Board Perspective
Why We Need Statewide Collective Bargaining for Public Defense Services
Andy Robinson — Page 7

“The juror’s overriding responsibility is to stand between the accused and a potentially arbitrary or abusive Government that is in command of the criminal sanction. For this reason, a trial judge is prohibited from entering a judgment of conviction or directing the jury to come forward with such a verdict.”

Calendars

2018 CLEs
Winter Conference
Nov 30–Dec 1 | The Benson, Portland

2019 CLEs
Z is for Zealous
Jan 26 | World Trade Center, Portland
Trial Skills College
February 8–9 | OCDLA Office, Eugene
March Seminar
March 15–16 | Eugene Hilton
Juvenile Training Immersion Program
April 11–12 | Agate Beach Inn, Newport
Annual Juvenile Law Conference
April 12–13 | Agate Beach Inn, Newport

Annual Conference
June 13–15 | Mt. Bachelor Village, Bend
September Seminar
September 13–14 | Location TBA
Juvenile Law Training Academy
Oct 21–22 | Valley River Inn, Eugene
Public Defense Management
Oct 24–25 | Hallmark Resort, Newport
Death Penalty Defense
Oct 25–26 | Hallmark Resort, Newport
Sunny Climate Seminar
Nov 8–12 | Location TBA
Winter Conference
Dec 6–7 | The Benson, Portland

B O A R D  M E E T I N G S

2018
Sat, Dec 1, 12:30 – 3:30 p.m., The Benson Hotel, Portland

2019
Fri, Mar 15, 9:00 a.m.–12:00 p.m., OCDLA Office, Eugene
Fri, June 14, 3:00–5:00 p.m., Mt. Bachelor Village, Bend
Board Retreat — Thur–Sat, July 11–13, location TBA

Visit ocdla.org for a complete calendar of meetings.

Board Members

President: Olcott Thompson | District 6, Salem.......................... o.thompson@comcast.net
Vice President: Alyssa R. Bartholomew | Southern Oregon Public Defender, Medford .......... alyssa@sopd.net
Secretary: Jennifer Robins | District 4, Hillsboro ......................... jennifer@robinslawsite.com
Charlie Allen, Umpqua Valley Public Defender | Roseburg ......................... charlie.allen@uvpd.org
Elizabeth Baker | District 2, Eugene ................................................... ejcbakeratty@comcast.net
Nell Brown | Federal Public Defenders Office, Portland .................. nell_brown@fd.org
Stephanie Engelsman | Metropolitan Public Defenders, Hillsboro .......... sengelsman@mpdlaw.com
Richard Garbutt | District 1, Klamath Falls ......................................... rgarbutt@fireserve.net
Allison Knight | Public Defender Services of Lane County, Eugene .... aknight@lanepds.org
Andrew Robinson | Office of Public Defense Services, Salem ............... andrew.robinson@opds.state.or.us
Stacey Reding | Multnomah Defenders, Portland ....................... sreding@multnomahdefenders.org
Sara Snyder | District 5, Portland ..................................................... sara@sarasnyderlaw.com
Gina Stewart | District 3, Roseburg ..................................................... gstewart@arnesongroup.com
Neal Weingart | At-large, Portland ...................................................... neal@nealweingartlaw.com

Visit ocdla.org to view board members and meetings or a map of board districts.

Online summary of seminars and events

COMMITTEE MEETINGS

Education Committee – Mon, Dec 10, 12:15 p.m., contact OCDLA for access information.

Honored Members Steering Committee
Contact OCDLA for date and time of next meeting.

Juvenile Law Committee – Tues, Dec 4, 12:00 p.m., contact OCDLA for access information.

Legislative Committee – Tues, Nov 27, 10:00 a.m., contact OCDLA for information.

Publications Committee – Friday, Nov 30, The Benson Hotel, contact OCDLA for information.

Web Governance Committee – Mon, Dec 31, 12:15 p.m., contact OCDLA for access information.

For updated and current meeting information visit ocdla.org’s calendar of meetings. Contact OCDLA for GoToMeeting access information.

PUBLIC DEFENSE SERVICES COMMISSION MEETINGS

NEXT MEETING — December 13, 2018, 10:00 a.m. - 2:00 p.m., OPDS Office, 1175 Court Street NE, Salem, 97401. Check the PDSC online meeting schedule for updated meeting information, or contact Brooke Sturtevant, brooke.e.sturtevant@opds.state.or.us.
Winning the Day

Olcott Thompson

It’s fall. Football season, especially high school and college, is here. As a number of you know I am a Ducks fan. If you remember back to when Chip Kelly was the UO coach, the team slogan was “Win the Day,” meaning the goal was to win every battle. In the Mark Helfrich era the slogan morphed into “Better than Yesterday,” meaning continue to improve not only daily but task by task. There is also the Nike slogan, “Just Do It”; stop dancing around what needs to be done and do what you need to do.

What does this have to do with practicing law? To be good advocates for our clients, we must continue to improve. Like athletes, we can and do improve by practicing. After all, we, like doctors, practice—it is a process, not a static goal. While winning the day every day is very unlikely, even for elite athletes, we can win many battles by preparing for what we will face.

Part of “Winning the Day” is also taking care of the rest of our lives. The holistic approach to life was important to coach Chip Kelly, too. I learned from an aunt of one of the students who played while he was coach that Chip was not all about football. His impact on the players went far beyond and was more important than just playing football. He made sure his players learned skills they needed for the rest of their lives because those skills are more important than how to play football.

We also need to take care of the rest of our lives, beyond practicing law. An easy place to start is sustenance: we all need to sleep and eat to stay healthy. Every article I have ever read says we all need seven to eight or more hours sleep per night. We do. Think how well you function when you get enough sleep. Yes, we can’t always sleep eight hours a night — especially when we are in trial — but we need to work on making sure we get enough sleep, what we need, over time.

Criminal defense requires more than spending just 40 hours a week practicing law. But the time we spend with the law must be balanced with personal endeavors. We also need to “practice” at relationships. Humans are social animals; lawyers are no different. Sharing our lives with others is fun. Listen to your family when they try to draw you away from work. They usually are right, it is time to take a break and do something with them. Get a hobby or two, not a comparison of various beers or whiskeys, and spend time on your hobby. Hobbies are a way to rest your mind by using it in a different way.

We should be proud of what we do. We are quality control for the criminal system. A large part of our job is making sure the government follows its own laws in prosecuting an accused. That is why we file motions, try cases, represent our clients. We are the people who make sure the government does not cheat, that it follows its own rules, that it treats everyone fairly. Like everything, we need to continue to work toward our goals, personal and professional. Whatever you find is the best way to recharge yourself, just do it. Yes, good slogans do mean something and resonate in our lives.

Defense Funding Perspective

The current “Board Perspective” column is written by Andrew Robinson, the Office of Public Defense Services representative on our board. Like all “Board Perspective” entries, this is his opinion. OCDLA’s position regarding defense funding is that defense providers need lots more money. The board has specifically refused to take a position on how money should be divided among providers or how the system should be structured. Andy’s ideas are great. They present a new way to look at the funding issues. What is great about the OCDLA board is its civility; directors look at the same issue in different ways and we all value everyone’s input and thoughts, and we discuss the issues civilly.

Civil discussion is very important throughout all we do. We must be civil with our clients, the district attorney’s offices, judges, their staff. Everyone. Our families and friends, too. We are all too often our client’s last, best chance. Yes, sometimes we need to bite...
our tongues so much that it really hurts, but that is part of not only being a lawyer but also a member of a civil society. Very rarely does a rant accomplish much except to let off steam and make us momentarily feel better. The downside is often harming the relationship we had with the person we were ranting at.

We all need to find more productive ways to let off steam and reduce stress. I found when I lived in upstate New York that hockey was a great way to get all my aggressions out but there is very little ice in Salem. Physical exercise is usually the best way to relieve stress and it helps keep us healthy. Like everything else, find what works for you and just do it. Win the Day, be Better than Yesterday.

---

**OCDLA Board Meetings**

**2018**

Sat, Dec 1, 12:30 –3:30 p.m., The Benson Hotel, Portland

**2019**

Fri, Mar 15, 9:00 a.m.-12:00 p.m., OCDLA Office, Eugene

Fri, June 14, 3:00-5:00 p.m., Mt. Bachelor Village, Bend

Board Retreat — Thur–Sat, July 11–13, location TBA

Upcoming meetings are also posted online.

---

**Thank You!**

OCDLA Thanks these Newport businesses for donating door prizes during the Search & Seizure Seminar:

- Arr’ Place
- Best Western Agate Beach Inn
- Local Ocean Seafoods
- Marine Discovery Tours
- Oregon Coast Aquarium

OCDLA thanks these Sunriver businesses for donating door prizes during the Death Penalty Defense Seminar:

- Sunriver Resort
- Hola Sunriver

---

**OCDLA Celebrates Building Donors**

Almost 30 building donors and guests gathered at The John R. Potter Building on September 29 to honor and toast five years at 101 East 14th Avenue. Good company, yummy treats, drinks and a special cake made for a fun afternoon! Thank you, donors!

---

**Bocce Ball Tournament Winners**

Six teams, 24 players, stiff competition. Ultimately only one bocce ball team can prevail. Pictured below are the winners (left to right): Felix Cohen, Michael Shannon, Kent Hickam and Ella Cohen. Congratulations!

---

All tournament proceeds support OCDLA’s Scholarship Fund.

After the tournament players gathered with Sunny Climate Seminar attendees and guests at the welcome reception to enjoy food, drink and dancing to the music of Decades.
When in Doubt, Work Harder
Lane Borg

We live in interesting times, and for all the drama at the national political level, the day-to-day life of public defense (at least at OPDS) is controlled by the state. It now looks like the next session of the legislature will be controlled by a super majority of Democrats in both chambers. Maybe it is the natural state of public defense providers to be cautious. Maybe it’s because we think of sayings about looking gift horses in the mouth, but I would be untruthful if I did not admit to some trepidation.

I am genuinely happy for legislators who won or retained seats, especially for those from both parties who have been so supportive of public defense. But we cannot be complacent. We cannot think that we can simply sit back and watch the money roll in. OPDS is only one agency among many standing in line for more resources, each one making the case that they are the most worthy. And many of them will be worthy. I am nervous of being expected to weigh and rate worthiness for social programs.

So what to do? Now is the time for us to step up our game. Do even better work. Demonstrate our value to the system. I am convinced we can. Public defense providers perform magic every day. We just need to keep making those miracles and tell those stories. By this I mean the mundane stuff we do all the time, like helping a client find housing or treatment, as well as the bigger stuff: digging beyond the discovery to find the evidence that turns the case. Or, when we believe in an accused and go to trial against the odds; win or lose, we better the system when we help empower our clients.

Clearly the chances for additional resources look better today than before the election. Legislators are aware that outside partners like the Fair Shot Coalition are prioritizing public defense providers. The best thing we can each do is to be worthy of that trust. Continue your good work. When in doubt, work harder. Do more for your clients. Get to know your local legislator and tell them how much you want to keep doing this work but are challenged by lack of funding. Make sure they know that each of you are contributing to the economy of your community. We are not just attorneys; we are law offices that hire employees, rent commercial space, buy office supplies and, yes, work magic to save families and clients every day.

I look forward to continuing this work at this exciting time. I look forward to making the case for public defense on behalf of each of you.

OCDLA member Lane Borg is Executive Director, Office of Public Defense Services.

NOW AVAILABLE!

2017 & 2018 Case Review Summaries by Topic
Library of Defense

Members now have easier access to four year’s worth of case summaries, organized for your convenience by topic, such as search and seizure, self-incrimination and evidence code.

Each week OCDLA member Rankin Johnson identifies the key legal concepts in the appellate court and Oregon and U.S. Supreme Court cases that criminal defense practitioners need to know. He condenses that information into succinct, practical summaries. These are emailed to you and posted to the Library of Defense.

Help prepare yourself — visit the Case Summaries pages today!

Upcoming Public Defense Services Commission Meeting
December 13, 10:00 a.m. - 2:00 p.m., OPDS Office, 1175 Court Street NE, Salem, 97401.
Online calendar
Why We Need Statewide Collective Bargaining for Public Defense Services

Andy Robinson

Editor’s Note: The views in this column are those of the author and do not reflect OCDLA board policy.

Since joining the Board last year, I’ve been troubled by the dissatisfaction and conflict among public defense providers around how (and how much) the state pays us for our work.

Public defense providers may disagree about a lot, but one thing’s clear. When it comes to compensation and caseloads, the state has us right where it wants us: disorganized, divided, and weak. Most providers – probably all of us – have caseloads that are too high for our clients’ good, and we’re paid too little for them. That puts us in a destructively competitive dynamic, where the only one who benefits is the one who pays us and who also happens to be our clients’ adversary in court. It’s classic divide-and-conquer, and it’s what the system was built for.

