Second Chances
Network of Support Helps Former Inmates Re-Enter Society

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Finding homes and jobs for formerly incarcerated men and women is the primary mission of dozens of private and public agencies and organizations. But it’s important, state and local officials say, to understand that those efforts to create “Second Chances” and clear paths for re-entry into society are the direct result of changes to how we view the role of incarceration. Writers Janay Haas and Jillian Daley take a closer look in a two-story special report that begins on Page 18.

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Thank you to the many lawyers who have volunteered to help the OSB meet the public’s legal needs during the pandemic.

The following lawyers produced legal information articles and videos that are now available on our public home page:

- **Business Law:** John E. Carley, Cody Emily Schvaneveldt and Laura E.K. Warf
- **Employment Law:** S. Caitlin Dolan, Patricia M. Pascone and Jovanna L. Patrick
- **Family Law:** Adrienne Howells Garcia
- **Immigration Law:** Peter R. Tovey
- **Landlord Tenant Law:** Steven M. Crawford
- **Wills/Trusts/Estates:** Meredith Lee Williamson

You’ll find more information and links to the videos and articles written by our volunteers on the public home page.

[www.osbar.org/public](http://www.osbar.org/public)
Inform, Entertain, Inspire

By Gary M. Stein

Timothy Farrell always wanted to be a published writer. But with more than 20 stories to his credit, it’s no longer the thrill of seeing his byline in print or the desire to pad his resume that drives the Hood River lawyer, who moved to Washington, D.C., a few years ago.

“I still like to write to educate others on what I have come across in my life,” he says. “And from what I can tell, my life has been quite unusual.”

That’s key to a good story, of course — the ability to translate unique experiences into words that inform, entertain and inspire. Usually, the Bulletin relies on professional writers to do that; we develop story ideas, ask freelancers to seek out interesting sources and then piece together much of the work you see in the pages of the magazine.

But sometimes, we’ve learned, it’s better just to get out of the way and let Oregon judges and lawyers share their passion and expertise in stories they pitch to us — stories like Clackamas County Circuit Court Judge Susie Norby’s explanation of what can or should be done if a lawyer encounters a judge who falters (“Ivory Tower Interventions,” Page 30). Or attorney Jas. Jeffrey Adams’ tips for appellate advocates (“Lessons Learned,” Page 42).

Or Farrell’s Parting Thoughts column (“Fighting for LGBT Rights,” Page 62), which explores the efforts of Andrew Kamya and his non-governmental agency Probono Publica to improve the lives of LGBT people in Africa.

“Unlike my privileged existence in this country, Andrew has to deal with bugged phones, snooping government agents and dear friends who are persecuted — some of whom have been killed,” says Farrell, who lived in Africa for three years and has visited often as an adult. “He wants to change an entire culture and society. I can’t even imagine the frustration, but I know from experience that implementing any idea he has will be filled with challenges.”

By telling the world about those challenges, Farrell says, he can still be “an engine of change” even if he isn’t on the ground in Uganda. “So that was my feeling when I asked Andrew if he would help me to write the article about what he is doing as chairman of Probono Publico. If we could tell others about his good work, maybe people can contribute in some small way. Maybe someone will understand his challenges and have an answer for him.

“I wish that I could be on some international panel to move the needle and allow me to serve and make a difference,” Farrell says. “But maybe someone that reads the article will.”

Like Farrell, Judge Norby also saw a Bulletin article as the best way to educate and inform. As the only state trial judge member of the Oregon Bench and Bar Commission on Professionalism, she learned that lawyers who attend professionalism CLEs frequently ask presenters what to do if their concern is not with a lawyer, but with a judge. CLE presenters reported being surprised at the questions, she says, and not knowing how to respond.

“I realized that the bulk of lawyer-judge interactions are in state trial courts. The other judge members of the commission are appeals judges and federal judges, whose positions I felt may insulate them and give them less exposure to the issue than I have,” Judge Norby says. “So I offered to create bullet-point answers to help future CLE presenters field such questions.”

Creating concise bullet points proved to be difficult, Judge Norby says, because the complexity of the problem required more elaboration than she anticipated. “I wrote the article still intending that it be used as a CLE handout,” she says, “but the commission felt a broader distribution may benefit bar members.”

Which brought her to the Bulletin.

“The Professionalism Commission members identified the Bulletin as the most widely distributed publication with the broadest readership of lawyers who may be interested in the topic,” Judge Norby says. “It is also the professional publication that I read most often of all the ones I receive. It seemed the best place to begin exploring the potential to publish the piece.”

Adams also turned to the Bulletin when he sought a broader audience for tips he
developed as part of a CLE panel on the 50th anniversary of the Oregon Court of Appeals, where he had clerked and then worked as a staff attorney from 1979-82.

“I learned some valuable lessons there that helped me in my subsequent appellate career in private practice and at the Appellate Division at DOJ,” Adams says. “So I included a selection of those tips in my CLE presentation. But I hoped to be able to share my insights more widely with folks who had or wanted an appellate career.”

As part of the editing process, Adams actually split his proposed article in two: One story, focusing on his experience working for the Court of Appeals, will run in the Willamette Law Review; the approach he developed while working over the years as an appellate advocate is explored in the pages of the magazine you hold in your hands.

“It occurred to me,” he says, “that the OSB Bulletin was a great venue for reaching every practicing lawyer in Oregon.”

Have a Story for the Bulletin?
We’re always on the lookout for quality manuscripts on topics that range from access to justice, legal funding and judicial independence to diversity in the profession, professionalism and future trends. We also publish columns on ethics, practice tips, law practice management and history, as well as essays on law and life.

Whether you have a completed manuscript or just a suggestion or idea, we’re happy to talk about requirements for publication. Just send an email to editor@osbar.org.

Reach Editor Gary M. Stein at (503) 431-6391 or gstein@osbar.org.
Order Goes Too Far

In the articles in the May 2020 Bulletin about the COVID-19 pandemic, I saw no discussion of the lawfulness of Gov. Kate Brown’s closure orders. After I thought about it, I was shocked at the power the governor has exercised over the economy, health care and personal conduct in Oregon, without legislative approval.

The governor has indefinitely changed commercial and residential lease law, restricted all medical facilities, closed some businesses and not others, and told us all to behave. It’s an unconstitutional delegation. (The court in Wisconsin Legislature v Palm, Wis. SCt May 13, 2020, discussed the delegation issue, ruled the closures illegal and generated lengthy discussion in majority and dissenting opinions.)

We have three branches of government. The Legislature creates laws. The executive enforces them. The Legislature can delegate, but it cannot delegate unrestricted power to control the economy and personal behavior. The state constitution, article 10A, provides that in a catastrophe, the governor must convene the Legislature, and the Legislature can suspend taxes, appropriate money and act to aid recovery. The governor is to manage only immediate response to the catastrophe. § 1 (5). These special powers last only 30 or 60 days.

The governor’s orders are unconstitutional because she has created laws which only the Legislature can enact. We all took an oath to support the state and federal constitution. We should all act to defend it from the coronavirus.

Roger B. Ley, Portland

‘Sedulous Aping’

Until reading Rebecca Hanley’s excellent article (“The Legal Writer,” May 2020), I did not realize that there was a name for casual but productive reading after a day of writing head-clutchingly banal legal stuff.

“Sedulous aping” is what I’ve been doing: There’s the Hemingway brief (when I have strong facts and don’t want any thinking about them); the Proust brief (when I’m just having a lazy, dependent-clause kind of day); the Mark Twain brief (when I would have written a shorter brief, but I didn’t have the time); and the David Foster Wallace brief (when I need to footnote a footnote).

I’d like to see more articles like this that focus on doing anything but writing.

Pete Meyers, Portland

A Call for Help

Many of you know Mike Long, who served as an Oregon Attorney Assistance Program attorney counselor for 23 years. What you may not know is that Mike had a stroke over a year and a half ago and has not yet regained his ability to walk.

Mike was a talented and committed counselor and is now serving as a wonderful example of resiliency for all of us. He is not giving up! Instead, he has started a GoFundMe campaign, so that he can try some therapies that are available in Canada. The link for his campaign is https://tinyurl.com/y7xtk7gh. As you’ll see, the news is great: He is roughly halfway to his fundraising goal!

Thanks in advance for considering a contribution to Mike’s medical treatment, and for helping to get the word out. Mike sends his regards and deepest thanks!

Barbara Fishleder, Portland

Letters to the Editor

The Bulletin welcomes letters. They should be limited to 250 words. Preference is given to letters responding to letters to the editor, articles or columns recently published in the Bulletin.

Letters must be original and addressed to the Bulletin editor. Unsigned or anonymous letters will not be published. (There are exceptions. Inquire with the editor.) Letters may not promote individual products, services or political candidates.

Letters may be edited for grammatical errors, style or length, or in cases where language or information is deemed unsuitable or inappropriate for publication. Profane or obscene language is not accepted.

Send letters to: Editor, OSB Bulletin, P.O. Box 231935, Tigard, OR 97281. Or you may email them to editor@osbar.org.
As an Oregon lawyer, you are a mandatory reporter under ORS 419B.005 et seq.

A child is anyone under the age of 18.

- You must report whenever you have reasonable cause to believe that:
  1) a child with whom you have come in contact has been abused, or
  2) a person with whom you have come in contact has abused a child.

- You do not need to report if:
  1) the information is based on a communication that is privileged;
  2) the information was communicated in the course of representing a client, and disclosure would be detrimental to the client; or
  3) the information was acquired from a report of child abuse, and you reasonably believe that the information already is known to law enforcement or DHS.

When to report
(see ORS 419B.005 for details):

Physical Abuse. Bruises, welts, burns, cuts, broken bones, sprains, bites, etc., that are deliberately inflicted. Any injury that does not match the explanation given for it.

Mental Cruelty. Speech or sleep disorders, failure to grow; victims may be overly aggressive or withdrawn and may show an abnormal need for emotional support.

Sexual Abuse or Exploitation. Victims may have difficulty walking or sitting, pain in the genital area, and torn or stained clothing. They may have poor peer relationships; fantastical or infantile behavior; fear of being left with someone; inappropriate interest in, knowledge of, or acting out of sexual matters; or any of the symptoms listed under Mental Cruelty.

Neglect or Maltreatment. Children often don’t want to leave school, are constantly tired, are left alone without supervision, and have unmet physical, emotional or medical needs.

Threat of Harm. Subjecting a child to a substantial risk of harm. Children may exhibit any of the behavioral symptoms listed above.

Child Selling. Buying, selling or trading for legal or physical custody of a child.

Drug Exposure. Child present in a place where methamphetamines are manufactured; unlawful exposure to any controlled substance that puts the child’s health or safety at risk.

A report of child abuse must be made immediately and orally, by telephone or otherwise.

How and where to report:
- Use the statewide hotline at the bottom of this page, or
- Report to the local office of the Oregon Department of Human Services, or
- Report to a law enforcement agency in the county where you are located at the time.

What to report (if possible):
- Names and addresses of the child and parent
- Age of the child
- Type and extent of the abuse, as well as any previous evidence of abuse
- The explanation given for the abuse
- Any other information that will help establish the cause of abuse or identify the abuser

Failure to report is a Class A violation.

A person who has reasonable grounds to make a report and does so in good faith is immune from civil or criminal liability for the making or content of the report.

Reports of child abuse are confidential, except as otherwise provided in ORS 419B.035.
BRIEFS

Changes and out-of-cycle amendments of special note prohibit civil arrests in courthouses and courthouse environs without a judicial warrant or judicial order; require judgments, orders and writs to clearly state the substance of the court’s ruling; allow the use of electronic signatures on declarations; create a rule for filing exhibits in post-conviction relief cases; and amend requirements for filing a Uniform Support Declaration.

The approved changes are available online at tinyurl.com/UTCRules. The preface to the 2020 UTCR includes detailed explanations of the changes.

The UTCR Committee’s next meeting is scheduled for Oct. 2. The committee welcomes proposals for changes to the trial court rules. Submit proposals by Aug. 31 to utcr@ojd.state.or.us or mail them to UTCR Reporter, Office of the State Court Administrator, Supreme Court Building, 1163 State St., Salem, OR 97301-2563.

State Increases Liability Limits for Public Bodies

Oregon’s Office of the State Court Administrator (OSCA) has increased the limits of liability for state and local public bodies in cases involving personal injury or death and property damage or destruction.

OSCA adjusts the limits annually, as required by statute. The new amounts took effect on July 1; they apply to all causes of action arising on or after July 1, 2020, and before July 1, 2021.

Based on OSCA’s calculations, the new limits are:

- $2,307,500 for injury or death claims against a state body that involve a single claimant. The old limit was $2,247,000;
- $4,615,000 for injury or death claims against a state body that involve multiple claimants. The old limit was $4,494,000;
- $769,200 for injury or death claims against a local body that involve a single claimant. The old limit was $749,000;
- $1,538,300 for injury or death claims against a local body that

Multnomah County Central Courthouse to Open July 20

The opening of the new Multnomah County Central Courthouse is scheduled for Monday, July 20. The last day of court business in the old courthouse will be Tuesday, July 14.

The old courthouse will be closed from Wednesday, July 15, to Friday, July 17, to accommodate the move. The justice center, juvenile court and east county court will each be open those days. During this time, dockets for some essential matters (for example, restraining orders, immediate danger issues, etc.) may be scheduled at the other courthouses.

Trial call/assignment day will be in the old courthouse on Tuesday, July 14, for trials that begin on Monday, July 20.

Due to budgeting issues, the sheriff’s office has revised facility operating hours for the current downtown courthouse. The building will now be open at 7 a.m. and doors will be locked at 5 p.m. All visitors will need to be out of the courthouse by 6 p.m.

Changes to UTCR Take Effect on Aug. 1

Chief Justice Martha Walters has approved changes to the Uniform Trial Court Rules, effective Aug. 1.

By the Numbers

A New Normal

As COVID-19 continues to impact the global economy, nearly two-thirds of legal professionals say they’re worried about the success of their law practice and more than half say they’re concerned about making a living over the next few months. That’s according to research conducted this spring by the practice management software company Clio, which surveyed lawyers and the general public. Among the results:

77% Consumers who say lawyers provide an essential service to society.

49% That if they had a legal issue today, they would very likely delay reaching out for help until after COVID-19 has subsided.

38% Believe that if they had a legal issue go to trial, a remote hearing/trial (as opposed to an in-person one) would negatively impact the outcome of their case.

75% Legal professionals who say they are experiencing more stress and/or anxiety (physical, mental or emotional) than they were before the coronavirus outbreak.

44% Legal professionals who say they’re more concerned about their financial future than they are about their health.

22% Consumers who believe most lawyers have stopped offering legal services because of the pandemic.

Source: Clio COVID-19 Impact Research Briefing (May 4, 2020); find the complete survey online at clio.com/resources/legal-trends/covid-impact.
As careful as they may be with their clients, (lawyers) often forget to apply the same rigor in balancing their own net income with their personal expenses. Now is the perfect time to go through a careful budgeting exercise to understand any gaps between net income and personal expenses, and adjust any non-fixed expenses to offset any loss of income.

— Michael Nathanson, CEO of the wealth management and financial planning firm The Colony Group, offering advice to lawyers impacted by COVID-19 cutbacks. By late May, more than 70 major law firms had announced reductions in pay for attorneys and staff.

involve multiple claimants. The old limit was $1,498,000;

• $126,200 for property damage or destruction claims against a state or local body that involve a single claimant. The old limit was $122,900;

• $630,800 for property damage or destruction claims against a state or local body that involve multiple claimants. The old limit was $614,300.

A list of past and current limitations on liability of public bodies can be found on the Oregon Judicial Department website at courts.oregon.gov/Pages/tort.aspx.

Golf Tournament Benefitting CLP Scheduled for Aug. 7

The 2020 Jim Neill Memorial Golf Tournament to benefit Classroom Law Project is still scheduled from 7:30 a.m.-2:30 p.m. on Aug. 7 at the Eastmoreland Golf Course in Portland. Registration will begin at 6:45 a.m., followed by a ceremonial tee shot and a shotgun start for the tournament. Lunch and an awards ceremony will begin at 1:15 p.m.

Visit jimneill.org for up-to-date information on the tournament.

“My mind is so relaxed here that I just came up with a great legal argument for a case I have been struggling with. So now I wonder - can I bill some of my time for staring at the ocean?”
Navigating Pandemic-Related Changes from Your Home Office

Coronavirus & Legal Ethics: Part Two

By Nik Chourey

April’s issue of the Bulletin contained Bar Counsel’s initial guidance in response to frequent questions related to the coronavirus that have been received on the Legal Ethics Helpline. This month’s column continues that theme.

The regular flow of ethics calls has continued during the COVID-19 pandemic, with members raising additional questions about the practice of law from home. For that reason, this column responds to universal ethics implications resulting from pandemic-related changes to how and where we practice law.

Changes in How We Practice Law

The impact of the COVID-19 pandemic appears without limitation. From courts to sports and from offices to schools, we have not been able to gather as we did before. How we practice law has changed, too.

Telecommuting policies for law firms and agencies have either already expanded, or they are in transition. That means many lawyers have the ability to continue much of their work from the security of their homes. Still, practicing from a kitchen table presents daily and vexatious challenges. And our workspace adjustments are only compounded by the management of a casserole of vital needs.

Staying safe, keeping our families safe, keeping our clients and staff safe — all require the best we have to offer. Those of us who are parents of school-age children are now their substitute teachers, coaches and camp counselors, too. Simply put, the boundaries between work and home have melted into some new, not-yet-recognizable form.

These changes mean that our identities as lawyers are also challenged. Before, our dockets and calendars directed us to go forth and gather. We traveled to court appearances, meetings, depositions, arbitrations and conferences. Now, all of those in-person gatherings have changed, and uncertainty surrounds when, where and how we will gather in the future. Any return to pre-pandemic behavior will vary widely from solos to big firms, and from cities to smaller communities.

