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# WCBA Newsletter

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## President's Note

*Lawyers associated for justice, service, professionalism, education, mentoring, social interaction and leadership for our members and our community.*

Thank you for making our February CLE and dinner with the Oregon Court of Appeals a success. Our attendance numbers were great and a good time was had by all. Please join us for our March CLE on Search and Seizure. David B. Thompson from the Oregon Department of Justice will be our CLE presenter and the Oregon Supreme Court will be our dinner guests. Registration information is below. Also, please take a look at our upcoming events and CLE information, which has been finalized through the summer.

Our February raffle winner for a free dinner was Michael J. Fearl of Schulte Anderson Downes Aronson & Bittner, P.C. We look forward to seeing you at our next dinner! As always, we would like to thank our local judges for attending our meetings. Judges Thompson, Bailey, Cobb, Erwin, Fun, Wipper, Menchaca and Rini all attended our February meeting.

I had the opportunity to attend the Oregon Hispanic Bar Association Annual Awards Dinner. Federal District Court Judge Marco Hernandez, our former local circuit court judge, was presented with the Paul J. De Muniz Professionalism Award. I was pleased to see so many faces from Washington County in attendance, including many of our local judges. It was a wonderful event and anyone who is familiar with Judge Hernandez, knows that he is a great storyteller.

He did not disappoint. Congratulations to Judge Hernandez on receiving the Paul J. De Muniz Professionalism Award.

Please feel free to contact me with any feedback and/or information for inclusion in our newsletter. You may always contact me or any other member of the board directly with input, questions or concerns.

*Amy Velázquez*  
*President, Washington County Bar Association*



## Upcoming Events/CLEs

**March 12:** CLE: Search and Seizure;  
Dinner Guests: Oregon Supreme Court

**April 9:** CLE: Adoption Update;  
Staff Appreciation Dinner

**May 14:** Family Law Bench-Bar Update

**June 11:** Summer Social/Annual Picnic  
**NEW LOCATION:**  
Ruby Vineyard & Winery, Hillsboro

*The WCBA uses email to promote its programs and services to members only and does not share its email list with third parties. If you would like to be removed from our email list, please reply to this message with the word "remove" in the subject line.*

## DVRC

### Out of the Shadows

By Kathy Proctor

If you missed February's CLE or you want a little extra information following the CLE, read on. This month's speakers included Sara Wade, Executive Director of the Domestic Violence Resource Center (DVRC), Gayle Sheller, LCSW, Clinical Director, and Lisa Davis, M.A., Community Advocacy and Protective Order Advocacy Program Coordinator.

For those of you who may not know, DVRC refers to the Domestic Violence Resource Center. The center was started in 1975 in Beaverton and was originally called *Women Together*. Over the years it has gone through changes and changed locations. It is currently located across the street from the courthouse and is Washington County's only provider of services for victims of domestic violence. The services offered in Washington County include providing forms and a place where victims of domestic violence may get help with the process of filing for a restraining order. Services also include free counseling which is offered in both English and Spanish, crisis intervention, safety planning and resource referrals.

Why do we need to know about domestic violence? No matter what type of law you practice the chances are you are going to encounter, work with, or personally be affected by domestic violence. Domestic violence spans all cultural and socio-economic boundaries and effects the children and teachers in our schools, citizens on the streets, in our homes and work places. Possibly the most famous case of domestic violence here in Washington County is dramatized in the book *Dead by Sunset, Perfect Husband, Perfect Killer?* by Ann Rule. The victims of the abuser in that real life case included a lawyer, a doctor, a waitress, and even the babysitter. According to the account in the book, the abuser, after killing his wife, placed her in her vehicle in the road on Highway 26 apparently hoping another car would crash into it and either destroy evidence of the murder, or make the murder look like a car accident. Thankfully, no innocent person was injured or killed in that abuser's attempt to hide his crime. Unfortunately, there are many more recent examples of how domestic violence impacts our society. A quick search of the words *domestic violence* on [OregonLive.com](http://OregonLive.com) brings up dozens of stories of domestic violence that made it into the news; and, those are just the ones we hear about. Every day there are incidences of

domestic violence that go unreported with victims, including children, going to school, or to work, or maybe nowhere and not knowing that help is available, or how to get it. In order to help victims of domestic violence, the facts of, the signs of, and the ways to get help need to be known. In other words, domestic violence needs to be out of the shadows.