So what can we do about it? The first thing to do is to try to get clear about the nature of the problem.

I appreciate the Office of Public Defense Services’s efforts in preparation for the upcoming budget process. I trust and respect its current leadership. A public defense “reform” project is much needed and long overdue. And I have no doubt that the data from the current studies by the Sixth Amendment Center and the ABA will help OPDS make its case for more funding and for reform more generally. I’m optimistic that OPDS will achieve improvements in public defense funding, which should, in turn, reduce caseloads and increase compensation, each of which will contribute to what I know is everyone’s top priority: providing maximal representation – as good as it can possibly be – to every last client.

At the same time, I’m deeply suspicious of half measures. Incrementalism isn’t good enough. It never really gets the job done. Even though marginal improvements may be in the offing, asking the state to voluntarily fund even a minimally fair public defense system out of the kindness of its heart is a fool’s errand, in light of the basic economics of the situation. Simply put, the state can fund whatever kind of public defense system it wants to, and it has no interest in a fair one. Asking it to fund what we’re obliged to seek – maximal representation for every client – is a pipe dream. The reasons are pretty obvious, but let’s examine them briefly.

I don’t know anything about economics, so take all this with a grain of salt, but there’s a technical term that seems to apply to our predicament. (I admit, I took this from Wikipedia, so maybe two grains of salt are in order):

Monopsony: a monopsony (from Ancient Greek μόνος (mónos) ‘single’ + ὀψωνία (opsōnía) ‘purchase’) is a market structure in which a single buyer substantially controls the market as the major purchaser of goods and services offered by many would-be sellers.

That’s us, folks. There’s only one ultimate buyer of public defense services, the state, and there are many would-be sellers. Of course, some of us negotiate our caseloads and compensation with an employer that’s formally distinct from the state, like Multnomah Defenders, Inc. (MDI) or Metropolitan Public Defenders (MPD). But those employers can’t give us anything OPDS doesn’t give them, and OPDS can’t give them anything the state doesn’t give it. As for the rest of us (private contractors and public employees), we “negotiate” more or less directly with OPDS, though negotiation isn’t really the word for it, since for the most part OPDS is in a take-it-or-leave-it position. The point is, despite the system’s apparent complexity, there’s really only one buyer for us many would-be sellers of public defense services, and that buyer is none other than our clients’ adversary in court. That puts the state in a position to substantially control the market for our services. It can

OCDLA Board Member Andy Robinson is a Deputy Defender with the Office of Public Defense Services. He serves as board liaison to the association’s Amicus Curiae Committee.

“Even if public defenders in different offices can’t actually bargain together (yet), a statewide labor organization for public defenders could help to coordinate our efforts.”
set our compensation level wherever it wants it to be to maximize its interests, at our expense and our clients’.

And there’s the rub. In addition to the “monopsony” problem, there’s an agency problem compounding it. With a normal monopsony, the single buyer controls prices, but at least the buyer is buying whatever it’s buying *for itself* (or to sell for as much as it can get). So even though it wants prices as low as possible, it still has an interest in paying enough to allow sufficient quality.

In the public defense system, by contrast, what’s being bought and sold are legal services for the buyer’s adversaries in court. That’s a fundamental conflict of interest that creates a perverse incentive: The state can set the price for our services as low as it wants, without worrying about quality, because (within very low limits like the risk of constitutional litigation) the state’s interest is in buying *low-quality* public defense services. Its larger interest is in keeping the railroad running; the state is aware that high-quality public defense services can pull a train right off the tracks. So it uses its monopsony power to set compensation low and caseloads high, thereby depressing the quality of the legal services it buys for its adversaries in court. It pays lip service to other values, but there’s no real follow-through.

That, in a nutshell, is why the current public defense system is a raw deal, both for us and our clients. All the data in the world won’t change the fundamental economics of the situation.

So what can we do about it? What recourse is there for a seller of professional services in a legally-sanctioned monopsony, where the buyer’s incentive is to use its overwhelming market power to depress not only prices, but quality too?

I’d suggest the answer is to protect ourselves and our clients by forming the kind of economic organization capable of countering the state’s monopsony power: a legally-sanctioned statewide cartel for public defenders, also known as a *labor union*. Only statewide collective bargaining can counter the state’s decisive advantage in the market for public defense services.

---

**OCDLA 2019 Pet Calendar**

$15 each
2 for $25

Calendars will be available at the Nov. 30 – Dec. 1 Winter Conference.

*Order online now, or call OCDLA.*

While supplies last.

Free shipping.
Achieving that won’t be easy and it won’t happen soon. Labor unions have met with limited success in improving compensation and caseloads in our system, largely because the suppliers of public defense services are chopped up among different nominal employers. In that way, the system is designed to throw up barriers to collective bargaining, allowing the state to maintain the economic benefit of its monopsony power without having to bargain with a correspondingly powerful labor cartel.

For instance, while my colleagues at Appellate Division can bargain collectively amongst ourselves, we can’t bargain collectively with our friends at the various trial-level public defense offices, and (more importantly) they can’t bargain collectively with each other, because even though the real buyer of their services is the state, each office has a different nominal employer.

Another problem is that while my bargaining unit at Appellate Division is buffered from our real employer by only one layer of administrative non-accountability (our nominal employer, OPDS), trial-level units are buffered by two such layers (OPDS and their nominal employer, e.g., MDI or MPD). That allows their employers to pass the buck twice as well as mine can.

Thus, at least for the time being, the divide-and-conquer set-up of the public defense system means we can’t just start bargaining collectively on a statewide level. For now, we can only take small steps in that direction.

One place to start is by unionizing the public defender offices that have not yet done so. That won’t solve the fundamental problem, but it would be progress towards a solution. And anyway, it’s a matter of principle: if you’re not bargaining collectively to the extent you can, you’re letting your employer exploit you, and your clients, for no good reason at all.

But in the long term, to really counter the state’s monopsony power in the market for public defense services, what we need is an economic organization that can bargain collectively with the state on behalf of more or less everyone who provides public defense services in the state courts. That’s obviously a huge project and the devil is in the details, but one way to get there is to move toward statewide public employment of trial-level public defenders, on the model of Appellate Division. (Indeed, in its recent paper on “The Future of Public Defense in Oregon,” OPDS signaled its interest in exploring that very possibility).

In the meantime, we need more formal economic cooperation between the unionized public defender offices. Even if public defenders in different offices can’t actually bargain together (yet), a statewide labor organization for public defense providers could help to coordinate our efforts. It could also set its own caseload standards and public defense policies more generally, a bit like the “Shadow Cabinet” in the U.K. The possibilities are endless.

Whatever we do, we shouldn’t kid ourselves. The state will never spontaneously decide to fund a public defense system that provides fair caseloads and fair compensation. Because of its monopsony power, it doesn’t have to, and because its real interest is in keeping quality low, it has no reason to. A fair system has to be compelled. Unless we find a way to achieve real, statewide collective bargaining for public defense services (such as a public-employment model for trial-level providers), the state will continue to use its decisive market power to create exactly the public defense system it wants: one that entrenches its unfair advantage over our clients by keeping compensation too low and caseloads too high.
Ever feel like you’re being *double-teamed* by the Multidisciplinary Team?

Facing child complainants *contaminated* by ongoing prosecution interviews?

Fighting *motions to admit* prior bad acts?

**YOUR STRATEGIES & DEFENSES ARE HERE!**

- Precharge Representation
- Bail and Release
- Telling the Defendant’s Story
- Evaluating Physical Findings
- Challenging Hearsay and Other Act Evidence
- Handling Experts and the Multidisciplinary Team
- False Memories
- “Vouching”
- How to try the case: jury selection, cross-examination, jury instructions

*And more!*

**NEW!! Get your copy today!**

Web-active PDF: $175 members only
Hardcopy: $225 members, $250 nonmembers
541.686.8716 | ocdla.org
It’s Unanimous: The Nonunanimous Jury Verdict Must Go.

Friends and colleagues—it is fair to say there are still a lot of open questions on the legislative front, but at least one issue is clear: it is past time for the nonunanimous jury verdict to go.

Over the last year, I have been working closely with top legislators, our esteemed colleagues and criminal justice allies, and the legislative chairman of the Louisiana Association of Criminal Defense Lawyers — who advocated for the Louisiana legislation as well as Louisiana’s Measure 2 that passed this month, leaving Oregon the remaining state to allow nonunanimous jury verdicts.

Together, we have strategized to bring forward a unanimous jury bill for 2019. Impending legislation on this issue is now a reality. As you’ve seen in the news, House Majority Leader Jennifer Williamson plans to introduce two bills — a legislative fix and a ballot measure referral. There are strong arguments that nonunanimous juries can be changed legislatively, but I suspect the legislature may prefer a ballot referral given the potential for litigation. It is also plausible that the legislature both passes the legislative fix and refers the constitutional change to the voters.

Share Your Story

Given Louisiana’s win — leaving Oregon in the dust of the past — and the makeup of the Oregon legislature, I feel confident the legislature will pass a bill this coming session. It is still incredibly important for you to reach out to your legislators and share with them why getting rid of nonunanimous jury verdicts is so important. Please look for a Members Only email with helpful messaging tips coming this week.

Other Updates

“In the Building” and Beyond...

With November 6th in our rear-view mirror, we now know where much of Oregon stands on important issues.

Oregonians mailed in and dropped off their ballots in record numbers, and they’ve spoken. Governor Kate Brown will enter her second term, Democrats have taken super-majorities in the both the House and Senate, and Oregon declined measures to allow local law enforcement to aid ICE and prevent women from accessing healthcare including abortions.

HB 3078—Waiting on the OSC

The Oregon DOJ fast-tracked the HB 3078/DA John Foote litigation to the Oregon Supreme Court to hear the criminal and civil cases at the same time. (Click here for a refresher on this issue). OCDLA’s Amicus Committee followed the litigation and dialogue over the course of this year and co-signed an amicus brief submitted to the Oregon Supreme Court. Oral arguments in both cases (John S. Foote v. State of Oregon/State of Oregon v. Santiago Maximo Vallin) were heard before a packed court room on September 13, 2018. You can watch the oral arguments here.

As OCDLA crafts our strategic plan for the upcoming long session, I will be sending out emails to the Pond requesting your case stories. If you have an idea for a law-fix or a completely new idea, email me! With your continued support, financial contribution to our Legislative Fund, and civic engagement in this process, OCDLA will continue to champion justice through the rule of law.

Big things are in our future—won’t you join me?

— Mary A. Sofia

OCDLA Member Mary A. Sofia is OCDLA’s Legislative Advocate.
One of the most important questions being presented in these cases is this: once the legislature revises a voter-passed law with the requisite supermajority, does that end the need for a supermajority vote to change parts of that law in the future? This is an imperative question for the legislature, as this ruling will impact the types of fights the legislature may take on against Measure 11, Measure 57, and other contentious laws on the books passed by the people that require the incredibly high bar of a supermajority vote to alter.

The Sixth Amendment Center Study

Is Oregon failing its obligation under the Sixth Amendment (as applied by the Fourteenth Amendment) to provide adequate public defense to its citizens? What does this mean for OPDS? What does this mean for public defense providers and defenders? What does this mean for you and me? These are big open questions that the Sixth Amendment Center is poised to answer by the end of the year. A meeting is tentatively scheduled for December 13, 2018, where David Carroll will present his findings and recommendations, with his report set for presentation in January (contact OPDS for meeting details). OCDLA’s Legislative Committee and Board of Directors are committed to fixing our broken system and supporting appropriately funded defense. I have been engaging in conversations with legislators about public defense funding all year, and legislators are paying attention.

What Does This All Mean for OCDLA?

Our mandate “Fairness in Justice” has been my mantra and my guidepost as I’ve navigated countless workgroups, sat down with legislators and their staff, and engaged with OCDLA’s hardworking Legislative Committee.

OCDLA will move forward with our legislative concepts (click here to see our agenda) and continue to coalition build with allies working on related issues. As I outlined in the previous issue, 2019 is going to be a big year — full of substantive legislative change — with legislators and allies helping us tackle public defense funding, juvenile justice issues, nonunanimous juries, and a whole slew of criminal justice reform issues.

As always, please continue to share your stories with me and schedule meetings with your legislators. I cannot do this without you!

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.

OCDLA’s Learning Center
Available for Your Meetings

OCDLA’s home office boasts a spacious room designed to host meetings, small CLEs and other events. The Learning Center comfortably holds 25 people and is equipped with a 65-inch HD “smart” television, donated by Walter Todd. HDMI cables connect your PC or Mac to allow PowerPoint presentations or online demonstrations. This space is available to all members. Schedule an event!

Conveniently located at 101 E. 14th Ave, Eugene, OR 97401.

Contact OCDLA staff to reserve — 541-686-8716.
IN MEMORIAM

Lemarr Carver & Lisa Harmening

The criminal defense bar lost two members in the past few months: Lemarr E. Carver, 42, of Beaverton, and Lisa M. Harmening, 50, who had been spending time in Arizona.

