Camas

AGE: 25

PROFESSION: I believe all working moms in this profession are forced to decide each day whether her priority that day is motherhood or lawyering. Sometimes the balance is off in one direction or another and perfect balance is only achieved when the stars are aligned and with great sacrifice by someone (usually the mom/lawyer).

HOBBY: Hanging out with my family and traveling.

LAST BOOK READ: Explosive 18 – I have a reading group that passes around the Stephanie Plum bounty hunter series – chick stuff.

LEGAL PHILISOPHY: Do unto others as you would have them do unto you.

LATEST ACCOMPLISHMENT: I can't decide if it is getting to the bottom of my laundry bin, or assisting an elderly landlord client in staying out of jail.

WHY I DO WHAT I DO: There is nothing better than the feeling after completing a case and closing a file so the client can move on in a positive forward direction.

PROFILE: Fun-loving, happy, positive, and ready to jump into the next quagmire.

BEVERAGE OF CHOICE: Anything that can be served in a hollowed out pineapple.

Clark County
VOLUNTEER
 Lawyers Program

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

Statistics for December include 72 clients seen in advice clinics, 24 in Family Law, 11 in Family Law paperwork review clinic, 9 in the General Law clinic, . We also saw 8 clients at the court house for the Housing Justice Project, 7 in the Housing Justice Project Clinic and 7 clients at the Homeless Shelter clinic. We placed 5 cases with an attorney for direct representation. There were 124.50 hours of volunteer attorney time donated.

HOORAY! We launched our website, please visit us at www.ccvlp.org and let us know what you think. Some pages are still under construction, give us feedback and let us know what else you would like to see on it. It has been months in the making, long nights and weekends; we should all applaud Susan for her fantastic job!

Thanks,
 Susan

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

BANKRUPTCY:

Rob Russell

DV CLINIC:

Sidney Dolquist, Christie Martin, Katie McGinley, Jill Sasser,
 Kathryn Smith

FAMILY LAW:

Lou Baran, Ed Dawson, Dee Grubbs, Lincoln Harvey,
 Christie Martin, Kathy McCann, Katie McGinley,
 Nathan Petersen, Scott Matthews

GENERAL LAW:

Michael Borge, Stewart Martin

HOMELESS COURT:

Shon Bogar, Erin Culver, Kevin McClure, Brian Parker,
 Mark Sampath, Nathan Petersen

HOMELESS SHELTER:

Peter Fels, Gavin Flynn, Dustin Klinger, David Feeney

HOUSING JUSTICE PROJECT:

Ed Dawson, Scott Matthews, Bill Robison, Phil Wuest

**TOO BUSY TO GET THAT
 BIG CASE MOVING?**

The daily rigors in a solo or small practice can make it difficult to stay on top of a wrongful death or serious personal injury case. We have the experience and financial backing to help you do what it takes to litigate claims properly.

The three senior partners in our firm each have over 30 years of experience. Ask about our reputation, or give us a call to discuss your client's case.



**SCHAUERMANN, THAYER
 JACOBS & STAPLES, P.S.**

ATTORNEYS AT LAW

AV Martindale-Hubbell Rating

1700 E. Fourth Plain Blvd. • Vancouver, WA

(360) 695-4244

www.stjps.com

**Video Conferencing
 Court Reporting**



613 West 11th Street | Vancouver, Washington 98660

Rider & Associates, Inc., Reporting & Transcription Services
 is proud to announce their latest technological amenity:
 a new high-def video conferencing suite!

- Affordable
- Downtown location
- No cross-country flights
- Technical assistance
- Free water and coffee
- Comfortable seating

800.869.0864 or 360.693.4111

NEWS YOU CAN USE



LISA DARCO
CCBA Office Manager

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

Elizabeth Arwood has opened a new firm:

Arwood Law, PLLC
712 W. Evergreen Blvd.
Vancouver, WA 98660
(503) 819-5558
elizabetharwood@gmail.com
www.arwoodlaw.com

Kirsten A. Samwel, Sharon D. Cousineau & Mary E. Shea are pleased to announce the formation of Samwel, Cousineau & Shea, PC.

700 W Evergreen Blvd.
Vancouver, WA 98660
Ph. (360) 750-3789
Fax (360) 750-3788
www.sclawoffice.com (website coming soon!)

LAW LIBRARY NEWS



MARIA SOSNOWSKI
Law Librarian

The law library's Westlaw contract is expiring later this year. Are there databases you use regularly? Are there new databases you would like to see added? Please give us your feedback by email to lawlibrary@clark.wa.gov so that we can put together the most useful Westlaw package possible.

FOR SALE Through February, 2012

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

1. Disability Discrimination in the Workplace - volume, 2008 update, CD Rom. BNA
2. Washington Handbook on Civil Procedure 2009-2010. Washington Practice 15A.
3. Hearsay Handbook, 4th edition.

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

ATTORNEY BOOKKEEPING TIPS



EMANUELA SANDRI
Attorney Bookkeeping Services, Inc.

QuickBooks — How to Setup a Client That Is Also a Vendor & Vice Versa

If a client is also a vendor or a vendor is also a client, add name to both customer and vendor lists, and vary the name slightly or tag the name with an identifying letter. For example, if the vendor is named Brenda Bowden, list her as Brenda Bowden_c (for customer) in the customer list and Brenda Bowden_v (for vendor) in the vendor list.

For the real name to print on invoices or checks for this person, enter the person's real name in the "Bill to" field for customers and in the "Print on Check as" field for vendors. (These fields are at the bottom of the Address Info tab in the New Customer and New Vendor windows.)

