Subordinate Bias Liability

Foster Pepper PLLC
33rd Annual Civil Service Conference

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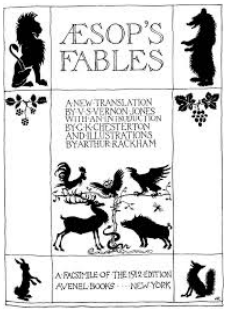
The Monkey and the Cat



Subordinate bias ("cat's paw") Liability

"In the employment discrimination context, 'cat's paw' refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action."

Subordinate Bias Liability

- Combination of:
  - Agency law
  - Vicarious liability (respondeat superior) principles
  - Multiple proximate cause theory
  - Statutory liability (in particular under anti-discrimination statutes)
- Appears to apply across the board in employment cases

Why cat's paw?

Shager v. Upjohn (1990)

Aesop's Fable

Shager v. Upjohn Co. (1990)

- Discharge decision made by a committee
- Engrafts agency principles to statutory tort under ADEA relying on inclusion of "agent" in definition of "employer"
- Deliberate act of supervisory employee within scope of authority deemed the act of the employer
- Employer liable for committee decision "tainted" by prejudiced supervisor recommendation

Staub v. Proctor Hosp. (2011)

Staub v. Proctor Hosp. (2011)

- Recognizes subordinate bias liability
  - Axiomatic in tort law that decision maker's exercise of judgment does not prevent earlier agent's action from being proximate cause
  - Based more on multiple causation theory than agency law
- Holds that an employer may be liable if a discriminatory act by a subordinate *intended* to cause adverse employment action is a proximate cause of the ultimate action
  - Causation standard in *Staub* derived from statute at issue in case ("motivating factor")

Questions unanswered by Staub

- Does not reject superseding cause rule, but ambiguously limits it to a "cause of independent origin that was not foreseeable."
- Does not establish hard-and-fast immunization rule for independent investigations.
- Does not address situation where co-worker rather than a supervisory employee influences ultimate employment decision.

Vancouver v. PERC (2014)

CITY OF VANCOUVER v. STATE PUBLIC EMPL. Wash. 213

180 Wash.App. 213

CITY OF VANCOUVER, a municipality, Appellant,

v.

STATE OF WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION, Vancouver Police Officers Guild, Respondents.

No. 43441-8-II.

Court of Appeals of Washington, Division II.

March 25, 2014.

Background: City sought review of Public Employment Relations Commission decision finding that city committed an unfair labor practice by discriminating against police officers' guild president out of animus over his union activities. The Clark Superior Court, John P. Wells, J., certified the appeal.

Holdings: The Court of Appeals, Bjorgen, J., held that:

(1) Commission was authorized by statute to impose liability on individuals for unfair labor practices;

(2) Commission did not impose individual liability on police chief for unfair labor practices;

(3) Commission's error in applying an improper burden of proof in determining the city's liability was harmless;

(4) fact that police chief did not have notice of assistant police chief's antiunion animus in making recommendation to terminate guild president's employment did not preclude a finding of unfair labor practices;

(5) officer's loss of benefits conferred by selection to the motorcycle unit constituted an adverse employment action for purposes of claim of unfair labor practices;

(6) Commission did not engage in rule making with its order finding city liable for unfair labor practice;

(7) substantial evidence supported Commission's finding that assistant police chief's animus was a substantial factor in motorcycle unit position who shared police chief's "vision" betrayed his animus towards police officers; and

(8) substantial evidence supported Commission's finding that police chief relied on a tainted recommendation from assistant police chief.

Affirmed.

1. Labor and Employment ⇔1066

Court of Appeals reviews a Public Employment Relations Commission decision reviewing unfair labor practices under the standards prescribed by the Administrative Procedure Act (APA). West's RCWA 41.56.160, 41.58.180.

2. Labor and Employment ⇔1059

In reviewing decision by the Public Employment Relations Commission, Court of Appeals reviews any question of law, such as the Commission's interpretation of a statute or judicial precedent, de novo; Court may substitute its interpretation of the law for the Commission's, but it gives the Commission's interpretation of statutes regarding public employee bargaining great weight and substantial deference.

3. Labor and Employment ⇔1001, 1066

When reviewing decision of the Public Employment Relations Commission, Court of Appeals may not substitute its judgment for that of the agency regarding witness credibility or the weight of the evidence.

4. Administrative Law and Procedure ⇔704.1

Unchallenged agency findings are considered verities on appeal.