Despite so much uncertainty, legal ethics endures as a defining element of our identities as officers of the court. We are members of a learned profession, united in legal practice by our role as officers of the court, our adherence to the Oregon Rules of Professional Conduct and our oaths to uphold the law. To that score, manage your regulatory risk by learning what rules apply to common practice scenarios in this new environment.

Sustaining Legal Ethics at a Home Office

Duty of Confidentiality

When working remotely, consider that our ethical duty of confidentiality may often cover more information than the attorney-client privilege (OEC 503) and the work-product doctrine. Our duty of confidentiality almost always prohibits the disclosure of “information related to the representation” of prospective, current and former clients. The source of the information is immaterial, as long as it originates from the professional relationship; all information related to the representation is subject to your duty of confidentiality. This is always the case, barring the informed consent of your client, implied authority or other limited exception. RPC 1.6(a) and (b).

There is no friends-and-family exception to our duty of confidentiality. Working from home requires that we make reasonable efforts and act competently to prevent unauthorized access to client information or the inadvertent disclosure of that information to our own family members and housemates. RPC 1.1; RPC 1.6(c). Further, remote work may pose challenges for supervising lawyers charged with ensuring that their lawyer and non-lawyer staff abide by the rules, including the duty of confidentiality. RPC 5.1; RPC 5.3; RPC 5.5(a).

A number of members who have called the Ethics Helpline have never worked from home before, and have no dedicated space to do so. The good news is that solutions to this problem are realistic and need not be complex. Close the door, modulate your volume on calls (or consider installing a white noise machine outside your door), wear headphones, keep confidential documents out of view and be discrete. Lawyers may also consider whether to request that housemates and family members agree to keep confidential any information they may overhear inadvertently.

Doing legal work on a home internet network may also undermine client confidentiality. Lawyers have an obligation to employ “reasonable steps” to safeguard
electronic information that is protected by Rule 1.6. Lawyers who are not tech savvy should turn to experts to determine what protections are advisable. Many options, such as investing in virus protection and utilizing virtual private networks, are relatively simple to implement.

The bottom line is that lawyers must use secure methods of client communication and handling of client information that affords a reasonable expectation of privacy.8

Document Integrity & the Paperless Office

Before COVID-19, many attorneys operated within cloud-based paperless offices, enjoying cost savings with efficiencies in both access and production. Since the advent of the pandemic, many more attorneys are transitioning to paperless offices.

Lawyers implementing new paperless practices must take reasonable steps to ensure that any third-party server entrusted with client information is in compliance and up to date with industry standards of security and confidentiality. Such steps include the use of a service agreement requiring the vendor to preserve confidentiality and security of the documents and notify you of any unauthorized breaches of the system.9

With effective cloud security, a paperless office will protect client confidentiality and safeguard client property.10 Electronic document systems also help lawyers meet the requirement to promptly deliver a client file upon current and former clients’ request, or to substitute counsel upon receiving the client’s consent.11

Attorneys who move to a paperless practice should also consider what materials are deemed to be part of the client file. As the Legal Ethics Committee explains with more detail in OSB Legal Ethics Op 2017-192 (osbar.org/_docs/ethics/2017-192.pdf), the term “client file” is not defined in the RPCs; in addition, information technology has changed the form and location of what now may constitute a client file.12 But regardless of form or location, the client file should be considered to be the sum total of all documents, records or information (i.e., texting, Facebook messenger, DMs and email) that have been maintained in the exercise of professional judgment for use in representing the client.

Sustaining the Attorney-Client Relationship

More than before, the Ethics Helpline has heard from a number of members who, despite their best efforts, have lost touch
with their clients. It doesn’t matter whether it’s a criminal, estate planning, family law or personal injury matter — attorneys who can’t communicate with their clients are at risk of violation of a number of rules, including RPC 1.1, 1.2, 1.3 and 1.4.

At the most basic level, this is because the allocation of authority between lawyers and their clients concerning the objectives of the representation requires communication. A communication breakdown may also affect the discharge of duties of competence, diligence and loyalty owed to clients.13

What to Consider If Communication Fails

First, RPC 1.2(a) provides that there are certain decisions about the representation that are for the client alone, including whether to settle or, in a criminal proceeding, whether to accept a plea, waive a jury or testify.14 On the other hand, with few exceptions, the strategy, tactics and manner of pursuing the objectives of the representation are, ultimately, matters for the lawyer to determine, based upon the exercise of professional skill and judgment in consultation with the client.15

Adequate communication with clients is integral to this allocation of authority. To meet the duty of communication under RPC 1.4, lawyers must obtain their clients’ informed consent to act on those decisions that are solely theirs to make. Similarly, the failure to communicate or inability to communicate with a client will also risk violations of the duties to provide competent (RPC 1.1) and diligent representation (RPC 1.3). If continuing the representation will result in violation of the rules, your withdrawal is mandatory. RPC 1.16(a)(1).

In seeking a tribunal’s permission to withdraw as attorney of record, we must comply with applicable law and, if so ordered, continue the representation “notwithstanding good cause for terminating the representation.” RPC 1.16(c); see also OSB Legal Ethics Op 2005-33 (osbar.org/_docs/ethics/2005-33.pdf). In moving to withdraw, we must maintain our duty to protect client confidentiality. This likely requires that our pleadings disclose only that we “seek to withdraw for professional considerations.”16 Finally, we must be careful to abide by our other duties to the client upon withdrawal, and take all steps “reasonably practicable to protect a client’s interests.” RPC 1.16(d).

When you have the kind of experience we do, you start to see things a little differently – often with a bit of necessary cynicism. Because at Olsen Barton, our years advising clients in both real estate transactions and litigation have taught us to spot potential problems others may miss. So before you enter into any new deal, let us help you differentiate fact from fiction. And if you’ve had a deal gone bad, let us be the advocate you deserve.

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Lawyers with ethical conundrums are always welcome to contact the Legal Ethics Helpline or turn to legal ethics resources on BarBooks for answers. Together, we can work to address hard questions that may arise during the pandemic. 

Nik Chourey is deputy general counsel for the Oregon State Bar. Reach him at nchourey@osbar.org or connect with him on the bar’s Legal Ethics Helpline at (503) 431-6475.

ENDNOTES
1. For additional COVID-19 related ethics guidance, visit the bar’s online resources at osbar.org/_docs/resources/CoronavirusEthicsFAQ.pdf and osbar.org/bulletin/issues/2020/2020April/index.html?page=11.
2. “Law is not a business. It is a learned profession.” In re Heider, 217 Or 134, 159 (1959) (emphasis in original). Attorneys cannot escape responsibility for conduct by claiming that their “actions are to be evaluated and judged by the standards of the competition of the marketplace, rather than those of (the legal) profession.” Id.
5. RPC 1.0(f). “Information relating to the representation of a client” denotes both information protected by the attorney-client privilege under applicable law and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client. (osbar.org/_docs/rulesregs/orpc.pdf).
6. ORS 9.460(3), RPC 1.6(a): A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b); RPC 1.8(b); RPC 1.9; RPC 1.18.
8. Beyond legal ethics rules, keep in mind that lawyers must also consider whether special circumstances require enhanced information security measures in compliance with state and federal data privacy laws.
10. RPC 1.15-1(a); RPC 1.15-1(d).
11. RPC 1.6; RPC 1.15-1(d); RPC 1.16(d); see In re Arbuckle, 308 Or 135 (1989); In re Chandler, 306 Or 422 (1988); and OSB Legal Ethics Op 2005-90 (osbar.org/_docs/ethics/2005-90.pdf).
12. RPC 1.0(c) (electronic communication); RPC 1.0(q) (writing).
13. RPC 1.1; RPC 1.2; RPC 1.3; RPC 1.4; RPC 1.6.
15. Krummacher v. Gierloff, 290 Or 867, 875-876 (1981); see also RPC 2.1 ADVISOR: In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation.
Tips from a Master Storyteller

By Elizabeth Ruiz Frost

Good Writing Comes From Hard Work, Stephen King Says

In sum, successful writers think critically about their own writing and are mindful of their audience.

Successful Writers are Open to Criticism

First, King advises us to “be talented.” Really, he means writers should make sure this whole writing thing is something they can do successfully. He encourages writers to be objective about their talent and to “skip as much of the self-illusion as possible” to know whether to keep going or to turn back. Are they getting published, or are they getting rejected? Can writing realistically cut a path to success?

Lawyers should skip any self-illusion about their writing, too. Think critically about how successful your writing is. How is it received by the audience? Unlike writers of fiction, we might not have the objective measure of publication to gauge our success, and we can’t exactly quit writing if it’s not going so well. But rather than stubbornly pushing forward whether we’re writing successfully or not, we can take stock of our effectiveness. Does our writing work? If so, then good. But if it’s not working? Turn back and make a plan to improve.

Writers should be aware of their own talents while recognizing that careful writing comes from hard work. King encourages writers to “be self-critical.” He writes, “If you haven’t marked up your manuscript a lot, you’ve done a lazy job. Only God gets things right the first time.” Amen. The first draft should never be the final draft.

More specifically, he suggests that writers “remove every extraneous word.” King’s writing is descriptive and evocative, but he is economical with words. He doesn’t need more words to terrify or move you; he needs the right words. King tells aspiring writers to “get to the point. And if you remove all the excess garbage and discover you can’t find the point, tear up what you wrote and start over again.”

This applies doubly in professional writing. Legal readers read to learn, not to indulge in the writer’s musings. That doesn’t mean legal writing has to be boring. Readers will appreciate some rhetorical flourish, but only when it enhances the writer’s point. Chief Justice John Roberts’ writing, which is artful and crisp, provides a good example of getting to the point without excess.

The law is complex enough without bogging it down with gummy writing. So in legal writing, if a 30-word sentence can be reduced to 15 words without sacrificing important content, do it. Search for extraneous detail that distracts and detracts from the point, then cut it.

But sometimes cutting a few words isn’t enough. King says, “If it’s bad, kill it.” Don’t tweak. Delete. This advice can be so hard to follow, though. When we’ve written something, even when we know it isn’t working, it can be so hard to erase it. Maybe that’s because we’re attached to the words we wrote or because deleting acknowledges wasted time.

Occasionally, to ease the pain, I paste the really bad stuff I’ve written into a blank document “for later,” so it’s not really gone. But the truth is that I have almost never come back to it. When a piece of writing isn’t working — maybe because the organization is askew or the ideas are twisted up — it’s often better to “kill it” and start afresh with a clean page.

Developing an awareness of our own strengths and weaknesses, which allows us to know what to cut and what to kill, comes from receiving feedback from others. And so King recommends that writers send drafts to lots of people, read their feedback carefully and then think critically about it. Of course, this is one of the hardest things for some writers to do. Sharing a draft can make a writer feel quite vulnerable; the feedback can sting. But in the end, seeking feedback only helps.
Lawyers might not have the luxury of showing a draft to lots of people, as King encourages. Time and staffing might not permit that. But we can gather feedback from project to project. If a theme emerges from that feedback, King says, the feedback is probably correct.

**Successful Writers are Punctilious**

King included a few tips about the practice of writing in his essay. He believes the way we work and present ourselves as writers matters, so he encourages a certain punctiliousness in writers. When drafting, he says, “be neat.” Type, double-space, use quality paper and start a new draft if you’ve marked up your current draft too much. When submitting a piece for publication, authors ought to present themselves well by adhering to the organization’s rules. This all makes sense for legal writing, too. Messy habits may lead to messy thinking, which bleeds into messy writing. Take more care with professional writing — even something as mundane as an email — than you would dashing off a grocery list. Honor legal writing by treating it as a craft.

Further, heed King’s advice by following court rules and your office’s style guides, if you have them. Failing to adhere to rules disrespects the audience, and it shows a lack of attention to detail.

Sometimes my writing students balk at rigid format requirements — isn’t the point the same no matter which font they use? Sure, but format can be the canary in the coalmine. If the writer will not use proper margins and font size, can the reader trust that they will follow other important rules? Following rules is an easy way to establish some credibility with the reader.

Next, King advises writers to streamline their writing process. He says, “Never look at a reference book while doing a first draft.” Here, his point is to keep from disturbing the flow of one’s thoughts. A writer stymies his productivity when he stops to look up a word or check a fact. Instead, write freely with the promise to come back later to make it right.

That could be dangerous advice for legal writers, who shouldn’t guess about a fact’s accuracy or a contract provision, for example. But with details like spelling, grammar and citation, legal writers will write more efficiently and creatively without adding speed bumps along the way. Draft without worrying whether those sorts of details are perfect, and allow enough time to come back later to make it so.
Successful Writers Know Their Audience

Finally, King advises writers to consider their relationship with the audience. “Know the markets,” he says. “Only a dimwit would send a tender story about a mother and daughter making up their differences on Christmas Eve to Playboy ... but people do it all the time.” He tells aspiring writers to read magazines in their preferred genre to get to know the rhythm and style. That can inform the writer’s next project.

Lawyers should know the markets, too. With everything we write, we should be thinking about what our audience already knows, what they need to know, how they’ll best digest new information and what their expectations are. For example, some readers might need the writer to recite specific statutory language, while others need it summarized. Contractions may be too informal for some audiences, but perhaps they’re humanizing in a client email.

Knowing the market can be a challenge for newer lawyers. A newer lawyer can hone her understanding of audience by reading a lot. Read a judge’s opinions to understand what that judge might expect from advocates. Read supervisors’ letters to learn how to strike the right tone with clients and colleagues. As you’re reading, of course, think critically about why that writing works. What made it easy to follow? What made it persuasive? What can you draw from that writing that you can apply going forward?

In Conclusion

Great fiction writers can teach us a lot about our own writing practices, even if we’re writing in different contexts. Sometimes it’s reassuring just to know that successful writers struggle, too.

For those who are interested in the EP version of King’s story, I recommend On Writing: A Memoir of the Craft, in which he describes his path to becoming a writer. For those who seek additional stress about pandemics, consider The Stand instead.

Elizabeth Ruiz Frost teaches Legal Research and Writing and other courses at the University of Oregon School of Law.

ENDNOTE
1. Reprinted in in The Writer’s Handbook, 3-9 (ed. Sylvia K. Burack 1988); the essay has since been reprinted on various websites, including msu.edu/~jdowell/135/King_Everything.html.

PLF Board of Directors Positions

The Board of Directors of the Professional Liability Fund (the “BOD”) is looking for two board members, one lawyer member and one public member, each to serve a five-year term on the BOD beginning January 1, 2021. Directors attend five board meetings per year, plus occasional committee meetings. Directors are also required to spend time reading board materials and participating in occasional telephone conferences between meetings. They are not required to engage in fundraising. 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. Interested persons should send a brief resume and letter of interest by August 3, 2020, to:

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Network of Support Helps Former Inmates Re-Enter Society

By Janay Haas
If you’ve gone grocery shopping this week, you’ve probably had a criminal encounter. Most likely in the bread aisle, where Dave’s Killer Bread lines the shelves.

“Dave” — the tough-looking guy on the wrapper — is Dave Dahl, arguably Oregon’s most famous baker with a criminal record. Dahl is doubtless one of the richest ex-offenders in the state too, having sold his brand four years ago to Flowers Inc. for $275 million.

But this isn’t a story about Dave Dahl. It’s a story about what most people face when they leave jail or prison and try to re-enter society. In Dahl’s case, it was the inability to get a job with his criminal record. As a last resort, he went back into his family’s bakery business and then, with his brother, built a whole-grain empire. He had a skill, a support structure and entrepreneurial drive.

“I started seeing I had potential,” he told The Oregonian’s Larry Bingham. “I started accepting myself for who I really am. For the first time in my life, I felt strong.”

In general, though, people leaving prison don’t have skills, support or a vision of what they could become. Typically, inmates have not finished high school, and illiteracy is common. Some wound up in a cell when they were so young that they never had a chance to find their first job.

A demographic profile issued in 2019 by the Oregon Department of Corrections showed that more than 60 percent of those in custody had drug dependence or addiction issues; almost three-quarters of prisoners had mental health needs. Dahl himself has had to deal with a long history of depression, suicidal thoughts and substance abuse — before, during and after prison.

“But we can’t incarcerate our way out of addiction, and we can’t incarcerate our way out of mental illness,” says Talia Gad, communications director for the Partnership for Safety and Justice. Headquartered in Portland, the 20-year-old policy organization supports both victims and people convicted of crime throughout the state. “Public health problems simply don’t have public safety solutions.”

Oregon lawmakers apparently agree.

In 2013, the Justice Reinvestment Act allocated funds for programs that increase public safety and improve offender accountability. In 2017, the state shifted roughly $47 million in corrections spending to addiction treatment, diversion programs and mental health services in local communities. (The price tag for community-based corrections services is a tenth of the cost of imprisonment, officials say, so many more people can receive treatment and other help without additional budgetary pressure.) Oregon also became the second state in the country to pilot a prison diversion program for parents to preserve families and keep children out of foster care.

Those changes make sense to Shannon Wright, the Partnership for Safety and Justice’s deputy director, who says that “for both survivors and people with convictions, we need much deeper investments in services that are culturally specific, run by and for the communities they serve.”

“The most important thing we can do is dramatically shrink the number of people in the criminal justice system and strengthen other parts of our system,” Wright says, “particularly low-income housing and mental health and substance abuse disorder treatment.”

This model also appeals to Deschutes County District Attorney John Hummel.

“Setting inmates free into our communities without providing them the support they need to succeed does a disservice to them and to our communities,” he says. “We know that housing, employment, transportation, recovery services and mentorship are the keys to successfully reintegrating people returning from prison.”

Obstacles to Re-entry

Oregon’s prison system releases about 440 people every month, and local jails release many more. But when most of them return to the “outside,” they find that landlords don’t want to rent to someone with a record and employers don’t want to hire someone with a criminal past. The only doors that seem to be open, officials say, are those leading back into prison.

Some 45,000 federal, state and local laws inhibit what parolees can do and where they can go, according to the Prison Policy Institute. For example, ex-prisoners cannot move out of the jurisdiction where they land on release, drastically limiting job opportunities. Some, sent up for drunk driving felonies, can’t get a private or commercial driver’s license in several states.