OCDLA member Lemarr E. Carver passed away on November 7, 2018, at the age of 42. Lemarr, a marine veteran, was admitted to the Oregon State Bar in 2010. He practiced criminal law out of Beaverton, focusing on DUII, sex crimes, felonies and post-conviction relief.

Former OCDLA member and long time defense private investigator and mitigation specialist, Lisa M. Harmening passed away on June 17, 2018, just shy of her 51st birthday. Lisa served as a mitigation specialist on many capital defense teams, including high-profile Oregon cases such as State v. Longo and State v. Stott-Smith.

We can take Lisa’s daughter Ashleigh’s words of wisdom to heart:

“To anyone that sees someone struggling, REACH OUT. They may not be able to ask for help. Don’t let them do it alone. Hug your loved ones, forgive your grudges, and love unconditionally. You never know which time will be a last, so say what you mean, but choose your words wisely. Always try to be nice, but never fail to be kind.”
Garrett was a rare “journeyman lawyer” who could develop a legal issue, try the case, and take it up on appeal.

Throughout her career, she was a firm advocate for women in the law, mentoring by example and with sage advice those who came within her orbit.

In 2014 due to increasingly challenging medical issues and Cate in late 2016 upon her retirement).

It is appropriate that Garrett and Cate receive this award together.

Cate writes, “We used to talk a lot about what was going to happen when either of us retired, the thought being that our duties for MDI didn’t really overlap, but rather meshed to cover what the office needed. There was no redundancy in that neither of us had a backup. We concluded that if one of us was hit by a bus the other one was screwed.”
GARRETT A. RICHARDSON

Many lawyers outside Portland may not be aware of Garrett Richardson and his influence over the development of Oregon law and criminal defense attorneys throughout his long career. Over the years, the Oregon appellate courts issued opinions in an astounding 261 cases he briefed or argued. To put this into context, Garrett received more written appellate opinions than other, perhaps more well-known appellate attorneys such as Peter Gartlan (199) and Jesse Wm. Barton (224, including Washington State opinions). Writing appeals was, as Cate puts it, “his calling…. he thought of losing the trial as the necessary predicate to getting to write the appeal, the fun part.”

Garrett was not a self-promoter. He was more interested in advancing the law case by case. He was not big on presenting at OCDLA/OSB seminars or using the Pond to crow about his wins. He was not into backslapping over drinks or penning scholarly articles to spread his fame. He valued one-on-one mentoring, nailing down his legal arguments, and making his office a welcoming place for lawyers to go for answers or a laugh. Garrett was a rare “journeyman lawyer” who could develop a legal issue, try the case, and take it up on appeal. He was a leader who knew exactly when his people needed a pat on the back, a kick in the rear, or to be left alone.

Garrett’s wife Kalynne provided some interesting background: he grew up in Raleigh, NC, and went to Catholic school at the behest of his mother. She writes, “He remembers a nun telling him he would never amount to anything so he should look into a trade school.” When describing his time at Lewis and Clark she says, “Apparently, criminal law was his weakest class in law school.”

Garrett began his criminal defense career in 1981 as a trial assistant, then as staff attorney with Urban Indian Counsel which later became MDI. Garrett became Assistant Director there during the Ed Jones era. While an administrator, Garrett still took on the trial trial-bound case and kept his hand in appeals. Over the course of his career, Garrett mentored young, impressionable (and not so young or not so impressionable) attorneys. He instituted monthly meetings (Cate calls them “Garrett Meetings”) to ensure his team was equipped with the latest legal developments. His door was always open for a legal consult.

He scored his first published opinion in 1985, a win on an MJOA that he felt strongly had been wrongly decided—State v. Sargent, 74 Or App 50 (1985). His second published opinion was also a win, this time on a difficult overbreadth issue) that came out a few months later—City of Portland v. Gatewood, 76 Or App 74 (1985). The last published opinion in one of his cases appeared on March 3, 2017, more than one year and three months after his untimely death.

During the mid-90s, mere mention of Garrett’s name during a legal argument could cause a judge to blanch and rule for the defense. “Garrett says” was a legitimate legal citation in Multnomah County in the 1990s. As Judge Aaron Brown once confided, playing the “Garrett card” often meant a win for the defense, because a judge does not “want to read [his] name in the yellow sheets.” (The fear was real. According to Cate Wollam, Garrett wanted to reverse every judge in Multnomah County.)

When Ed Jones left for the Multnomah County Circuit Court bench, many were surprised when Garrett did not become the new head of MDI. But he charged into Community Court to fill a role he thought was important for MDI to fill, and he continued to conduct appeals and serve MDI faithfully until his health forced him to take medical leave in 2014. Garrett Richardson passed away in 2015.

Although Garrett is no longer with us, his influence is still felt in the defense bar. The monthly “Garrett Meetings” inspired a member of the Education Committee, an appellate attorney who had trained under Garrett’s tutelage, to insist that OCDLA should feature an Appellate Update yearly at its Annual Conference, a tradition that continues to this day.

Garrett did not limit himself to misdemeanor trials and appeals. He also worked felonies, plea deals, parole cases, post-conviction cases, civil commitments, and juvenile dependencies and delinquencies. Garrett did it all. If you practice criminal law in this state, it is almost certain you have cited to a case that Garrett Richardson affected through his advocacy, or you’ve worked with an attorney he mentored or influenced. Again, Kalynne writes, “He loved nothing better than to see

Continued on next page
other lawyers he mentored do well.” She should know: they met at MDI where she worked as an investigator, and they were married for the better part of 20 years.

Garrett Richardson was undoubtedly the best criminal defense attorney you have never heard of. The Journeyman Lawyer we should all aspire to be, he is a fitting recipient of the Ken Morrow Award.

CATE K. WOLLAM

It is difficult to describe the impact Cate Wollam has had on the criminal defense bar without using the word “maternal.” Her influence on the trial bar, on young lawyers, and on her clients has been an outgrowth of her strength of character, her organizational prowess, her natural warmth, and her fearless defense of the underdog.

Cate was born a proud “red diaper baby,” a sixth-generation Oregonian. She is the first lawyer in her family in five generations. She is a Quaker and a firm believer in human rights and dignity. Cate studied at the University of Hawaii for a time, finishing at “a small, Catholic College in Iowa. At a time when colleges were deleting graduation requirements as ‘not relevant’ to the degree being sought, Mt. Mercy added 2, Metaphysics and Morality and Aristotelian Logic. Neither had anything to do with my major, psychology, but they have served me well and I’m glad they were required.”

Graduating from law school while pregnant with her second child, Cate did not have to be told that the law can be a difficult, if not hostile, place for women. Throughout her career, she was a firm advocate for women in the law, mentoring by example and with sage advice those who came within her orbit.

Cate, like Garrett Richardson, entered the MDI office in the early ’80s when it was Urban Indian Counsel. She became the in-house expert on driving under the influence issues. Cate estimates she has tried more than two thousand jury trials and countless court trials. Every day in the mid-90s during court call, Cate would be there, reporting ready on one or more cases. Cate notes that during one week she tried eight misdemeanor trials, and once she completed three jury trials back-to-back in one day—her “hat trick.” For those who know her and her indomitable spirit, the only thing that’s hard to believe about that is that it only happened once!

Cate once told a young lawyer that it was okay for her to feel nervous before trying a case, and confided that even she had a moment of stress as a case was called for trial. “If you don’t feel nervous, you need to get out of this line of work,” she said, “because unless you feel like there’s something at stake, you are not going to do a good job for your client.”

Cate argued strongly for her clients, celebrated the wins and mourned the losses, but did not let the caseload overwhelm her. Her clients and their families loved and trusted her. Cate once shared a letter from a frequent client’s mother who was so overwhelmed with grief that she reached out to Cate because she knew Cate would try to help her son, and even if Cate could not, she knew that Cate would understand her grief. By the 1990s, Cate was being appointed to clients who were the children of clients she represented at the beginning of her career. (This did not please her.)

Cate was able to escape the burnout that trapped so many of her contemporaries because she had an interesting and fulfilling home life, filled with dogs, her children, her late mother, and her supportive husband Aaron.

One element of Cate’s career must be mentioned: Cate was instrumental in the unionization of MDI, which was successful in the 90s. She held meetings to discuss joining a union, educating young attorneys about the benefits of unionization, getting out the vote and organizing sidewalk demonstrations to pressure management to sign contracts. Cate was one of the strongest voices advocating for equal pay, decreased caseloads, and the strength of collectivization.

In 2002, Cate had to resign from the union when she was made Assistant Director of MDI with Garrett. Though she could no longer fight the good fight for the union, she was happy to be in a role where she could influence the hiring decisions and actively train and mentor new lawyers learning their craft.

Ken Morrow Lifetime Achievement Award

Recipients:

2000: Ken Morrow, Eugene, In Memoriam
2001: Bob McCrea, Eugene
2004: Duane J. McCabe, Bend
Ralph H. Smith, Jr., Bend
2005: Jim Hennings, Metropolitan Public Defenders Office, Portland
2008: Honorable Linda Bergman, Multnomah County Circuit Court
2010: Bert Putney, Southern Oregon Public Defender, Inc.
2011: John Henry Hingson, III, Portland
2012: Justice Paul J. De Muniz, Oregon Supreme Court
2013: Emily Simon, Portland
2014: Steven Wax, Federal Public Defender, Portland
2015: Pete Gartlan, Chief Defender, OPDS, Salem
2016: John Potter, OCDLA Executive Director, 1979–2016
Another element of Cate’s career and one particularly important to this association is that she was the second woman elected OCDLA President and she served from 2009 to 2010. She presided over the Legislative Analysis PDF being made an automatic benefit of OCDLA membership, writing in the newsletter in 2010, “Our Legislative Analysis is released four or five months prior to the Criminal Code, so without my copy of the Analysis I could not properly advise my clients of the possible consequences they face… A wonderful new service for our members!” (In Cate’s honor, you can download recent editions here.)

The Board of Directors officially began fundraising for a future home for OCDLA during Cate’s term as President. She was at the helm when the Building Committee was formed and took in the first contribution of $10,000 for what is now the John R. Potter Building. She helped bring Barbara Babcock, first woman tenured at Stanford Law and first woman director of the public defender’s office in the nation’s capital, to this very dinner which will now honor Cate with the Ken Morrow Award. And, she wrote passionately in these pages about issues relating to the draconian sentences of Ballot Measure 57, the massive prison infrastructure, state underfunding of education, bail bonds injustices and the right to an in-person DMV hearing. And through it all, she led with great wit and grit.

Cate was diagnosed with Idiopathic Pulmonary Fibrosis and retired on December 31, 2016. For many attorneys of a certain age, it is unthinkable that there could be a Multnomah County Call docket without Cate sailing in on her tennis shoes, confident and blazing with justice, announcing that she’s ready for trial and woe betide the prosecutor who drew her case that day. Through the years, Cate Wollam worked to ensure justice for her clients and to assist her colleagues in professional and personal fulfillment. Cate Wollam was a surrogate mother, mother confessor, mama bear, earth mother, and mother superior to the entire criminal defense bar. Hers was a rare gift, and for that the Board of Directors will rightly bestow the Ken Morrow Lifetime Achievement Award.
**MENU**

Grilled Flat Iron Steak  
with Roasted Potatoes, Onions and Wild Mushroom Jus

- or -

Honey-Soy Glazed Salmon  
with Green Rice Pilaf, Sesame Vegetables and Lemon Aioli

- or -

Quinoa and Brown Rice Stuffed Roasted Pepper  
with Grilled Vegetables and Marinara Sauce

Salad: Mixed Greens with Cranberries, Pears, Manchego Cheese and Balsamic Vinaigrette

Dessert: Rich Chocolate Cake with Chocolate Mousse Filling topped with Chocolate Ganache

**A Special Tribute to Cate and Garrett** – Featuring special guest speakers Ed Jones, Lisa Ludwig and Jennelle (Hall) Barton, plus a fun, live auction to benefit OCDLA’s legislative work in Salem. Order your table or individual tickets today using the form below, or purchase online at ocdla.org.

---

**Yes! Please reserve for me on Friday, November 30:**

This event regularly sells out. Reserve no later than Monday, Nov. 26.

| Standard | $75 single | $150 couple | = $ ____.
| Benefitors* | $100 | $200 couple | = $ ____.
| Table Sponsor*  | $600 | = $ ____.

Name of table sponsor: ________________________________________________________________

* (Benefactors and Table Sponsors receive special recognition in the program).