5. Civil Rights ⇔1745

Washington adjudicates statutory discrimination claims using the *McDonnell Douglas* Corporation v. Green framework.

6. Civil Rights ⇔1734

In an employment discrimination case, the complaining party first bears the burden

Vancouver v. PERC (2014)

- Recognizes subordinate bias liability in WA
  - Unfair labor practice case based on anti-union discrimination (Ch. 41.56 RCW)
  - Appeal of PERC administrative appeal decision
- Holds that employer which delegates power or influence over employment decisions to a subordinate places the exercise of that power or influence within the course and scope of employment of the subordinate

Vancouver v. PERC (2014)

- Holds that the trigger for subordinate bias liability is the level of control exerted by the subordinate
- Holds for purposes of Ch. 41.56 that the substantial factor test applies
  - Substantial factor lies somewhere between a "to any degree" standard and a "but-for" standard
- Holds that a complainant bears the burden of establishing a substantial factor

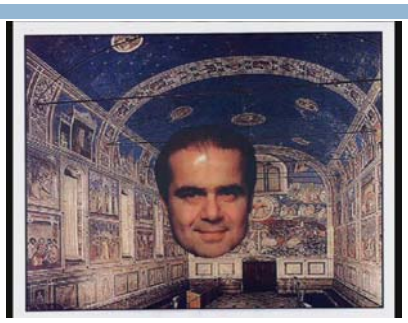
Vancouver v. PERC (2014)

- Indicates that an employer may insulate itself from liability by either:
  - Disregarding a biased subordinate recommendation; or
  - Reaching an independent decision regarding any employment action taken
- Reliance on a tainted recommendation made by a subordinate nonetheless establishes liability

Vancouver v. PERC (2014)

- Unfair labor practice case but likely not limited
  - Federal cases apply subordinate bias liability to multiple statutes regarding employment rights
- Causation test likely not limited to Ch. 41.56 RCW claims
  - Substantial factor test borrowed from other settings
  - Applies to variety of employment discrimination and retaliation for protected conduct claims in WA

QUESTIONS?



The Cat and the Monkey (1921)

Foster Pepper PLLC's 33rd Annual Civil Service Conference
Yakima, WA - Sept. 22-23, 2014
Subordinate Bias (a/k/a Cat's Paw) Liability
by Tim Donaldson, Walla Walla City Attorney

> Once upon a time a Cat and a Monkey lived as pets in the same house. They were great friends and were constantly in all sorts of mischief together. What they seemed to think of more than anything else was to get something to eat, and it did not matter much to them how they got it.
>
> One day they were sitting by the fire, watching some chestnuts roasting on the hearth. How to get them was the question.
>
> "I would gladly get them," said the cunning Monkey, "but you are much more skillful at such things than I am. Pull them out and I'll divide them between us."
>
> Pussy stretched out her paw very carefully, pushed aside some of the cinders, and drew back her paw very quickly. Then she tried it again, this time pulling a chestnut half out of the fire. A third time and she drew out the chestnut. This performance she went through several times, each time singeing her paw severely. As fast as she pulled the chestnuts out of the fire, the Monkey ate them up.
>
> Now the master came in, and away scampered the rascals, Mistress Cat with a burnt paw and no chestnuts. From that time on, they say, she contented herself with mice and rats and had little to do with Sir Monkey.

THE AESOP FOR CHILDREN 54 (Chicago, Rand McNally & Co. 1919).

"In the employment discrimination context, 'cat's paw' refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action." *E.E.O.C. v. BCI Coca-Cola Bottling Co. of Los Angeles*, 450 F.3d 476, 484 (10th Cir. 2006), *cert. granted* 549 U.S. 1105 (2007), *cert. dismissed* 549 U.S. 1334 (2007). "Cat's paw," "rubber stamp" and other names are more generally categorized as subordinate bias

theories of liability. *BCI Coca-Cola Bottling*, 450 F.3d at 484-86.

An employer is not automatically liable for any discriminatory act committed by anyone in its employ in every circumstance. In *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 72 (1986), the Supreme Court wrote that "Congress' decision to define 'employer' to include any 'agent' of an employer, 42 U.S.C. § 2000e(b), surely evinces an intent to place some limits on the acts of employees for which employers under Title VII are to be held responsible." Over the years following *Meritor*, liability rules developed whereby an employer generally would be held responsible for discrimination or harassment committed by management with employment decision making authority, but free from liability for such conduct by lower level employees unless it was made aware of it and failed to act. *See Shager v. Uphohn Co.*, 913 F.2d 398, 404-05 (7th Cir. 1990). The *Meritor* line of cases did not however resolve what would happen if management took adverse action against an employee that was influenced by another lower level employee who was motivated by some improper reason.

