

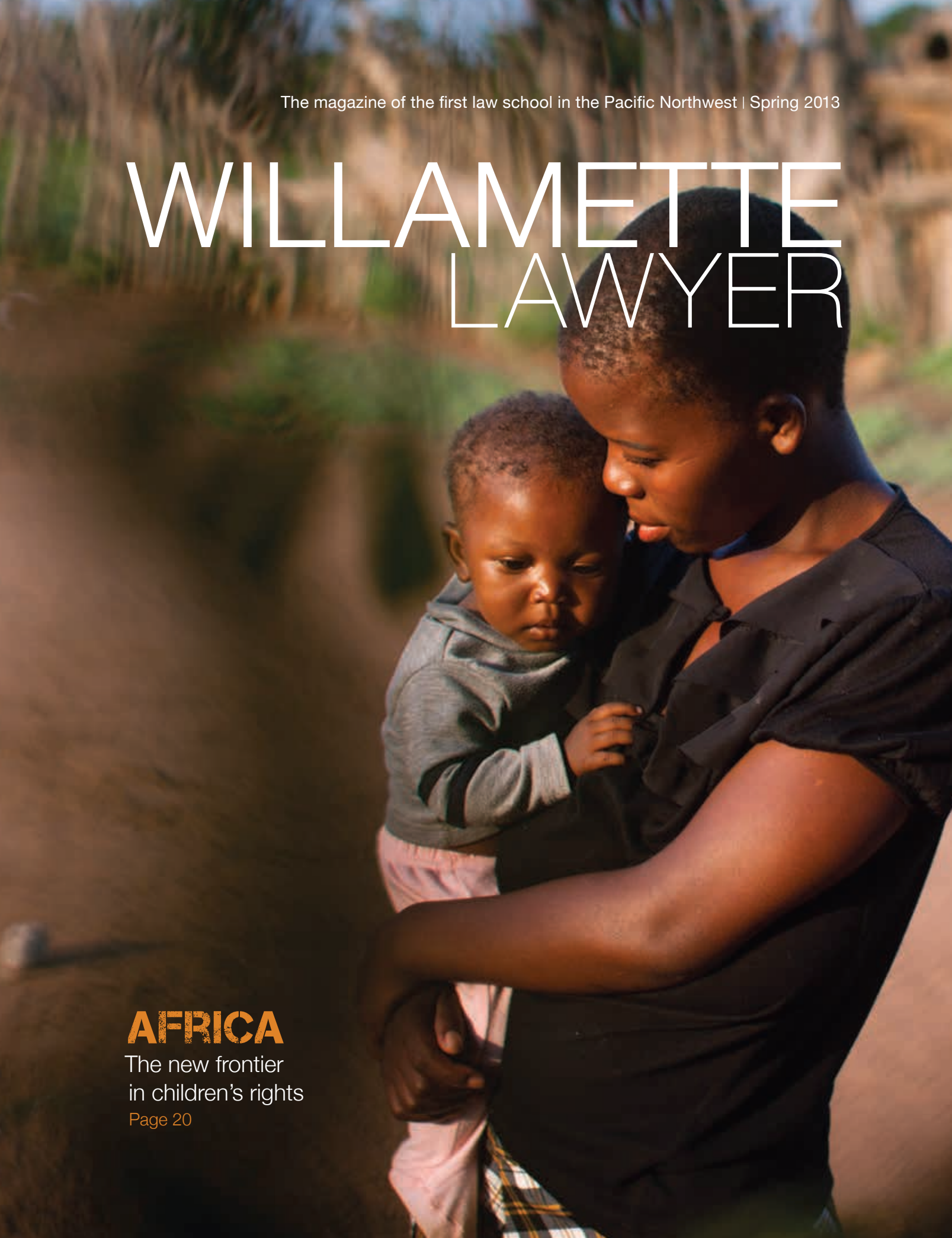
The magazine of the first law school in the Pacific Northwest | Spring 2013

WILLAMETTE LAWYER

AFRICA

The new frontier
in children's rights

Page 20



What do you get when you cross a lawyer and a CPA?



Steve Brier, JD, PhD and Lori Hoby, CPA

You get a team of experienced, bright, and compassionate professionals who love helping people make an impact on Willamette's future.

We can help you help your clients develop strategic and sophisticated plans to advance their financial security and change the lives of Willamette students.