Many former inmates cannot get occupational licenses — for bartending, teaching, bartering, taxi and bus driving, pharmacy technician jobs, nursing, real estate sales and more. In some states, they cannot become lawyers. (The Oregon State Bar has no blanket exclusion, but does list criteria relating to past criminal conduct. See Oregon Rules for Admission of Attorneys, as amended in October 2019.)

Sex offenders are proscribed from living in certain neighborhoods, reducing registered offenders in many communities to living on the street or so far out of town that it becomes difficult to make their parole appointments. In Oregon, two or more registered sex offenders may share a household only with special permission from the state board of parole and the local corrections office.

Karen Caskey, who entered prison at age 40 after a drunk driving felony, is one of many Oregonians working to address those barriers. She says that although she had a college education, she didn’t find her life’s mission until she was serving time.

“One of my cellmates was about to be released, and I asked her what she was going to do,” Caskey says. “She hadn’t even thought about anything beyond walking out the door. She shrugged and told me, ‘I’ll find some guy to move in with, and then I don’t know.’ Right away I realized that re-entry was going to be my calling.”

Caskey is now executive director of the nonprofit Welcome Home Oregon, which is based in Josephine County. The faith-based organization works with 14-30 newly released prisoners every month.

“About 75 to 80 percent of them,” she says, “arrive in town with nowhere to go.”

Changing Directions

Finding homes and jobs for former inmates is the primary mission of dozens of private and public agencies and organizations. But it’s important, state and local officials say, to understand that those efforts are the direct result of changes to how society views the role of incarceration.

John Hummel
In the late 1980s and '90s, a national boom in prison construction resulted in facilities built to house what has become the largest prison population in the world — by both number and percentage. Federal and state drug-related convictions had burgeoned in response to the War on Drugs. Federal law required mandatory minimum sentences for many crimes, and numerous states enacted three-strike laws for reoffenders. Oregon voters embraced Measure 11 in 1994, agreeing with the ballot initiative’s sponsors who later argued that violent criminals cannot be reformed through probation or short prison sentences, and that the time they are incarcerated is itself a benefit to society.

Between 2000 and 2010, the state’s prison population jumped almost 50 percent, according to the Oregon Criminal Justice Commission (OCJC), to 14,000 inmates. The three-year reincarceration rate approached 60 percent in Oregon, the five-year rate considerably higher.

Gradually, though, those statistics prompted legislators and the public to take a closer look at the cost of long prison sentences — about $39,000 per year for each adult in custody in Oregon — and to ask whether rehabilitation was taking place and whether public safety was being served. The result: Changes now are visible at state and national legislative levels and in local communities, together forming a patchwork of knowledge and services that have the justice system continually reconsidering what prison should mean.

Ten years on, Oregon’s prison population hasn’t grown much at all, hovering at just under 15,000 despite a large increase in the general population. And recidivism rates are down, according to the latest OCJC statistics.

One early shift was the development of drug courts (called re-entry courts at the federal level) and, later, mental health courts and courts for veterans. These programs recognized that many offenses were the product of mental health and substance abuse disorders. (For more on specialty courts, see “A Non-Adversarial Approach” in the January 2020 issue of the Bulletin.)

In 2007, the Obama administration signed into law the Second Chance Act to promote the reintegration of offenders into the community on their release. One of its effects was to shorten prison sentences for many non-violent offenders; it also created a pilot program that allows some adults in custody to obtain Pell grants to pursue higher education, with the long-term goal of restoring Pell grant eligibility to all inmates for the first time since 1994.

Chemeketa Community College is Oregon’s Pell Grant pilot, and CCC reports that those who complete their studies and net an AA degree have a recidivism rate of less than 6 percent. The Bard Prison Initiative in New York, which operates in three prisons, says its graduates with bachelor’s degrees return to prison at the rate of 2.7 percent.

The First Steps Act, signed into law by President Trump at the end of 2018, increased training and treatment opportunities for former offenders. Legislative changes in some states restored former prisoners’ voting rights, and “ban the box” laws now forbid prospective employers from asking about a person’s criminal history before making a job offer.

Hummel, the Deschutes County district attorney, recently led his staff in a three-day training about expanding the role of prosecutors to include consideration of re-entry and recidivism — a stance championed by the Center on the Administration of Criminal Law, among others. The center encourages the criminal justice system to use offender-appropriate pre-trial risk assessment to limit pretrial detention to only the highest-risk defendants; base bail amounts on the defendant’s ability to pay; support treatment pathways for first-time and low-level offenses; tailor fines to ability to pay; use the plea-bargain process to craft supportive services as needed; help with expungement; and distribute information on local re-entry resources.

In many ways, it’s the same philosophy that guides Oregon’s specialty courts, where judges, prosecutors and defense attorneys “all sit together and try to figure out what we can do to help these individuals make progress toward recovery and exit.
from the criminal justice system," Multnomah County Circuit Court Judge Eric J. Bloch says.

The specialty courts also work with housing, government and treatment agencies, Bloch adds, “looking for partnerships that people need for a well-grounded life in recovery.”

Pathways to Success

What kinds of services are available to those coming back to their communities from prison? Models vary, but the granddaddy program — around since the 1970s, is Eugene-based Sponsors Inc.

Started by Catholic nuns and community activists, Sponsors Inc. began as a volunteer mentoring program. It now comprises 20 buildings on six sites, with 220 beds for both transitional and permanent supported housing (including its newest project, a 10-unit tiny home community). It serves men and women and their children, with additional services for registered sex offenders.

Volunteers and peer mentors with Sponsors Inc. have served more than 1,000 people with criminal histories. The organization provides 39 cognitive behavioral therapy groups weekly and mental health counseling; at three of its complexes, it boasts an onsite parole office. Representatives from the University of Oregon School of Law staff a monthly onsite legal clinic where residents can get help with debt, family law and other legal issues.

“Ninety-seven percent of the people in prison will be released,” says Paul Solomon, who has served as executive director of Sponsors Inc. for the past decade, so the program focuses its efforts on those who are at highest risk — people who are homeless and indigent. The program tracks the progress of its clients toward achieving a stable income, finishing treatment, remaining drug-free, complying with parole and probation requirements, and moving to stable permanent housing.

“Annually, about 65-75 percent complete the program,” he estimates.

In Portland, Central City Concern has long addressed problems associated with urban homelessness. Not surprisingly, the increasing numbers of those with criminal histories has added new challenges to the organization’s mission. It’s now in year three of a pilot program called LEAD — Law Enforcement Assisted Diversion — in which police and sheriff’s department staff offer street addicts services and support in lieu of arrest.

Born in Seattle in 2011, LEAD in that city has reduced recidivism by almost 60 percent.

A program that extends beyond Portland is Bridges to Change, which offers a variety of “wrap-around” services not only in the metro area (Multnomah, Washington and Clackamas counties) but also in Marion County to the south and Wasco County to the east. It was founded in 2004 by Charles Simpson and Joann Griffin, who brought with them a deep knowledge of the resources necessary for people re-entering the community to succeed.

In addition to mentoring, housing and treatment services, Bridges to Change offers a recovery drop-in center and the Diane Wade House, an Afrocentric transitional housing program for women in Multnomah County where residents have access to mental health stabilization and support services.

One of Bridges to Change’s alumni, Doug Vanzant, helped grow it from a two-person operation to a service provider with dozens of staff. He now works in downtown Oregon City with Children, Family & Community Connections (CFCC), helping former inmates find work; he teaches them how to write cover letters and resumes, where to find online job postings and how to interview, and connects them with GED courses at Clackamas Community College.

Vanzant himself has walked the walk. A 24-year block of his life was spent in addiction, treatment programs, probation, jail, prison and parole. He says he’s eager to show his clients how far he’s come — and how far they can go — and has persuaded dozens of initially reluctant local employers to hire people with records.

“My mission statement: When an employer says ‘no,’ I hear ‘come back tomorrow,’” he says with a grin, noting that he strives to find jobs for clients that will pay a living wage and that have room for growth and promotions.

Vanzant’s job is part of a network of services coordinated by a coalition of Clackamas County agencies and other providers, including Clackamas Community College, Clackamas County Behavioral Health and others. For example, CFCC works hand-in-hand with the county’s Health, Housing and Human Services Department to conduct pre-release “in-reach” to inmates who will soon leave prison or jail for home. The county also operates the Transition Center, located just across from the county jail, where a newly released person can get a change of clothes and hygiene items, sign up for food stamps and the Oregon Health Plan, get bus passes and complete paperwork to get official identification. Longer-term services include treatment support groups and cognitive therapy, mental health and substance abuse assessments, and housing assistance.

On the bluff a couple of miles above downtown Oregon City, meanwhile, a small faith-based nonprofit called Free on The Outside Inc. works with the most-stigmatized population in re-entry:
registered sex offenders. This population represents about 29 percent of those in custody, according to the Oregon Department of Corrections, but Free on the Outside is one of the very few organizations in the country that focuses primarily on this group.

With access to Hilltop Community Church several days a week, pastor and director Michael Cross, himself an ex-offender, facilitates 12-step meetings and adults-only religious services. Free on the Outside also coordinates occasional retreats, camping trips and a women’s ministry. Most importantly, Free on the Outside provides long-term group housing for sex offenders, as well as others in recovery, thanks to cooperation from corrections authorities and the county Board of Commissioners. The organization currently has access to 15 houses in the tri-county area — 10 for men, three for women and two for couples. It also helps residents find work.

“Registered (sex offenders) are the best tenants,” Cross says, voicing an opinion shared by Solomon of Sponsors Inc.

“On any given day, approximately one of every three men in our transitional housing program is an individual with a sex offense conviction,” Solomon says. “As a group, they struggle to access housing and employment in part because of release conditions barring them from working and living anywhere where minors are present (regardless of whether their crime involved a minor or not). But we know both anecdotally and through research that re-offense rates are extremely low for this population. Approximately 2 percent of people with sex offense convictions in Oregon commit a new sex crime, while roughly 25 percent of the other population re-offend and go back to prison.

“In the long-term housing project we manage for people with sex offenses,” he adds, “we have not had a single person re-offend during my tenure as executive director.”

Building a Network

Other communities offer their own models for those transitioning from prison.

For example, rural Grants Pass offers an unusual partnership between Welcome Home Oregon and Josephine County Community Corrections, where the nonprofit has an office. It conducts “in-reach” to prisoners and provides hygiene items, clothing and emergency food to the newly released. It also manages four transition houses — each staffed by an onsite certified peer recovery mentor — with support from mental health services, housing providers and local clergy.

One of the beneficiaries of that support was Tawnya Woodley, now a drug and alcohol counselor with Grants Pass Treatment Center. Growing up in a home where both parents were occasional meth users, Woodley says she did everything she could in her teen years to stay away — joining the basketball team, the softball team and cheerleading. After graduation, she left the area, studying medical assisting at a community college and maintaining the machinery at a lumber mill.

But when her long-time partner had a severe mental breakdown, she says, she “lost it” and started using — and then dealing — drugs. Eventually, she wound up at Coffee Creek Correctional Center. Growing up in a home where both parents were occasional drug users, she says, she “lost it” and started using — and then dealing — drugs. Eventually, she wound up at Coffee Creek Correctional Center.

For a long time, Colin didn’t even know whether he had graduated from Ashland High School. He was already addicted to drugs by age 13, and was too high to remember the years that followed.

His mother, who holds a Ph.D. in criminal justice, says she knew how to find treatment resources for Colin. But nothing — including 22 treatment programs — stopped the downward spiral until he was convicted of felonies and sentenced to prison in Texas at age 23.

“He needed prison to break the cycle,” his mother reflected, “and he’s been clean for seven months since he’s been released.”

Colin, 29, has a job now and is a resident in Oxford House, a drug-free transitional housing network for ex-offenders. But his mother says that if she and other support hadn’t been there for him when he walked out the prison gates, she has no doubt he would have disintegrated again.

“The first month out presented so many obstacles,” she told the Bulletin, which is withholding her name and her son’s last name because of privacy concerns.

Colin walked out of prison, his mother says, with a check for $50 and the offer of a free bed in a halfway house notorious for its ready access to drugs of all kinds. Colin knew that he would be back in prison within the week if he went there, but he couldn’t find a landlord willing to rent to him, even with a co-signer. His mother found the opening at Oxford House.

“It was sheer luck,” she says. “There was normally a waiting list of six months or more.”

She took him to a bank to cash his check. And then another bank, and another, because Colin had no identification other than his prison ID. She opened a joint account using her own ID, and then took him to a DMV office to get a driver’s license.

“We went back six times over the next three weeks,” she recalls, “while I flew back and forth from Oregon to get his birth certificate, his school records and other proof that finally satisfied DMV who he was.”

The $50 was gone in days, used for bus rides to the employment office and to Colin’s parole appointment. (In Texas, drug-convicted parolees are required to bring $30 with them to each parole office visit to cover the cost of a urinalysis. Showing up without the money gets them sent back to prison.) Colin’s mother put more money in her son’s account, but even with the support she could provide and her knowledge of the system, she says she’s been surprised at how hard it’s been for her son to avoid the many potholes in the road to a normal life.

“It’s been really, really tough,” she says, “and exhausting.”

— Janay Haas
Facility, the women’s prison in Wilsonville, where she learned a new trade. “I was a barista,” she says, “with a little cart called Bad to the Bean.”

She’s been counseling other addicts for seven years now, she says, and next year she will get her bachelor’s degree from Southern Oregon University with a double major in psychology and human services. It was the network of support she had both in prison and on re-entry that kept her on track to succeed, she says; without it, her release would have been like that of so many others, and she quotes a co-counselor to explain: “Out the gate at 8, on the spoon by noon.”

She calls her network her “family,” and has a tattoo on her arm in honor of those who have stayed by her side.

Woodley’s mother came to visit recently from Southern California and sat in on one of Woodley’s 12-step meetings. Afterward, she asked: “How in the world did you stop (using)?” Woodley takes a deep breath as she tells this story, and then laughs: “Mom. Mom. I went to prison.”

Woodley says her mother is thinking about visiting again soon, and attending more meetings.

For his part, Dave Dahl has used the past several years to funnel support to former inmates, too. When he sold his bread business in 2015, a part of the deal was that Flowers Inc. (Harry & David is an Oregon subsidiary) would continue his legacy of recruiting ex-offenders as employees through his Second Chance employment program. He also established the Dave’s Killer Bread Foundation, a nonprofit that helps companies across the country adopt Second Chance practices and advocates for systemic reform of the criminal justice system.

Dahl’s foundation sponsors an annual Second Chance Summit that focuses on employment connections. (Companies such as Mod Pizza and Starbucks are on board.) Dahl also has been a frequent host on a weekly podcast called “The Felony Inc.” that features entrepreneurs with criminal histories who have their own success stories to share.

Other ex-offenders frustrated by closed doors have designed websites featuring jobs and other opportunities for their peers. Among them are defyventures.org, 70millionjobs.com, felonyfriendlyjobs.org, jailtojob.com and exoffenders.net.

How Can Lawyers Help?

Oregon’s lawyers have stepped up to make job connections easier, too. Dozens participate in pro bono expungement clinics around the state, coordinated through local legal aid offices, public defenders or county bar associations.

It’s hard to exaggerate what a huge difference an expungement can make in finding housing, says Elliott Farren, a lawyer with the Oregon Law Center in Eugene. Having a clean record is also a big help for people looking for a job or transitioning from a menial job to a more skilled one.

“My last expungement client told me that this expungement would allow her to go from $12 to $18 an hour in a short time,” Farren says. “And she told me she finally felt free.”

In Clackamas County, the bar association’s pro bono committee trains lawyers to evaluate eligibility and help clients prepare paperwork to clear their records. In Pendleton, Legal Aid Services of Oregon prepares self-help packets for ex-offenders, and private lawyers in the six-county service area work with individual clients.

Although clearing a criminal history removes one of the most significant barriers to meaningful employment and housing, it can be years before people are eligible for expungement. La Grande lawyer Michelle Bartov says many of her clients have records that could have been expunged, “but they just didn’t know or thought it was far more complicated than it actually is. Once you have the forms ready, it’s pretty much plug and play.”

A recent study in Michigan found that only 6 percent of those with eligible expungible records were aware of the option to clear them.

“What we should be doing is automatically expunging records that are eligible so that we aren’t putting the burden on people to ask for it,” says Shannon Wright of the Partnership for Safety and Justice, “particularly when it’s already been determined that they are eligible.”

Oregon lawyers are also serving as mentors, providing one-on-one guidance for ex-offenders. Others are providing ongoing training for nonprofit treatment and housing providers about their fiduciary duties as corporations, and about the rights of residents who have disabilities or who are perceived as having disabilities.

Business clients also need to know how to prevent unlawful housing and employment discrimination against those with criminal histories, re-entry experts say. (See “How You Can Help,” Page 25.) To that end, some lawyers are advising employer and landlord clients about hiring and housing policies that can have a disproportionately negative impact on racial minorities.
The U.S. Department of Housing and Urban Development, which is responsible for enforcement of equal rights in housing, has issued guidance from its general counsel saying that, in some cases, turning down an individual tenant because of his or her criminal record can be legally justified. But blanket policies of refusing to rent to anybody with a criminal record are de facto discrimination, HUD says, because of the systemic disparities of the American criminal justice system.

The same rules apply in the workplace. According to the Equal Employment Opportunity Commission, an employment policy that disqualifies all former offenders will have a disparate racial impact. Employers must show a business necessity before automatically disqualifying these candidates.

“Once someone has ‘paid their debt to society,’ it is important that society take steps to reintegrate them back into the fold,” says Arron Guevara of the Pendleton legal aid office. “To do otherwise not only hurts the individual but hurts society at large through higher recidivism rates, increased homelessness and taxpayer-funded programs dealing with the associated problems of citizens living on the fringe.”

Besides, he adds, “It is a great feeling to be able to help folks open doors to a better future.”

Portland’s city officials apparently agree. The Portland City Council voted last June to change the city code by revising the screening criteria for landlords to use when evaluating a renter’s application. The changes — the first of their kind in the nation — include requiring landlords to choose renters on a first-come, first-serve basis and to give 72 hours’ notice before accepting applications. As of March 1, landlords are no longer allowed to check for felony convictions older than seven years or misdemeanors older than three years.

