



# LIFE BEGINS

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(Washington State Bar Association)

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The following article is the second installment of a detailed synopsis of our May 2017 seminar. This article was written by our Senior Lawyers Section Secretary, **Al Armstrong**. Al has been doing this for several years and it shows in his writing. No wonder he does such a fantastic job as our ExComm Secretary, too! Thanks again, Al!

## Recap of 2017 Senior Lawyers Section CLE May 5, 2017: Second Installment

By Al Armstrong

### Jenny Durkan—Emerging Issues in Cybersecurity: How You and Your Clients are at Risk. “Are You Scared Yet?”

Jenny Durkan opened our afternoon addressing the serious and complex issue of cybersecurity. Durkan was appointed U.S. Attorney for Western Washington by President Barack Obama in 2009 and she served in that capacity until 2014. Prior to that, she had earned a solid record of achievement in the legal profession as well as in community service. A 1980 graduate of Notre Dame and a 1985 graduate of the University of Washington School of Law, she has served as legal counsel and strategic advisor to two Washington governors. As U.S. Attorney she chaired key Department of Justice committees and work groups charged with crafting national policies and investigative strategies for cyber crime, intellectual property enforcement and consumer privacy. She currently is the head of the Seattle office of the world-wide firm Quinn, Emanuel, Urquhart and Sullivan, LLP, serving as Global Chair of that firm’s Cyber Law and Privacy Group. [Durkan was elected Mayor of Seattle in November.]

While U.S. Attorney, Durkan chaired the cybercrime and intellectual property subcommittee of the Department of Justice for five years. Drawing on this background, she brought a wealth of information and quite a few cautionary “cyber tales” to the attendees. In fact, during her presentation she asked a question that could well serve as her theme for the afternoon: “Are you scared yet?”

### Who are the Bad Boys?

What are the chief motivations of those involved in cyber misdeeds? Durkan outlined several broad categories of miscreants:

“Hacktivists:” those whose principal motives involve the embarrassment or exposure of others. Typical activities may involve destroying or altering a rival’s website, sending out phone tweets in others’ names and accounts, and hacking into others’ personal emails and exposing private matters contained therein.

Criminal Profiteers: most cyber offenses fall in this category. This might involve hacking and emptying bank accounts, immobilizing others’ computers with the intent of

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## Editor's Column

By Ron Mattson

I believe it was two issues before this one in which I discussed the "issues" that many of our compatriots (in the WSBA Sections business) were having with the WSBA. It seems that most of that brouhaha has settled down now, but that could be simply the result of myself becoming less connected. I closed the last office I had about two or three years ago. My "office" has been a somewhat large sectional desk/credenza that takes up the corner of one of our basement rooms. I have now decided to reduce my costs and become "Emeritus pro bono" rather than "Active Member." It cuts my annual cost in half, but limits what I can do to acting as a legal clinic lawyer. I've enjoyed the several clinics I have been supporting, but I am cutting back to just two of those that are the closest to my home.

But more importantly, there is no provision (that I have been able to find) for my continued membership in any Section. "Bye-bye Family Law Section." "Bye-bye Senior Lawyers Section." WAIT!! WHAT?!! Yeah, I am uncertain what that means. I suppose if this Section, for instance, wants me to stay on as Editor of this publication, I can do so because I have not ever been required to show anyone my active membership credentials (I don't know if the Bar still provides those!). I attend our Executive Committee meetings and no one there asks to see my "ID"!

A few years ago, and for about four or five years prior to that, I was a partner in a family law firm downtown. One of the principals in that group created and kept functioning the "Family Law List Serve." That was a forum open to anyone who asked (I don't believe membership in the Family Law Section was required, but I could be wrong about that) and it was extremely helpful for sharing practice tips, what forms to use for what purpose, handling opposing counsel, getting information on judges before whom you may have never appeared, etc. However, the person who developed that has moved on and is now creating virtually the same type of list serve outside of the WSBA. It will be interesting to see what the WSBA response or action may be.

The reason I bring it up here is that, although I believe I will no longer be able to claim (even by paying the money) membership in the Senior Lawyers Section,\* I will continue to have the capability of providing my services as Editor of this Section's quarterly publication, *Life Begins*. I wonder whether the Bar will say that I haven't paid my dues, that I am no longer a general member, and therefore I am ineligible to be a part of an organ of the WSBA.

\* I could be wrong about that – there is nothing in any of the Bar information about being a member of a Section after switching to Emeritus status. I guess 'time will tell' where this all leads.

