



Ten Years After

by Rob Raschio

“Of the first 250 DNA exonerations, 190 involved eyewitnesses who were wrong, as documented in ‘Convicting the Innocent,’ a recent book by Brandon L. Garrett, a law professor at the University of Virginia.... Barry C. Scheck, a director of the Innocence Project at the Benjamin N. Cardozo School of Law...pointed to a pioneering report last year from a special master appointed by the New Jersey Supreme Court. The special master, Geoffrey Gaulkin, suggested that memory should be treated ‘as a form of trace evidence: a fragment collected at the scene of a crime, like a fingerprint or blood smear, whose integrity and reliability need to be monitored and assessed from the point of its recovery to its ultimate presentation at trial.’”

—“34 Years Later, Supreme Court Will Revisit Eyewitness IDs,”
by Adam Liptak, *The New York Times*, August 22, 2011.

Lee Berger posted this article on eyewitness evidence on the Pond on August 23, which inspires this View on the past.

Everything I write about from here should be viewed with suspicion.

Here’s how I remember the facts.

September 10, 2001, I passed the bar. September 10, 2001, I celebrated my passage of the bar with a 30th birthday party for my roommate Shawn and met with some classmates who also passed. September 11, 2001, was not a good day. I went to speak to my father about what I was supposed to do. He had experienced Pearl Harbor. He, as with so many of the Greatest Generation, told me to wait, our leadership would give us direction. Little did he know, we would be told to shop. Oh, and to give up a great deal of our own civil liberties in the name of safety.

I had not really looked for work. I got a job from my buddy Jimmy catering at the zoo after taking the bar. Highly unentertaining. Working food service is a way to meet a lot of people and observe. Shilling hotdogs to five-year-olds, refilling catsup bottles, wiping down tables and observing people. The highlight was being chased out of an area by a peacock. Mean bastards.

The world was changing. Truly was a scary time. The mood in Portland was anxious and bitter. People did not know how to react. Were we supposed to fight? How safe were we? What did we have to give up to be safe? Lots of questions.

So, Shawn’s buddy, Grant Wenzlick, invited me to go to Newport

“

Do not leave your sense of humor at the door. This work is hard enough to also be humorless.

”

to an OCDLA seminar on driving under the influence of intoxicants. I called the OCDLA and they let me attend. I had to volunteer at the front desk for a couple of hours and the cost of membership; they let me attend the seminar. I was amazed at how kind the staff of the OCDLA were. Both Jennifer and Tracye held my hand through the process. Everyone coming to the front table was kind. I sensed a community.

I learned so much that weekend about driving under the influence of intoxicants as a crime and defending those cases.

McHugh moderated. Those of you who have not met him, he is a great mind. He could roll you on the floor. Creativity. McHugh got a cardboard box, a hose and some duct tape. He put it together into a mock Intoxilizer 5000. He did this demonstration for juries. His mockery of the mystery machine was so smart and hilarious, everyone’s sides hurt.

The important lesson McHugh taught me was: Do not leave your sense of humor at the door. This work is hard enough to also be humorless. I have noted in my career that nearly every time a jury laughs with me, I acquit a person of a crime. It’s sort of like angels and bells.

That seminar, like so many of our seminars, was packed with talented and exciting speakers. Ingrid Swenson and Bill Houser spoke on the legislature. Started me down the path of being particularly interested in the politics of this organization. Jennelle Hall spoke on felony DUII. Ross Shepard moderated. David Celuch spoke, a formidable poker player and lawyer. Lisa Ludwig presented on ethics. Bob Thuemmel presented twice and closed the seminar, a master of his craft of DUII defense. A lot of people I now consider colleagues and friends I saw for the first time over those two days.

John Henry Hingson, III, gave a rousing presentation on DUII investigation. He always finds a way to move the crowd. A fine advocate and the Dean of Criminal Defense in Oregon. I could not have imagined I would have the honor of presenting him with the Ken Morrow Lifetime Achievement Award in December at the Benson. You need to be there. Going to be a great night.

Thuemmel and Uhle broke out their Intoxilizer 5000 on Friday night and we did a defense “wet lab.” Very unscientific. I am not a

Continued on next page

OCDLA Board President **Rob Raschio** is with Morris Olson Smith Starns Raschio in *The Dalles*. He serves on the Legislative and PAC committees.



lightweight, whatever that machine says.

Later that night, I vaguely remember Grant attempting to barter my body to some sailors in a shanghai-for-booze scam. Good friends are hard to come by.

Saturday morning was rough, very rough. I pulled through.

Out of the weekend, I learned that OCDLA is a community. I wanted in. I have never wanted out again. As I said in my last “View from Here,” that seminar was the first time after September 11 when I relaxed and realized that everything was going to be OK. There were people out there of good spirit and hearts protecting my freedom.

The seminar led to a job, the job led to a career, the career has led to a great life. Funny how one seminar can do so much.

Those are the facts from memory with, of course, some materials from Tracye May, who is extremely helpful.

Finally, [come to a seminar soon](#) and change your perspective. The next one is in Newport on sex cases, “[When A Child Is Involved](#),” at the same hotel as ten years ago, the Agate Beach Inn, September 16–17. Avoid Grant on Friday night. 📱

OCDLA Member Running for OSB Board of Bar Governors

In announcing his candidacy for the OSB Board of Governors, Patrick Ehlers, an Assistant Federal Public Defender, promises to “give a voice to the criminal defense perspective on the Board of Governors.” Ehlers has been a criminal defense attorney for the past seventeen years. There are currently no members of the BOG who practice criminal defense full time.

This October the Oregon State Bar membership will elect three new members to the BOG. Ehlers is running in Region 5 (Multnomah County). Active Bar members will be able to vote online through the bar’s website beginning October 3rd. Voting closes at 5:00 p.m. on October 17. To ensure you receive an email reminder to vote, [log in to the OSB website](#) and make sure your email address is up to date.

- [Read Pat Ehlers’ candidate’s statement.](#)
- [See a list of candidates and general information on the BOG.](#)

WE WILL MISS YOU...

[Check ocdla.org for updates](http://ocdla.org)

Forrest “Joe” Rieke

passed Aug. 29, 2011

“Joe was working hard to the end and would appreciate that folks in OCDLA continue to defend, defend, defend. A memorial is planned for September 23 at the PPS Blanchard Building, 501 N. Dixon, Portland, 5pm. Until then, a Bushmills and a beer back are in order. Donna would likely remind you to give your family a hug.” —Bruce Tarbox.

In lieu of flowers, the family requests that remembrances be made to the foundations near and dear to Joe’s big, gruff heart.

[Portland Public Schools Education](#) | [Oregon Health Sciences Education](#)

Trial strategy eluding you? Starving for innovative motions?



Swim in the Pond!

OCDLA’s Listserve

- expert referrals
- shared tips and insights
- even motions and case law—fast!

“We belong to what is very likely the best state organization of criminal defense attorneys. Among the many benefits of membership is the ability to use this listserv to get quick answers, to prompt discussion of current issues, and to distribute information.” — Philip A. Lewis

Free with membership

Email your request to info@ocdla.org.