---

**Payment Information:**

Total $ __________

- [ ] Check enclosed, payable to OCDLA
- [ ] AmEx/Discover/Visa/MC #

Exp. Date: __________  
CVC: __________

Billing Address: _________________________________________________________________

Name on card: _________________________________________________________________

---

Return with payment to: OCDLA, 101 E. 14th Ave., Eugene, OR 97401 / fax: 541.686.2319 / tel: 541.686.8716
Need Credits?
ORDER written material & MP3 audio

Specialty Credits
- Access to Justice
- Child Abuse Reporting
- Elder Abuse
- Ethics

Complete Seminars
2018
- Death Penalty Defense
- Juvenile Law Training Academy — Safe & Strong Families: Advocacy Strategies for Success
- Search and Seizure Seminar
- Annual Conference — Smashing Defenses
- Annual Juvenile Law Conference — Advocacy With Teeth: When the Facts Are (Or Aren’t) On Your Side
- Taking the High Road: Impaired Driving and DUII Defense
- Z is for Zealous: Effective Criminal Defense Advocacy

2017
- Winter Conference: Dancing With Your Stars
- Sunny Climate Seminar
- Unified Defense: Death Penalty Defense
- Juvenile Law Training Academy — Safe & Strong Families
- Defense Never Surrenders
- Annual Conference — Charting a New Course
- Juvenile Law — Don’t Stand Still: Juvenile Law at a Crossroads
- Defending Sex Cases
- Retirement Webinars

2016
- Winter Conference
- Death Penalty Defense
- Juvenile Law Training Academy
- Search and Seizure
- Annual Conference
- Annual Juvenile Law Conference
- Becoming an Expert DUII Lawyer
- Z is for Zealous: Effective Criminal Defense Advocacy

2015
- Winter Conference — Daring Defenses That Work

Veterans and Military Service Page at the Library of Defense

The Veterans and Military Service page provides basic information about defense and mitigation strategies in veteran defendant cases.

The page was first created by Jesse Wm. Barton (jessewmbarton@gmail.com) in May 2012.

Jennelle Meeks Barton (jmb@jessbartonlaw.com) re-designed and re-worked the page in fall 2017. Jesse Wm. Barton provided the final editing, with input from James A. Gardner (james@gardnerpotter.com).

What you will find there —
- Introduction
- Military Concepts & Terminology
- Developing a Servicemember’s Case for Pretrial Negotiations, Trial, & Sentencing
- District Attorney Diversion Authority
- DUII Diversion for Servicemembers
- Military Service as a Mitigating Factor
- Constitutional Considerations
- Additional Resources for Assistance
- CLE Presentations and Publications

Help prepare yourself — visit the Veterans and Military Service page today!
Friday, November 30
Moderated by Viktoria Safarian, Metropolitan Public Defender, Portland

8a Registration/Continental Breakfast (included)

9a ■ State v. Dulfu: Using Trial Strategy to Cap the Sentence
   Ryan Scott, Attorney, Portland

9:30a ■ Shining a Light on Discovery Part 1: Kyles v. Whitley — What Aren’t We Getting and What Should We Do About It?
   Carl MacPherson, Executive Director, Metropolitan Public Defender, Portland

10:15a Break/Door Prizes

10:30a ■ What Online Dating Taught Me About the Art of Jury De-Selection
   Deja Vishny, Deputy Training Director, Wisconsin Public Defender Office; Adjunct Professor of Law, Marquette University Law School, Milwaukee, WI

11:30a ■ Shining a Light on Discovery Part 2: Getting What You Need on Your Own
   Elizabeth Baker, Attorney, Eugene

12:15p Lunch (included)

1:15p ■ Visual Storytelling
   Joshua Cohen, Fat Pencil Studio, Portland; Nell Brown, Federal Public Defender, Portland; Steve Lindsey, Attorney, Portland; Viktoria Safarian

2:15p ■ The New Oregon Supreme Court and Upcoming Issues
   Ernie Lannet, Chief Defender, Criminal Appellate Section, Office of Public Defense Services, Salem

3p Break/Door Prizes

   Lindsey Burrows, Attorney, Portland

4p Adjourn for the day

6p Holiday Dinner and Ken Morrow Award
   Presentation to Cate Wollam & The Late Garrett Richardson, plus a live auction
   (See back cover for more info. See registration form for tickets.)

Saturday, December 1
Moderated by Peter Klym, Multnomah Defenders, Inc., Portland

8a Hot Breakfast (included)

8:30a ■ Ethics: Supervising Your Agents — Investigators, Experts, Case Managers, Social Workers, Bookkeepers and More
   Amber Hollister, Oregon State Bar, Tigard

9:30a ■ PCR Part 2: Point & Counterpoint — Strategic Decisions, Reasonable Investigation and Experts to Avoid Post-Conviction Challenges
   Noel Grefenson, Attorney, Salem; Lynn David Larsen, Department of Justice Trial Division, Civil and Criminal Rights Section, Salem

10:30a Break/Door Prizes

10:45a ■ Forensic Discovery and Challenges: What to Challenge and When, Specific Issues and Beyond
   Janis Puracal, Forensic Justice Project, Portland

11:30a ■ Beyond the Shadows: Child Abuse Reporting
   Michael Rees and Valerie Feltz, Metropolitan Public Defender, Portland

12:30p Adjourn

Program coordinated by Liz Wakefield, OCDLA Education Committee Chair
(Program subject to change)
**DISCOVERY**
Nov. 30 - Dec. 1, 2018
The Benson Hotel
Portland, Oregon

**Who can attend?**
This program is open to defense lawyers and those professionals
and law students directly involved in the defense function.

**What’s included in the fee?**
- Two days of seminar admission
- Written material download in advance
- CLE credit
- Continental breakfast on Friday, hot breakfast on Saturday
- Lunch on Friday
- Refreshments during breaks

**Financial assistance?**
Contact OCDLA by Nov. 20 about scholarships, payment plans or
creative payment arrangements.

**Cancellations**
Seminar cancellations made by November 23 will receive a
refund less a $25 cancellation fee. Cancellations made after
November 23 – once material download link has been emailed
– will receive a refund less a $100 cancellation/fee.

**CLE Registration**
ocdl.org
Phone: 541-686-8776
Fax: 541-686-6559
Mail: 101 East 14th Avenue
Eugene, OR 97401

**CLE Credit**
Oregon - pending approval
for 7.25 general, 1 ethics, and 1
child abuse reporting credits;
Washington – pending approval
for 8.25 general and 1 ethics credits. OCDLA certifies that the Winter
Conference has been approved
for MCLE credit by the State Bar
of California in the amount of
8.25 credits, of which 1 will apply
to legal ethics. OCDLA is also an
approved Department of Public
Safety Standards and Training
CLE provider. Contact OCDLA for
information regarding other states.

**Lodging at The Benson**
503-228-2000/1-888-523-6766
reservations@bensonhotel.com
Reservations must be made by
November 8. After that date
rooms may not be available at our
special rate of $155 night Deluxe
Run of House; $189 Executive King;
$259 Benson Junior Suite, $269
Executive Junior Suite.

---

**OCDLA 2018 Winter Conference**

**REGISTRANT INFORMATION**

<table>
<thead>
<tr>
<th>Name __________________________</th>
<th>Bar# / DPSST# ____________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name for Badge __________________</td>
<td>----------------------------</td>
</tr>
<tr>
<td>Address _________________________</td>
<td>State _______ Zip __________</td>
</tr>
<tr>
<td>Phone _________________________</td>
<td>Fax _________________________</td>
</tr>
<tr>
<td>Email _________________________</td>
<td>___________________________</td>
</tr>
</tbody>
</table>

**CLE TUITION AND MATERIALS**
PDF emailed in advance.

<table>
<thead>
<tr>
<th>OCDLA Members</th>
<th>Non-lawyer</th>
<th>Student</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer</td>
<td>$290</td>
<td>$25</td>
</tr>
<tr>
<td>Non-lawyer</td>
<td>$210</td>
<td>$250</td>
</tr>
</tbody>
</table>

**Other Material Options**
- Add a CD of the materials (includes supplements) for an additional $15.
- Add a hardcopy of materials (without supplements) for an additional $30.
  (Pre-order the hardcopy by November 21.)

**VEGETARIAN LUNCH OPTION**
- I would like a vegetarian lunch on Friday.

**FRIDAY HOLIDAY DINNER & KEN MORROW AWARD PRESENTATION**

<table>
<thead>
<tr>
<th>Standard Guest Ticket</th>
<th>Benefactors</th>
<th>Table Reserved for Eight</th>
</tr>
</thead>
<tbody>
<tr>
<td>$75 single</td>
<td>$100 single</td>
<td>$600</td>
</tr>
</tbody>
</table>
| $150 couple           | $200 couple | $= $_____

**CAN’T ATTEND? Get the audio and written materials.**

- Order online after the seminar, download written & MP3 audio, $230, members only
- Order online after the seminar, download written & audio CDs for CLE credit, $255, members only

**OCDLA FUND DONATIONS**
I would like to donate $25 to the:

- Scholarship Fund to assist members who would otherwise be unable to attend.
- Legislative Advocacy Fund to support OCDLA’s lobbying efforts.
- General Fund: my gift will be applied where it is most needed.
- Building Fund to help pay the OCDLA office mortgage.
- Library of Defense Fund to support this online resource.

**OCDLA MEMBERSHIP**
Membership valid through June 2019.

| Bar entry 2014 to 2017 | $190 new/$255 renewing |
| Bar entry 2013 or earlier | $270 new/$360 renewing |
| Non-lawyer Professional Membership | $105 new/$140 renewing |
| Bar entry 2018–New Bar Admittee | $50 new only |

**PAYMENT INFORMATION**
Payment must accompany registration.

<table>
<thead>
<tr>
<th>Check enclosed</th>
<th>VISA/ MC/ AMEX/ Discover</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Name on Card</th>
<th>Card Number</th>
<th>Exp. Date</th>
</tr>
</thead>
</table>

Credit Card Billing Address
Billing Zip Code
CVC #
The Time Is Now
Oregon Must Amend Measure 11 to
Rehabilitate More Juveniles

Nicole McGrath

“The time has now arrived for Oregon to amend Measure 11, Oregon’s automatic transfer law. Oregon has undertaken juvenile justice reform based on an understanding that youth are immature and prone to peer pressure, yet still capable of rehabilitation when individually assessed and connected to the evidence-based therapeutic services they need to grow and become healthy, caring community members.

Keeping youth in the juvenile system — instead of prosecuting them in adult court — will ensure more juveniles receive the treatment and services they need for rehabilitation. In addition, juveniles who can individually address their childhood trauma, undergo therapeutic treatment, and obtain an education or job training become more productive members of society and therefore communities are safer.

Nationwide, sweeping juvenile law reform efforts have been spearheaded by community movements such as End Mass Incarceration and End the School-to-Prison-Pipeline. Such efforts have gained momentum from a series of United States Supreme Court juvenile cases recognizing that children are different from adults. In Roper v. Simmons in 2005, the U.S. Supreme Court held the Eighth Amendment to the United States Constitution extends protection to juveniles from cruel and unusual punishment, including the death penalty. This seminal case adopted scientific evidence submitted by amici medical and psychological stakeholders which substantiates that juveniles are different in three significant ways: they are immature, more susceptible to peer pressure, and their character is not as well formed as an adult’s character.

In Washington state, the Roper momentum for juveniles arrived in 2015 in the Washington State Supreme Court’s decision in State v. O’Dell. The O’Dell court held that during adult sentencing proceedings, a defendant’s “youthfulness” could support an exceptional sentence below the standard sentencing range, and that in making such a finding, the trial court had discretion to grant such a sentence. The court recognized the Washington State Sentencing Reform Act had been originally drafted over 20 years prior to the Roper decision. The court found it understandable that 20 years before legislators did not have the benefit of adolescent brain development science when they enacted portions of the sentencing scheme.

The momentum continued in 2017 in State v. Houston-Sconiers when the Washington State Supreme Court rectified a grossly unjust result in a robbery case in which heavy adult sentences were imposed on two juveniles. On a fateful Halloween night, two teenagers stole candy from multiple teens at gunpoint. All parties including the prosecutor, defense attorneys, and trial judge struggled to craft a plea and sentence that reflected mercy, but found themselves constrained by the reality of strict adult sentencing guidelines. The Houston-Sconiers court held it was permissible and lawful for trial courts to consider “features of youthfulness” as mitigating factors for youth facing imposition of an adult criminal sentence. The court said that trial judges possess absolute discretion to craft and impose a sentence when particular features are present for a youth. “Features of youthfulness” have been described as a youth’s age, immaturity, impetuosity, failure to appreciate risks and consequences, the nature of the juvenile’s surrounding environment, family circumstances, extent of participation in the crime, the way familial and peer pressures may have affected him, how youth impacts any legal defense, and capacity for rehabilitation. In Houston-Sconiers, on remand, the trial judge exercised its discretion and resentenced the two teenagers to shorter sentences.

