



A View From Outside The Box

One Board Member's Perspective

Dick Garbutt

As my first two years of Board service come to a close, I'd like to reflect on what has happened these two years and what I would like to see for the future.

This organization is an amazing group of very dedicated staff and volunteers. It has been a real eye-opener for me to see just how much hard work happens behind the scenes and how much has been accomplished in the past two years through the efforts of our superb Executive Director Shaun McCrea, amazing staff Tracye May, Jennifer Root and Alene Sybrant, and outstanding lobbyist Mary Sofia. Accomplishments include Books Online, excellent CLEs year after year, limits on juvenile shackling and grand jury recording legislation and proposed new dependency legislation in the works. Not to mention the time and effort expended at the legislature to keep our needs and objectives in front of lawmakers.

Areas to Address

That said, there are areas I hope can be addressed in the coming years. Specifically:

By-law Review

Review of the association by-laws would ensure they remain relevant, accurate and meaningful. We should review and discuss redefining our *mission* and its *execution*, and explore additional areas of *funding* for OCDLA's operation.

As an example, our current Mission is "education." Don't we do substantially more than educate our members today?

"Oregon Criminal Defense Lawyers Association" Brand

We may want to consider what our name implies and reevaluate what our "brand" says about us. I am passionately involved in the dependency side of public defense. I constantly get rankled when I hear about the justification for funding, legislation, and more for the "defense function." Maybe we should change our name. One possibility is: "Oregon Families And Criminal Defense Lawyers Association." (*Editor's Note: In 2007 OCDLA Board Member Tahra Sinks raised the idea of changing the association's*

name [see her Board Perspective in the [Nov-Dec 2007 Oregon Defense Attorney](#)]. More recently in 2015, the Juvenile Law Committee vetted the idea of changing OCDLA's name and decided instead to focus on ways OCDLA could be more inclusive of dependency and delinquency defense lawyers without a name change.)

The Dependency World

In the dependency world, just what does the "defense function" really mean? I don't feel like I am actually "defending" my kiddo clients. My goal is completely different from defending a person charged with a crime. Reuniting families or fighting to protect children from abusive parents is not the same as representing a criminal defendant.

There is a paradigm shift in what it means to "represent" a parent after jurisdiction is taken. If one succumbs to the belief that (as in a criminal case) the person represented denies, minimizes, delays and fights the state at every turn, then the objective of obtaining timely reunification becomes a nullity. In dependency cases the objective is different. One has to "turn the tables" on DHS. The game becomes using "reasonable efforts" and "zealous advocacy" to ensure services are provided to the parent in a timely fashion; maybe seeking and obtaining more services for the parent at the front end is even better—i.e., creating and presenting your own Action Agreement. The lawyer in a dependency case needs to hold the agency's "feet to the fire" to get the represented parent access to all necessary and appropriate services quickly, which helps our clients reach the goal of family reunification faster.

Dependency and delinquency practice is not a just a sideline in OCDLA. Dependency litigation is the growth industry for our profession.

It is my belief that the legislature would be more open to understanding what we do and providing the funding we need

Continued on next page.

*OCDLA Board Member **Dick Garbutt** practices with Klamath Defender Services and serves on the association's Juvenile Law Committee. He received the Juvenile Law Advocacy Award in 2017.*

“
Reuniting families or fighting
to protect children from
abusive parents is just not
the same as representing a
criminal defendant. ”

if they understood the full extent of the massive job we all do every day; while classical defense of the criminally accused is significant and important, it is just one facet of the myriad ways that we in the public defense arena represent those in need.

I believe dependency cases have a much greater impact on society and our future than criminal cases do. Think about it: in dependency cases, we represent both the perpetrator and the victim and then work diligently to reunite them with the deep hope the child does not become the ultimate “white rat” in the process of this grand experiment.

Additionally, the legislature needs to be educated so they can understand that for public defense providers to abide by all the standards heaped on us in the dependency realm, we must have the help of at least one full-time dependency case manager per attorney. With the help of a full-time dependency case manager, we as counsel can effectively assist in reducing abuses in foster care by having adequate time in the field to proactively check on the conditions children live in. We would have adequate time to build meaningful relationships with our parent clients and adequate time to assist these parents through the day-to-

day frustrations they face and the myriad demands put on them. (See “[Preparing a Parent to Testify in Juvenile Court](#)” by Ginger Fitch in the Jan/Feb-Mar 2018 issue of *The Oregon Defense Attorney*.)

Revenue

It has become readily apparent during my tenure on the board that revenue is a constant concern. Budgeting and relying on traditional sources of funding like membership dues, publications and CLEs is not the only way to do business. I suggest an impetus on two new sources of revenue:

Ad placement

Using our presence on the internet and in our newsletter, we should further promote the advertising available to a range of professionals we use in our practices such as expert witnesses and investigative support. I know there is an argument that by doing so we are allegedly certifying their competence but that is overthinking the issue. We are all professionals, and we know enough to research the qualifications of those we intend to hire.

Legacy giving

There is presently a push to encourage legacy giving to OCDLA in members’ estate plans. However, I believe that process

needs to be further enhanced by personal member contact with the Board and with executive staff. We should all be mindful of the present and future financial needs of the organization and all the services OCDLA provides. Be an ambassador for our group to your local brethren to remind them to remember OCDLA in their estate plans. A little bit goes a long way toward paying off our building or for sponsoring or underwriting a specific CLE.

In closing, there is not enough gratitude available to thank the talented and courageous pioneers who fought the good fight to get us to where we are today. There was no road map or operator’s manual, it was done by intelligence, planning, cooperation and pure grit. I can only hope that new scions in the mold of Jim Hennings, Barnes Ellis, John Potter, Ross Shepard, Cate Wollam, Emily Simon, Bob McCrea, Ken Morrow, Janet Hoffman and last but not least the “Reverend John Henry Hingson” are coming up through the ranks to carry us forward. I am confident they are among us and we will flourish and prosper in the good work we are doing every day for the less fortunate among us.

Thank you for this opportunity to serve, and if there was just one WTF moment from this missive, then my time — so far — on the board has been worth the effort. 



Ask About Our HONORED MEMBER Membership Category

The Honored Member category is for members who are either permanently or temporarily retired from the active practice of law. Rate and benefits are the same as Professional Nonlawyer membership, but Honored Members may not vote. The Honored Member category allows members who want to continue to contribute and be part of OCDLA to do so at a reduced rate. [You may renew as an Honored Member online.](#)

Honored Members plan activities such as mentoring, travel, retirement lectures, and more. If you have ideas, contact Bob Thuemmel, bthuemmel@gmail.com, (503) 227-4601.

- [Access Retirement Webinars](#)

See Honored Members online or on page 34.

Appellate Perspective: A Monthly Audio Conversation with host **MARC BROWN.**

All episodes available [on the Library of Defense podcast page.](#)

- Episode 1—*Bonilla*
- Episode 2—*Simonov*
- Episode 3—*Ramos*
- Episode 4—*Officer Safety*
- Episode 5—*Preservation Primer*
- Episode 6—*Warrant Attenuation*
- Episode 7—*State v. Davis*
- Episode 8—*Conversation with Shaun McCrea, new OCDLA Executive Director*
- Episode 9—*State v. Prieto-Rubio, State v. Hensley*
- Episode 10—*State v. Morgan*
- Episode 11—*Oregon’s Nonunanimous Jury Provision*

