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The Wild West now resides in the air above you. Drones continue to take to the skies, and the laws regulating them vary from town to town and state to state, whether it’s for commercial, government or recreational use. Concerns persist regarding unwanted surveillance and the potential invasion of privacy, which makes where drone law is going even more fascinating. Cliff Collins reports.

Cover photo by Alvaro Fontan

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Photographers Alvaro Fontan and Ken Aaron have been shooting professionally for decades, turning their lenses on everything from people and products to architecture and agriculture. For the most part, their subjects have always been right in front of them.

Not anymore.

“I started using drones a couple years ago because more clients started asking for both drone photography and video,” says Aaron, a longtime Portlander who is now based in Bend. “My focus is still on photography, but I added simple video services because many of my clients want the one-minute flyover videos for real estate, hospitality and architecture.”

Newspapers throughout the Portland metro area have increasingly asked Fontan to send his cameras skyward, too. “We use the drone to capture images when the use of normal photography isn’t efficient,” he says, “especially when trying to reach a location far from any accessible roads.”

The result: a new perspective on marches and protests, the fury of Mother Nature and the impact of urban growth. For one project, Fontan documented the construction of a mixed-use project in downtown Lake Oswego with a series of monthly drone photos taken over the course of more than two years.

“My clients hire me to tell stories about their places and spaces, so a view from the air is very helpful,” Aaron says. “The only downside I see is increased competition, but that’s just business. The bigger problem is the irresponsible pilots.”

That lack of responsibility is why both men say they welcome the rules and regulations at the heart of “Eyes in the Sky,” our story about the evolving area of drone law that some experts liken to the Wild West. You’ll find it on Page 20.

In the article, Cliff Collins writes that drone use has proliferated in recent years, both in the hobby sector and increasingly for commercial use, raising concerns about privacy and safety. Not surprisingly, the quickly changing landscape has led to legal conflicts as federal, state and local governments all try to regulate the use of drone technology.

“For my perspective, the laws haven’t really impacted how I do business,” Aaron says. “But I welcome them because there are too many drone pilots who ignore safety and privacy. They give those of us who use drones professionally a bad name. In fact, I’d like to see more teeth in the punishments for those who break the law and fly irresponsibly.”

So would the legal experts quoted in Collins’ story, who point out that many current laws were developed before we had the ability to pry like we do now. What’s more, they say, approval of a commercial license doesn’t even require the testing of one’s ability to actually fly an unmanned aircraft.

That’s a worrisome view, to be sure — even for those of us who are monitoring the situation from the ground.

Reach Editor Gary M. Stein at (503) 431-6391 or by email at gstein@osbar.org.
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Remembering Judge Warden

I was saddened to learn of the recent death of former Court of Appeals Judge John C. Warden (“In Memoriam,” February/March 2019).

John, his wife Marty and their children were family friends in Coquille — with me “sandwiched” between their son, Sam, and their daughter, Barbara. Their third child, Valerie, was a few years younger.

Our family friendship translated into professional support. John took time from work to find my parents and me after my bar-admission ceremony. Two years later, he supported my application for a deputy position with the state Public Defender’s Office.

Perhaps the most profound aspect of John’s professional career is that he may well be the last of his kind — a small-town resident from outside the Willamette Valley who made his way onto the appellate bench, giving small-town residents a sense of having a voice on the state’s high courts.

In Coos County, John had been a deputy district attorney, district court judge and circuit court judge. After 19 years on the county’s bench, he was appointed by Gov. Vic Atiyeh to the Court of Appeals. (That led to an urban-rural electoral clash, which John lost, prompting legislation that failed. But that’s a story for another day).

Although in later years I lost touch with the Warden family, I’m fortunate to have known John and to have benefited from his friendship and professional support. In view of the appellate bench’s present composition, it may well be that John is the last of his kind, which would be the state’s loss.

Jess Barton, Salem

Keep Intimidation Out of the Law

I trust that when Roger Ley writes approvingly of lawyers scaring the other side (“Letters,” February/March 2019), he is describing the awe inspired by the lawyer’s talent and the strength of the case. Abuse and intimidation have no place in the practice of the law.

Charles D. Bates, Portland

Fond Memories of Judge Panner

I was very sorry to hear of Judge Owen Panner’s passing (“In Memoriam,” February/March 2019). I recall a strange case of contempt before him.

In the 1980s, I defended the state in all manner of civil suits, including what we loosely called “posse comitatus” cases. My job was to secure dismissal of liens against the property of state officers by persons with a gripe, as well as other cases of little legal or factual justification often brought in “admiralty.”

In one such case, a woman from Klamath Falls was told by Judge Panner to cease doing whatever she was doing. She had many disputes with the state, including over weights and measures and, I think, pyramid schemes. She disregarded the judge’s order, and I prepared a contempt action. However, as it had to be prosecuted by the United States Attorney’s Office, I provided the ammunition and attended court as a spectator.

The judge was inclined to be lenient, but his patience was soon exhausted because it seemed as if there were two cases going on simultaneously. One was directed by Judge Panner; the other was by the woman at counsel table who set up her own American flag. Thirty days!

Tom Elden, Palos Verdes Peninsula, Calif.

Letters to the Editor

The Bulletin welcomes letters to the editor. Preference is given to submissions that are responding to previous letters to the editor, articles or columns published in the magazine.

Letters must be original, signed and addressed to the Bulletin editor. They should be limited to 250 words when possible.

Letters may be edited for grammatical errors, style or length; profane or obscene language will not be accepted. In addition, Bulletin editors reserve the right not to publish letters containing language constituting an attack on an individual, group or organization.

Send letters to: Editor, OSB Bulletin, P.O. Box 231935, Tigard, OR 97281. Or you may email them to editor@osbar.org.
We protect what our clients value most.

For decades, McKinley Irvin has helped clients navigate through some of life’s most difficult challenges. Our attorneys, like prominent family law attorney Jeff Matthews, are known for their relentless pursuit of successful results, whether representing individuals in financially complex divorce or high conflict parenting disputes. But perhaps our most noted distinction is our steadfast commitment to protecting what our clients value most.
District of Oregon Conference Scheduled for May 10

“First Amendment and Free Speech: Voices in Law and Media” will be the theme of the 2019 District of Oregon Conference, which is scheduled from 8:30 a.m. to 5 p.m. on Friday, May 10, at the Oregon Museum of Science & Industry in Portland.

The annual event, sponsored by the Oregon chapter of the Federal Bar Association, is scheduled to include a variety of panels, including:

- A Supreme Court Review by three judges of the U.S. Court of Appeals for the 9th Circuit;
- Social Media and Discovery, featuring Paul Grewal, vice president and deputy general counsel at Facebook and a former U.S. magistrate judge for the U.S. District Court for the Northern District of California;
- Trust in the Media, with Carol Costello of CNN and David Lat from Above the Law; and
- The Ethics of Social Media, with Oregon State Bar General Counsel Amber Hollister and Elisa J. Dozono of Miller Nash, Graham & Dunn.

Registration ($150 for general admission, $100 for public sector attorneys and free for judges) is now underway for the conference. For more information, go to oregonfederalbarassociation.org/2019-annual-conference.

LCBA Spring Social, Award Banquet Planned for May 15

The Lane County Bar Association will host its annual spring social and award banquet from 5:30-8:30 p.m. on Wednesday, May 15, at the Hotel Eugene in Eugene. The evening will start with a cocktail hour and social time, followed by dinner and the presentation of awards.

Tickets are $35 for individuals or $250 for a table of eight. For more details and to register, visit lanecountybar.org.

Submit to the Oregon Appellate Almanac

The Oregon Appellate Almanac, which is published by the Appellate Practice Section and focuses on issues of Oregon appellate law and practice, is looking for submissions. This year’s theme will be celebrating the 50th anniversary of the Oregon Court of Appeals, but non-theme pieces are welcome as well. The almanac publishes works in the following areas: biographies; interviews or profiles of current and past figures in Oregon law; court history, statistics and trivia; legal analysis of recent, significant or overlooked Oregon appellate cases; practice tips; and miscellaneous humor, poetry and wit. Works should be between 500 and 2,000 words and lightly footnoted. Submissions are due June 1 and can be sent to Nora Coon at Oregon.appellate.almanac@gmail.com.

Oregon Paralegal Association Fundraiser Set for June 6

The Oregon Paralegal Association will celebrate its 40th anniversary with the Oregon legal community by holding a fundraiser for the Lawyers’ Campaign for Equal Justice from 5:30-7:30 p.m. on Thursday, June 6, at The Porter Portland. Chief Justice Martha L. Walters is the keynote speaker.

Registration is free until May 31, or pay $20 at the door. For more information, visit oregonparalegals.org.

Lawyer Well-Being CLE in Klamath Falls on June 6

The OSB Professional Liability Fund and the Oregon Attorney Assistance Program, in conjunction with the Klamath County Bar Association, are hosting a free CLE and reception on Thursday, June 6, in Klamath Falls.

“Cultivating Lawyer Well-Being & Asking For Help” will focus on recent research that supports the need to increase lawyer well-being and identifies barriers to asking for help; increasing awareness of our own well-being, especially the relationship to stress and the role of resilience; and how and where to ask for help for yourself, a colleague, family member or other person you are concerned about.

A social hour and reception with Klamath County and Lake County attorneys and the Professional Liability Fund Board of Directors will immediately follow. The CLE and reception are at MC’s on Main, 617 Main St. in Klamath Falls. The CLE runs from 4-5 p.m., followed by the reception from 5-6 p.m. Lawyers, judges and staff are welcome to attend and join for refreshments and a no-host bar.

Register by June 3 by contacting DeAnna Shields at deannas@osbplf.org or calling (503) 639-6911.

District of Oregon Needs 9th Circuit Lawyer Representatives

The District of Oregon is seeking nominations for 9th Circuit Lawyer Representatives. Nominations are open to attorneys licensed to practice in Oregon. To submit a nomination, please visit the website for the District of Oregon or contact the bar association directly. Nominations are due by June 1.
Quotable

“American Indian and Alaska Native communities face extensive public safety challenges, but through creative approaches that combine traditional methods with innovative solutions, they are demonstrating their determination to meet the needs of victims in their communities. These grants will provide significant resources to bring critical services to those who suffer the effects of crime and violence.”

— Matt M. Dummermuth, principal deputy assistant attorney general for the federal Office of Justice Programs, who announced in April that more than $8 million in grants will be awarded to Native American communities in eight states — including two in Oregon — to fund critical crime victim services. The Klamath Tribes of Oregon was awarded $396,793 to enhance existing services and outreach to victims of domestic violence, sexual assault, stalking, sex trafficking and dating violence. The Cow Creek Band of Umpqua Tribe of Indians was awarded $714,783 to offer longer-term transitional housing to provide stability for families and individuals while they receive restorative services.
The Ethics of Unclaimed Lawyer Trust Account Funds

By Amber Hollister

Lawyers are routinely given funds to hold in trust. After legal services have been provided, representation is concluded or the deal is done, the rules require the lawyer to promptly deliver any remaining funds to the party entitled to them. But a lawyer left with unclaimed funds can be left with an ethical conundrum.

Simply put, on occasion a lawyer may run into a problem returning money in trust to its rightful owner. Perhaps a client has disappeared, a party has failed to cash a check or mystery money is left in the lawyer’s trust account. This Bar Counsel column explores common ethics questions that arise when a lawyer possesses unclaimed funds, and outlines the steps lawyers should take to submit unclaimed lawyer trust account funds when required.

The Disappearing Client

If a client has simply disappeared and left funds in trust, you may be in possession of unclaimed lawyer trust account funds. Since 2010, lawyers have been required to report unclaimed lawyer trust account funds to the Oregon Department of State Lands (DSL) and send those funds to the bar. See ORS 98.302 to 98.436.

The Uniform Disposition of Unclaimed Property Act provides that funds held by a fiduciary, including a lawyer, are deemed unclaimed or abandoned if the owner has not accepted payment of the funds, corresponded in writing about the funds or otherwise indicated interest in the funds within two years after the funds are payable or distributable to the owner. See ORS 98.332.

Before determining that funds are unclaimed, lawyers should make a reasonably diligent effort to locate the person who is entitled to the funds. See Oregon RPC 1.15-1(a), (d). As noted by OSB Formal Ethics Op 2005-48, lawyers must “exercise reasonable diligence” to determine the whereabouts of [the person entitled to the funds] and, when possible, to communicate with [the person] and take necessary steps to prevent abandonment from being presumed. This same duty is implicit in the duty under Oregon RPC 1.15-1 to safeguard client property [and the property of others].” Savvy lawyers should make a last attempt to communicate with the owner of the funds before reporting them as abandoned, and explain the consequences of a lack of response.

Disputed funds are not abandoned funds. Instead, lawyers are obligated to maintain the disputed funds in trust until the dispute is resolved. See RPC 1.15-1(e).

Uncashed Checks

From time to time, a client or third party will refuse to cash a check. Maybe the payee never makes it to the bank, or the check is so small the payee determines it is not worth the effort. If the amount is small, it might be tempting to just leave it in the trust account in perpetuity.

But such an approach can snowball; leaving a bit here and there in trust can lead to the collection of a significant amount of unidentified funds over time. Plus, the problem will never resolve itself, because the lawyer or firm will never be allowed to take the funds. See RPC 1.15-1(a). A better approach is to make a reasonably diligent attempt to deliver the funds and, once two years have passed without success, report the funds to the Department of State Lands and send them to the bar.

Leftover Balances

Sometimes simple accounting errors can result in a leftover balance in an IOLTA account that a lawyer cannot explain. Such a balance can be a sign that a lawyer has failed to safeguard and account for the funds of others, or it can be the result of a simple math or entry error.

If a review reveals that the leftover funds are interest that should have been paid to the client or to the Oregon Law Foundation, you should promptly deliver the funds to the person or entity entitled to them. A lawyer may never personally benefit from interest on client trust funds. See RPC 1.15-2(g).

If you cannot determine, after a reasonably diligent inquiry, who is entitled to the funds in trust, you should not assume the funds belong to you. After all, lawyers are not allowed to maintain their own funds in client trust accounts. See RPC 1.15-1(a). If you find yourself in this situation, it may be prudent to call the Ethics Helpline (503-431-6475) for
prospective guidance or seek advice from private ethics counsel on next steps.

