

The magazine of the first law school in the Pacific Northwest | FALL 2012

WILLAMETTE LAWYER

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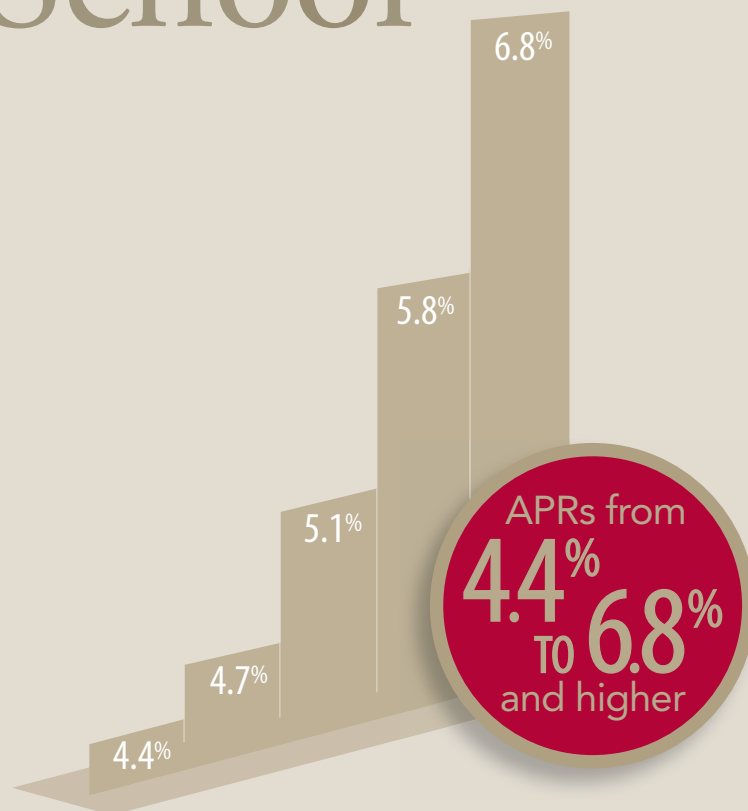
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WILLAMETTE LAWYER

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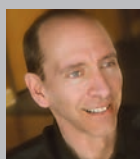
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Drew DeSilver ("Risky Business," p.16) has worked as a business reporter for The Seattle Times since 2000. He has won numerous business writing awards, including a "Best in Business" award from the Society of American Business Editors and Writers for his reporting on the collapse of Washington Mutual. His coverage of the recession's local toll won a Sigma Delta Chi award from the Society of Professional Journalists. During the 2010–11 academic year, DeSilver was a Knight Bagehot Business Fellow in business and economics journalism at Columbia University.



Daniella Lednicer ("Risky Business," illustration, p.16) graduated from Pratt Institute with a BFA in communication design. An artist and illustrator based in New York, she has illustrated several children's books and worked with the late Jeanne Claude and Christo on a companion brochure to The Gates. Her work has appeared in Ubiquitous Magazine, Fort Greene Journal, The Association of Joint Labor Management and various election campaigns throughout the New York tri-state area.



Todd Schwartz ("Death Defier," p. 20) has won more than 20 writing awards from the Council for Advancement and Support of Education (CASE). His work has appeared in Oberlin Magazine, Oregon Quarterly, Portland Magazine and Travel + Leisure Magazine.



Lee van der Voo ("How Loudly Should Money Talk?," p.28) is an independent journalist based in Portland, Ore., focusing on enterprise and investigative journalism. Her work has appeared in The New York Times, High Country News and Portland Monthly magazine, and online for The Atlantic, Slate.com, CNN, USA Today, The Chicago Tribune and The Boston Globe. Van der Voo is a regular contributor to InvestigateWest, the Seattle-based nonprofit news foundation. She won awards from Investigative Reporters and Editors for her coverage of a police scandal and from the Society of Environmental Journalists for revealing corporate pollution in a private lake.

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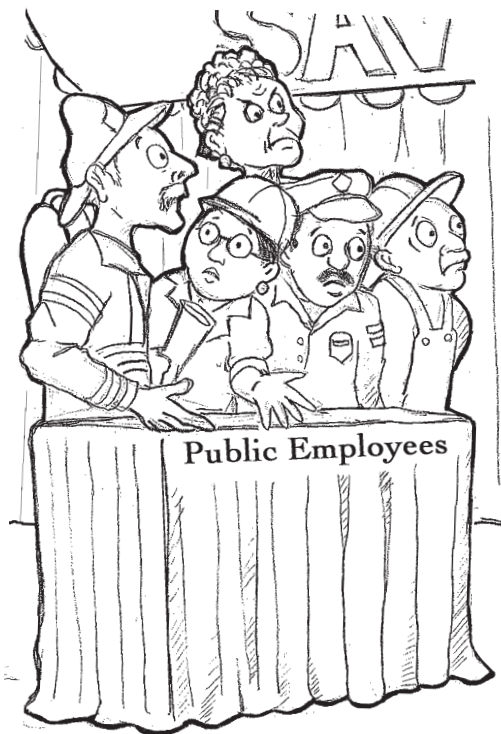
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by Todd Schwartz

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by Drew DeSilver

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How Loudly Should Money Talk?

by Lee van der Voo

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Editor's Note

Dear Readers,

With this issue, Willamette Lawyer takes a bold step in a new direction. In keeping with the law school's commitment to the advancement of knowledge, this edition of the Lawyer adds a new and important component: regular reporting on legal issues that are primarily — but not exclusively — of significance to the Pacific Northwest. While the Lawyer will continue to serve as an alumni magazine with the features our alumni have come to expect, it now will tell the law school's story in broader



The Lawyer ... will tell the law school's story in broader terms, with every issue reflecting the intellect of a university magazine and the spark of a regional magazine of ideas.

terms, with every issue reflecting the intellect of a university magazine and the spark of a regional magazine of ideas.

We are doing this for several reasons. The legal world in the Pacific Northwest, especially in Oregon, needs better coverage. As the only law school in the Pacific Northwest located across the street from the state Capitol and the Department of Justice, the College of Law, through the Lawyer, is in a unique position to report on the trends buffeting the legal world today. By picking up the coverage that other media have dropped, we are living up to the Willamette University motto: "Not unto ourselves alone are we born."

We have a lot to brag about at the law school — and rest assured, we still will. But we also believe we can contribute to the community conversation by serving as a forum for ideas. To that end, we're expanding our circulation to include not only College of Law alumni, but legislators, judges, legal academics and legal writers based in the Pacific Northwest. We've added several new sections, including a Letters to the Editor page, because we want this to be a two-way conversation. Our aim is for the Lawyer to drive the debate on legal topics of concern to all residents, be they lawyers or non-lawyers, graduates of Willamette or graduates of other schools.

We took this step after much research, thought and discussion. Willamette law graduates will find intact their favorite sections, such as Class Action. We'll still report news about faculty and we'll still tell you

about the incoming class and the accomplishments of our graduates. But you'll also get high-quality editorial content, imaginative design and arresting photographs. We know you read other magazines and we want to win the war for your attention.

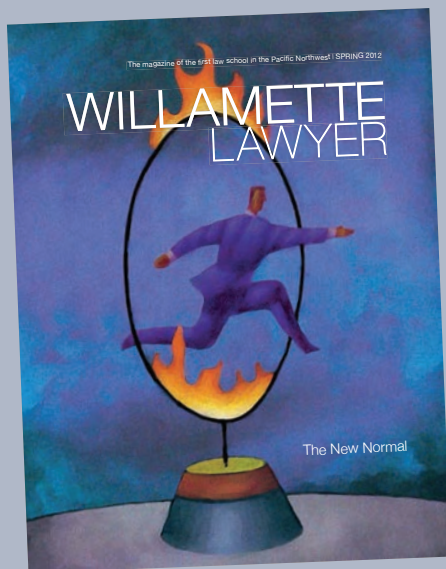
We hope you'll enjoy reading the new Lawyer. As always, please let us know what you think. We look forward to your input as we continue transitioning into a publication that is a must-read, not only for our alumni, but for everyone in the Pacific Northwest.

Sincerely,

Lisa Grace Lednicer, Editor

Peter V. Letsou, Dean

Letters to the Editor



Dear Editor:

The stories in the Spring 2012 issue describing the various new venues of work for WUCL graduates are inspiring tales of ingenuity, persistence and intelligence. They show that our students are resourceful, as well as smart, as they face an uncertain future.

The refreshing emphasis on student initiative invites consideration of the larger question of whether and how the law school has reconsidered its mission and curriculum given many fundamental changes of late in the legal profession. That is, if students are redefining themselves based on new economic and social realities, is the law school, likewise, trying to do the same?

To that end, I think this is a propitious moment to ask the question of what is taught and how one even thinks about legal education. With respect to this task, one can just reaffirm the status quo, a "quo" that has been "statusing" for about 140 years, with minor changes around the edges. Or, one can suggest and implement largely cosmetic changes, such as beefing up offerings in health law, financial law and other growing areas of an otherwise anemic economy. One also can ask the more

fundamental question of what a legal education is meant to do for students.

If one has the courage to address the last category, a series of questions then presents itself regarding the interests that law serves, the way one understands law's fundamental categories and ambitions, and the relationship of some of these issues to the school's responsibility (or not) to assure its graduates have quality job offers at the end of three or four years.

As in most things in life, it is the experience of those "on the ground" that ought to shape the way that those removed from the daily challenges of finding jobs consider what they are doing. Thus, in the final analysis, the praiseworthy efforts of WUCL graduates should encourage those more in the center of legal education to consider whether they have ears to hear what is being said to us by our students.

William R. Long JD'00
WUCL visiting professor, 2003–06

Dear Editor:

Thank you for featuring my historical fiction novel, "Sun-Painted Man," in your Spring 2012 edition. The beautiful silver-embossed frame for the painting was designed in 2005 by the late Thomas A. Blackweasel (Gray Horse Rider), a revered, full-blood Blackfeet Elder. A widely respected Native historian, orthographer and linguist of the Blackfeet language, this good man's guidance with the Blackfeet language and cultural issues proved invaluable. The icons depicted in this traditional Blackfeet frame give witness to the suffering and survival of the Blackfeet people. In designing this frame, Blackweasel has left a lasting tribute to the Blackfeet people and ancestors, embodying the values held dear by the Blackfeet Nation and which are found in the story: hope, faith and love.

Philip F. Schuster II JD'72


We welcome your letters and comments.

Please address all correspondence about the stories in the Lawyer to editor Lisa Grace Lednicer at: llednice@willamette.edu. Or send a letter to Willamette University College of Law, 245 Winter St. SE, Salem, OR. Or call 503-370-6760.

Submit information for Class Action to Cathy McCann Gaskin, associate director of alumni relations. She can be reached at 503-370-6492 or wu-lawyer@willamette.edu. Print or type all submissions. Submission dates are Jan. 15 for the spring issue and July 15 for the fall issue.



Detail of the silver-embossed frame that holds the painting given to Christian Schuster, great-uncle of Phil Schuster.

A portrait of Amanda Marshall, a woman with blonde wavy hair, smiling. She is wearing a black blazer over a red turtleneck and a pearl necklace. Her hands are clasped in front of her. The background is a blurred indoor setting with a wooden pillar on the left.

The Willamette Lawyer Interview

Amanda Marshall, JD'95

OREGON'S 27TH U.S. ATTORNEY

Legal insiders in Oregon knew little about Amanda Marshall JD'95 when President Barack Obama nominated her to be Oregon's 27th U.S. Attorney. A former deputy district attorney in Coos County and a supervisor in the child advocacy section of the Oregon Department of Justice, Marshall had no experience trying cases in the federal system. But her combination of litigation and administrative savvy landed her the job, which she started in October 2011.

Marshall recently met with Willamette Lawyer editor Lisa Grace Lednicer to discuss her peripatetic upbringing (some of her classmates were offspring of the Grateful Dead), her stand on marijuana prosecutions and whether she's a better lawyer than her husband, a deputy district attorney in Yamhill County. For more of our conversation with Marshall, please go to willamette.edu/wucl/internal/alumni/lawyer.

Q How was the culture you grew up in — Marin County, Calif. in the 1970s — different from the rest of the country?

A It was very intellectual, very stimulating and certainly affluent, lots of opportunities educationally in good public schools, lots of outdoor recreation, mountain biking, the beach. But you know, I just don't recall parents being very much a factor in our lives, to tell you the truth. If you take that freedom and lack of boundaries and add to it a sense of privilege and entitlement, that is a really dangerous combination. And I never had the sense of privilege and entitlement. I was never the kid that thought that nothing bad can ever happen to me and I'm going to get everything I want. That probably helped to ground me so that I didn't end up in the dangerous situations that a lot of those other kids did.

Q What is the greatest gift that your upbringing gave you?

A Independence, being self directed, knowing I could take care of myself. Accountability. By the time I got to college and I was looking around at kids where it was their first time with freedom and their first time out on their own, there were just a lot of really poor decisions being made. And I felt like I was done with that. I had a job the

whole time I was in college, I paid my bills, I had a checking account, I had a credit card, I didn't go crazy with it, I had a car and paid my own insurance and I'd been doing that since I was 17. I feel like whatever childishness that had to occur as part of natural development as a human being had occurred much earlier on for me because I was given all that freedom. Knock on wood that it all worked out for me.

Q The U.S. attorney general has said that the Justice Department won't make it a priority to prosecute medicinal marijuana users or their caregivers who are complying with state laws. But U.S. attorneys in the West — including your predecessor — have drawn controversy by warning states against allowing large-scale medical marijuana distribution. How do you plan to navigate this sensitive issue?

A If you are a sick person who has your limit of marijuana and you have a card and you're

“I was never the kid that thought that nothing bad can ever happen to me and I'm going to get everything I want. That probably helped to ground me ...”

using it as medicine, we don't care. I think many of the people who voted for the medical marijuana law voted for something that they saw as compassionate care for sick people, and they may not agree with legalization. The Legislature specifically intended not to allow dispensaries, and yet we have 170 in Oregon. But law enforcement has had no additional money or resources. We're interested in tax evaders, money laundering drug trafficking

that up have been shown to be false or misleading. Does that mean sex trafficking isn't a big deal in Oregon?

A No. We know that hundreds of girls are trafficked in Oregon. Unfortunately, there hasn't been statistical analysis or a study. What I have done is get a professor at Portland State University to agree to do a study. So we'll be able to answer some of those questions. Can I tell you with specificity the exact number or even within

Q Your job involves more administering than litigating. Do you miss trial work?

A I've been missing it for a long time. I think my last trial was in 2008.

Q What do you miss most about it?

A I love being in trial because I feel like I'm 100 percent focused. When I'm in trial, my house is spotless, all of my clothes are back from the cleaner's and put away neatly, I have my clothes picked out for the whole



organizations, and people with large quantities of marijuana for sale and profit commercially — which isn't medical marijuana.

Q What's your take on why Oregonians feel so passionately about this issue?

A I don't see the evidence that Oregonians feel so passionately about this. I don't have a lot of other people calling me and talking to me about it besides the press. I don't have citizens writing me letters, I don't have community groups coming to me and asking about it.

Q Curbing child sex trafficking is one of your priorities, and media outlets around the country have said that Portland is a national hub for juvenile sex trafficking. Yet some of the statistics used to back

reason a numerical estimate? No, but we hope to have that information by late fall.

Q Is there a profile of a typical sex trafficker that your office prosecutes?

A Yes. They're pimps. They're gang members, gang associates or gang affiliated. Not all, but most. When I came in we had one prosecutor doing all trafficking cases: labor, sex, kids, adults, foreign born, domestic born. We separated it out because I think they're very different cases in terms of the investigation, the prosecution, the victims. So we moved the child sex trafficking cases into the gang unit, which at the time was a unit of one. We went from one to three in the gang unit, so now those cases are much more directed in terms of the prosecution.

week, I've got dinners made or planned for the whole week for my family. I'm just completely focused on what's going on in that courtroom. And I enjoy the adrenaline of it. I like the strategy of it, I like the rules of evidence, I like the structure of it, and I love the law. I like trials against very good attorneys that raise your level of practice. And I like trying cases in courtrooms with judges who keep cases moving and control the courtroom and rule quickly and decisively on objections.

Q What don't you miss about litigating?

A Gamesmanship. When I feel like people are manipulating or playing games to get some type of advantage or hiding the ball. As a prosecutor who has an obligation to share all information — especially exculpatory information with the defense — I

don't have a lot of experience with the sorts of discovery games that I think can happen, primarily in civil cases.

Q Who's the better lawyer, you or your husband (Yamhill County Assistant District Attorney Ladd Wiles)?

A I think that we're very similar in the way that we view cases, in the way that we view justice. And he's got an amazingly strong work ethic. He has a phenomenal reputation

judgment and his diligence that I would then question my position. One of us would have to be very wrong in our judgment to be bringing those cases against each other.

That said, if he was wrong and I was right, I would kick his butt.

Q You went to Grateful Dead concerts as a kid. What would people who hung around with you then say if they could see you in this position today?



"I like trials against very good attorneys that raise your level of practice."

for fairness and for being reasonable, which is also really important to me. We're both good lawyers but we're different. I'm the type of lawyer who will walk up to the jury, put my hand on the bar, and look them in the eye. I will be very open and vulnerable with the jury because I feel like that's my style and I need to be myself. And Ladd's very much himself with the jury. He's much more formal and reserved but with flashes of passion. Also, he's adorable. He looks like you want a prosecutor to look.

Q If you were on opposite sides in a trial, who would win?

A If I was against Ladd in a trial, I would have a really hard time because I know that Ladd would never take a case to trial where he wasn't completely convinced that somebody was guilty. And I so believe in his

A I think people that knew me well weren't necessarily surprised. The surprise was more in a positive way, that I'm not a person who has ever been politically connected. I don't hobnob with the Who's Who in Oregon or D.C., or give tremendous amounts of money to anything. And so I think the surprise was, "Wow, who knew that somebody we know that just works hard every day and establishes themselves and is a public servant could actually succeed?" That it's not really all about who you know and whose hand you shook.

Oregon Law Commission Considers Judicial Selection

Oregonians have had the power since statehood to elect judges at every level of the judiciary. The acrimony that is a staple of today's political campaigns has been largely absent from Oregon's judicial contests.

Nevertheless, soon-to-be retired Oregon Supreme Court Justice Paul J. De Muniz JD'75 believes it's time to consider exchanging the current system for a new one of judicial appointment. He's heading up a work group studying different ways to choose judges for Oregon's appellate and supreme courts.

