



# WHATCOM COUNTY BAR JOURNAL



2021

www.whatcombar.org

JANUARY

## 2021 WCBA Officers

**President:** Phil Buri  
(360) 752-1500

**Vice Pres.:** Jennifer Slattery

**Secretary:** Genissa Richardson

**Treasurer:** Collin Alberts

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## Top Stories!

<b>Meet Judge Jones: An Introduction</b>	<b>3</b>
<b>Celebration of Outgoing Judge Garrett: Please RSVP</b>	<b>12</b>
<b>Letter to the Editor: Race Relations</b>	<b>5</b>
<b>Quick Look at WA Supreme Court's Opinions: Nov. &amp; Dec., 2020</b>	<b>7-9</b>

## Your Regular Favorites!

The President's Column— " <i>Final Thoughts</i> "	2
Classifieds— Jobs, office space & services!	4
Pro Bono Connection— <i>On a break</i>	n/a
Bar Meeting Minutes & Treasurer Reports— (Dec 2020)	10-11
Rajeev's Musings— " <i>Mrinalini Xochimitl Majumdar</i> "	13
Fantastic Ads & Deals!— Our Proud Sponsors	14-20

## Calendar!

<b>Our Second Virtual Bar Meeting!!! (Jan. 6)</b>	<b>2</b>
<b>Celebration of J. Garrett (Jan. 8)</b>	<b>12</b>
<b>Goldmark Award Luncheon (Feb. 5)</b>	<b>6</b>

## BAR LUNCH



*Coronavirus Cancellations Continue. But....*

**January 6, at Noon ... our Second Virtual Meeting! See Page 2.**

## *Superlative*

## *Disclaimer:*

*The information & various articles contained within this publication have not been checked for accuracy. All opinions expressed are those of the authors and do not reflect the opinions of the Bar Association, the Journal, or the agents thereof.*

# The President's Column

By Phil Buri, WCBA President 2021

## What Do We Do Now?"



What good is a local bar association in a pandemic?

After nearly a year of lockdown, we have all had to question the basic details of our lives. Why do I have an office? What is my job, really? And my favorite, if the Courthouse no longer holds trials, am I still a trial attorney?

I have no idea what 2021 will look like. But I know that I crave any face-to-face social interaction. I miss going to bar meetings, talking to my friends and colleagues, and confirming once again that I am happy to be a small-town lawyer.

We can't meet in one place, yet. But we can at least talk to each other on Zoom. And yes, I hear the collective groan. One more meeting looking at my video reflection wondering if I look that weird in real life. Our goal is to keep the County Bar alive until we can meet again. If that requires more virtual meetings, I'm in.

We want the Bar to be useful, not just an obligation, but actually helpful. On **January 6, 2021 at noon**, the first Wednesday in January, we will hold our first 2021 virtual meeting and discuss what we can do to support each other through the crest of the pandemic. Please join us and give us your ideas.

After all, we are making this up as we go along.

Phil

### To Join Zoom Meeting on January 6th at Noon:

<https://us02web.zoom.us/j/82326391233?pwd=Ujd2a21SN0dPTHh4RU5BYkp0NEVwdz09>

Meeting ID: 823 2639 1233

Passcode: 331889

One tap mobile

[+12532158782](tel:+12532158782).,82326391233#,,,,,0#.,331889# US (Tacoma)

[+16699006833](tel:+16699006833).,82326391233#,,,,,0#.,331889# US (San Jose)

Meeting ID: 823 2639 1233

Passcode: 331889

Find your local number: <https://us02web.zoom.us/j/82326391233?pwd=Ujd2a21SN0dPTHh4RU5BYkp0NEVwdz09>

# Introductions

*“...I think this is the beginning of a beautiful friendship”*  
-Casablanca (1942)

I hope this letter finds you well and ready for whatever the new year brings.

Things are changing for the Whatcom County Superior Court. With the retirement of Judge Deborra Garrett, recent gubernatorial appointments, and two contested elections last November, we now have a relatively new and enthused judicial foursome on the bench. As one of the newly elected Superior Court Judges, I write to introduce myself. As they say, the beginning is the most important part of the work.