Recidivism in Oregon has dropped by about half since the advent of post-prison innovations and services, most notably in housing-centered programs. In 2019, the state’s prison population was almost 1,000 below the projected number for the year, and analysts estimate that the savings to taxpayers is between $5 and $12 (depending on the type of intervention) for every dollar not spent on incarceration.

That’s a good deal for all concerned, Woodley says, and a sign that efforts like hers are working. Looking back on her life so far, she adds, it’s also confirmation of the mantra she tries to live by:


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Finding Hope

New Legal Clinic Offers Resources for Women Behind Bars

By Jillian Daley
Kristina Wells Fowler knew two things: She was pregnant, and drugs were just too easy to get for someone on probation. So she confessed her drug use to her probation officer, knowing that prison would be the best thing for her unborn child because Wells Fowler would be cut off from her drug supply.

“I knew I was still dirty and still using, and I needed a place where I could get clean and work on my sobriety,” says Wells Fowler, who now lives in the McMinnville area. “I had my son in Coffee Creek (Correctional Facility). It gave me that opportunity to get away from the situation I was in.”

It also gave her a new source of hope. Because while she was in the women’s prison in Wilsonville, Wells Fowler participated in Re*Membering, a groundbreaking program that provides civil legal services to incarcerated women. She says she is now working toward shared custody of her two older children, something she’d once considered “hopeless.”

Created in response to the civil legal issues Oregon women face upon release from prison, Re*Membering launched inside Coffee Creek in late November 2019. It offers limited representation to incarcerated women who need assistance with a wide range of civil legal issues, including family, debt, housing and employment.

The program at Oregon’s only women’s prison is the first in the state — and possibly in the nation — in which dedicated attorneys operate a legal clinic inside a prison to help clients focus on civil issues that “are or might become barriers to successful reentry into the community, and work with them to resolve issues or plan around roadblocks,” according to officials with the Oregon Justice Resource Center (OJRC).

Wells Fowler says Re*Membering works, and that the attorneys who run it go above and beyond for their clients.

“They’re amazing. They’re amazing,” she says. “I can’t say it enough.”

**Beginning Re*Membering**

Founded in 2011, OJRC strives to provide legal representation to historically underserved groups. Its activities and services include advocating for civil rights, immigrant rights, justice for youth and justice for those who’ve been wrongfully convicted. It’s also home to the Women’s Justice Project (WJP), the Portland-based program that created Re*Membering.

In late 2017 and early 2018, WJP — which also sponsors an annual women-in-prison conference — conducted a survey of women incarcerated at Coffee Creek to learn more about their experiences through the criminal process — from arrest, sentencing and intake to their thoughts about what life would be like when they were released. The goal of the survey, which was conducted in conjunction with Portland State University’s Department of Criminology and Criminal Justice, was to identify problematic trends in the treatment of women in Oregon’s criminal legal system.

Roughly two years later, Re*Membering was born after WJP received funding from the state Legislature to expand reentry-focused individual legal services at Coffee Creek as a pilot program through 2021. WJP’s three attorneys now visit Coffee Creek once per week in minimum security and once per week in medium security. (There is only one person in maximum security on death row.)

Inspiration for the program’s name came from Coffee Creek’s chaplain, Rev. Emily Brault.

“One of the images I use that helps me practice love is the experience of remembering,” Brault explains on the WJP webpage. “I don’t mean remembering in terms of nostalgic reminiscences of the past ... but ‘re-membering,’ as in returning people to membership, or bringing people into community, or something we do with our hearts and our guts.

“People in prison are often a forgotten people,” Brault says. “When I remember people ... I am acknowledging the actuality of their life, and affirming the worth and dignity of their existence. ... One of the side-effects of remembering is that when we bring people into (our) community, we are changed.”

**Fulfilling a Need**

Women’s Justice Project Director Julia Yoshimoto says WJP was established because women’s civil legal rights are often overlooked in a criminal justice system designed for and by men. During the past 20 years, she says, the incarceration rate of women in the state has tripled, even though the arrest rate for women plummeted 36-40 percent during the same time. And yet women have largely been left out of conversations around reform and ending mass incarceration.

“The statistics highlight the fact that women have gone ignored for a number of decades,” says Yoshimoto, an attorney who graduated from Lewis & Clark Law School and also holds a Master of Social Work degree.

Oregon lawmakers united to change the narrative last year with House Bill 2631. The WJP’s three attorneys now are supported through the bill, which earned bipartisan support as it worked its way through the Legislature without a single “no” vote at its various readings. A public hearing attracted a slew of supporters from the OJRC and the community, including written testimony from incarcerated women who had received legal help from the OJRC in the past.

### Opposite: Women being held at the Coffee Creek Correctional Facility were among the speakers at the 2019 Women in Prison Conference, which focused on justice for defendants who are survivors of domestic violence. Other attendees at the sold-out event included social service providers, corrections and community corrections staff, lawyers, formerly incarcerated people, state and local decision-makers, and other community members. Photo by Jason Wasinger
With Gov. Kate Brown’s signature, the bill became law and went into effect on June 25, 2019.

“HB 2631 was designed to prevent recidivism by addressing the many obstacles people face when exiting the prison systems,” says Rep. Tawna Sanchez (D-North and Northeast Portland), who sponsored the legislation. “The bill is significant because it supports clearing civil legal issues that some people may not even know they have due to the overwhelming trauma of the addiction-to-prison pipeline that exists in our society.”

By providing $800,000 over two years for the Re*Membering pilot program at Coffee Creek, HB 2361 also allows WJP to work on the expansion of a statewide support network — in collaboration with the Oregon Department of Corrections, the Oregon Criminal Justice Commission and other partner organizations — for women transitioning out of prison. The result, Yoshimoto says, is a working model that other prisons could use — at women’s facilities in other states, for example, but also at men’s prisons in Oregon.

The need for the services that Re*Membering provides clearly exists. In its first 2½ months, the program received about 200 requests for services from women in Coffee Creek who would be releasing to 25 different counties, Yoshimoto says. After three months, the program had 44 actual clients with an average of three separate civil legal issues per client, she adds.

“Research shows when people make a success of their return to the community after incarceration, we all benefit through lower crime rates, increased economic activity and healthier and happier families,” Yoshimoto says. “Helping women at Coffee Creek identify and address issues that could be barriers to successful reentry will position them to prepare for life after prison in a way that will surely benefit them and their families.”

Resolving Issues

The most common civil legal issues faced by Re*Membering’s clients, according to Yoshimoto: parenting time, child custody, divorce, issues regarding real property and personal property, debt (child support, property taxes, court fines and fees, restitution) and revoked/suspended driver’s licenses. Issues with student loans also made the list, Yoshimoto says, with many clients unaware that the loans could be rehabilitated so that students could return to college.

Alex Coven, one of the WJP attorneys working at Coffee Creek, says some of the women have also sought help in probate court with wills and inheritance issues. “Family members have passed away … and they have inheritance that they’re entitled to, but (the women) can’t go through the processes to get that,” he says — at least not while they’re behind the walls of a prison and without the help of an attorney.

Yet it’s important that incarcerated people do go through those processes, Coven says, because often a will includes a home as part of the inheritance, providing a recently released person somewhere to live after incarceration. It’s similarly valuable to help incarcerated women fight foreclosure on homes they already own or to keep debts from spiraling out of control, he says.

“Re*Membering is built off of five years of work that the OJRC and Julia have been doing through our Women’s Justice Project,” OJRC Executive Director Bobbin Singh says. “Specifically, HB 2631 builds on five years of proof of concept and adds more capacity to be able to serve more women. Over the past five years, we have learned that there is an overwhelming need, demand and benefit to assist women with civil legal issues that have been exacerbated by incarceration. Re*Membering is a paradigm shift and can be a national model for how we think about the delivery of legal services and access to the courts.”
Besides fighting debt and looking after their property, Re*Membering’s clients are also eager to spend time with their children after release from Coffee Creek. Staff attorney Sarah Bieri recalls working with a client who hadn’t seen her children in a year but discovered that she was entitled to monthly visits under an approved parenting plan. Bieri helped the client prepare for a hearing on a motion to enforce the visits, and the woman seems to have impressed the judge.

“Navigating the legal system can be a bewildering experience for anyone, but being incarcerated creates additional barriers that can make it particularly challenging,” Bieri says. “Our preparation helped this client feel more confident about how to present her case, and she felt the judge really heard her concerns. Not only was she able to re-establish contact with her children, but she will also likely be more comfortable and prepared to face the court if future visitation issues arise.”

Re*Membering attorneys don’t work on appeals of criminal cases, but they may assist with related reentry issues. Yoshimoto recalls one case involving a woman who was serving time in Oregon while on post-conviction release from another state. “We communicated with the other state’s corrections department to calculate the maximum amount of additional prison time she could potentially be facing,” she says, “which helped to manage her fears.”

“We further helped prepare this client for the steps to take after her release from the other state’s prison so that she would remain in good standing with community supervision in both states,” Yoshimoto adds. “And we further advised the supervision offices of the unique situation she was in so that they would be prepared to assist her upon release.”

Sparking Hope

For Wells Fowler, who is now free and spending significant time with her children, working with the Re*Membering program was a life-changing experience. Prior to her incarceration, she was granted eight hours of supervised visits with her daughters, 9-year-old Avery and 12-year-old Payton. But she is now seeing her children more and will be advocating for more parenting time and, ultimately, joint custody.

“I never in a million years thought I would be four months out of prison and have my kids every other week,” she told the Bulletin in late March.

Wells Fowler says WJP’s legal team fights hard for their clients — delving deeply into issues, studying relevant laws and connecting with specialists to divine the best answers. But the help doesn’t stop at the prison gate, she says.

Even after leaving Coffee Creek, Wells Fowler says Coven continues to check in with her to see if she needs further legal guidance. The entire Re*Membering team has been amazing, she says, and she is deeply grateful to all of them. They made her feel heard, and that infused her world with promise.

“They’ve given me hope,” she says, “that I’m not alone.”

Jillian Daley is a Portland-area freelance writer. Reach her at jillianbdaley@gmail.com.

ENDNOTES

1. Learn more about the Oregon Justice Resource Center online at ojrc.info/about-us.
2. For more about the Women’s Justice Project, go to ojrc.info/womens-justice-project.
3. For more about PSU’s online Criminology and Criminal Justice bachelor’s degree, visit pdx.edu/psu-online/programs/criminology-and-criminal-justice-bachelors.
4. Learn more about the HerStory Oregon Survey at orjc.info/herstory-oregon-survey.
IVORY TOWER

Interventions

Responding to Professionalism Dilemmas with Judges

By Judge Susie L. Norby
Judges are human, and humans err. Judges’ legal errors can be challenged by appeal, of course — but behavioral lapses are trickier. There are 175 state trial judges in Oregon, each with our own limitations. No matter how long each one practiced law before reaching the bench, practice rarely makes perfect. Judges hope for understanding when we falter, just as attorneys and parties hope for compassion from judges when their frailties are exposed.

If a lawyer encounters a judge who falters, what can or should be done? Judges work in ivory towers, separated from open social interaction to avoid the appearance of impropriety. Entry into the inner sanctum of judicial chambers is unusual, so those who feel slighted by a judge seem to have few options to clear the air.

Would communication make matters worse? Is a motion to disqualify necessary? Should a complaint be filed with the Judicial Fitness Commission? Or is it better to do nothing?

The law can unravel countless thorny dilemmas. But this one is different. Diplomacy and intuition solve many relationship problems, but it takes more to navigate the hierarchical pitfalls that clutter the legal landscape between lawyers and judges. The Code of Professional Conduct calls upon lawyers and judges alike to promote and embody collegiality.

Judges are often consulted by lawyers for advice about professionalism in practice. But many lawyers feel strongly inhibited from approaching a judge with a reminder of the reciprocal obligation for collegiality toward attorneys in and out of the courtroom. This is a guide to help identify the need for intervention after a judge falters, and the options available to do so.

**Distinguishing Lapses in Judgment from Misconduct**

Professionalism and our obligation to promote and embody collegiality require that we differentiate discrete transgressions from unmistakable misconduct. Both may create concern, but one is less urgent than the other.

An aberrant transgression allows the offended attorney to wait for the right time to consider the issue. Misconduct requires swifter action.

Some clashes between lawyers and judges arise from conflicting expectations. Lawyers may expect judges to innately grasp nuances of unspoken struggles outside of court — with disobligeing clients, or spiteful opponents, or overwhelming workloads. (We can’t.) Judges may expect lawyers to strategically sift every bit of evidence, to anticipate which arguments the court wants to hear, and to eliminate the rest. (You can’t.) Friction arises when conflicting pressures and obligations clash with unrealistic expectations.

If a judge says or does something concerning in court, it’s best to take time to allow emotions to calm. Evaluate the severity of the event later, in retrospect. In court, emotions run high, and the severity of a judge’s actions or words may be misperceived in the heat of the moment. After the event, allow calm reflection to help you differentiate between words and actions that are merely frustrating and truly serious improprieties.

Among other things, consider whether there was unusual provocation or possible shared fault for the transgression, whether there could be an alternative inoffensive interpretation of what transpired, and whether the event was an aberration or part of a pattern of ongoing behavior. Was the behavior rooted in circumstance or was it personal? Was it persistent throughout the proceeding, or momentary? All these factors will shape a decision on what to do.

A similar analysis is helpful to assess whether a statement or action outside a courtroom merits a response. For example, when I was a deputy district attorney in the early 1990s, a male judge took me aside after a court trial to warn me that a female litigator who wears fitted pants at work will never be taken seriously as an attorney. Although his comments were unwelcome, he seemed to believe that my pant suit would imperil my career.

I considered whether to do something to express my concern, but I perceived that he was shaped by the customs of his more conservative generation, and he meant to help. I chose not to do anything about it. I did not believe it reflected poorly on his judicial ability, and his helpful intention offset the transgression enough.

**Collegiality-Focused Remedial Options**

**Direct Approach**

Keeping in mind our professional duty to act collegially — even in response to someone who failed to do so — the threshold option to resolve concerns about judicial behavior is to speak directly to the judge in person.

Ideally, this kind of conversation will be delayed until after the conclusion of the court matter in which the troubling incident occurred. If it can’t wait, though, be sure to seek permission from your opponent to speak with the judge about “a topic unrelated to the case.” If they won’t give permission, then ensure that your opponent is included in the private conversation to eliminate any risk of *ex parte* contact.
Ask the judge’s court clerk whether the judge will see you in chambers about a private matter. If that isn’t allowed right away, then ask if there is a better time for you to return to talk. If all else fails, consider writing a polite and respectful email to request a meeting or convey your concern.

Ideally, approach the matter as an opportunity to learn, not to teach. Give the judge a chance to explain what happened from her perspective, then share the alternative point of view that raised the concern. Allowing the judge to save face in the moment creates the best context for future change, and instills a sense of gratitude in the judge for your sensitivity.

**Indirect Approach**

If a direct approach does not work out, or if the circumstances make a direct approach unlikely, the next option is to make an indirect approach, either through a judicial colleague of the offending judge or through a colleague in the bar who knows the judge better. This may be another judge who makes you feel more at ease, a colleague whom the offending judge already trusts, or it may be the presiding judge.

Share your concern with your chosen go-between and explain your reasons for an indirect approach. Also ask whether any further action by you could be helpful in resolving the concern for the future. If a go-between judge deems the concern significant enough, then he must report it under CJC Rule 3.11(A).²

**Semi-Direct: Signed or Anonymous Letter**

If neither a direct nor an indirect personal approach fits the situation, the next option is to write a letter to the judge and mail it or have it delivered. Write the letter with respect and without insult, criticism or hyperbole. Objectively state the concern and consider noting that your respect for the judge and her role in the justice system are the reason you believe she deserves to be told that the concern exists and allowed the opportunity to weigh its validity.

**OAAP Outreach**

Some concerns may raise suspicion that a judge is in personal distress. If there are such signs, or if the transgression is coming out of the clear blue sky from a judge who is known for patience, discretion and professionalism, then a call to the Oregon Attorney Assistance Program at (503) 226-1057 or (800) 321-6227 should be considered.

When a judge offends or acts unprofessionally, it may be reflexive to assume that power or status has propelled his behavior. But it is always kinder to begin with the converse assumption, by remembering that judges are human and at risk of indisposition by tragedy, medical conditions or issues of abuse just as we all are. The OAAP is a confidential program, and its staff is committed to protecting the confidentiality of callers.

If you have clear and convincing evidence (not a mere suspicion) that a judge’s performance is significantly impaired physically or mentally — or severely impacted by habitual or excessive use of intoxicants or controlled substances, temporarily or permanently — you may submit a complaint to the chief justice of the Oregon Supreme Court pursuant to ORS 1.303. This is an option for situations on the most severe end of the spectrum and beyond hope of informal resolution.

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"Intolerance is a form of egotism, and to condemn egotism intolerantly is to share it."
— George Santayana

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**Reconciling More Radical Options with the Duty for Collegiality**

**Immediate Reactionary Comments: Effectiveness of Collegial Comebacks**

When court is in progress and a concerning event transpires, it may be tempting to reflexively react. Court proceedings heighten emotions, which can impair efforts at restraint. Moreover, litigation is adversarial, and attorneys often arrive in court reader to lock horns than to breathe deep.

Regrettably, snarky commentaries and incisive criticisms made in the moment are unlikely to facilitate instant insight by a judge into the compromised behavior you perceived.² They are also unlikely to instill confidence in clients, parties and court observers that the justice system is a place of honor.

Planning ahead for this unfortunate contingency may give you a useful advantage if the need ever arises. Well-chosen words or actions can improve the circumstances if properly deployed in the moment. For example, it is sometimes helpful to interrupt the problematic behavior or exchange with the code phrase “Your Honor, I have a matter for the court. I request a conference in chambers or a sidebar.” This gives the judge (and everyone else) a moment to pause and shift gears.