Momentum from Roper has informed legislative changes to juvenile laws in Washington as well. During the 2018 legislative session, SSB 6160 was enacted modifying Washington’s auto decline (transfer) laws. As of June 7, 2018, the following crimes

Nicole McGrath is a lawyer practicing in Snohomish and King Counties in Washington. She has participated as a trainer at two of OCDLA’s Juvenile Training Immersion Programs and as a presenter at the Annual Juvenile Law Conference.
are no longer subject to auto decline (transfer) for youth ages 16 or 17 at the time of the offense: first-degree robbery, first-degree burglary, drive-by shooting, and any violent offense committed with a firearm.16 Regarding the law change, King County Prosecutor Dan Satterberg noted, “Sending a young person into adult prison is a very serious decision that can have lifelong implications.”17 He said, “In 20 years, we’ve learned a lot about the science of cognitive development and now it’s informing our case law and our practice.”18 After passage of SSB 6160, however, conviction of such crimes, while not subject to transfer into adult court, does subject a teenager to a lengthier juvenile sentence and an increased juvenile jurisdiction, meaning the youth can be incarcerated at a juvenile rehabilitation prison (called “JR” in Washington state up to age 25).19

California has also recently codified Roper factors into that state’s auto transfer laws. Governor Jerry Brown recently signed SB 1391 into law. SB 1391 abolishes auto transfer laws for youth under the age of 16 who commit any kind of crime including homicide.20 For California teenagers convicted of crimes the new law requires incarceration in locked juvenile facilities rather than adult prisons.21 As California State Senator Ricardo Lara expressed, “We need to be tough but smart on crime. With these laws, California is reducing mass incarceration through research-based reforms that will contribute to public safety.”22

After this article was written, the Washington State Supreme Court issued State v. Bassett on October 18, 2018 and held “…sentencing juvenile offenders to life without parole or early release constitutes cruel punishment and therefore is unconstitutional under Article I, section 14, of the Washington Constitution.”23 As part of the court’s reasoning, it stressed that the trend in juvenile jurisprudence is “of affording more protections for juveniles.”24 The court looked nationally and found that “[a]s of January 2018, 20 states and the District of Columbia have abolished life without parole for juveniles.”25 A rapid enactment of abolishing this law by states can be clearly seen since the Miller case became law.26

Oregon is now well poised to invite community and legal stakeholders to wrestle with how to amend Measure 11 to create more opportunities for juvenile rehabilitation in the juvenile justice system. Amending Measure 11 will balance the need to foster more safe communities with the individual needs of convicted juveniles. Certainly not every juvenile may be rehabilitated, but some convicted juveniles will be reformed, can return home and will make healthy contributions within their own families and to society at large. The loss of a child is significant. The effect is felt by more than just the incarcerated individual; parents, brothers and sisters miss them. Aging grandparents, aunts and uncles not only miss them, but need them one day to be advocates for members of the extended family.

Rehabilitated youth can be a valuable future resource in our communities and society. Changing Measure 11 now will help.

Endnotes
4. Id.
7. Id. at 690-91.
8. Id.
10. Id. at 8.
11. Id. at 13.
12. Id. at 20.
13. Id. at 21.
15. See “Teenage Halloween robber’s sentence reduced by decades,” by Derrick Nunnally, originally published June 30, 2017, the News Tribune; and “He got 26 years for Halloween robberies. Then the Supreme Court intervened,” by Alexis Krell, originally published July 28, 2017, the News Tribune.
17. See “Seismic Shift: New law will reduce number of juveniles sent to adult court in Washington State,” by Sara Jean Green, originally published April 2, 2018, Seattle Times.
18. Id.
19. RCW 13.40.0357.
20. See “Jerry Brown limits prosecution of minors to ‘work toward a more just system’,” by Alexei Koseff, originally published September 30, 2018, Sacramento Bee.
21. Id.
22. Id.
24. Id at page 11.
25. Id. at page 18.
26. Id. at page 19.

Online JOB Board
Visit ocdla.org, click “Jobs.”

Jobs currently listed:
- Request for Qualifications, Indigent Defense Contracts, Clark County, WA
- Computer Systems Administrator, Portland
- Criminal Defense Lawyer, Newport
- Criminal Defense Attorney, Bend
- Operations Manager, Portland
- Lawyer, Bend
- Criminal Defense Attorney, Salem

View job listings or post a job opportunity. Anyone can view; you will need your OCDLA user name and password to post.
The Practice and Practicalities of Representing Children in Dependency Cases

Ginger Fitch

The media, the department case worker, the parents, the parents’ attorneys, the court-appointed special advocate (CASA), and the foster parents all have opinions about what attorneys for children ought to be advocating for and doing. Bombarded with expectations from others about how to represent our child dependency clients, it is fortunate that we have excellent guidance from the Specific Standards for Representation in Juvenile Dependency Cases (Practice Standard), the Oregon Rules of Professional Conduct (ORPC) and the dependency statutes in ORS 419A and ORS 419B. We can be reassured that research supports our ability to have a positive influence on the outcomes for our clients and their families in the child welfare system.

Children at Hearings

ORS 418.201(2) provides that foster children have the “essential right” to be “notified of, and provided with transportation to, court hearings and reviews by local citizen review boards pertaining to the foster child’s case...”. Under ORS 419B.090(2) and ORS 419B.875(2), the child as a party to the juvenile court proceedings has the right to meaningful participation in any hearing including the right to be heard and to be present. At permanency hearings specifically, ORS 419B.473(1) provides that “[t]he court may order that the child or ward or any other person be present during the hearing.” Also, ORS 419B.476(6) provides that when the court is making determinations regarding another planned permanent living arrangement, “the court shall ask the ward about the ward’s desired permanency outcome.”

Practice Standard 7(C) provides: “The child-client’s lawyer should explain to the child client, in a developmentally appropriate manner, what is expected to happen before, during, and after each hearing and facilitate the child client’s attendance at hearings when appropriate.” The commentary provides: “Whether to attend the hearing is a decision for the child client if the client is able to direct the child-client’s lawyer on this issue.” It also provides: “When the child client wishes to attend the proceedings, the child-client’s lawyer must request that the agency, as the child’s legal custodian, transport the child client to the hearing.”

Every time there is a hearing, including a Citizen Review Board hearing, explain the purpose of the hearing, who will be there and how long it will take. Then ask what the child client wants the judge to know, ask how they want that to happen: 1) you speak on their behalf with or without them there, 2) they speak to the judge in chambers or from counsel table, or 3) by writing a letter. If the child wants to talk to the judge, ask if there is anyone they want in the room and anyone they do not want in the room. Inform the caseworker that the child wants to go to the hearing and ask the caseworker to arrange transportation. Normally, a week’s notice is plenty and a couple of days is often enough. Remind child clients that it is their choice about whether they should go and whether they speak—even if a parent, foster parent, caseworker or therapist tries to talk them out of it. Finally, let children know they can change their minds at anytime.

Children’s Mental Health Records

There may be many reasons an attorney would want to protect disclosure of a child client’s mental health records—including a concern that the department may use them against the child at a future time, e.g., when the child becomes a parent. This article will address just the situation when a child does not want a parent to have those records.

Under ORS 409.225, children can object to disclosure of their records in the department’s possession. Also, ORS 419B.811 provides the court with authority to order, upon showing of good cause, that specified disclosure of discovery be denied, restricted or deferred, or make such other order as appropriate.

Be specific about what information you want protected from disclosure: the name of the treatment provider and nature of record (e.g., Morrison Center mental health assessment and therapist notes); argue it is in the child’s best interest not to disclose; use a declaration of the department caseworker or child or both to support your argument; use the jurisdictional grounds and parent’s...
behavior in the context of the case as reasons supporting the denial. Denial is a discretionary determination, so point out that “the interests of the children will always be a relevant, even primary, consideration.”

Meetings, Meetings and Meetings

All cases should have a Child Safety Meeting (CSM) early in a case. This is a department requirement that is often minimal on substance but key for meeting the ongoing caseworker. Family Decision Meetings (FDMs) are substantive opportunities to bring parties and non-parties to the table to discuss coordination of services, visitation plans and return home plans. Some counties may have Leveraging Intensive Family Engagement (LIFE) or Case Planning Meetings (CPMs) which are designed to address gaps and challenges in reducing the time to permanency for children facing many risk factors. Children may also have feedback sessions from psychological assessments, yearly Individualized Education Plan (IEP) meetings at their school, monthly Wellness Recovery Action Plan meetings (WRAP) which can be incredibly useful and productive, county developmental disability services meetings (DD) and Independent Living Program meetings (ILP) for older clients aging out of the system.

Meetings are a place to advocate, persuade, and negotiate for what your client wants. Attend them when you can, whether in person or by phone. When you cannot, send someone else or send your input in writing to the meeting facilitator—this works also for Citizen Review Board hearings you cannot attend. If you are not being invited, make a call or put in writing your request to be invited to all meetings. Your notice of representation and request for records to schools can include a sentence asking to be invited to all IEP meetings that may take place for the child.

If meetings are not happening, ask for them directly via the caseworker or provider. If that does not work, ask the court to order a meeting within a certain timeframe. Do not get too concerned with the label of a meeting but describe what you want the purpose to be and who should be at the table. Sometimes the department views an FDM in a narrow manner and will oppose setting an FDM but not oppose “a meeting to discuss visitation changes.”

Practice Standard 4(C) provides: “The child-client’s lawyer should cooperate and communicate regularly with other professionals in the case.” The commentary explains that the purpose is to get relevant information to represent a child client. Practice Standard 4(E) provides: “The child-client’s lawyer should engage in case planning and advocate for a permanency plan and social services that will help achieve the child client’s goals in the case.”

Experts and Investigators

Sometimes attorneys need the aid of an expert or an investigator. Early in the case, a child’s attorney can help build a case for or against jurisdiction based on the work of an investigator or expert. In one instance, after our investigator brought out evidence of credibility problems with the department’s key witness and Dr. Daniel Reisberg of Reed College had advised me about similar issues with the CARES evaluation and was added to my witness list, the department moved for a dismissal without prejudice. The juvenile court granted one with prejudice! Experts on child development, special needs (like autism), and attachment can provide assistance in advocating for services for your client or just advise you on how to work with your client. One savvy attorney sent an investigator to document the child’s comments about permanency options so it could be introduced as an exhibit at the permanency hearing.

Court-appointed attorneys can request non-routine expenses for the investigator and expert. Ask other attorneys for suggestions, if needed. The form requires the provider’s name, city, and phone number. Also, make sure to get the hourly rate and number of hours the provider expects will be needed. Make the request early in the process on the provided form at the Office of Public Defense Services website. It is helpful for me to use the letter

Continued on next page.
supporting the request to clarify my theory of the case and expected outcome from the investigator or expert.

Conclusion

Using the Specific Standards for Representation in Juvenile Dependency Cases and the Rules of Professional Conduct, we can all be excellent advocates for our child (and parent) clients.

Endnotes
1 See Dept. of Human Services. v. A.E.R., 278 Or App 399, 404, 374 P3d 1018 (2016) (the court has “readily concluded that a party’s statutory right to participate includes the right to testify in the party’s own behalf”).
* These sections apply equally to parent attorneys.
3 See Practice Standard 4(E).
4 See Practice Standard 6(A) and 6(E).
5 See Practice Standard 7(F).
Call for Award Nominations

Juvenile Law Advocacy Award

The OCDLA Juvenile Law Committee is accepting nominations for the Juvenile Law Advocacy Award, which will be presented at the April 12–13 Annual Juvenile Law Conference.

The Juvenile Law Advocacy Award:
• recognizes the challenging nature of practicing juvenile dependency and delinquency law, the legal complexity of these cases, the physical and emotional toll of representing parents, children, and youth when the state has intervened in the family, and the extraordinary effort required to capably and compassionately do this work.
• honors the vital services of juvenile law defense attorneys who have set high practice standards in Oregon’s child welfare and juvenile justice systems through effective and zealous advocacy.

The committee understands that there are remarkable juvenile practitioners from all parts of our state whose talents and accomplishments may go unnoticed. The Juvenile Law Advocacy Award is an opportunity for members to tell us about lawyers who are well-known, unknown or somewhere in between, so that they can be appropriately honored. The talent or accomplishment could be a particular case, an argument, a special project, or a way of working with clients and colleagues.

To Nominate

Email two to three paragraphs describing the person’s talent(s)/accomplishment(s) along with their name to Executive Director Shaun McCrea (smccrea@ocdla.org) and Juvenile Law Committee Cochairs Sarah Peterson (sarah.peterson@opds.state.or.us) and Annette Smith (asmith@lanepds.org).

We cannot accept nominations of a name only—remember, the committee may not know this person so we need you to tell us in two to three paragraphs what has distinguished them in your eyes.

The nomination deadline is January 15.

The Juvenile Law Committee will decide the Juvenile Law Advocacy Award recipient(s) in February 2019.

Julie H. McFarlane Lifetime Achievement Award

Created in 2017 following the retirement of Oregon’s legendary juvenile law defense attorney, Julie H. McFarlane, the eponymous Lifetime Achievement Award recognizes the long-standing commitment and significant achievements of juvenile delinquency and dependency defense attorneys who have made substantial, important, and enduring contributions to the administration of justice for their clients.