Willamette gift planners Steve Brier, JD, PhD and Lori Hoby, CPA recently worked with Vernon Bowlby, a CPA in Corvallis. Vernon's client held large tracts of highly appreciated timberland and was searching for a tax-efficient way to provide for a loved one. After many discussions between Vernon and Willamette, Vernon's client decided to use his timberland to fund a charitable remainder trust. That enabled him to get a large tax deduction, provide a lifetime income for his loved one and ultimately leave a substantial gift to Willamette.



Vernon Bowlby, CPA

"Willamette's gift planning staff added real value for my client and me," Vernon says. "Lori and Steve suggested creative options and produced detailed illustrations that enabled me to explain to my client what his options were. Willamette continues to add value through its exceptional service as trustee of my client's trust."

FOR INFORMATION ON HOW TO HELP YOUR CLIENTS help Willamette, contact Steve or Lori in the Office of Gift Planning at giftplanning@willamette.edu or **866-204-8102**.

WILLAMETTE LAWYER

Spring 2013 Vol. XIII, No. 1

Dean

Peter V. Letsou

Editor

Lisa Grace Lednicer

Graphic Designers

Susan Blettel

Emily Oliva

Mike Wright

Class Action Editor

Cathy McCann Gaskin JD'02

Photographer

Frank Miller

Willamette Lawyer is published by Willamette University College of Law for constituents of the College of Law, the first law school in the Pacific Northwest.

This publication is partially supported by contributions to the College of Law Fund.

Copyright © 2013 Willamette University College of Law

Send correspondence to:

Willamette Lawyer
Willamette University
College of Law
245 Winter St. S.E.
Salem, OR 97301

Contact Editor

Lisa Grace Lednicer
at llednice@willamette.edu
or call 503-370-6760

willamette.edu/wucl

Contributors



Courtney Sherwood is a Portland-based freelance writer and editor who specializes in health care, business and the law. She contributes to a number of magazines, newspapers and websites, and is a fill-

in online editor for Oregon Public Broadcasting radio. Previously business and features editor of *The Columbian* in Vancouver, Wash., she also has worked as a reporter at *The Columbian*, the *Portland Business Journal* and other Pacific Northwest publications. She is a former Wharton Seminars for Business Journalists fellow whose reporting has been cited by *Investigative Reporters and Editors* and the nonprofit website *ProPublica*. She has won awards from the Society for Professional Journalists for her coverage of business and health care.



Peter Sleeth is a veteran investigative reporter who covered the invasion of Iraq for *The Oregonian* and served as the lead reporter when the newspaper won the 2007 Pulitzer Prize for breaking news. Now freelancing, his most recent piece for the nonprofit website *ProPublica* was a year-long investigation detailing how the U.S. military lost millions of war records in Afghanistan and

Iraq. He also researches and writes history. His most recent historical work for the Spring 2011 issue of the *Oregon Historical Quarterly* was a profile of Progressive Era activist Tom Burns.



Nichole Sobecki is an independent photographer, videographer and writer based in Nairobi. She formerly was the Turkey correspondent for *Global Post* and worked for the *Daily Star*, Lebanon's English-language newspaper based in Beirut. She covered the early days of the Libyan uprising and the war in Afghanistan. Her work has appeared in *The New York Times*, *The Wall Street Journal*, *Newsweek*, *The Times of London*, *The Guardian*, *Le Monde M Magazine* and *Global Post*. Last year she was selected by the Magenta Foundation as a Flash Forward Emerging Photographer winner.

WILLAMETTE LAWYER

SPRING 2013

In This Issue ...

COVER STORY

20 AFRICA'S LEGAL RENAISSANCE

Professor Warren Binford, a Fulbright Scholar, explores how African countries are leading the world in placing children's rights directly into their constitutions.

28

A Second Chance

by Peter Sleeth

In courtrooms throughout Oregon, veterans who commit crimes are being offered options other than jail time.