**Bank Closure**

On occasion, a bank may close an inactive trust account. While the Uniform Disposition of Unclaimed Property Act provides that banks should not deem lawyer trust accounts abandoned until they have been inactive for three years, mistakes can happen.

If your account was closed and submitted to the bar as unclaimed property, you will need to submit a claim form with the Department of State Lands to obtain a return of funds. If you are concerned that your bank could close an inactive account, it may make sense to touch base with your financial institution on a regular basis so it is on notice that the account has not been abandoned.

**How to Report**

If you plan to report unclaimed funds, timing is key. Funds deemed unclaimed or abandoned as of June 30 of each year should be reported to the Department of State Lands and the Oregon State Bar during the month of October of the same year, although earlier reporting may be allowed upon written request.

The reporting forms can be found on the DSL website at [oregon.gov/DSL/Money/Pages/OLTA.aspx](http://oregon.gov/DSL/Money/Pages/OLTA.aspx). You should complete DSL Holder Forms 1a and 2a and send them to the DSL. Then, send copies of the reports with a check for the unclaimed funds to the Oregon State Bar, attention General Counsel.

If the owner of the funds has a last known address in a different state, those funds must be reported and sent to that state. The bar will not accept funds if the owner's last known address is outside of Oregon, because to do so would be inconsistent with the Uniform Disposition of Unclaimed Property Act.

As OSB Formal Ethics Op No 2005-48 explains, a lawyer’s ethical obligations do not end when funds are paid to the bar as required by the act. After payment, the lawyer “should continue to take steps reasonable under the circumstances to try to locate Client [or third party] and must maintain reasonable records sufficient to permit Client [or third party] to make a claim for the return of property for the period permitted by the Act.”
What Happens to Unclaimed Funds?

After the bar receives a copy of a DSL report with the related funds, the money is deposited in the Unclaimed Lawyer Trust Account Fund account. The bar coordinates with DSL and administers any claims from former clients or other parties who assert they are the rightful owner of unclaimed lawyer trust account funds.

Unclaimed lawyer trust funds help support the bar’s mission to protect the public and its mission to increase access to justice. Since 2010, the bar has received 288 separate claims for funds and returned more than $260,000 to clients and other rightful owners.

The program has proven to be a significant source of funding for Legal Aid: Since the program’s inception in 2010, the bar has disbursed $1,071,525 in unclaimed lawyer trust account funds to fund Legal Aid.

Amber Hollister is general counsel for the Oregon State Bar. She can be reached at ahollister@osbar.org.
The nomination deadline for the 2019 OSB awards honoring Oregon’s most outstanding lawyers, judges and others is

**Tuesday, June 11 at 5 p.m.**

Nomination criteria, forms and other information about the following awards can be found at [www.osbar.org/osbevents](http://www.osbar.org/osbevents)

- OSB Award of Merit
- Wallace P. Carson Jr. Award for Judicial Excellence
- President’s Diversity & Inclusion Award
- President’s Membership Service Award
- President’s Public Service Award
- President’s Public Leadership Award
- President’s Sustainability Award
- President’s Technology & Innovation Award
- The Oregon Bench & Bar Commission on Professionalism’s Edwin J. Peterson Professionalism Award

For additional information please contact Kay Pulju at (503) 620-0222 ext. 402, (800) 452-8260 ext. 402, or email kpulju@osbar.org
Bloated Writing Makes My Blood Boil

The Worst Words

By Elizabeth Ruiz Frost

Donald Trump famously said in 2016, “I know words. I have the best words.” Well, as he’s been cultivating his list of the best words, I’ve spent many years grading student papers to discover some of the worst words. What follows is a short list of the words and phrases that I have red-penned most over the past 10 or so years.

I should preface this by noting that some of these words and phrases are just fine in some contexts or when used occasionally. I do not mean to suggest that no writer should ever use them. But I do recommend that writers choose their words carefully, considering how a word or phrase can dull one’s writing by adding unnecessary bulk or imprecision. Each of these below tends to do one or the other.

Able to

This year, ranking first on the worst-words list is “able to.” My blood pressure rose when I typed it. “Able to” constructions lead to empty surplusage that can be reduced so easily. Each of these four sentences can be shortened (Look at all this excess!):

- “If a plaintiff is able to prove” becomes “If a plaintiff can prove”;
- “The defendant will be able to show” becomes “The defendant can show”;
- “She was able to complete the project” becomes “She completed the project”;
- “The plaintiff would have been able to appeal” becomes “The plaintiff could have appealed.”

I can’t account for its surge in popularity, but “able to” is everywhere. About 50 percent of my students’ analyses over the past years have begun with the phrase, “The plaintiff most likely will be able to…” Each time, I underline those words and write “Probably can? Two words replace six.”

Again, I don’t claim that “able to” phrases are always bad. Some sentences might make more sense with “able to.” When “able to” follows a modal auxiliary verb like “may,” for example, the replacement isn’t so obvious. “She may be able to” does not mean exactly the same thing as “she likely can.” I can imagine similar issues with other modal auxiliary verbs like “shall” and “must.” But in the four examples above, I would argue the meaning is unchanged by the revision, and the writer should choose the more concise construction.

Proceed to

The word “proceed” can be used effectively to convey its meaning: “to begin or continue a course of action.” But when writers stretch out a sentence with “proceed to” for no good reason, it’s the worst. They use the term to show sequential action, which is not wrong, but the phrase is rarely necessary.

Here is an example of where it isn’t necessary: “After she read the letter, she proceeded to call her attorney.”

That sentence is no clearer than simply saying, “After she read the letter, she called her attorney.” When paired with a transition word like “after,” the past tense verb (“called”) does the job. So “proceeded to” here is filler, and bad filler at that. To me, it makes writing sound like a police report. The revised version without “proceeded to” is better because it sounds more like how we speak. Plus, it’s more concise, and it rightly focuses on the important action (here, calling) rather than the empty action (proceeding).

I recognize that in some contexts, “proceeded to” does add something. For example, in the sentence, “After protesters interrupted her five times, she proceeded to speak.” That usage suggests a notable perseverance in the sequential action. Here, proceeding is just as relevant an action as the speech.

Or, in a different context, it can show a subject’s insubordination or the writer’s disbelief. Take the following sentence for example: “Despite being asked not to smoke in the house, she proceeded to light a cigarette.” There, the phrase “proceeded to” duly highlights the continued action because it’s surprising. But when the sequential action is more hum-drum, like “proceeding to say ‘hello’ after picking up the phone,” proceed to delete “proceeded to” before the verb. The regular old verb will do on its own.
I have noted that law students use the verb “to state” a lot in their legal writing. A “state” here or there isn’t such a big deal, but “state” is bland, and it borders on legalese. We can do better.

When talking about what a person said, there are more interesting, vivid verbs than “state.” Try “responded,” “answered,” “asked,” “expressed,” “demanded,” “whispered,” “yelled,” “uttered,” “replied” or “announced.” Or how about “said”? “Said” is fine! “Said” is better than “stated” because it sounds more like how people speak and less like how a person thinks a lawyer might speak.

Sometimes writers use “state” to describe information contained in a document, rather than part of a human conversation. I see a lot of sentences that begin with, “the statute states…” and that’s not great either. Verbs can be more descriptive in this context, too. “Prohibits,” “allows,” “permits,” “circumscribes,” “includes” and “defines” might work.

“Utilize” earns its spot on the worst-words list because it’s so often incorrectly written in place of “use.” Like “state,” writers seem to write “utilize” to sound lawyerly, but they miss the mark. It can sound puffed up. And in some cases, it’s just plain wrong.

“Use” not only better reflects real speech, it more often reflects the sentence’s actual meaning better than “utilize.” Believe it or not, the two words mean slightly different things. “Utilize” means “to turn to practical use.” “Use” means “to avail oneself of something as an instrument or means to an end” or “employ something for a particular purpose.” They are similar but not the same.

“Utilize” applies when converting a tool for a new or unusual use. “Use” covers just about everything else. The difference is clearer in examples, so here are a few that show how “use” and “utilize” work in different contexts:

“I used her pen to sign my name.”

“I utilized her pen to perform an emergency tracheotomy.”

“This bowl can be used to hold the salsa.”
“This bowl can be utilized as a hat!”

“We used the garage to park our car.”

“We utilized the size of the garage to hold the neighborhood garage sale.”

Note: In any of these examples containing “utilize,” “use” could be subbed in. And so if the difference between the two seems a bit foggy, “use” is always a safe choice. It will never sound like one is trying too hard.

Get

I have written about “get” in this column before. It continues to rank among the worst words in part because it is a boring and imprecise verb that can usually be replaced with a better verb. But that alone doesn’t make it the worst.

“Get” is particularly annoying because of its ubiquity. Because it fits into so many contexts, it appears in so many sentences. “Get” is a little like a sugar ant. You see one and might not think much of it. But then you spot a couple more, and before long, the whole troop is parading across your floor. They’re everywhere! Look at all these “gets” (and replacements):

“I get it.”
“I understand.”

“She’ll get there at 11 a.m.”
“She’ll arrive at 11 a.m.”

“Daphne gets candy in her lunch every day.”
“Daphne’s dad packs candy in her lunch every day.”

“I get to see the opera when I’m in New York.”
“My sister is taking me to the opera when I’m in New York.”

“The accountant got the document yesterday.”
“The accountant received the document yesterday.”

All of the revised versions above are a little more precise than the originals. Some of the revisions are less concise, but the need for precision often trumps concerns over length. Importantly, the
replacements all add variation that makes reading more interesting and enjoyable.

The Fact That

This phrase is among the worst because it’s pure verbal flab. It serves very little purpose in a sentence. Sometimes cutting “the fact that” requires a little rearranging, but the sentence will almost always be better without it. Take a look:

Original: “The fact that she had jewelry in her pocket gave the guard probable cause to stop her.”

Revision #1: “Because she had jewelry in her pocket, the guard had probable cause to stop her.”

Revision #2: “The guard had probable cause to stop her because she had jewelry in her pocket.”

In addition to creating bloat, one of the sins of “the fact that” is that it shifts the reader’s focus from the sentence’s more important ideas, placing it on a vague “fact.” In the first sentence, “the fact” shouldn’t be the subject; the guard should be. Without “the fact that,” the reader of these two sentences can better focus on what’s most important.

“The fact that”’s portlier cousin, “due to the fact that,” is even worse. “Due to the fact that” can probably always be replaced with “because.” I love when one word neatly replaces five.

Is Considered/Will Be Considered

The passive phrases “is considered” and “will be considered” are boggy constructions; removing them from a sentence usually improves it.

These phrases come up a lot in legal writing because legal writers often write to predict. These passive phrases capture that predictive purpose by explicitly referencing the consideration phase in legal proceedings. But the prediction is just as valuable when the writer skips the middle phase and refers directly to the outcome. The following examples demonstrate the difference:

Original: “The statements will be considered privileged under New York’s priest-penitent privilege.”

Revision: “The statements will be privileged under New York’s priest-penitent privilege.”
Original: “The stop will be considered legal.”

Revision: “The stop was legal.”

The improved examples without the passive “considered” phrases convey the very same meaning as the originals, but they skip that middle step. The new sentences are crisper. And leaving those passive phrases out does not risk confusing the legal reader, who would understand that the prediction depends upon a court’s consideration without the writer expressing it.

My students tell me they’re reluctant to write the crisper versions of these sentences because they lack confidence in their predictions. For them, hiding behind “will be considered” puts them less out on a limb. But whether the considerer is in the sentence or not, the prediction is equally strong and equally theirs.

Conclusion

Collecting this list of words and phrases has been both cathartic and infuriating for me. But sometimes a person needs to vent among friends. If you have a list of words or phrases that make your blood boil, you can email me at efrost@uoregon.edu. Perhaps I will discuss and dissect them in a future column.

Elizabeth Ruiz Frost teaches Legal Research and Writing and other courses at the University of Oregon School of Law. In March, the Legal Research and Writing program was ranked No. 5 in U.S. News and World Report’s annual listing of the best law school programs in the country – its 12th consecutive year in the Top 10.
As Drone Use Grows, Regulations Are Scrambling to Catch Up

By Cliff Collins
Speaking at a law conference in 1989, Andy Johnson-Laird asked attendees who had email accounts to raise their hands. About 10 percent of the crowd said they did. “We are at that stage now with unmanned aircraft and the law,” says Johnson-Laird, an expert on the forensic analysis of Unmanned Aerial Vehicles (UAV), more popularly known as drones. “What we’re effectively seeing today is the emergence of a new technology with far-reaching uses and abuses, one that the law and lawmakers have not yet fully grasped in terms of the societal, legal and technological implications.”

Steven Wilker concurs.

“I think this is very much the Wild West,” says Wilker, co-chair of Tonkon Torp’s litigation department and its Information Privacy & Security Practice Group, who is interested in privacy issues surrounding the use of drones and the internet of things. Most laws related to this topic were “developed before we had the ability to pry like we do now,” he says.

Drone use has proliferated in recent years, both in the hobby sector and increasingly for commercial use, raising concerns about privacy, safety and more. The resulting regulatory and legal issues were the focus of a full-day discussion at the opening of the American Bar Association’s Techshow 2019 in late February.

“As Unmanned Aerial Vehicle technology becomes more advanced, more approachable and more affordable, droves of recreational and commercial drone pilots” are getting into the act, according to the website UAV Coach. “In such a quickly evolving ecosystem, policymakers are having a hard time keeping up, (and) the existing regulations don’t take into account how much the UAV landscape has changed over the last several years.”

Not surprisingly, that quickly changing landscape has led to legal conflicts as federal, state and local governments all try to regulate the use of drone technology. Attorney Jonathan Rupprecht, who has embraced drone law as a major practice area in his specialty of aviation law, says the resulting regulations are confusing, and the myriad policy statements perplexing.

In addition to the commercial drone regulations and guidance the Federal Aviation Administration (FAA) has created, Rupprecht says, “many other enigmatic legal issues that surround the operation of drones are popping up, with other federal agencies claiming some sort of regulatory authority over drones. To make matters worse, states, counties, cities and towns have started passing laws regarding the use of commercial drones, government drones or hobby/model drones.”

At the federal level, Rupprecht says, the National Oceanic and Atmospheric Administration and the National Park Service have started to claim authority over the use of drones flying over whales or landing in parks. At the state level, “Oregon owns the ground,” but what flies over it is controlled by the FAA, according to Johnson-Laird, who since 2012 has been working with the organization ASTM International to develop standards in collaboration with the FAA to form new federal aviation regulations.

