In recent years, the Confrontation Clause has undergone close examination in both the United States and Colorado Supreme Courts. In 2004, the United States Supreme Court’s announcement of Crawford v. Washington overturned the long standing confrontation rule established in Ohio v. Roberts. Crawford established a bright-line rule regarding a defendant’s right to confront the witnesses against him.

Prior to Crawford, the Colorado Supreme Court held in People v. Mojica-Simental the statutory provision allowing the results of a criminalistics laboratory report to be admissible without the lab technician who conducted the testing constitutional. The court found section 16-3-309(5) did not violate the Confrontation Clause provisions of either the United States or Colorado Constitutions. Section 16-3-309(5) provides “[a]ny report or copy thereof of the findings of the criminalistics laboratory shall be received in evidence in any court, preliminary hearing, or grand jury proceeding in the same manner and with the same force and effect as if the employee or technician of the criminalistics laboratory who accomplished the requested analysis, comparison, or identification had testified in person. Any party may request that such employee or technician testify in person at a criminal trial on behalf of the state before a jury or to the court, by notifying the witness and other party at least ten days before the date of such criminal trial.” It is important to note there is a notice requirement that needs to be made ten days prior to trial. This notice must be made to both the laboratory technician as well as the opposing party.

In Mojica-Simental, the constitutional claim alleged the provision of the statute requiring the defendant to specifically issue a demand for the lab technician to appear was unconstitutional. The Supreme Court rejected that argument stating that while the right to confront one’s accuser is a fundamental constitutional right, it is one that can be limited. After the announcement of (continued on page 4)

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CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by e-mailing lynne@boulder-bar.org, or pay online with a credit card at www.boulder-bar.org/calendar.

Tuesday, April 10
Family Law
What Boulder County Child Support Services Can Do for Your Client
Presenters: Rhonda Rawlinson and Pam Howell
Noon brownbag in Boulder County Justice Center Courtroom N
1 CLE $20, $10 for new/young lawyers

Wednesday, April 18
Longmont Lawyers Lunch
Noon at Terroir
Lunch and 1 CLE $20

Thursday, April 19
Immigration Law
Open Forum/Roundtable Discussion on Current Topics in Immigration
Noon at Caplan and Earnest
1 CLE $20, $10 for new/young lawyers
Lunch $10

Thursday, April 26
Elder Law & Grandparents Rights
Presenter: Melody Fuller
Noon brownbag in Courtoom N
Boulder County Justice Center
1 CLE $20, $10 new/young lawyers

Friday, April 20
ADR with Family and Civil Litigation
Dialogue with the Judges on ADR in Family & Civil Matters
Presenters: Judges and Magistrates
Noon to 1:30 in the Boulder County Justice Center, Jury Assembly Room
2 CLE’s $40, $20 new/young lawyers
Lunch $10

Thursday, May 3
All Lawyers
20th JD Boulder Drug Court
A Five-Year Update on Successes: What’s New and Different
Presenter: Judge Bailin
Noon in the Boulder County Justice Center
Jury Assembly Room
1 CLE $20, $10 new/young lawyers

CALCULATION OF EVENTS

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Crawford the following year, it was only a matter of time before the courts began addressing the issue of laboratory technician testimony again.

In 2007, the Colorado Supreme Court announced an opinion on the confrontation issue raised by section 16-3-309(5) in Hinojos-Mendoza v. People. The court found the findings contained within the laboratory report to be testimonial under Crawford. The court next addressed the constitutional challenge that the statute imposed an illegal burden on the defense by establishing a “notice and demand” requirement. It held that the procedure for ensuring the presence of the laboratory technician at trial did not deny the defendant the opportunity to cross examine the witness, but simply required the defendant to decide prior to trial whether it would cross examine the witness. The Court compared the requirement imposed upon the defense to be no more onerous than the requirement to comply with the alibi defense requirements or the requirement to file a written jury demand and pay a jury fee. The court further held that the decision to exercise the right to cross-examine a witness, and therefore to provide the necessary “notice and demand”, is not right which requires the defendant personally to make a knowing, voluntary, and intentional waiver. Rather, the right to confrontation is one of the many rights that defense counsel can waive through strategic decision.