My name is Evan Jones and I grew up here in Whatcom County. I was raised in the Columbia Neighborhood of Bellingham, swam at Lake Padden, rode bikes at Galbraith, and shopped at Meridian Haggen. I graduated from Western Washington and attended law school at Seattle University.

Professionally, I have been here my entire career and have practiced in most of the local courts - Bellingham, Ferndale, Blaine, Lynden, Everson/Sumas Municipal Courts, Whatcom District, and most recently Whatcom Superior Court as a Deputy Prosecutor. I also teach Constitutional Law at the Whatcom Community College. While my primary experience is in criminal law, I have also spent time in private practice working in the areas of estate planning, probate, business, land use, and municipal law. I am married and my wife and I have five -mostly pleasant- children. I am excited to join Judges’ Robert Olson, Lee Grochmal, and David Freeman on the Superior Court bench!

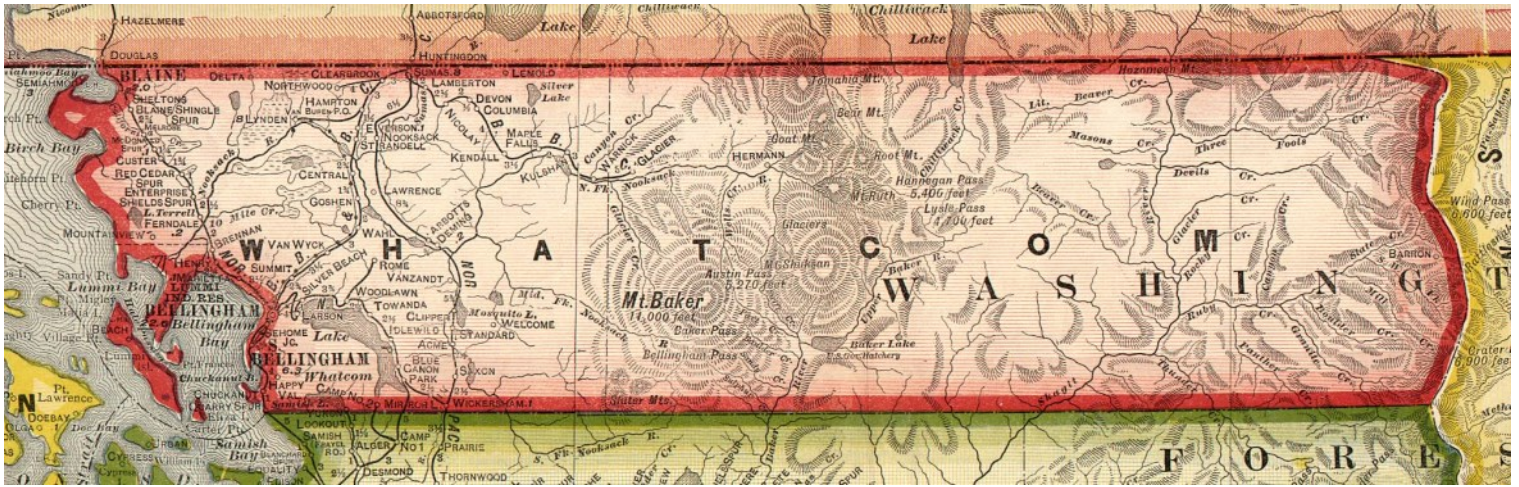
In that spirit, I hope all of you can find time in this new year to reach out and introduce yourselves to me. Our county is not so large that a local judge cannot know each lawyer appearing before the court. I can be reached through my judicial assistant Christy Martin at (360) 778-5615, or directly at [ejones@co.whatcom.wa.us](mailto:ejones@co.whatcom.wa.us). I am looking forward to meeting you.

As we all adjust to changes in the legal system, my sincere hope is that your practice remains robust and your disputes find resolution.

Respectfully,

Evan Jones  
Whatcom County Superior Court Judge  
Department 2





**Office Space Available** – Bellingham Towers - 119 N. Commercial Street – downtown! Just down the street from City Hall, the Court House and the Federal Building. If interested please call 360-647-1916 x 112 or email: [robbi@hollanderinvestments.com](mailto:robbi@hollanderinvestments.com). Conference room available for Rent to Tenants and Non-Tenants.