Nominations for the Julie H. McFarlane Lifetime Achievement Award are accepted year round, and the Juvenile Law Committee will decide each February whether to make the award at the April Annual Juvenile Law Conference.

We believe the name of a potential lifetime achievement award will speak for itself. Email nominees to Executive Director Shaun McCrea (smccrea@ocdla.org) and Juvenile Law Committee Cochairs Sarah Peterson (sarah.peterson@opds.state.or.us) and Annette Smith (asmith@lanepds.org).

To read more about the juvenile law awards and see past recipients click here.
Call 1-877-394-8966 today!

2019 Annual Conference

June 13–15
Lodging at Mt. Bachelor Village, Bend
Ref: OCDLA/316847

Our block always fills early!
See room descriptions at https://mtbachelorvillage.com/nck/ocdla/?NCK=8773948966

Celebrate 40 years with OCDLA!

Grand Jury Troubles? Ask the Pond!

for all this & more,
Swim in the Pond!
OCDLA’s Listserv
Free with membership.

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

“Don’t miss a single line of Ryan Scott’s advice – from incorrect jury instructions to demurrers he offers on FIPOs, Att Agg Murders and co-defendant indictments (and much more!) stay on the Pond!”

Subscribe
Send an email to info@ocdla.org with “Subscribe” in subject line.

Unsubscribe
Send an email to info@ocdla.org with “Unsubscribe” in subject line.

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
12th Annual OCDLA
Trial Skills College
February 8–9, 2019 • OCDLA Office, Eugene

Comprehensive and Fun Lectures
Case overview • Theory and theme development • What an actor knows • Voir dire
Opening statement • Cross-examination • Closing argument • Demonstrative evidence
Integrating theme & theory into each aspect of trial

Guest Lecturer — Keith Belzer, La Crosse, Wisconsin
A nationally recognized lecturer on trial techniques, Keith also enjoyed a productive
career as an actor, director and playwright. He weaves together the best of both worlds in
his law practice and his teaching.

Small Group Workshops & Video Review
All students use the same hypothetical Assault case (emailed in advance). Students work
in small groups on: voir dire, cross-examination (including a special cross-examination
workshop to help students assemble their cross-examinations) and closing argument.
Exercises are videotaped and reviewed by an instructor during private meetings with each
participant. The goal is helpful and supportive feedback that will make any lawyer better.

Demonstrations
Much can be learned from a lecture on voir dire or closing argument, but there is immea-
surable value in observing someone actually doing it. Our faculty will demonstrate each
of these major trial skills: voir dire, opening statement, cross-examination and closing
argument.

A CHANCE TO TAKE RISKS!
The trial college is structured so students learn and practice what they learn. The atmo-
sphere is intended to be instructive and positive. Students learn from each other as well
as from the instructors. This is the time and place to try something “outside the box.”
Creativity is encouraged. No one fails here. No one goes to jail.

REGISTRATION SPECIAL — SAVE $25 Until December 14!
Pay only $325 if you register by December 14. Register at ocdla.org or call OCDLA.
Also, send an email to info@ocdla.org that states the number of years you have practiced
and the number of criminal trials you have had. This information is used for group place-
ment purposes. After December 14 registration is $350 ($400 after January 25).

CLE Credit Pending in Oregon for approximately 16 practical skills credits.
Scholarship Assistance Scholarship assistance is available, inquire at OCDLA.
Questions? Call the OCDLA office, 541-686-8716.

FOR RECENT GRADUATES AS WELL AS SEASONED VETERANS
OCDLA, 101 East 14th Avenue, Eugene, OR 97401, (541) 686-8716, info@ocdla.org, ocdla.org
OCDLA’s

BOOKS ONLINE

Just turned nine!

OCDLA’s veterans representation manual now added!

9 Books just $149/year.

Visit the Library of Defense and find the “Books Online” tab for more info.

Order here.
Pushing the Envelope to Limit FST Testimony

Matthew Blythe

A recent Court of Appeals decision held that common testimony about the walk-and-turn and one-leg-stand field sobriety tests (FSTs) is scientific evidence, which places significant limitations on the state’s ability to rely on the tests without calling an expert to lay a scientific foundation.

Consider a typical investigation into driving under the influence of intoxicants. A police officer administers standardized field sobriety tests—the horizontal gaze nystagmus, the walk-and-turn, and the one-leg stand. The officer testifies at the subsequent trial that he or she has been specially trained to uniformly administer the walk-and-turn and one-leg-stand tests and will periodically practice administering the tests on intoxicated people in “wet labs” under controlled conditions. Each test has a certain number of “clues.” The officer says that the defendant got a failing score on both the walk-and-turn and the one-leg stand, which is proof that he or she was intoxicated.

The type of testimony about the walk-and-turn and one-leg stand described above is no longer tenable. In State v. Beltran-Chavez, 286 Or App 590, P3d 590 (2017), the Court of Appeals held that an officer’s testimony that the defendant “failed” the walk-and-turn or one-leg-stand FSTs constitutes scientific evidence that is not admissible without a proper foundation. The Court of Appeals observed that “the walk-and-turn and one-leg-stand tests allow officers, and through officers’ testimony, the jury, to spot commonly known signs of intoxication.” Thus, “certain officers may be practical experts in recognizing intoxication, and, when they are, they may offer expert opinions on that topic without first showing that the process by which they arrive at their opinions is scientifically valid, provided that their testimony does not imply that it is based on science.”

But the court distinguished evidence describing signs of intoxication displayed by suspects while performing FSTs from evidence that defendant “passed” or “failed” the FSTs. Whereas “[t]he jury will not perceive evidence describing the test performance as scientific because the evidence will relate to commonly known ‘observable symptoms’ or ‘signs’ of alcohol impairment that comport with jurors’ own knowledge and experience[,]” a jury “would perceive the proposition underlying the testimony that a defendant ‘failed’ the walk-and-turn test or one-leg stand test as scientific[].”

That is because the conclusion that a person “failed” either test “does not derive from common understanding or the officer’s practical expertise.” Instead, the conclusion “relies on an external scoring rubric” developed through scientific research purporting to show a statistical correlation between exhibiting a certain number of clues on the test and having a high BAC. The state cannot offer evidence that relies on such a rubric without laying a proper scientific foundation.

Where They Derive Their Authority

The results of the walk-and-turn and one-leg-stand tests draw their persuasive authority from an external scoring rubric that the jury is likely to perceive as scientific.

“A jury may perceive expert testimony as scientific if it rests on a scientific underpinning that is unfamiliar to the jury or if it is phrased in scientific terms.” Thus, the distinction between scientific evidence and other types of expert testimony is largely about the jury’s perception. Scientific evidence is likely to have an “unusually high degree of persuasive power,” and a court must exclude that evidence unless it can be sure that the “persuasive power is legitimate.”

The Beltran-Chavez court held that an officer’s testimony that a defendant “failed” the walk-and-turn or one-leg-stand FSTs constitutes scientific evidence that is not admissible without a proper foundation.

Where They Derive Their Authority

The results of the walk-and-turn and one-leg-stand tests draw their persuasive authority from an external scoring rubric that the jury is likely to perceive as scientific.

“A jury may perceive expert testimony as scientific if it rests on a scientific underpinning that is unfamiliar to the jury or if it is phrased in scientific terms.” Thus, the distinction between scientific evidence and other types of expert testimony is largely about the jury’s perception. Scientific evidence is likely to have an “unusually high degree of persuasive power,” and a court must exclude that evidence unless it can be sure that the “persuasive power is legitimate.”

The state cannot offer evidence that draws its persuasive authority from the rubric unless it calls an expert to establish a valid connection between a defendant’s level of intoxication and his or her score on the tests.
Under Beltran-Chavez, an officer can use the walk-and-turn test to put suspects in a situation where they are likely to display commonly-understood signs of intoxication, such as poor balance and poor hand-eye coordination. And an officer can properly describe his or her observations of the suspect during the test and explain why those observations indicated impairment.

The officer’s testimony becomes scientific evidence—which requires a scientific foundation—when the focus shifts from the officer’s observations of a suspect during the walk-and-turn test to the officer’s evaluation of a suspect’s performance on the test in a way that suggests that the test, itself, is the source of the officer’s conclusion.

Currently, there are no Oregon appellate cases accepting the scientific validity of the rubric used to score the walk-and-turn and one-leg-stand tests. As a result, the state cannot offer evidence that draws its persuasive authority from the rubric unless it calls an expert to establish a valid connection between a defendant’s level of intoxication and his or her score on the tests.

Pushing the Envelope of Beltran-Chavez

Although the court stated that its holding of Beltran-Chavez is narrow, its reasoning undermines the state’s continued reliance on the walk-and-turn and one-leg-stand tests as two of the three components of the standardized field sobriety tests. Defense attorneys can raise some additional limitations so that they can eventually be litigated in the Court of Appeals to take Beltran-Chavez to its logical endpoint.

Clues

First, Beltran-Chavez should categorically prohibit all testimony about clues—both the description and number of clues on each test and the defendant’s specific score on each test. If testimony that a defendant passed or failed a test is scientific because it relies on an external rubric, then the clues that make up the rubric itself are also scientific. Officers can testify based on their experience that people who are intoxicated tend to have problems walking in a straight line. But calling the inability to walk in a straight line a “clue”—and saying that a certain number of clues is indicative of impairment—draws persuasive authority from the rubric of the test rather than the officer’s own observations and experience.

The Language of Standardization

Second, even referring to the one-leg-stand and walk-and-turn tests as “standardized field sobriety tests” is problematic because that label suggests some degree of standardization—which in common parlance is just another word for scientific validity.

Officers frequently testify about their training in administering the field sobriety tests in a way that makes the tests seem very scientific. For example, a jury is much more likely to be persuaded by the test itself—as opposed to the officer’s common-sense observations during the test, which are often easier to refute—after
hearing officers’ references to standardization, certification, or participation in wet labs.

It is unlikely that courts will altogether prohibit officers from testifying that they are trained to administer the walk-and-turn and one-leg-stand tests as a way to recognize impaired drivers. But an officer saying that he or she has been trained to administer the field sobriety tests is much different than saying that he or she has been certified to perform those tests and frequently participates in wet labs to ensure that he or she is performing the tests in a way that will yield standardized results. Defense attorneys should attempt to curb descriptions of the training that give the tests unjustified persuasive power in the eyes of the jury.

Conclusory Statements that Rely on the Rubric Rather Than the Officer’s Own Expert Opinion

Third, officers must narrowly tailor their conclusory statements about the defendant’s performance on the tests. Although officers can form expert opinions based on their own observations, they cannot rely on the walk-and-turn or one-leg-stand tests to make the conclusion for those tests without establishing that they are relying on a scientifically valid scoring rubric. Beltran-Chavez presented a straightforward application of that rule—the officer in that case explicitly testified that defendant “failed” the test, which clearly invoked an external rubric for which the state failed to lay the proper scientific foundation. But officers can also invoke an external scoring rubric without explicitly saying that the defendant “failed” the test.

Assume, for example, that the suspect starts the walk-and-turn test early, before the officer has given all the instructions. The officer might conclude that the early start is not indicative of impairment under the circumstances because English is not the suspect’s first language. Nevertheless, the officer notes that the suspect started the test early because that is one of the clues that she is trained to look for. The officer notes other clues that she may or may not personally find persuasive, then applies the rubric to those clues and concludes that the suspect was intoxicated. Even if the officer does not testify that the suspect failed the test, her opinion is still based on the scientific rubric of the test rather than on her own training and experience.

Thus, defense attorneys in DUII cases should dissect the basis for the officer’s opinion to determine which aspects of the defendant’s demeanor the officer found most noteworthy in forming his or her opinion. The attorney should move to exclude any conclusory testimony that substitutes the rubric of the test for the officer’s own personal judgment. The trial court should exclude that testimony under Beltran-Chavez.

Conclusion

Stripped of their scientific trappings, the one-leg-stand and walk-and-turn tests are essentially holistic—and, therefore, ambiguous—methods of getting suspects to display commonly-understood signs of intoxication such as poor balance and lack of coordination. Defense attorneys should not let the state get away with treating the tests as anything more than that without a proper scientific foundation.

Endnotes
3 286 Or App at 615-16.
4 Id. at 606.
5 Id. at 604 (emphasis added).
6 Id. at 606, 614.
7 Id. at 607.
8 Id. at 607 n 11.
9 Id. at 611-12.
Save the Date — January 26, 2019

Z is for Zealous
Effective Criminal Defense Advocacy
World Trade Center, Portland

- Engaging, experienced speakers.
  - Practical advice you can use immediately.
  - Full details coming soon.

Register at ocdla.org.

Your BEST DEFENSE starts here.