Judge Posner of the Seventh Circuit Court of Appeals addressed this situation in *Shager* and concluded that an employer could be held liable for discrimination by a lower level employee if decision makers acting with no discriminatory motive of their own nonetheless merely rubber stamped an adverse employment decision recommended by the lower level employee. *Shager*, 913 F.2d at 406-07. Posner reasoned that in such circumstances, the decision maker was merely a conduit, or "cat's paw," for the prejudice of the lower level employee. *Shager*, 913 F.2d at 405.

The federal cases on subordinate bias liability culminated in *Staub v. Proctor Hospital*, 562 U.S. ___, 131 S.Ct. 1186, 179 L.Ed.2d 144 (2011). *Staub* involved a claim by a worker under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4311(a). The worker was discharged by a decision maker (a vice president of human resources) on recommendation of the worker's supervisors who were motivated by hostility to the worker's absences due to obligations as a military reservist. The statute at issue in that case provided that an employer shall be considered to have engaged in prohibited action if a person's membership in the armed services "is a motivating factor in

the employer's action. . . ." 38 U.S.C. § 4311(c)(1).

Staub held that an employer could be held liable under USERRA if a discriminatory recommendation made to a decision maker by a subordinate was a proximate cause of the employment decision even though there might be multiple proximate causes. *Staub*, 131 S.Ct. at 1192. It noted however that:

> Needless to say, the employer would be liable only when the supervisor acts within the scope of his employment, or when the supervisor acts outside the scope of his employment and liability would be imputed to the employer under traditional agency principles. . . . We express no view as to whether the employer would be liable if a co-worker, rather than a supervisor, committed a discriminatory act that influenced the ultimate employment decision.

Staub, 131 S.Ct. at 1194, n.4 (citations omitted).

The status of cat's paw liability in the State of Washington was uncertain until 2014. The issue was addressed only once by a Washington appellate court in *Felt v. Bellevue*, No. 61838-5-I, 2009 WL 1065877 (Wash. App. Apr. 20, 2009) at *3 (unreported case), but the court found it unnecessary to resolve the question. In 2014, however, the doctrine was adopted in Washington by *Vancouver v. PERC*, 180 Wn.App. 333, 325 P.3d 213 (2014). In *Vancouver*, the police chief chose one officer over another for promotion to a motorcycle unit. The employee who lost out on the promotion happened to be the president of the Vancouver Police Officers' Guild (the union for the officers). The union thereafter filed an unfair labor practices complaint against the City with the Public Employment Relations Commission (PERC) alleging that the employment decision made by the police chief was tainted by the anti-union bias of the assistant chief who had sat on the panel which made the promotion recommendation to the chief. PERC found an unfair labor practice based on its interpretation of *Staub*, reasoning that subordinate bias liability makes an employer strictly liability for the bias of a subordinate that influences employment action taken by a decision maker unless the employer can demonstrate that the decision maker independently reached its decision free of the discriminatory recommendation of a subordinate. *Vancouver*, 180 Wn.App. at 343-46.

The Court of Appeals in *Vancouver* upheld the result reached PERC, but it rejected PERC's interpretation of subordinate bias liability. The Court of Appeals held that subordinate bias must be a substantial factor in an employment decision, rather than a mere influence upon it, before subordinate liability would apply to an unfair labor practice alleged under Chapter 41.56 RCW. *Vancouver*, 180 Wn.App. at 353-57. In nonetheless upheld PERC's finding of an unfair labor practice, because it found that the substantial factor standard had been met. *Vancouver*, 180 Wn.App. at 357-58.

The Court of Appeals in *Vancouver* clearly adopted the subordinate bias (cat's paw) theory of liability for the State of Washington. It explained

> In subordinate bias liability cases, "a biased subordinate, who lacks decision making power, uses the formal decision maker as a dupe in a deliberate scheme to trigger a discriminatory employment action." . . . . Subordinate bias liability recognizes that it does not matter whether the subordinate's personally "'pull[s] the trigger'" on the adverse employment decision; the subordinate's animus sets in motion the events that culminate in the adverse employment action. . . . Because the employer has delegated power or influence over employment decisions to the subordinate, any wrongful conduct on the subordinate's part occurs within the course and scope of employment. . . . Because the wrongful conduct occurs in the course and scope of employment, we impute the discriminatory act to the agent's principal.