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*by the 15th of the preceding month*

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**Part-time Assistant Wanted.** Part-time legal assistant needed for law office. Independent contractor (not an employee). Duties include organizing files, on paper and on the computer, creating templates, editing documents. Helping to close out 2020 and create new systems for 2021. Detail-oriented, quick learner, and a pleasant person to be around. If interested, please send a text to Maureen Toomey at 360-599-0697.

Dear Editor,

Thank you for publishing the James Williams editorial, "What Every White American Should know about African Americans". It was certainly timely.

I want to share with other members of the bar a book that has impacted me profoundly. *Caste: The Origins of Our Discontents* by Isabel Wilkerson offers insight into so much that operates unseen and within our culture. The really cool thing is Wilkerson, an African-American woman, doesn't disparage anyone for their lack of consciousness. She sees all of us as negatively impacted in profound ways by a caste system that predates us by hundreds of years. Certainly people of color, and black people most of all, have been negatively impacted most, but she recognizes that we are all harmed by an unhealthy culture which we drink in before we are old enough to understand what we are receiving. I read it to try to understand our politics when the election didn't turn out to be the overwhelming rebuke of Trumpism that I was expecting. It gave me insight into that and so much more. It's the rare sort of book that I cannot recommend highly enough.

**Roy N. Martin, Attorney at Law**  
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[www.creativedivorce.com](http://www.creativedivorce.com)



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**KEYNOTE**  
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Former Seattle Seahawk  
and social justice advocate

## PRESENTING SPONSORS



## Quick Look: Nov & Dec. 2020 Washington Supreme Court Opinions

Michael Bersch

michael@michaelbersch.com

### Agricultural Workers – Minimum Wage Act

#### *Martinez-Cuevas v Deruyter Brothers Dairy*, slip op No. 96267-78, November 5, 2020

The issue taken by the Court was “whether RCW 49.46.130(2)(g), which exempts agricultural workers from overtime pay requirements set out in RCW 49.46.130(1), violates the privileges or immunities clause “of the Washington State Constitution [which reads,] no law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations. WASH. CONST. art. I, § 12.” (p. 5).

In a two-step analysis, the Court first found that RCW 49.46.130(2)(g) implicates a fundamental right and grants dairy farmers a privilege or immunity from paying otherwise mandatory overtime pay. Second, the Court found that the “legislature lacked reasonable grounds for granting the overtime exemption to agricultural employers.” (p 15).

In a 5-4 decision, the Court ruled “[t]he stated purpose of the Minimum Wage Act is to protect the health and safety of Washington workers, as required by article II, section 35. See RCW 49.46.005(1). This purpose underlies the entirety of the act, including the overtime pay protections and exemptions. In the face of this clear purpose and constitutionally mandated protection, the exemption in RCW 49.46.130(2)(g) is an impermissible grant of a privilege or immunity under article I, section 12 of Washington’s constitution.” (p. 17).

### Contempt – Remedial Sanctions

#### *Gronquist v Dep’t of Corr.*, Wash. slip op No. 97227-0, November 12, 2020

The issue before the Court was “whether courts have discretion to impose remedial sanctions under RCW 7.21.030(3) in the absence of ongoing, continuing contempt [under 030(2)].” (p. 2).

Remedial sanctions are civil sanctions imposed “for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person’s power to perform.” (p 7).

“Washington’s civil contempt statute outlines the court’s authority to impose remedial sanctions designed to coerce a contemnor into purging continuing contempt. RCW 7.21.030(2). Specifically, before imposing coercive sanctions under .030(2), the court must first find that “the [contemnor] has failed or refused to perform an act that is yet within the person’s power to perform. . . . In contrast, subsection (3) of the civil contempt statute provides that [t]he court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney’s fees.” (p 7, internal quotation marks omitted).

The Court held “that a civil contempt motion is not necessarily moot when coercive sanctions are no longer available under RCW 7.21.030(2). The court has discretion to enter a compensatory order for losses and costs under RCW 7.21.030(3).” (p 15-16).