Felony Sentencing in Oregon
Guidelines, Statutes, Cases
Included with Books Online!
Edited by Jesse Wm. Barton
2012 Edition — INCLUDES January 2018 Update

Be the lawyer who —
- excels at plea negotiations
- succeeds at sentencing

with a manual that delivers —
- objective discussion of legal issues & defense perspective
- practice tips
- guidelines rules and analysis
- must-know constitutional challenges to sentencing options
- Sentencing Guidelines Grid

$225 — PDF license for 1–3 users
$425 — 1 Hard copy & PDF license for 1–3 users
$275 — Hard copy only
hard copy includes one color, laminated Sentencing Guidelines Grid (2016)

Buy the book here.
Buy just the January 2018 Update here.
Help for Oregon Veterans Is Here:

- Discover the Veterans Defense Resource Center.
- Learn how to obtain military records.
- Study the “good soldier” defense.
- Read about military culture, PTSD, TBI and the impact of warzone deployment.
- Draft motions on admitting expert testimony, and crib from a sample sentencing memorandum.
- Understand the effects of arrest, conviction and incarceration on federal VA benefits – for your client and their family.
- Learn how to avoid providing constitutionally deficient representation of veteran clients.

And so much more. With 15 chapters submitted by the defense, the prosecution, the judge for Lane County’s Veterans Treatment Court, and experts, OCDLA’s *Still at War* will stand as the definitive guidebook for working with Oregon’s veteran defendants. **BOOKS ONLINE:** Access all chapters (and eight additional manuals) on your tablet, smartphone, or laptop whereever wi-fi is available. For more information, visit the Books Online page in our [store](#).
State v. Benjamin Keith Beckerich
State v. Bryan Giovanni Tucker

Susan Elizabeth Reese

Cases: State v. Benjamin Keith Beckerich
Defense Counsel: Lisa Ludwig and Kevin Ellis, 2nd chair
With help from Tiffany Harris and prior counsel Gabriel Biello
Defense Support: Mike Nations, investigation; Linnea Morrow, paralegal
Defense Expert: Dr. Wendy Bourg
Court: Columbia County Circuit Court Judge Ted E. Grove
Prosecutor: Columbia County DDA John Berg
Trial Dates: October 3–5, 2018
Charges: Sexual abuse in the first degree [one count]
Verdict: Not guilty

Ben Beckerich and W. R. were young, just 22 and 19, when they began dating. W. quickly became pregnant; uncertain of the future of the relationship, however, she disappeared from Ben’s life until after the birth of their son, F. She contacted Ben again when F. was about six months old, and they renewed their relationship. They married in 2006, shortly after F.’s second birthday.

The couple had five additional children, four sons and a daughter, who ranged in age from 2 to 12 years old at the time of trial. Their couple’s household was relatively “traditional,” with W. home-schooling and caring for the children and Ben working hard in his construction firm. On weekends, Ben also played hard—mountain climbing and competitive road biking. F. helped his mother with the younger children. Acting in the fashion of a younger “man of the house,” he was a friend and confidante of his mother.

When F. was nine, his dad sustained a serious climbing accident. This not only curtailed Ben’s vigorous weekend sports but also meant that he was home more often. He treated his five sons as a little “squad,” setting limits and imposing rules. F. chafed at the new order his dad imposed; interested more in art and reading, he began to act out and threatened to run away.

After a fight with his father when he was 11, F. complained to his mother that his father had shown him some photos of semi-nude women. Ben admitted having done it and apologized. The tension continued, however, and it was exacerbated when Ben began an affair with W.’s sister. F. found them in a romantic encounter and reported it to his mother, but both Ben and his sister-in-law denied the relationship.

Unconvinced, W. secretly began to save money, set up a new bank account and took other steps toward a separate life. F. urged her to divorce Ben, but W. testified at trial that she didn’t feel she could just take her six kids and leave her husband. When F. complained to her about Ben one night via text message, she responded that she couldn’t act unless Ben had done something serious like molested him. F. then reported to his mother that, years ago, when his father had shown him the adult photos, “I think maybe he touched my penis.” W. reported this, and the investigation began.

Interviewed at the Amani Center, F.’s descriptions of the alleged abuse included many statements that “Mom and I believe” or “my mother and I feel….” The comments helped Dr. Wendy Bourg suggest an alternative explanation for F.’s claims: he was helping his mother find a reason for divorce that her church would accept.

W. petitioned to dissolve the marriage just three weeks after Ben was indicted, and the proceeding was completed well in advance of the trial.

Ben’s prior counsel, Gabe Biello, prepared the case thoroughly and generously offered his help when Lisa Ludwig and her team took over Ben’s defense. A week before trial, DDA Berg filed a motion (under seal, but without a protective order) indicating his intention to offer evidence of Ben’s homosexuality to prove his
“interest in penises.” He claimed that State v Williams, 357 Or 1 (2015), justified this offer.

Tiffany Harris jumped on this issue, involving the ACLU and other advocacy groups, as well as colleagues with experience in the area to resist this proffer. Berg’s supervisor, District Attorney Jeff Auxier, listened to these voices, reviewed the law, and consulted with other district attorneys he knew and trusted. He had the courage and honesty to insist that his deputy withdraw this motion before trial.

Without the spectre of improperly prejudicial claims in the background, Ben had a fair trial on the evidence. The recording of F’s interview at the Amani center suggested his motive of helping his mother. W. was evasive and hostile on the witness stand. Ben was firm and credible in his denials of any improper conduct.

About 7:00 on Friday evening, October 5, Ben’s jury concluded just over two hours of deliberations with a decision rendering his mother. W. was evasive and hostile on the witness stand. Ben’s interview at the Amani center suggested his motive of helping courage and honesty to insist that his deputy withdraw this motion with other district attorneys he knew and trusted. He had the interest in penises.” He claimed that about Bryan’s statement, she added details to her story and claimed no reason to doubt her. He did, however, admit that they had contact, but in later interviews she expanded her story. Bryan also with Bryan.

From her on his 18th birthday, he called her to ask why. At that just 16 years old, and later an even younger 15. Nearly as tall as the spring of 2015 at the local high school. She asked him for Ryan T ucker was 17 years old when he met Kaitlyn Rogers in About 7:00 on Friday evening, October 5, Ben’s jury concluded just 16 years old, and later an even younger 15. Nearly as tall as the spring of 2015 at the local high school. She asked him for Ryan T ucker was 17 years old when he met Kaitlyn Rogers in

Bryan Tucker was 17 years old when he met Kaitlyn Rogers in the spring of 2015 at the local high school. She asked him for a cigarette, claiming at first that she was 17, then admitting she was just 16 years old, and later an even younger 15. Nearly as tall as Bryan’s 5’10”, Kaithe had lip piercings and a sophisticated demeanor that suggested she was at least as old as he.

The two established a relationship that eventually became sexual and continued for several weeks. When Bryan didn’t hear from her on his 18th birthday, he called her to ask why. At that point, her mother told him that she was only 12 years old, and Bryan immediately ended the relationship.

Kaithe, however, was upset and made several suicide gestures which eventually led to a police investigation of her relationship with Bryan.

When a detective first spoke with Kaithe, she denied any sexual contact, but in later interviews she expanded her story. Bryan also spoke with detectives, insisting that Kaithe had led him on, insisting that she was at least 17 and acting sufficiently mature that he had no reason to doubt her. He did, however, admit that they had engaged in consensual sexual activity. Once the detective told Kaithe about Bryan’s statement, she added details to her story and claimed she had tried to say “No” to his advances.

Continued on next page.
Bryan was indicted in June of 2017 but not arrested until August. The case had languished after the initial investigation and would likely have been dropped without Bryan’s cooperative statement to officers when he was questioned. Despite family support and work as an aspiring glassblower, he remained in custody until the end of the case.

At trial, defense counsel was prohibited from presenting Kaite’s lies about her age but pointed to many inconsistencies in her varied stories about the events and to multiple gaps in the state’s evidence that had been redacted due to a successful motion in limine by the state. Kaite’s own mother – called as a witness by the state – provided contradictory testimony about her daughter’s age at various dates important during trial.

Bryan testified on his own behalf, admitting his acts but insisting that “what he had learned” when he talked to Kaite’s mother caused him to immediately end the relationship. Because his ignorance of her age was not a legal defense, the state redacted references to that belief when introducing his “confession” into evidence. The result seemed to serve more to confuse and upset the jury than to help them determine their verdict.

Outside of the presence of the jury, defense counsel Gregory Day argued the injustice of a law that treated a 17-year-old (whose acts had been induced by lies) in the same way as an adult predator. At every opportunity, he challenged the strength and credibility of the state’s evidence and pointed out that Bryan, too, had been a minor during the time of the relationship.

After a week’s hard-fought battle, the jury returned a verdict on the many charges which the judge summarized as a package: “Not guilty on all counts,” which defense counsel characterized as a “jury nullification.” Those Beautiful Words gave Bryan his freedom and a new life as an adult.
**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 42.

---

**Laminated Guides**

**Add these to your collection —**

- **Expungement Guide** (2016)
- **Juvenile Dispositional Grid** (2016)
- **Oregon Constitution** (2011)
- **Preservation of Legal Issues** (2016)
- **Sentencing Guidelines Grid** (2018)

$20 members ($25 nonmembers)

Don't forget to log in to get your member discount.

---

**Juvenile Defender Scholarships**

The OCDLA board has designated two $500 scholarships for two juvenile defender members to attend the National Juvenile Defender Center’s Certified Juvenile Training Immersion Program (JTIP) Trainer Course, which takes place during the summer when funding allows. Attendees become certified JTIP trainers and are able to teach Oregon lawyers and lawyers in other states the JTIP curriculum, which is designed to help defenders achieve the highest level of advocacy for their clients. OCDLA has offered two JTIP lessons in conjunction with its spring Annual Juvenile Law Conference since 2015. Check NJDC’s website for announcements regarding its summer JTIP Trainer training schedule.
Donors Make the Difference
Thank you to all of our donors.*

**SCHOLARSHIP FUND**

<table>
<thead>
<tr>
<th>Amount</th>
<th>Donor Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>$3000+</td>
<td>Emily Olson-Gault</td>
</tr>
<tr>
<td>$501–$1,000</td>
<td>James W. Gardner</td>
</tr>
<tr>
<td>$251–$500</td>
<td>David T. McDonald</td>
</tr>
<tr>
<td>$101–$250</td>
<td>Martin C. Habekost, Roy A. Moffitt, Philip W. Studenberg, Valerie Wright</td>
</tr>
<tr>
<td>$26–$100</td>
<td>Jenifer Feinberg, Chris Hansen, Victor J. Hoffer, Shaun S. McCrea, James G. Rice, Bob Thuemmel, David M. Veverka</td>
</tr>
</tbody>
</table>

*Photo by Geoffrey Squier Silver.*

**LEGISLATIVE ADVOCACY**

<table>
<thead>
<tr>
<th>Amount</th>
<th>Donor Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1001–$2000</td>
<td>Steven H. Gorham, Olcott Thompson</td>
</tr>
<tr>
<td>$501–$1000</td>
<td>Emily E. Elison, James D. Hennings, John H. Hingson, Shaun S. McCrea, John Potter</td>
</tr>
<tr>
<td>$251–$500</td>
<td>James A. Arneson, C. Lane Borg, Mary Bruington, Shannon Rae, Douglass, Jason E. Thompson</td>
</tr>
<tr>
<td>$101–$250</td>
<td>Katherine O. Berger, James Comstock, Jeffrey A. Cone, Nancy J. Cozine, Michael Paul Muniz</td>
</tr>
<tr>
<td>$26–$100</td>
<td>Deborah K. Cummimg, Julia Demorest, Sara Foroshani, Shelley L. Fuller, Peter Gartlan, Adam Greenman</td>
</tr>
</tbody>
</table>

**GENERAL FUND**

<table>
<thead>
<tr>
<th>Amount</th>
<th>Donor Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2000+</td>
<td>Tom Cronkrite</td>
</tr>
<tr>
<td>$501–$1,000</td>
<td>Roscoe C. Nelson</td>
</tr>
<tr>
<td>$251–$500</td>
<td>Richard L. Garbutt, Chris Hansen, Andrew Robinson, Philip W. Studenberg</td>
</tr>
<tr>
<td>$26–$100</td>
<td>Keith B. Rogers, Gregory K. Herbert, Jacqueline A. Joseph, Teresa (Tess) A. McMahill, Alan D. Reynolds, Stephen Yerger</td>
</tr>
<tr>
<td>$1,000+</td>
<td>Steven H. Gorham, Steven L. Kraskik</td>
</tr>
<tr>
<td>$251–$500</td>
<td>Michael R. Levine, Alice Ellis Gaut, Robert C. Homan</td>
</tr>
</tbody>
</table>

**LIBRARY OF DEFENSE FUND**

<table>
<thead>
<tr>
<th>Amount</th>
<th>Donor Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to $100</td>
<td>Emilio F. Bandiero, Tracey May, Philip W. Studenberg</td>
</tr>
<tr>
<td>$251–$500</td>
<td>Michael R. Levine, Alice Ellis Gaut, Robert C. Homan</td>
</tr>
<tr>
<td>$101–$250</td>
<td>Steven H. Gorham, Steven L. Krasik</td>
</tr>
</tbody>
</table>

*Photo by Geoffrey Squier Silver.*

*Donors January 1, 2018, through November 16, 2018. View donors online. Please contact info@ocdla.org with corrections, updates, or concerns about our donor lists.*
**Building Fund**

(Donations and Pledges as of November 19, 2018)

View donors online.