Vancouver, 180 Wn.App. at 351-52 (citations omitted).

The *Vancouver* court recognized that the principal question in subordinate bias liability cases is causation. In other words, how much must the bias of a subordinate influence a decision before liability will attach to an employer? It wrote that "we need to examine 'the level of control a biased subordinate must exert over the employment decision' in order to impose liability on the employer." *Vancouver*, 180 Wn.App. at 354. If a biased recommendation had little or no effect on the decision maker's ultimate decision, either because the decision maker disregarded the recommendation or because the decision maker independently reached its decision, an employer would not be liable, because the

subordinate's bias could not be said to have caused the decision. If however, the subordinate sufficiently controls the ultimate employment decision, an employer would be liable. *Vancouver*, 180 Wn.App. at 354.

The Court of Appeals in *Vancouver* determined that subordinate influence must rise to the level of a substantial factor for an employment decision with respect to complaints made under RCW 41.56.140. *Vancouver*, 180 Wn.App. at 355-56. It did so however, because that is the general causation standard adopted for complaints made under that statute by *City of Federal Way v. PERC*, 93 Wn.App. 509, 512-13, 970 P.2d 752 (1998). The Court of Appeals expressly noted that "[f]ederal courts have determined that the necessary level of control varies based on the language of the statutory provision proscribing the discriminatory act." *Vancouver*, 180 Wn.App. at 355. In other words, the substantial factor causation test adopted in *Vancouver* may not apply to all types of cases in which subordinate bias liability is alleged.

Federal Circuit Courts have not agreed upon a uniform causation test for subordinate bias liability. Polar opposite tests have instead developed. Some courts have adopted a lenient standard that requires a claimant to demonstrate only that a subordinate had some influence or leverage over a decision maker. *E.g.*, *Russell v. McKinney Hosp. Venture*, 235 F.3d 219, 226-27 (5th Cir. 2000). Others have held that influence is not enough and have required proof that a subordinate employee possessed such authority as to be viewed as the one principally responsible for the decision. *E.g.*, *Hill v. Lockheed Martin Logistics Mgmt.*, 354 F.3d 277, 289-91 (4th Cir. 2004) *cert. dismissed* 543 U.S. 1132 (2005). The Tenth Circuit Court of Appeals extensively reviewed the competing standards developed by other circuits in *BCI Coca-Cola Bottling*, 450 F.3d at 486-88 and noted the deficiencies of each. It recognized that the lenient influence approach adopted in *Russell* and like cases tolerates such a weak relationship between a subordinate's actions and the ultimate employment decision that it improperly eliminates a requirement of causation. *BCI Coca-Cola Bottling*, 450 F.3d at 486-87. It similarly noted that the strict de facto decision maker approach employed in *Hill* undermined the deterrent effect of subordinate bias claims by allowing employers to escape liability except in the most extreme cases of subordinate control. *BCI Coca-Cola Bottling*, 450 F.3d at 487. The Tenth Circuit

therefore adopted an intermediate test that requires more than subordinate influence but less than subordinate control. *BCI Coca-Cola Bottling* , 450 F.3d at 487-88.

Federal cases following *Staub* caution that courts "must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination." *Sims v. MVM, Inc.*, 704 F.3d 1327, 1336 (11th Cir. 2013); *see also Simmons v. Sykes Enterprises, Inc.*, 647 F.3d 943, 949-50 (10th Cir. 2011). The Supreme Court recognized in *Staub* itself that causation requirements revolved around the particular statutory language at issue. It wrote that "[t]he central difficulty in this case is construing the phrase 'motivating factor in the employer's action.'" *Staub*, 131 S.Ct. at 1191. It analyzed that question by reference to a similar federal statute that prohibits race, color and other discrimination when it is "'a motivating factor for any employment practice, even though other factors also motivated the practice.'" *Staub*, 131 S.Ct. at 1191, *quoting* 42 U.S.C. § 2000e-2(m).

Therefore, the level of influence required to establish causation in subordinate bias liability cases will likely depend upon the particular statutory or other basis under which a claim is made. A substantial factor test was adopted in *Vancouver* for claims made under RCW 41.56.140, but that standard may not be generally applicable. *See Vancouver*, 180 Wn.App. at 355-56. The causation standard may vary depending upon the situation and the legal basis under which a claim is made.