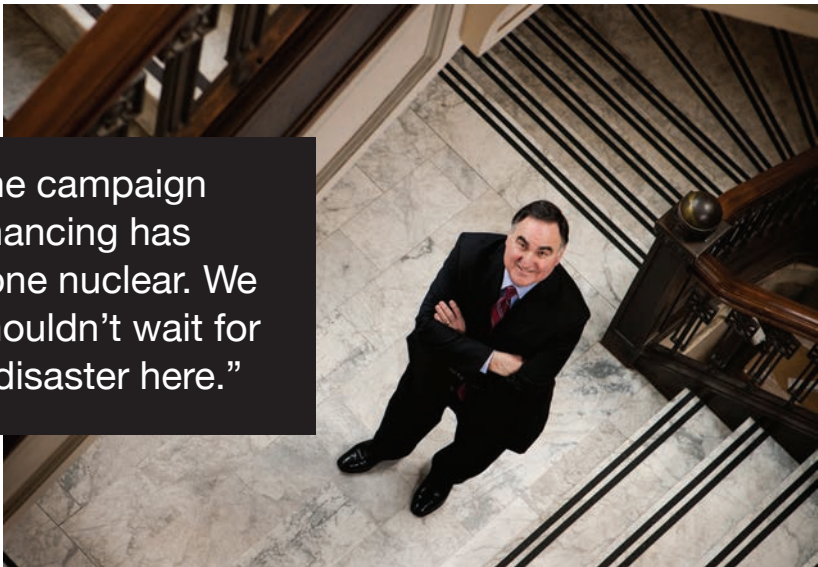
judges. The governor would select a judge from the list, and voters would decide later whether to affirm or deny that choice in a retention election. In 1977 the Legislature referred a version of the Missouri plan to voters, but it was defeated. Currently the Oregon State Bar's Board of Governors recommends candidates to the governor for appellate openings that need to be filled by appointment, but the governor is not bound by the Bar's recommendations.

Wallace P. Carson Jr. JD'62, a retired Oregon Supreme Court Chief Justice and a member of the OLC work group, voted against the Missouri Plan when he served in the Legislature but said his thoughts about judicial selection are evolving. "I'm of the opinion let's not work too quickly to find a cure for a problem we don't have yet," he said. "But maybe I'm out of date and we should move to forestall any problems."

Several polls have shown that voters are concerned about the role of money in judicial campaigns. A 2007 Zogby International poll of 200 business leaders showed 71 percent supported a selection process for judges. Four in five business leaders backed restrictions on either the amount of contributions or spending in judicial races.

Thirty-four states and the District of Columbia use merit selection to choose at least some judges, according to a study on judicial selection by the Institute for the Advancement of the American Legal System. That study concluded that no one system ensures judicial accountability, impartiality, quality, diversity and legitimacy. Evidence suggests that judges selected by merit, rather than election, are less responsive to political pressure in making decisions than elected judges. But supporters of elections, the study said, could argue that elections enhance judicial accountability to voters.

The OLC work group is expected to submit its recommendations to lawmakers during the 2013 legislative session, which begins in January.



"The campaign financing has gone nuclear. We shouldn't wait for a disaster here."

Paul DeMuniz

De Muniz, who has served on the Supreme Court since 2001, said he was "unprepared for the kind of politics that saturated my race" when he ran for the open seat he eventually won. He has watched special interest groups in states such as Michigan pour millions of dollars into Supreme Court races and worries the pattern could be repeated in Oregon.

"The campaign financing has gone nuclear," he said. "We shouldn't wait for a disaster here."

One idea is for Oregon to adopt an appointment process called the Missouri Plan, which would set up a special commission to create a list of potential

Sentencing Reform, Budget Top Legal World's Legislative Agenda

Almost two decades after Oregon voters passed Measure 11, the state's mandatory minimum sentencing law, a gubernatorial task force is examining ways to control escalating corrections costs. The committee's work, aided by the Pew Center for the States, is expected to result in a set of sentencing reform recommendations for lawmakers during the 2013 Legislature.

The Oregon Department of Corrections budget is \$1.3 billion for 2011–13, just over 9 percent of the state's operations budget. According to the Legislative Fiscal Office, the corrections budget has doubled in size since the 1980s and now is one of the budget's fastest-growing areas.

"We've demonstrated that we don't need to grow prisons to make Oregon safer," said Craig Prins, executive director of the **Oregon Criminal Justice Commission**. He noted that violent crime and property crime rates have fallen in the last several years, but Oregonians believe crime has actually increased. "A lot of times we get so focused on punishing the past, but not the future," Prins said. "How do we change behavior and make sure it doesn't happen again?"

Eyewitness testimony tops the agenda for the **Oregon Criminal Defense Lawyers Association**. The organization is proposing a bill that would require all law enforcement agencies in Oregon to establish a written protocol governing eyewitness identification procedures. At a minimum, the protocol would have to follow the guidelines established by the International Association of Chiefs of Police. Among the guidelines: not allowing a detective investigating a case to show photos of the accused to potential eyewitnesses; and showing photos of the accused to potential eyewitnesses one at a time rather than in a group.

"I don't expect we'll get any pushback from anybody," said Gail Meyer, legislative representative for the OCDLA. "This is simply a good reform that should pass."

The **Oregon District Attorneys Association** and the **Oregon State Bar** both are focused on restoring cuts to corrections and the courts. The ODAA is particularly concerned about a lack of adequate funding for the state crime lab, which can take weeks to return toxicology reports crucial to making a case in court, said Lincoln County District Attorney Robert Bovett, the ODAA's legislative co-chair. The ODAA also wants lawmakers to clean up the state's expunction and sex offender registration statutes.

The **Oregon State Bar** is proposing just under 20 bills to streamline and clarify the way legal work is done in Oregon, including an amendment to existing law that would allow police officers to seize an animal without a warrant if the animal is believed to be in danger.

Among the OSB's more noteworthy bills are one that would establish what to do with someone's "digital assets" — a Facebook page, Twitter account, email address — upon that person's death; and a bill that would allow judges increased discretion to sentence veterans suffering from Post Traumatic Stress Disorder or Traumatic Brain Injury to probation and treatment instead of incarceration.

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"Willamette's reputation is such that when they send a third-year student to intern with me, I can rely on the work they produce."

Oregon House Rep.
Mike McLane,
R-Powell Butte

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CLOSED

Justice in Secret? That Isn't Justice

By The Honorable Rich Melnick

"We adhere to the constitutional principle that it is the right of the people to access open courts where they may freely observe the administration of civil and criminal justice. Openness of courts is essential to courts' ability to maintain public confidence in the fairness and honesty of the judicial branch of government as being the ultimate protector of liberty, property, and constitutional integrity."

— *Allied Daily Newspapers of Washington v Ikenberry* (1993)

JUSTICE ADMINISTERED IN SECRET erodes the public's trust in the third branch of government. Two amendments of the Washington State Constitution state that "Justice in all cases shall be administered openly" and an "[A]ccused shall have the right to...a public trial." The intertwining of these seemingly clear constitutional mandates — the right of the public to view court proceedings and the right of the accused to have a public trial — has resulted in great confusion, increased litigation and, in an alarming recent trend, reversed convictions.

As early as 1927, Washington State courts warned that the wholesale exclusion of the general public from a murder trial could result in reversible error. The current state of the law is that before closing all or part of a hearing, judges must apply a five-part test, which includes weighing the competing interests of the defendant against the rights of the public. Judges must articulate their reasons for doing so on the record.

In 1980, the Washington Supreme Court upheld a trial court judge's pretrial order closing a hearing and temporarily sealing the court file. The trial court judge articulated the reasons for closure on the record, saying the media wouldn't respect bench-bar-press guidelines because at least one newspaper had previously violated those guidelines. The judge's decision passed constitutional muster because media outlets and the public were able to access the information from the hearing in a timely manner.

In 1982, The Seattle Times sued a Superior Court judge who closed a pretrial hearing involving a criminal defendant's motion to dismiss her murder charge. The judge then sealed the record of the proceeding and continually refused to open the records to the public after jury selection and even after the trial ended. Rather than state a reason for the closure, the judge said the constitutional right to an open and public trial is not absolute.

The Washington State Supreme Court subsequently developed a five-part test requiring that before closing a court, judges must, on the record, balance the right of the public to openness with the right

public's right to an open trial. In one recent, highly publicized case where a gynecologist had been charged with sexually assaulting his patients during physical examinations, the Washington Supreme Court upheld the defendant's conviction after the trial judge allowed the lawyers to question jurors in chambers. The court's rationale was that the defendant had agreed to the closure, actively participated in it and benefited from it. The justices held that the closure didn't make the trial fundamentally unfair — even though nobody from the public waived the right to have justice administered openly. Future litigation on this topic is likely to follow.

In another twist, the appellate courts have routinely permitted appellants to argue violations of the public's right to open justice even when the appellant failed to object to the closure in the trial court. The result: reversed convictions.

Judges have the right to maintain order in their courtrooms and to prevent interference with the orderly procedure of a trial. But what constitutes a closure is defined on a case by case basis. Excluding friends, family members, reporters and spectators from the

... a number of serious criminal cases — including five murder cases and two sexual exploitation/assault cases — have been reversed because trial judges conducted some part of jury selection either in chambers or via some other method the public couldn't access.



of a litigant to a speedy trial. In a 1995 case, *State v. Bone-Club*, the Supreme Court said the test applied to criminal and civil cases. It also applies to records.

When judges have failed to employ the Bone-Club test, appellate courts have reversed the trial courts for noncompliance. The result: a number of serious criminal cases — including five murder cases and two sexual exploitation/assault cases — have been reversed because trial judges conducted some part of jury selection either in chambers or via some other method the public couldn't access. Retrials are expensive and time-consuming. They're also painful for victims who thought they had closure and instead were forced to revisit their worst nightmares.

Unfortunately, the appellate courts have blurred the lines in deciding which constitutional clause or right has been violated.

Appellate judges have all agreed, however, that a defendant's right to a public trial takes precedence over the public's right to have "justice in all cases administered openly." In some fairly unique circumstances, a criminal defendant has been permitted to waive the

courtroom during jury selection is a closure, as is conducting jury selection in chambers or by email. Courts throughout Washington differ on whether the sealing of juror questionnaires is a closure. Purely ministerial or administrative matters may be handled outside the presence of the public but the definitions of these terms are still evolving. From a "best practices" standpoint, judges should avoid sidebars — which necessarily exclude the public.

Issues in this legal arena are not unique to Washington State. In June of this year, the Oregon Supreme Court heard arguments in a case in which the defendant said his conviction should be reversed because the state's rape shield law allows records to be "reviewed in camera" and thus violates Oregon's constitution. Victims' advocates are deeply concerned that if the defendant prevails, it would undercut the work that has been done to help protect sexual assault victims.

The only way to protect the rights of plaintiffs, defendants, the public and the media is for judges to keep their doors open at all times — or give a compelling reason, in public, why that's not a good idea.

— *Rich Melnick is a Clark County, Wash. Superior Court Judge*

In light of the financial difficulties facing law firms, **is it time to allow these firms to be owned by non-lawyers?**



Oregon, along with most other American states, prohibits non-lawyers from owning or investing in law firms.

The District of Columbia Bar permits ownership by non-lawyers in limited circumstances. (England and Australia also now permit investment in their private law firms.) The concept has gained more attention in certain circles this year because the legal industry happens to be one of the few profitable industries during the Great Recession. It can certainly be tempting to try to attract investors by floating an IPO or at the very least make a non-lawyer CEO a partner in the firm.

I foresee three disturbing alternatives. First, an investor might insert himself or herself into the case files to ensure that the law firm is only handling cases within an efficient profit margin. Second, the business relationship might involve a contract with the law firm that would override recovery of fees to a client. Finally, such an investment relationship might present a personal conflict of interest to the lawyers in question. A lawyer cannot place accountability to the investor above his or her duty to the client.

Earlier this year, the American Bar Association floated the idea of a model rule permitting a non-lawyer working at a law firm to own up to 25 percent of the firm. It weighed the short-term benefits of infusions of cash into law firms against the concerns listed above. It did not proceed, and the proposal gained little attention outside the small cadre of ethics lawyers. (The ethics bar, by the way, took opposite sides of the debate; some gasped at the idea of outside investors, while others firmly felt that transparency and good intentions were all necessary to provide a wall against potential violations of the ethics rules.)

— Judith A. Parker JD'06

No. Financial exigencies will pass. To paraphrase John Adams, independence, once lost, is difficult to regain.

Broad prohibitions against involving non-lawyer third parties in the practice of law have existed since our earliest history. These prohibitions against non-lawyer ownership and involvement rest on the policy of protecting the independent professional judgment of lawyers. Independent professional judgment means that lawyers can be relied upon to provide legal advice to our clients relatively free from conflicting and competing influences.

When decisions about strategies and tactics to be pursued in representing a client compete with profits — or other concerns regarding brand and image — non-lawyers may not place the client's interests above their own. Additionally, a law firm subject to these pressures when considering the compensation, advancement and promotion of its members might be tempted or widely perceived to elevate these other concerns above devotion to the client. That appearance of compromised judgment taints not only the individual practitioners, but also the profession as a whole, and even the system of justice itself.

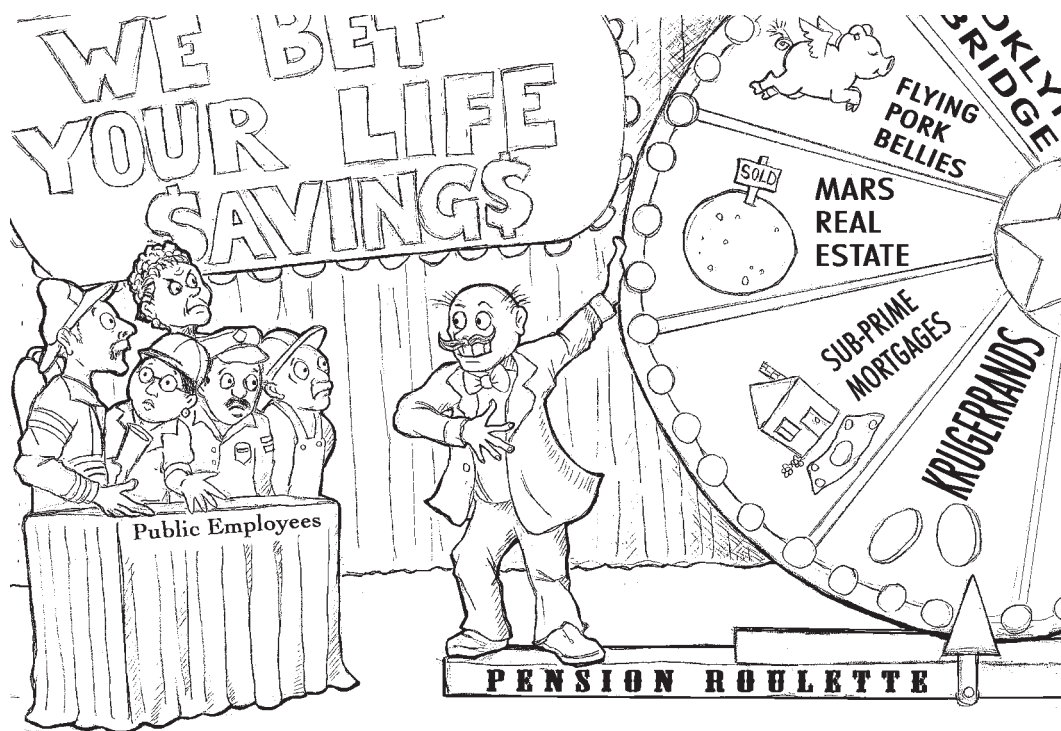
Professionalism requires all lawyers to subordinate our interests in personal gain to the interests of our clients. Business may require the opposite in pursuit of short-term gain. While law is a business, it is a business unlike others. Maintaining professionalism while running a business may sometimes be difficult, and occasionally unprofitable, but this rule helps to ensure that the practice of law remains comparatively free of competing influences.

— **Robin Morris Collin, Norma J. Paulus Professor of Law,**
Willamette University College of Law



No — at least not because of financial pressures. As lawyers, we have a unique place within society. As Shakespeare noted, in many ways we are the gatekeepers of stability and access to justice. As such, we answer to high ethical standards, which require us to place the interests of clients ahead of profit. If, for the sake of relieving financial pressure, law firms are sold to outside investors, profit (which, let's be real, is a motivator in every law firm any investor would be interested in owning) would be moved in front of our ethical obligations. Thus, decisions related to protecting our client's interests could fall prey to pure profit motives with decision makers who answer to no code of ethics. Allowing investment to relieve financial pressures does not warrant such risks. But should outside investors be able to buy and operate law firms like HMOs to make legal services more available to a broader spectrum of clients? That would seem to pose another question!

— **Mark C. Hoyt JD'92, managing partner at**
Sherman Sherman Johnnie & Hoyt LLP



RISKY BUSINESS

BY DREW DESILVER

Public pension plans around the country are under fire for being overly generous and underfunded. But in Oregon, the real issue may be how they're handling their investments.

Public-sector pensions are having a rough time of it these days. Their investment returns were gutted by the 2008–09 financial collapse and have yet to fully recover. Government officials fear their budget-busting potential. And taxpayers wonder why government workers should get guaranteed lifetime retirement benefits, especially when those benefits are based on deals cut long ago in rosier economic times.

Nearly all states have either increased the amounts employees must contribute to their plans or are considering doing so. States also are raising age and length-of-service requirements, limiting or repealing automatic cost-of-living increases for retirees, and cracking down on such notorious practices as “double dipping” (collecting pension benefits from one government job while working at another) and “salary spiking” (using overtime, untaken vacation and other tricks to boost one’s salary in the last few years before retirement, which most plans use to calculate benefits).

But until recently, relatively little attention has been paid to the asset side of the pension puzzle: the stocks, bonds, office buildings and investments that are supposed to pay for the promised benefits. While some academics and think tanks question whether plans are assuming overly optimistic investment returns, few have scrutinized the investment choices themselves.

Enter Jason Seibert JD’09.

Earlier this year, Seibert, on behalf of two state workers, sued the Oregon Investment Council (OIC), the directors of Oregon’s Public Employees Retirement System (PERS), State Treasurer Ted Wheeler, the attorney general’s office and a host of other people responsible for managing or overseeing the state’s \$60 billion pension fund. Seibert’s main allegation: The OIC breached its fiduciary duties in 2008 and 2010 when it agreed to invest \$1 billion with Lone Star Funds, one of its favored money managers, to buy distressed real-estate debt. Lone Star also is named in the suit.

The Oregon attorney general has rejected a call to appoint an independent special counsel to investigate the Lone Star investments, choosing instead to represent all the defendants. As of press time, the defendants hadn’t formally responded to the suit.

The lawsuit cites several reasons in support of its allegation that the Lone Star deal was imprudent. Perhaps the most sensational accusation involves a securities manipulation case against Lone Star and its officers in South Korea; the suit claims that Lone Star failed to fully inform the OIC about the case and that Oregon decision-makers dismissed it as irrelevant when they learned the full story.

At its core, though, Seibert’s suit challenges the way the OIC and state treasurer manage the money state workers depend on to support them in retirement. The Lone Star funds are one slice of the pension plan’s \$18.5 billion bet on “alternative” investments, which includes private equity, hedge funds and real estate. Close to a third of

PERS’ pension assets are invested in alternatives; private equity alone accounts for nearly 21 percent. A recent survey of large public pensions by research firm Preqin ranked Oregon’s fund third-highest in its share of its investments in private equity, trailing only Washington state and Pennsylvania.

Across the nation, public pensions are shifting money out of stocks — whose returns in recent years have been paltry at best — and into alternatives that often are far more risky. A survey last year by the trade publication Pensions & Investments found 92 percent of large public and private pension plans were invested in private equity. Sixty percent were in hedge funds.