“So there’s tension between federal and state,” Johnson-Laird says.

There’s also tension between the state and some cities. The Oregon Legislature has passed four statutes over the past six years that pertain specifically to drones flown within Oregon (See “Drone Laws in Oregon,” Page 25); one of them, ORS 837.385 — passed as HB 2710 in 2013 — pre-empts local governments from also regulating drones.
But some local municipalities “feel that they can pass ordinances that control what happens above a park,” Johnson-Laird says — even if that’s not technically true. “Cities cannot control overflight — that’s federal airspace — but they can control takeoffs and landings,” he says, “and that effectively limits quite a lot of overflight activity.”

Controlling the Skies

Several FAA rules apply to every state. To fly a drone for commercial uses, for example, pilots across the U.S. must comply with the agency’s Part 107 Small UAS Rule, which includes passing an Aeronautical Knowledge Test to obtain a Remote Pilot Certificate. Flying a drone as a hobbyist requires registering with the FAA as a pilot and following the agency’s Special Rule for Model Aircraft. Flying a drone as a government employee, such as for law enforcement purpose, entails either operating under the FAA’s Part 107 rule or obtaining a federal Certificate of Authorization.

In Oregon, ORS 837.040 requires every owner operating a civil aircraft that is based or operating commercially within the state to register the aircraft with the Oregon Department of Aviation. Drone registration in Oregon is required only for public bodies, however, not for private-use drones.

According to the National Conference of State Legislatures, lawmakers across the country are debating if and how drone technology should be regulated, taking into account the benefits of their use, privacy concerns and potential economic impact. So far, 41 states have enacted laws related to drones, and an additional three states have adopted resolutions.

Common issues addressed in legislation include definitions, how drones can be used by law enforcement or other state agencies, and how they can be used by the general public for activities such as hunting.

Local attempts at drone control in Oregon generally fall under two categories: those pertaining to recreational use, and those for drones employed by governments. As an example of the first, the City of Lake Oswego forbids flying drones in city parks without permission from the parks director.

“We don’t read the prohibition against operating drones in a city park as necessarily prohibiting flying drones over a city park,” explains City Attorney David Powell. “Instead, the rule prohibits launching or otherwise operating a drone while in a city park without permission. This park rule is aimed only at keeping the parks safe and available for all users. It’s not an aviation regulation.”

The cities of Portland and Eugene have similar provisions.

For safety reasons, the Port of Portland prohibits recreational drone operations on its properties. Requests for commercial and public drone operations require a permit obtained through the agency, which also follows federal regulations that require drone operators to notify the Port of Portland when operating within five miles of a Port airport.

Several cities are also regulating the use of drones by law enforcement and other governmental agencies. For example, the City of Albany posts regulations and procedures it follows for the use of drones for purposes such as emergency and disaster training and response, firefighting and surveillance. The city says it does so to protect safety and privacy.

Speaking at the February ABA Techshow, Russ Cochran, general counsel for the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, said law enforcement must be cautious in applying potentially invasive technology. If law enforcement isn’t, he said, it is going to face more restrictions.

Pointing to recent Fourth Amendment cases from the U.S. Supreme Court, Cochran said “the trend is to increasingly require probable cause to track vehicles and search phones or third-party location data,” the ABA Journal reports. “To that end, he recommends to his agency that agents build a case for probable cause before using drone surveillance, even though that isn’t yet required by law.”
Law enforcement is subject to the Fourth Amendment and to Article I, Section 9 of the Oregon Constitution regarding unreasonable searches and seizures, says Tonkon Torp’s Wilker. When governments take steps toward using high-tech surveillance, they have to seek a warrant, he explains, and the Fourth Amendment requires it be done only after showing probable cause and what is to be accessed. That creates additional tension, Wilker says, “particularly between the Fourth Amendment and actions government takes.”

“The home is sacrosanct,” he explains. The law provides greater protection in your home than in your workplace or in public. If a high-tech device flies at low altitude over your home, the action holds implications for invasion of individual privacy and public disclosure of private facts. Nevertheless, definitive answers about the tort limits on drone use won’t be known until plaintiffs bring tort actions for privacy invasions involving drones and those cases get taken up on appeal, he says.

“When you’re dealing with a trial court decision, there isn’t significant case law on these issues — what is and is not permissible from a private-party perspective,” Wilker says. “What you will see develop is a body of law regarding uses. I would be surprised if legislation completely deals with this.”

Javier D. Spyker, an attorney with Hernandez and Associates who has started a drone business with two other partners, says one of his chief tasks is risk management. “I don’t want our drones on the news because they came down and crashed on someone’s property,” he says.

To prevent that circumstance as much as possible, he contracts with pilots who have commercial and military flight experience, and deploys two people to handle safety issues and communicate with the FAA, local airport towers and flight operations in a given area. Under new regulations, the FAA prohibits drones from flying higher than 400 feet above ground level without FAA clearance.

“Before that, they could go as high as they wanted, as long as they were not in controlled airspace,” notes Johnson-Laird. The federal government is “really trying to clamp down on unmanned model aircraft.”

Unlimited Potential

Those restrictions come at a time, though, when commercial use of drones is ramping up. Tech giants Amazon and Wing, a unit of Google parent Alphabet, are experimenting with product delivery via drone. FedEx is teaming up with Walmart and Pizza Hut to test drone deliveries.

Drones are increasingly being employed in agriculture too, such as for inspecting crops, and for monitoring construction and utilities. They’re also coming into play in the courtroom; La Grande trial lawyer Brent Smith regularly employs video taken from drones.

“I use drone pilots’ video in large property-damage cases,” Smith says. “It’s incredibly valuable.”

When a jury sees footage showing enormous acreage from the air, Smith says, “they get the picture, in more ways than one.” He adds that hiring pilots to take drone video is “relatively inexpensive” compared with stills taken from a helicopter, and “a lot more effective.”

Rupprecht’s Florida law firm has assisted clients in obtaining FAA approvals for commercial drone operations, given guidance on restrictions the FAA places on drones and handled other

Using multispectral sensors mounted to drones, attorney Javier Spyker’s company EYEON18 is able to diagnose irrigation issues for golf courses and other water-dependent industries. The image at left shows the Pumpkin Ridge Golf Club in North Plains from directly overhead; at right, a false-color image indicates plant health — a proxy for detecting irrigation problems. Deep green represents excessive plant health; red to black indicates a lack of plant life. Photos by Javier Spyker/EYEON18
tangential issues relating to drones. Businesses, drone manufacturers and service businesses using drones come into contact with many legal issues, he notes; drone manufacturers must deal with import and export restrictions on drones and also with hiring certain types of contractors or employees.

“Getting commercial drone operations approval from the FAA is not the biggest hurdle for businesses,” Rupprecht says. “Being able to make a profit operating under the FAA restrictions is.”

According to the Association for Unmanned Vehicle Systems International, industry uses in Oregon are many and varied. For example:

- Oregon State University’s Aerial Information Systems Lab has used drones to detect the chlorophyll content at vineyards to gain valuable data that can improve wine quality;
- The Bureau of Land Management and the U.S. Geological Survey explored the use of drones at the Horning Seed Orchard in Colton to increase the speed and accuracy of cone counts from above the trees, a process normally done from the ground by three full-time staff members;
- Business Oregon, the state’s economic development arm, is contributing millions of dollars for the development of the Pendleton UAS Test Range, as well as the Warm Springs and Tillamook test ranges, which are all part of one of the six FAA-designated drone test sites. The agency also has developed SOAR Oregon, a business accelerator, to support Oregon’s growing drone industry;
- OSU has conducted a number of drone research projects, including successfully demonstrating search-and-rescue applications. Drones can safely reach high vantage points over difficult terrain and survey a large search grid for a missing child, provide valuable data to help fight wildfires or scan vast expanses of water where a boat might be adrift;
- OSU also conducted an analysis of potato fields. Potatoes are expensive to raise — farmers spend about $4,000 or more per acre, or about $500,000 for the average-size field. Using drones will save farmers time and money and lead to improved safety over dangerous manned operations;
- The U.S. Geological Survey worked with the Bureau of Indian Affairs on projects in the Klamath River area to study temperature dynamics on the river systems and assess the utility of thermal infrared remote sensing using drones; and
- The Oregon Department of Fish and Wildlife plans to use drones to collect data on fish and bird populations. The drones will count seabirds to assess their impact on migratory fish.

Spyker sees unlimited potential in using drones to audit irrigation use in golf course and grass landscapes, which is the initial focus of his business, called EYEO18. “In Southern California,” he says, “we have clients with million-dollar water bills.”

Too much water becomes runoff, too little can leave areas too dry. Drones can find where soil is too rich or not rich enough in water content. “We’ve really been successful in making soil conditions consistent across the course. We’re able to

Drone Laws in Oregon

- HB 2710, passed in 2013, prohibits law enforcement from using a drone to acquire information unless specifically authorized to do so by statute, and requires a search warrant unless there are exigent circumstances. The bill also: allows drones to be used for emergencies or tracking individuals fleeing a crime; allows drones to be used for reconstructing a crime scene or for training purposes; requires public bodies to register drones with the Oregon Aviation Board and report annually on their use; and pre-empts local government from regulating drones.

Furthermore, HB 2710 establishes that it is a crime to use a drone to attack an airplane or, conversely, to interfere with the use of a drone. It also prohibits public bodies from arming drones; grants attorney fees to a property owner under certain limited circumstances if the drone has been trespassing in the air space above the person’s property; limits the use of information that a public body obtains from a drone; and allows the Oregon Aviation Board to adopt rules to implement the reporting requirements.

- SB 5702 (2016) specifies fees for the registration of public drones, and established fees for their use by public bodies.

- HB 4066, also passed in 2016, makes it a Class A misdemeanor if any person intentionally, knowingly or recklessly operates a drone that is capable of firing bullets or projectiles, or otherwise operates it as a dangerous weapon. The bill also modifies the definition of unmanned aerial systems to apply to all flying machines, including model aircraft, and creates a new violation of reckless interference with aircraft. HB 4066 requires public bodies using drones to establish policies and procedures for use, storage, accessing, sharing and retention of data collected, and prohibits the use of drones near critical infrastructure, such as law enforcement and correctional facilities.

- House Bill 3047, passed in 2017, modifies earlier statutes prohibiting using a drone as a weapon, elevating it to a class C felony to fire a bullet or projectile from a drone, and to a class B felony if doing so results in serious physical injury to someone. The bill also allows law enforcement to acquire accident scene information, and prohibits the use of drones over private property in a manner that intentionally, knowingly or recklessly harasses or annoys the owner or occupant of the property.

Sources: UAV Coach, Oregon Legislative Assembly
use our system to make adjustments and get 100 acres consistent. Satellites wouldn’t have the resolution that a drone does. At a certain height, things get a little fuzzy, but when we’re optimizing, we can see a dime lying on a golf course green.”

Right now, soil-moisture needs mostly are judged by the human eye, but “the future is automated to make those adjustments,” Spyker adds. “The next phase is analytics of drone-derived data. In two years it will be automated. It could be you won’t need specialized drones and pilots. It’s what you can do with the data once you’ve got it. Software will do that for us.”

According to an economic-impact analysis from the Association for Unmanned Vehicle Systems International, the drone industry nationally “is poised to help create more than 100,000 jobs and have more than $82 billion in economic impact” over the next decade. In addition, it says Oregon is expected to create more than 400 jobs during the next three years, and add almost $500 million in economic impact within a decade.

The association says more than 100 members of Oregon industry have obtained federal permission to operate drones commercially, supporting applications such as real estate, construction and utility inspections. The 143 individuals and 23 companies in Oregon belonging to the organization represent industries such as public safety, defense and security.

The Pacific Northwest also is home to the HoneyComb Corp. in Wilsonville, a manufacturer of drone platforms, as well as Northwest UAV in McMinnville, which makes drone propulsion...
Drones are increasingly being used commercially in a variety of sectors, including real estate, hospitality and architecture. “My clients hire me to tell stories about their places and spaces,” says Bend photographer Ken Aaron, “so a view from the air is very helpful.”

Photo by Ken Aaron

systems, and Insitu in Bingen, Wash., which designs, develops and manufactures drones. Flir Systems Inc., based in Wilsonville, produces drone thermal imagers, used in applications such as fighting fires and inspecting utilities, roofs and solar panels.

What remains unclear, though, is how all of those uses will be regulated in what Wilker refers to as the “Wild West.” For his part, Johnson-Laird views the current laws as having a principal deficiency.

“The test (for a commercial license) doesn’t include a competency test. It requires passing only a knowledge test, and does not require any formal flight training or testing of one’s ability to actually fly an unmanned aircraft,” he says. “The functional equivalent would be to get a license to drive a car merely by passing a knowledge test after having read the Oregon driver manual and paying a fee, but not having any actual driving experience or demonstrable ability to drive.”

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Columbia Park occupies 450 acres along the Columbia River in Tri-Cities, Wash. It hosts an annual event called the Water Follies, which includes a hydroplane race. On July 28, 1996, Will Thomas and Dave Deacy were wading along the river bank near Kennewick, sipping from cans of Busch Light and looking to avoid the race’s entrance fee. Thomas stepped on something smooth and round. He pulled a human skull out of the mud.

The skull made its way to Benton County Coroner Floyd Johnson and then to forensic anthropologist James Chatters, who initially thought the skull looked “Caucasoid.” Johnson and Chatters returned to the site, with help, to unearth most of the rest of the skeleton. Chatters sent a finger bone off for carbon dating, and the results were startling: “Kennewick Man” was about 9,000 years old. But where did he come from, and where did his bones belong?

Defining ‘Indian’

Kennewick Man CaseFocused Attention on Native Identity and Sovereignty

By Jennie Bricker

ABOVE: Wiyákuktpa, or “The Gathering Place,” highlights the Confederated Tribes of the Umatilla Indian Reservation’s heritage and customs of gathering tule reeds and capturing fish around Anwas – the area in and around what is now known as Clover Island on the Columbia River, not far from where the remains of Kennewick Man were found. The public art installation also symbolizes a partnership between the tribes and the Port of Kennewick.

Photo courtesy of Port of Kennewick/Kim Fetrow Photography
The U.S. Army Corps of Engineers, which owns the riverbank along that section of the Columbia, quickly determined that the remains were Native American and subject to the Native American Graves Protection and Repatriation Act (NAGPRA). Anthropological norms at the time presumed that any remains that existed on U.S. soil before 1492 were Native American. But a group of professors believed otherwise, and they pursued administrative and legal appeals to fight the Corps’ determination.