### Privilege – Corporate Attorney-Client

#### *Hermanson v. MultiCare Health System, Inc., et al.*, Wash. slip op No. 97783-6, November 12, 2020

(Continued on page 8)

(Continued from page 7)

The Court considered two questions regarding the corporate attorney-client privilege and how it operates when in conflict with a plaintiff's physician-patient privilege in a medical malpractice lawsuit.

Question one: Does the corporate attorney-client privilege allow a defendant hospital to have *ex parte* communications with a plaintiff's nonparty treating physician who is the hospital's independent contractor, not its employee?

Answer: The Court held the defendant hospital may have *ex parte* communications with the nonparty physician so long as there is a principal-agent relationship between the physician and the hospital defendant and the physician serves as the "functional equivalent" of an employee, provided the physician-contractor has firsthand knowledge of the alleged negligent event and the communications are limited to the facts of the alleged negligent event. (See *Youngs v. PeaceHealth*, 179 Wn.2d 645, 316 P.3d 1035 (2014)).

Question two: Does the corporate attorney-client privilege extends to communications between the defendant hospital and its nonphysician employees who treated the plaintiff?

Answer. Yes, subject to the same conditions set forth in *Youngs*.

### **Hearsay – “The Fact of the Complaint Doctrine”**

#### ***State v. Martinez*, Wash. slip op No. 97496-9, November 15, 2020**

Martinez was convicted of sexually abusing his daughter. Four witnesses were allowed to testify that the victim told each of them she had been raped. Martinez argued that under the hearsay rules these testimonies should not have been allowed and “the fact of the complaint doctrine” should be abandoned.

The Court noted that “[a]s a general rule, witnesses may testify only about their own observations, not about what other people told them. This general rule is subject to a long-standing exception for “the fact of the complaint.” Under this current iteration of the fact of the complaint exception, the State may offer evidence that a victim of sexual violence told someone about it.” (p. 1).

The Court stated, “We recognize that the fact of the complaint doctrine is inconsistent with the hearsay rules. But the rule is long standing, has been recognized since the hearsay rules were codified, and provides an important supplement to those rules. A special rule that restores the credibility of sexual assault complainants is not only practical and analytically justifiable, but also necessary because of persisting cultural stereotypes and bias, both explicit and implicit. Under our evidence rules, prior consistent statements may be used only when a witness's credibility has been attacked. But because of the nature of sexual assault cases, where there is often little to no physical evidence, it is vital to have a preemptive tool. In many cases, a defendant need not explicitly or impliedly attack the victim's credibility—juror bias based on widespread mistaken beliefs about sexual assault and sexual assault victims has already called the victim's credibility into question.” (p. 10, internal quotation marks and citations omitted).

“Because the fact of the complaint doctrine protects victims and provides an important supplement to the current rules of evidence, we decline to abandon the doctrine.” (p. 10-11).

Dissenting, Justice McCloud wrote, “The majority clearly understands that the “hue and cry” doctrine is based on a myth—the myth that a female naturally complains promptly of offensive sex liberties upon her person. But it maintains this doctrine anyway. It does so in the hope that it will combat widespread juror prejudices against rape victims. I disagree with this approach. I would not retain one false and prejudicial myth (that female rape victims always raise a timely hue and cry) to combat another false and prejudicial myth (that rape victims cannot be trusted). That path

(Continued on page 9)



(Continued from page 8)

poses several problems: it perpetuates the rape myth, it adds a judicially created exception to the rule against hearsay despite the fact that the Rules of Evidence (ERs) contain an exclusive list of exceptions, and it results in a blanket rule allowing admission of those out-of-court statements without any of the indicia of reliability that the enacted ERs demand of all other exceptions to the rule against hearsay.” (D-p. 1).

### **Casualty Insurance – Cyclist as Pedestrian**

#### ***McLaughlin v. Travelers Commercial Insurance Com.*, Wash. slip op No. 97652-0, December 10, 2020**

Todd McLaughlin purchased auto insurance from Travelers Commercial Insurance Company in California before moving to Washington. “McLaughlin was riding his bicycle on a Seattle street when the door of a parked vehicle opened right into him. McLaughlin fell, suffered injuries, and sought insurance coverage for various losses, including his medical expenses.” (p. 1) McLaughlin’s recovery for his losses under the insurance contract turned on whether he was considered a pedestrian. “Pedestrian” was not being defined in the policy.