Seibert and his former law school professor, Meyer Eisenberg, argue that private equity and similar investments are highly speculative, difficult or virtually impossible to value accurately and often require investors to lock up their money for years. All that, they say, means pensions must tread carefully when making alternative investments — much more carefully than PERS has.

“Maybe 5 percent or even 10 percent might still be prudent, but not 30 or 40 percent,” says Eisenberg, a former deputy general counsel for the Securities and Exchange Commission. “Can pension



Jason Seibert JD’09, left, and Professor Meyer Eisenberg

managers take some chances? Sure, but not like that.”

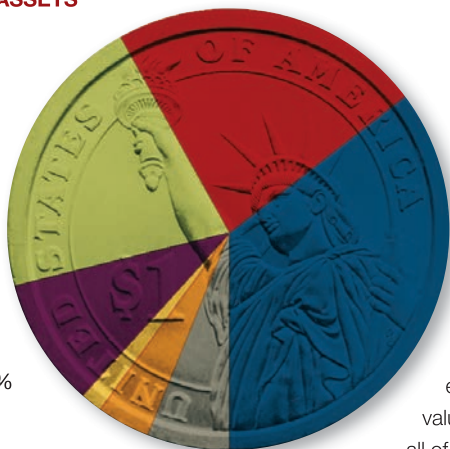
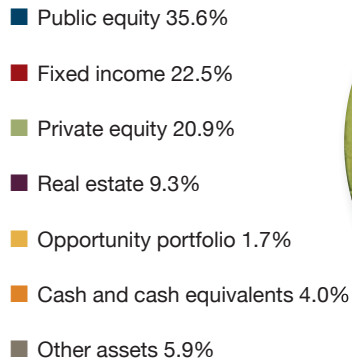
All defined benefit plans — those that pay a set monthly benefit based on some combination of service length and final salary — face the same challenge: how to make today’s assets pay benefits for decades to come. The more plans can earn from stocks, bonds, real estate speculation, foreign currency and other investments, the less they’ll have to collect from cash-strapped local governments and their employees.

In order to determine whether they have enough money to pay out their promised benefits, pension funds must assume a certain long-term rate of return. Oregon’s assumed rate is 8 percent, which is about what most plans have been able to deliver by investing in a mix of common stocks and bonds.

However, the overall stock market has been mostly flat ever since the dot-com crash of 2000 and substantially more volatile since the 2008

PERS DEFINED BENEFIT PLAN ASSETS

As of June 30, 2011



Source: Oregon PERS Comprehensive Annual Financial Report for fiscal year ended June 30, 2011

economic meltdown. Bond returns are down, too. Consequently, several pension funds have lowered their assumed rates of return, and Treasurer Wheeler recently suggested that the PERS board do the same. But that creates a problem: A lower assumed return rate means workers and local governments must contribute more money.

One response is to invest beyond the stock and bond markets, says William “Flick” Forna, a veteran retirement consultant and actuary in Denver who specializes in public pension funds. Alternative investments such as private

equity and hedge funds may be riskier, but they offer higher returns.

“It’s harder to get good returns without looking at investments the average person can’t access,” Forna says. Pensions, he adds, “have got the experience and they’ve got the [long] time horizons, so it makes sense to take the risk.”

But assigning a value to private equity investments, which typically last many years and have no real “market price” until they’re finally sold, is tricky. The “fair value” numbers on PERS’ investment books come from the fund managers, who see what comparable companies

are selling for, project future profits and discount them back to today, or employ other valuation methods — all of which depend heavily on the assumptions and choices made by the managers or their advisors.

Investors in private equity, hedge funds and other alternative investments typically don’t know going in what the fund manager will do with their money. Nor do investors usually have access to all the data needed to check valuations of the assets. That means they have to rely mainly on the fund managers’ reputation and track record in deciding whether to commit cash.

In the case of PERS, Seibert says, “people got into the habit of approving these funds” without looking too closely at them. Their attitude, he added, seemed to be, “Who cares *how* we get the returns so long as we get the returns?”

In the Lone Star case, Seibert and Eisenberg say, that reliance went beyond prudence. Lone Star should have been suspect because it was enmeshed in the South Korean securities case at the same time it was pitching the OIC on its newest funds. In addition, they say, those funds were effectively “blind pools,” with little known about them other than that they would invest in distressed debt.

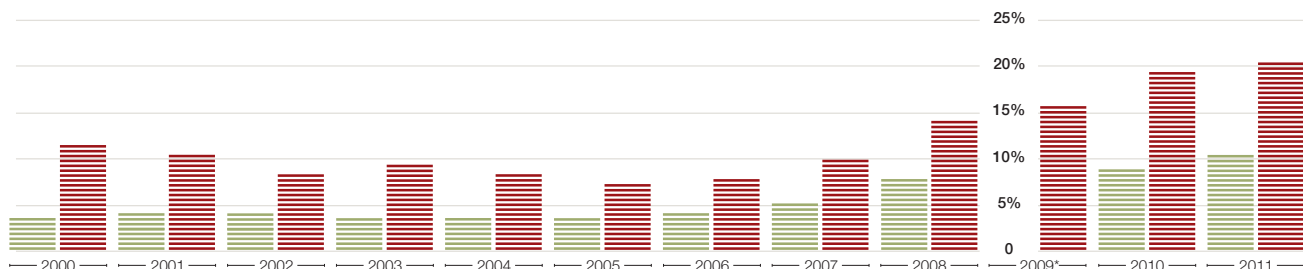
“It seems to me you want to know what you’re investing in, with whom you’re investing, what are the risks involved, who’s in charge of risk management,” Eisenberg says. “Instead, they’re giving [Lone Star] a blank check.”

And, he added, given that the Lone Star funds purchased billions of dollars worth of “toxic” collateralized debt obligations — financial instruments comprised of bits and pieces of other securities — it’s almost impossible to tell if they’re really worth what Lone Star says they are.

For decades, state laws strictly limited the kinds of investments that public pension managers could make. Oregon was one of the first states to loosen its investment rules, in the mid-1960s, when lawmakers

PERS VERSUS PEERS

Oregon PERS private-equity investments, as a share of total defined-benefit plan assets, compared to the average of the 200 largest defined-benefit public pension funds.



Source: *Pensions & Investments* (average data); Oregon PERS Comprehensive Annual Financial Reports for fiscal years 2001–11

*No average data available for 2009

allowed PERS to buy stocks. Today, Oregon's only statutory restriction on public pension investments is that no more than half of the pension fund can be invested in stocks.

In the 1980s, PERS began investing in private equity and hedge funds. Hedge funds employ a broad range of investment strategies, including trading in options, commodity futures, foreign-currency swaps, and other exotic securities. Private equity firms focus on one of two strategies: Venture capitalists invest in young, cutting-edge companies, while buyout firms seek to take control of publicly traded but underperforming companies, retool them and then resell them at a profit (often after extracting cash profits in the form of dividends).

A \$194.1 million investment with leveraged buyout firm Kohlberg Kravis Roberts in 1981 made PERS one of the first public pension funds in the nation to experiment with private equity. As the 1990s began, PERS began spreading its private equity dollars more widely and increased the total amount invested.

As of the end of the 2011 fiscal year, PERS had \$12.8 billion, or 20.9 percent, of its assets in private equity. Another \$5.7 billion, or 9.3 percent, was invested in real estate ventures. (By contrast, the average asset mix among the 200 largest public pension funds last year included just 10.5 percent in private equity and 7.2 percent in real estate).

According to PERS data, since its initial 1981 investment the fund has gotten back more than one-and-a-half times the \$26.8 billion it has plowed into private equity. As of fiscal year 2011, private equity had a 5-year average annual return of 9.4 percent, the highest in the fund.

Those returns have helped PERS recover somewhat from the financial panic of 2008–09, though the fund is still below its pre-crash level. PERS says the system's benefit obligations were 86.7 percent funded as of the end of 2010; a study by the Pew Center on the States found that only seven state plans were better funded.

A recent study found that buyout funds have outperformed the Standard & Poor's 500 stock index for most of the past three decades. Each dollar invested in the average private equity fund, the study estimated, returned at least 20 percent more than a dollar invested in the S&P.

But those return calculations assume that the funds' investments are fairly and accurately valued. Should the assets end up being worth less than their value on the plans' books, the plans will be short of money they were counting on to pay benefits — meaning either more benefit cuts or more cash pumped in by local governments.

Private equity has another feature that perhaps ought to give pension funds pause: While its returns still beat the stock market, they've been trending lower over time. Also, several researchers have identified a seeming paradox: The more money that investors pour into private equity funds, the lower their returns are. One theory is that when funds were few and small, they could more easily find promising startups and undervalued companies; now the low-hanging fruit is gone, and funds are competing intensely against one another to find the best deals.

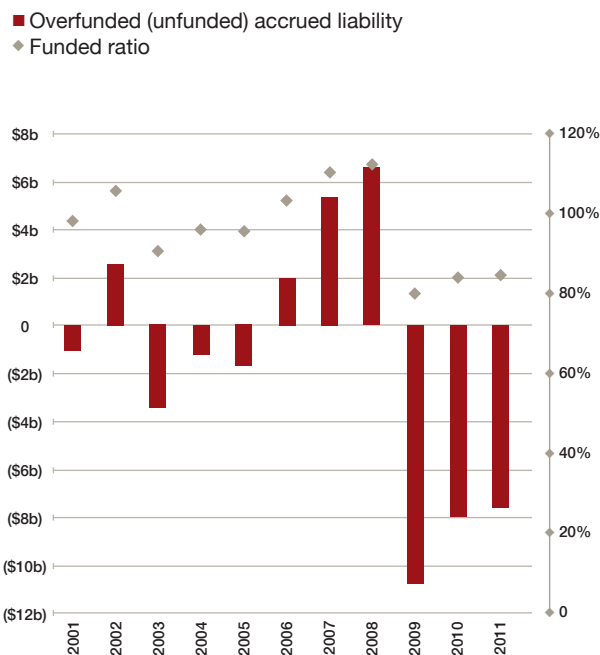
Oregon's PERS isn't likely to turn its back on alternative financing anytime soon. As of

June this year it had committed \$250.4 million to private equity. And in December 2011, PERS invested \$100 million in a "catastrophe fund" that invests in insurers' risk from hurricanes, earthquakes and other natural disasters.

Catastrophe investments can produce ample returns so long as the skies remain clear and the ground solid, but the potential downside is sobering: A \$300 million catastrophe bond was among the casualties of the March 2011 Japanese earthquake. ■

FUNDED STATUS OF OREGON PERS

As of Dec. 31, 2011



Source: Oregon PERS Comprehensive Annual Financial Reports for fiscal years 2001–11



DEATH DEFIER

By Todd Schwartz



As one of Oregon's leading capital defense counsels, Steven Krasik JD'79 believes passionately that the means don't justify **THE END.**



THE CONDEMNED

is strapped to a gurney in a small room in the Oregon State Penitentiary. An IV is placed into each arm. Only one line will carry the drugs that will be used to execute the prisoner; the other is merely a back-up. The needles and the injection site have been carefully sterilized, which may seem odd given the situation. One reason is the possibility of a last-second stay of execution — it wouldn't do for the governor to snatch the condemned from the jaws of death, only to have him or her die from an infection.

A saline drip begins, to prime the line. A heart monitor is attached. After the curtains separating the room from the viewing chamber are opened, the condemned makes or declines a final statement. Then, a three-phase sequential injection is triggered.

A fast-acting barbiturate renders the person unconscious. Next, a powerful muscle relaxant paralyzes the diaphragm. Breathing stops. Finally, a dose of potassium chloride stops the heart. The combination and sequence are key: without the barbiturate, the muscle relaxant would cause paralysis but the person would still be awake. Potassium chloride alone, while fatal, can cause severe pain.

Death is pronounced after cardiac activity ceases. The entire process usually takes between seven and 20 minutes — although it can take as long as two hours, as it did in the case of a 265 lb. man executed in Ohio in 2007. His veins were so difficult to find that it took 10 attempts to complete the execution. He was even given a bathroom break.

This is how the death penalty would be carried out in Oregon — if the death penalty were ever again to be carried out. It has been 15 years since the last person was strapped to that gurney: Harry Charles Moore, killer of two, was executed in 1997. The year before that, the state executed Douglas Franklin Wright, killer of three. Both, in a sense, volunteered to die by giving up their rights early in the appellate process.

Those are the sole examples of capital punishment in Oregon since the death penalty was reinstated in 1978. Gov. John Kitzhaber, who was also the governor at the time of those executions, now calls Oregon's death penalty “broken,” “inequitable” and “compromised.” He refuses to sign any more execution orders during his term, which ends in 2015.

His decision angered a range of people, including a vocal and apparently eager-to-die resident of Oregon's death row and many of the state's prosecuting attorneys. But the governor's words — if not the realities of his action — resonated clearly with Steven Krasik JD'79, who has represented defendants in capital murder cases for more than a quarter-century. He would add several words of his own: “disproportionately applied,” “random,” “morally troubling” and “intellectually disconnected.”

"If more people understood the stunning lack of proportionality in the application of the death penalty — and the lack of the death penalty being applied, as intended, only to the worst of the worst — they would see that the net is too broad," Krasik says. "This is supposed to be a limiting process, but in fact it is an inclusionary process. It gives the government a much larger hammer than they should have."

Krasik has served as lead or co-counsel on nearly 50 homicide cases, half of which were charged as capital murder. He has spent countless hours in the company of Oregon's most evil and most dangerous citizens, and he has never failed to discern some evidence of humanity in each of them.

"I don't actively look for that humanity," Krasik says, "but then something will happen, they will show a sense of humor, or maybe just a wry appreciation for their situation. Or it's just clear how broken they are. Rarely, some belated empathy on their part will appear. They just seem to slightly normalize, become human."

Krasik has never wavered in his passion for his work, which the onetime Navy pilot sees as nothing less than a patriotic calling.

"I'm the quality assurance branch of the government — one of the few jobs actually written into the U.S. Constitution," Krasik says. "It's remarkable, and it makes me swell with pride that such a thing is part of the structure of our system — to ensure that someone is watching on behalf of the accused."

That mindset is where Krasik always returns, whether in the presence of

cold-blooded killers, in front of a jury awash in hatred for his client, or teaching law students at Willamette. For the last decade his practice has, with the exception of defending a man who crashed his truck into the Marion County Courthouse, been exclusively limited to capital defense.

ACCUSTOMED TO STRESS

Functioning in a high-stress environment is nothing new to Krasik. Raised in Los Angeles' San Fernando Valley, he earned his civil pilot's license by age 18, flying in and out of America's second-busiest airport. "I learned to drive on the LA freeways and I learned to fly at Van Nuys, which at the time had more takeoffs and landings than almost any airport in the country. In both cases you had to pay attention," he remembers.

Krasik eventually spent a year at UC Berkeley in the mid-1960s before getting a call from the federal government.


"If you were out of school for more than four microseconds in those days you got a draft notice," Krasik recalls. "I found a program in the Navy that would allow me to stay in school, send me to officer training and then on to flight training. It sounded like a good deal, and everyone knew the Vietnam War would be over in a year or two."

Krasik flew his missions from an aircraft carrier in the South China Sea, pathfinding for air strikes, providing maritime surveillance and support, mostly trying not to get shot down.

Eventually the war did end, and Krasik became a flight instructor and test pilot.

Based in San Diego, he spent his evenings taking the college courses he'd dodged as an undergrad: physics, calculus and more. Then a friend invited Krasik to join him taking the LSAT.

"I did the sample questions and got every one of them wrong," Krasik says. "But I took the test anyway, which seemed more like reading comprehension than law, and did very well."




"It gives the government a much larger hammer than they should have."

Krasik took a year of law school night classes in San Diego and left the Navy in 1977. He wanted to move to the Northwest, so he transferred to Willamette.

"I loved the school; I loved Salem," he says. "I never regretted my choice."

Certified as an aircraft crash investigator, Krasik performed investigations during school to pick up a few bucks, then began clerking for the Salem City Attorney's office. He prosecuted trial after trial as a law student, and his love for criminal law was born.

Chain of Events: The Death Penalty in Oregon Source: Oregon Blue Book



1864
Death penalty for first-degree murder is adopted by statute.

1903
Oregon Legislature requires the death penalty to be carried out at the State Penitentiary in Salem.

1904
H.D. Egbert becomes the first man to be hanged at the State Penitentiary.

1912
Four men are executed at the State Penitentiary, the most in one day.

1914
Oregon voters repeal the death penalty. The amendment becomes Article I, Section 36 of the Oregon Constitution.

After passing the bar, Krasik opened a solo criminal defense practice in the same second-floor Salem office he occupies today, 32 years later. Model airplanes cover most of the shelves, a giant image of the earth as seen from space adorns one wall, and a six-foot-tall slide rule leans in the corner. Emblematic, perhaps, of Krasik's nature: adventurous, given to taking the long view, and always doing the math on behalf of his clients.

The first capital case Krasik defended came to him by default in 1987. *State v. Farrar*, Marion County's first aggravated murder case since the return of capital punishment in Oregon, was scheduled for trial, and the presiding judge realized there was no one experienced in capital defense. So he called Krasik.

"I'd defended some 'ordinary' murders, and I guess that the judge had been watching up-and-coming lawyers," Krasik says. "I was fairly precocious. I said 'Sure, I can handle it.' We kind of invented the process."

From 1859 until 1903, executions were carried out at the county level, and "necktie parties" were popular spectator entertainments.

SHIFTING ATTITUDES

The death penalty in Oregon has been an on-and-off-and-on affair from the beginning. The first official execution under the Oregon territorial government was in 1851, although it is likely that horse thieves and others had been hanged prior to that. The original Oregon Constitution of 1857 had no provision for the death penalty, so a statute was added in 1864 making it legal for what was then called first-degree murder.

From 1859 until 1903, executions were carried out at the county level, and "necktie parties" were popular spectator entertainments, with the press bribing guards for better access to the last moments of the condemned. Two particularly carnival-like public hangings in Portland in 1902 prompted the Oregon Legislature to rule that executions be removed from public sight and taken inside the Oregon State Penitentiary in Salem.

An initiative petition in 1912 was the first effort to abolish Oregon's death penalty. Sixty percent of voters opposed it. But a run of executions in 1913–14 spurred then-Gov. Oswald West, who had vowed never to execute anyone under his watch, to lead an initiative to repeal the death penalty. By the slimmest of margins, 50.04 percent, the measure passed and the Constitution was amended.

In 1920, voters brought back the death penalty. The method of execution changed in 1931 from hanging to lethal gas, but no repeal efforts resurfaced until the late 1950s, when the staunchly anti-death-penalty Gov. Mark Hatfield BA'43 took office. He authorized what would be the last execution for more than three decades

when he refused to intervene in a 1963 case. In 1964, an initiative petition to end capital punishment passed by a 60–40 vote and Hatfield quickly commuted the sentences of three death row inmates.

The death penalty returned to Oregon about the time Krasik entered Willamette; this time the method was lethal injection. The Oregon Supreme Court subsequently struck down the law on the grounds that it denied defendants the right to be tried by a jury of their peers. Voters in 1984 overwhelmingly approved a new amendment based on Texas capital punishment law. A second statute, passed in the same year, required a separate sentencing hearing before a jury in cases of aggravated murder.