Although the professors won their lawsuits in the federal courts less than 10 years later, subsequent scientific testing eventually proved that Kennewick Man was Native American. So why did it take two decades to return him to the tribes for a proper burial?

**The Right to Define ‘Indian’**

“In Indian Country, identity is inextricably connected to nationhood and sovereignty as well as personhood, and the sense of where one comes from and who one is.”

— Se-ah-dom Edmo, *American Indian Identity*

Kennewick Man’s remains lay only a mile outside lands ceded by the Confederated Tribes of the Umatilla Reservation — on federal land, but not quite in “Indian Country.”

Jessie Young, chair of the Oregon State Bar’s Indian Law Section, explains that the term “Indian Country” and many other terms used in relation to tribes and tribal identity have their roots in federal law. The word “Indian” is used twice in the U.S. Constitution, but what the word means and who it includes for purposes of federal law — and many times state law — vary depending on what part of the U.S. Code is being applied.

In *American Indian Identity*, Young writes that “there is no universal definition of ‘Indian’ under federal law.” Rather, the term’s scope depends on the specific federal benefit, program or statute.

One such statute, the Indian Child Welfare Act (ICWA), recognizes tribal intervention or jurisdiction over custody and child welfare cases that involve an “Indian child.” The act defines “Indian child” to include a child who is enrolled or eligible for enrollment with a tribe. ICWA was enacted in 1978 to put a halt to state removal of Indian children from their homes, extended families and cultural traditions.

In 1974, prior to the enactment of ICWA, the U.S. Supreme Court heard *Morton v. Mancari*, which put to rest the argument that such protections are racially based and therefore violate the U.S. Constitution’s Equal Protection Clause. The court ruled that the matter is one of a political relationship between a tribe and its members, and not based on race.

NAGPRA, which was enacted in 1990, provides for the return of human remains, funerary objects and “objects of cultural patrimony” to the tribes affiliated with them. The operative term under NAGPRA is “Native American,” which means “of, or relating to, a tribe, people or culture that is indigenous to the United States.” If human remains, like Kennewick Man, are Native American, NAGPRA vests “ownership or control” in the decedent’s lineal descendants or, if no lineal descendants can be identified, in a tribe that is “affiliated” with the remains.

Before the enactment of NAGPRA, Kennewick Man would have had a one-way ticket to the Smithsonian Institution to be tested, drilled, poked, prodded and analyzed. Those tests would have been performed repeatedly to produce consistent and redundant results. But once the Corps of Engineers made its determination that the remains were Native American, four Columbia Plateau tribes — the Confederated Tribes and Bands of the Yakama Indian Nation, the Nez Perce Tribe of Idaho, the Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes of the Colville Reservation — filed a claim under NAGPRA. The Corps then followed federal law, cancelling the trip to the Smithsonian, calling a halt to further testing and concluding that the remains would be released to the tribal claimants for repatriation.

Anthropologists grew agitated. They wanted to coax from those bones more knowledge about early human history. But the Umatilla tribes maintained that Kennewick Man was Native American. “We already know our history,” they said.

And so, in what author Scott Malcomson calls “the strangest instance yet of racial profiling,” a nine-year battle followed in Oregon’s federal courts. The question: Was Kennewick Man — or the “Ancient One,” as the tribes preferred to call him — Native American or not?

The Department of the Interior had determined that the skeleton was “Native American” under the NAGPRA definition. The tribal claimants, whose oral histories confirmed their indigeneity, had no doubt that the Ancient One was Native. But Chatters’ preliminary observation that the skull looked “Caucasoid” seemed to take hold of European imaginations, even though “Caucasoid” includes those of Asian descent and despite the fact that Chatters later backed away from his original statement.

In “The Color of Bones,” Malcomson recounts how “the media spread far and wide the possibility of a European wandering across North America many millenniums ahead of schedule.” A few new groups stepped forward with short-lived, bizarre claims about being descended from Kennewick Man, including the Asatru Folk Assembly in Northern California, a church whose members had Northern European roots and wanted to revive Germanic paganism.

Magistrate Judge John Jelderks evaluated Interior’s decision under the deferential standard of the Administrative Procedure Act. In *Bomichsen v. United States*, Judge Jelderks rejected the tribal claimants’ oral history evidence and the Corp of Engineers’ arguments, and overturned Interior’s decision.

“Kennewick Man’s culture is unknown and apparently unknowable,” he wrote.

**Sovereignty**

“Despite our national preoccupation with mass media and everyone’s constant interaction with hand-held communication devices, Americans are sadly uninformed about the Native peoples in their very midst.”

— Walter R. Echo-Hawk, *In the Light of Justice*
The 573 federally recognized Indian tribes in the United States are self-governing, sovereign nations, with their own constitutions, laws and courts. The U.S. deals with each tribe on a government-to-government basis, in most cases under the terms of treaties. Other federal policies and laws also recognize tribes on a government-to-government, sovereign-to-sovereign basis.

One important attribute of tribal sovereignty is that each tribe establishes its own criteria for enrollment. Even though Congress has broad legislative authority over “Indian affairs,” it has recognized that determinations of tribal citizenship belong to the tribes, whose inherent sovereign authority over membership was recognized by the Supreme Court in the 1978 decision, Santa Clara Pueblo v. Martinez.

Yet enrollment in a tribe is only one aspect of what it means to be Indian under federal law. In American Indian Identity, Young writes about Indian identity from the standpoint of federal criminal jurisdiction. The Major Crimes Act, an 1885 statute, confers federal jurisdiction over Indians accused of enumerated crimes. To exercise jurisdiction, courts determine whether someone is “Indian” based on both ancestry — the person’s quantum of “Indian blood” — and on factors of “recognition,” such as tribal enrollment and social participation in a tribe.

Of the nine federally recognized tribes in Oregon, all maintain their own judicial systems, several have their own bar associations and two require bar examinations. Oregon’s Executive Order No. EO-96-30 explicitly recognizes the nine tribes as sovereigns, and the order formalizes “the government-to-government relationship that exists between Oregon’s Indian tribes and the state.” Several Oregon statutes, such as ORS 182.162 et seq. and ORS 190.110, further define and detail the relationship of state agencies with the tribes and address agreements with the tribes.

The features and consequences of tribal sovereignty are intricate, which makes the practice of Indian law complex. That can create problems for practitioners that range from simple misunderstandings to outright malpractice.

DNA provided by members of the Confederated Tribes of the Colville Reservation in Washington helped demonstrate that Kennewick Man was Native American. The iconic 9,000-year-old skeleton was at the center of a long legal battle.

Photo by William Albert Allard/National Geographic Creative
Martha Klein Izenson, a member of the Indian Law Section, believes that gaps in understanding arise from a practitioner’s failure to take account of tribal sovereignty. Patrick Sullivan, past chair of the section, agrees. Among attorneys, he says, he frequently encounters “blissful ignorance of the fact that there’s a sovereign there” when issues involve a tribe.

The Dorsay & Easton law firm focuses exclusively on Indian law, and Craig Dorsay has spent the past 40 years practicing only that. “Most lawyers don’t know anything about Indian law,” he says. As with other sovereigns, he explains, tribes are immune from suit — but his tribal clients still occasionally get sued in state court.

“When that happens,” he says, “I’ve got a boilerplate motion to dismiss for lack of subject matter jurisdiction.”

Personal injuries that might arise at the Chinook Winds Casino, for example, fall under the Siletz Tribal Code, which includes restrictions on who may be sued and for how much. Like the Oregon Tort Claims Act, the Siletz Code imposes notice requirements, and tort claims are subject to a six-month statute of limitations.

Casinos typically have contracts with outside vendors. Dorsay estimates that Chinook Winds has about 200 such contracts. When negotiating contracts with Indian tribes, uninformed attorneys are often surprised to learn that tribes are immune from suit absent an explicit waiver of sovereign immunity — just like federal, state and municipal governments.

Tribal sovereignty is affected by federal law because Congress retains “plenary power to legislate in the field of Indian affairs” with laws like NAGPRA, which was enacted at the insistence of Native American activists like Maria Pearson. Pearson famously responded to the governor of Iowa when he asked what he could do for her: “You can give me back my people’s bones and you can quit digging them up.”

NAGPRA helped close a gap in tribal sovereignty by recognizing tribal rights to control their own internal relationships, including those with their ancestors, in accordance with their own religious beliefs, laws and customs. But in 2004, the 9th Circuit affirmed Judge Jelderk’s decision about the fate of the Ancient One. The remains were housed at the Burke Museum in Seattle, under contract with the Corps of Engineers.

The remains were never displayed and were subjected only to limited scientific research by the Bonnichsen plaintiffs — 16 days at the hands of forensic anthropologists from the National Museum of Natural History. Following a 2006 settlement, the tribal claimants were also permitted to visit the remains and conduct ceremonies.

Meanwhile, tribes continued to push for repatriation.

**Cultural Disconnect**

“From a thoroughgoing scientific viewpoint, there is no dividing line between today and 9,000 years ago. This is true for many Indians too, but they tend to communicate with their dead without digging them up.”

— Scott Malcomson, The Color of Bones

Dorsay thinks the conflict over the Ancient One is a good illustration of cultural insensitivity and ethnocentrism. His law partner, Lea Ann Easton, emphasizes that working with tribes is different because “history matters in a way that isn’t true for other clients.” Representing tribal clients requires learning not just Indian law, but the tribe’s history and culture.

As an example, Easton mentions a case that involved the identification of burial items. To handle the case, Easton needed to understand the tribe’s burial practices, but she ran into a cultural obstacle — the custom of never speaking a dead person’s name or describing funeral practices. Easton’s strategy? She made a lot of pies. She took her baked offerings to the tribal elders until, eventually, they trusted her enough to talk about it.

To be an attorney for Indian tribes, Dorsay says, requires learning those cultural nuances. “There is a difference that needs to be understood in order to represent them well,” he says, but it may not come easily to many attorneys, who are used to having all the answers.

“Lawyers are used to taking charge,” says Dorsay. “They don’t listen.”
In an essay on Native identity, law Professor Rebecca Tsosie writes that the Kennewick Man conflict shows more than insensitivity — it exposes a deep rift between “Western and Native metaphysics.” She compares the Western scientific model to the methodology of the law, with their shared “mechanistic world view.” Science and the law, after all, were the two forces that converged to institute the Bonnichsen lawsuit and to decide it. Tsosie contrasts the mechanistic world view with “Native epistemologies,” which tend toward a more fluid and reciprocal understanding of human experience.

Tsosie writes that “whiteness” itself informs the debate, with its tendency to universalize, to liquidate and engulf indigenous viewpoints, and to lose the ability to even imagine alternative world views. Part of the tendency to universalize goes back to the issue of Indian identity. The term “Indian” has been imported into both the popular and legal vernacular in a way that erases the history of individual tribes as distinct sovereign nations, says Izenson.

In his work representing tribes, Sullivan says it is “dangerous to generalize anything” in Indian law because issues are so often tribe-specific, and many issues raise matters of first impression. Indian law practitioners often refer to tribes’ treaties for answers (for those tribes that have them) and consult the specific tribe’s constitution, laws, regulations and policies.

Sullivan thinks Oregon needs more Indian law experts, and that Indian law issues are an important part of legal education, embedded as they are in our nation’s history.

**Back to School**

“The most basic problem is that people don’t know what they don’t know.”

— Martha Klein Izenson

Young would like to see a robust Indian Law program at Oregon law schools. As an adjunct professor, she is co-teaching the Federal Indian Law course at Lewis & Clark Law School. She hopes that sometime soon, Oregon law schools will hire full-time faculty members with Indian law expertise.

“Indian Law problems are complex,” she says, and every law student needs to learn the issues.

Attorney Caroline Lobdell heads up the Western Resources Legal Center, a nonprofit legal education program affiliated with Lewis & Clark. As the former Walter Echo-Hawk Visiting Indian Law Professor, Lobdell has also taught the Indian Law course. Through the law school, she runs an externship program that finds field placements for students who want to learn Indian law.
“You can’t fully practice natural resources law without some understanding of tribal issues,” Lobdell says.

Izenson participated in the externship program when she was a Lewis & Clark student, which she says was a high point of her law school experience. She thinks the pivotal concepts of Indian law, such as jurisdiction, are “learned best through experiential programs.”

Until 2012, the Lewis & Clark faculty included an Indian law professor, Robert J. Miller. John Parry, the law school’s associate dean of faculty, says Miller’s departure coincided with the “crisis in law school education” that followed the Great Recession. In Parry’s view, the talent pool of local lawyers and alums, who serve as adjuncts, is more than adequate to meet students’ needs and also allow the school some budgetary flexibility. Still, Indian law expertise is “a big plus factor,” he says, when Lewis & Clark hires a new faculty member.

Laid to Rest

“Gonna be where no lies be told on me
When I get on the other side.
Yeah, sit down on the banks of the river,
Lord, I won’t be back no more.”

— Rev. Gary Davis,
Goin’ to Sit Down on the Banks of the River

U.S. Supreme Court, 2018-2019 Term

As of mid-March, the Supreme Court had granted certiorari in three Indian law cases, with cert petitions pending in 10 more.

Herrera v. Wyoming, Docket No. 17-532, arose from the criminal conviction of a citizen of the Crow Tribe who was arrested for subsistence hunting. The case presents the question of whether the tribe’s 1868 treaty right to hunt on unoccupied federal lands was abrogated by Wyoming’s admission to the union or by establishment of the Bighorn National Forest.

Washington State Department of Licensing v. Cougar Den, Docket No. 16-1498, will address whether the 1855 treaty of the Yakama Indian Nation gives tribal members the right to avoid state taxes when importing fuel.

Carpenter v. Murphy, Docket No. 17-1107, will decide a question of state criminal jurisdiction in Oklahoma. Specifically, the court will determine whether the 1866 boundaries of the Creek Nation territory are an “Indian reservation” under 18 U.S.C. § 1151(a).


Douglas Owsley is a forensic anthropologist from the Smithsonian Institution and one of the plaintiffs in Bonnichsen. Although his findings were not published in a peer-reviewed journal, he concluded in 2014 that the Ancient One was not Native American but more closely related to the Ainu and Polynesians. Owsley’s research was based on skeletal morphology, including the shape of the skull.