The topic of the conference or sidebar can be as simple as a question such as “May I have a recess to talk to my client? The hearing has taken some unexpected turns I’d like to explain to him.” This is the professional equivalent of a timeout and signals a judge that a moment of self-reflection may be appropriate.

Another way to prepare for this potential eventuality is to converse with attorney colleagues about courtroom stories of effective interventions they have implemented or seen that de-escalated perceived judicial misbehavior. This can be particularly helpful if the stories are specific to a judge you are likely to appear before. The most disarming rejoinders tend to be those in which the attorney expresses humility and receives the concerning judicial behavior gracefully.

Defusing a situation with refinement and respect can effectively neutralize all sorts of misbehavior and reverse the course of many types of troubling circumstances.

**Affidavits for Change of Judge: Impacts on Court Administration & Case Progress**

If you attempt to resolve a concern with a judge but are not satisfied with the result — or if you are unwilling to experiment with less drastic methods for resolving a concern — then a more extreme option is to avoid the judge entirely by filing motions to disqualify the judge. Under ORS 14.260 et seq. any attorney may request that a judge be disqualified from presiding over a court proceeding by filing a motion supported by an affidavit confirming the attorney's good-faith belief that the judge cannot be fair and impartial in the
proceeding. Although the judge is entitled to a hearing to challenge the affiant’s good faith, judges rarely request one.

The timing of such motions is restricted by statute and local rules to ensure the court has notice of the need to procure another judge to handle the case. An attorney may disqualify up to two judges in any single proceeding.

Each jurisdiction chooses how it will handle such motions, and the processes are different from one jurisdiction to another. In larger counties, for example, the judges named in such motions are often not informed about disqualification requests; therefore, the attorneys’ perspective and identity remain unknown to the offending judge.

In smaller counties (including those with only one judge), however, such motions have a greater impact on the court docket and cannot remain anonymous. It can be very difficult to secure a substitute judge in geographically remote areas, which may mean that resolution of the case is prolonged as the court struggles to procure a more acceptable judge for each appearance.

Some local rules require an attorney to consult with the presiding judge of the jurisdiction before filing a motion to disqualify. If the presiding judge is the only judge (or is the objectionable judge), this method may be problematic. Before considering this option, consult with the trial court administrator of the offending judge’s jurisdiction to fully understand the transparency of the disqualification process and the practical impact that disqualification may have on the progress of your case.

Reports to Commission on Judicial Fitness:
Failsafe for Clear Conduct Code Violations

If you believe that a judge has clearly violated a rule in the Code of Judicial Conduct, then another option is to lodge a complaint about the offending judge with the Commission on Judicial Fitness.

ORS 1.410–1.480 create the commission and describe its processes for investigating and addressing complaints about judges, while ORPC 8.3(b) states: “A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge’s fitness for office shall inform the appropriate authority.”

Before filing a complaint, however, professionalism dictates that a complainant should consider carefully the specific rule the judge may have violated, and the unlikelihood of misunderstanding the situation. Best practice is to confer with trusted colleagues about the concerning event and ensure that others support your perspective and agree that the issue rises to the highest level and merits the filing of a complaint with the commission.

The commission website1 describes its mission this way: “The Commission on Judicial Fitness and Disability reviews complaints about Oregon state judges and justices of the peace2 and investigates when the alleged conduct might violate the state’s Code of Judicial Conduct or Article VII, Section 8 of the state Constitution. If the commission files formal charges, a public hearing is held. The commission recommends action to the Supreme Court. Recommendations include dismissal of the charges, censure, suspension or removal of the judge.”

The commission, which meets six times a year, can’t change a judge’s decision in a case or the case outcome. Instead, possible fi-
nal outcomes only include dismissal of the complaint due to lack of information and insufficient evidence, issuance of an informal disposition letter to the judge pursuant to Rule of Procedure 7(c), and prosecution. Information about specific complaints remains confidential under ORS 1.440, unless formal charges are filed.

The commission also investigates complaints that a judge has a disability, which significantly interferes with the judge’s job performance. If the disability appears temporary, the commission may hold a private hearing, but the judge can request a public hearing. Again, the Supreme Court makes the final decision.

The commission does not notify judges about the filing of a complaint against them unless corrective action is deemed necessary after the complaint is considered, or formal charges are filed. At its discretion, the commission may or may not notify the complaining party about how the complaint is resolved. Therefore, a complaint filed with the commission is unlikely to send a message to the offending judge in most circumstances. Unless corrective action is taken or formal charges are filed, the identity of complainants remains anonymous to the judge whom they reported.

A Risk of Inaction: Passive Reputation Destruction

Choosing a way to address a concern with a judge can be intimidating. But avoiding the need to take curative action to address the concern can have unexpected negative consequences that extend beyond the risk that the judge’s misbehavior recurs.

It is human nature to dwell on wrongs we experience. Attorneys instinctively internalize perceived injustices and feel righteously indignant if an esteemed judge lets them down. Legal professionals’ reflexes are to defend against injustice. Therefore, if a decisive curative step is not taken, the stifled urge to defend can devolve into deeper resentment and incurable bitterness.

The wronged person may find himself perseverating, repeatedly criticizing the offending judge to others and perpetually nurturing his own resentment. This passive, inadvertent crusade to destroy the judge’s reputation may offer moments of relief when the criticism meets a sympathetic ear, but it tends to burden the person dwelling on the event far more than it affects the judge they criticize.

It also magnifies an isolated experience with a single judge into a malcontented perspective that the justice system is wholly irreparable. The complainant’s suffering is revived indefinitely, while the judge likely remains oblivious that a problem ever existed.

Choosing a path to deal with a concern productively and taking that path is daunting, but also liberating. It creates a real possibility that the judge will improve and better represent the justice system itself because of the attorney’s brave intervention. And it allows the attorney to unburden himself without lowering himself to the same sort of unprofessionalism he feels he encountered.

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“Give people the benefit of the doubt, over and over again, and do the same for yourself. Believe that you’re trying and that they’re trying. See the good in others, so it brings out the best in you.”

— Liz Newman

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The suggestions offered here were curated with state court trial judges in mind. In other court contexts, such as municipal courts, justice courts and federal courts, their usefulness may be limited. One thing that judges in all courts have in common, though, is that all are human beings first, and judges second. It is fair and reasonable to assume that all try hard to bring their best self to the work of judging.

Like any other profession, judicial work impacts perspective, and a person who becomes a judge is likely to evolve and change over the arc of time. Judges’ perspectives on how to communicate within the constrictive procedural context changes, their understanding of how to best serve the public and the litigants changes, and their ability to shoulder the stressors of judicial work while striving to remain outwardly inscrutable changes.

Most of all, judges’ security and confidence in their own value changes.

Attorneys may perceive judges as unfeeling or disinterested in personal growth, but that is rarely (if ever) true. Many judges keenly feel the loss of opportunities for open dialog with colleagues in the legal community that disappear when they transition into their metaphorical ivory tower. An attorney with a concern may be pleasantly surprised by a judge’s receptivity to an open conversation about the frustrating event.

In the end, communication and belief in one another’s potential is not only a sign of true professionalism and a commitment to collegiality, it is often more powerful than a title or a robe. Earnest efforts at respectful communication keep all of us, and the justice system we serve, revitalized and renewed.

Judge Susie L. Norby served as a deputy district attorney for Clackamas County and as senior legal counsel to the Clackamas County Board of Commissioners, the tax assessor and other county officials before she was elected to the Clackamas County Circuit Court in 2006. She is a member of the Oregon Bench and Bar Commission on Professionalism and the Council on Court Procedures.

ENDNOTES

1. CJC Rule 3.11(A) states: “A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects, shall inform the appropriate authority.”

2. Many years ago, I sat in the gallery of a courtroom waiting for my case to be called. I watched as the judge expressed frustration with the attorney who had just spoken. When the judge finished his critical comments, the attorney paused, then said: “Judge, have you taken your meds today?” Some people gasped, some people laughed, and the judge amped up the lecture. The professional relationship between the judge and the attorney broke down that day and was never repaired. The judge remembered the comment, and focused solely on its impropriety, without reassessing his own demeanor and conduct. Nothing good came of the exchange.

3. For more information, go to courts.oregon.gov/programs/cjfd/default.aspx.

4. Note that the Commission on Judicial Fitness has no jurisdiction over arbitrators, mediators, administrative law judges, hearing officers, municipal court (city) judges or federal judges.
COVID-19 Pandemic Reshapes How We Deal With Loss

A Different Kind of Grief

By Liani JH Reeves

We all know that nothing beats Oregon in the summer. This entire state is beautiful — the rugged Oregon coast, the picture-perfect Columbia Gorge, the deserts of Eastern Oregon, the mountains and valleys of Southern Oregon, and the rivers of Portland. As we are finally being let out of our homes after being sheltered in place for months, we couldn’t ask for a more beautiful state in which to emerge.

Yet, I can’t help feeling a lingering and deep sense of sadness and grief. If I’m being honest, the months at home have taken a toll on my well-being in ways I can’t quite explain.

To be clear, I am incredibly fortunate. I am in good physical health and I have been able to stay employed and work from home with nothing more than some minor inconveniences. I also know that there are many people in our community who have been impacted physically and financially in ways I can’t even imagine. So I do not intend for my message to come off as ungrateful for what I have, or to minimize what others may not have.

But I suspect that many of you — even those who have been blessed with the best of circumstances — may be feeling the way I do. Because despite my best efforts at staying positive, during the past couple of months I have found myself slipping in and out of what I can only describe as a mix of depression and hopelessness. Fortunately, the feelings are fleeting, and they pass. But when they are present, they are real and almost debilitating.

Let me add a bit of context.

My mom was diagnosed with cancer last summer. At the time, her prognosis was good and she was being treated locally in the town where I grew up on the south coast. However, several months into chemotherapy treatment, she became very ill with multiple infections. She was rushed to the hospital, and she’s never gone home. She spent the winter months in emergency and respite care in Eugene. In January, we found out that her cancer had spread, and doctors prescribed a new course of treatment. We moved her to Portland to be closer to me and to have the benefit of care at a larger health system.

And then COVID-19 happened. I could no longer visit her, because the community where we had placed her stopped allowing guests. I could no longer accompany her to her appointments, because the hospital stopped admitting visitors. Even though she was living closer to me than at any time since I left the house for college — literally just minutes down the street — I was unable to be with her.

When this all began, it felt like an inconvenience, and maybe even a challenge to meet. We learned how to visit through video calls, something we had never learned to do even when we were living hours apart. I could drop off care packages with ice cream and treats, and we still talked by phone even more often than before she got sick. We celebrated her 78th birthday virtually, joined by family from across the country.

But as the months went by, I had to eventually admit what was happening. I was sheltering in place to stay safe and healthy. But my mom was sheltering in place to die alone.

As spring came and the weather started to turn, we got more bad news. We learned that the new course of treatment wasn’t working and that the cancer had spread even further. My mom opted to forego any additional treatment, and the doctor gave her four to six months to live. She was alone when she received the news. She went home alone to process the news.

I am a practical person, and I’ve learned to push through obstacles with stubbornness and intention. No doubt, I get this from my mother, who has made the difficult decision to face death head-on and alone. She has always had an incredible strength. As a practical person, I know that losing parents is an inevitable part of life. As a practical person, I understand why I haven’t been able to see her. Intellectually (and clinically), of course, it’s the right decision. But that doesn’t mean that my heart does not ache, or that I don’t feel sad and angry about being separated from my mom at a time when she and I both need support.

I share all of this because I think it demonstrates how COVID-19 has impacted our lives in an extreme and vivid way. Because I know what I have been feeling is not just about my mom. That’s certainly part of it, but it’s another type of grief. Not the same grief that I know I will feel once my mom passes, or the grief I felt when I lost my dad 20 years ago. It’s a different type of grief that
I cannot quite name, but it’s still a feeling grounded in loss. 

Being physically separated from the people you love and to whom you turn for support is a loss of community, of course. It leads to feelings of isolation. But being confined to your home, not being able to just do the things you want to do — eat a good meal, read the paper at the local coffee shop, explore and travel — is a loss, too. It’s a loss of control, no doubt compounded by uncertainty over a future shaped by the pandemic. And as lawyers, many of us are used to being in total control of our lives and our practices. Our clients, who are often in a state of panic or dire need, look to us for stability and support. That pressure to remain in control is real.

So after months of feeling like I’m on the verge of losing control, I have to admit to myself and to you that this has been hard. And I want to say to my dear colleagues in the Oregon State Bar that, for those of you who may be feeling fatigued, sad, overwhelmed, scared or angry, I feel you and I feel for you.

I haven’t been able to really articulate my feelings until now. They have just been sitting there as a weight on my shoulders and a cloud over my head. But as the sun and all of us are finally coming out of hiding, and as my mom has come to peace with her life and death, I have finally been able to find a voice to give my feelings that I couldn’t find before. I hope that sharing my feelings today may help give voice to yours.

Don’t mistake these feelings for weakness or lack of resiliency, though. As I expressed in my column in the May issue of the Bulletin, I am confident that we will come out of this a more efficient and stronger community and profession. I have already seen this community come together in new ways to lift each other up, and for that I am incredibly grateful and proud.

As for me, I know that I will come out of this as well. It may be without my mother, but it will be with her strength. And everywhere I go in this state, I will always carry with me so many memories of my parents, who chose to retire in Oregon because it is truly one of the most beautiful places in the world.

Liani JH Reeves is president of the Oregon State Bar. Reach her at lreeves@osbar.org.
As a wide-eyed young man growing up in Florence, Italy, attorney Andrea Bartoloni developed a taste for fine art, a fondness for great food and wine, a love of his natural surroundings and a desire to explore the wider world abroad.

He first studied at the Art Institute in Florence to become a teacher, but with bigger goals in mind, Bartoloni set his sights on a career as a lawyer. Eventually, his law studies brought him to the U.S. and to Oregon, and it’s here where he planted roots, started a family and built a distinguished international law practice.

But as his Oregon roots grew strong over the years, his ties to Italy only grew stronger, especially since 2003 when he became Honorary Consul of Italy for the State of Oregon — a diplomatic role well suited for someone of Bartoloni’s natural curiosity and friendly disposition. Coming from a world-renowned center of art, culture, wine and cuisine, he since has become an evangelist for all of the things that made his hometown and his home country famous.

“Florence is such an international place because of all the tourism,” he says. “It was easy to develop an interest for travel and international friendships and connections.”

In his role as honorary consul, Bartoloni serves a wide range of important tasks, from mundane to exciting — all designed to enhance bilateral relations in business, culture and science between Italy and the State of Oregon. That includes extensive work assisting Oregonians in attaining visas to work or study in Italy, as well as assisting local businesses in matters relating to hiring foreign talent. It also includes helping Italian businesses and investors gain a foothold within Oregon’s economic landscape.

“First and foremost, I have significant pride in representing my birth country,” Bartoloni says. “The position itself makes you the highest representative for Italy in Oregon, so you really have a finger on the pulse of the Italian community in Oregon. And as an attorney, it’s is beneficial because it helps me develop relationships with both elected officials and the business community, so it is a very good marketing tool.”

To become honorary consul, Bartoloni submitted his name for vetting and approval by the Italian government when his predecessor stepped down from the position. He also required vetting and approval by the U.S. Department of State.

Bartoloni’s experience with corporate and international law lends itself perfectly to his consul duties. He’s currently a shareholder and member of the corporate practice group at Buchalter, a full-service business law firm headquartered in Southern California. He practices from the firm’s branch office in Portland’s Pearl District. Formerly a partner with Ater Wynne, Bartoloni came to Buchalter when the firms merged last September.

“One of the great aspects of the merger was that Buchalter incorporated the entire Ater Wynne office. We’re like a family,” Bartoloni says. “I strongly believe that we have one of the best international teams in the state and maybe on the West Coast.”

One day each week, Bartoloni opens his office to the public, providing pro-bono assistance to folks seeking consul services, whether it be filing visa applications or...
answering questions that include everything from “How do I bring my pet to Italy?” and “How do I bring somebody’s ashes to Italy?” to “How do I get married in Italy?”

But his broader diplomatic duties extend to playing a major role in the state’s business relations with Italian companies. For example, he assisted in bringing Italy’s world-leading tunneling company, Salini Impregilo, to Portland to work on the Willamette River “Big Pipe” project. He also helped lay the groundwork for Danieli, an Italian metals provider, in its partnership with Cascade Mills in McMinnville.

“Andrea has a complex immigration practice where he works with a lot of high-tech companies and other corporate interests on various immigration issues,” says Todd Mitchell, the managing shareholder in Buchalter’s Portland office. “His consular practice gives him great connections. There’s a small group of people who serve in that capacity, so it gives him nice entrée to the business community, which is something that clients can find helpful.”

“We have a lot of Italians who work at Nike, at Intel, at OHSU, and a lot of smaller businesses as well,” Mitchell adds.

“There are 30,000 to 40,000 Italian-Americans who reside in Oregon, and they all have different needs.”

Building Cultural Bridges

As honorary consul, Bartoloni also fosters cultural exchanges that have helped create lasting relationships between education, business and political leaders on both sides. One of his pet projects involved establishing the Italian city of Bologna as Portland’s Italian Sister City. The idea began with a series of back-and-forth visits between city leaders from both places, and the relationship continues to this day.

“It has been a pleasure working with Mr. Bartoloni over the past three years and building our Sister City relationship with Bologna,” says Portland City Commissioner Chloe Eudaly. “Last year, we celebrated our 15th year of sisterhood with an art exhibit in honor of Gianni Rodari, a celebrated Italian writer, journalist and children’s author. The exhibit was a gift to us from Bologna, very generously hosted by the Portland Art Museum, where we had the honor of welcoming the Mayor of Bologna, Virginio Merola.

“This would have never happened without the support of Mr. Bartoloni,” Eudaly says. “His work and advocacy help shine a positive light on our city and our state.”