Today there are 37 people, including one woman, on Oregon's death row. Recent polls seem to indicate a swing back toward repeal. The number of people executed in the U.S. has dropped by half in the past decade. It's safe to say that the public has a complicated relationship with the death penalty.

It is this uncertain terrain that Krasik must carefully navigate. His most effective courtroom strategy is both simple and challenging: be real. Talk to the jury person-to-person. Don't be slick.

"Steve Krasik is a tribute to his profession as evidenced in part by his tightly held moral beliefs and sense of fairness and justice," says Rod Underhill, chief deputy district attorney for Multnomah County. "Even as adversaries, we can work together as colleagues. Steve can always be trusted to tell it like it is."

1920

Oregon voters restore the death penalty by repealing Article I, 36 and replacing it with Article I, 37-38.

Emmet Bancroft is the first inmate to be hanged since re-enactment of the death penalty. He was convicted of murdering the Umatilla sheriff during a jailbreak.

1925

L.W. Peare, convicted of murdering his wife and another man, is executed at age 67 — the oldest inmate ever to be executed in Oregon.

1931

James Kingsley, who murdered a police officer in Jackson County, is the last death row inmate to die by hanging. The state switches to lethal gas.

1942

John Anthony Soto, who murdered two men and one woman in Umatilla County, is executed at age 17 — the youngest inmate ever to be executed in Oregon.

Where the death penalty lives Source: Death Penalty Information Center

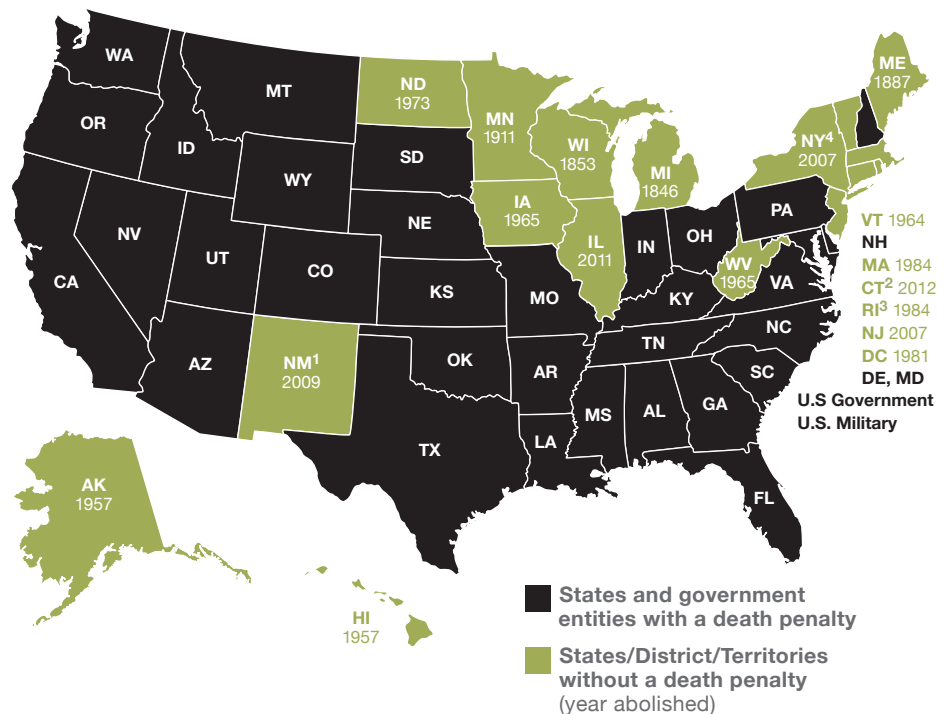
A CHALLENGING CAREER

Beginning in 1987, with his rookie outing as lead counsel in *State vs. Farrar*, Krasik has been involved in just about every highly publicized capital murder trial in Oregon, including those of Christian Longo, who killed his wife and three children; Joel Courtney, who confessed to killing OSU student Brooke Wilberger; Bruce and Joshua Turnidge, who bombed a Woodburn bank and who are the only cop killers on Oregon's death row; Angela McAnulty, who tortured and starved her 14-year-old daughter to death; and inmate Gary Haugen, who is lobbying to have his sentence carried out.

In each of these cases, perhaps Krasik's greatest challenge in defending against the death penalty is the very thing hardest to overcome: human nature.

"Our notion of victory is not necessarily a walk-away acquittal, because there are certainly defendants who are guilty," Krasik says. "But when you get to the moral issues of the death penalty, I think the whole equation changes. There you have juries who are being enraged by horrible acts, and it's often very clear that the defendant has done terrible things. We as the capital defenders are very hard put to defend against the government showing that the defendant is scary ... but scary doesn't mean dangerous. All the research, in fact, is to the contrary — it shows that homicide convictions are less likely to be violent in prison than property criminals. Their violence rate, in fact, is almost identical to the streets of Salem.

"The state must show future dangerousness, and in my personal opinion they fail to do that



¹ In March 2009, New Mexico voted to abolish the death penalty. However, the repeal was not retroactive, leaving two people on the state's death row.

² In April 2012, Connecticut voted to abolish the death

penalty. However, the repeal was not retroactive, leaving 11 people on the state's death row.

³ In 1979, the Supreme Court of Rhode Island held that a statute making a death sentence mandatory for

someone who killed a fellow prisoner was unconstitutional. The legislature removed the statute in 1984.

⁴ In 2004, the New York Court of Appeals held that a portion of the state's death penalty law was unconstitutional. In

2007, it ruled that its prior holding applied to the last remaining person on the state's death row. The Legislature has voted down attempts to restore the statute.

in most cases," Krasik says. "There's a tremendous tendency, even if it's unconscious, to demonize the defendant and frighten the jury."

One of the most egregious examples of that in Krasik's mind is in the McAnulty case.

"Yes, she should be locked up for life," Krasik says. "What she did is one of the most horrible things I've ever seen. But in terms of true remorse and demonstrated

nonviolent behavior — the idea that this woman, who was the meekest person during two years in prison, constitutes a dangerous future threat — is irrational. But the jury wasn't rational and sentenced her to death. This wasn't an explosive act of violence; it was a low-speed collision, a long-term torture. The idea that this woman presents a future danger is beyond comprehension to me."

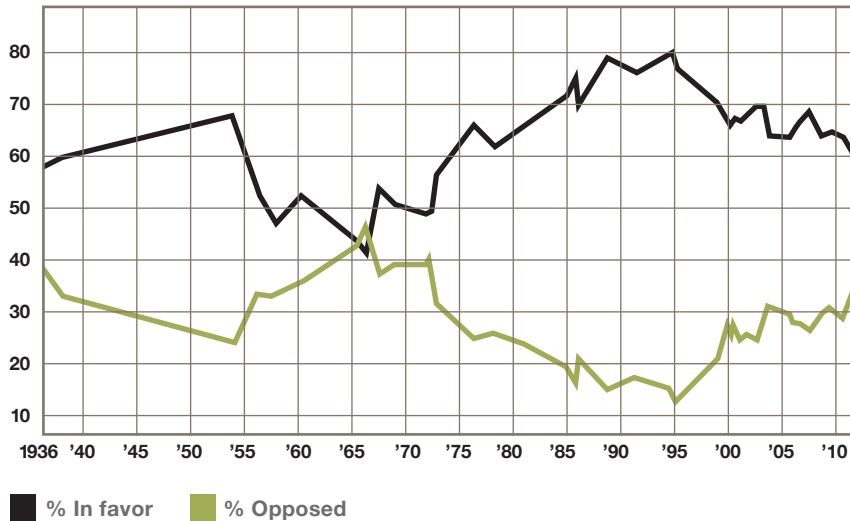
1964

Oregonians repeal the death penalty. Two days later, then-Gov. Mark Hatfield BA'43 commutes the sentences of three death row inmates, including the only woman ever to be sentenced to death in Oregon.

1978

Oregonians approve Ballot Measure 8, which brings the death penalty back to Oregon. This time it's in statute rather than the Oregon Constitution. The trial judge, not a jury, determines the death penalty sentence.

Public opinion about the death penalty Source: Gallup (1936-2011 trend)



“The only question is whether that client poses an uncontrollable future danger to society.”



Reacting to horror and fear with rationality isn't the strong suit of the average human, and often the prosecution — consciously or unconsciously — uses that to great effect, Krasik claims.

“The idea when the death penalty was brought back in the '80s was that prosecutors would be very circumspect and only bring capital charges against the worst of the worst, those who presented a lasting threat of future dangerousness,” he says. “That was a fantasy. If prosecutors have the budgets and the staffing they charge what they can charge. It's a tremendous lever to generate pleas, but should that plea not happen, they go for the whole enchilada and leave it to the jury. I'm troubled by that kind of ad hoc application of the death penalty.”

That's why selecting a jury is such an important part of the process, Krasik says.

“Part of our job is very delicate — to make sure that the people who are not automatic death penalty supporters understand that they can be against it but still serve on one of these juries — if they agree that there is some case somewhere in which you could meaningfully consider capital punishment,” Krasik says.

“So we get poetic in court and talk about Hitler and Eichmann. What we need to find in order to balance the jury are the people who say ‘I oppose the death penalty, but I can conceive of a case that would lead me to consider it.’ They must understand that no matter the evidence, they don't have to impose the death penalty — the system gives them an opportunity to make a moral judgment. Well-meaning anti-death penalty people refuse to take part in these cases, which has the opposite of their intended effect. It abandons the system to those who are willing to impose the death penalty.”

FINDING HUMANITY

Krasik says one improvement would be to have separate juries for the trial and the penalty phase. He has often filed motions requesting just that, though they are rarely granted. Occasionally, on appeal, the court will let the verdict stand and overturn only the penalty phase, which will result in a new jury. Not that a new jury will be immune to the horrors of the case, but they won't have been steeped in the weeks of awful photos and testimony and the agony of the survivors as the first jury was.

Granted, these convicted killers are very hard people for the public to care about —

1981
The Oregon Supreme Court strikes down the death penalty statute, saying defendants are being deprived of the right to trial by a jury.

1984
Oregonians approve Measure 6, amending the constitution to legalize the death penalty; and Measure 7, which requires a separate sentencing hearing before the trial jury.

1988
The U.S. Supreme Court reverses a Texas death penalty sentencing, saying it violates the Eighth Amendment prohibiting cruel and unusual punishment. The justices say the character, record and nature of the offense must be considered before imposing a death sentence. The decision impacts Oregon because Oregon's death penalty is based on Texas law.

1989
The Oregon Legislature requires juries to be asked whether the character, background or circumstances of the offense would justify a lesser sentence than death.

or to want to feed and water for the next 40 or 50 years. But that isn't what the death penalty is about, Krasik says. No matter how evil and horrifying his clients may be, the only question is whether that client poses an uncontrollable future danger to society.

"There is humanity in every defendant I've met," Krasik reaffirms. "Part of the mission is bringing that out for the jury. It's not easy. I've had clients with demonic aspects that were very dangerous people. I'm very aware of their ability to suddenly harm someone — to grab a pencil and run it into my eye. They are very damaged people, usually with a life history of making the worst conceivable decisions, and there's no reason to believe they won't be doing that at every possible moment. But the death penalty is disproportionate, overly emotional in its application, and rarely connected to the evidence of future uncontrollable dangerousness.

"In a perfect world, the right people would be caught for crimes, they would be treated properly and constitutionally, everyone charged with a crime would be guilty, everyone would be convicted with the right evidence with no exceptions, the jury would be smart and fair and get it right, and the defense would have nothing to do," Krasik says. "The fact that those things don't always happen makes what we do a vitally important job. It just ain't a perfect world." ■



**“THERE IS HUMANITY
IN EVERY DEFENDANT I’VE MET.”**

1996, 1997

Douglas Franklin Wright and Harry Charles Moore, who waive their appeals, are the last men to be executed in Oregon during the 20th Century.

2011 April

Death row inmate Gary Haugen says he wants to end his appeals and be executed. His lawyers challenge his mental competence.

May

A Marion County judge grants Haugen's request.

November

Gov. John Kitzhaber, a former emergency room doctor, announces he will no longer carry out executions while he's governor.

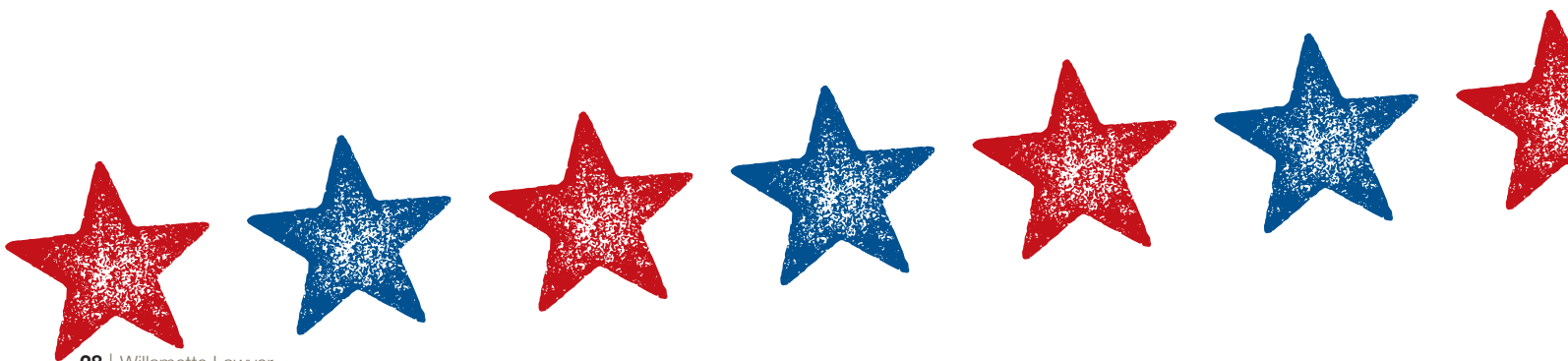
2012 August

A judge rules Haugen can reject Kitzhaber's reprieve and continue his efforts to die by lethal injection.

HOW **LOUDLY**
SHOULD
MONEY
TALK?

Fred VanNatta BA'60
and John DiLorenzo
BS'77, JD'80 were key
players in an obscure
legal fight that may yet
upend
Oregon politics.

By Lee van der Voo



The man who opened the floodgates of Oregon politics to unlimited amounts of money — even before Citizens United, the U.S. Supreme Court's controversial ruling on the subject — has a lanky build and a salt-of-the-earth manner that belies his reputation as a rock star lobbyist. At the height of his 45-year career, Fred VanNatta BA '60 managed a Republican Governors Association conference and counted the NBA and NFL as clients. Recently retired, his day job includes lobbying legislators on behalf of the Oregon Anglers and the Professional Land Surveyors of Oregon.

But get VanNatta started about VanNatta v. Keisling, the landmark 1997 Oregon Supreme Court case that bears his name, and it's clear where his true passion lies.

"I am a strong supporter of grassroots politics and the initiative and referendum system," said the former chairman of Willamette's Young Republicans Club. "In Oregon, the effort usually has been to give the unions an advantage. Limits on campaign expenditures would tilt the field against the small business community."

Attorney Dan Meek is equally passionate about campaign financing — but he's 180 degrees from VanNatta. For the past 15 years, Meek has waged a losing battle to toss VanNatta v. Keisling on the scrap

heap of failed political ideas. In a recent lawsuit before the Oregon Supreme Court, he asked the justices to reopen the case and overturn it. They declined to do so, but the decision seems to carve out a new path for the court to take it up again.

At issue was whether Measure 47, which restricts campaign contributions and lays down other election rules, should become law. Voters approved it in 2006 but rejected its companion, Measure 46, which would have amended the Oregon Constitution to allow campaign contribution limits.

Because voters rejected Measure 46, the state never codified Measure 47. But a little-noticed clause in Measure 47 foresaw such an outcome. That clause, Section (9)(f), says that if the measure is found unconstitutional, it should nevertheless exist as a dormant law, lying in wait for a constitutional change or for VanNatta v. Keisling to be overturned. Lower courts have allowed the state to avoid codifying it.

In an unusual legal argument, Meek — who wrote both measures — said Measure 47 should become law until a court rules it unconstitutional.



Left to right: John DiLorenzo, Dan Meek, Fred VanNatta

"Where is the finding that it was unconstitutional when it was adopted? There is no such finding," said Meek. "You have to have the litigation that says what part of Measure 47 is unconstitutional. And no one has challenged it."

The Oregon Supreme Court heard oral arguments in Meek's lawsuit, *Hazell v. Brown*, in January. The justices issued their decision in early October.

Yet the outcome of the case creates new avenues for supporters of campaign finance limits enacted into law. Invited by the defendants to throw out Measure 47 entirely, the court ruled the measure is legal, but dormant. That means new litigation or a ballot measure that wiped out *VanNatta v. Keisling* could clear the path for Measure 47, or the legislature could pass a bill to make parts of it law.

Should it ever spring to life, Measure 47 would shake Oregon's political foundation by limiting contributions and expenditures, controlling the use of personal wealth in campaigns, calling for new disclosures in ad funding and new spending reports, and offering cover for employees whose bosses solicit them for contributions. It also would dissolve war chests that campaign committees spend years building, sending surplus campaign funds to the state treasury.



Campaign contribution limits have a checkered history in Oregon. In 1908, voters limited the amount of money candidates could spend — and, in some cases, accept — and created a voters pamphlet so all political candidates could affordably argue their case. The Oregon Legislature repealed those limits in 1973 and instead decided to limit expenditures amid vigorous debate about campaign finance at the federal level. In 1976, the U.S. Supreme Court ruled expenditure limits on candidates for federal office were unconstitutional. Predictably, Oregon's limits didn't survive.

In 1994, voters passed Measure 9, which restricted contributions in state elections. Measure 6, which voters passed the same year, ended out-of-district donations.

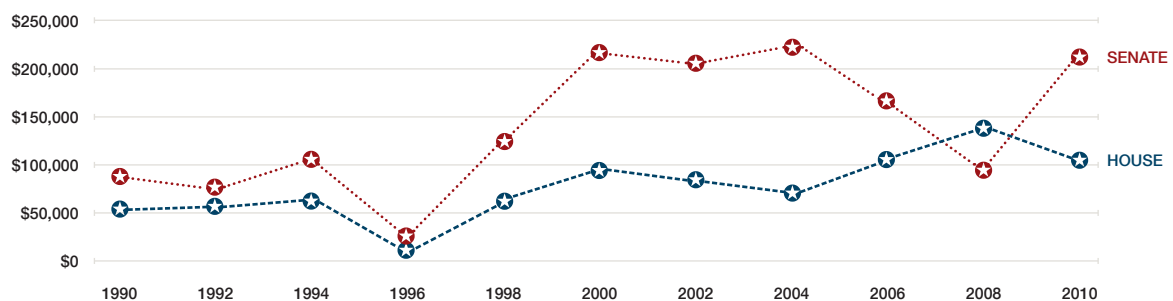
VanNatta was particularly bothered by both measures' impact on small businesses, which he claims were likely to be bested by unions that could use employees and volunteer labor in lieu of cash to influence issues. He and a cadre of silent supporters set their sights on litigation challenging the measures. They recruited John DiLorenzo BS'77, JD'80 as attorney and raised money for a lawsuit through the then newly-formed Center to Protect Free Speech.