**Visionary** – $50,000+
- Roscoe C. Nelson, Jr.

**Defender** – $10,000+
- Richard A. Cremer
- Chris & Suzanna Hansen
- Gordon Mallon
- Lawyer, P.C.
- David McDonald
- Mary Potter
- John & Beverlee Porter
- Law Office of Robert Raschio
- Susan Elizabeth Reese & John Painter Jr.
- Steven J. Sherlag
- Law Office of Terri Wood, P.C.
- Campaign Supporter

**Guardian** – $7,500+
- Jim Hennings
- McCrea PC
- Creighton & Rose, P.C.
- Pacesetter – $5,000+
- Angeli Ungar Law Group
- Russell Barnett
- Kelly R. Beckley
- Paul J. De Muniz
- Hoevet Boise Olson
- Howes
- Edward A. Kroll
- John B. Lamborn, Jr.
- Attorney at Law, P.C.
- Phillip Margolin
- Anne & Dave O’Brien
- Cow Creek Band of Umpqua Tribe of Indians
- Ferder Casebeer
- French & Thompson, LLC

**Partner** – $2,500+
- David Audet
- Lane Borg
- Thomas Crabtree
- Daniel A. Cross
- Campaign Supporter
- Hugh Duval
- Braulio Escobar
- Steven H. Gorham
- Greg Hazarabedian
- John Henry
- Hingson, III
- Megan L. Jacquot
- Peter A. Ozanne
- Robert Schranks

**Associate** – $1,000+
- Fred W. Anderson
- James A. Arneson PC
- Ann S. Christian
- Eve Oldenkamp & Mark Costello
- Cynthia Hamilton
- DeAnna M. Horne
- Bronson James
- Eric Johansen
- Barbara & Scott Jones
- Riley P. Jones
- Gregory A. Karpstein
- Dr. Richard Kolbell
- Paul Levy & Judy Jewell
- Lisa J. Ludwig
- Max Mizewski
- Herbert A. Putney
- Brook & Valerie Reinhard
- Ross M. Shepard
- Alene & Shannon Sybrant
- Bob Thuemmel
- Greg Verlaufl
- Cate Wollam & Aaron Greenberg
- Campaign Supporter

**Supporter** – $500+
- Tonkon Fund at the Oregon Community Foundation
- Gary Berlant
- Joe Conyard
- Jenny Cooke
- Alice D. Ellis Gaut
- Guy Greco
- Adam Greenman
- David A. Hill
- Robert & Jessika Kaiser
- Chris L. Lillegard
- Tracey May
- Keith B. Rogers
- Jennifer Root
- Geoffrey S. Silver

**Friend** – Up to $499
- Dixie Adams
- Carol J. Andersch
- Karl G. Anuta
- M. Janise Augur
- Linda G. Beloof
- Katherine O. Berger
- Thaddeus A. Betz
- Kelsyn Bevins
- Janet M. Boyrano
- Mary Bruington
- Erik M. Bacher
- Bradley A. Cascagrete
- Jesse Coggins
- Richard Cohen
- Joseph M. Connelly
- Nancy J. Cozine
- Robert Crow
- Shannon Rae Douglass
- Ben Eder
- Douglas M. Engle
- Samantha R. Evans
- Jeni Feinberg
- Mary C. Goody
- Terrance Gough
- Kent Hickam
- William Howell
- Patricia Jaqua
- Steven L. Krasik
- James D. Lang
- Rosalind Manson Lee
- Kenneth Lerner
- Lann & Melody Leslie
- Philip A. Lewis
- Joseph G. Maier
- Duane McCabe
- Josh McCarthy
- Karen McGowan
- Teresa A. McMihill
- John M. Morrell
- Lynn Myrick
- David M. Orf
- David Paul
- David M. Pebworth
- Robert N. Peters
- Beverlee Potter
- Joe B. Richards
- Lore Rutz-Burri
- David & Jessica Saydack
- Brian Schmonsees
- Greg Scholl & FFOTMEM
- Michael W. Seidel
- Mary A. Sofia
- Michael W. Staropoly
- Janan Stoll
- Suzanne Taylor
- Olcott Thompson
- Sheri Thonstad
- Troy & Rosenberg, P.C.
- Elizabeth N. Wakefield
- Law Office of Owyhee
- Weikel-Magden
- Larry Workman
- Brian Zanotelli

**Building Projects Fund**

(Donations as of November 19, 2018)

View donors online.

-$500+
- Steven L. Krasik
- John Potter

Up to $150
- Tracey May
- Dave O’Brien
- Alene Sybrant

The Building Projects Fund will help OCDLA pay for a new exterior paint job, bathroom improvements, and upgrades to its security camera system and sewer system.

How to Help

Donate to an OCDLA Fund
You may send a check in the mail, [DONATE ONLINE](#) (one time donation or set up monthly payments), or contact our office at 541-686-8716 or [info@ocdla.org](mailto:info@ocdla.org).

Scholarship Fund
Assists members who otherwise are unable to attend OCDLA seminars.

Legislative Advocacy
Support OCDLA’s lobbying effort which focuses on securing public defense funding, promoting legislation beneficial to the criminal justice system, and protecting the constitutional and statutory rights of those accused of crime. This is not the OCDLA-PAC.

Library of Defense
Donations go specifically toward maintaining and updating this online research wiki.

Building Fund
Accelerates the retirement of OCDLA's mortgage.

Building Projects Fund
Pays for building maintenance and improvements.

General Support
Supports office operations and is applied where most needed.

Door Prizes
OCDLA always appreciates the help it receives from business owners who are invaluable in making our seminars and events more enjoyable.

Legacy Giving
Contact [info@ocdla.org](mailto:info@ocdla.org) for materials to take for your financial planner. Plan your future, and help OCDLA at the same time! Charitable gift annuities, charitable remainder annuity trusts, and other planned giving vehicles are a great

Total Donations
$253,693
## Our Members

### Welcome New Members

**Recent/Regular Bar**
- Adam Arthur
- Ryan Baker
- Alicia Kay Eagan

- Megan M. Halley
- Catherine Hord
- Alice Jayne
- Louis Marcanti
- Cyral Neeley
- Whitney Phelps
- Alexis Rado
- Laura Ruggeri
- Justin Rusk
- Michelle Thomas
- Peter Tinsley

**Nonlawyer Professional**
- Tana Gutza
- Sophia Jewett
- Amy Knudsen
- Eric Squires

**Academic**
- Hughie Barnett
- Kassidy Hetland
- Ally Lee
- Kirsten Parsons

- Zach Richey
- Brenna Twohy
- Jay Winn

### Life Members

**M. Janise Augur**

- Kelly R. Beckley
- James E. Bernstein
- Michael P. Bertholf
- Claudia E. Browne
- Christopher Edward Burris
- Peter J. Carini
- David R. Carlson
- Jenny Cooke
- Richard L. Cowan
- Richard A. Cremer
- Mark Austin Cross
- Michael D. Curtis
- Jacques P. DePlois
- Edward L. Dunkerly
- Jay Edwards
- Thomas L. Fagan
- Daniel L. Feiner
- Paul M. Ferder

- Laura Fine
- Steven H. Gorham
- Chris Hansen
- Fredrick R. Hass
- Gregory J. Hazarabedian
- John H. Hingson
- Rush M. Hoag
- Victor J. Hoffer
- Robert C. Homan
- J. Kevin Hunt
- Steven Jacobson
- Carter Kerns
- Charles G. Kochlacs
- Steven L. Kraski
- Paul H. Kuebrich
- Angie LaNier
- Neil F. Lathen
- Gordon K. Mallon
- Phillip M. Margolin
- S. Amanda Marshall
- Harris S. Matarazzo
- Shaun S. McCrea
- David T. McDonald
- James P. McHugh
- J. Robert Moon
- Lynn M. Myrick
- Robert H. Nagler
- John W. Neidig
- Roscoe C. Nelson
- Susan Elizabeth Reese
- Forrest Reid
- James G. Rice
- Beverly D. Richardson
- Justin N. Rosas
- Michael E. Rose
- Robert M. Schrank
- Ryan Scott
- Tom Sermak

- Steven J. Sherlag
- Geoffrey Squier Silver
- Emily Simon
- Richard Smurthwaite
- Philip W. Studenberg
- David G. Terry
- Olcott Thompson
- Jason E. Thompson
- Bob Thuemmel
- Walter J. Todd
- William L. Tufts
- William K. Uhle
- Gregory E. Veralrud
- John C. Volmert
- Peter F. M. Warburg
- Kristen Winemiller
- Richard L. Wolf
- Terri Wood
- Valerie Wright

### Sustaining Members

**Paul E. Aubry**

- Elizabeth J. C. Baker
- Katherine O. Berger
- Whitney P. Boise
- Brett Claar
- Jennie L. Clark
- Mark C. Cogin
- Brian Patrick Conry

- Kathleen M. Correll
- Deborah K. Cumming
- Jenifer Feinberg
- Mike Flinn
- James W. Gardner
- Laura Graser
- David M. Hall
- James D. Hennings

- Christine K. Herbert
- David A. Hill
- Ronald H. Hoevet
- Andrew M. Kohlmetz
- Stacey Lamont Diedrich
- Danny R. Lang
- Rosalind Manson Lee
- Philip A. Lewis

- Kendra M. Matthews
- Bryan Joseph Orrio
- Randy Perkins
- David L. Rich
- Mark N. Sabitt
- Sara Snyder
- L. Todd Wilson

### Honored Members

**Emilio F. Bandiero**

- Jennelle M. Barton
- Jesse Wm. Barton
- Kathleen E Bergland

- Richard A. Carlson
- Ann S. Christian
- Douglas M. Fischer (Retired)
- Daniel N Gordon
- James D. Lang
- Duane J. McCabe
- Gail L. Meyer
- Herbert A. Putney

- James J. Susee

---

**November/December 2018**

---

---

---

---

---

---
** Classified Ads **

| Deadline Ads | Members (up to 100 words, 3x/year) | Free | Non-members | 25¢/word |

---

**NEW ATTORNEY SEEKS TEMPORARY CONTRACT/LAW CLERK WORK**
May 2017 law graduate from the University of Colorado - Boulder. New to Portland, and recently licensed in Oregon. Inactive Colorado license. Background in indigent criminal defense, indigent capital habeas, plaintiff’s civil rights/1983, plaintiff’s personal injury/medical malpractice, and plaintiff’s nursing home neglect cases. Contact phone: 503-914-2754 or email: Carlita@Marchitto.Law.

**FORENSIC HANDWRITING EXAMINER**

**FORENSIC DOCUMENT EXAMINER**
Full service laboratory to resolve questioned handwriting, inks, indentations, etc. Twenty-five-years experience. Board certified. Government trained. Contact Jim Green, (541) 485-0832, www.documentexaminer.info

**ONE ATTORNEY OFFICE SPACE FOR RENT**
Support staff space available if desired. Conference room, copier, fax/TV/internet, receptionist, access to Westlaw included. Our office is next to Pioneer Square with MAX stops in front of the building. Price is $1300. Office consists of 8 attorneys (5 criminal defense, 2 employment law, 1 civil practitioner) and one author. If interested, please call 503-223-5814.

**SUNRIVER RESORT RENTALS**

---

**Events Elsewhere**

**Oregon Innocence Project** • **Welcome home, Josh!**
Thursday, December 6 • 6:00 – 8:00 p.m.
Location: Deschutes Brewery Bend Public House, 1044 NW Bond St., Bend OR 97703
Please join us as we celebrate Josh Horner’s freedom with family and friends.

This event is open to all and is a fundraiser for the Oregon Innocence Project. Come hear from Josh and our Legal Director, Steve Wax, about his case. **Sponsored by the Oregon Innocence Project.**

Registration for this event is free.

**NORML — Key West Legal Seminar**
December 6, 7, 8
Location: The Pier House Resort and Caribbean Spa, Key West, FL
**Sponsored by the National Organization for the Reform of Marijuana Laws.**
OCDLA Holiday Dinner & Award Presentation
FRIDAY, NOVEMBER 30 | THE BENSON HOTEL

2018 KEN MORROW
Lifetime Achievement Award
CATE WOLLAM
& the late
GARRETT RICHARDSON

Call OCDLA or visit our website to order tickets.