As part of the Sister City partnership, Bartoloni has nurtured a youth exchange program in which about 20 high school-age children from Portland visit Bologna every other year, with students from Bologna visiting Portland in the off years. He’s also helped develop strong ties between Oregon Heath & Science University and the University of Bologna, one of the oldest, largest and most prestigious universities in Europe.

And occasionally, he’s been able to combine his consul work with his personal passions. He’s a big soccer fan, and before the Timbers became an MLS team in 2011, he helped stage matches in Portland with the second teams from legendary Italian professional clubs Juventus and A.C. Milan.

“When we started the Sister City relationship, there was an incredible amount of fresh energy that went into it,” Bartoloni says. “The difficult part is how to sustain it over time, and I think we’ve done really well.”

Being a lawyer is not a prerequisite for serving as consul — there are currently 30 countries represented by individuals in the
Navigating Challenges

In his role as honorary consul now for 18 years, Bartoloni has taken on the challenges of changing times. That’s especially been the case over the past several months, when the COVID-19 pandemic took over the headlines and disrupted the daily lives of millions worldwide.

Italy was one of the earliest and hardest hit countries in Europe by the pandemic, reaching peak infection numbers in early April. Amid the crisis, travel restrictions created visa problems for Americans overseas and Italians needing to return home — the kinds of problems an honorary consul is called upon to help solve. Bartoloni recounts the story of one gentleman recovering from heart surgery who was running low on his medicine and needed to travel home to Italy to replenish his supply; another of an Italian woman with an expiring visa doing research in Eastern Oregon who preferred to stay rather than return home.

“A lot of people are trying to extend their visa either because they can’t get a flight or because they’d rather be here than go back to Italy,” says Bartoloni, whose immigration practice includes work on temporary working visas, labor certification, employment-based permanent resident visas and extraordinary ability and investor visas. “So we’re working with immigration, and they’re setting up a procedure where you can notify immigration electronically and ask for an extension.”

With governments proposing increased tariffs on imports and exports, Oregon’s economy is directly affected when it comes to products such as hazelnuts and grass seed — local products in heavy demand in Italy. The same holds true for wine imported from Italy. At Buchalter, Bartoloni’s law expertise with imports, exports and international business allows him to better address the effects of the changing economy on local businesses. His work includes assisting American companies with international marketing and financing with joint ventures, international licensing and distribution agreements. He also assists Asian and European investors with relocation to the U.S., including land acquisition, financing and setting up manufacturing facilities.

“Whenever there is a local need to provide some expertise, I’m able to be a gateway to international law and immigration law,” he says. “On the business side, it’s provided a direct line to not only Italy but also the entire international community through the Consular Corps. It’s been a good way to develop those relationships and become known as an international lawyer. It’s a specialized niche, so it can be a great source of referrals.”

It also adds a bit of prestige to Buchalter’s local operation.

“Andrea being from Italy adds to that entire practice,” Mitchell says. “He’s from Florence, he owns an Italian restaurant — he’s as real Italian as it gets. It definitely adds value to the firm, and having Andrea serving in that role is definitely a feather in our cap.”

Bartoloni’s consistent energy, enthusiasm and passion for the job also add value to his contributions to the firm.

“I’ve never seen him not that way, which is pretty remarkable, especially for lawyers,” Mitchell says. “Lawyers can get beaten down, but when Andrea is frustrated by something, he never loses that overall kind of humor and sunny disposition. He’s a wonderful partner and just a great person to work with. He’s very genuine, and clients see it.”

Sharing His Enthusiasm

On a recent sunny, unseasonably mild afternoon in the Pearl District, Bartoloni walked up to a table set up outside Gallo Negro, the restaurant he co-owns with chef Davide Filippini, a fellow native of Florence. Filippini greeted him on the sidewalk and the two sat down for a chat in Italian, sharing a laugh before Bartoloni headed inside to eat.

This is Andrea Bartoloni in his element — good food, good wine, good conversa-
tion. He grew up just a stone’s throw from a winery in Florence, and when it comes to Italian wine, he really knows his stuff.

That’s not lost on the folks back at the office. “This firm really enjoys its wine and food, and when we had a retreat at one of our offices in Southern California, they asked if Andrea would put on a little presentation about various wines of Italy,” Buchalter’s Mitchell says. “This was for a younger group of associates — a little starter course on wines. He put together this whole presentation and organized a number of varieties of wines, not the typical stuff you would get, and gave a class on the whole history of wines in Italy — of different areas they grow them and how they label them. And people just absolutely loved it. I’m sure it’s going to become a mainstay — the Andrea seminar on wines.”

When the conversation turns to European soccer, Bartoloni’s eyes really light up. He closely follows the top Italian professional league, subscribes to Italian TV to watch games and keeps a careful eye on the progress of his favorite team, ACF Fiorentina. He traveled to Germany in 2006 for the World Cup, when Italy took home its fourth world title. He was in the stadium for the Italians’ semifinal victory, and celebrated in the streets with his fellow countrymen when Italy snatched the Cup in a shoot out win over France.

“It was amazing,” he says. “You don’t get to see your team win the World Cup very often. It was an incredible experience.”

Back at Buchalter, there’s a picture on the wall of Bartoloni’s Pearl District office that was taken in Florence sometime in the early 1960s. It’s a black-and-white action shot: a young boy in a collared shirt and shorts, gliding on his bicycle, smiling gleefully in the summer sunshine.

“That’s me,” Bartoloni says, as if there were any mistaking that same twinkle in the eye. Turns out you can take the boy out of Italy, but you can’t take Italy out of the boy — even after all these years.

“Have you ever been to Italy?” he asks with unabashed enthusiasm. “No? Oh, you need to go!”

Phil Favorite is a Portland-area freelance writer. Reach him at philfavorite@gmail.com.
In the summer of 1979, I applied for a clerk job at the Oregon Court of Appeals after a former Reed College classmate clerking there described it to me as “the perfect job.” I became a floating law clerk and then a staff attorney at the court until 1983, when I began a 23-year career as an appellate advocate — first in private practice and then transitioning from law firm partnership to the Appellate Division of the Oregon Department of Justice (DOJ).

The following “Lessons Learned” consist of appellate practice guidance that I developed for myself on the basis of my experience working at the court and my subsequent appellate law practice.

As a preliminary matter, it is debatable whether advocacy skills can be taught effectively in the context of a CLE presentation or article. The following guidance is intended to provide examples of concepts and frames of reference that might resonate with other Oregon lawyers in the process of developing their own approach to appellate advocacy.

State Facts and Case Holdings Accurately

When I was on staff at the court, I sometimes attended oral arguments and, on more than one occasion, I would observe Chief Judge Herbert M. Schwab glance at a party’s brief during the lawyer’s oral presentation and then ask the bailiff to bring up the transcript of the proceedings below. Everything would grind to a halt while Judge Schwab found the transcript page he was looking for, and then he would confront counsel with the disconnect between a factual statement in that lawyer’s brief and what was actually contained in the transcript.

Few advocates were staunch enough to muster a coherent response to this frontal attack on their accuracy (at best) or honesty (at worst).

The only safeguard against being skewered in oral argument in that way is to double-check your summary of facts against the record to ensure that your objective recitation of facts is accurately based on the record. Doing so will help build your credibility as a straightforward appellate advocate in the eyes of the court. Extrapolation of the facts and articulating the inferences that can be drawn from them belong in the argument portion of your brief, not in the objective statement of the facts.

List Your Points in Order

There are different types of outlining, including loosely brainstorming ideas along spokes that radiate outward, listing your points in sequential order or tightly nesting points using a standard outline format. Although for several years I outlined my briefs using the standard nested outline approach, I eventually found that in briefing, the simplest type of outline and perhaps the most useful is a basic list of points in sequential order. This simple form of outlining tends to result in a logical progression of ideas that flow naturally from point to point, which will have the effect of drawing the reader along the path of the argument.

Narrow the Issues Throughout

When I was working at the Oregon Court of Appeals, Chief Judge George M. Joseph once described the narrow focus of appeals by explaining: “The best appeal has been whittled down to a gnat’s eyelash.” That metaphor stuck with me as a pithy expression of the narrowing nature of the appellate process.

The court has long been an adherent of the “principle of parsimony” — that is, the approach of disposing of appeals on the simplest ground feasible, such as threshold and procedural issues, instead of tackling more complicated legal issues that need not be addressed to resolve the appeal. Following that principle inevitably narrows the issues to those that are dispositive.

Focus Your Oral Argument

In appellate CLEs, I have often heard the following statement advanced as a practice tip for oral argument: “You cannot win your case in oral argument, but you can lose it there.” That may hold true in many cases, but not all. The advice may reflect a judicial concern with advocates who take their full allotted time in oral argument to rehash every point raised in their brief. Other lawyers have taken an overly minimalist approach to oral argument and come to the podium only to recite that they have nothing to add to their brief.

As an appellate advocate with a functional view of the appellate process, I viewed oral argument as the last opportunity to focus the court on the dispositive issues. If you do so succinctly, the court
will appreciate the focused nature of your presentation.

Attorney General Dave Frohnmayer, who hired me to work in the Appellate Division at Oregon DOJ, advised appellate lawyers to prepare for oral argument by making “at most two or three “must-win” factual points and at most two or three “must-win” legal points. I found that advice to be worthwhile, because it helps narrow the issues.

Doubt Thyself (During Preparation)

There is value in sticking to one’s guns. But during the briefing process, you should be able to serve as your own devil’s advocate and make an objective effort to anticipate the weak points in your analysis. Those are the very points that are most likely to be attacked by opposing counsel or questioned by the judges hearing the oral argument.

Appellate advocates who have clerked for appellate or trial judges have had some experience evaluating the strengths and weaknesses of a party’s case. That type of objectivity is particularly valuable when anticipating critical questions and formulating a response in order to strengthen the less robust aspects of your legal position.

In observing oral arguments over the years, I often saw appellate advocates being forced at the podium to respond to skeptical questions to which they had no coherent response, because they had not faced up to weaknesses in their legal analysis. You will be substantially more effective in that scenario when you have given serious thought to the potential weak points in your legal argument and have developed some countervailing points.

Conceive of Your Argument as a ‘Paradigm’

In college, I first encountered the concept of a “paradigm shift” in The Structure of Scientific Revolutions, by Thomas Kuhn (University of Chicago, 1962). The main thesis of the book is that major advances in science arise not through evolutionary and incremental changes over many years, but rather through theoretical “revolutions” in which a new theory that better fits factual observations is initially dismissed, then hotly debated and then adopted as doctrine within a relatively short span of time.¹

At some point in my appellate practice career, I realized that the concept of the paradigm shift was applicable to the art of appellate persuasion. The idea of shifting the court’s “paradigm” proved helpful to me in thinking about how to persuade appellate court judges to accept my legal position — that is, to adopt my proffered “paradigm” if it efficiently resolved the appeal and was consistent with settled law.

What helps to shift the paradigm for the court? As noted, there is value in crafting a statement of facts that holds up to scrutiny as being objectively and accurately based on the record, in addition to the persuasiveness of proceeding logically from one point to the next.

The following recommendations for strengthening your legal argument are derived from my appellate practice experience.

Write Clearly

One cannot overstate the virtue of clarity in writing and the importance of not introducing or permitting any possible ambiguity. If your argument is ambiguously explained, it will be taken at face value and will diminish the strength of your legal argument.

The court is somewhat more forgiving for pro se litigants, but far less so for parties represented by appellate counsel. Regardless, the court is under no obligation to attempt to figure out what your argument should have been.

My favorite quotation calling for clarity in writing is from the Roman author Quintilian in the 5th century B.C.: “We should write not so that it is possible for the reader to misunderstand us, but so that it is impossible to misunderstand us.”

Identify Public Policies that Support Your Proposed Resolution

Another useful metaphor, derived from mediation theory, is that below the surface of logical arguments (the visible portion of an iceberg), a submerged mass of motivating values (the much larger portion of an iceberg) drives one’s behavior when engaged in a dispute. In the context of appellate litigation, public policies (the “values” reflected in both statutory and case law) can be a significant element in affecting how an appellate tribunal resolves the appeal, even if not explicitly acknowledged.

You can strengthen the persuasiveness of your argument by augmenting its technical points with reference to the public policies that your argument advances. That includes statutory goals set forth in the statutes at issue; equitably based

¹-6 vertical 1.indd   1-6 vertical 1.indd   1 6/30/2016   11:09:57 AM6/30/2016   11:09:57 AM
policies like freedom of contract or avoiding injustice; and judicial policies related to the effect of precedent, which include the process values of reducing litigation and providing certainty.

Eliminate Stumble Points in Your Legal Argument

Persuasion is the ultimate goal of every advocate. But at its most fundamental level, an argument can be persuasive only if it is heard and understood. If your legal argument loses the sustained attention of your audience as a result of assertions that raise more questions than definitive answers for the reader, you have not only interrupted the flow but have diminished your opportunity to persuade.

In short, the best way to persuade the court to accept your paradigm is to present an argument that is well thought-out, cleanly stated and consistent with existing law, and that identifies a disposition that efficiently resolves the case in accordance with the principle of parsimony, without any chinks or weaknesses. If you can do all that better than your opponent, your brief will be compelling.

The court might decide to go in its own direction, but you will have done all you could possibly have done to maximize your opportunity to prevail.

Maintain a Professional Demeanor

Earnest good faith is the only attitude that worked for me as an appellate advocate, both in writing and in oral argument. I regarded oral argument as a professional conversation, even if I knew the judge(s). I tried not to show anger or visible annoyance. I also did my best to avoid giving the impression that I was a know-it-all; I have observed that judges are quick to pick up on any hint of such an attitude.

Keep in mind that most judges are generalists in at least some areas of the law and, unlike you, they have not spent months poring over the record and dissecting arguments in your case. Above all, do not antagonize the court.

For example, if a judge asks, “Isn’t your argument this?” and then quickly summarizes your legal position, it is best not to respond: “There, now you’ve got it!” Nor is it necessary to grovel with: “Your Honor, I could not have stated it better myself!” Instead, I’d suggest: “If I have captured all the nuances of your formulation, I believe so.” That leaves you an out to avoid
being trapped if you have unwittingly agreed to more than you intended, which happened to me only once, early in my appellate practice career.

**Take the High Road**

Don’t mount a legal ethics attack on opposing counsel in your appeal. Outside the rare case where the lower tribunal has made an appealable ethics ruling, raising untethered ethics issues in your appeal will come across as an *ad hominem* attack.

The Oregon Rules of Professional Conduct do not require ethics complaints to be raised during the pendency of an ongoing case. *See* Oregon Rules of Professional Conduct, Oregon State Bar (2018), Section 8.3(a). If you meet all requirements of that rule on reporting professional misconduct, the correct protocol is to file an ethics complaint with the Oregon State Bar.

Some lawyers also hope to impress their clients (or themselves) by including in their argument clever put-downs aimed at opposing counsel or parties. In my experience, such zingers won’t garner more than perhaps a judicially raised eyebrow. A much higher-percentage strategy is to focus on maximizing the strength of your own argument. Your client will be far more impressed when you actually *win* the appeal.

My final recommendation: *Make* the odds be ever with you!

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Jas. Jeffrey Adams worked at the Oregon Court of Appeals from 1979 through 1982 as a clerk and staff attorney. In 1983, he entered law practice as an appellate advocate in private practice and then in the Oregon DOJ’s Appellate Division, with a final tally of more than 250 published opinions in appellate cases personally briefed and argued. After 2005, he became the attorney-in-charge of Oregon DOJ’s Natural Resource Section, retiring in 2014. Between 2001 and 2015, he developed and taught courses in Wildlife Law, Oregon Administrative Law and Advanced Legal Writing as an adjunct law professor at Willamette University College of Law.

**ENDNOTES**

1. Cf. “All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident.” (Arthur Schopenhauer)
2. To paraphrase a slogan from the popular film trilogy “The Hunger Games.”
Oregon Bar Exam to Proceed With Safety Measures in Place

Oregon’s Board of Bar Examiners (BBX) is taking unprecedented steps to protect the health of the 500 applicants who plan to sit for the state’s bar exam at the end of July, creating staging areas to maintain social distancing and multiple exam rooms for small groups at four locations in the Portland metro area, Salem and Eugene.

More than 20 states have opted to postpone their exams until the fall; others have set aside two days in late September for a second round of testing or in case their July exams need to be postponed. But in a letter to Oregon’s legal community, BBX Chair Hon. Angela Franco Lucero and Vice Chair Joanna T. Perini-Abbott said they believe that by putting safety measure in place, the board can administer a test on July 28-29 that “provides the greatest opportunity for licensure under our statutory constraints, in the most equitable manner, while still protecting the interest of the public.”

To make that happen, the BBX is limiting the test to 500 applicants, a number that was reached in mid-May. Multiple exam rooms at each site will be limited to no more than 40 test takers per room, with applicants gathering in staging areas designed to keep them at least six feet apart. They’ll maintain that distance as they travel from staging areas to exam rooms in single-file lines, and they’ll be seated at least six feet away from other applicants during the test itself.

Registration will take place in the staging areas and include screening questions about applicants’ health and exposure to the virus. Every person onsite will wear at least a surgical mask, and anyone who handles exam materials will wear nitrile gloves. Everyone will be given a bottle of hand sanitizer. Restrooms and common touch points will be regularly cleaned throughout each exam day with FDA-approved products, and each site will receive a thorough cleaning after each exam day.

If state health officials require it, all out-of-state applicants will self-quarantine for 14 consecutive days before the bar exam.

“We have been planning this event for months, with everyone’s health and safety
in mind,” says OSB Admissions Manager Troy Wood. “It has been daunting, but we believe we have established new policies and procedures that will provide the safest possible environment for the exam.”

For the latest information about the July exam, go to osbar.org/admissions.

**Don’t Be Duped on MCLE Program Advertisements**

The MCLE department of the Oregon State Bar reminds all members that the only official source of information for MCLE program accreditation is the MCLE Program Database on the bar’s website at hello.osbar.org/MCLE/Search/Accreditation.

While most program sponsors take measures to ensure accurate advertising of the accreditation of their programs, do not assume they have actually been accredited and for the specific number and type of credits the provider advertises.