In a surprising turn, the Oregon Supreme Court ruled in *VanNatta v. Keisling* that campaign contributions are a form of speech. (The U.S. Supreme Court ruled similarly in 2010, when the justices said that in *Citizens United v. Federal Elections Commission* the First Amendment prohibited the federal government from restricting independent political expenditures by corporations and unions. Limits still apply to direct contributions to candidates and political parties in federal races). Since the *VanNatta v. Keisling* ruling, Meek noted, the amount of money in Oregon state races has steadily risen. In the 2010 general election, contributions topped \$77 million. That's up from \$4 million in 1996.

"I was appalled at this decision," Meek says. But he says it wasn't until 2006 that he and his supporters, concerned about ever-increasing campaign expenditures, were able to bring the issue to voters.

A solitary practitioner who lasted only six months at a big law firm, Meek says money in politics blunts the will of the citizenry. Indeed, a 2009 study by Common Cause Oregon found that 83 percent of the money in state elections in 2008 came from corporations, unions and political action committees, dampening the influence of individual donors. Meek, who made his career suing utilities on behalf of ratepayers, funneled the proceeds into campaign reform

Average contributions in Oregon legislative races, 1990–2010 (in 2010 dollars)



Source: National Institute on Money in State Politics

efforts and other causes. He and his supporters have made campaign finance reform a priority since the VanNatta ruling, spending \$700,000 for the Measure 47 campaign with the help of well-known political strategist Joe Trippi, who worked pro bono as the campaign's media manager.

Meek is comfortable taking a principled, if unpopular, stance. Always on the side of the consumer or the aggrieved, he's in his element beating back corporate influence. Raised as a non-Mormon in the Mormon community of Pocatello, Idaho, Meek was born a contrarian, one of only a few children who didn't go to church four times a week. After attending the University of Wyoming for debate, he says he benefitted from Stanford Law's "hick quota," although he took four years to finish law school because he kept running out of money.

Since settling in Oregon, Meek teamed with attorney Greg Kafoury and anti-nuclear advocate Lloyd Marbet to push for the closure of the Trojan Nuclear Plant in the mid-'80s. More recently, he has become involved in the Occupy movement.



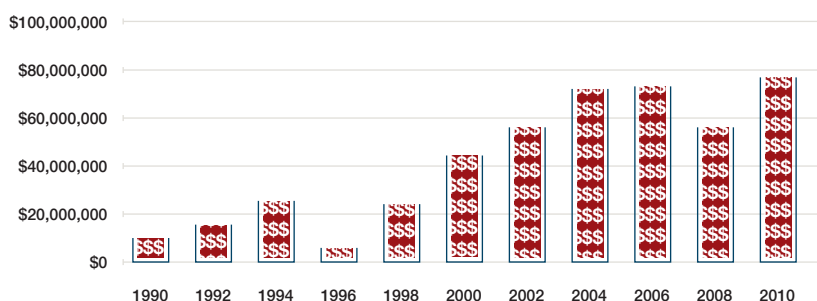
Since the VanNatta ruling, the amount of money in Oregon politics has ballooned. More than \$20 million was spent on the governor's race alone in 2010, approximately five times the amount spent on all state elections in 1996, the last time campaign contribution limits were in place. That growth has far outstripped the rate of inflation.

The idea that money buys influence seems evident in some giving patterns. In Common Cause Oregon's 2009 report, the organization noted some donors simply wait until after the election to make contributions, then give to the candidate who won. Some hedge their bets and give to both candidates in a race, or give to one and then the other if their first pick loses.

Critics say Oregon is wide open for ethical conflicts. The state allows legislators to pay job-related expenses with campaign funds, including suits, cars and office space. Campaign contributions also serve as a back door on state gift rules, since lobbyists can use them to pay for legislators' meals without having to report those expenditures as gifts. And candidates with well-funded campaign coffers are expected to tithe to their parties, which then use them to help win contested races.

Meek says voters have sent clear signals they want limits on such financial exchanges. After all, they've approved them three times. Three years ago, after the Oregon Government Ethics Commission tightened lobbyist spending on legislators, VanNatta again went to the Oregon Supreme Court to challenge the state's gift rules. The

Total state election contributions (in 2010 dollars)



justices ruled, however, that while contributing money to a campaign is an expression of free speech, accepting such contributions can be regulated.



Not surprisingly, VanNatta defends VanNatta v. Keisling and frowns on opposition to Citizens United, noting that, "we've had unlimited corporate contributions in politics available in Oregon for ... nearly 20 years. It has not been the end of Western Civilization." DiLorenzo says money helps candidates and the public debate ideas — even though the cost of those debates can be astronomical.

"When you compare it to the amount of money people spend advertising Tide or McDonald's hamburgers, it's nothing," he says. "We are nowhere near a threshold to be worried about ... And if (we're) spending the majority of our ad dollars on matters of public concern, God bless us."

Both the state and DiLorenzo argued before the Supreme Court that there wasn't any real basis to reopen the VanNatta case. The Oregon Department of Justice said Measure 47 is constitutional, but should stay dormant until the VanNatta ruling is overturned or the constitution shifts. DOJ attorneys argued that the Secretary of State and the Attorney General correctly interpreted the deferred-option clause. DiLorenzo said Measure 47 is unconstitutional and wanted the court to declare it invalid. The justices declined to do so. Measure 47 now lies dormant, awaiting the next legal challenge.

But DiLorenzo, a seasoned lobbyist, said he'd prefer the Legislature just get rid of Measure 47. Among the practical concerns is that so much has changed since its approval. No one is quite sure how the VanNatta case would fare in a future constitutional challenge, should it come, but DiLorenzo said he didn't see any signals in the Supreme Court's decision. One thing is certain, though. "If somebody ever does a wholesale re-examination of VanNatta, they're going to have to do it with Citizens United in mind," DiLorenzo said. ■

College of Law Announces Dean Search

The College of Law is conducting a search for a new dean, and members of the search committee hope to have someone in place by June of next year.

Norman Williams, the Ken and Claudia Peterson Professor of Law and director of the Center for Constitutional Government, is chairing the search committee. Members of the committee include Brian Gard BA'68, who serves on Willamette University's board of trustees, and Susan Hammer JD'76, a life trustee emeritus. Faculty representatives are Professor Laura Appleman; Oregon Law

Commission Director Jeff Dobbins; Fred H. Paulus Professor Steven Green, who directs the Center for Law, Religion and Democracy; and Professor Yvonne Tamayo, who serves as general counsel for Willamette University.

The committee is searching for applicants committed to building a vibrant, intellectual community dedicated to excellent scholarship, teaching and research. Applicants also should have a vision for enhancing the law school's national academic profile and a record as a successful fundraiser.

Oregon Commission for Women Honors Robin Morris Collin



Norma J. Paulus Professor of Law Robin Morris Collin, a nationwide leader in the area of sustainability and environmental justice, is one of four winners of the 2012 Oregon Women of Achievement Award from the Oregon Commission for Women. Past winners include former Oregon House Speaker and Portland Mayor Vera Katz; former U.S. Rep. Darlene Hooley; and Columbia Sportswear founder Gert Boyle.

Morris Collin's husband Robert W. Collin, an adjunct lecturer at the College of Law, nominated her for the award. He cited her leadership on the Oregon Environmental Justice Task Force, which won an award from the U.S. Environmental Protection Agency, and other honors she has received, including one from the Oregon State Bar. Morris Collin was the first professor to teach sustainability at an American law school and lectures widely on the topic.

Morris Collin was the first professor to teach sustainability at an American law school and lectures widely on the topic.

"While sustainability in the U.S. is dominated by privileged white male leadership, sustainability in most of the world is the work of women," Collin wrote in his nominating letter. "Professor Collin's excellent work and leadership in sustainability at home and abroad restores women's leadership voice to this growing contemporary dialogue."

Added Secretary of State Kate Brown, who has worked with Morris Collin on the Oregon Sustainability Board: "She really puts her heart and soul into her work."

Morris Collin said the award recognizes that sustainability, environmentalism and equity are women's issues. "It's about finding balance between our economic and business needs and our community's health and values," she said. "Women need to be part of the decision-making structure."

Professor Karen Sandrik Joins Faculty

Professor Karen Sandrik, formerly assistant professor at Florida State University College of Law, has joined the Willamette Law faculty. Sandrik is teaching Contracts this fall, and in the spring she's teaching Sales and an intellectual property course. Her research focuses on the intersection of commercial law and intellectual property.

Sandrik's research and classes align with her experience as a patent litigator in Atlanta. She focused on intellectual property disputes involving patents, copyrights and trademarks, as well as the licensing of intellectual property rights. Sandrik was involved in a number of patent litigation lawsuits, most notably the litigation defending the patents of the late Gertrude Neumark Rothschild. Rothschild's patents and corresponding research helped improve light-emitting and laser diodes now used in many Blu-ray disc players, flat-screen televisions and cell phones. Sandrik's practice also included intellectual property transactions and disputes with clients such as Atlanta Bread Company, Mizuno, and the Southern Company.

Sandrik, a former member of the U-23 U.S. Women's National Soccer Team, played soccer at Mississippi State University and three seasons in the W-League before bowing out after her third surgery. "It wasn't a career-ending injury, but it decreased my chances of making it to the next level (the Olympic or World Cup team)," she said. "In the end, I decided to go to law school and keep my body intact."



Professor Jeffrey Dobbins Receives Tenure

Professor Jeffrey Dobbins, who serves as executive director of the Oregon Law Commission and has taught students since he was an undergraduate at Harvard, was awarded tenure earlier this year.

Dobbins' academic research focuses on civil procedure and federal jurisdiction, with an emphasis on appellate process and theory. He is a former attorney in the Appellate Section of the Environment Division at the U.S. Department of Justice in Washington, D.C. and clerked for Associate Justice John Paul Stevens of the U.S. Supreme Court.

The Oregon Law Commission, created in 1997 and housed at the College of Law, is the only law reform organization in the state. The OLC advises lawmakers on how to reform state statutes and proposes new provisions that would fill the gaps in Oregon law.

"We're here to solve problems in the law that are created because the legislative process is reactive," Dobbins said. "We're technicians; we're there to repair the system, not to make it look different."

Dobbins is member of the bars of the State of Oregon (active) and West Virginia (inactive) as well as of the U.S. Supreme Court and the U.S. Courts of Appeal for the First, Second, Eighth, Ninth, Tenth, D.C., and Federal Circuits. He is a member of the Executive Committee of the Appellate Section of the Oregon State Bar.



Center for Dispute Resolution Wins Ninth Circuit Education Award

Willamette's Center for Dispute Resolution has won the Ninth Circuit Alternative Dispute Resolution Education Award, which recognizes law schools that incorporate dispute resolution across their curricula. Willamette is the only Oregon law school to win the annual award, which was established in 2005.

U.S. Magistrate Judge Valerie P. Cooke of Nevada, chair of the award committee, said the law school's new LLM in Dispute Resolution and the school's interdisciplinary approach to the subject persuaded the committee to give the award to Willamette.

"People assume that part of their litigation experience will have some component of alternative dispute resolution built into it," Cooke said. "Schools that get that are schools we like to recognize."

CDR Director Richard Birke said the award represents nearly three decades of Willamette's "consistent efforts to improve ADR education. This is a platform on which to build." He said the center

would continue efforts to bring the American model of dispute resolution overseas and to increase the knowledge of how neuroscience, psychology, spirituality and cross-cultural understanding intersect with dispute resolution.

Earlier this year, professor Birke was named an Honorary Fellow in the International Academy of Mediators (IAM), an organization that sets standards and defines qualifications for commercial mediators worldwide.

Dean Peter Letsou noted that Willamette has been a leader in the field. The CDR, established in 1983, is one of the oldest in the country.

"We have outstanding teachers and scholars, a long history of experience and an outstanding set of programs and courses," he said. "It's a well-deserved award that recognizes the many successes of this program."

Professor Warren Binford wins Fulbright



Professor Warren Binford, director of the Clinical Law program, is in South Africa as a Fulbright Scholar teaching at the University of the Western Cape. She also is doing research related to international children's rights.

Binford said she applied for the Fulbright because she wants to better understand the lives of African children who face challenges such as war, poverty, hunger and racial discrimination.

"This is a very humbling opportunity. I have always felt compelled to use the education and resources I have been given to work to advance the rights of others in the hope that they, too, will have similar educational, economic, social and political opportunities," she said before she left the United States. "Of all the populations in the world, I can envision no population more disadvantaged than Africa's children."

During her semester-long leave from the law school, Binford is researching and writing a law school textbook on international children's rights. She also is co-teaching a course, "Children's Rights in the African Context," at the University of the Western Cape.

Binford plans to travel to orphanages, refugee camps and rehabilitation centers for child soldiers throughout Africa. She will work with the university's Children's Rights Centre and Legal Clinic, collaborating with some of Africa's leading experts on children's rights and training African judges on international children's rights.



Law School Welcomes Class of 2015

THE 1LS AT A GLANCE

Number of students

138

Number of undergraduate institutions the students represent

69

Number of countries where students have traveled or studied:

51

Age range

20–43

Foreign languages spoken

20

including Farsi, French, Marathi and Spanish



Students may be entering Willamette during difficult economic times, but law schools continue to provide a uniquely rigorous education that prepares students for careers in multiple professions, Dean Peter Letsou said to the law school's first-year class.

Letsou and other administrators welcomed 138 students to the College of Law in August. Members of the class of 2015 speak 20 languages other than English. They've traveled or studied abroad in 51 countries and majored in 35 subjects during their undergraduate years. The median age of the class is 25.

"You'll discover that the relationship you build with the person sitting next to you, in front of you or behind you may very well last a lifetime," said Carolyn Dennis, the law school's admission director, on opening day. "The next three years will strengthen your endurance and commitment to your professional goals."

Among the opening day speakers were Willamette University President Stephen E. Thorsett, who challenged students to "love the law; nurture it with care and reverence," and former Oregon Supreme Court Chief Justice Edwin Peterson, who passed along some advice from students: seek out second- and third-year students for advice; participate in Moot Court competitions — and relax.

"Our role is to ensure that you are equipped with all the provisions you will need for this demanding profession," Letsou said. "To this end, we will train you hard during your three years with us. Your admission to this school demonstrates our confidence that you have the ability to meet this challenge."

PROFESSIONS OF THE ENTERING CLASS

Pro racquetball player: **Arash Afshar**

U.S. Army commander who served in Iraq: **Michael Curtis**

Plastics engineer: **Mitchell Howell**

Polo instructor: **Logan Joseph**

Archaeology lab assistant: **Linda Kendrick**

THE THINGS THEY'VE SAID:

"All people, be they in the LGBT community, underrepresented minorities, migrant workers or the working poor have a right to have their voices heard and their rights protected. I came to realize that I want to spend the rest of my life in service to these people, fighting for their rights and being their voice."

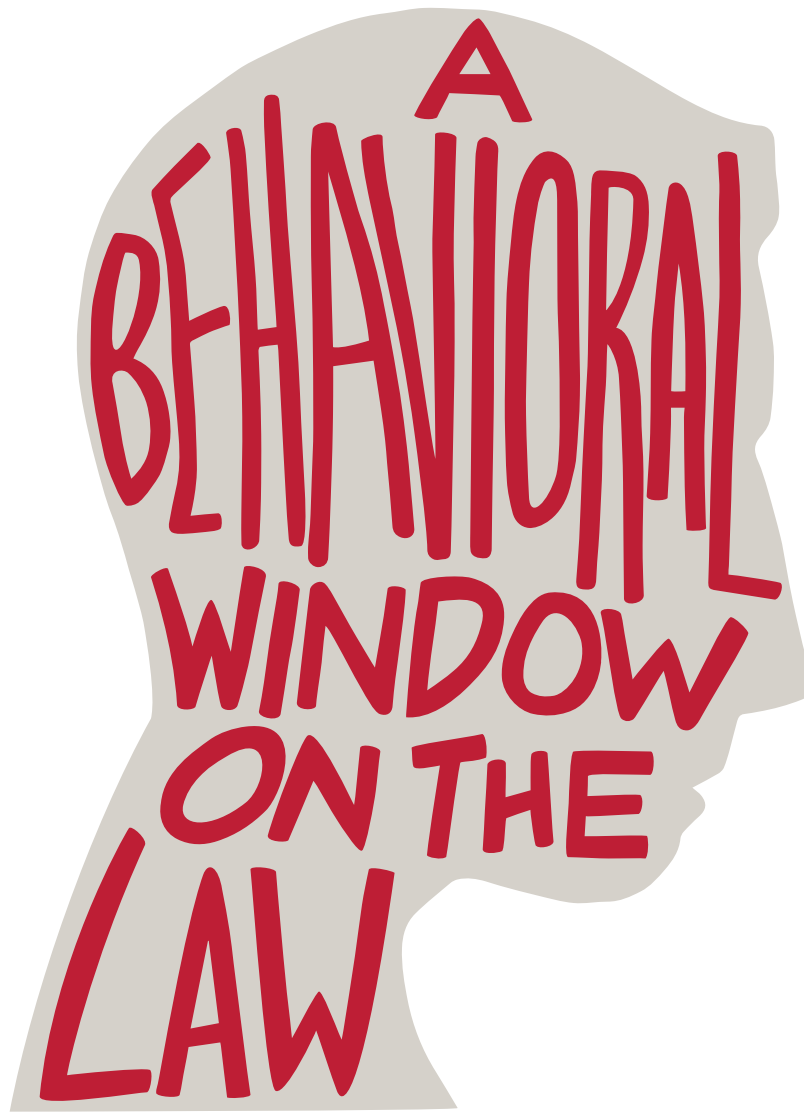
— Anna Fredenberg

"From an early age, it was clear that I was destined to practice law. When I broke my parents' law, I wanted to argue, to look at the facts, and scrutinize that law to ensure the proper punishment was handed out. Interestingly, I always believed I was innocent of any wrongdoing and argued tooth and nail for amnesty."

— Stephen Montgomery

"When I was a child, I saw the world as impossible. Today I see it as limitless."

— Carleigh Anable



Why Conservatives Will Never Forgive Justice Roberts for His Decision on Health Care

by Professor Richard Birke

During his nomination to be a justice and later the chief justice of the U.S. Supreme Court, John Roberts was widely believed to be a tried-and-true conservative. When he was sworn in, conservatives rejoiced. One commentator wrote that conservatives “leaped from their seats with applause” after he took the oath of office, and that the “private reception for Roberts ... felt like a cel-

ebration, as prominent conservatives from every administration gathered with Republican senators, staffers and outside advisors, as well as Justices Thomas and Scalia. The mood was almost euphoric ...”

However, the reaction was quite different after the decision earlier this year in *NFIB v. Sebelius*, otherwise known as the Patient

Protection and Affordable Care Act Case. Roberts wrote the opinion that upheld the act, and conservative commentators across the nation excoriated him for doing so. Louisiana’s Republican Governor Bobby Jindal called the decision “extremely disappointing” and Republican U.S. Representative Mike Pence likened the decision to the 9/11 attacks. Some news commentators called for Roberts’ impeachment, and one went so far as to suggest that the decision was a by-product of Justice Roberts’ epilepsy medication.