Vancouver fortunately provides some guidance in Washington regarding the causation standard that may apply in situations beyond just claims made under RCW 41.56.140, because the substantial factor standard applied to that statute by *City of Federal Way* was borrowed. *See City of Federal Way*, 93 Wn.App. at 512-13. The substantial factor test also applies in Washington to retaliatory discharge cases brought for violation of an employee's exercise of his or her worker's compensation rights under chapter 51.48 RCW, *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46, 71-72, 821 P.2d 18 (1991); age discrimination claims brought under chapter 49.60 RCW, *Allison v. Housing Authority*, 118 Wn.2d 79, 95-96, 821 P.2d 34 (1991); disability discrimination claims brought under chapter 49.60 RCW, *Burchfiel v. Boeing*, 149 Wn.App. 468, 482, 205 P.3d 145 (2009); gender

discrimination claims brought under 49.60 RCW, *Mackay v. Acorn Custom Cabinetry*, 127 Wn.2d 302, 310, 898 P.2d 284 (1995); racial discrimination claims brought under chapter 49.60 RCW, *see Capers v. Bon Marche*, 91 Wn.App. 138, 142-45, 955 P.2d 822 (1998); retaliatory discharge claims for reporting violations of chapter 49.60 RCW, *Kahn v. Salerno*, 90 Wn.App. 110, 129-31, 951 P.2d 321 (1998), *Galbraith v. TAPCO Credit Union*, 88 Wn.App. 939, 952, 946 P.2d 1242 (1997); and possibly whistle blower retaliation claims, Stanwell v. King County Parks, No. 44066-7-I, 2000 WL 1634608 (Wash. Ct. App. Oct. 30, 2000), at *2 (unreported case). In all of these situations, Washington Courts have adopted a substantial factor test. Therefore, although the court in *Vancouver* dealt with an unfair labor practice claim under RCW 41.56.140, its reasoning regarding the appropriate causation standard should also apply in those types of cases, because they already generally apply the same substantial factor test.

Finally, it is worth noting that *Vancouver* recognized means by which employers may insulate themselves from subordinate bias liability. The Court noted that liability would not attach for a subordinate's biased recommendation if a decision maker either (1) disregarded it, or (2) independently reached an employment decision. *Vancouver*, 180 Wn.App. at 354. As noted in the introduction to this paper, subordinate liability is sometimes called "rubber stamp" liability. It is therefore advisable for those with employment decision making authority to conduct and document some level of independent review and evaluation when relying on recommendations of subordinates. It remains to be seen how much independent analysis by a decision maker would be required to break the causal link between a biased recommendation and the ultimate action taken by a decision maker, however, the Court of Appeals did indicate in *Vancouver* that subordinate bias liability cannot be used to shift or reverse a claimant's burden to prove causation. *Vancouver*, 180 Wn.App. 356-57. Therefore, it is arguable that a claimant alleging subordinate bias liability bears the burden of disproving independent decision making if an adequate basis for asserting independent review and analysis can be made.

CONCLUSION

Vancouver v. PERC, 180 Wn.App. 333, 325 P.3d 213 (2014) adopts subordinate bias

liability in Washington. An employer may be liable for an unbiased decision maker's employment decision if it is based upon the recommendation of a biased subordinate. *Vancouver*, 180 Wn.App. at 351-52. Liability attaches if the decision maker is nothing more than the cat's paw.

Vancouver adopts a substantial factor causation test to determine if the bias of a subordinate sufficiently biased a decision to improperly deny a promotion to an employee for engaging in union activities protected by RCW 41.56.140. *Vancouver*, 180 Wn.App. at 355-56. Although *Vancouver* was decided in the context of a claim brought under chapter 41.56 RCW, its causation test should equally apply to employee claims brought under other statutes where a substantial factor test has been generally adopted.

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Washington State Bar Association: Oct. 27, 1987-present (WSBA # 17128)
Oregon State Bar Association: Apr. 23, 1992-present (OSB # 920515)
Idaho State Bar Association: Sept. 29, 1994-present (ISB # 5040)
United States Supreme Court: Feb. 26, 1996-present
United States Court of Appeals for the Ninth Circuit: Dec. 26, 1991-present
United States Court of Appeals for the Federal Circuit: Apr. 27, 2004-present
United States Court of Appeals for the District of Columbia Circuit: Apr. 28, 2006-present
United States District Court of the Western District of Washington: Dec. 18, 1987-present
United States District Court for the Eastern District of Washington: Dec. 4, 1992-present
United States District Court for the District of Idaho: Sept. 29, 1994-present
United States District Court for the District of Oregon: Dec. 15, 1995-present

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Whitman College, Walla Walla, WA: B.A., May 20, 1984