It is always a good idea to cross-reference program advertisements with the MCLE Program Database before you purchase a program. If you have questions about a specific CLE provider, email mcle@osbar.org.

**OSB Looks for Committee, Board, Council Volunteers**

The Board of Governors is now accepting applications for lawyer and non-lawyer volunteers interested in serving on a number of bar boards, committees and councils. A description of each opportunity accompanies the online applications:

- Non-lawyer volunteers should submit their interest form by July 12 at www.osbar.org/volunteer/publicmember.html;
- Lawyers should apply online by Sept. 16 at www.osbar.org/volunteer/volunteeropportunities.html.

**Bar Furloughs All Employees**

Due to budget issues resulting from the COVID-19 pandemic, the OSB is requiring all staff to take unpaid furlough days. Although some furloughs will be staggered to maintain core operations, the bar was closed on four Fridays in June and will be closed again on July 2, 10, 17 and 24.

There will be additional furloughs for some staff, and three positions will be eliminated. Although these cuts will be difficult to absorb, they will allow the bar to continue all critical operations through 2021 and also to fill the currently vacant Director of Diversity and Inclusion position.
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.

CONRAD E. YUNKER
OSB #873740
Salem
60-day suspension

By order dated March 26, 2020, the disciplinary board approved a stipulation for discipline and suspended Salem attorney Conrad E. Yunker for 60 days for violations of RPC 1.3 (neglect), RPC 1.4(a) (failure to keep client reasonably informed or to respond to reasonable requests for information) and RPC 1.4(b) (failure to explain matter to extent necessary to allow client to make informed decisions about the representation).

Yunker represented a client in an administrative proceeding before the Oregon Department of Consumer and Business Services (DCBS). The DCBS issued an order adverse to the client on Nov. 1, 2017, with notice that the deadline to appeal was 60 days after the order was served. Yunker read the notice to mean that the deadline was Jan. 3, 2018 (60 days after receipt of the order), but under ORS 185.482(1), the deadline was actually Jan. 2, 2018 (60 days after DCBS mailed the order).

Yunker filed the appeal on Jan. 3, 2018, and DCBS successfully moved to dismiss it as untimely. Yunker sought reconsideration of the dismissal in a timely manner, but the Court of Appeals denied reconsideration on June 15, 2018. Yunker then informed the client of these adverse orders.

Under ORAP 9.05(2), the deadline to petition for review with the Oregon Supreme Court was July 20, 2018. Yunker did not file a petition for review, and a judgment of dismissal was issued in September 2018. Yunker did not inform the client of the dismissal in a timely manner.

The bar and Yunker stipulated to the presence of several mitigating factors, including absence of a dishonest or selfish motive, remorse and full disclosure. Aggravating factors included substantial experience in the practice of law and prior discipline for similar conduct.

AMBER N. WOLF
OSB #031738
West Linn
Public reprimand

Effective March 26, 2020, the disciplinary board accepted a stipulation for discipline and reprimanded West Linn lawyer Amber N. Wolf for violation of RPC 8.4(a)(3) (conduct involving dishonesty and misrepresentation that reflects adversely on her honesty, trustworthiness or fitness as a lawyer).

In October 2018, a prospective client set up a free telephone consultation with Wolf to discuss a potential bankruptcy representation. Several hours before the scheduled consultation, the prospective client emailed Wolf to cancel. Wolf did not respond until 3:35 a.m. the next morning, when she sent an email to the prospective client notifying her that Wolf intended to bill her for the canceled consultation and that she would be flagged in Wolf’s system.

Upon receiving the email, the prospective client contacted the bar’s Client Assistance Office (CAO) and expressed concerns about potentially being charged for what Wolf had advertised as a free consultation. When CAO asked for an explanation, Wolf knowingly made several false and material misrepresentations to CAO and bar staff, including denying that she sent the 3:35 a.m. email.

Wolf’s prior disciplinary history involving similar rule violations and her substantial experience in the practice of law aggravated her misconduct. In mitigation, Wolf cooperated with the bar’s investigation and expressed remorse for her conduct.

FRANK WALL
OSB #733160
Portland
60-day suspension, all stayed, pending 2-year probation

By order dated March 31, 2020, the disciplinary board approved a stipulation for discipline and suspended Portland attorney Frank Wall for 60 days, all stayed pending successful completion of a two-year probation, for violations of RPC 1.3 (neglect) and RPC 1.4(a) (duty to keep client reasonably informed or to respond to reasonable requests for information).

A client consulted Wall in August 2018 regarding a false advertising claim related to an apartment the client had recently rented. The client’s objective was to terminate the lease. Wall agreed to send a demand letter to the property manager and told the client that he expected to hear back within the next four weeks.

Due to the press of other matters, however, Wall did not send a demand letter or take other action on the case. Moreover, Wall believed that the false advertising claim implicated Oregon’s Unlawful Trade Practices Act, which was subject to a one-year statute of limitations.

Between Sept. 6 and Nov. 26, 2018, the client asked Wall several times by email whether the property manager had responded to the demand. Wall did not acknowledge or respond to these requests for information until late November 2018, when the client reached him by phone. Wall then informed him that he had not sent a demand because a one-year statute of limitations applied to the client’s claim.

The bar and Wall stipulated that several mitigating factors were present, including absence of a dishonest or selfish motive, restitution and full disclosure. Aggravating factors included substantial experience in the practice of law and a prior admonition for similar conduct.

CAROLINE J. PONZINI
OSB #111346
Bend
Public reprimand

Effective May 4, 2020, the disciplinary board accepted a stipulation for discipline and reprimanded Bend lawyer Caroline J. Ponzini for violations of RPC 1.4(a) (duty to keep a client reasonably informed about
the status of a matter and promptly comply with reasonable requests for information), RPC 1.15-1(d) (duty to promptly return client property upon request) and RPC 1.16(d) (duty to refund unearned fees upon termination).

Ponzini closed her Bend law practice in December 2018 without refunding the remaining retainer funds of one of her clients. Over the next six months, the client made several attempts to contact Ponzini, but did not receive a response or a refund. A few months after the client sought help from the bar, Ponzini refunded the client’s money, provided an accounting and submitted proof that the client’s funds were held in trust at all times.

The stipulation recited that Ponzini’s conduct involved multiple offenses, which stands as the sole aggravating factor. In mitigation, Ponzini had no prior disciplinary history, did not act with a dishonest or selfish motive, cooperated fully with the bar’s inquiries and expressed remorse.

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

Lori A.G. Hellis has won the Arizona Bar Creative Arts competition for nonfiction with her essay, Fantôme. Hellis, who holds a master’s of fine arts in creative writing from Oregon State University, recently retired to devote time to writing. A member of the Oregon State Bar, she now lives in Mesa, Ariz., where she is a member of the State Bar of Arizona as well. Her winning essay can be found at lorihellis.com. Her upcoming book, Done, A Veteran Attorney’s No-Nonsense Guide to Getting Divorced, is represented by Sinusherim Literary.

Amy Robinson recently was appointed to serve on the Washington State University Vancouver advisory board for WSU’s Carson College of Business. Through building industry alliances, the advisory board helps to define the college’s vision, as well as provide guidance and best practices to academic departments. Robinson is an employment attorney with Miller Nash Graham & Dunn.

Benjamin P. Melnick has been named partner at Schauermann Thayer Jacobs Staples & Edwards. Melnick practices in the areas of personal injury and wrongful death involving auto, motorcycle, trucking, bicycle and pedestrian collisions, as well as insurance disputes.

Perkins Coie has added Renée Rothauge as a partner in the firm’s commercial litigation practice in its Portland office. Rothauge counsels national and global clients on litigation strategy and guides them through high-stakes jury and bench trials, as well as arbitrations. She has three decades of courtroom trial experience and has represented clients in licensing and shareholder disputes, business torts, breach of contract and intellectual property matters.

Katherine Moyer has become a partner with Hershner Hunter. Moyer joined the firm in 2017 after practicing at large firms in Indianapolis and Portland and a small law firm she co-founded in Eugene. She focuses her practice on business transactions and securities law. She regularly advises early-stage companies engaged in private placements, and she represents both early-stage and mature businesses in a wide range of commercial transactions, including opportunity zone investments.

Chenoweth Law Group has announced that Tasha Lyn Cosimo and Katelyn E. Kindberg have joined the firm as attorneys. Cosimo represents clients in business litigation, personal injury litigation, trust dispute litigation and general civil litigation. She also assists clients with business transactional needs and ongoing needs for legal representation and consultation services. Kindberg’s practice focuses on civil and business disputes, business transactions, contracts, real estate, arts and en-

Moves

Christine Moore has joined Richardson Wright as a partner. Moore’s practice focuses on aviation, appeals and civil litigation. She is licensed to practice in Oregon, Washington and Nevada and has appeared pro hac vice in jurisdictions across the country. Moore has served on the executive committee of the OSB’s Appellate Practice Section for several years and is currently chair of the group. She also is a member of the Oregon Rules of Appellate Procedure committee and is active in the Oregon Trial Lawyers Association, serving on its board of governors and the amicus committee.

Parsons Farnell & Grein has welcomed two new associates to the firm. Nicholas V. Beyer now is part of the litigation department. He has experience assisting clients with employment disputes, contract litigation, real estate issues, product liability and construction defects. Mark W. McCarter has joined the firm’s business and corporate department. While in law school, McCarter represented small business own-
Two Spruce Law of Bend has welcomed John H. Myers to the firm. Myers graduated from Willamette University College of Law in 2019. Prior to law school, he helped manage his family’s winery and vineyard management companies and owned a small tavern in McMinnville. Myers primarily is practicing estate planning.

Schwabe, William & Wyatt recently named three shareholders. Jean Back has broad expertise in litigation, mediation and settlement of employment and business tort claims. She is part of the firm’s manufacturing, distribution and retail, and technology industry groups. Maria Schmidlkofer practices in the areas of estate planning and administration. She is part of the firm’s natural resources and healthcare and life sciences industry groups. Garrett Stephenson helps clients navigate all facets of land use law. He is part of the firm’s natural resources and real estate and construction industry groups.

Souvanny Miller has joined Miller Nash Graham & Dunn’s Portland office as a member of the firm’s prominent education law team, representing educational institutions throughout the state.
Kristen Lee Price has joined Lane Powell as an associate on the commercial litigation team in Portland. Price assists individuals and businesses in navigating the complexities of commercial and corporate litigation matters, such as those involving business, labor and employment, environmental issues, insurance coverage, class actions and tort liabilities, including claims under the Federal Tort Claims Act.

Joanna Lyons-Antley has joined Clatsop County as its first in-house counsel. Prior to joining the county, she served as Klamath Falls city attorney and a chief financial officer for a community college.

Rachel Wolfard has joined Hart Wagner’s medical malpractice and general liability defense teams. Her work on these teams will include personal injury and wrongful death defense, premises and product liability defense, and regulatory agencies representation. Before joining Hart Wagner, Wolfard worked as a certified law clerk at the U.S. Attorney’s Office and a law clerk at the Oregon Law Center.

In Memoriam

Dennis Charles Karnopp passed away peacefully on March 9, 2020.

Karnopp was born in Lincoln, Nebraska, to Gertrude and Merle Karnopp. He had the unique experience of growing up in the Lancaster County Jail, where his father was first the deputy county sheriff and later county sheriff. At 16, he went to the Skyline Ranch for Boys in Colorado, which led to a lifetime love of the outdoors. He attended the Pacific Northwest. Before joining Miller Nash Graham & Dunn, Miller practiced at a small law firm in Southern Oregon. She also served as a law clerk for the Oregon School Boards Association.
University of Nebraska where, unbeknownst to many, he was a member of the rodeo team. He met and married fellow Nebraska student Marilyn Masters.

After graduating from the University of Nebraska Law School, Karnopp left the cornfields for the mountains of Oregon. In 1967, he and Marilyn moved to Bend, and Karnopp joined the McKay, Panner, Johnson & Marceau firm. For the next 50 years, he would practice law and explore the West with his friends and family. He was an avid angler, hunter, skier and river rat who was renowned for his sourdough pancakes and flawless delivery (and closely guarded secrecy) of the “Corn Trick.” Karnopp was also a committed father, regularly attending his three children’s sporting events.

Karnopp’s professional life was equally fulsome. Among many other accomplishments, he served as president of the Oregon State Bar, the Western States Bar Conference and the Central Oregon Bar. He also served as a lawyer representative for the Ninth Circuit Judicial Conference and as a co-chair of the Campaign For Equal Justice. He was also a member of the OSB Affirmative Action Committee and, in 2009, received the OSB President’s Affirmative Action Award.

But it was Karnopp’s representation of and service to The Confederated Tribes of the Warm Springs Reservation of Oregon that formed the core of his identity, transcending his professional and personal life. When he joined McKay, Panner, Johnson & Marceau in 1967, he was immediately assigned to help represent the tribe. He was especially proud of his work on the landmark United States v. Oregon case, which defended the tribe’s treaty-reserved fishing rights and associated cultural identity. Throughout his long service to the tribe, Karnopp became very close to its members, developing personal friendships that lasted a lifetime and were an enduring source of joy for him.

He is survived by his wife of 53 years, Marilyn; daughters Lisa Nye (Brad) and Dr. Megan Karnopp (Will Warne); his son, Justin (Lauren); and six grandchildren.
J. Alan Jensen, a retired partner in the Portland office of international law firm Holland & Knight, passed away March 3, 2020, at the age of 81.

Born in Cedar Falls, Iowa, Jensen lived there until he left for Carleton College (Minn.). He then received his LLB from the University of Michigan Law School and his LLM in tax from New York University School of Law. In 1964, he went to work for the Oppenheimer Firm (St. Paul, Minn.) before moving on to San Francisco, where he worked for Crown Zellerbach and served on Ronald Reagan’s Constitutional Revision Committee.

Jensen was a full-time law professor at Lewis & Clark from 1970-76; he remained an adjunct law professor after returning to practice at several Portland-based firms, including Weiss Jensen Ellis & Howard, which merged with Holland & Knight in 2001. He retired from active practice in 2018.

Jensen became the national leader of Holland & Knight’s family business succession practice, where he was a renowned expert in complex life insurance planning. He was recognized by his peers and clients with many honors, including being listed in the Chambers High Net Worth guide, the Best Lawyers in America guide and Oregon Super Lawyers magazine, as well as being named a Top 100 Attorney by Worth Magazine.

Well known outside the practice of law for his contributions to the community and his boundless energy, Jensen was instrumental in the enactment of Oregon’s Pet Trust law. He worked diligently with animal advocacy groups, including the Oregon Humane Society, the Pongo Fund and NWPetSearch. At home, on the trails around Portland and sometimes at the office, Jensen could be found with his beloved bearded collies. He also found time to serve on committees for the Children’s Cancer Association and the OHSU & Doernbecher foundations. He was a recipient of the president’s award from the Multnomah Athletic Club.

Jensen will be remembered by many for his outstanding legal practice and teaching career, countless contributions to the community and his tireless athletic activity (including more than 40 marathons!). He will be missed for his professional mentoring and guidance, the devotion and generous support he gave his wide circle of friends, and the deep love he had for his family.

He is survived by his wife of 32 years, Marilyn Murray Jensen; six children; and 10 grandchildren. Remembrances may be made to the OHSU Foundation’s Center for Ethics in Healthcare, the Pongo Fund, the Oregon Humane Society or any other organization that will further Jensen’s adventurous and loving spirit.

David O’Brien passed away April 21, 2020, after a more-than-two-year fight with Stage 4 brain cancer. He was 52.

O’Brien was a proud first-generation Irish American, the third of four children born to Dr. Patrick O’Brien and his wife, Frances O’Brien. He was raised in Fresno, Calif., and earned his undergraduate degree at the University of California at Santa Barbara before heading to Oregon for his law degree at Willamette University School of Law.

At UCSB, O’Brien fell in love with Julie Bachman. They were married in 1991. In 1998, O’Brien and his wife moved to Northeast 30th Avenue in the Alberta Arts District of Portland. The community and neighborhood became their family and provided an unending source of friendship, joy and support for 22 years. Also in 1998, their son Dylan was born, followed by daughter Emma Claire in 2001. O’Brien absolutely adored his children. He coached their teams and supported them in all endeavors.

O’Brien commuted by bike to his job at Hart Wagner, where he enjoyed 13 years as director of operations and spiritual leader of the firm. Known for his kind demeanor, easy-going nature, wonderful sense of humor, unflagging optimism about the firm and impeccable Halloween costumes, O’Brien’s constant encouragement and insightful advice led to many lasting friendships. He loved his colleagues and they loved him back.

O’Brien was incredibly energetic and involved in many organizations and endeavors, such as the Hood to Coast Relay, Cascade Lakes Relay, Spokane HoopFest, Old School basketball team, basketball coach at Nativity School and CYO, and much more. He also made frequent trips to California and Hawaii to see family. O’Brien was a renaissance man who loved literature, music, the arts, history, dancing and, of course, sports. He was a loud and passionate fan of the Jefferson High School Democrats, OJVA volleyball, Oregon State Beavers and Portland Trail Blazers.

O’Brien is survived by his wife of 28 years, Julie Bachman; children Dylan and Emma; mother Frances O’Brien; siblings Mary Frances, William and Elizabeth; as well as Ernie the dog and tough cat Milo. He was preceded in death by his father.

Due to COVID-19, the family is unable to gather and celebrate at this time. They hope to gather this summer, as well as install a basketball court at Wilshire Park in O’Brien’s honor.

Douglas “Doug” Wilkinson died peacefully on April 28, 2020, surrounded by his girls in the home he built for all of them. He was always a teacher — of the law, of common sense, of the importance of family. He worked tirelessly to provide for his family. Their security (financial, physical and emotional) were at the heart of his decisions.

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Douglas “Doug” Wilkinson was born on April 13, 1946, to Roy and Bonnie Lee Wilkinson, in Calgary, Alberta, Canada. He moved to Drain, Oregon, where he would meet the love of his life, Julie (Crowe) Wilkinson. They married in June 1967. He proudly served in the United States Navy and was honorably discharged from active duty in 1973, but he remained in the Naval Reserves until 1995, when he retired as a commander. He earned his bachelor’s degree from the University of Oregon and his juris doctorate from Lewis & Clark Law School.