Let’s suppose that Roberts, like the proverbial leopard, cannot change his spots — that he really is the conservative most suppose him to be. He probably will, as he has in the past, author a string of decisions supporting the conservative side of most cases. Moreover, if the health care decision is an outlier, the principle of regression to the mean suggests that most or all of Roberts’ future decisions will hew more closely to the conservative side. But will the expected string

of conservative opinions be enough to earn him forgiveness? Behavioral psychology and neuroscience strongly suggest that the answer is no.

Nobel Laureate psychologist Daniel Kahneman has proved that losses loom much larger than gains in the human brain and that events that run counter to expectations are more easily recalled than events that meet expectations. In his recent book, "Thinking Fast and Slow," Kahneman describes the robustness of two phenomena — the availability heuristic and prospect theory. Each will make conservatives slow to forgive Roberts.

Kahneman's work proves that our minds give unexpected information special weight because the unusual is easier to recall than the typical. However, once recalled, the events surrounding the memory are forgotten. But the mind still mistakes vividness for commonality, and this is why most people believe that highly vivid but rare events like shark attacks kill more people than more common events like emphysema. Even if Roberts writes a string of decisions that are more in line with his reputation, conservatives will remember the health care opinion and overestimate how typical it is of Roberts' jurisprudence.

The second concept, prospect theory, demonstrates that losses loom larger than gains. You may intuitively grasp that insults sting more than compliments feel good and that you are more sensitive to a rise in your taxes than to a raise in your wages. Loss aversion is a very powerful way that humans evaluate their world, and conservatives surely will weigh the health care decision through the lens of loss. When evaluating this decision against Roberts' other opinions, conservatives will view this "loss" as greater than any "gains" from other cases, at least for the next several years and quite possibly for the remainder of his tenure on the Court.

A study of the neuroscience of politics suggests that the conservative reaction to Roberts' decision is rooted in a brain function associated with survival. In a 2004 experiment, Emory professor Drew Westen studied Democratic and Republican reactions to information that affirmed or contradicted their pre-existing beliefs. Westen told Republicans good things about George W. Bush and bad things about John Kerry. He told Democrats good things about Kerry and bad things about Bush. When people heard what they already believed, they felt a brief stimulation in their pre-frontal cortex — a highly intellectual "I knew that" response.

their beliefs ("my candidate is bad and the opponent is good") caused a longer duration, hotter flash in the emotional centers of the brain — the amygdala and other components of the limbic system. That's because the brain deems contradiction as a threat to one's ability to navigate through life and it releases neurotransmitters that ready the body for battle.

When conservatives consider Roberts' "defection" in the health care case, they have to struggle with a series of difficult realities. Were they wrong in believing Roberts to be a conservative? If they were fooled by him,

Loss aversion is a very powerful way that humans evaluate their world, and conservatives surely will weigh the health care decision through the lens of loss.



Chief Justice John Roberts

However, when the information was switched, and people heard what they didn't want to hear, the brain patterns changed remarkably. The information that didn't affirm

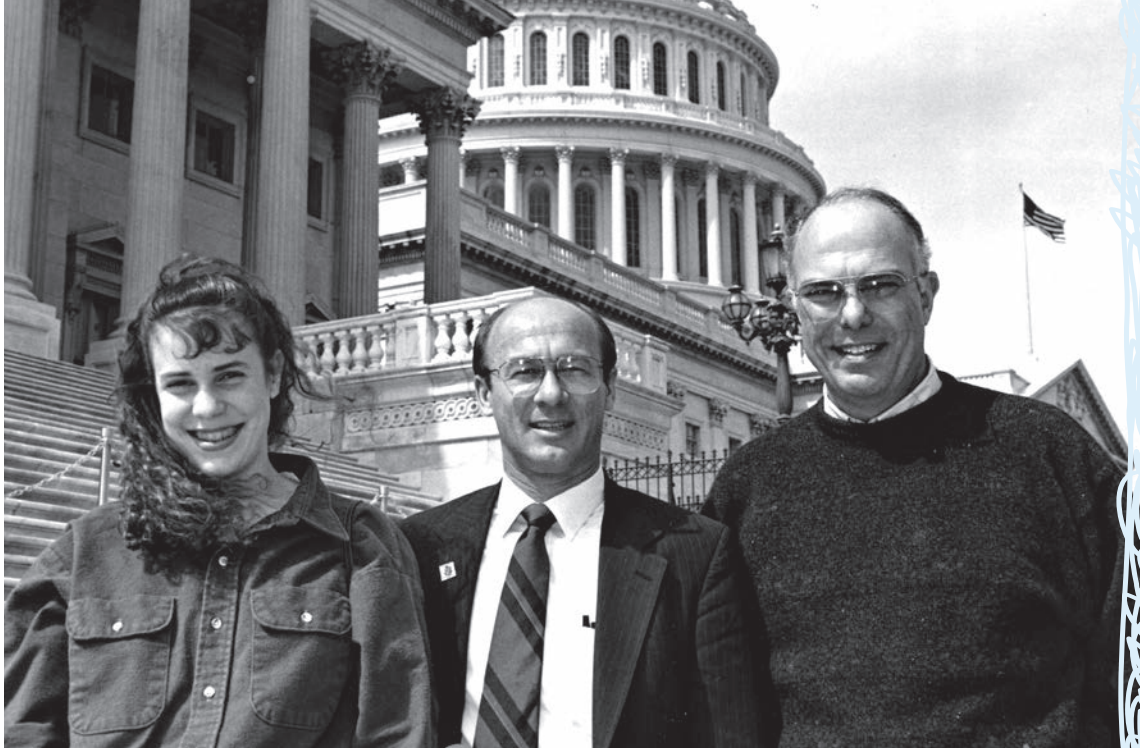
what else may they be wrong about? Such thoughts can undermine a person's whole sense of how to navigate his or her way in the world, and this upending of their world view may cause conservatives to view Roberts as a fear-inducing figure.

Roberts said in his confirmation hearings that he deemed his job to be that of an umpire — calling balls and strikes. And so he may have put himself in that unenviable place: alone in the middle. Umpires may be feared and respected, but it seems they take tea alone.

—Professor Richard Birke is the director of the Center for Dispute Resolution at Willamette University College of Law.

Photo credit: The Collection of the Supreme Court of the United States

Angela Wilhelms, 14, left, accompanied her father, lobbyist Gary Wilhelms, far right, on a lobbying trip to Washington, D.C. in 1992. Between them is then-U.S. Rep. Mike Kopetski.



Family Business

Third-year law student Angela Wilhelms grew up watching her father help run the Oregon House of Representatives. Now she has his old job.

This spring's short legislative session in Oregon had all the makings of a political disaster: an evenly split House, a state climbing its way out of a recession, and a governor demanding big changes in the state's education and health care systems. But by the time the end-of-session gavel came down in March, lawmakers were drawing praise for their ability to cooperate and avoid the gridlock that has stymied other legislatures around the nation.

Less publicly noticed were the legislative staffers who tamp down rivalries and smooth disagreements before they blow up into major issues. Angela Wilhelms, chief of staff for House Republican co-Speaker Bruce Hanna, was a key player in Hanna's negotiations with Democratic co-Speaker Arnie Roblan and Gov. John Kitzhaber. Wilhelms, who is pursuing a joint JD/MBA degree and expects to graduate in 2013, sat in on budget talks, managed the flow of bills and alerted legislators to eleventh-hour changes in their proposals.

"In this atmosphere, there are a lot of people more in love with themselves than with anybody, and you've got to be able to deal with that. I happen to believe my daughter is excellent at it."

"She has a depth of understanding of public policy that is amazing," said Republican Rep. Matt Wand of Troutdale. "You can spend hours and hours just to get a toehold on an issue, but she has the toeholds nailed. She has a striking memory for details."

That's not surprising, given her background. Wilhelms' dad is Gary Wilhelms, the Republican House minority leader in the late 1970s and, more recently, chief of staff for former House speakers Lynn Snodgrass and Karen Minnis.

Wilhelms was 12 months old when her mother brought her to former Gov. Vic Atiyeh's office to uncork Champagne at the end of the 1979 session; her father toted her along with him to

high-level meetings around the state and in Washington, D.C. Wilhelms, the youngest of four children, grew accustomed to sitting at dinner tables with congressmen and top policy makers. When they asked the high schooler her opinion, she offered it.

"I grew up in an environment where you don't get to sit back," Wilhelms said. "There was never any pressure to be involved, but we were always taught that if you're not going to be involved, you didn't have the right to complain."

Wilhelms said she never intended to go into politics, but after working a few years for a medical device company in the San Francisco area, she decided to return home. She ran campaigns and ballot measures and worked as a lobbyist before deciding to try law. Now she juggles classes and externships with the chief of staff job.

Wilhelms describes her political philosophy as "center right" and refers to herself as a moderate Republican with Libertarian tendencies. After all these years, Gary Wilhelms says he has no idea of his daughter's position on abortion or gun rights because they've never discussed it.

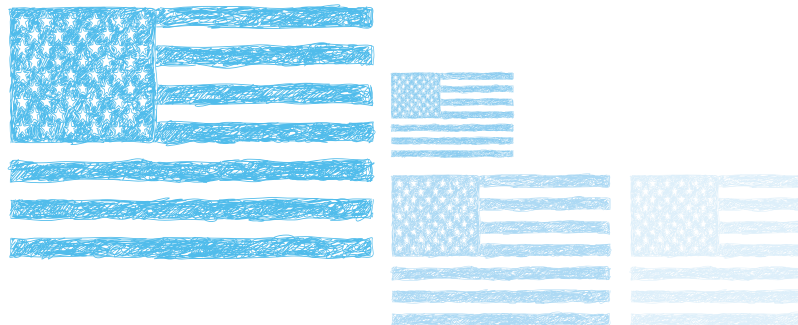


Angela Wilhelms shares a laugh with Oregon House Reps. Matt Wand, R-Troutdale, (left) and Mike McLane, R-Powell Butte, before a House Republican caucus meeting last May.

Besides managing the day-to-day operations of the House staff, Wilhelms — and her cohorts in Roblan's office and the Senate president's office — work together to ensure that key bills progress through both chambers. They settle internal disputes among office staff so their bosses can focus on the needs of their caucuses and their negotiations with the governor. Wilhelms apprises Republican

members of budget talks and the status of their own bills. She flatters, cajoles and steers them toward reason.

"She's not afraid to get in peoples' faces and tell them they're wrong," Gary Wilhelms said. "In this atmosphere, there are a lot of people more in love with themselves than with anybody, and you've got to be able to deal with that. I happen to believe my daughter is excellent at it."



One day during the interim, Wilhelms seemed to be everywhere: texting madly, strolling into House members' offices to listen to proposals about a rainy day fund and reassure them that firefighters wouldn't be cut from the budget before Oregon's fire season. (On her rounds through the Capitol, Wilhelms lightens the mood by carrying several folders labeled "STUFF," with the subheads "to do/to avoid/to postpone entirely.")

One member proudly told her that the municipal employees' union liked him. "That's because you're an undefeated Republican who won't have a problem getting re-elected," she shot back. "True," he smiled. "But they still like me."

Oregon politics being the longevity career that it is, there are still people around the Capitol who remember Wilhelms when she was in diapers. Now she tells them, politely but firmly, whether or not they'll get their way on a bill. This past session Gary Wilhelms returned to the House Speaker's office, so Wilhelms got to boss her dad around. He said he didn't mind that so much because he got paid more.

The upcoming session could be even more of a challenge for lawmakers than the one this spring. Public pension costs are eating away at the state's budget. An outside panel is set to deliver recommendations on prison sentencing. Lawmakers still haven't tackled tax reform. And Wilhelms will be in the thick of it.

Joked Rep. Vicki Berger, a Republican from Salem: "You know she runs the state of Oregon, don't you?"





Getting in the Game

Married, a successful businessman and firmly into middle age, Brian Grossman JD/C'93 decided he needed a new challenge. So he signed up to run the most grueling race in the world.

The Marathon des Sables is not a race for would-be athletes or weekend joggers. The six-day, 150-mile foot race across the Sahara Desert requires competitors to carry their food and sleeping gear on their backs in temperatures that can reach 120 degrees. At least two people have died running it; one time, a racer from Italy hit a sandstorm and wandered around, lost, for nine days. Entry fees are steep. Multiple bloggers state that anyone even considering running the “marathon of the sands,” the equivalent of six marathons, must be crazy.

Brian Grossman's reaction? Bring it on. Combining self-interest and philanthropy, Grossman ran the MdS earlier this year to raise money for Kids in the Game, a Bend, Ore.-based charity he founded in 2010 to provide athletic fees for low-income kids who can't afford to participate in their local sports programs.

“I told myself that I'm going to take the whole idea of a midlife crisis to a midlife ascension,” said Grossman, JD/C'93. “This is the time of life where people cheat on their wives, buy motorcycles, etcetera. You can leave a legacy when you're dead, but also when you're alive.”

Grossman, a veteran of several ultra-long races, is 6 feet 2 inches. He skis, bikes and runs, but over the years his weight had ballooned to 221 pounds. His dad's reaction when he told him he was going to run the MdS: “That's the dumbest thing you've ever signed up for. Why would anyone want to do that?”

The race had actually been on Grossman's to-do list for quite a while. While living abroad after law school, he had seen a pal of his running down the hot, steamy streets of Shanghai with a backpack. When Grossman asked him what he was up to, his friend replied he was training for the MdS. Intrigued, Grossman vowed he'd tackle the race some day, but it was 15 years before he got to it.



"My goal was to finish," he said. "No matter how bad my feet got, if I didn't have a biomechanical or major dehydration issue, I would finish."

The Internet is awash in training regimens for the MdS, but, astonishingly, Grossman didn't do any research or set a schedule. He'd run until he got tired — although that usually didn't happen until he'd covered eight straight hours through the desolate, rugged territory of Central Oregon. He also

did yoga, tae bo and lifted weights. He didn't diet or count calories, but he did give up burgers, fries, chips and beer. Most of his time went into researching gear and footwear.

"He's very disciplined, very committed," said Grossman's running partner, Eric Plantenberg, who has climbed Mt. Everest and plans to run the MdS someday. "I've never heard of anyone training for an endurance race like that, but what I love about it is it fits Brian's personality. He's bucking conventional wisdom and he gets great results."

"I want to live an inspired life, and that means inspiring others with what you do."



Brian Grossman, top, during the Marathon des Sables. Bottom: Grossman's shoes and gear that got him through the Sahara Desert.

On April 5, Grossman found himself at the start of the race in Morocco, confident he'd done everything he could to prepare. He had the right recovery drink, good shoes and a light pack. All he had to do was ignore the signals that his body, running in extreme heat over sand and scree, would send to his brain: that he was dying and had to stop.

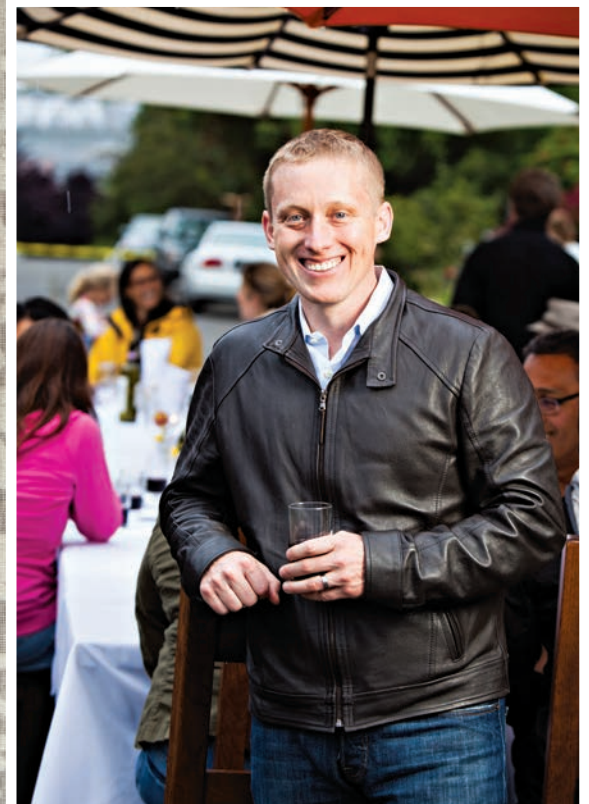
Running the MdS is actually a misnomer; most MdS participants power-walk large sections of it. At night Grossman slept in military-style tents that race organizers provided; during the day he ate oatmeal, protein bars, nuts, beef jerky and ginger. Dinner consisted of expedition-style meals of beef stroganoff and chili con carne. At rest stations, he regularly changed his wet socks to dry ones because he was worried about blisters hobbling him.

Grossman ran through rain and a sandstorm. He thought about his family. About eating and drinking. How painful his feet felt. And if he'd get through the race or drop out.

He finished, of course, and spent two weeks recovering. He lost 32 pounds and raised \$58,000 for Kids in the Game. After an initial bout of gloom — what do you do to follow up running the most difficult race in the world? — Grossman decided he wants to do more for the world. But he's not sure what.

"I want to live an inspired life, and that means inspiring others with what you do," he said. "When you're in your late 80s, sitting on a park bench and looking back on your life, it won't matter the mistakes you made or how good a lawyer you were. What I don't want to have is regrets over the things I could have done."

To donate to Kids in the Game, visit the organization's website: kidsinthegame.org.



Childhood, Revisited

Wade Moller's fondest memories of his childhood in Seattle were his family's weekly visits to an Italian restaurant. So when he grew up, he opened one of his own.

Five minutes before the annual block party was scheduled to begin, the skies looked ominous. The chefs at Cantinetta had spent the day prepping the platters of antipasti, tomatoes and pasta; the residents of Seattle's upscale Wallingford neighborhood had started streaming in, anticipating the free food. Kids in Hello Kitty pajamas mingled with women in high heels.

The drizzle turned into a steady rain, but that didn't faze Wade Moller BS'96, JD'00, Cantinetta's co-owner. He strode in, accepting handshakes and shoulder clasps, clearly in his element. Moller is an attorney for Weyerhaeuser by day, but in his off time he runs the restaurant. It's a change from conference calls and corporate boardrooms, but he loves it.

"You don't see a lot of unhappy people in the restaurant world," Moller said. "They're not going to retire at 52 and have a fancy house on the water, but they sure get the most out of every day."

Moller met his business partner, Trevor Greenwood, in high school when both worked as maintenance men at the Mercer Island Beach Club. They bonded over broken lawn mowers, then kept in touch as each pursued different careers. Moller, a philosophy major at Willamette, got a law degree and worked at Washington Mutual before landing at Weyerhaeuser. Greenwood worked management jobs at the iconic Seattle restaurants Queen City Grill and Via Tribunali. Wouldn't it be cool to open a restaurant someday? they'd ask each other.



And then in 2008, Greenwood called Moller. He said he had some seed money and was looking to leave Via Tribunali. How about going into the restaurant business? They thought about what kind of place they wanted to run, and both remembered their childhood trips to family-style Italian restaurants. They ran across an old dentist's office in Wallingford with great character, met with investors, then opened up Cantinetta, a rustic Italian ristorante, in January 2009 — possibly the worst time financially to open a restaurant.