But scientific techniques for the analysis of 9,000-year-old DNA continued to progress, and scientists at the University of Copenhagen concluded instead that the Ancient One was Native American after all. The scientists, who published their results in 2015, said their analysis showed that the remains were genetically closest to the Colville tribes.

The following year, Congress passed legislation to expedite return of the remains to the tribes, and the Ancient One was reburied on Feb. 18, 2017, in the Columbia Basin.

The dispute over the Ancient One focused attention on issues of tribal self-determination and sovereignty, including the inherent right of tribal people to define themselves. But unlike the remains of the Ancient One, those issues are far from being laid to rest.

Endnotes:

1. The number of federally recognized tribes increases over time because of a change in federal policy. From the 1940s to the 1960s, the government’s policy toward Indian nations was one of assimilation, and the U.S. stripped official recognition and sovereign status from tribes, including many in Oregon. Since the “Termination Era” ended and federal policy changed to support tribal self-determination and self-governance, tribes have fought to regain that status.


Sources:

Bonnichsen v. United States, 357 F.3d 962 (9th Cir. 2004).
Se-ah-dom Edmo, Jessie Young, and Alan Parker, American Indian Identity: Citizenship, Membership, and Blood (2016).

The executive committee of the Indian Law Section contributed to this story. Jennie Bricker is a natural resources attorney at Harrang Long Gary Rudnick and a freelance writer doing business as Brick Work Writing & Editing. Reach her at brickworkwriting@gmail.com.
He once crooned a ditty from “Oklahoma” in a courtroom — and won the case. He and his wife also directed a show featuring Johnny Cash songs — and sold out all 10 performances.

Meet Brent Smith, a singer, guitarist, songwriter and trial lawyer in La Grande. And yes, that’s the order he prefers whenever he describes himself.

“I’m a musician and a lawyer, rather than a lawyer and a musician,” he explains.

Smith is a highly successful attorney whose firm, Baum Smith, has handled contentious, high-profile civil cases in Eastern Oregon. But his early dream of making a living with music never faded. Instead, he tightly held onto it and managed to fashion a blended life that allowed him to practice law and be a local musician with his own band who could stay close to home and raise a family.

“Music really has helped me be in the moment and be in the room,” Smith says. When you’re playing before an audience, “you have to learn how to emotionally connect with people, and be able to react to what is happening. You have to be able to read a room. I think I’m able to do that as a trial lawyer better” because of performing music.

Despite his relative youth — he just turned 41 — Smith has tried numerous cases before judge and jury in both state and federal courts. He also parleys his litigation experience into giving clients strategic advice about their legal problems and helping them arrive at a solution. He says his professional objective is to ensure that people living east of the Cascades can obtain counsel from an attorney living in their region.

“Lawyers from the west side of the state don’t always know what they’re getting into,” he observes.

He attributes much of his success to being able to connect with the local community. Because he has always lived in rural areas, Smith feels he is better able to communicate with juries. For example, he uses regional or local people as much as possible when calling in expert witnesses.

Several years ago, he handled a case involving a fire started by farming combine equipment. Smith interviewed 20 wheat farmers about fire-suppression equipment, and called in five of them to testify about what the “standard of care” should be for a wheat farmer.

“You have to put on evidence of what is the standard of care in that community,” he explains. “I have that sort of issue regularly.” Half of his cases involve cows in some fashion.

“Ranchers have lots of disputes” related to government regulations, says Smith, who represented the Hammond family on the civil side of their case involving grazing rights on federal land. The Bureau of Land Management and the U.S. Forest Service often have different interpretations of matters such as overgrazing and the use of fire than ranchers do, he points out.

“There’s a history of ranchers using fire in a way that ranchers feel benefits the land. The government sees it differently when it’s on government ground. It’s kind of a mess.”

But Smith emphasizes that “because I’m rural, I get to” represent both sides.

“I don’t run into conflict of interest, in part because every case is different. I’m able to do both sides; I’m not an advocate for one side or the other.”
Accepting Trade-Offs

Smith and three younger brothers grew up in the farming business. Although he was born in Long Beach, Calif., his parents moved to Utah when he was a child to operate an alfalfa manufacturing plant, making hay cubes for stables. He was “pushing a broom” for his parents by age 11, he says, and learned early on how to operate heavy equipment.

“I grew up around farming and ranching,” he says, “but I wasn’t particularly mechanically minded.”

Smith became the first person in his family to earn a bachelor’s degree, majoring in political science at Southern Utah University. There he met his future wife, Jeannette, when they played together in a rock band. He became part of the music community during his summer breaks, often traveling to different states as a solo singer playing cowboy songs.

One summer, he played for tourists at Bryce Canyon National Park in Utah. He also got involved in what he calls “the song poem business,” working for a company that hired him to compose music for lyrics written by other people.

“It was great training for me as a musician,” he says.

But when his manager told Smith that he would need to do 300 musical gigs a year to make a living, he knew it wasn’t the life he sought.

“I wanted to have a family,” he says, and the constant travel required to be a musician just wasn’t compatible with that. He knew he also liked speech and debate and “talking about ideas,” though, and decided that being a lawyer might be a better fit for the life he envisioned.
So Smith took the LSAT, and while at the University of Utah’s S. J. Quinney School of Law, he worked as a summer intern at the firm that is now Baum Smith. He never left. When he passed the bar in 2006, Smith joined the firm and became the mentee of seasoned trial lawyer David Baum.

“He had good delivery,” Baum says, and his experience appearing before an audience on stage helped put him at ease with juries. Smith’s strapping size — he stands 6 feet, 7 inches tall and weighs 230 pounds — gave him a commanding presence that made him an imposing figure in the courtroom, too.

At Home on Stage

Playing music is now a family affair for the Smiths.

Jeannette Smith is a singer and music educator, and the couple’s four children, ranging in age from 8 to 14, sometimes perform together. They recently starred in a production of “Mary Poppins,” and Brent Smith has appeared in a variety of other musicals, including “Seven Brides for Seven Brothers.” His band regularly puts on shows at Christmas and during the summer solstice in restaurants and various other venues, including the Elgin Opera House.

“I love getting people together to play music,” he says.

A prime example: In 2016, Smith and his wife co-directed and led a cast of 12 — along with a choir of about 20 singers — in a production called “Ring of Fire: The Music of Johnny Cash.” It sold out 10 performances over three weekends in the Elgin Opera House, which seats nearly 200.

“I’m a big believer in the power of live music,” he says. “The Cash show gave me an excuse to bring together my favorite local musicians and singers, great songs and a big, appreciative audience. I think it’s important for people to see their Realtor, their kids’ school teacher — the people in their community — performing.”

Smith is actively involved in a host of community activities, especially nonprofit music, theater, film and child welfare projects. These include the Elgin Opera House, the Eastern Oregon Film Festival, the Grande Ronde Child Center and the Liberty Theatre Foundation. The latter involves restoration of a 1909 former vaudeville house.
“Why is community involvement important to me? I want to leave things a little better if I can,” Smith explains. “The small nonprofits that provide services need help navigating the legal and regulatory issues they face. I think lawyers can do a lot to help those organizations.”

When the nonprofit Grande Ronde Child Center’s services were absorbed by other entities, he helped direct its reserves into a granting organization. For about three years, it gave out around $300,000 in grants to improve the other programs that provided services to children in the area.

“This challenged our local providers to improve their programs,” Smith says.

Circuit Court Judge Russell West, a senior judge who retired last year after presiding in Union and Wallowa counties, considers Smith “one of the best lawyers I worked with as a judge. He’s always prepared. He knows when to object and when not to object, and he understands Eastern Oregon juries.”

He also knows when to bring his musical talents into the courtroom. During his closing argument in a water pollution case, West recalls, Smith “burst into song.” It was a tune about ranchers, and “the jury was spellbound.” Opposing counsel “didn’t bother to object,” West says, and the case was decided in Smith’s client’s favor.

The musician part of Smith says that adding a musical element to the proceedings probably didn’t hurt, but his lawyer side is quick to add that “we got it because we had a strong case.”

Smith acknowledges that choosing family and home over a full-time music career was a trade-off, but one he was willing to make. He also feels gratified that he can “support my wife’s career in teaching” music.

“What I love about practicing in Eastern Oregon is driving around the state and appearing before different judges,” he says. “I still get to travel and play to an audience.”

All photos are courtesy by Brent Smith.

Cliff Collins is a Portland-area freelance writer and contributor to the Bulletin. Reach him at tundra95877@mypacks.net.
Fifty years ago, 262 people sat for the Oregon bar exam. It was a turbulent time in the United States, remembered still for growing anti-war protests, an ongoing civil rights movement and significant legal and political decisions.

To celebrate the year’s golden anniversary, the Oregon State Bar honored its Class of 1969 this spring with a luncheon — a tribute not only to members’ contributions to the legal profession, but also their deep commitment to family, community and country.

Seventy-three OSB members are marking their 50th year of bar membership in 2019, including 39 who gathered with family, friends, colleagues and the Board of Governors on March 22 at the Tualatin Country Club.

“The Class of ’69 boasts judges, district attorneys, authors, teachers, politicians, business leaders, community activists and volunteers,” OSB President Chris Costantino told the group. “Each has served the community in unique and meaningful ways. We are here today to honor their service.”

For many members of the Class of 1969, that service included stints in the military. Warner E. Allen (U.S. Marine Corps), Baron C. Sheldahl (U.S. Army) and James O. Smyser (U.S. Army) all served with the Judge Advocate General’s Corps, for example. David L. Jensen’s legal career was interrupted by his active duty as a Marine Corps officer.

And the Hon. William Michael Horner, who actually passed the bar exam in 1968, wasn’t sworn in as a member until 1969 — a ceremony that took place during his service with the U.S. Army in Vietnam’s Mekong Delta. Fifty years later, he joined his bar colleagues in celebrating all they have accomplished in the five decades since then.

For more photos from the event, visit www.osbar.org/events.

— Gary M. Stein
Celebrating 50 Years of Service

TOP ROW
| Left: Richard M. Mollison and Maria Mollison. Middle: Hon. Jerome E. LaBarre. Right: Northwestern School of Law grads Lloyd B. Robinson (from left), Edward P. Miska, Hon. Wayne R. Harris and Frank Porcelli Jr.

SECOND ROW

THIRD ROW
| Left: Donald A. Loomis and Joan Loomis. Middle: University of Oregon Law School grads Dean S. Kaufman, Frank H. Lagesen (seated), Kenneth C. Bauman (standing), Michael E. Kohlhoff, Richard E. Alexander, David L. Jensen and Baron C. Sheldahl. (That’s Julie and Ira L. Gottlieb walking past the group in the upper left corner.) Right: Dean C. Werst.

THIS ROW

Fifty years ago, 262 people sat for the Oregon bar exam. It was a turbulent time in the United States, remembered still for growing anti-war protests, an ongoing civil rights movement and significant legal and political decisions.

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— Gary M. Stein
Although technology has changed the world for everyone in the past several decades, it has been nothing short of revolutionary for people with vision loss. The personal computer, along with the digitization of data and the evolution of the internet, have arguably had more of an impact on living conditions for the blind than the advent of braille or the development of guide dog training.

The exponential growth of technology has changed what it means to be blind. The print world — books, newspapers, mail, street signs, restaurant menus, bank statements, medical records, legal documents and more — is now playing live in our earphones and at our fingertips.

The authors of this article know this firsthand. When he was 22, Duboff was seriously wounded in an explosion that left him blind and unable to read braille. He uses Alexa, a reading machine and a computer that can read him his email. Ferris, who is deafblind, uses a combination of a screen reader and a digital braille display to use the computer. The screen reader converts the words on the screen into an audible voice, and then her braille display converts that voice into a series of rising and falling tactile pins that she reads with her fingers.

**Inefficiencies Limit Potential**

Not that long ago, we had to depend on volunteer readers and charity libraries to access print information. This was time-consuming and inefficient. It created an information famine where print information trickled to us. There were often long waitlists for books and magazines, and we had to rely on the kindness and schedules of others to help read our mail and fill out forms. This severely limited our choices and access to large chunks of information.

The consequences of this inefficiency were dire for us. We lagged behind in knowledge and lost networking opportunities because we were not able to discuss the latest news story or best-selling book. We lost job opportunities because we could not stay on top of required reading and documentation as fast as our colleagues.

We lost all confidentiality with respect to our medical, legal and financial records. We signed legal documents we couldn’t read when there was no help available. We had to trust frenzied counter employees to fill out important forms and hope that they did it correctly. We missed critical deadlines we didn’t know about because readers were not available in a timely fashion to read us the printed deadlines on important pieces of mail.

Ferris’ business partner had a several-year legal odyssey that cost him thousands of dollars because of a mistake on some immigration papers. Without his
knowledge, a clerk spelled his name with an extra “t” that made his residency papers mismatch his passport. Another person Ferris knows got into legal trouble because of a bank error that put his child support payments in the wrong account. He did not have access to the bank statements until months after they were issued.

**New Technology Evens the Field**

But now, through accessible digital technology, the blind, deafblind and visually impaired have the potential to access everything in real time, independently and without having their options filtered through others.

With services like MyChart for medical records and online banking, we now have independent, 24-hour access to our own confidential information. Online fillable forms and legal digital form services like DocuSign allow us to ensure the accuracy of our information and to read and fully understand the legal documents that we sign.

When the world of paper is made digitally accessible, we gain access to the same civil rights as others have come to expect for themselves.

**Still Work to Be Done**

However, this technology is available only when organizations prioritize accessibility and convert paperwork and digital materials to accessible formats. The legal field is, unfortunately, lagging in its adoption of accessibility standards.

For example, the Oregon Department of Justice still does a large portion of its work via paper forms and mailed letters. Many attorneys expect blind people to sign wills, contracts, deeds, custody and divorce papers and other documents that they have never read and can never refer to.

Digitizing print is not enough. Digitization has to be done in a way that meets the Web Content Accessibility Guidelines (WCAG) so that screen-reading software can process the information. Here, too, the legal field is behind.

For instance, the archives of the Oregon State Bar Bulletin are in a format that essentially turns the written word into a picture that our software cannot access. Ironically, this article will not be accessible to those who are blind, deafblind or have other reading disabilities. (See “Increasing Accessibility,” Page 42.)

**Three Steps to Get You Started**

The commitment to ensuring your law practice or organization is meeting the standards needed for everyone to have accessibility begins with these three easy steps.