The United States Supreme Court issued its own ruling on this issue in 2009 in Melendez-Diaz v. Massachusetts. In Melendez-Diaz, the defendant was charged with drug related offenses. At trial the prosecution was able to use the lab technician’s sworn affidavits to prove the results of the drug testing. In a 5-4 decision, the Supreme Court held that the testimony of the laboratory technician qualified as testimonial evidence requiring a defendant the right to confront the witness at trial. The court held, “the Confrontation Clause imposes a burden on the prosecution to present its witnesses, not on the defendant to bring those adverse witnesses into court.” The court later addressed concerns that the confrontation requirement will significantly affect the prosecution of cases requiring laboratory testing. It recognized that there are already numerous statutory limits and procedural rules in place requiring the defense to affirmatively act to ensure certain due process right. As an example, it noted that a defendant needs to notify the court of its intent to assert an alibi defense.

The court specifically cited to the recent Colorado ruling in Hinojos-Mendoza and the procedure under section 16-3-309(5) requiring the defense to provide notice and demand the attendance of a witness
In addition, active participation in the BCBA has afforded me opportunities to serve our community, such as volunteering for Food Wine Jazz Art which raised over $10,000 for the Legal Aid Foundation this year, thanks to everyone who got involved!

Our sections have planned various community projects providing our membership with opportunities to get involved. The Business section provided gifts (necessities in socks) for the Bridge House, which serves the homeless. The Criminal Law section donated Christmas gifts to underprivileged kids. The Natural Resources section, in conjunction with our Young Lawyers, are going to be planting more trees this year on April 21st to re-forest the Fourmile Fire burn area, which will help combat erosion problems. We need volunteers to plant 750 saplings in Sunshine Canyon. Please contact David Perlick at 303.449.6543. This is a project coordinated with Boulder County Parks and Open Space and is sponsored by the American Bar Association Section on Environment, Energy, & Resources’ One Million Trees Project. Additional support is provided by the Colorado Bar Association Environmental Law Section and Young Lawyers Division, and other area lawyers and law firms. If you do not have the time to come out and help plant on April 21st, please consider making a donation on our website, click on the calendar and go to April 1.

Happy spring –might be time to hang up the skis and get out and about and get involved! This page will hopefully provide you with a few ideas to do just that.

Now is the time of year when our bar association looks to recruit new leadership for the year ahead. Our fiscal year begins on July 1. This year, there are two (2) three-year Board positions opening up, plus the Secretary/Treasurer officer position. In addition, there will be opportunities to step up as a section co-chair in your field of choice. If you would like to apply for one of the Board positions, or become a co-chair of a section, please call Christine at the bar office, 303.440.4758.

Involvement in BCBA leadership and/or active membership provides invaluable experience and an array of opportunities - to network, to give back to the community, and learn. Sometimes attending a bar function can provide one with a great chance to commiserate! I began as a co-chair of the bankruptcy section. Given that bankruptcy is a bit of a niche practice, I did not know many attorneys in different fields of practice until I became actively involved in BCBA leadership. My participation has enabled me to forge connections with people and to effectively network as well as establish new and valuable friendships.

(continued on page 8)
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2012 Mock Trial Volunteers
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Peggy Goodbody   John Hoelle
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Alex Logemann    Jennifer Lorenz
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Judge Pat Butler
Judge Bruce Joss
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Judge Tom Mulvahill
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Judge Gwyn Whalen

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Will be stepping down to become
Of Counsel to the Firm.
Baine will continue part-time at the
Firm assisting and advising on
medical negligence, personal injury,
civil rights, and Title IX cases,
while writing fiction and enjoying life.

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Wednesday, April 11
EEOC Chair to Speak at CU Law School
Hosted by the Black Law Students Association
Presenter: Jacqueline A Berrien, Chair of the
U.S. Equal Employment
Opportunity Commission.
5:30 PM at the CU Law School
Wittemyer Courtroom
Reception will follow in the Boettcher Hall.
No RSVP required and Free CLE.

Wednesday April 11
Longmont Library Festival Week
6:30 - 8:30 PM
Denver Attorney and crime-fiction-author,
Manuel Ramos
will do a reading from one of his
books and have a book signing.
Longmont Library is located at
3rd and Kimbark
FREE and open to the public.

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Another great volunteer opportunity presented by the BCBA this year was the Boulder County high school mock trials. Thank you to all of the people who participated in that and helped to educate our future lawyers. Also, the Colorado Bar Association state mock trials were held in Boulder this year with 22 teams from across the state participating. Many of our judicial officers and bar association members stepped up to volunteer and help make this a success.