But they've made it work by serving crowd-pleasing food, appealing to local residents and, perhaps most important, keeping prices low. Greenwood runs the day-to-day operations; Moller uses his legal expertise to draft contracts and liquor license applications. He also dreams up new concepts, like the combination deli/restaurant version of Cantinetta that they've opened in Bellevue.

Moller said he's always had an affinity for food, but his inspiration for opening Cantinetta may have been his father. He had

“You don't see a lot of unhappy people in the restaurant world,” Moller said. “They're not going to retire at 52 and have a fancy house on the water, but they sure get the most out of every day.”

been an airline pilot and loved to fly, Moller said, but always had wanted to start his own business. Yet when he was given a chance to invest in a McDonald's, he turned it down because he would have had to move his family to New York. “He had the entrepreneurial gene but things didn't line up for him,” Moller said. “If you have that itch and you don't scratch it, you always wonder.”

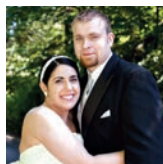
Moller and Greenwood built much of the restaurant themselves: they tore up the flooring, installed drywall and chandeliers and put in floors salvaged from a local high school. On the night of the block party, most of the visitors were from the neighborhood.

“I'm the person this restaurant was made for,” said Bill Enger, who lives three blocks away. “This is the kind of place my wife and I like to come to after work. It's really low-key and the quality is really high.”

Three hours after the party began, the food was gone and it was drizzling again. People had long ago shrugged off the rain and taken their plates outside. It would have been a perfect time to walk home, but the tables remained full. The customers kept talking. They didn't want to leave.



Marriages



Myah M. Osher JD/C'07 married Andrew Kehoe on

June 23, 2012, at Mt. Tabor Park in Portland, Ore. The couple reside in Portland, where Osher runs her own law practice specializing in domestic relations. *Photo by Abby Rae Photography.*

Carolyn R. Foster JD'08 and Stephen Kalb were married on Nov. 12, 2011, at Green Villa Barn in Independence, Ore. The couple reside in Keizer, Ore. Foster works as a compliance specialist in the education division of the Oregon Real Estate Agency.



Evan R. Cole JD'12 and **Lauren E. Miller JD'10** were married

March 22, 2012, at the Royal Hawaiian Hotel in Honolulu. The couple reside in Los Angeles, where Miller works as in-house counsel at the Normandie Club.

Family Additions



Sonia (Patel) Dalton JD'96 of Irvine, Calif., and husband

Danny welcomed daughter Samarra Dutch on Dec. 2, 2011.



Sara D. (Civey) Couch JD'02 of Edmonds,

Wash., and husband Sean welcomed daughter Mercer Jean on March 6, 2012. She joins sister Reese.



Marisol (Ricoy) McAllister JD/MBA'02 of Portland, Ore., and

husband Alan welcomed son Cameron Augustin on April 17, 2012. He joins brother Henry and sister Maggie.



Daniel A. Kittle JD'10 and **Rachel J. (Wixon) Kittle JD'08** of Seattle,

Wash., welcomed son Judah Kingston on Jan. 5, 2012. He joins big sister Sophia.

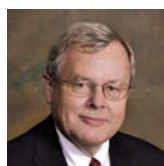


Jonathan P. (Strauhal) Strauhull JD'10 of Portland, Ore., and

wife Margot welcomed son Henry Lyle on April 7, 2012.

the 1960s

Richard A. Uffelman JD'66 of West Linn, Ore., was admitted to practice before the Tribal Trial and Appellate Courts of the Warm Springs Confederated Tribes, effective January 2012. A shareholder at Buckley Law, he divides his practice between transactional work and litigation, focusing on the areas of taxation, estate planning and administration, real estate and general business law.



Henry H. Hewitt JD'69 of Portland, Ore., received the

prestigious Judge Learned Hand Lifetime Achievement Award from the Oregon Area Jewish Committee at the organization's annual luncheon in June. A partner at Stael Rives LLP, Hewitt has been described by Chambers USA as the "Dean of Corporate Law." He served as chair of Stael from 1989 to 1999, and again from 2002 to 2005, and led the firm's business services practice group from 2005 to 2009. He has served as principal legal advisor to the boards of many companies, including Tektronix, PacifiCorp, Fred Meyer, Electro Scientific Industries and Medford Corp.



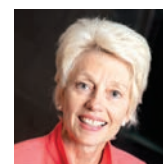
David A. Hilgemann JD'72 of Keizer, Ore., has joined Garrett

Hemann Robertson PC. His practice focuses on real estate transactions, property management, wills and estates, business organization, and real estate development. Hilgemann also is a distinguished arbitrator and mediator. He most recently managed his own law practice in Salem, Ore.

David H. Deits JD'75 of Bellevue, Wash., has retired from the practice of law, effective January 2012. Deits most recently was a partner in the

Seattle office of Davis Wright Tremaine, where he focused his practice on intellectual property law.

E. Pennock Gheen III JD'75 of Seattle, has returned to Bullivant Houser Bailey PC in the firm's Seattle office. He is part of the firm's litigation practice, where he represents manufacturers across many industries in the defense of product liability, professional liability and personal injury and catastrophic claims. He previously was with Karr Tuttle Campbell.



Susan M. Hammer JD'76 of Portland, Ore., was named the

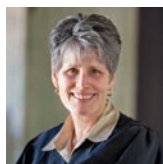
2012 Oregon Mediation "Lawyer of the Year" by Best Lawyers®. Hammer is an experienced mediator, having handled more than 1,500 disputes. She specializes in matters that are legally, factually or emotionally complex. She is a distinguished fellow in the International Academy of Mediators and a member of the National Academy of Distinguished Neutrals. In addition to her dispute resolution practice, Hammer is a life member of Willamette's board of trustees and a senior fellow at the Willamette University College of Law Center for Dispute Resolution, where she teaches lawyers and law students negotiation, mediation and mediation advocacy.

Angel G. Lopez JD'78 of Portland, Ore., received the 2012 Judge Mercedes Deiz Award for the promotion of minorities in the law at the

Oregon Women Lawyers annual Roberts–Deiz Awards dinner held March 9, 2012. Lopez was recognized for continually taking a leadership role in promoting minorities in the law. Prior to his appointment to the Multnomah County Circuit Court in 2009, Lopez worked as a public defender and later tailored his private criminal defense practice to serve underrepresented Spanish-speaking communities.

Dennis S. Reese BS'72, JD'79 of Portland, Ore., has been inducted into the College of Workers' Compensation Lawyers. He is the second Oregon lawyer ever to be inducted into the college, and was one of only 43 new fellows inducted this year. He is a past chair of the American Bar Association's Workers' Compensation and Employment Liability Committee, and past chair of the OSB Workers' Compensation Section CLE committee. Reese, who has defended businesses in connection with employment law and worker's compensation claims since 1979, has been of counsel with Garrett Hemann Robertson PC in Salem since 2007.

the 1980s



Justice Virginia L. Linder JD'80 of Salem, Ore., received the

2012 Justice Betty Roberts Award for the promotion of women in the law at the Oregon Women Lawyers annual

Roberts–Deiz Awards dinner held March 9, 2012. The Oregon Supreme Court justice was recognized for her distinguished career and for serving as a valuable resource for women and minorities in the field of law.

Richard Baroway JD'83 of Beaverton, Ore., is an owner in the newly formed law firm, Tomasi Salyer Baroway in Portland. Baroway was a partner at Garvey Shubert Barer until 2010, and has been practicing for almost 30 years representing businesses, financial service providers and nonprofit organizations in several areas of the law including real estate, corporate, nonprofit and creditor-rights issues. He also regularly works with businesses on mergers and acquisitions, formation and tax-exempt organization issues.



Martha O. Pagel JD'83 of Salem, Ore., recently was named to the board

of directors of the Oregon Water Resources Congress, a nonprofit trade association that represents irrigation districts, water control districts, drainage districts and other agricultural water providers in Oregon. A shareholder at Schwabe, Williamson & Wyatt, Pagel focuses her practice on water law, natural resources law and government relations.

Coni S. Rathbone JD'88 of Lake Oswego, Ore., has been appointed as a public member of the Oregon Real Estate Board, which advises the state's real estate commission and the governor's office on real estate industry matters.

Rathbone is a shareholder with Zupancic Rathbone Law Group PC, where her practice focuses on real estate, corporate and securities law, mergers and acquisitions, and general business transactions.

Steven M. Lippold JD'89 of Salem, Ore., has joined the civil litigation section of the Oregon Department of Justice as a senior assistant attorney general. Lippold previously was a founding partner of Fetherston Edmonds LLP, and was a civil defense trial lawyer for 23 years. He has extensive jury trial experience in the area of personal injury, wrongful death, employment law and commercial litigation, as well as appellate experience.

the 1990s

James E. Green JD'91 of Salem, Ore., has joined the Oregon School Boards Association as its deputy executive director. Green is a veteran lawyer, lobbyist and member of the Salem-Keizer

School Board. Prior to joining the OSBA, Green was a member in the firm of Harrang Long Gary Rudnick PC in Salem.

Scott A. Miller JD'94 of Chicago, Ill., is now an associate partner at Hewitt Ennis Knupp Inc., where he provides consulting and educational services on fiduciary and governance issues to multibillion dollar pension plans. Miller formerly served as special counsel and director of fiduciary services for Saxena White PA in Montana.

Patrice D. Altenhofen JD/C/ MBA'95 of Salem, Ore., has been tapped to serve as the new executive director of Family Building Blocks. Altenhofen, who most recently served as president of Cascade Employers Association, started at the nonprofit child abuse prevention agency in September. Family Building Blocks served more than 858 children in 2011 alone through its therapeutic classes, outreach services, dependency treatment court and supervised visitation programs. Its services are focused on at-risk children 6 weeks to 5 years old.



Timothy M. Parks BS'89, JD'93 of Beaverton, Ore., and **Dina E. Alexander JD'96** of Lake Oswego, Ore., along with Barbara Radler and Christe White, recently formed a new boutique real

estate and land-use firm. Radler White Parks & Alexander LLP will operate offices in Portland and Bend, Ore. The firm represents both private companies and public entities in such areas as commercial and residential development, commercial leasing, debt and equity financing, tax-deferred exchanges, public-private partnerships, land division, development charges and infrastructure. Parks and Alexander previously were partners at Ball Janik LLP.



Tara J. Schleicher JD/MBA'95 of Tualatin, Ore., has been

recertified as a business bankruptcy law specialist by the American Board of Certification. She has been certified since 2007, when she passed a rigorous examination and successfully completed the requirements for national certification in business bankruptcy law. Schleicher is the 2012 chair of the Oregon State Bar Debtor-Creditor Section and has more than 15 years of experience representing creditors, trustees and debtors in all types of bankruptcy matters. She is a shareholder at the Portland law firm Farleigh Wada Witt.

Brinton M. Scott JD'95 of Shanghai, China, has joined the Shanghai office of Winston & Strawn LLP as a partner. His practice focuses on corporate, intellectual property and employment law matters, including those involving mergers and acquisitions, joint ventures and foreign direct investments. Scott most recently was a partner at Clyde & Co.

Kelly A. Cole JD'96 of Washington, D.C., has been promoted to executive vice president, government relations, of the National Association of Broadcasters, where she will oversee all advocacy efforts of the department. Cole joined the NAB in 2006 after serving six years as telecommunications counsel to the House Committee on Energy & Commerce, where she was an adviser on legal and policy issues relating

to communications and the Internet.

Robyn L. Helmlinger JD'96 of San Francisco, Calif. has joined Squire Sanders as a partner. Helmlinger, who previously was with Sidley Austin, is a member of the public and infrastructure finance practice group.



Elizabeth N. Wakefield JD'97 of Portland, Ore., has been

named to the Multnomah Bar Association board of directors. Her three-year term began July 1, 2012. Wakefield is an attorney with the Metropolitan Public Defender, where she practices in the areas of criminal defense, juvenile law and civil commitments.

Heather J. Van Meter JD'98 of Portland, Ore., has joined the civil litigation section of the Oregon Department of Justice as a senior assistant attorney general. Van Meter was a civil litigation defense attorney for more than 12 years, where her practice focused on product liability, torts, contracts, defamation and other complex civil litigation in state and federal courts.

Brenda K. Baumgart BA'95, JD'99 of Portland, Ore., joined Stoel Rives LLP in January 2012. She focuses her practice on employment counseling and litigation, appellate law, labor law and on-site employment training. Baumgart previously was a partner at Barran Liebman LLP.

the 2000s



Elyssa J. Weber JD'00 of St. Paul, Minn., has been named

president for 2013 of the Saint Paul Jaycees. She joined the Saint Paul Jaycees after moving to the area, and has held various positions within the organization over the years, including membership vice president and Minnesota state legal counsel. Weber is an attorney for the League of Minnesota Cities, where she works exclusively in the field of workers' compensation.



James D. Howsley JD'01 of Vancouver, Wash., has been

appointed to the Building Industry Association of Washington's legal committee for 2012. The BIAW's mission is to be the voice of the housing industry in the state of Washington. The association is dedicated to ensuring and enhancing the vitality of the building industry for the benefit of its members and the citizens of the state. Howsley is a shareholder at Jordan Ramis PC.



Kristin M. Flickinger JD'02 of West Hollywood, Calif.,

accepted a position as associate director of the Southern California office of AIDS/LifeCycle. In the

last year alone, ALC raised \$13 million to support the HIV/AIDS services of the LA Gay & Lesbian Center and the San Francisco AIDS Foundation.



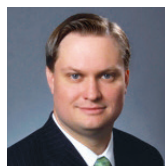
Christopher B. Matheny JD'02 of Keizer, Ore., has joined Fetherston

Edmonds LLP as of counsel. Matheny previously was with the law offices of David Hilgemann in Salem, Ore. Matheny will continue to represent businesses and individuals in the areas of real estate law, business and corporate transactions, commercial landlord-tenant issues, mortgage foreclosure defense, and general civil litigation.

Kristen L. Bremer JD'03 of Portland, Ore., has been elected to a three-year term on the board of trustees for the Portland Institute for Contemporary Art (PICA). A partner in the labor and employment practice group at Tonkon Torp LLP, Bremer represents companies and nonprofit organizations in employment and labor matters.

Jay A. McAlpin JD'03 of Eugene, Ore., was appointed to the Lane County Circuit Court by Gov. John Kitzhaber in May 2012. McAlpin most recently worked as a trial attorney with Zipse, Elkins & Mitchell, where he handled insurance defense cases throughout Oregon. He began his legal career as a judicial clerk for Lane County Circuit Judge Maurice Merten, and later served for five years as a Lane County assistant district attorney. His spouse, **Megan B.**

(Bell) McAlpin JD'03, and two daughters presented McAlpin with his robe at his swearing-in ceremony held in June.



Severin A. Carlson
JD'04 of Reno, Nev., was named a Legal Elite

attorney for 2012 by Nevada Business magazine. The list represents the top two percent of practicing attorneys in the state as selected by their peers. Carlson is a partner at Kaempfer Crowell Renshaw Gronauer & Fiorentino, where he focuses his practice on administrative law, governmental regulatory matters and commercial litigation.

Sean C. Gay JD'04 of Canby, Ore., has been named partner in the Portland office of Stoel Rives LLP. He is a member of the firm's construction and design group. Gay has substantial experience drafting and negotiating construction and design contracts, as well as extensive public contracting experience, having litigated bid protests and contract disputes.



Carlos R. Moncayo Castillo
C'04 of Shanghai, China, has

been named a Young Global Leader for 2012 by the World Economic Forum. He was one of only 192 honorees from 59 countries to receive the honor. The recipients are recognized for their professional accomplishments, commitment to society and potential to contribute to shaping the future of the world. Moncayo Castillo

is co-founder and chief executive officer of the ASIAM Business Group, a socially responsible apparel-sourcing firm with operations in China, Vietnam, India and Pakistan.

Daniel M. McCay JD'05 of Riverton, Utah, was chosen by Republican delegates and appointed by Gov. Gary R. Herbert in January 2012 to represent District 52 in the Utah House of Representatives. A real estate attorney, McCay plans to focus his work in the House on education and health-care issues.

Ryan A. Mulkins JD'05 of Grants Pass, Ore., was named the 2011 Oregon Child Abuse Prosecutor of the Year by the Oregon Department of Public Safety Standards and Training. Mulkins is a deputy district attorney in Josephine County.



Shannon A. (Terry) Reel
JD'05 and **Heather A. Vogelsong**
JD'05, both

of Salem, Ore., have chaired the local Imprint program for the past two years. The program matches a local attorney with a North Salem High School student, allowing them to form a one-on-one connection over a semester through reading a book and exchanging letters on what they've read. It provides students with the opportunity to interact with positive adult role models and encourages the students' interest in learning. This year, 31 attorneys participated in the program, each reading one or two classic books with their student. The students who participated in the Imprint program this year all are part of

North Salem High School's Advanced Via Individual Determination program. AVID students have the intellectual capacity to attain college entrance, but tend to have barriers that would prevent them from attending, such as language or economic hurdles.



Matthew R. Wilmot
BA'01, JD'05 of Portland, Ore., was

named a shareholder at Schwabe, Williamson & Wyatt PC. Wilmot is an intellectual property attorney focusing his practice on advising business clients on identifying, protecting and enforcing their intellectual property assets.

Christopher J. Bergstrom JD'07 of Vancouver, Wash., has joined the Washington County office of St. Andrew Legal Clinic, a nonprofit practice providing low-cost legal advocacy for low- and moderate-income families. Bergstrom previously was in private practice, where he focused primarily on family law issues.

Eleanor A. DuBay JD'07 of Beaverton, Ore., has joined the Portland, Ore. firm of Tomasi Salyer Baroway as an associate. She focuses her practice on consumer and commercial real estate foreclosures, representing all types of secured lenders in foreclosure-related matters throughout Oregon. DuBay previously was an associate at Farleigh Wada Witt.

Preston C. Greene JD'07 of Portland, Ore., has been promoted to senior associate

by CBRE, a global real estate services company. Since joining the company in 2008, he has represented both landlords and tenants in the sale and leasing of commercial property throughout Portland and the mid-Willamette Valley. His clients have included companies such as Netflix, Cargill, First Group, John Deere, Emeritus and Walgreens.

Joshua L. Lute JD'07 of Grants Pass, Ore., has joined Dutch Bros. Coffee as general counsel at the company's headquarters in Grants Pass. He previously was an associate at Perkins Coie LLP in Portland. Lute worked for Dutch Bros. as a barista during high school and at times during law school.



Lucas W. Reese
JD'07 of Salem, Ore., has been named a

shareholder in the firm of Garrett Hemann Robertson PC. He focuses his practice on civil litigation, employment and labor law, and human resources consultation and litigation. Reese serves on the board of directors for the Boys & Girls Club of Salem, Marion and Polk Counties, and participates in the local Teen Court program.



Sarah E. Hunt
JD/C'08 of Washington, D.C., received her

LLM in International Environmental Law from Georgetown University Law Center in May 2012. She previously was an associate at Kevin L. Mannix

PC, where she focused her practice on elections law, civil rights, crime victim's rights, appellate practice and public policy development.