16

The Mortgage Mess

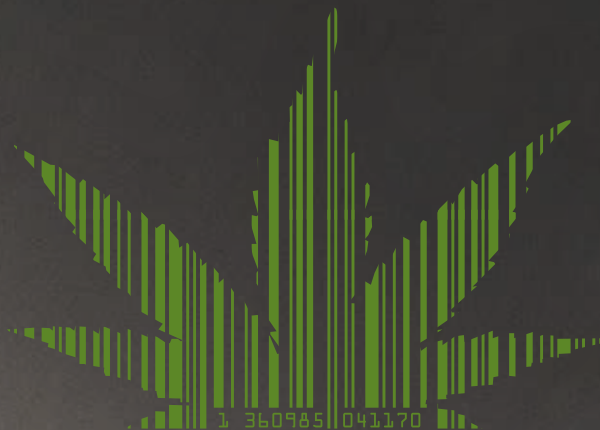
by Courtney Sherwood

Mediation before foreclosure sounded like a great idea. Making it work was another story.





The Willamette Lawyer Interview
Oregon Supreme Court Chief Justice Tom Balmer discusses music, trial court judging and budget belt-tightening.



12

Around the Northwest
Clark County Superior Court Judge Rich Melnick on the unexpected consequences that arise from legalizing marijuana.



Dicta
Professor Paul Diller explains how local governments are trying to reduce obesity rates.

Departments

Letters to the Editor	5
The Willamette Lawyer Interview	6
Legislature and the Law	10
Around the Northwest	12
Ethics Corner	14
On Campus	34
Dicta	38
Outside the Law	44
Class Action	46
Res ipsa loquitur	53

Feature Stories

Mortgage Mess	16
Africa's Legal Renaissance	20
A Second Chance	28

Profiles

"To Me, That's Unforgivable"	40
A Warrior for Conservation	42

Editor's Note

Dear Readers,

Like many of you, I was raised on images of Africa as a deeply unfortunate continent, a collection of countries that needed saving after decades of war, famine, political oppression, poverty and, more recently, AIDS. I celebrated the end of apartheid and marveled at the progress nonprofit groups have made in eradicating smallpox and other diseases plaguing that part of the world. But until recently I was unaware of the groundbreaking work being done in Africa to erect a legal framework guaranteeing children special and unique rights. It's the kind of work that smart, committed academics want to be part of, which is why professor Warren Binford, who directs Willamette's



Clinical Law Program, applied for a Fulbright grant to spend a semester teaching and researching the issue at the University of the Western Cape in Cape Town, South Africa. While there, she worked on a book about international children's rights and a law review article on the leadership of Africa in advancing children's rights. Her work will lead to opportunities for Willamette students to take on law reform projects in Africa by providing research, drafting and analytical support.

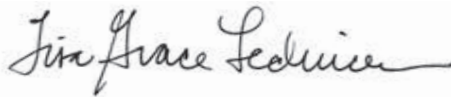
Binford suggested I travel to Africa to document her work, and I jumped at the opportunity. I was an African Studies minor in college and I've lived in Africa twice — once during the summer after graduation, doing manual labor in Lesotho with Operation Crossroads Africa; and later in Namibia, as a volunteer teacher with WorldTeach. I hadn't been back since 1993 and I was eager to see how Africa — particularly South Africa — had changed.

You can read about what Binford and I found starting on page 20 of this issue. Willamette will benefit richly from Binford's experience as

a Fulbright Scholar, as it has from the experiences of professor Mike Wise, a former Fulbright Scholar in Namibia, and professor Susan Smith, a former Fulbright Scholar in Australia.

As we've already announced, Curtis Bridgeman will start as Willamette's 21st dean in July. Bridgeman is the James Edmund and Margaret Elizabeth Hennessey Corry Professor of Law and Associate Dean for Academic Affairs at Florida State University. Bridgeman is a scholar in the fields of contract and commercial law and was voted "Professor of the Year" at Florida State three times. He also has a doctorate in philosophy. You'll find a profile of him on pages 34 and 35, and we look forward to telling you more about him in the fall issue of Willamette Lawyer.

Sincerely,



Lisa Grace Lednicer, Editor

It's the kind of work that
smart, committed academics
want to be part of ...