One of the speakers, Lisa Davis, M.A., the Community Advocacy and Protective Order Advocacy Program Coordinator, described how the protective order advocacy program in Washington County assists clients. The process for the center begins first thing in the morning when they open. Often times clients are waiting for the doors to open so they can come in receive services, file the appropriate restraining order paper work and receive other services and information about other resources. In order to receive a restraining order signed by a judge the same day, victims must arrive at the DVRC office before 9:30 AM to meet with an advocate. While the advocates at DVRC will assist with the process, one of the things that the DVRC staff cannot and does not do is provide legal advice.

In addition to the services offered to help victims obtain a restraining order, DVRC provides a safe haven for some victims at Monika's House. "Built in 1999 with the help of Community Development Block Grant funds, Monika's House Shelter is Washington County's *only* domestic violence shelter, and is named in memory of domestic violence victim Monika Voits—a Tualatin, Oregon woman murdered in her bed by her husband while her sons slept down the hall in January of 1999. Monika's House is a 24-bed facility (6 family units, 3 single-person units) providing safe and confidential emergency shelter for more than 200 adults, children, and their pets fleeing imminent physical danger from family violence each year." [Monika's House](#).

Monika's house is only one of five safe houses in Oregon for victims of domestic violence that allows pets. Providing the ability for victims of domestic violence to escape their situation with their pets is important, because according to speaker Gayle Sheller, LCSW there is a strong connection between the abuse of pets and domestic violence. That connection appears to be supported by the American Humane Society which states that nearly three quarters of pet-owning women entering women's shelters reported that their batterer had injured, maimed, killed or threatened family pets for revenge or to psychologically control or

coerce victims; approximately one-third reported their children had hurt or killed animals. [American Humane Society](#).

The U.S. Department of Health and Human Services confirms that domestic violence impacts every segment of society. While generally the focus of domestic violence has been on the adult victims, (and as noted, pets are often collateral damage) increased attention is being given to the impact that domestic violence has on the children who have either been victims of or who have witnessed domestic violence. In a review of over thirty studies, 30-60% of families that experienced domestic violence included both adult and child victims. ([Family abuse of adult and child](#); see also, *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Abuse*, Wilson, K.J. Ed.D., Hunter House Publishers 2006). [Child Welfare](#).

Before 2013, victims of abuse had to be in the same household with the abuser or related to the abuser or in some way in order to get a restraining order under the Family Abuse Prevention Act (FAPA). ORS 107.700. In 2013, the Oregon State Legislature passed HB 2779 making another form of protective order available for victims of sexual abuse. Lisa Davis provided those who attended the CLE with a sample form for the Sexual Abuse Protective Order (SAPO). The process for obtaining a SAPO is similar to the FAPA and victims can obtain assistance with the form at the DVRC. Eligibility for a SAPO extends to minors and adults. The minor who is 12 and older can apply without a guardian ad litem; for a child under 12 a parent or lawful guardian must file the petition on the child's behalf. The respondent must not be a minor. Additionally, unlike in the case of a FAPA restraining order, the petitioner and the respondent in a SAPO must not be family or household members as defined by ORS 107.705. The full text of the statute may be found in Chapter 687 of Oregon Laws 2013, or online at [Chapter 687](#). Like the FAPA, the petitioner who obtains a SAPO has the burden of proving their claim of abuse by a preponderance of the evidence. The SAPO offers some protection for a victim of sexual abuse whose case may or may not be able to meet the stringent burden of proof beyond a reasonable doubt in a criminal case, but is nevertheless in danger of further abuse as described under the statute. Use the following link to view the new Oregon DOJ SAPO forms:

<http://courts.oregon.gov/ojd/forms/pages/SAPO.aspx>

Of note, the forms available include a no-

tice regarding possible firearms restrictions. Pursuant to 18 U.S.C. Section 922(g) it is unlawful for any person to possess any firearm or ammunition if the person is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the partner, or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the child. The order must have been issued after a hearing of which the person received actual notice, and the person had an opportunity to participate in the hearing. There must be a finding that such person represents a credible threat to the physical safety of the intimate partner or child; or by its terms, the order explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury; or the person has been convicted in any court of a misdemeanor crime of domestic violence.

For practitioners who encounter victims of domestic abuse or sexual abuse, whether or not you are sure the person would qualify for either a FAPA order or a SAPO, the Domestic Violence Resource Center is a good place to start to get the person the help they need.

If you want to know more about DVRC please visit their website at <http://www.dvrc-or.org/>

and if you shop on Amazon and want an easy way to help the DVRC, consider using this information when you shop [Smile Amazon](#). Smile Amazon will contribute 5% of your eligible purchase to the DVRC.

Finally, DVRC has a vision for its future that will make it easier for victims to get the help they need. As part of that future, the DVRC is looking for board members to help with the path forward. If you would like more information on becoming a member of the board, contact Sara Wade at the DVRC.