The parties agreed that Washington law applied. The Court stated that for purposes of casualty insurance in Washington. “Pedestrian” means a natural person not occupying a motor vehicle as defined in RCW 46.04.320. [and] RCW 46.04.320 defines a motor vehicle as ‘every vehicle which is self-propelled . . .’; thus, a bicycle is not a motor vehicle.” (p. 7). McLaughlin’s injuries were covered under the insurance policy.

### **Recall Election – Seattle Mayor Durkan**

#### ***In re Recall of Jenny Durkan*, Wash. slip op No. 98897-8, December 10, 2020**

Citizens filed a recall petition of Seattle Mayor Jenny Durkan based on various charges, stemming from Seattle Police Department actions that occurred during protests following the killing of George Floyd. The charges including allowing the police to use unnecessary force, use of chemical agents, failure to use appropriate de-escalation techniques, and causing significant harm to nonviolent protesters, residents, media, representatives, and medical aid workers.

The Court noted that “Washington voters have a constitutional right to recall any nonjudicial elected official who “has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his [or her] oath of office. CONST. art. I, § 33.”” (p. 14). However, a charge of malfeasance, misfeasance, or violation of oath of office, must be factually and legally sufficient, that is, “the alleged facts, taken as a whole, “‘identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a *prima facie* showing of misfeasance, malfeasance, or a violation of the oath of office.’”” (p. 14). Also, there are two limitations on recall. “First, an elected official is not subject to recall for the act of a subordinate done without the official’s knowledge or direction. Second, an official may be recalled for execution of discretionary acts only if the execution of that discretion is done ‘in a manifestly unreasonable manner,’ which may be shown by demonstrating discretion was exercised for untenable grounds or for untenable reasons.” (p. 15-16 internal quotation marks and citations omitted).

The Court opined that while the allegations in the petition “are deeply troubling and certainly cannot be considered frivolous, . . . [t]he recall petitioners do not show that Mayor Durkan’s failure to take any particular action was manifestly unreasonable.” (p. 18). If the charges in the petition are true, those responsible accountable should be held accountable, but recall is not the proper process to do so.

**WHATCOM COUNTY BAR ASSOCIATION  
TREASURER'S REPORT - November 2020**

For period 11-1-2020 to 11-30-2020

Beginning of period cash balance (on 11/1/2020) **\$20,929.19**

**Deposits/Credits:**

Lunches		
Advertising revenue	975.00	
CLE Fees Received		
Membership dues received this period		
Copier Income		
Interest Income - Checking	0.19	
<b>TOTAL DEPOSITS:</b>		<b>975.19</b>

**Checks/Expenses:**

Accounting Fees	27.18	
Northwood Hall - Bar Lunch		
Honorarium, Plaques, Holiday Tip		
Courthouse Copier Rental	163.78	
Meals & Entertainment (Retirement Party)		
Post Office Box Rental (annual)		
Postage and Supplies		
Newsletter Stipend (Annual)		
Taxes and Licenses		
Bank Fees		
<b>SUBTOTAL EXPENSES:</b>		<b>190.96</b>