Publications:

Law review articles

Co-author, *Dying to Testify? Confrontation vs. Declarations in Extremis*, 22 REGENT U. L. REV. 35 (2009/10)

Co-author, *"Classic Abusive Relationships" and the Inference of Witness Tampering in Family Violence Cases after* Giles v. California, 36 LINCOLN L. REV. 45 (2008/09)

Combating Victim/Witness Intimidation in Family Violence Cases: A Response to Critics of the "Forfeiture by Wrongdoing" Confrontation Exception Resurrected by the Supreme Court in Crawford *and* Davis, 44 IDAHO L. REV. 643 (2008)

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Co-author, Comment, *Jurisdictional Survey of Tort Provisions of Washington's 1986 Tort Reform Act*, 22 GONZ. L. REV. 47 (1986/87)

Deskbooks

Co-author, *Ethical Issues for Prosecutors*, Ch. 8 in the PUBLIC LAW ETHICS PRIMER - 2010 UPDATE (Washington State Association of Municipal Attorneys and Municipal Research and Services Center, Seattle, WA 2010)

Involuntary Motor Vehicle Liability Insurance, Ch. 10 in the WASHINGTON MOTOR VEHICLE ACCIDENT INSURANCE DESKBOOK (Washington State Bar Association, 2d ed. suppl. 2009)

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Involuntary Motor Vehicle Liability Insurance, Ch. 10 in the WASHINGTON MOTOR VEHICLE ACCIDENT INSURANCE DESKBOOK (Washington State Bar Association, 1995)

Conference papers

How to Handle the Recanting Victim in DV Cases, in PROCEEDINGS OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS' 2013 ANNUAL FALL CONFERENCE OCT. 9-11, 2013 (Municipal Research and Services Center, Seattle, WA 2013)

Adoption History of the Washington Supreme Court Standards for Indigent Defense Services, in PROCEEDINGS OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS' 2012 ANNUAL FALL CONFERENCE OCT. 17-19, 2012 (Municipal Research and Services Center, Seattle, WA 2012)

Update on Court Rules Proposals: Public Defense Standards, in Information Bulletin No. 540, LEGAL NOTES, PROCEEDINGS OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS' 2011 ANNUAL FALL CONFERENCE OCT. 5-7, 2011 (Municipal Research and Services Center, Seattle, WA 2011)

Mental Health Alternatives (Roundtable Discussion), in Information Bulletin No. 540, LEGAL NOTES, PROCEEDINGS OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS' 2011 ANNUAL FALL CONFERENCE OCT. 5-7, 2011 (Municipal Research and Services Center, Seattle, WA 2011)

Crawford: Forfeiture and Use of Material Witness Warrants, in Information Bulletin No. 535, LEGAL NOTES, PROCEEDINGS OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS' 2010 ANNUAL SPRING CONFERENCE MAY 5-7, 2010 (Municipal Research and Services Center, Seattle, WA 2010)

Confronting Domestic Violence in "Mayberry", in ARE WE THERE YET? COMMEMORATING THE PAST, CREATING THE FUTURE: A 30TH ANNIVERSARY DOMESTIC VIOLENCE SYMPOSIUM, sponsored by Seattle University School of Law, the King County Prosecuting Attorney's Office, the Office of the Seattle City Attorney, and the King County VAWA program (Seattle, WA Sept. 11-12, 2009)

A Blast from the Past: Crawford, Giles and Confrontation Forfeiture, in Information Bulletin No. 531, LEGAL NOTES, PROCEEDINGS OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS' 2008 ANNUAL FALL CONFERENCE OCT. 15-17, 2008 (Municipal Research and Services Center, Seattle, WA 2008)

Dealing with Statutory and Other Defenses in Negotiations with Defense Counsel, in Information Bulletin No. 526, LEGAL NOTES, PROCEEDINGS OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS' 2006 ANNUAL FALL CONFERENCE OCT. 4-6, 2006 (Municipal Research and Services Center, Seattle, WA 2006)

Prosecution after Crawford v. Washington, in Information Bulletin No. 523, LEGAL NOTES, PROCEEDINGS OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS' 2005 ANNUAL FALL CONFERENCE OCT. 12-14, 2005 (Municipal Research and Services Center, Seattle, WA 2005)

Usage of Hearsay in Criminal Cases after Crawford v. Washington, in Information Bulletin No. 520, LEGAL NOTES, PROCEEDINGS OF THE WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS' 2004 ANNUAL FALL CONFERENCE OCT. 6-8, 2004 (Municipal Research and Services Center, Seattle, WA 2004)