Our sections provide many learning opportunities at reasonable cost. CLE programs are actually an important part of the BCBA’s financial stability, and this year, our co-chairs have done an outstanding job in putting on many great CLE’s which provide income to the BCBA. This year we expanded our sections. We added an In-House Counsel group, an Immigration Law section, Senior Lawyers group, and a group of Spanish-speaking lawyers that will hopefully meet for tapas again soon! Also, watch for the Mentor/Mentee program starting up in collaboration with the Colorado and Denver Bar Association. Mentor and Mentee applications are on the BCBA’s website.

The 3rd Annual Senior Law Day will be held August 12, 2012 in Longmont for the Boulder County aging population, families and caretakers. Last year, over 400 people attended and many of our lawyers were sponsors as well as presenters. The Boulder County Bar Foundation also supports this program. Not up your alley? Consider participating in Law Day on May 1st, which will be geared toward the younger population this year. Our Law Day committee is planning some great speaking engagements at local high schools and may be looking for people to help.

Another great upcoming event is the Medical/Legal Dinner on May 15th at the Boulder Country Club. This is your opportunity to become more informed by Colorado legislators who present to the Boulder County Medical Society and our BCBA on legislative changes potentially affecting the medical and legal communities.

(continued on page 12)
Pro Bono Referrals

Twelve cases were referred during February. Thank you to the following attorneys:

Michele Clark
Mark Detsky
Graham Fuller
Judson Hite
Rogelio Peña
Craig Small
Stephen Wills

Pro Se Program Volunteers

M.L. Edwards
John Hoelle
Lauren Ivison
Tucker Katz
Michelle Stoll
Leonard Tanis
Karen Trojanowski

Thank you to the following mediators who accepted pro bono referrals in February:

Tom Bache-Wiig
James Christoph
Christine Fleetwood

BCAP Volunteers

Thank you to the following attorneys who accepted pro bono referrals for the Boulder County AIDS Project in February:

Paul Bierbaum
Kurt Hofgard

Interested in a Pro Bono case? Please call Erika at 303-449-2197.

CLE credits available for pro bono service.
to be a reasonable limit of the con-
frontation right. 20

Following the rulings in Hinojos-
Mendoza and Melendez-Diaz there was
considerable discussion as to what
obligation the prosecution may have
in cases involving laboratory reports.
Does the prosecution have an affir-
mative obligation to notify the
defense of its intent not to call the
witness so the defense had the
opportunity to comply with the
statute? The issue of notice to the
defense was answered in Cropper v.
People.21 The Colorado Supreme
Court held that the prosecution, by
providing the defense with a copy of
the forensic lab report through dis-
covery, had placed the defense on
notice that, absent the specific
request under section 16-3-309(5),
the report could be introduced with-
out the witness being present.22

After nearly a decade of decisions by
the Colorado courts on the issue of
confrontation under section 16-3-
309(5), it is clear that while the right
to confront a witness is a fundamen-
tal right enjoyed by a defendant, it is
not an unlimited right. In order to
exercise this right, counsel must
make early decisions regarding its
trial strategy and follow the specific
statutory notice and demand
requirements.

FOOTNOTES
S.Ct. 1354, 158 L.Ed.2d 177 (2004)
2. Ohio v. Roberts, 448 U.S. 56, 100 S.Ct. 2531,
65 L.Ed.2d 597 (1980)
3. Crawford, supra at 1364
4. Id.
5. People v. Fry, 92 P.3d 970 (Colo.2004)
Indiana, 547 U.S. 813, 126 S.Ct. 2266, 165
L.Ed.2d 224 (2006)
7. People v. Moreno, 160 P.3d 242 (Colo.2007)
8. People v. Mojica-Simental, 73 P.3d 15
(Colo.2003)
10. Mojica-Simental, supra
11. Hinojos-Mendoza v. People, 169 P.3d 662
(Colo.2007)
12. Id. at 668.
13. Crim. P. 16(II)(d)
(Colo.1992)
15. Hinojos-Mendoza, supra at 669.
305, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009)
17. Id.
18. Id. at 2540
16(II)(d)
20. Melendez-Diaz, supra at 2540
22. Id. at 437

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Jim Christoph, JD
Boulder DA, Stan Garnett, hosted a recent lunch to celebrate an historic tribute done by Siliva Pettem, well-known Boulder historian, about the Boulder County District Attorneys’ office past and present. Boulder has the longest judicial history of any other county in Colorado. The history and pictures of the past twenty-one DA’s in Boulder County are hanging in their offices at the Boulder Justice Center. Go and see!

Many of the past district attorneys and public defenders came together to celebrate the history and to see Stan Johnson, who was DA in Boulder County from 1969 to 1973. The entertainment was superb. Lots of great stories and memories of events, cases and trials were shared and enjoyed.