## Recap of 2017 Senior Lawyers Section CLE

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extorting money from the computer owners, and obtaining, using or selling credit or debit card numbers.

Foreign State Actors: A few short years ago, few countries had the ability to tap into government computer or security systems. Now, the necessary technology and know-how is much more common throughout the world.

### Computer Tricksters: What are Their Methods?

Computer cyber mischief can be achieved using computer viruses (malicious codes) which can destroy computer programs, and can be inserted into computer systems as "sleeper" viruses, which can lie dormant for years before being activated by the bad guys. Other means of wrongdoing can be instigated by "phishing," that is, baiting the target computer user with tempting "click bait." Then there is "spear phishing," phishing aimed at a specific individual or an identified group of individuals. The unwitting computer operator, with a simple click of the mouse, can be downloading a fatal and disabling virus onto the computer's software.

Durkan warned of "keylogger," a system that tracks and copies every single entry made on the target computer, allowing the attacker to obtain everything from personal information to bank account numbers. Sometimes the target computer can be tricked into identifying other computer systems to which the target computer is tied. The attacker can then break through various security levels, thus rendering ineffective previously impenetrable "triple authentication" security measures.

There are schemes involving the perpetrators taking over huge groups of computers (unbeknownst to their respective owners), creating a "botnet" and directing these "captive" computers to crash a given target computer. There is a host of pop-ups (using "scare ware") that warn computer users that their computers have been infected with viruses, and the only way this problem can be remedied is to "click here." This is exactly what happened to John Podesta, Hillary Clinton's campaign chair and former White House Chief of Staff in the Clinton White House. He had received a computer message warning him that his computer had been compromised, and was directed to change his password; he was directed to enter his password and choose a replacement. This he did and, in an instant, the Russians had his documents.

Some of the bad guys use "water hole" tactics—they predict what website(s) a given computer operator would tend to visit, and set up a dummy website that could lay the target computer low, or hack its information. Skillful use of these tactics can mean millions of dollars withdrawn from accounts—and, oftentimes with scant remedies for victims. Using directed denial of service (DDoS) schemes (flooding the victim computer with transmissions from many other

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“captive” computers through the creation of a “botnet”) thus compromising or crashing the target (directed denial-of-service), the outlaws can have their victims at their mercy.

Durkan also discussed “ransomware”: viruses that can lock an entire block of computers of an organization or business. The hackers may then demand that a specified amount of bitcoin (a crypto-currency and digital payment method) be paid before the systems are unlocked. Several hospitals have already had to deal with this situation—being told that in order to save its patients, the hospital had better pay as directed. Sometimes the FBI can only tell the victims to submit to their extorters, in hopes that the blackmailers will, upon satisfactory payment, follow through and allow the victims to unlock their devices or keep their promises not to reveal purloined information.

Counter-strategies can include attempts to trace the transmissions back to their source (tracing back to the “hop points,” the various layers of unwitting “captive computers”) but that is often fruitless as the bad guys can conceal their remote transmission origin, rarely using their own software. Beware “free” thumb drives, our speaker warned. Miscreants are known to set up tables at computer shows and lay out “complimentary” thumb drives, intent on the recipients unknowingly sending them their confidential information by using the drives.

Durkan even said that most cars that were built after 1995 are vulnerable to hacking due to their onboard computer systems; brakes may be disabled, the car accelerated and/or made inoperable. She related that hackers have been able to, from a distance, start a Tesla, drive it, and apply the vehicle’s brakes. Also, be careful of those remote baby monitors: those transmissions to mom and dad in the next room have been intercepted and placed on clandestine child-porn sites.

Many times computer crimes can be an “inside job,” such as a disgruntled or larcenous employee. Durkan gave an example: a U.S. company (American Semiconductor) was in negotiations with a Chinese turbine maker. A disgruntled employee of American Semiconductor sold the company’s computer codes to a Chinese entity. The Chinese company then simply raided American Semiconductor’s computer systems, obtained the information that they needed, and then broke off negotiations. As a result, seven hundred million dollars in contracts were lost to the domestic firm, and 500 people lost their jobs.

Another war story from Ms. Durkan’s U.S. Attorney days: “We were able to arrest one Roman Seleznev at a

posh Maldivian Island resort. He happened to have with him nearly two million credit card numbers that he had been selling on the black market.” Durkan related that Mr. Seleznev was recently convicted and sentenced in federal district court in our state.

Durkan’s former law firm is representing U.S. Steel in a case against a Chinese company that had hacked into their client’s company secrets regarding the manufacture of a type of high-grade steel that the Chinese had not been able to formulate on their own.