Thank you,
Emanuela

LEGALLY DRAWN



Reproduced with permission. For more cartoons and information, go to <http://www.legallydrawn.com>.

HEARSAY ADVERTISERS WANTED!

CCBA is looking for reliable Attorney Support Services who want affordable, targeted advertising in upcoming issues of Hearsay. If you have reliable and trustworthy service providers that can benefit our audience, please refer them to Lisa Darco for pricing and availability today!

EXPERT WITNESS & CONSULTANTS • BAIL BONDS • COURT DISPLAYS •
PARALEGAL • MARKETING • FINANCIAL SERVICES, ETC.

UPCOMING EVENTS

MEETING

February 14, 2012

Superior Court Bench/Bar Meeting
Courthouse – Noon

CLE

February 15, 2012

Inns of Court
Little Italy's Trattoria - 5:00pm

MEETING

February 16, 2012

Web Site Committee Meeting
JD Nellor's Office - Noon

MEETING

February 21, 2012

CLE Committee Meeting
CCBA Office 12:00pm

SOCIAL

February 22 - 23, 2012

Mock Trial
Court House

MEETING

March 7, 2012

CCBA Hearsay Meeting
CCBA Office- 11:30am

MEETING

March 7, 2012

CCBA Board Meeting
CCBA Office – Noon

CLE

March 14, 2012

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

CLE

March 14, 2012

Nuts & Bolts CLE: Trial Skills - Direct Examination, Cross Examination and Examination of Experts
Red Lion at the Quay 3:00pm to 5:00pm

SW WASHINGTON LAWYER REFERRAL SERVICE

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

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

THE SWLRS REFERRED 243 CLIENTS IN THE MONTH OF DECEMBER

Administrative Law	11
Bankruptcy	3
Business & Corp	3
Consumer	18
Criminal	26
Debtor/Creditor	14
Family Law	50
General Litigation	52
Labor & Employment.....	23
Real Property.....	32
Wills & Trusts	8
Worker's Comp	3

Representing Injured Workers on Their Washington Claims

Busick Hamrick, PLLC



Steven L. Busick | Frances R. Hamrick | Douglas M. Palmer

(360) 696-0228

1915 Washington Street Vancouver, WA 98660

2011/2012 CCBA OFFICERS & TRUSTEES

**PRESIDENT**

John Fairgrieve
(360) 397-2261
john.fairgrieve@clark.wa.gov

**IMMEDIATE PAST PRESIDENT**

Kurt Rylander
(360) 750-9931
rylander@rylanderlaw.com

**VLP REPRESENTATIVE**

David Gregerson
(360) 906-1164
david@gregersonlangsdorf.com

**VICE-PRESIDENT**

Suzan Clark
(360) 735-9434
sclark4224@aol.com

**TRUSTEE**

Jane Clark
(360) 859-3823
jane@janeclarklegal.com

**OFFICE MANAGER**

Lisa Darco
(360) 695-5975
ccbamanager@ccbawashington.org

**TREASURER**

J.D. Nellor
(360) 695-8181
jd@nellorlaw.com

**TRUSTEE**

Arin Dunn
(360) 737-6793
arin@dunnsheldrick.com

**MEMBER SERVICES**

Kaitlin Lisandrelli
(360) 695-5975
kaitlin@ccbawashington.org

**SECRETARY**

David Gregerson
(360) 906-1164
david@gregersonlangsdorf.com

**TRUSTEE**

Jill Sasser
(360) 816-2534
jill.sasser@landerholm.com

**HEARSAY EDITOR-IN-CHIEF**

Kurt Rylander
(360) 750-9931
rylander@rylanderlaw.com

Great Sponsorship Opportunity

This year lawyers, firms, and vendors have the great opportunity to Sponsor the Barristers' Ball.

PLATINUM SPONSORS (\$400) WILL RECEIVE:

- A table at the ball on which to put literature and information
 - Ability to hang a banner at the ball.
- Recognition in the program, as well as
- Recognition by the Master of Ceremonies.

GOLD SPONSORS (\$300) SHALL RECEIVE:

- Ability to hang a banner at the ball.
- Recognition in the program, as well as
- Recognition by the Master of Ceremonies.

SILVER SPONSORS (\$200) SHALL RECEIVE:

- Recognition in the program, as well as
- Recognition by the Master of Ceremonies.

Additionally, all Sponsors shall receive one (1) month's ad space in The Hearsay recognizing their Sponsorship.

This is a great opportunity to be recognized and get your name spread bar wide to those attorneys most active in the local bar. Contact Lisa Darco at (360) 695-5975 or ccbamanager@ccbawashington.org to find out more.

CLARK COUNTY BAR ASSOCIATION

500 W. 8th Street, Suite 65

Vancouver, WA 98660

PRSR STD
U.S. POSTAGE
PAID
VANCOUVER, WA
PERMIT NO. 620



MESSINA BULZOMI CHRISTENSEN

PERSONAL INJURY AND TRIAL ATTORNEYS

Is your firm ready to do battle? We would be happy to confer with you on your most complex personal injury cases. Let us help you get the recovery your client deserves.

- Generous referral fees
- Superior client service

**Bring us your
tough cases.**



Attorneys
John L. Messina
Stephen L. Bulzomi
John R. Christensen
Jeremy A. Johnston
James W. McCormick

Office
5316 Orchard Street West
Tacoma, WA 98467
tel: (253) 472.6000, (800) 992.9529
fax (253) 475.7886

<http://messinalaw.com>



Advertise in HEARSAY

**Does your business cater to the legal industry?
Get targeted exposure to CCBA members and associates!**

Reserve your ad space today! Call Lisa @ 695-5975