## Social Media Investigations, Part 1: Down the Rabbit Hole

By Eli Rosenblatt  
iBridge Forensic & Fraud Examiner

**You may not have a “spirit animal” or know much about rodentology, but the best investigators I know are experts at “ferreting out” needed information.**

As it happens, the analogy to this lithe, highly intelligent carnivorous mini-weasel is particularly apt when it comes to professional digital forensics and to ensuring the capture, ongoing collection, and presentation of relevant in-depth social network data. With their long, lean build, and inquisitive nature, ferrets are very well equipped for getting down circuitous holes and chasing elusive critters out of their burrows—just like us persistent investigators. In part one of this series, iBridge Forensic and Fraud Examiner Eli Rosenblatt looks at how, on our journeys down those burrows, we may be neglecting to retrieve (or lacking the best tools to retrieve) crucial nuggets that could make a real difference in the case at hand.

### Following a Digital Trail

Take a look at your current caseload. You may be researching, helping litigate, or otherwise investigating in a criminal defense, civil, workplace, insurance, or fraud case. Regardless of your caseload’s makeup, you hopefully know that digital evidence is now a factor in every case.

With our highly surveilled, connected, and electronically-mediated environments, one would be hard-pressed to find a case where digital evidence didn’t play some role. You may have a sense of this growth in your own work if you’ve been in practice since the fax machine (remember fax machines?), but most of us don’t fully understand the full scope of the phenomenon,

The folks who track data proliferation globally, IDC, found in their recent study (and their archive of past years’ installments of the study) that 2.8 zettabytes of data were created and replicated in 2012.

Most of us don’t have a good sense of what 2.8ZB is, exactly. Take a look at that nice little 4-inch terabyte USB back-up drive sitting on your desk. Yes, that one. Don’t unplug it! (You’ll interrupt that crucial backup.)

Now, multiply it in your mind by about 3 billion. If you lined those disks up, they would stretch 110,479.6 miles, or wrap around the equator more than 4 times. By comparison, in 2005, there were about 130 exabytes of data created or replicated on all the computers and computing devices worldwide. Today the figure is 22 times larger than that. In 2020, it’s expected to rise to 40 ZB, or 315 times larger than it was in 2005.

Certainly much of that data is junk. But the point is that now, there are more places than ever where data relevant to our case could be hiding. So as

thorough and diligent as we professionals are, there’s likely to be more digital evidence out there we’ve not yet uncovered.

In my experience, many of those sources can be one or more of a panoply of social media services.

Unfortunately, discovery standards and professional norms regarding investigation of social media are still somewhat lacking in the breadth and depth necessary to establish reliable benchmarks for how to adequately capture and present all the available information. Those efforts need to take into account the new realities of the social networking landscape and why social media now plays a larger role in our investigations.

### More Users, More Data

More people than ever before are spending more time using more social media services for more kinds of sharing than ever before. (A recent mylife.com infographic details this.) Kids, octogenarians, and yes, even pets, can leave a long trail of potentially useful data. Now, investigators are using that data in more ways than ever.

The number of services in use—and the total number of users—have both grown tremendously in recent years, as seen on Wikipedia’s (not complete but huge) list of social network sites. There’s a handful of services that stand out, and there are some you might never have heard of, despite their having millions of users. Facebook and Twitter, of course, are the biggest players.

Right behind Facebook and Twitter is a true giant of social media data: YouTube. Videos hosted on YouTube may even have been entered as evidence in some of your cases. Statistics were recently released, however, which completely blew away my estimates of its ubiquitousness:

- More than 1 billion unique users visit YouTube each month.
- Over 4 billion hours of video are watched each month on YouTube.
- 72 hours of video are uploaded to YouTube every minute.
- In 2011, YouTube had more than 1 trillion views, or around 140 views for every person on Earth.
- Traffic from mobile devices tripled in 2011, with people now watching one billion views a day on YouTube mobile.

### Emerging Networks

These giants will likely continue to dominate the social media landscape for some time to come, but diligence in this field demands we pay attention to a host of others, and as much as possible, stay up-to-date on emerging players.

The importance of this strategy was underscored recently in an article by Ryan Holmes, CEO of the social media management company Hootsuite. He pointed to the rocketing growth of Instagram, which

went from a million users in December 2010 to 100 million users and 58 photo uploads per second just 24 months later.

Holmes looked at seven up-and-coming social networks which could be the next Instagram. That's interesting enough for its own sake, but for our purposes, they show how sources of potentially useful evidence crop up in the space of months, not over the course of years. And what's striking is how few of us are familiar with them.