Letters to the Editor



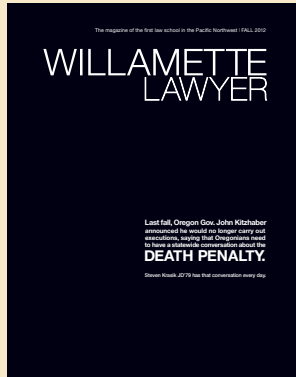
Dear Ms. Lednicer,
What a pleasure it has been to read the Fall 2012 issue of Willamette Lawyer, sent to my boss, John Potter, here at the Oregon Criminal Defense Lawyers Association. I truly enjoy quality magazine journalism, and I found this issue to be engaging, challenging, and a pleasure visually to read and absorb. I hope we will remain on your recipient list, as I look forward to reading future issues.

Jennifer Root,
Oregon Criminal Defense Lawyers
Association

We welcome your letters and comments.

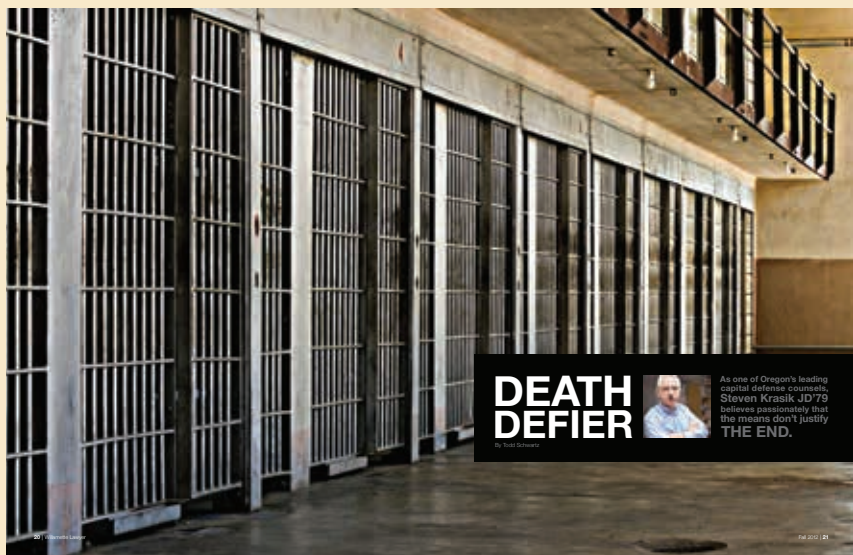
Please address all correspondence about the stories in the Lawyer to editor Lisa Grace Lednicer at: llednice@willamette.edu. Or send a letter to Willamette University College of Law, 245 Winter St. SE, Salem, OR, or call 503-370-6760.

Submit information for Class Action to Cathy McCann Gaskin, associate director of alumni relations. She can be reached at 503-370-6492 or wu-lawyer@willamette.edu. Print or type all submissions. Submission dates are Jan. 15 for the spring issue and July 15 for the fall issue.



We were gratified to see a portion of “Death Defier” quoted in the March 17, 2013 edition of the (Salem) Statesman Journal, in an editorial advocating that Oregon death row inmate Gary Haugen be granted his wish to be executed:

“A morbid irony of capital punishment is that the needles and injection site are fully sterilized. ‘One reason is the possibility of a last-second stay of execution—it wouldn’t do for the governor to snatch the condemned from the jaws of death, only to have him or her die from an infection,’ stated an article in the Fall 2012 edition of Willamette Lawyer.”



We’d also like to share some exciting news: Willamette Lawyer won two awards from the Council for the Advancement and Support of Education. One was in the magazine category for overall presentation; the other was in the writing category for “Death Defier,” writer Todd Schwartz’s excellent profile of Steven Krasik JD’79. Krasik has served as lead or co-counsel on nearly 50 homicide cases, half of which were charged as capital murder. “He has spent countless hours in the company of Oregon’s most evil and most dangerous citizens, and he has never failed to discern some evidence of humanity in each of them,” Schwartz wrote. For a link to the magazine, please visit: willamette.edu/wucl/alumni/lawyer, and thank you again for reading Willamette Lawyer.

A photograph of Tom Balmer, Chief Justice of the Oregon Supreme Court, sitting on a wooden bench in a courtroom. He is wearing a dark suit, a red and blue striped tie, and glasses. He has his arms crossed and is smiling. In the foreground, a wooden desk holds a gavel and a leather folder. The background shows other wooden benches and chairs in the courtroom.