Lindsay A. Burton JD/

MBA'09 of Belmont, Mass., was recently promoted to the position of senior counsel at Litle & Co LLC, located north of Boston. Litle is a leading provider of payment processing services to e-commerce and direct marketing merchants such as Overstock, Ancestry.com, GoDaddy and ShopNBC.

Michelle K. Sugahiro JD'10

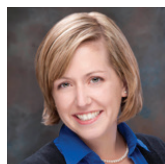
of Milwaukie, Ore., is an associate at the firm of Cavanaugh Levy Bilyeu LLP in Portland. She focuses her practice on estate planning matters.

Brian J. Best BA'06, JD'11 of Portland, Ore., is an associate with Hart Wagner LLP, where he focuses his practice on medical malpractice defense.

William A. Chambers JD'11

of Helena, Mont., is practicing with Dix, Hunt & McDonald.

His practice encompasses the areas of plaintiff's personal injury, products liability, medical malpractice, appeals, class action suits and anti-trust and trade regulation.



Alissa L. Salerno

JD'11 of Helena, Mont., has joined

Crowley Fleck Attorneys PLLP as an associate, where her practice focuses primarily on corporate transactions — including asset and stock sales, corporate formation, mergers and securities offerings.

In Memoriam

Karl S. Clinkinbeard JD'58 of

Eugene, Ore., passed away on Jan. 3, 2012, at 90. Clinkinbeard practiced law in Medford, Ore. for more than 20 years. He was an active Kiwanis member and served on the Medford School Board. During World War II, Clinkinbeard served in the U.S. Marine Corps as a second lieutenant in the battle of Iwo Jima.

He later wrote a memoir about his wartime experiences. He was preceded in death by son William. He is survived by wife Annette, son Kent, stepsons Eric and Michael, stepdaughters Shannon and Lauren, 13 grandchildren and 11 great-grandchildren.

Richard L. Barton BA'62,

JD'65 of Beaverton, Ore., passed away April 7, 2012, at 71 after a four-year fight with renal cell carcinoma. After graduating from Willamette, Barton was hired by Multnomah County District Attorney George Van Hoomissen as a deputy district attorney. He built a reputation for winning trials and being a tough negotiator during plea-bargaining sessions. In 1972 he left the district attorney's office and established a private practice, where he handled general trial work, including domestic relations and criminal defense cases. Barton served as president of the Oregon Trial Lawyers Association in the early 1980s, and on a number of Oregon State Bar committees.

However, he cared most about his work with the State Lawyers Assistance Committee. Barton retired from private practice in 2004, subsequently serving as a pro tem judge in Washington County for a short time. Barton enjoyed travelling with this wife Donna, and particularly loved Ireland, Italy and Istanbul and Amsterdam. He also enjoyed history and music. When he was younger, he served in the U.S. Army Reserves. Survivors include wife Donna and sons Richard and Robert.



Fred U. Hammett, Jr. JD'67, of Ramona, Calif.,

passed away

on May 30, 2012 at 70 as a result of an auto accident. Hammett began his legal career at the San Diego County District Attorney's Office. From 1970–72 he worked at the law offices of McInnis, Fitzgerald & Wilkey, after which he opened his own practice specializing in the fields of personal injury and insurance



Daniel J. Miller JD'11 and **Caroline J. Campbell JD'11** of Gig Harbor, Wash., have had quite an eventful couple of years. The couple, who are both from Puget Sound area of Washington, met their first year of law school, sitting next to one another on the first day of class in contracts taught by professor David Friedman and torts with professor Dean Richardson. Was it love at first sight? Perhaps — they

started dating second semester, and were inseparable from that point forward. To the surprise of many, they were engaged and married over winter break their third year of school, surrounded by family in a beautiful ceremony in Seattle. "It is safe to say that our responses to, 'how was your winter break?' were received with a certain degree of shock and surprise from most of our classmates," recalls Campbell.



In mid-July 2011, two weeks before the Washington State Bar exam, the couple welcomed their daughter Mabel Campbell Miller. The couple is proud to announce another "birth," of sorts, the opening of Campbell & Miller PLLC in Gig Harbor on Dec. 1, 2011. The couple offer

affordable legal services in the areas of estate planning, family law, real estate, business law and personal injury. Miller and Campbell are happy to report that their firm continues to grow each month and "we love practicing for ourselves and with each other," Campbell says. Mabel already has her first job as junior partner at the firm, where she spends time drooling over her parent's legal documents.

litigation. As an undergraduate student at San Diego State University, he was a member of the Sigma Phi Epsilon fraternity and he maintained close ties with his fraternity brothers over the years. He joined the San Diego Yacht Club in 1972, and was an enthusiastic competitor in many local and long distance ocean races over the past 40 years. Hammett and wife Joette loved the outdoors, and enjoyed camping, ATVs, sailing, skiing and fly fishing. He loved rebuilding old "Detroit Iron," spending time with family and friends and visiting the beautiful log cabin he built in McCall, Idaho. He was unfailingly generous and gracious with his time and resources. His favorite "charities" were any family members or friends who needed help. Hammett left behind his wife of 42 years, Joette; three sons, Gaven, "Buddy" Fred IV and Joseph, and daughter Monica; and several grandchildren.

Richard N. Roskie JD'69 of Ketchum, Idaho, passed away Feb. 29, 2012, at 69. He went the way he would have chosen to go. While skiing on Mt. Baldy in California in massive amounts of fresh powder, he suffered a heart attack and died with his boots (and skis) on. To friends and family, Roskie was an irresistible force. His mind was a catch basin for every field of study and stray fact that crossed his path. Roskie could, and did, discuss law, electrical engineering, celebrity gossip, ballistics, politics, sports, culinary arts, religion and anything else worth talking about with humor, graciousness and a depth of knowledge — which earned him the sobriquet

"Rickopedia" among his friends.

An avid skier, he was easily recognizable by the bill of his battered pink baseball cap he wore under his ski hat. He also was an excellent golfer, one of the few who could almost always shoot in the 70s without seeing his handicap drop below 11. He served as president of Columbia Edgewater Golf Club in Portland, Ore. for many years before moving to Ketchum in 2002. He was a wonderful cook, often preparing the fruits of his frequent hunting expeditions. His kindness and willingness to pitch in were legendary. He retired from a very successful legal practice with Black Helterline LLP, where he had served as managing partner and remained of counsel until his death. He is survived by sister Lynn, niece Jamie, and friend and former wife Cherri.

Ronald J. Podnar JD'71 of Portland, Ore., passed away July 19, 2011, at 67. Podnar enjoyed a 20-year career as an administrative law judge with the Oregon Workers' Compensation Board, and had retired in 2002. He will be remembered for his sense of adventure, embrace of life and his ease in making friends everywhere he went. He had an abiding appreciation for the arts, fly fishing, travel, cooking, martial arts, yoga, languages and history. His intellectual curiosity, easygoing and fun-loving manner and mastery of any subject he attempted impressed all who knew him. He had a unique laugh that embodied his enjoyment of life, and it will be recalled with love by his friends and family. He is survived by wife Kathy.

Robert B. Moore JD'79 of Grants Pass, Ore., passed away on Feb. 3, 2012, at the age of 57. After attending law school, Moore worked in Salem, Ore. at the Oregon State Treasurer's office and was the legislative aide for state Rep. Cecil Johnson. He was named administrator for the Oregon House Republican caucus from 1980–82. In 1984, he was appointed deputy state treasurer and served in that role for several years before returning to Grants Pass to begin a career with Evergreen Federal Bank. He was with the bank for more than 20 years, helping thousands of people with their home financing and commercial loan needs. Active in the Rogue Valley community, Moore played a key role in the efforts to build a new Grants Pass High School campus, the Riverside West All Sports Park (now Reinhart Volunteer Park) and the city's new bridge. He was also honored by the State of Oregon for his help with Harbeck Village, a low-income housing development. He enjoyed river rafting and traveling with his partner, Kathy Scott, and supporting the Oregon State University Beavers. He is survived by Scott, a sister and two brothers.

Andrea Conklin Bucklin JD'86 of Mercer Island, Wash., passed away June 20, 2012, at 50 after a brief but valiant fight with breast cancer. A successful Tacoma attorney and administrative law judge, she was an extremely active member in her local community and her children's schools. She was the ultimate planner, and reached out to include everyone in the events and activities she helped coordinate, including the Lakeridge Chess Club and

Hoopfest. She also helped form Rotary basketball and USTA tennis teams. She took great pleasure in watching her daughter Molly's crew regattas and her son Zach's football games. She passed away in her home, surrounded by family, and was able to say goodbye to many of her closest friends who helped care for her and her family until the end. She is survived by her husband of 20 years, Kerry, son Zach and daughter Molly.

Lee H. Peterson JD/MBA'87 of Salem, Ore., passed away Jan. 27, 2012, at 63. He attended the University of Oregon and served in the U.S. Army. After law school, Peterson practiced law in Salem, joining Churchill Leonard Lawyers in 2009. Peterson organized and served as executive director of the Barbara Emily Knudson Charitable Foundation. He enjoyed attending University of Oregon football games, and was a "fighting Duck" to the end. He also enjoyed the outdoors. Peterson is survived by his beloved daughter, Emilee A. Peterson JD/C'10, also an attorney; brother Steven; sister Janice; former wife Toni; nieces, nephews and numerous cousins; and a great host of friends.

Joseph A. Niederhauser JD/MBA'10 of Littleton, Colo., passed away June 30, 2012, at 31. An avid hiker and outdoorsman, Niederhauser went missing in the Denver area on July 2, 2012. A memorial service honoring him was held at the Brighton Ski Resort in Utah on July 14. He is survived by wife Kirsten and many other family members and friends.

Class Action Contact

Information for Class Action should be submitted to:
Cathy McCann Gaskin, Associate Director of Alumni Relations
Phone: 503-370-6492 E-mail: wu-lawyer@willamette.edu

Willamette Lawyer
Willamette University College of Law
245 Winter St. S.E.
Salem, OR 97301

Please print or type all submissions, in the interest of accuracy. If something has been written about you in a newspaper or another publication that you would like mentioned in Class Action, please submit a brief summary of the original piece.

Submission dates are Jan. 15 for the spring issue and July 15 for the fall issue.

It is the practice of Class Action not to print pregnancy or engagement announcements, nor candidacies for political offices, due to the lag time between receiving such information and the publication dates. Willamette Lawyer reserves the right to edit or omit any information submitted.

We welcome photographs for possible use, depending on space and photo quality. Please send a self-addressed, stamped envelope if you would like your photo returned.

Editorial Contact

Direct comments, suggestions and reprint requests related to Willamette Lawyer to: Lisa Grace Lednicer, editor in chief
Phone: 503-370-6760

Job Listings

If you have a position opening, we invite you to post a job for alumni or current students using our online job posting system. Just follow the link to the WUCL Office of Career and Professional Development "For Employers" page at willamette.edu/wucl/careers/employers/. Under the title "Recruiting," click on "Post a Job Opportunity." You will be directed to a registration page where you then can choose "Register and Post a Free Local Job."

The Career and Professional Development Office is happy to accept job postings or accommodate on-campus interviews at any time. For specific questions about posting a job or setting a date to interview on campus, contact Bev Ecklund at becklund@willamette.edu.
Phone: 503-370-6057

Key

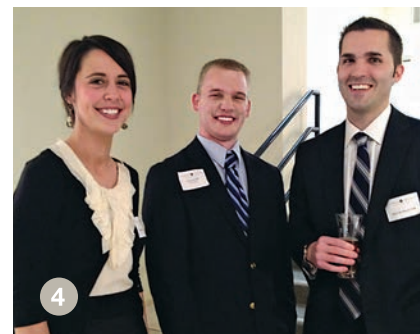
JD = Doctor of Jurisprudence
L = Non-degreed
LLB = Bachelor of Law (equivalent of JD)
LLM = Master of Law
MM = Master of Management, Master of Administration
MBA = Master of Business Administration
H = Honorary degree
C = Certificate in Dispute Resolution, International and Comparative Law, Law and Government, Law and Business, or Sustainability Law
BA = Bachelor of Arts
BS = Bachelor of Science

Portland Alumni Gathering

Feb. 16, 2012

Laura Russo Gallery

- 1 Renee E. Starr JD'04 and Judith A. Parker JD/C'06
- 2 Carl Del Balzo and Mary D. (Nozzi) Del Balzo JD'85
- 3 Lee Ann R. Donaldson JD'09; professor Paul Diller; Michael R. Fuller JD'09
- 4 Paige A. (Allen) De Muniz JD/C'08; Tony L. Swartz JD'12; Michael P. De Muniz JD'08



Events

Seattle Alumni Gathering

Feb. 22, 2012
Hotel 1000



1 Dean Peter V. Letsou and Eric B. Watness JD'77

2 Rachel J. (Wixon) Kittle JD'08 and Daniel A. Kittle JD'10

3 Richard E. Bangert JD'74 and Jeffrey B. Wells JD'75

4 Victoria Nguyen JD'09 and June A. (Kaiser) Campbell JD'80



Boise Alumni Gathering

March 1, 2012
Cottonwood Grille

1 M. Dean Buffington JD'66 and A. Richard Grant JD'64

2 A. James Balkins JD/MBA'79 and Jean (Rynd) Uranga JD'75



Honolulu Alumni Gathering

March 8, 2012
Sheraton Waikiki

1 Julie A. Bates JD'01; Kim K. Hasegawa JD/C'01; Laura K. Maeshiro JD'01; professor Michael Wise; Rory A. Kaneshiro JD'02, MBA/C'04

2 David A. Webber JD'72 and Gilbert C. Doles JD'83

3 Karin L. Holma JD'89; Peter T. Kashiwa JD'79; Mark A. Rossi JD'74



1962 Reunion

May 12, 2012
Illaha Hills Country Club,
Salem, Ore.



From left: Norma J. Paulus JD'62; Morris A. Arntson JD'62; Jerome L. Noble JD'62; William M. McAllister JD'62; Lawrence O. Gildea JD'62; Wallace P. Carson Jr. JD'62; William V. Bierek JD'62



1981 Reunion

Members of the class of 1981 gathered at Scholls Valley Lodge in Hillsboro, Ore., a beautiful inn owned by classmate A. Richard Vial JD'81 and his wife Paula, for a weekend of fun activities and much reminiscing April 20-21, 2012. Thanks to Tucker Photography for the class photo.

Front row, from left: Douglas K. Fermoile JD'81; Margaret Herrmann Taylor JD'81; A. Richard Vial JD'81; Timothy R. Volpert JD'81; James E. Horne JD'81; Theresa L. Wright JD'81; Michelle H. (Johnson) Hansen JD'81; Jennifer L. Wieland JD'81

Second row, from left: Daniel J. Hess JD'81; Judith E. Basker JD'81; Michael B. Mendelson JD'81; Wendy B. (Lewis) Comstock JD'81; Mark L. Cushing JD'81; Gerald L. Warren BS'78, JD'81; Lynnia K. Woods JD'81; Jeffrey A. Bowersox JD'81; Stanley G. Renecker JD'81, Duane H. Pellervo JD'81

Third row, from left: James A. Fitzhenry JD/MBA'81; Robert A. Davis JD'81; P. Stephen Russell JD'81; Mark B. Comstock JD'81; David J. Arthur JD'81; Brenda J. (Peterson) Rocklin JD'81; Alzora B. Jackson JD'81; Douglas S. Parker JD'81; Scott O. Pratt JD'81; Laurie A. (Bingham) Miller JD'81; Frank E. Bocci JD'81

Fourth row, from left: William R. Phillips JD'81; Douglas E. Goe JD'81; Clifford L. Peterson JD'81; William J. Hedges JD'81; Bradley D. Westphal JD'81; Max Rae JD'81; T. Randall Grove JD'81; James D. Hughes JD'81; Heather L. Reynolds JD'81; David J. Jack JD'81; Louis A. Falcone JD/MBA'81; Leslie A. Wagner JD'81



Greece Cruise

May 16-26, 2012

More than 50 alumni and friends of the College of Law boarded Oceania Cruises' beautiful new ship, Riviera, and embarked on a tour of Italy, Greece, Croatia, Montenegro and Turkey in May 2012. Led by Dean Emeritus Symeon C. Symeonides and Dean Peter V. Letsou, the trip started with a breathtaking departure from the Grand Canal in Venice and ended in historic Athens, with wonderful sights, food and weather along the way. Of course, the company made the trip worth it — thank you to all who joined this incredible journey, most of whom are pictured here on the ship's main staircase.

Photo by Robert W. Donaldson JD'74

Live Free or Die

For the past 22 issues, New England native and Willamette University College of Law Librarian Richard Breen has written a column for Willamette Lawyer called "In the Stacks." He has told readers about legal maxims, clever judges, trial by jury and piracy and the law, among other subjects. We've enjoyed Dick's wry takes on the legal profession, which is one of the reasons we'll miss him greatly in retirement.

Politicians, take note.

In a state known for its rugged individualism and where 44 percent of the electorate are registered as independents, it should come as no surprise that in part 1, article 10 of the New Hampshire Constitution, its citizens retain the right of revolution:

Whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

And, for good measure, the state motto, "Live Free or Die," is emblazoned on New Hampshire license plates which are, ironically, made by prisoners.

In the spirit of the constitution, one independent-minded George Maynard in 1974 violated the letter of state law to knowingly obscure any letters or figures on any license plate when, on several occasions, he taped over the motto "Live Free or Die." For his transgressions he

was found guilty of a misdemeanor and eventually spent 15 days in the Grafton County jail. Only through the intervention of the U.S. Supreme Court in *Wooley v. Maynard*, 430 U.S. 705 (1977), did justice prevail and revolution, or death, was thereby averted.

In the words of citizen Maynard, "I refuse to be coerced by the State into advertising a slogan which I find morally, ethically, religiously and politically abhorrent."

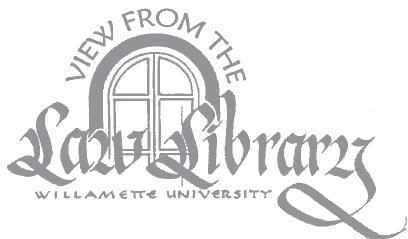
Well said. Every New Englander values the right not to speak, which includes the right not to become a mobile billboard for state government.

And now for the rest of the story

Legend has it that the words "Live Free or Die" were spoken by New Hampshire's General John Stark before the 1777 Battle of Bennington, where he defeated a detachment of General Burgoyne's British dragoons. Fact has it that 32 years later and in failing health he sent the words as a toast to be presented at a reunion of his comrades-in-arms.



Regardless, the words were adopted as the state motto in 1945 and remained in obscurity until 1969 when the New Hampshire Legislature, in a resurgence of state pride in its revolutionary history and the individualism of its citizens, voted to replace "Scenic New Hampshire" on its license plates with "Live Free or Die." The motto was particularly appealing to arch-conservative, defender of state sovereignty, lawyer, and Equity Law Book publisher Meldrim Thomson, who used it as a political slogan in his unsuccessful runs for the New Hampshire governorship in 1968 and 1970. In 1971 the motto appeared for the first time on New Hampshire license plates and in 1972 "Ax the Tax," "Keep your Guns," "Live Free or Die" Mel Thomson won the governorship on the Republican ticket. By that time the slogan had taken on a political identity and the rest is history.





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