Relative to retail losses through cybercrime, Durkan reported that during a given period of time, American retailers suffered approximately 141 million dollars in losses due to cybercrime, but only 46 million of that loss was covered by insurance. She noted that the reputational cost to the companies victimized is incalculable, in addition to damage sustained by consumers.

Our national electrical grid is vulnerable to a cyber-attack; this was the subject of a recent book by journalist Ted Koppel. Durkan, recalling how inconvenient even

short-period power blackouts can be, invited the audience to imagine what sort of damage would accrue during blackouts of one or two months.

As if the foregoing was not enough, here’s some more unsettling information from Durkan: Cyber spying has become so pervasive that China, or individuals therein, have, by now, all the medical records of *every American*. “Even pacemakers can be hacked.” It is believed that China has the records of every person who has applied for, not to mention who had been given, a top-secret security clearance. So a potential adversary now has the personal, financial and medical information of many holders of U.S. government security clearances. Intelligence services of all countries traditionally expend a great deal of energy seeking this very type of personal information about influential people in foreign countries, but now this can be had through possibly instantaneous cyber-snooping.

### So What Can Potential Victims Do?

So, what can we as individuals do about all this, to protect ourselves? Several things, advised Ms. Durkan:

1. *Do not click* on suspicious emails or enticing but improbable-sounding clickbait (“If it sounds too good to be true, it probably is!”). Beware emails from people you have not heard from for a long period of time, asking you odd questions which

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### Mark the Date: April 27, 2018 Next Senior Lawyers’ CLE

Our next Senior Lawyers’ CLE will be held at the same location, the Sea-Tac Marriott, on Friday, April 27, 2018. We look forward to seeing you then.

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call for a response from you. (No, your old friend isn't a threat, but hackers who have somehow found a connection between you and your old acquaintance may be trying to trick you into responding.) Most cybercrime is accomplished by phishing. Durkan indicated that two-thirds of computer attacks are done through phishing. She also noted that *60 percent of phishing targets fall for the click bait.*

2. Change your password periodically, and *do not* use the same password for all your accounts.
3. At the ATM, be sure to use your hand to cover your card as much as possible; there are all sorts of clever ways for others to observe your card number. Durkan recalled that, while U.S. Attorney, she had thousands of dollars whisked away from her ATM account by a ring of Romanian fraudsters.
4. If you do on-line banking, "make sure there's only enough in that account so that if you lost it all, you could still get up in the morning."
5. "Patch, Patch and Patch!" (For the uninitiated, "patching" consists of updating your software's fraud protection on a regular basis.) Make sure that you have the authentic update software, and not some miscreant-driven app bent on stealing everything you have.

### Panel Discussion: Practice Transitions and Changing Demographics, with Hon. James M. Riehl, Kitsap County District Court (Ret.); Brian Comstock, Comstock Law Firm, PLLC; and Carole Grayson, University of Washington Student Legal Service.

In keeping with this year's theme, three distinguished members of the senior lawyer age cohort conducted a panel discussion offering their respective views regarding the needs and interests of transitioning older attorneys, as well as how to "capture" the wealth of knowledge these practitioners have amassed.

Panel member James Riehl served as a Kitsap County District Judge from 1982 to 2014 and as President of the Washington State District and Municipal Court Judges Association (1995-1996) and co-chair of the Board of Judicial Administration. He has been very active on a national level and is currently the District 9 representative for the Executive Committee of the National Conference of Specialized Judges of the ABA and has chaired that conference in the past. At the behest of the Justice Department, he has instructed new attorneys in Washington, D.C., on the sub-

ject of domestic and sexual violence, and has even trained judges in Kosovo.

Panelist Brian Comstock graduated with honors from the University of Washington in 1954, before serving as a counter-intelligence undercover agent for the U.S. Army, followed by graduation from Harvard Law School and admission to the Washington State Bar in 1959. Over the next 42 years, he practiced tax, securities and business law, working at three different firms. Having taught at the Seattle University School of Law for several years, he has now partnered with his lawyer-son at the Comstock Law firm in Bellevue. Mr. Comstock is currently the Chair-Elect of our Senior Lawyers' Section, and has served as Chair of our Section in prior years.