Speaking engagements:

How to Handle the Recanting Victim in DV Cases, Washington State Association of Municipal Attorney's 2013 Annual Fall Conference (Walla Walla, WA, Oct. 11, 2013)

Standards for Indigent Defense: The Prosecutor's Perspective, Washington State Association of Municipal Attorney's 2012 Annual Fall Conference (Spokane, WA, Oct. 18, 2012)

Primary Aggressor Determination, 12th Annual Justice and Hope Domestic Violence Conference, sponsored by the Kelso Housing Authority and St. John Medical Center (Longview, WA, Apr. 12,

2012)

Update on Court Rules Proposals: Public Defense Standards and *Roundtable: Mental Health Alternatives*, Washington State Association of Municipal Attorney's 2011 Annual Fall Conference (Couer d'Alene, ID, Oct. 6, 2011)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Wenatchee, WA, May 24-26, 2010)

Crawford: Forfeiture and Use of Material Witness Warrants, Washington State Association of Municipal Attorney's 2010 Annual Spring Conference (Vancouver, WA, May 6, 2010)

Confronting DV in Mayberry, "ARE WE THERE YET? COMMEMORATING THE PAST, CREATING THE FUTURE: A 30TH ANNIVERSARY DOMESTIC VIOLENCE SYMPOSIUM," sponsored by Seattle University School of Law, the King County Prosecuting Attorney's Office, the Office of the Seattle City Attorney, and the King County VAWA program (Seattle, WA Sept. 11, 2009)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Yakima, WA, Mar. 24-26, 2009)

A Blast from the Past: Crawford, Giles and Confrontation Forfeiture, Washington State Association of Municipal Attorney's 2008 Annual Fall Conference (Cle Elum, WA, Oct. 17, 2008)

Strengthening Relations with Your Police Department, Washington State Association of Municipal Attorney's 2007 Annual Fall Conference (Chelan, WA, Oct. 4, 2007)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Wenatchee, WA, Apr. 30 - May 2, 2007)

Dealing with Statutory and Other Defenses in Negotiations with Defense Counsel, Washington State Association of Municipal Attorney's 2006 Annual Fall Conference (Spokane, WA, Oct. 5, 2006)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Wenatchee, WA, May 22-24, 2006)

Prosecution after Crawford v. Washington, Washington State Association of Municipal Attorney's 2005 Annual Fall Conference (Couer d'Alene, ID, Oct. 6, 2005)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission

(Wenatchee, WA, May 16-18, 2005)

Usage of Hearsay in Criminal Cases after Crawford v. Washington, Washington State Association of Municipal Attorney's 2004 Annual Fall Conference (Chelan, WA, Oct. 7, 2004)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Wenatchee, WA, May 17-19, 2004)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Wenatchee, WA, May 19-21, 2003)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Wenatchee, WA, May 13-15, 2002)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Wenatchee, WA, May 14-16, 2001)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Wenatchee, WA, May 15-17, 2000)

Washington State Domestic Violence Team Training, sponsored by the Washington State Coalition Against Domestic Violence and Washington State Criminal Justice Training Commission (Wenatchee, WA, May 17-19, 1999)

Personal Injury Defense: Practical Tips and Update on the Law, sponsored by the Washington State Trial Lawyers Association, "Policy Issues: Reading the fine print" (Seattle, WA, Oct. 1, 1993)

Reported cases:

Counsel for party

Catsiff v. McCarty, 167 Wash. App. 698, 274 P.3d 1063, *review denied* 175 Wash. 2d 1016 (2012), *cert. denied* 133 S.Ct. 1470 (2013)

City of Walla Walla v. $401,333.44, 164 Wash. App. 236, 262 P.3d 1239 (2011)

City of Walla Walla v. $401,333.44, 150 Wash. App. 360, 208 P.3d 574 (2009)

Coffey v. City of Walla Walla, 145 Wash. App. 435, 187 P.3d 272 (2008)

City of Walla Walla v. Greene, 154 Wash. 2d 722, 116 P.3d 1008 (2005), *cert. denied* 546 U.S. 1174 (2006)

City of Walla Walla v. Topel, 104 Wash. App. 816, 17 P.3d 1244 (2001)

City of Walla Walla v. Ashby, 90 Wash. App. 560, 952 P.2d 201 (1998)

Munns v. Martin, 131 Wash. 2d 192, 930 P.2d 318 (1997)