The Willamette Lawyer Interview

Tom Balmer

OREGON SUPREME COURT
CHIEF JUSTICE

Tom Balmer faces daunting challenges as Oregon Supreme Court chief justice: the state's almost sole reliance on a single source of revenue has resulted in shuttered courts and laid-off employees. Balmer's colleagues elected him chief justice of the Supreme Court last year after Chief Justice Paul J. De Muniz JD'75 stepped down. Balmer, who has served on the court since 2001, grew up in Portland, worked for the antitrust division of the U.S. Department of Justice in Washington, D.C., and practiced civil law with a private firm before and after serving as a deputy attorney general under Oregon Attorney General Ted Kulongoski. Balmer, who played guitar in a high school band and is a fan of the Decembrists and the Shins, discussed his job, his temporary stint as a trial judge and the music he loves with Willamette Lawyer editor Lisa Grace Lednicer.

Q What instruments do you play?

A I studied piano for many years and now I don't play as much as I'd like to. My mother was a piano teacher. So we had within the family somebody playing clarinet and trombone and bassoon and guitar and all of us had to study piano for at least a while. I also play a rudimentary guitar. I essentially know the same 14 chords I knew when I was 14. We get together with a group of friends and play Bob Dylan and The Grateful Dead and The Beatles and things like that every once in a while.

Q If you were a DJ and you were playing the last song that you would ever play in your life, what would it be?

A Chimes of Freedom (from) Mr. Tambourine Man. The combination of the enigmatic but ultimately hopeful Bob Dylan lyrics and the Rickenbacker 12 string — that's the jangly guitar sound that you get from The Byrds — is a potent combination. If Roger McGuinn had done nothing other than to take Bob Dylan folk songs and set them to sort of a rock beat with that guitar, he would be revered as important in rock music history.

Q Are there any changes that you either have made or are thinking of making to the De Muniz court?

A I think that continuity is probably more significant for us at this point. Our court system is functioning but it is stressed right now. And under Paul we made a number of changes to try to increase efficiencies, reduce costs, and we really did squeeze out all the inefficiencies we've been able to. We are down 15 percent of our employees and we're just not able to give Oregonians the full-time, full-service justice system that they need. The courts are now closed on the Fridays when the rest of state government has had furloughs. And to me that's not acceptable. If you're a victim of domestic violence and you need to get a restraining order against your abusive ex-spouse or boyfriend or girlfriend, it's not helpful to have the courts open on Monday if you need to go into court and get a restraining order on Friday. We need to develop a model where we are getting sufficient funds to be a full-time court system across the state, and most of my efforts so far have been directed towards helping us make our case to the public and

“People who come in and watch the Supreme Court say they're surprised at how hard we work.”

to the Legislature for better funding for the courts. A group of legislators have put together a courts caucus who want to advocate among their members on behalf of the courts. The bar and a lot of individual lawyers who've seen first hand the problems when trial judges don't have a clerk who can help them out — who've prevailed in court but haven't been able to get a judgment entered for a week or two — are being very supportive.

being a good trial judge. Being a trial judge is harder in a way than being a good appellate judge. As a trial judge, you're much more likely to be subject to abuse by the parties because you're making the decision right there — mom gets custody, dad doesn't, you're going to jail for five years. The combination of legal skills and ability to run the courtroom and stage manage a jury trial is very impressive to watch.

that what we do, what the courts do, is the second core function of government.

Q If you could have one other job instead of this, what would it be?

A Maybe full-time student? I would be interested in teaching or reading or learning religious studies. Studying the great religious texts of great religions would be fascinating. And there's an aspect of law there too, of course.



Q What do you think would most surprise people about the Supreme Court?

A People who come in and watch the Supreme Court say they're surprised at how hard we work. If you come in to a Supreme Court argument and hear the questions that we ask, people will say, "Gosh, you guys really read all those briefs." We say, "That's why we were up until 1 a.m., because this is our job, this is what we're supposed to do." It's why I feel very lucky and sort of humbled to be doing it. If you go and watch a judge like Janice Wilson (BA'76, JD'79) you would be unbelievably impressed at how much thought, how much knowledge of the law, how much knowledge of human interaction and how much tact but firmness goes into

Q You've been serving briefly on the benches of some of the circuit courts. What have you learned from that?