**Donations:**

- Law Advocates
- Law Library
- Teen Court
- High School Mock Trial Team

**TOTAL DONATIONS:** -

**TOTAL EXPENDITURES** **\$ 190.96**

**END OF PERIOD BALANCE** **\$21,713.42**

**Petty Cash** **100.75**

**Operational Reserves Savings Account - including interest\*\*** **6,488.75**

**\$ 28,302.92**

WCBA MEMBERS

103

## Whatcom County Bar Association

Monthly Meeting Minutes— December, 2020

*Via Zoom*

- I. Call to Order
- II. Recognition of Judicial Officers and Introduction of Guests
- III. New Business:
  - Matt notified members of WCBA current affairs regarding navigating the pandemic
  - WCBA is still looking for a new venue
    - Member feedback from the survey will be considered
  - Surplus budget from not having venue and catering expenses during the pandemic
- IV. Future budget concerns with 2021 fee waiver and anticipated increased venue costs
- V. Approval of March Meeting Minutes by motion and vote
- VI. Approval of New Board Members by motion and vote
  - I. President – Philip Buri
  - II. Vice President – Jennifer Slattery
  - III. Treasurer – Collin Alberts
  - IV. Secretary – Genissa Richardson
- VII. Approval of WCBA 2021 fee waiver for individuals who paid in 2020 by motion and vote
- VIII. Treasurer's Report – Jennifer Slattery gave the March 2020 treasurer's report.
  - Report was approved by motion and vote.
- IX. Upcoming Events/Announcements
- X. Meeting Adjourned



Seems Like Only  
Yesterday...



*Judge Deborra Garrett*

Join Us as We Celebrate the Tenure  
of the 1st Woman on the  
Whatcom County Superior Court

Friday, January 8, 2021

6 pm to 7:30 pm

Zoom Call Number with RSVP

## Be Ready to Share Your Thoughts

Deborra Garrett and her many friends looked at the Whatcom Courthouse Walls which held the many framed photos of all the previous judges -- all men and that was in 2012. After winning that election, she would go on to become Presiding Judge to a bench where the next three seats would be women until one was appointed and elected to the Supreme Court. But, there was much more to her service than making history: there was a compassionate, always questioning jurist unafraid of taking on new paths -- if justice was better served.

**FOR THOSE WHO CAN ATTEND:  
PLEASE RSVP TO  
[miranda.laratta@gmail.com](mailto:miranda.laratta@gmail.com)**

## Ramblings of a Small Time Country Lawyer

~By *Rajeev!*

### *Mrinalini Xochimitl Majumdar*

**Subtitle: Personal Privilege.**

The nice thing about being in an association of professionals is getting to know each other better! It makes us better communicators and better able to see each other as humans. SO, a glimpse into my life which abounds with joy as the year closes, and I hope will spread to you and yours.

On December 21, 2020, my second child, Mrinalini Xochimitl Majumdar entered the world!

It was a close one- she was due on Christmas Day, so we unexpectedly ran to the hospital on that morning, water breaking in the car, and almost giving birth in the car, and then in the lobby... and four-year-old Savitri's little sister, Mrinalini Xochimitl Majumdar... came out within 10 minutes of arriving at the hospital, with mom never getting in a bed and with our van left running in the hospital driveway for about an hour.

She is a strong, healthy, and bold child. I will engage in the pre-licensing process for bar admission immediately, under WSBA 39753-C.

It has been an intense two weeks of exhaustion that all new parents recognize! In addition to the regular no-sleep worrying about baby feeding, My wife, Sara lost a bit more blood than expected, and Savitri had to come to terms with a 4-year-old not being allowed to be the primary caregiver. Sara is doing great now, baby is feeding well, and Savitri, in an act of early rebellion has decamped next door to her grandparent's house where she has happily set up a new base of operations. Ha ha, Savitri is adjusting but loves baby conditionally on the promise that baby will get more interactive eventually.



Some people asked for a pronunciation guide, so I thought I would share:

⇒ Her first name is from Sanskrit meaning a Cluster of Lotus (and Lotus is a meaning of my name): **Mrinalini** = *Mrin-a-lee-nee*.

⇒ Her middle name is from Nahuatl meaning the Flowered Arrow. **Xochimitl** = *Zo-chee-mit-il*.

Hope you are well and have a great holiday! And early wishes for a great covid-defeated 2021 with much professional and personal joy!

**Genissa Richardson announces her new firm,  
True North Legal Services, PLLC.**

Dear Colleagues,

I am pleased to announce that I opened a solo practice this July, focusing on Estate Planning and Probate. I was born and raised in Whatcom County and am proud to serve my community as a home-grown attorney. Referrals for Estate Planning and Probate appreciated.