Panelist Carole Grayson has been a world traveler as well as a trail-blazer: She was in the second class of undergraduate women at Princeton and was the first woman (and first criminal defense attorney) to serve as Editor of the Washington State *Bar News* and the King County *Bar Bulletin*. She has been a solo practitioner, an arbitrator, a judge pro tem, a hearing officer on K-12 discipline and public housing and a Lecturer at the University of Washington Law School. She is currently the Immediate Past Chair of the Senior Lawyers' Section, and recently completed a seven-year stint as Editor of our Section's newsletter, *Life Begins*. She is just now retiring as Director of Student Legal Services at the University of Washington after 16 years at the helm.

### Carole Grayson

Ms. Grayson opened the discussion. She noted that the panel represented three different career paths: Grayson's way was public service, Mr. Comstock represented the big firm experience, and Judge Riehl, that of judicial service.

She recalled addressing the January 2017 BOG meeting in Spokane, and brought to the BOG's attention a 2012 WSBA study that predicted that within five years (that is, by 2017) fully 56 percent of the Bar membership will have retired, cut back their practice or will have otherwise left the practice of law. She noted that the Bar seemed not to have kept track of, nor followed up on, this prediction. Expressing some impatience, she felt that this study and some follow-up might have provided a platform on which to address issues relating to utilizing senior attorney experience and knowledge for the good of the profession and the public. She asked: "But where are we, now, in light of that study?" She noted that retired Judge Paul A. Bastine, who also spoke at the January BOG meeting, was only one of two retired Spokane County Superior Court judges (out of nine) who were still active in the local legal community. "What more can we do to reap the benefits of all that legal (and judicial) experience?"

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Grayson referenced her late attorney-husband's views as to lawyer transition: Alex Hart had in fact "retired" from legal practice twice, once in 1972 and again in 1992, after another ten years in the law. In his 1993 article in the Washington State *Bar News*, included in Grayson's CLE written material, he related how he dealt with both the relief from stress and, conversely, with the sense of loss that accompanies the departure. "Ceasing practice is a process, constantly changing each day."

As for her own retirement, Grayson stated that she leaves her position proud that her U.W. program has prospered during her tenure. She indicated she would continue to teach a solo and small practice class at the law school during winter quarters, and is considering a possible position with U.W. Bothell. She closed her presentation by relating a dream she had in which she was being importuned by a big-firm rainmaker type, urging her to join the firm and make great money. In her dream, she briefly considers the offer and realizes again that the dream she has is not practicing law, and turns down the chance with the big firm. She looks forward to "chocolate, fruit, cheese, travel, and maybe love."

### Honorable James Riehl

Next up was the Honorable James Riehl, who retired from his Kitsap County judgeship at the age of 66. He, like Grayson, wondered aloud just how everyone got to be so old, "What the heck happened? How did we get here?" He retired from the bench in 2014. How did he make that decision? According to Judge Riehl, the "planets were perfectly aligned." He had become vested in his retirement, and at his age he could collect full social security. The Judge wanted to retire forthrightly at the end of his term, not, say, six months before the end of his term "so I could get a friend appointed in my place." In his personal life, he wished to have time to spend with his children and grandchildren. In retirement, he has been able to attend his children's activities and, in a manner of emphasizing that freedom, noted that: following his presentation here, he was going to attend one of his child's track meets later in the afternoon!

Having been involved with the ABA for 33 years, the Judge is now focused mainly with the ABA Senior Lawyers' Division (SLD). The primary subject of this CLE presentation, said Judge Riehl, was to relate how the ABA has changed its ways relative to reaching out to its older members. He has recently been asked by the Chair of the ABA SLD to head the Publications Committee of that Division, which prints both a quarterly hard-copy magazine and a monthly newsletter. In acting in this capacity, he

became familiar with how the ABA is utilizing the substantial experience of its more seasoned attorneys. Judge Riehl recalled how the SLD had been losing members for a number of years. It was mainly serving as a social club, requiring, in addition to the standard ABA dues, a yearly payment of \$50. Then, with a new chairperson of the Division, came a new plan: at 62 years of age, all ABA members were automatically made members of the SLD, dues-free. To skeptics, it was explained that funding for the Division would come from various sponsors. "It worked!" he said. Membership in the Division rose from 3,400 to 64,000, and the focus was broadened from a social club addressing issues such as retirement and travel to also include endeavors such as mentorship and other activities that would utilize the wealth of knowledge and experience the older lawyers have to offer. He happily recalled attending a recent SLD meeting; at his table was a woman, 92 years of age and an SLD member since 1948, and a 62-year-old still-active attorney from Hawaii – proof enough that the Senior Lawyers' Division of the ABA was both relevant and prospering.