#### The seven sites Holmes pointed to were:

1. Pheed, a photo and video monetizing site;
2. Thumb, a personalized crowdsourcing tool;
3. Medium, an invitation-only social network;
4. Conversations, a real-time collaboration tool by Hootsuite;
5. Chirpify, a tool for purchasing via Twitter;
6. Flayvr, an elegant photosharing platform;
7. Chirp, a proximity message and photo sharing app.

Investigators: Have you used or at least visited one of these seven services? Two? Five? All seven?

For most of us, the answer is no. What this shows us is that when deciding what social media to search for possible evidence in a case, it's getting to the point where it's not enough to simply check out the top sites to see if perhaps our subject has an account on one. Instead, as much as possible, we need take any practical steps to start with the subjects themselves and, through our investigation, determine what (if any) social network sites they may subscribe to.

#### In the Courtroom

A growing number of civil and criminal court cases involve social media evidence in some way. Some have even hinged on it. E-Discovery experts studying this closely over the last few years found 689 state and federal court cases during 2010 and 2011, which they believe represent a fraction of cases that in some way directly involved social media evidence (not counting all the cases where social media was merely mentioned or brought up in passing but didn't play a central role).

Then last year, we see an explosion. During just the first half of 2012, they found another 320 cases filed nationwide. (See X1 Discovery's list of social media-related cases.)

If you're not looking closely into social media as a central source of information for workplace investigations, you could be doing your client a real disservice by ignoring a huge pool of potentially useful data. Whether you tease out just a "like," find some comments on the page of a contact, or uncover many pages of ranting, social media data of all kinds can have a crucial impact.

Jessica Miller-Merrell's compilation of terminations and firings related to social media activities goes back to 2002 and underscores how essential these investigations can be in any workplace case you may be working.

Investigators may not need to be as concerned

with legal privacy issues as attorneys, but there are a few important details to keep in mind when conducting thorough social media investigations:

#### 1. Do not delete the evidence

First, as was sharply illustrated in the case of Lester vs. Allied Concrete, an attorney or his agent can't advise a client to "clean up" or delete the client's social media postings or accounts. This is called spoliation of evidence and it could cost you dearly.

#### 2. Observe privacy laws

Second, there are some complex issues surrounding access that employers may or may not have to an employee's social networking content-postings that are password-protected may be covered by federal privacy laws. Do your due diligence and work with legal counsel to establish boundaries and guidelines on any workplace investigations.

#### 3. Restrict your search to information that's publicly available.

Third, conduct your investigation in a way that is transparent and strictly legal. Here's how I phrase this to clients when they ask about what I can and cannot access: The methods and tools I use only capture and index publicly available information from social network sites and any publicly available web postings.

I do not use any pretexting, subterfuge, password cracking, social engineering, or otherwise unethical means to gain access to protected material. (The ethics of these practices are still unfolding in the world of online investigations, but another personal rule for me is "better safe than totally screwed.")

Depending on the particulars of your case, you may indeed be able to capture, index, and prepare privately protected material, using the login credentials provided by a cooperating client or witness (provided that client or witness signs an authorization for release of information). But you'll need to proceed very carefully and work closely with an attorney when treading into these murky legal waters.

In the next segment, we'll be peeling back the layers of social media investigations, looking more closely at lessons from recent cases, and why screenshots are just not good enough.

#### About Eli Rosenblatt and iBridge

Eli Rosenblatt is a Certified Forensic Examiner, Certified Fraud Examiner, and licensed investigator. iBridge is a locally-based provider of forensic and eDiscovery services.

*A version of this article first appeared in Pursuit Magazine.*



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## CLASSIFIEDS

### FAMILY LAW ASSOCIATE POSITION:

Yates, Matthews & Eaton, P.C., an AV rated Portland firm seeks an attorney with at least 5-7 years' experience in family law. Competitive compensation and full benefits. Send resume with writing sample, Attn: Office Administrator, Cecelia Connolly, [cconnolly@yatesmatthews.com](mailto:cconnolly@yatesmatthews.com). All inquiries will remain strictly confidential.

**DOWNTOWN PORTLAND-1 OFFICE-CLASS A SPACE-RIVER VIEW: \$1,200/Monthly:** Class A office space, 18<sup>th</sup> floor of Umpqua Bank Building, at One SW Columbia. One exterior office with panoramic view of mountains, riverfront and downtown. AV family law practice will share two conference rooms, receptionist services, and kitchen. Copier, fax, telephones and email provided at cost. Building amenities include conference rooms, private gym and bank in building. Approximate room size 10 x 15. Call Cecelia Connolly at 503.224.7077.