Sincerely,  
Genissa Sygitowicz Richardson



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[www.TrueNorthLegalServices.com](http://www.TrueNorthLegalServices.com)

Phone:

360.392.2863

Email:

[Genissa@TrueNorthLegalServices.com](mailto:Genissa@TrueNorthLegalServices.com)



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  - Other Family Reconstruction Tests
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  - Alcohol tests include EtG and FAEE options
- Occupational Exposure Tests
- Chemical or Toxic Substance Tests
- Tests on Biological or Non-Biological Specimens
- Forensic Toxicology
- Expert Witness Testimony Coordination

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## Butler Beschen Law, PLLC

Is pleased to announce that Stephen Jackson has joined the firm as an associate attorney.

Stephen comes to the firm with years of experience handling serious felonies at the Whatcom County Public Defenders Office, clerking in US District Court, and for the Federal Public Defenders Office in Nevada. Before his legal career, Stephen worked in journalism as a reporter during which time he won an Emmy for his work.

Jackson's practice includes defense of individuals accused of criminal conduct, appellate work, employment actions, wrongful discrimination, civil rights, and vacating criminal convictions.



## ARE YOU DIVORCING OR SEPARATING? DO YOU HAVE CHILDREN UNDER 18?



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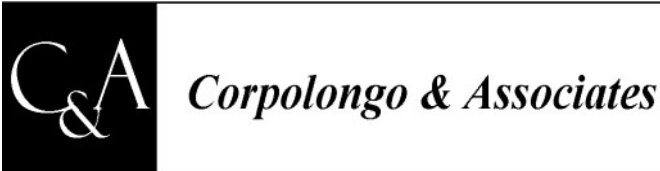
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THE WHATCOM COUNTY BAR ASSOCIATION  
**NEWSLETTER**

Happy New Year!  
JANUARY 2006  
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**Inside:**

- President's Column
- Light Court
- Across the Line
- Law Advocates
- Imminent Domain
- Classified Board News
- Monthly Bar Minutes
- Thank's E-Letter
- Announcements
- Support our Activities

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Please Recycle

### LAW Advocates' Project SAFER suffers huge funding hit

*Program for domestic violence victims may need new home*

**By Kirsten Barron**  
LAW Advocates Board Chair



There probably isn't a lawyer in Whatcom County who doesn't know about LAW Advocates' Project SAFER. One reason it is so well known is that it has been staffed by terrific lawyers, including Laurie Powers, Brian Valentine and Pam Englett. Another reason is the importance of the work. SAFER provides the most critical legal services to some of the county's most desperate folks, victims of domestic violence.

Project SAFER assigns lawyers to obtain emergency orders providing for the safety of domestic violence victims and their children, economic support and visitation. The goal is to get these orders in place immediately and deal with the urgent details so the private bar can then step in to finish the case.

The project has helped hundreds of victims of domestic violence and their families. A U.S. Department of Justice study conducted several years ago found that programs like SAFER are the single most important factor in breaking the cycle of domestic violence.

That's the good news. But what's with the bad news highlighted in this article's headline? Simply put, LAW Advocates has lost \$94,000 in federal funding — about 75 percent of the SAFER budget. I will not go into all of the funding details, which include the D.O. DSHS, CTED, OCLA, Law Fund, NW Justice, the Supreme Court, the Access to Justice Board, the WSBA and many others. (Although if anyone is interested, you won't be surprised to learn that I have a lot to say about the process. I mean A LOT!) The bottom line is the Project SAFER's federal funding was cut off as of October 2005, with almost no notice.

The Legal Foundation of Washington immediately provided us with enough funding to carry us through December, and it approved another grant that will get us through March of 2006. We have come up with a plan to run half-time program from April to June of 2006. After that there is no certainty about the program.

**I STILL HAVEN'T FIGURED OUT** how we are going to tell a woman whose husband has a knife to her throat in front of her children that she will have to wait for help. That may sound melodramatic, but it is the reality of these folks' lives. We want someone may die. Or a child may suffer, wounded that cannot be healed with stitches. Waiting — when we know how to prevent something — seems senseless. Because it is.

The LAW Advocates Board has been working through these issues for the last several months. We do not have a lot of confidence that we will be able to raise at least \$100,000 annually. Our fundraising of

(Continued on p. 9)

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**BAR LUNCH**

 The WCBA lunch and meeting will be at noon Wednesday, 2006, at Northwood Hall. The monthly business meeting will begin promptly at 12:15 p.m. The guest speaker will be .

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