Those attending the lunch celebration were: John Purvis, Bill Gray, Chuck Sisk, Joe French, Retired Judge Tom Reed, Pete Hofstrom, Dick Dana, Bob Miller, Peggy Jessel, Sean Finn, Pam Maass, Silvia Pettem, Stan Garnett and guest of honor, Stan Johnson. Alex Hunter and Mary Lacy who followed Johnson were unable to attend the event. For more details about Boulder district attorney and judicial past, go to *The Colorado Lawyer*, November 2011 issue and read the article by Siliva Pettem.

(Left) Stan Johnson, Siliva Pettem and Stan Garnett in front of the historic display in the DA’s office.

(Left to right) Bill Gray, Joe French, and Stan Garnett.

(Left) Bob Miller and Stan Johnson

Stan and Stan
I hope you will attend our Annual Dinner on June 7 at the Center Plate in Folsom Field. The reason I put this out there now is that the Board is seeking nominations from our membership for the Young Lawyer of the Year Award and the Award of Merit. Do you know someone worthy? Please call Lynne or Christine at the bar office 303.440.4758. We need your valuable input.

The Colorado Judicial Institute gives awards each year to a district judge, a county judge and a magistrate and they are looking for YOUR input. Nominations for the 2012 Judicial Excellence Awards opened last week and will close May 17. You can submit a nomination online at http://www.coloradojudicialinstitute.org. Nomination criteria may be found on the website. Please help CJI celebrate the judges and magistrates in our district by nominating a judge or magistrate. The only way CJI finds out about the great judges across our state is by hearing from people like you! The Judicial Excellence Awards will be presented on November 14th at the Denver Marriott City Center.

The BCBA relies on the input and ingenuity of members like you. If you have a great idea, or a desire to become more involved in the Association, please give us a call!
WONDERING WHY YOU WEREN’T LISTED IN THE ANNUAL DIRECTORY SPECIALITY AREA SECTION?
DO YOU WANT TO BE LISTED ON THE BOULDER COUNTY BAR WEBSITE?

FIND A LAWYER

How would a prospective client OR another lawyer find you?
1) When you Google “boulder county bar association,” you will find www.boulder-bar.org. A button leads the client to Find a Lawyer and to you.
2) Our office continues to receive many public calls from those in- and out-of-state seeking legal representation. We refer these people to the Find a Lawyer section on the bar’s website.
3) When the public searches the CBA website for Boulder County lawyers, the list used is our Find a Lawyer index.

Cost: The annual cost for you to be listed in one specialty area is $50, which also includes your specialty area listing in the front section of the 2012-2013 Annual Membership Directory. Each additional specialty area listing is $25, and you may be listed in up to 8 areas of the law. To see the list of specialty areas go to www.boulder-bar.org/find/index.html

Please select from the following options:

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Please make checks to BCBA or pay on-line with your credit card at www.boulder-bar.org, click on the calendar and go to June 1

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We will have a small furnished office in Boulder available in July for a personal injury attorney willing to handle our overflow of smaller cases and some contract hourly work. This would not be an associate or salary position, but does have potential to grow into a more permanent relationship. Call or email Randy or Jerry at 303-447-1144 lawyers@sloatlaw.com.

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In honor of Earth Day 2012, lawyers will plant trees on April 21 in the hundreds of acres burned by the Fourmile Canyon Fire in Boulder County. Last year, lawyers planted over 3,000 trees on burned private property. This year, we plan to plant on burned Boulder County Open Space. We ask individuals to please donate $100 and law firms to donate $500 to help us buy the trees. A $100 donation will purchase approximately 100 trees and water-reserving mulch, a discounted price for this public service project!

Donations are tax deductible (Boulder County Bar Foundation) and need to be made by April 1, 2012 so that the trees can be ordered in time for the planting. Questions?

Contact Joe Dischinger - jdischinger@fwlaw.com (Fairfield & Woods), Maki Iatridis - adi@bhgrlaw.com (Berg Hill Greenleaf & Ruscitti), David Perlick - david@perlicklegalcounsel.com (Perlick Legal Counsel), Ann Rhodes - amr@bhgrlaw.com (Berg Hill Greenleaf & Ruscitti)

If you would like to volunteer to plant some trees on April 21, please contact David Perlick.

To make your tax deductible donation online with a credit card, go to www.boulder-bar.org, click on the calendar and go to April 1.

Checks may be written to Boulder County Bar Foundation and mailed to 1942 Broadway, Suite 205, Boulder, CO 80302.
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