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## Oxymorons

*This should put a laugh or smile in your day ...*

- Why do we sing "Take me out to the ball game" when we are already there?
- Why are they called "stands" when they are made for sitting?
- Why is it called "after dark" when it really is "after light"?
- Doesn't "expecting the unexpected" make the unexpected expected?
- Why are a "wise man" and a "wise guy" opposites?
- Why do "overlook" and "oversee" mean opposite things?
- Why is "phonics" not spelled the way it sounds?
- If work is so terrific, why do they have to pay you to do it?
- If all the world is a stage, where is the audience sitting?

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**Brian Comstock**

Brian Comstock followed next, noting that our Bar may want to follow the ABA's example, automatically enrolling all attorneys past a certain age in the Senior Lawyers' Section, observing that between 13,000 and 14,000 of the WSBA are over the age of 62. "I have not proposed this to anyone but it's something we should consider."

Comstock noted that he has been in practice since 1959. He recalled the tremendous changes in the legal profession over the years. For starters, he recalled that there were six or seven women enrolled in his Harvard Law School class, one of whom would eventually sit on the U.S. Supreme Court – Ruth Bader Ginsburg. His first job after law school was with the old Seattle law firm Weter Roberts and Shefelman. In its day, this was considered a mid-size firm – 12 attorneys. Back then, most lawyers didn't specialize; one was expected to work in all legal areas. A new attorney could get a call from the federal court, ordering him to conduct the defense of a federal defendant. In fact, this happened to Comstock; he recalled how the U.S. Attorney's office appealed a favorable decision he had obtained on behalf of his client. Now, many lawyers have a legal specialty in mind right out of law school. When his firm merged with Foster Pepper in the late 1980s (becoming Foster Pepper and Shefelman) it was one of the largest in Seattle. He pointed to the recent merger of the Seattle firm Riddell Williams with the Philadelphia-based Fox Rothchild firm, which now has about 800 attorneys.

Comstock contrasted his generation's ideas about retirement with his own. At his firm, the mandatory retirement age was 70 years of age. "My partners didn't know I had turned 70. When they realized they had a 71-year-old in their midst, they told me to "wrap things up by the end of the year." With the baby-boomers, they don't accept this idea of mandatory retirement. They see no need for any kind of mandatory retirement.

A brief question and answer session followed. One attendee inquired as to whether the ABA made any sort of special provision, dues-wise, for its older lawyers, apart from the free membership in its Senior Lawyers Division. Judge Riehl replied that he didn't believe it did. The question of whether our Section could use a name-change came up. Ms. Grayson mentioned that former Senior Lawyer Executive Committee member Karen Klein's view is that our Section needs a name change – Ms. Klein, after all, does not see herself as a "senior lawyer." Judge Riehl saw her point: "After all, our ABA magazine is called Experi-

ence, not Old People's Magazine." Comstock noted that the changes made by the ABA's Senior Lawyers' Division probably saved that section from collapse. He noted that our Section is not near that point, but we should try to learn from the ABA's new approach. Another attendee indicated that he wouldn't mind going to an "Experienced Lawyers" seminar, as opposed to a "Senior Lawyers" gathering. Grayson noted that many WSBA sections are specialty-oriented; attorneys join their respective sections with whom they identify and to advance their careers. "No one joins the Senior Lawyers' Section or its Executive Committee to pad their resume," she quipped.

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## Senior Therapy – 10 Things to Do When You're Bored

1. At lunch time, sit in your parked car with sunglasses on and point a hair dryer at passing cars. Count how many you get to slow down.
  2. On all your check stubs, write "For Marijuana."
  3. Skip down the street rather than walk and see how many strange looks you get.
  4. Work on your multi-tasking by wasting time, being unproductive and procrastinating all at once.
  5. Make daily entries in your log of happenings at the White House in the other Washington.
  6. When the money comes out of the ATM, scream: "I WON! I WON!!"
  7. When leaving the zoo, start running toward the parking lot yelling: "Run for your life! They're loose!!"
  8. Tell your grandchildren at a family dinner: "Due to the economy, we are going to have to let one of you go."
  9. Just remember: experience is the thing you have left when everything else is gone.
  10. Attend the Senior Lawyers Section CLE, "Practice Transitions: Baby-Boomers and Beyond" on April 27 at the Sea-Tac Marriott!
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## 2017 - 2018 Senior Lawyers Section

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Membership in one or more of the WSBA's sections provides a forum for members who wish to explore and strengthen their interest in various areas of the law.

### What are the benefits?

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Jan. 1 to Dec. 31.

### What about law students?

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