1. Perform an “accessibility assessment” to determine how compliant your organization is with ADA and other applicable laws. There are online tools, as well as consultants, available to help with this.

2. Create a plan to bring your policies and environment up to code. Make sure in the future, digital accessibility is prioritized from the start of everything you do.

3. Test your digital presence and digital processes (i.e., online intake forms and legal documents) with actual people with disabilities who use assistive technology. Don’t assume that you won’t ever deal with a disabled client; it could be that you haven’t in the past because of your organization’s inaccessibility.

A good website to help you get started is www.w3.org/WAI/. You’ll also find more information at https://www.biggerlawfirm.com/digital-accessibility-for-law-firms.
Lawyers and other members of the legal profession should be sure that the written word is presented as text or as a readable PDF, not a scanned image. Forms cannot simply be scanned and attached to an email, but need to be made into either accessible fillable PDFs or web-based HTML forms.

There may be a learning curve with WCAG, but these guidelines are not difficult or expensive to implement. Resources for web and app designers to learn the standards are free and readily available online, and after some study, these standards soon will become second nature. Consultants also are available to assist with accessibility.

When incorporated and prioritized throughout all stages of a project (rather than as an afterthought), universally accessible websites do not cost any more money to make and take no more time to develop. Besides, it’s the law in many jurisdictions.

Fighting for What’s Right

Lawsuits relating to website accessibility have sharply increased. A number of courts have held that websites and web-based services are subject to the law.

Increasing Accessibility

The OSB’s Bar Accessibility Review Team (BART) works on identifying and correcting accessibility issues at the bar center and on the bar’s website.

Recently, the review team approved placement of a downloadable pdf version of the Bulletin on the OSB website. The OSB has also enlisted the services of consultant Niklas Petersson, founder of Miles Access Skills Training (MAST), who had already helped attorney Leonard Duboff with accessibility issues on his own website.

Members who are unable to access the Bulletin online should contact Editor Gary M. Stein by email at editor@osbar.org.
Americans with Disabilities Act (ADA). Other courts have, however, held that they are subject to the ADA only when there is a connection, or nexus, between the website and a brick-and-mortar location.

Advocacy groups like the National Association of the Deaf (NAD) and National Federation of the Blind (NFB) continue to pass resolutions and work on stronger, more specific legislation that will require accessible digital media to be made available as a reasonable accommodation to print media and paperwork, and that all digital media be accessible to people with disabilities.

Like nearly all accommodations for people with disabilities, WCAG guidelines benefit everyone, not just the disabled. Digital forms mean that clerks are free from having to enter handwritten data and guess at illegible handwriting that may cause errors and delays. Digital legal forms mean that signatures can be procured and documents distributed in minutes rather than days. Less paper waste benefits the environment and saves money.

Accessible websites and apps are neater and more organized for designers and developers. They are more easily searched and accessed by search engines and are easier to modify. Universal design benefits all. There is no downside.

It just takes commitment.

Leonard DuBoff is the author of more than 30 books on business and intellectual property law and a former law professor for 25 years, first teaching at Stanford Law School, Lewis & Clark Law School and the Hastings College of Civil Advocacy; he is currently the managing principal of the DuBoff Law Group, which focuses on complex business and intellectual property. Lisa Ferris, with partner Niklas Petersson, founded Miles Access Skills Training (MAST), which teaches and promotes the use of technology and alternative skills to people with disabilities and works with organizations that want to become more accessible; find more information about MAST at blindmast.com.
CLE Seminars

The Perfect Question with David Markowitz
How to Control the Witness, Reveal Hidden Information, and Persuade the Judge and Jury
Wednesday, May 15, 2019, 9 a.m.–11:45 a.m., OSB Center
CLE credits: 2.5 General
Explore the impact of a carefully crafted question on achieving goals at deposition and trial. Understand the importance of putting a witness at ease to maximize the information obtained. Examine how witnesses can be controlled and manipulated during deposition and trial. Gain insight as to how tone, pace, and word choice affects a witness’s response. Learn how to impeach a witness, and explore the techniques of framing, priming, and anchoring.
PQ19

Practicing Inclusion: How to Best Represent Clients with Disabilities
Friday, June 7, 2019, 9 a.m.–4:30 p.m., OSB Center
CLE credits: .5 General, 1 Abuse Reporting, 2 Access to Justice, 1.5 Ethics, and 1 Mental Health and Substance Use
Representing clients with cognitive and physical disabilities presents unique challenges. Learn how to better serve clients with disabilities with session topics including better courtroom access, navigation, and participation for people with disabilities and the ethical implications of working with clients when mental health or cognitive disability is a concern. Complete your specialty MCLE credit requirements by exploring lawyer wellness with regard to mental health and substance use, as well as mandatory abuse reporting for Oregon lawyers. Cosponsored by the Disability Law Section.
DIS19

Advanced Estate Planning
Friday, June 14, 2019, 8:30 a.m.–4:45 p.m.
Multnomah Athletic Club
CLE credits: 5.75 General and 1 Ethics
Experienced estate planning lawyers will find a wealth of information relevant to their clients. Receive an overview of the Uniform Prudent Investor Act, including trustee’s rights and planning for IRA distributions to a trustee. Examine the benefits and risks of economic opportunity zones and their use in estate planning. Delve into issues related to removing occupants from estate property. Learn how to identify, create, and change grantor trusts and explore creative opportunities for charitable giving. An hour of legal ethics will cover actual complaints and some of the more interesting circumstances involved in ethics complaints. Cosponsored by the Estate Planning and Administration Section.
AEP19
Make Time for OSB Institutes

More than just a seminar, the 2019 OSB institutes present intensive, multi-day CLE content along with unequaled networking opportunities.

Next institute:

19th Annual
Oregon Tax Institute
Thurs., June 6, 9 a.m.–5:15 p.m.
Friday, June 7, 9 a.m.–4:30 p.m.
Multnomah Athletic Club
CLE credits: 10.5 General and 1.5 Ethics

From a U.S. Supreme Court decision to the Tax Cuts and Jobs Act, the 2019 Tax Institute will cover a range of state and federal tax changes. Learn about how the IRS detects and pursues enforcement objectives. Explore state tax post-Wayfair and estate planning and administration after the Tax Cuts and Jobs Act. Examine tax rules related to blockchain and cryptocurrency, as well as qualified opportunity zones. You’ll also receive an update on recent federal income tax developments and learn about contingent fees and conflicts of interest with respect to tax practice ethics. Cosponsored by the Taxation Section

OTI19

Legal Publications

Juvenile Law: Delinquency
2019 Edition

Represent your juvenile clients effectively with Juvenile Law: Delinquency. Written by public defenders, state attorneys, private practitioners, and judges, this second volume of Juvenile Law deals with issues relevant to delinquency cases, from custody and intake through appeals, as well as expunction of juvenile court records. It offers a thorough examination of the Juvenile Code as well as the code’s case law interpretations, will include the latest legislative developments and cases, and is full of practice tips.

Comes with full text of Juvenile Code and relevant 2019 bills.

View the full catalog at www.osbar.org/publications or contact the order desk for help: (503) 431-6413.

Register for all seminars and search the full catalog at www.osbar.org/seminars
Day at the Capitol Planned for May 8

Day at the Capitol is an opportunity for lawyers to meet with their state representatives and senators to talk about justice-system issues of importance to the bar. This year’s Day at the Capitol will be held on Wednesday, May 8, in the Oregon Civic Justice Center Lobby and Hearings Room at Willamette University College of Law in Salem.

The Public Affairs Department of the bar works to arrange meetings for bar members with as many legislators as possible. The day will also be a chance to discuss the bar’s priorities for the 2019 legislative session, which include funding for the court system, funding for low income legal services and funding for indigent defense services.

RSVP to Kellie Baumann at (800) 452-8260 ext. 376 or pubaff@osbar.org.

Celebrate 30 Years of IOLTA on May 21

The Oregon Law Foundation invites all Oregon attorneys to celebrate 30 years of IOLTA (Interest On Lawyer Trust Accounts), which provides critical funding for access to justice in Oregon at no cost to lawyers or the public. The event is scheduled from 5:30-7 p.m. on Tuesday, May 21, at the Oregon Historical Society in downtown Portland.

The event, which is free, includes light food and drinks. Register at olf-2019.eventbrite.com. To read more about the IOLTA program and why “Where You Bank Matters,” visit olf.osbar.org.

Four Positions Open on Board of Governors

The Oregon State Bar is seeking candidates for four open seats on the Board of Governors — two positions in Region 5 (Multnomah County) and one each in Regions 6 (Benton, Linn, Marion and Polk counties) and 8 (out of state).

The Board of Governors determines the general policies of the bar and approves its budget each year. It consists of 15 lawyers elected from eight regions, four
public members appointed by the board and the non-voting position of immediate past president.

Candidates for the four open seats have until 5 p.m. on Tuesday, May 14, to file statements with the bar. Ballots and candidate statements will be sent to members on Oct. 7 via an email link to an online ballot, which must be completed by 5 p.m. on Oct. 21. Elected board members will begin their four-year terms on Jan. 1, 2020.

For more information, contact Danielle Edwards at dedwards@osbar.org or (503) 431-6426, or visit osbar.org/leadership/bog.

PLF Board of Directors Seeking Two Lawyers

The Professional Liability Fund is looking for two lawyers to serve five-year terms on the PLF Board of Directors that would begin on Jan. 1, 2020.

Directors attend approximately six board meetings per year, plus occasional committee meetings. Directors are also required to spend time reading board materials and participate in occasional telephone conferences between meetings. PLF policies prohibit directors and their firms from prosecuting or defending claims against lawyers.

The PLF Board recognizes that bar members are diverse in perspective and background and highly encourages individuals from diverse backgrounds to apply. To do so, send a brief resume by July 8 to Carol J. Bernick at carolb@osbplf.org or PO Box 231600, Tigard, OR 97281-1600.

OSB Award Nomination Deadline is June 11

The Oregon State Bar is accepting nominations for annual awards that will honor Oregon’s most outstanding lawyers, judges and members of the public. Categories include judicial excellence, diversity and inclusion, technology and innovation, membership service, public service, public leadership and sustainability.

The Oregon Bench & Bar Commission on Professionalism also is accepting nominations for its Edwin J. Peterson Professionalism Award.

The deadline for all nominations is 5 p.m. on June 11. Visit osbar.org/osbevents/index.html for more details.
Discipline

Note: More than 15,000 people are eligible to practice law in Oregon. Some of them share the same name or similar names. All discipline reports should be read carefully for names, addresses and bar numbers.

KRISTA L. WHITE
OSB #941575
Sammamish, Wash.
30-day suspension, all stayed; 1-year probation

By order entered Feb. 22, 2019, the disciplinary board imposed a 30-day suspension, all stayed pending a one-year probation, as reciprocal discipline of Krista L. White for violations of RPC 1.15-1(a) and RPC 1.15-1(d).

In a Washington disciplinary proceeding, White stipulated to violations of Washington rules requiring attorneys to maintain certain trust account records and reconcile bank statements with trust account ledgers. These record-keeping violations resulted in shortages in two IOLTA accounts in 2014 and 2015, and disbursements on behalf of clients that exceeded funds those clients had on deposit in trust.

White’s conduct violated Oregon RPCs 1.15-1(a) and (d).

The Washington discipline proceeding resulted in a public reprimand, an assessment of attorney fees and administrative costs, and a two-year probation requiring White to submit monthly reports of her trust account reconciliations and to provide quarterly reports to the Washington disciplinary counsel’s trust account auditors.

At the time reciprocal discipline was imposed, White was in compliance with the Washington probation. The Oregon probation requires White to continue complying with the remaining term of the Washington probation.

KEVIN W. LUBY
OSB #844050
Tigard
Public Reprimand

Effective March 1, 2019, the disciplinary board approved a stipulation for discipline reprimanding Tigard lawyer Kevin W. Luby for violation of RPC 4.2 (unauthorized communication with a represented party).

Luby represented a landlord in a dispute with a tenant who was represented by a lawyer. When the tenant emailed Luby, copying his own lawyer, Luby responded directly to the tenant, copying the tenant’s lawyer, noting that he was prohibited from discussing the particulars of the case because the tenant was represented and commenting on the subject matter. The tenant emailed Luby a second time, copying his lawyer, and Luby replied directly to the tenant, copying the tenant’s lawyer. The tenant’s lawyer reminded Luby that he represented the tenant, that Luby’s email communications with the tenant were inappropriate and directed any further communications be made to the lawyer.

Several months later, Luby went to the subject property, encountered the tenant and asked him if he had vacated the property, which was an issue in dispute and a subject of the lawyer’s representation of the tenant.

Luby’s conduct was aggravated by prior discipline, multiple offenses and substantial experience in the practice of law, and mitigated by his forthright communications during investigation of the grievance and the remoteness of his prior discipline.

WILL DENNIS
OSB #61785
Bend
Public Reprimand

Effective March 1, 2019, the disciplinary board accepted a stipulation for discipline and publicly reprimanded Bend attorney Will Dennis for violating RPC 1.6(a).

Dennis represented the personal representative of an estate and discovered that his client had paid herself a professional fiduciary fee from estate funds without court approval. After the probate court approved the estate’s final accounting, which included an additional personal representative fee, Dennis advised his client that she needed to deduct her prior payments from the fee the court had approved. The client disputed Dennis’ calculations but did not communicate her rationale.

Thereafter, Dennis filed a motion to withdraw in which he disclosed that the client had paid herself fees without court approval and without his knowledge or consent. Dennis believed that he was permitted to disclose this information to the court pursuant to RPC 1.6(b)(1), that his client had committed theft and/or fraud with the estate’s funds and intended to do so in the future, and that his disclosures were necessary to rectify his prior statements to the court in the estate’s final accounting. Dennis admitted that by making his statements described above, he violated RPC 1.6(a).

Dennis’ conduct was aggravated by his substantial experience in the practice of law, but was mitigated by the absence of any prior discipline, Dennis’ full and free disclosure and cooperative attitude toward the bar’s investigation and proceeding, and the absence of a dishonest or selfish motive.

M. CHRISTIAN BOTTOMS
OSB #962270
Portland
30-day suspension

Effective March 10, 2019, the disciplinary board accepted a stipulation for discipline and suspended Portland attorney M. Christian Bottoms for 30 days for a violation of RPC 1.5(c)(3).