Cashmere Pioneer Growers v. Unigard Sec. Ins. Co., 77 Wash. App. 436, 891 P.2d 732, *review denied* 127 Wash. 2d 1011 (1995)

Krempl v. Unigard Sec. Ins. Co., 69 Wash. App. 703, 850 P.2d 533 (1993)

Unigard Sec. Ins. Co. v. Lakewood Engineering & Mfg. Co., 982 F.2d 363 (9th Cir. 1992)

Starczewski v. Unigard Ins. Group, 61 Wash. App. 267, 810 P.2d 58, *review denied* 117 Wash. 2d 1017 (1991)

Lien v. Barnett, 58 Wash. App. 680, 794 P.2d 865 (1990)

Amicus

Cannabis Action Coalition v. City of Kent, 180 Wash. App. 455, 322 P.3d 1246 (2014)

City of Vancouver v. PERC, 180 Wash. App. 333, 325 P.3d 213, 198 L.R.R.M. (BNA) 2899 (2014)

Stafne v. Snohomish County, 174 Wash. 2d 24, 271 P.3d 868 (2012)

City of Spokane v. Rothwell, 166 Wash. 2d 872, 215 P.3d 162 (2009)

City of Portland v. E.P.A., 507 F.3d 706 (D.C. Cir. 2007)

City of Seattle v. Clark-Munoz, 152 Wash. 2d 39, 93 P.3d 141 (2004)

City of Seattle v. Allison, 148 Wash. 2d 75, 59 P.3d 85 (2002)

Wolf v. Scott Wetzel Svcs., 113 Wash. 2d 665, 782 P.2d 203 (1989)

Administrative appeals

PacifiCorp dba Pacific Power and Light v. City of Walla Walla and Columbia Rural Electric Association, No. 13-023, 2014 Westlaw 1390955 (Shorelines Hearings Board, Feb. 12, 2014) (Order on Motions)

Citizens for Good Governance v. Walla Walla County, No. 05-1-0013, 2006 Westlaw 2415825 (Eastern Wash. Growth Management Hearings Board, June 15, 2006) (Final Decision and Order)

City of Walla Walla v. Walla Walla County, No. 02-1-0012c, 2002 Westlaw 32065609 (Eastern Wash. Growth Management Hearings Board, Nov. 26, 2002) (Final Decision and Order)

Citizens for Good Governance v. Walla Walla County, Nos. 01-1-0015c & 01-1-0014cz, 2002 Westlaw 32065594 (Eastern Wash. Growth Management Hearings Board, May 1, 2002) (Final Decision and Order), *appeal dismissed Walla Walla County v. Eastern Wash. Growth Management Hearings Board*, No. 21552-1-III (Wash. Ct. App. Sept. 19, 2003)

Unpublished appellate cases:

Cook v. Unigard Ins. Co., 84 Wash. App. 1076 (table only), No. 37324-2-I, 1997 Westlaw 22420 (Jan. 21, 1997)

Clark v. Michelson, No. 34859-1-I (Wash. Ct. App. Dec. 27, 1995)

Meckna v. Opheim, 68 Wash. App. 1075 (table only), No. 29044-4-I (Mar. 8, 1993)

Other appellate cases:

Kitsap County v. Kitsap County Deputy Sheriff's Guild, No. 89344-6 (Wash. 2014) (amicus)
Westmark Dev. Corp. v. City of Burien, 163 Wash. 2d 1055 (table only), No. 80930-5 (Jul. 9, 2008) (amicus)
Carey & Associates v. Unigard Sec. Ins. Co., No. 30515-8-I (Wash. Ct. App. Dec. 1, 1992)
Sexton v. Stone, No. 12134-4-II (Wash. Ct. App. Mar. 19, 1990)

Awards:

Outstanding service award, Washington State Association of Municipal Attorneys (2014)

Graduate of distinction award, Walla Walla Public Schools (2010)

Distinguished citizenship award, Walla Walla, Washington Lodge No. 287 and the Grand Lodge, Benevolent and Protective Order of Elks (2007)

Superstar award for judiciary excellence, Washington State Traffic Safety Commission (2001)

School board of the year, co-recipient with fellow board members Jeanne Beirne, Anne Golden, Dr. Richard Jacks, and Toni Rudnick, Washington State School Directors' Association (2001)

Other:

Board Member, Washington State Association of Municipal Attorneys (WSAMA): 2008-present
President: 2014-present
First Vice President: 2013-2014
Second Vice President: 2012-2013
WSAMA Amicus Committee Member: 2006-present