Wilkinson was an earnest, patient man. When he retired from practicing law in 2013, his partners, associates and other colleagues remembered him as a wise man whose counsel was held in high regard.
His office would be a hub of inquiry; new associates and seasoned partners relied on Wilkinson’s precise and deep knowledge of the law. He gave countless hours in service to others through his participation in a number of civic organizations.

The people who knew Wilkinson outside of his professional role knew a man that loved to be outside. He loved to raft the river, camp, hike and look at the stars. Many summers were spent floating the Deschutes, Grand Ronde, John Day and his favorite, the Rogue River. He was an expert oarsman who showed reverence to the water. He climbed mountains looking for wildflowers, scampered down trails to get to secret beaches and descended canyons in pursuit of waterfalls. Many of his family’s best memories are anchored in exploring the Pacific Northwest.

Wilkinson also loved taking his family to Disneyland; his final trip was in February.

Wilkinson was a spiritual man who sought the comfort of church (especially for the singing), read the Farmer’s Almanac for leisure and kept nearly every card, picture and book that people gifted him. He was sentimental. He created comfort in the predictable ways he expressed his love.

Wilkinson raised four daughters with his wife, Julie: Wendy, Leah, Elizabeth (Adam) and Rebekah. Their daughters, in turn, gave them eight grandchildren. He was loved tremendously by many people, but especially his family.

Additional Notices
Jeanyse R. Snow
75, Astoria, April 6, 2020

Lewis K. Scott
91, Portland, April 10, 2020

Ronald M. James
94, Jacksonville, May 27, 2020

John J. Tyner III
65, Aloha, June 4, 2020

CONGRATULATIONS, KAREN NERI!

The Oregon Attorney Assistance Program (OAAP) is pleased to announce that OAAP Attorney Counselor Karen A. Neri, JD, MA, graduated from George Fox University in May 2020 with a master’s degree in Marriage, Couple, and Family Counseling. We congratulate her on her accomplishment!

ANNOUNCING NEW PLF SENIOR LEADERSHIP TEAM

The PLF is pleased to welcome Madeleine S. Campbell, Jeff Crawford, and Matt Borrillo to their new positions within the organization.

Madeleine S. Campbell
General Counsel

Jeff Crawford
Director of Risk Management Services

Matt Borrillo
Director of Claims

The PLF Senior Leadership Team:
Nena Cook, Chief Executive Officer
Madeleine S. Campbell, General Counsel
Jeff Crawford, Director of Risk Management Services
Betty Lou Morrow, Chief Financial Officer
Matt Borrillo, Director of Claims

Professional Liability Fund
FOR SALE

LAW LIBRARY, COMPLETE SET OREGON REPORTS and Oregon Appellate Reports. $4,500, (503) 650-8010.

OFFICE SPACE

1400 SW MONTGOMERY STREET, PORTLAND Offices available in Goose Hollow neighborhood, just outside downtown core. Share space with small firm, solo lawyers, other professionals. $750/month includes parking, reception services, conference room, other amenities. Support staff space also available. Contact Gaylord Eyerman Bradley PC at (503) 222-3526 or email receptionist@gaylordeyerman.com.

5200 MEADOWS EXECUTIVE OFFICE SUITES – Offering Executive Suites, mail service, phone reception, meeting rooms, business support and more. Call (503) 726-5999 or visit 5200meadows.com.

BEND, OLD MILL, 1924 CRAFTSMAN with cozy reception area with fireplace, kitchen, conference room. Upstairs office with internet for $650 per month/year lease. May have some overflow of uncontested family law work. Contact: Lillian@familylawbend.com (541) 318-8038.

DOWNTOWN PORTLAND, 1000 BROADWAY, CLASS A SPACE, 23rd floor, receptionist, voice mail, conference rooms, copiers, scanners, phone, gym, showers, bike rack, starting at $750/mo, (503) 274-1680.

HILLSBORO – 2 elegant office suites 1 block from courthouse. $800.00/ea, utilities included w/first month free. For pics/info contact John Elliott: (971) 404-6631 or JMEDrum@Earthlink.Net.

HILLSBORO DOWNTOWN OFFICE SPACE one block to courthouse, free reserved parking. Single private offices on month to month or longer. $325 per month. Larger suites also available. New Comcast high speed internet available! Call Jay Weil (503) 924-5772, or email jayweil@aol.com.

LAKE OSWEGO KRUSE WAY – Class A Office Building. 4248 Galewood 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.

LAKE OSWEGO WINDOW OR INTERIOR OFFICE WITH ALL-INCLUSIVE SERVICES NOW AVAILABLE! Mail service, phone reception, lobby signage, kitchen, 24/7 building and conference room access. 5200meadows.com OR Call (503) 726-5999.

OFFICE AVAILABLE IN DOWNTOWN PORTLAND – Nice upstairs office (11 x 14.5) with large window, newer carpet and paint, and separate secretarial area with desk and chair outside door. $695. Building located on the corner of SW 6th and Clay near the transit mall. Full reception and custom telephone answering from 8:00 am to 5:00 pm, library w/fireplace, conference room, shower, all usual equipment. 7 experienced attorneys, 4 blocks to courthouse, coffee shop and restaurant next door, fitness center one block. Parking available $200/month. 521 SW Clay. George: (503) 226-3607.

OFFICE AVAILABLE IN THE BUTCHER & SMITH LAW FIRM SUITES – Located at 520 SW Yamhill St. across from Pioneer Courthouse Square. 121 sqft with large windows. Telephone system, copy/scan machine services and front desk person available to greet clients. $1,010.00 per month. Inquires to Elizabeth at (503) 972-7380.

OFFICE SPACE AVAILABLE IN THE HISTORIC AMERICAN BANK BUILDING - Top floor overlooking Pioneer Courthouse Square (with Max stops), large support staff spaces also available. Rent includes reception, conference rooms, telephone system, internet, telephone lines and copier/scanner for additional fee. Building has a gym with showers, bike parking and the windows open. Rent $1150/mo. for office, $450-$660/mo for support staff space. Contact Robert @ (503) 226-8122 or robert@swiderhaver.com.

ONE BEAUTIFUL OFFICE AVAILABLE IN MODERN, CLASS A BUILDING IN DOWNTOWN PORTLAND – Two secretarial spaces are available as well. Located in proximity to Multnomah County and Federal courthouses. The office is within a suite shared by two established law firms. The office and the available conference rooms present your clients with knockout views of the West Hills. The location is on the top floor of the 1000 Broadway Building. Two conference rooms, kitchen and file room available to share and receptionist services provided as part of lease. Copier, fax and postage services available. Parking (not included), private gym, and bank in building. Call Scott Brown at (503) 228-5027.

OREGON CITY office in a professional building, including adjacent support staff space. Share lobby, kitchen and two conference rooms with other attorneys. On-site free parking. Close to county office buildings, Family Justice Center and proposed courthouse. High-visibility, established location. $625 per month. Call (503) 680-2884.

PORTLAND DOWNTOWN – Remodeled & modern Class A office space on 9th Floor of 1000 SW Broadway Building. Currently available for sublet is 1 office and 1 smaller work space/office. Offered together or separate. Price and terms are negotiable and depend on term and amenities. Usual amenities offered (conference room, kitchen, receptionist, copier, workout room, etc.). Contact Tim Lands @ (503) 220-1331 / tim@tlandslaw.com or Mark Olmsted @ (503) 445-4453 / mark@olmstedlaw.com.

SW PORTLAND, WASHINGTON COUNTY OFFICE SPACE AVAILABLE – Located across the street from St. Vincent’s Hospital. First class finishes & professionally decorated office. Approximately 180 square feet and includes open area reception, two conference rooms (one in suite and one down the hall), private kitchen in suite, plenty of free parking, and utilities. $1,200 per month. (503) 719-6603 or ginger@skinnerlawpdx.com.

TIGARD DOWNTOWN – Office Space. A beautiful 10 x 14 window office with high ceilings, located in the vibrant and redeveloped downtown Tigard. Share space in a contemporary single level law office with two estate/tax planning attorneys. $800/month includes office, work room, conference room, kitchen, on-site parking, and access to postal and copier systems. Additional expenses are shared costs of reception, security, telephone, and utilities. Contact Jerry at (503) 639-4108.

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 connecting 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. Candice Wilson Stayer, Stayer Legal Search LLC cwstayer@stayerlegalsearch.com (503) 968-0901.

A PORTLAND METRO AREA AV 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. Benefit 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 Stayerlegalsearch.com (503) 968-0901.

ASSOCIATE ATTORNEY, NEWPORT, OR - Well established law firm representing a variety of local government entities, business organizations and individuals primarily in civil matters seeking a proactive attorney with excellent research, writing and communication skills who can produce the high-quality work the firm is known for. We offer the opportunity to gain experience in a variety of areas of civil law while taking on significant responsibility under the guidance and mentoring of senior attorneys. Please submit resume, writing sample and professional references to davis@mggdlaw.com.

OREGON PACIFIC BANK seeks attorney for position of Director of Trust Services to establish the direction, budget, policies and business development goals for a medium-sized Trust Department with offices in Eugene, Florence, Coos Bay, Roseburg and Medford. This position would be responsible for the operation of the Bank’s Trust offices focusing on developing and maintaining client relationships and in achieving overall departmental profitability. Bachelor’s degree in relevant discipline. J.D. preferred. Ten or more years of experience in trust administration or legal practice emphasizing trust, estate, and tax work. Salary commensurate with experience. Interested applicants should apply online at www.opbc.com.

REQUEST FOR QUALIFICATIONS - Jackson County (Medford, Oregon) is requesting Letters of Interest from qualified persons to serve as a Hearings Officer for the Development Services Department to conduct land use hearings, and optionally, code enforcement hearings; decide administrative quasi-judicial matters; and if warranted, impose civil remedies. For an information packet, please call (541) 774-6905 or email McaugDA@jacksoncounty.org. Deadline to submit Letter of Interest is 4:00pm PST on Friday, July 31, 2020.

TRIBAL COURT SEeks INdIGENT DEFENSE ATTORNEYS – The Confederated Tribes of Grand Ronde Tribal Court is seeking applications for our Indigent Defense Program. These attorneys will represent children and parents for child abuse and neglect cases in our Tribal Court. Call (503) 879-4623, email CourtPrograms@GrandRonde.org or visit our website: https://www.grandronde.org/government/tribal-court/court-programs.

STAFF ATTORNEY wanted for nine-lawyer public defender’s office. Full-time. Must be a member of the Oregon State Bar by start date. We handle misdemeanor and felony criminal cases, as well as juvenile delinquency and juvenile dependency cases. We prefer an attorney with felony experience, but all candidates will be considered. Salary depends on experience, plus benefits. For information contact: Southwestern Oregon Public Defender Services, Inc. Attention: Laynie Wilson, Office Manager 465 Elrod Avenue Coos Bay, OR 97420. (541) 267-2472. layniew@sowpds.org.

PRACTICES FOR SALE

BUSINESS LAW AND ESTATE PLANNING PRACTICE located in the heart of downtown Seattle, has averaged gross revenues of over $259,000 the last three years (2017-2019), and is poised for growth under new ownership. Contact info@privatepracticetransitions.com or call 253-509-9224.

EXTREMELY PROFITABLE SEATTLE ESTATE IMMIGRATION LAW PRACTICE that has average gross revenues of over $1,600,000 the last three (3) years (2017-2019). Even more, in 2019 the gross revenues were over $1,800,000! This successful firm has substantial advance fees in trust. The Practice employs two (2) attorneys in addition to the partners, seven (7) paralegals, three (3) full-time administrative staff, and one (1) part-time support staff. If you are interested in exploring this opportunity, would like the freedom to be your own boss and/or increase your current book of business substantially, then this is perfect for you. Contact info@privatepracticetransitions.com or call 253-509-9224.

KING COUNTY PRACTICE SPECIALIZING IN MARIJUANA LAW with a stellar reputation within the community. In 2019, the Practice brought in over $940,000 in gross receipts. The practice/case breakdown by revenue is 85% Cannabis Business Counsel and 15% Personal Injury. The Practice is located in a modern and thoughtfully designed, fully-furnished ~3000SF office space that the Practice leases. The Practice employs seven (7) employees: four (4) attorneys including one
licensed patent agent, (2) legal professionals, and (1) front desk person. If you are interested in exploring this opportunity, call or email us to set up a viewing or to learn more about this Practice. Email “King County Practice Specializing in Marijuana Law” to info@privatepracticetransitions.com or call (253) 509-9224.

PROFITABLE NORTHWEST OREGON LAW PRACTICE located in Marion County. The Practice was established in 1991 and has a practice/case breakdown by revenue of 34% Probate and Trust Administration, 30% Estate Planning, 20% Real Estate Transactions, and 10% Business Law and Contracts. The Practice is completely turn-key and has a strong client base. If you are interested in exploring this opportunity, would like the freedom to be your own boss and build upon a thriving practice, then this practice is perfect for you! Email info@privatepracticetransitions.com or call (253) 509-9224.

PROFITABLE SNOHOMISH COUNTY PERSONAL INJURY PRACTICE that has been in business for more than 27 years. The practice/case breakdown by revenue is approximately 95% Personal Injury and 5% Other. The Practice is located in a 1,022 SF fully furnished office that is also available for sale, if desired. Contact info@privatepracticetransitions.com or call (253) 509-9224.

REAL ESTATE LEGAL PRACTICE WITH TWO LOCATIONS is headquartered in the fastest growing metro area in the fastest growing state (Idaho). This real property law firm has two locations (Spokane and Coeur d’Alene), three attorneys, three support staff, and average gross revenues over $625,000 the last three years (2017-2019). For more information on this turn-key practice, contact info@privatepracticetransitions.com or call (253) 509-9224.

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PARTING THOUGHTS

Fighting for LGBT Rights

By Timothy MB Farrell

Since moving from Hood River to Washington, D.C., a few years ago, I have become familiar with a lot of international business executives and diplomats and have had the honor of being invited to several embassies.

Having lived in Africa for three years (Rhodesia during the Unilateral Declaration of Independence, South Africa, and Ghana during the ’60s) and visited numerous times as an adult (hitchhiking through the Chefchaouen Mountains of Morocco in the ’80s, wildlife safaris in Botswana’s Okavango Delta, hiking around Zimbabwe’s Victoria Falls in the ’90s and incredible windsurfing in mast-high waves off Cape Town’s Bloubergstrand in the 2000s), I have been particularly interested in meeting people from that continent whenever I have the opportunity to learn more about professional, philanthropic and recreational opportunities — and, working alongside my fellow legal professionals, to make things better for them.

Recently, I learned about Probono Publico, a Ugandan Nongovernmental Organization (NGO) established in 2017 to promote human rights and access to justice through free legal aid for those who are most at risk, including LGBT people, sex workers, young girls, women and political activists. The NGO specifically provides free legal aid in criminal law, constitutional law, land law and gender-based law. Unfortunately, it’s limited by both financial and technical logistics.

Here is the scene in Uganda: Article 31 of the country’s constitution forbids marriage between persons of the same sex. The constitution stops there on the issue, but the penal code says that having “carnal knowledge of any person against the order of nature” is punishable by life in prison, and an attempt “to commit unnatural offences” is punishable as a felony with up to seven years in prison.

The code is a bit vague on the carnal knowledge issue and the constitution does not directly forbid gay and lesbian sex, so there is room for advocacy on behalf of clients, especially with the potential for prison sentences.

Few members of the local bar are willing to take such cases, so Probono Publico’s existence is kind of a big deal in Uganda. For example, what does a lesbian woman do if she wants a divorce but cannot assert her homosexuality as a reason for the divorce? (Uganda does not have no-fault divorces.) That is one of the kinds of cases that Probono Publico takes to make sure that LGBT folks do not end up imprisoned for life.

Uganda has been cited as one of the most dangerous and difficult places for LGBT people. In late 2017, The Guardian listed the country as one of “the most difficult places in the world to be gay or transgender.” In 2014, when the Ugandan Parliament passed the Anti-Homosexuality Act, which included penalties of up to life imprisonment, the United Nations agency leading the global HIV/AIDS response said it would have “serious human rights implications.” (The legislation was later overturned by the Ugandan Constitutional Court. However, according to my friends at Probono Publico, lobbyists are looking to re-introduce a similar law and Probono Publico is doing its own lobbying to educate legislators on the effects such laws can have on clients.)

Probono Publico has dedicated much of its resources to fighting for the promotion of equal rights. The NGO has already established relationships with organizations like Barefoot Law, whose main project is to give people online access to Ugandan law. It has also worked with the U.S. Department of State on AIDS initiatives. But now its principals would like to expand their network and partner with a U.S. bar association, human rights organization, law firm or others who have a passion for the promotion of human rights generally — and LGBT rights in particular.

Uganda is one of the most beautiful places on the planet and would be an excellent place for someone to study LGBT rights as they relate to African law. The country has a common-law English system, so U.S. lawyers would find researching and understanding the law fairly easy. Because so few local lawyers are willing to look at these issues, the impact of a visiting lawyer would be enormous on the individual clients served by groups like Probono Publico.

Uganda has been called ‘one of the most difficult places in the world to be gay or transgender.’

On the other hand, U.S. lawyers willing to host human rights lawyers from Uganda to teach them about the American legal system and LGBT advocacy in this country would find enthusiastic advocates who would love the opportunity to work with like-minded people and enterprises here.

Anyone interested in learning more or wanting to get involved can check out the NGO’s website at pro-bonopublico.org; send email to info@pro-bonopublico.org; or write to Probono Publico, Plot 93 Price Charles Drive, P.O. Box 20057, Kampala-Uganda.

After several years in private practice and lobbying for legislation in Oregon, Timothy MB Farrell moved to Washington, D.C., where he is corporate counsel to MBI Health Services, the largest behavioral health provider in the nation’s capital.
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