In 2014, Bottoms and a client entered a flat-fee agreement that contained
some, but not all, of the provisions required by RPC 1.5(c)(3). Specifically, the fee agreement did not state that if the client discharged Bottoms, the client may have been entitled to a refund of all or part of the fee if the services for which the flat fee were paid were not performed.

Bottoms admitted that he violated RPC 1.5(c)(3) by not including all of the required provisions in his fee agreement.

The stipulation recited that Bottoms’ conduct was aggravated by a prior disciplinary history, a pattern of misconduct, a refusal to acknowledge the wrongful nature of his conduct, a vulnerable victim and substantial experience in the practice of law. Bottoms’ conduct was mitigated by the absence of a dishonest motive and the remoteness of his prior offenses.

SANDRA P. NARANJO
OSB #053314
Beaverton
Public Reprimand

Effective March 13, 2019, the disciplinary board approved a stipulation for discipline publicly reprimanding Beaverton attorney Sandra P. Naranjo for violation of RPC 1.5(c)(3) (charging or collecting a fee denominated as earned on receipt without written fee agreement with required disclosures); RPC 1.15-1(a) (failure to safeguard and keep separate client property); RPC 1.15-1(c) (failure to deposit client funds into trust); and RPC 5.3(a) (failure to make reasonable efforts to ensure that supervised non-lawyer’s conduct is compatible with the professional obligations of the lawyer).

Naranjo entered into two agreements that contemplated earned-upon-receipt fees but did not contain all of the requisite disclosures that would have enabled her to treat the fee as earned when paid. In each instance, the fee was not deposited into a trust account. The drafting of the second agreement was delegated to a non-lawyer whom Naranjo supervised. By not adequately reviewing the second agreement after delegating its drafting to the non-lawyer, Naranjo admitted that she failed to make reasonable efforts to ensure that the non-lawyer staff person’s conduct was compatible with Naranjo’s professional obligations as a lawyer.

Naranjo’s conduct was aggravated by the fact that there were multiple offenses and that she is experienced in the practice of law, but mitigated by her absence of a prior disciplinary record, the absence of a dishonest motive, her timely good faith effort to make restitution or rectify the consequences of misconduct, her cooperative attitude toward disciplinary proceedings and remorse.

JENNIFER BARRETT
OSB #044667
Roseburg
5-month suspension

Effective March 21, 2019, the disciplinary board accepted a stipulation for discipline and suspended Roseburg attorney Jennifer Barrett for five months for violation of RPC 8.1(a)(2).

Two former clients of Barrett complained to the bar regarding her conduct in 2017. In both cases, Barrett admitted that she knowingly failed to respond to requests for information from the bar regarding the client complaints.

The stipulation recited aggravating factors of a prior record of discipline, multiple offenses and substantial experience in the practice of law. However, the stipulation also recited mitigating factors of personal or emotional problems and remorse.

ROBERT D. OLSEN
OSB #053385
Sun City West, Arizona
30-day suspension

Effective April 3, 2019, the disciplinary board approved a stipulation for discipline suspending former Beaverton attorney Robert D. Olsen for 30 days for violations of RPC 1.1 (competence); RPC 1.5(c)(3) (collecting a fee denominated as earned on receipt without written fee agreement with required disclosures); RPC 1.15-1(c) (failure to deposit client funds into trust); and RPC 1.16(d)(failure to take reasonable and adequate steps to protect client’s interests upon withdrawal).

Olsen was hired to represent a grandparent seeking to adopt her grandson. He used a fee agreement that contemplated a nonrefundable flat fee but did not contain the required disclosures, and failed to deposit the retainer into his trust account. After filing an adoption proceeding, he electronically filed a proposed judgment that the court rejected because it lacked a statutorily required declaration. Upon receiving a copy of the pleadings from him, his client pointed out a different error that Olsen agreed to correct.

Two months later, Olsen closed his practice and electronically filed a motion to withdraw without submitting a proposed order. The court did not grant the withdrawal. Upon later receiving an email from the court that the judgment had not been entered and that the court was preparing to dismiss the proceeding, he forwarded the email without comment to his client.

The client contacted Olsen by email and telephone, seeking his assistance in getting the judgment entered. Olsen took no steps to rectify the situation and the court dismissed the adoption proceeding. When the client later sought to file the required child support worksheets and proposed judgment, the court rejected the filings because the case had already been dismissed.

Olsen’s conduct was aggravated by the existence of multiple offenses and his substantial experience in the practice of law, and mitigated by the absence of a prior disciplinary history, the absence of a dishonest or selfish motive, a cooperative attitude in the disciplinary proceeding, and remorse.

Legal Ethics Assistance

The bar’s general counsel’s office is available to discuss prospective legal ethics questions related to a member’s own conduct. A staff attorney can help identify applicable ethics rules, point out relevant formal ethics opinions and other resources and share an initial reaction to callers’ ethics questions.

The assistance that bar staff provides is informal and nonbinding and is not confidential; no attorney-client relationship is established between callers and the lawyers employed by the Oregon State Bar. (Lawyers seeking confidential ethics advice about the propriety of their previous decisions or actions should consult a private attorney.)

Members with questions can call the ethics helpline at (503) 431-6475 to be connected to the first available bar staff attorney.
Among Ourselves

Former Oregon State Bar President Vanessa Nordyke has been appointed to the American Bar Association’s Commission on the Future of Legal Education, which will take a leadership role in anticipating, articulating and influencing dramatic changes in the legal industry in the next decade and beyond.

Buchanan Angeli Altschul & Sullivan has announced that one of its co-founders, Courtney Angeli, has been appointed to the board of directors of the Oregon Symphony Association. Angeli’s practice focuses on representing employers and individuals in employment-related disputes; she is known for her effectiveness in employee trainings on issues such as harassment and appropriate workplace conduct.

Darcy Norville, managing partner at Tonkon Torp, has been honored by the Portland Business Journal as one of its 2019 Women of Influence. The award recognizes women who are business and community leaders in the greater Portland area. Judging is based on career accomplishments, business influence and leadership, and community and civic involvement. Norville is the first female managing partner at Tonkon Torp. She also has served as the chair of the hiring committee and a member of the firm’s managing board since 2005. She formed the firm’s diversity and inclusion committee in 2004 and has served as the chair of that committee since its inception.

Robert Koch, an attorney with Tonkon Torp, has been selected to serve a three-year term as a 9th Circuit lawyer representative for the District of Oregon. Lawyer representatives are chosen by federal judges in each of the circuit’s 15 districts. In this role, Koch will work closely with federal judges to improve the administration of justice in the circuit. He also will help plan the biennial District of Oregon Conference and represent the district at the annual 9th Circuit Judicial Conference.

Stephanie Grant, an attorney with Tonkon Torp, has joined the board of directors of Girls Build, which offers summer camps in several Oregon communities for girls 8 to 14 years old. The camps focus on building confidence through learning the basics of carpentry, plumbing, electricity and more. Grant is an associate in the firm’s litigation department.

Richardson Wright has elevated business litigator Jovita T. Wang to partner. Reach Wang at jovita@richardsonwright.com or (503) 546-4631.

Davis Wright Tremaine is pleased to announce that Alli Condra has been promoted to associate and Olivier Jamin has joined the firm as an associate. Condra’s practice focuses on counseling clients in the restaurant and food and beverage industries on food safety, labeling and other regulatory issues. Jamin practices environmental law and works closely with the firm’s restaurant and food and beverage industry groups. His practice focuses on land use, natural resources and energy law.

Bullivant Houser Bailey is pleased to announce that Robert Spajic has joined the firm’s casualty law practice group in the Portland office. A seasoned litigator, Spajic’s practice focuses on defending clients against professional liability, product liability, personal injury, transportation and construction claims.
Miller Nash Graham & Dunn is pleased to announce three additions to the firm’s construction law team, with Jacob Zahniser and Andrew Guess joining the Portland office and Kyle Sciuchetti joining the Vancouver office. Zahniser represents general contractors, subcontractors, remodelers, owners, property managers and municipalities in a wide variety of litigation matters. Guess represents contractors, design professionals and owners through the life cycle of construction projects, including during litigation. Sciuchetti’s experience includes drafting and negotiating contracts, litigating construction matters and providing general business advice.

Kolitch Roman, an intellectual property law firm based in Portland, has added Amber Sun as a partner. Sun is a registered patent attorney with the United States Patent and Trademark Office and has 15 years of experience securing, protecting and defending patents and trademarks across several industries, including automotive, semiconductor, mechanical and software. She is a native Chinese speaker and previously worked in Shanghai for four years as head IP counsel at a joint-venture automotive company. Sun is the president-elect of the Oregon Patent Law Association for 2019.

After 30-plus years in the same office suite, Sorensen-Jolink Trubo has moved two blocks to 1140 S.W. 11th Ave. in Portland. Herb Trubo has retired from practice but continues to work as a mediator; Scott Sorensen-Jolink continues his active practice representing clients, providing mediation services and parenting coordination, arbitration and reference

Who reached out to you when you were a brand new lawyer?

The first year out of law school can be bewildering at its best. What if someone were there as a guide, a coach, a sounding board?

Toward that end, every new lawyer in Oregon now gets that help through the OSB’s New Lawyer Mentoring Program, a first-year requirement for all new members.

If you have five years of experience as a practicing attorney and 90 minutes a month to lend a hand to a new lawyer, go to the OSB website for full details, or contact the NLMP directly.

Volunteers will qualify for 8 MCLE credits at program’s completion.

New Lawyer Mentoring Program
(503) 431-6406
mentoring@osbar.org
judge services in several counties. Sørensen-Jolink was also recently added to the judge pro tempore list for settlement conferences for Family Court Services in Multnomah County.

Jeffrey C. Bodie has merged his practice with Chernoweth Law Group (CLG), effective Jan. 1, 2019. Bodie serves as of counsel to CLG and draws on his 40 years of experience as a business and real estate lawyer to advise clients on technology, manufacturing, distribution, real estate sales and leasing, intellectual property protection and commercialization.

Melisa Thompson has joined Cosgrave Vergeer Kester as senior counsel. She joins the firm's business practice group and focuses on transactional real estate and construction law. Thompson's multifaceted professional background includes experience with a variety of real estate matters, including navigating title imperfections, assisting with property distribution in probate and all aspects of real estate acquisition and sale.

Annalise Lang has become a shareholder of Schantz Law, which has locations in Portland and Beaverton and is changing its name to Schantz Lang. Lang has been an associate with the firm since 2012. Her practice focuses on all matters related to family law, with an emphasis on complex divorce and child custody matters.

Danford Bickmore has retired as senior vice president and chief compliance officer from GM Financial, the $100 billion captive auto finance provider of General Motors located in Fort Worth, Texas.
Bickmore oversaw a compliance organization of 100 professionals in the United States, Canada, Mexico, Columbia, Brazil, Chile, Peru and Australia. He says he now looks forward to spending time in his hometown of La Grande. Reach him at debickmore@gmail.com.

Buckley Law has announced that two associate attorneys joined the Lake Oswego firm in the first quarter of 2019. **Aaron D. Cilek** is in the business and estate planning group. Prior to Buckley Law, Cilek practiced in Naples, Fla., where he had his own estate planning firm. **Branden Meadows** is in the business litigation group. Prior to joining Buckley Law, Meadows was an associate at Vaught & Boutris in California.

Lake Oswego law firm Olsen Barton has announced the promotion of **Brian Best** to member, effective Jan. 1, 2019. Best focuses on litigating a wide range of matters, including eminent domain, property and business disputes, construction defect and personal injury. Reach him at brian@olsenbarton.com or (503) 558-6214. **Chris M. MacMillan** has joined Olsen Barton as an associate. His practice focuses on real estate transactions and litigation. He also counsels real estate brokers on transactional and risk management issues. Reach MacMillan at chris@olsenbarton.com or (503) 836-7175.

Hart Wagner is pleased to announce **Jack Scholz** has joined the firm as a new associate. Scholz’s practice focuses on

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**Congratulations, Jeffrey!**

We are proud to share that Jeffrey Beaver has been honored with the Frohnmayer Award for Public Service from the University of Oregon Law School Alumni Association.

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medical malpractice defense and employment litigation. He is active in the District of Oregon, where he currently serves as a member of the Local Rules Advisory Committee. He also serves on the national board of directors for the Federal Bar Association Young Lawyers Division, as well as the local board of directors for the Oregon chapter of the Federal Bar Association. In addition, he is an elected member of the Oregon State Bar House of Delegates.

Lane Powell has welcomed two new OSB members to its offices. Shareholder Sean D. Jackson joins the labor, employment and benefits and transportation teams in Seattle. Jackson is a seasoned litigator who represents companies and entities in a variety of civil litigation, with an emphasis on employment and transportation matters. His employment practice includes the defense of public and private employers in claims of discrimination, harassment, retaliation, wrongful discharge and wage and hour violations. Shareholder Eric J. Kodesch joins the tax team in Portland. Kodesch counsels clients on a wide array of federal income tax and state and local tax issues in transactional and litigation matters, including general business planning, financial transactions, trust taxation, executive compensation and choice of entity issues. For state and local matters, he assists clients with obtaining tax incentives such as property tax exemptions for new investments and in resolving audits, even when litigation is necessary. For international transactions, Kodesch provides guidance to help clients structure cross-border transactions and comply with domestic and global tax regulations.

In Memoriam

Amy J. (Dummer) Carlton died Feb. 16, 2019, after a brief illness. Carlton grew up in Lincoln City and graduated from Willamette University after spending her senior year in Germany at Hamburg University on a Rotary scholarship. She graduated from Lewis & Clark Law School in 1992 and went on to practice law primarily at the Portland law firm of James, Urrutia, Marmaduke & Carlton.

In 1994, she married Bob Carlton, a member of the Portland law firm of Sussman Shank. A few years ago, the couple retired from the practice of law and moved to Redmond, where they lived with their beloved standard poodle until her death. Carlton loved nature, her family and animals. She spent much of her time in retirement enjoying the outdoors with her husband and their dog while also volunteering at the Brightside Animal Center in Redmond.

She is survived by her husband, her parents and stepparents, siblings, nieces and nephews.

Philip Hamilton Ringle Jr. passed away peacefully at home on Feb. 10, 2019. Ringle was born to Philip and Audrey Ringle on March 23, 1931. He grew up in Salem, where he attended high school and college. He earned his law degree from Willamette University College of Law and joined the Oregon State Bar in 1957. In 1963, he began working as an attorney for the firm of Hubbard Caldwell Jacobs and Kincart.