## Call for Help!

The OSB's Judicial Administration Committee is working on a project to increase public understanding of how our court system works and how courts serve our communities. The judges in Washington County are participating in these efforts, and now we need your help! We need bar members to help identify opportunities where our local judges can get out into the community and speak about the courts. If you are a member of or have contacts with any business, social, or civic organizations in Washington County that might be willing to host a presentation from one of our local judges, or if you just have an idea of an opportunity that might exist for this type of outreach, please contact Danielle Hunsaker at [503.222.4424](tel:503.222.4424) or [dhunsaker@larkinsvacura.com](mailto:dhunsaker@larkinsvacura.com). Danielle is a member of the Judicial Administration Committee and is responsible for coordinating outreach in Washington County.

## Classified advertising rates

\$20 for the first 50 or fewer words, and \$.50 per word thereafter. Classified ads must be prepaid. To obtain a quote, send the proposed text to: [washingtoncountybarnews@gmail.com](mailto:washingtoncountybarnews@gmail.com).

## Display advertising rates

|                                |      |
|--------------------------------|------|
| Business card size (2" x 3.5") | \$30 |
| 1/4 page                       | \$50 |
| 1/2 page                       | \$90 |

Please submit your ad in JPEG format to: [washingtoncountybarnews@gmail.com](mailto:washingtoncountybarnews@gmail.com).

# The WCBA CLE & DINNER MEETING

## Wednesday, March 12

### CLE: "Search & Seizure"

Presented by David B. Thompson, Oregon Department of Justice

Join us for dinner immediately following the CLE. Our guests will be the Oregon Supreme Court Justices.

CLE at 5:15pm, cocktails at 6pm, dinner at 6:30pm

The Old Spaghetti Factory, 18925 NW Tanasbourne Dr.

Hillsboro OR 97124

Please send your pre-registration form to:

Julie Viner

PO Box 912

Hillsboro OR 97123

Phone: 503.648.0300; fax number 503.693.9304; or via email to

[wcbassociation@frontier.com](mailto:wcbassociation@frontier.com).

Please register no later than March 10th so that we will be able to guarantee space. You can now also pay online on our website, [wcbabar.org](http://wcbabar.org), using our PayPal account.

**DINNER COST \$15 (PLEASE CHOOSE AN ITEM)**

**Dinner Reservation**

Name: \_\_\_\_\_

\_\_\_\_\_ Potpourri Spaghetti Sampler (Mizithra Cheese, Meat, Clam & Tomato Sauces)

\_\_\_\_\_ Spaghetti with Meat Sauce

\_\_\_\_\_ Spaghetti with Marinara

\_\_\_\_\_ Spaghetti with Mizithra Cheese

\_\_\_\_\_ Fettuccini Alfredo

\_\_\_\_\_ Baked Chicken with Steamed Broccoli

**(Gluten free & Whole Wheat Pasta Available upon Request)**

**CLE Reservation**

Name: \_\_\_\_\_

\_\_\_\_\_ Yes, I will attend the CLE, Number of attendees \_\_\_\_\_

(\$15 for members, \$25 for non-members)

## WASHINGTON COUNTY BAR ASSOCIATION 2014 DUES

The WCBA is a local association of lawyers serving Washington County practitioners. It provides a forum for the exchange of ideas and for local bar members to voice their views on matters of importance to their everyday practice. Consider the benefits of low-cost membership:

You will receive the *WCBA Newsletter*, which keeps you informed (and sometimes entertained) on updated information from Washington County judges, various bar committees, monthly CLE Programs, social dinners and activities, the law library, etc. The newsletter is also an excellent and inexpensive place for advertising and classifieds.

- Discount on monthly CLE programs and materials.
- Discount on monthly dinner meetings with speakers or opportunities to express your views and become informed directly from local practitioners.
- Events and committees for relaxation, networking and socializing with your colleagues.
- Leadership opportunities and community service.

Membership Dues: \$75 per year (September 2013 to August 2014)

(Note: new members have this fee waived for the first year!)

**Payable to:**                    **Washington County Bar Association**

PO Box 912

Hillsboro OR 97124

Phone: 503.648.0300, Fax:503.693.9304

\*You can also pay by credit card with our PayPal account

by visiting our website at [www.wcbabar.org](http://www.wcbabar.org)

Name: \_\_\_\_\_ OSB #: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone/Fax/Email: \_\_\_\_\_

One application per attorney, please.

Please return this form\* with your payment to the above address and indicate:

\_\_\_\_\_ New Member      Referred by: \_\_\_\_\_

Renewing Member: \_\_\_\_\_