In 1965, after the death of Judge Charles Sievers, the Gladstone City Council approached Ringle and asked him to apply for the job of city judge. When he retired, his 47-year tenure was the longest continuous reign of any judge in the state of Oregon.

Ringle was in private practice in Oregon City and owned a Christmas tree farm in Beavercreek. He collected rare Caterpillar tractors and was a member of the International Antique Caterpillar Machinery Club, which started in Brooks in 1991. He also collected violins, played the fiddle and performed with the Old Time Oregon Fiddlers. He was past president and member of the Schnee Vogeli Ski Club.

Ringle was preceded in death by his parents, a son and his first wife, Reba Ringle. He is survived by his loving wife, Marva Fabien, a daughter, three grandchildren and two great-grandchildren.
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FOR SALE – Complete set of Oregon Reports and Court of Appeals Reports. PRICE: $9,015 Shelves available. Will deliver in Oregon. CALL: (541) 426-4912.

LAW LIBRARY, COMPLETE SET OREGON REPORTS AND ALPINE Reports, $7,500.00, (503) 650-8010.

OFFICE SPACE
$800/ MO. OFFICE SPACE - DOWNTOWN PORTLAND ON PIONEER SQUARE – Furnished office space in the Jackson Place, other amenities. Contact Tony at (503) 245-5352 x103 for details and rates.

DOWNTOWN EUGENE, 975 OAK STREET – Spacious, view office in upper level of Class A Citizens Building. Ample staff space, copier and conference/library provided. Congenial atmosphere. Some work overflow probable. Would consider shared reception. $975/mo. Contact Terri at (541) 345-3333.

DOWNTOWN OFFICES ON PIONEER SQUARE – 1-2 private offices ($750 or $1,000) on the 9th floor, Chase Bank Building. Sublease includes beautifully appointed reception areas, high-end finishes with views of the SW hills and square below. 6 conference rooms, secure wifi, bike parking, free breakfast and afternoon snack every day, and unlimited copies. Call Susan at (971) 347-1907.

DOWNTOWN PORTLAND, 1000 BROADWAY, Class A space, 23rd floor, receptionist, voice mail, conference rooms, copiers, scanners, phone, gym, showers, bike rack, $750 to $1,500, (503) 274-1680.

DOWNTOWN VANCOUVER CLASS A TYPE SPACE – at 1610 C Street. 1 or 2 large offices and secretarial space available in collegial legal office. Access to conference room, kitchen, work area and copier/scanner. Very reasonable rates. Contact Karey at (360) 750-0673 or Julie at (360) 693-1630.

EXTERIOR OFFICE 12’ X 13’ IN 7 STOREY BUILDING in 5+ Main building (used to be called Congress Center), available now. Includes reception, conference room, kitchen and access to high-volume copier. Building workout facility with shower. $875/mo. assistant space $100/mo. Contact Christine, (503) 242-1122, ctraceyw@nwlawfirm.com.

FURNISHED OFFICES IN THE HEART OF PORTLAND – One or two large furnished offices in a three office suite available for lease. Large windows overlook Broadway one block from Pioneer Square. Reception area desk also available. WiFi included, $700 per office or $1300 for both. Contact Steve at (503) 294-1106.

HILLSBORO DOWNTOWN OFFICE SPACE one block to courthouse, free reserved parking. Single private offices ($600 per month) or a two person office ($725 per month). Larger suites also available. New Comcast high speed internet available. Call Jay Weil (503) 924-5772, or email jayweil@aol.com.

OFFICE SPACE AVAILABLE IN EUGENE, NEWPORT AND ROSEBURG – Share professional and furnished office space with an established Eugene firm. Available Immediately. Go to www.armstrongbankruptcy.com/officespace or call (541) 682-6652 for more information.

KRUZE WAY – Lake Oswego, Class A Office Building. 4248 Gallowood Street, Lake Oswego, OR 97035. Primarily Attorneys. Partner-sized, windowed offices. Receptionist, Phones, High Speed Internet, Conference Rooms available or included. Free parking. Office lease prices range from $600 to $1400 per month. Phone numbers or ported numbers available. Call for information. John (503) 675-4343.

PANORAMA BUILDING 5,000 SQUARE FEET OF GROUND FLOOR OFFICE SPACE 4504 SW CORBETT Convenient to Downtown. Panoramic River and River and Mountain Views. Space includes reception area, offices, conference rooms, cubicile areas and other amenities. Janitorial and basic utilities provided. Off and on street parking. All-inclusive lease $28 per sq ft. Annual. Contact: (503) 567-7521.

PREMIER PORTLAND LOCATION! 1000 SW BROADWAY, ninth floor. Approximately 850 total sq ft. Two offices, a common area large enough for up to three support staff: private entry, separate suite number and signage, if requested. Located on a floor with fitness center and direct access to parking garage. Building provides use of large conference room located on the ninth floor with capacity of 42. You will also have use of our private conference room, reception area, break room, internet, and phone system. The building has seven levels of secured and monitored parking. We are located two blocks from Pioneer Square and near theaters, hotels, and restaurants. $2,000 per month. Furnished or unfurnished – phones included. Available April, 2019. Contact Renae @ (971) 279-4178 or renae@roylawgroup.com.

TWO LAW OFFICES AVAILABLE DOWNTOWN at the Honeymoon House, 1318 SW 12th Avenue, Portland. Professionally remodeled Victorian House. Easy street parking for clients, 10 minute walk to the courthouse, and easy freeway access. Amenities include library, large conference room, access to copier and fax. One office is $600 per month and a smaller office is $425 per month. Both are on the 10th floor with a free terraces/parking place ($205/month value) with a minimum 30 month lease. Contact Al at (503) 781-7877 or Eric at (503) 224-1212.

TWO OFFICE SHARES IN DOWNTOWN PORTLAND 1 MONTH FREE WITH A 12 MO LEASE – One is 14x12 for $1,200 per month and the other is 15x10 for $1,025 per month. 10th floor office in Cascade Building. 2 blocks from Pioneer Square and MAX Transit hub. Alder Street Parking Garage across street. Rent includes reception, telephone/internet, office conference room, shred, copier & postage machine use. Building amenities: Gym, w/shower, tenant lounge. Contact Jamie @ (503) 243-2733 or jamie@kramer-associates.com.

POSITIONS AVAILABLE

It is the policy of the Bulletin to only list opportunities for employment that are consistent with OSB Bylaw 10.

A LATERAL MOVE IS A DIFFICULT DECISION, so let us find you the perfect fit. Since 2000, Stayer Legal Search has been recruiting lawyers with great opportunities in all sizes of law firms and companies. Our current searches cover nearly all practice areas. Let’s talk in confidence. Contact William Stayer, Stayer Legal Search LLC, staywest@stayerlegalsearch.com or (503) 968-0901.

A PORTLAND METRO AREA LV RATED LAW FIRM is seeking an Associate Attorney to join their growing defense litigation practice. This firm represents employers and insurers in the areas of workers’ compensation, employment law and insurance defense. This is an excellent opportunity for new lawyers who have strong interpersonal, analytical and organizational skills and a willingness to work in a demanding but informal and positive environment. As an associate you will also have the opportunity to work closely with senior attorneys to develop hands-on experience and to work collaboratively in a team environment. The ideal Associate will be licensed in Oregon or Washington. Dual licensure is a big plus. Candidates should have strong research and writing skills, excellent verbal communication skills and have a competitive personality. This is a full time, full benefit position. Benefits package includes medical insurance, dental insurance, life insurance, long term and short term disability insurance and 401K options. Interested candidates must submit a cover letter, resume, transcript and writing sample to recruiting@bi shopcreekservices.com to be considered for the position.

ASSISTANT DISCIPLINARY COUNSEL – LITIGATION –The Oregon State Bar is looking for someone to provide counsel to the OSB in the evaluation, investigation, and, where appropriate, litigation through trial and appeal of ethics complaints made against Oregon lawyers. Please visit http://www.osbar.org/osbcenter/ opensings.html for job details. Equal Opportunity Employer.
ATTORNEY – ESTATE PLANNING & ADMINISTRATION – DUFFY KEKEL LLP, a boutique law firm focusing on estate planning and administration in Portland, Oregon, seeks a qualified candidate to fill an associate position. The ideal candidate will have excellent academic credentials, strong written and interpersonal skills, Oregon bar admission and at least three years of general or estate planning practice experience. Qualified candidates should submit cover letter and resume to Joshua Novikovsky, dhestokfisky@duffykekel.com.

BUSINESS/MUNICIPAL LAW ASSOCIATE – Bend’s oldest law firm is seeking an associate attorney with 3-5 years of experience in Business and/or Municipal Law. Qualified candidates must have strong organizational skills, as well as the ability to work independently and as a team member. The ideal candidate will be a self-starter, have strong academic credentials, and outstanding writing and interpersonal skills. We offer competitive salary and benefits, and the opportunity to work on challenging projects in a collegial work environment. To apply, please submit cover letter, resume, and transcripts with class rank to Laura Tofzdahl, Bryant, Lovlien & Jarvis, 591 SW Millview Way, Bend, OR 97702 or laura@bljlawyers.com.

DIMENT & WALKER, ATTORNEYS AT LAW, an established and respected Eugene law practice, is seeking a full-time associate to practice in the area of family law and to assist other attorneys with case work. Benefits include health insurance and 401(k) after qualifying period of employment. One or more years of experience in domestic relations work preferred. Oversight and mentoring will be provided to newer attorneys. Salary based on experience. Applicants may also send cover letter to Morgan D. Diment, Diment & Walker, 767 Willamette Street, Suite 208, Eugene, OR 97401 or by email to Morgan@dwlawoffice.com.

DISTINGUISHED BUSINESS LAW FIRM is expanding and seeking lateral transfer attorneys. Gleaves Swearingen, a trusted business law firm in Eugene for almost 100 years, is seeking lawyers for our firm’s Business and Transactions, Litigation, and Estate Planning practices. Our firm takes great pride in working with clients with high quality legal guidance and our people with a rewarding work life balance. Candidates must have strong academic credentials and meaningful professional experience, including two to five years of experience in family law, a competitive spirit, strong work ethic, and superior oral and written skills. Salary and benefits will depend on experience and qualifications. Please submit a cover letter, resume, and writing sample to December Goodling Russell (Firm Administrator) at sgoodling@ringbenderlaw.com.

ESTABLISHED CENTRAL OREGON LAW FIRM is seeking a family law associate attorney to join our team. Ideal candidates will have at least two to five years of experience in family law, a competitive spirit, strong work ethic, and superior oral and written skills. Salary and benefits will depend on experience and qualifications. Please submit a cover letter, resume, and writing sample to December Goodling Russell (Firm Administrator) at sgoodling@ringbenderlaw.com.

ESTATE PLANNING & ELDER LAW ATTORNEY – The Law Offices of Nary & Friedenberg LLC is recruiting for an estate planning attorney. Interested candidates should have two to five years of experience in estate planning/elder law experience. We are seeking for someone who possesses a strong work ethic, has fantastic interpersonal skills, is organized and detail-oriented. You will be responsible for drafting estate planning instruments and assisting with the documentation process. Salary and benefits are competitive and will include time off, health benefits, paid holidays, etc. Please submit cover letter, resume, and writing sample to Nary Friedenberg at nfriedenberg@lawofficesnaryfriedenberg.com.

EXPERIENCED ATTORNEY, PORTLAND – Metropolitan Public Defender is seeking a leader to head our Community Law Division (CLD). Responsible for business planning, fund raising, managing relationships with a wide range of partners and funding bodies, as well as for the management of the staff. This is also responsible for the retention of current grants, acquisition of new grants, stewardship, reporting, and management of the grants portfolio. Demonstrated interest in criminal public defense and social justice issues preferred, and prior civil litigation experience required. Please send cover letter and resume via email to kconstan@mpdlaw.com.

EXPERIENCED CRIMINAL DEFENSE ATTORNEY, EUGENE – C совершает десятилетняя Firm is seeking an experienced attorney with at least one to five years of criminal defense experience and an experienced attorney for our Death Penalty Team. We are seeking someone who possesses strong advocacy skills, a can-do attitude, and a desire to work collaboratively as part of a close-knit team. We are seeking someone with experience in criminal defense practice and a strong commitment to plaintiff’s work is essential. Candidate must be an excellent writer, have experience in complex case management, and be a current member of the Oregon bar in at least one state. Must have strong organizational skills, a competitive spirit, strong work ethic, and superior oral and written skills. Please submit letter of interest to: shannon@damlaw.com.

HOOVER RIVER LAW FIRM SEEKS ASSOCIATE ATTORNEY – Successful candidate must have a strong desire to live in the Gorge. Our practice includes litigation, family law, municipal law, probate, real estate, immigration and business. All experience levels considered. Send your cover letter to admin@hooverriverlaw.com.

INTELLECTUAL PROPERTY PRACTITIONER – DASCENZO Intellectual Property Law, P.C. is seeking an experienced intellectual property prosecution attorney or patent agent to join our team of practitioners. DASCENZO specializes in U.S. and international patent and trademark searching, prosecution, licensing, and strategic advice, and its clients range from startups to industry-leading multinational corporations. Ideal candidates will have excellent writing and analytical skills, strong academic backgrounds and work experience, and an established client base. Candidates should also have at least four years of patent or trademark prosecution experience and be licensed to practice law in Oregon or California. Please submit resume and vita to estateattorneypdx@gmail.com. No calls, please. All submissions are strictly confidential.

LATERAL PARTNER/SENIOR ASSOCIATE – BRIX LAW LLP is seeking an attorney to join our Bend office as a Lateral Partner or Senior Associate. We are a specialized law firm with offices in Portland and Bend focused on real estate, corporate and land use transactions, representing the right person to join us. Our firm culture is business-minded, responsive, and practical in our approach to our clients’ needs whether working on complex, sophisticated transactions or more routine matters. All employees work collaboratively, and enjoy the flexibility of being able to work from home. Please submit cover letter and resume to info@dascenzoip.com. Inquiries will be maintained confidential upon request.

LINCOLN DEFENDERS & JUVENILE ADVOCATES, the indigent defense consortium for Lincoln County, is currently accepting applications from attorneys interested in providing contract indigent defense services for Lincoln County. We are seeking an attorney for a full time misdemeanor and felony case load. Applicants should have at least three years of criminal law experience. Please submit resume sample, and the position you are interested in to: shannon@damlaw.com.

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Photo by Rob LeChevallier

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