A How important every case is to the people who are right there. When we see them at the Supreme Court level after another layer of review or two, it's words on paper. But when we actually see the parties here, the person who's going to go to jail, or the person who's been injured, it makes what we do sort of take on more life. When you think of what a society does, whether it's ancient Babylon or it's Africa or Laos or any society, it has to protect itself against external forces, external invaders. But the next thing it has to do is to find a way to enforce its rules and to resolve disputes. And that's what we do. One of my goals is to help the Legislature understand

Q Did you ever consider following Ted Kulongoski into politics?

A I thought about it a little bit. To me, the sort of bare-knuckles political campaigning these days is not what I want to spend my time doing. Life is too short. There are too many concerts to go to or cross-country ski routes to follow or bike rides to do.

Q Can you in all honesty make the case that if the Legislature doesn't fund you to the level you want, then the state will be in jeopardy of violating the Oregon Constitution?

A I'm not going to make that argument. We don't have the revenues we need to have in this state right now. We need to show the Legislature that we are good stewards of the state's money. And I

believe we can say that, look, we have cinched our belts up, we have wrung the inefficiencies out, look at how we are doing video arraignments so we don't have to transport lawyers or prisoners or judges from one place to another, we've centralized these cases. We're willing to share in the cutting that everybody else has to face. The other thing to keep in mind is we are less than three percent of the general fund budget. So 10 million

one of the things that I think the governor would like to do over time is to look at the system more holistically. Let me give an example of drug courts. We can sentence 50 people in a morning for various drug offenses and send them off to jail or probation or whatever. A drug court docket, that's 15, 20 minutes with the defendant. That is very expensive in terms of judicial time. Look at the savings, though. We're saving on public safety

Q Maybe it's better to fight for your own turf?

A The problem is nobody's really looking out for us. We're it. We can't bring a thousand cute kids down on education day and say, "Fund the schools." If lawyers come down to advocate for the courts we hope they'll be listened to, but the fact is, they're not the most popular group around.

**"I believe we can say ...
we have cinched our
belts up, we have wrung
the inefficiencies out ..."**

dollars, which is a rounding error for K through 12 education, or the Oregon Health Plan, makes a huge difference in terms of us being able to decide these child custody cases. Or put somebody in jail. Or do a drug court, keep somebody out of jail and in a job while we try and get them drug treatment.

Q Shouldn't you not only put your energy into more money for the courts but add your voice to the idea that the Department of Human Services needs more funding and K-12 needs more funding because if we keep kids in school then you won't see them in court?

A They're the ones that ought to be helping us, frankly. And

dollars and public safety generally. We're keeping them in a job, hopefully, and they're paying taxes, so the system overall saves money even though it costs more on the court side.



Appointed or Elected? Legislators to Consider Judicial Selection Proposals From the Oregon Law Commission

Fear that campaign donors could start funneling large amounts of money into Oregon statewide judicial elections is at the heart of several judicial selection proposals being considered by a work group of the Oregon Law Commission, housed at Willamette University College of Law. Lawmakers are expected to take up the proposals before the 2013 Legislature adjourns in June.

Led by former Oregon Supreme Court Chief Justice Paul De Muniz JD'75, one of Willamette's Distinguished Jurists-in-Residence, the work group is evaluating several alternatives to the current system of electing appellate judges. One would limit the number of elections by extending the term length of appellate judges to 10 years from six. Other proposals would eliminate elections by giving appointment authority to the governor. In some cases that authority would be limited by requiring the governor to choose from a list of candidates proposed by a special commission. In other cases, the governor's choice would have to



Edwin J. Peterson, Paul De Muniz and Wallace P. Carson Jr.

“We tried to get rid of electing assessors in 1973 and people put up one heck of a fight.”

be confirmed by either the commission or the Oregon State Senate. In some proposals, a retention election at the end of a judge's term would continue to allow direct public involvement, although many work group members remain concerned about the influence of special interest money in

retention elections. Any final work group proposals would need to be approved by the full Law Commission before being submitted to the Legislature.

“Our system isn't broken; we have an excellent judiciary,” says De Muniz. “But there was a consensus that there is a dark cloud looming. What can we do to make sure that special-interest financing of judicial elections doesn't turn into a nuclear war like it has in other states and erode public confidence in the judiciary?”

De Muniz, who has written and lectured widely about judicial selection, says the infusion of big money into judicial races in other states means that Oregonians should consider a system of judicial appointment. The large work group he convened includes members with differing viewpoints, such as Wallace P. Carson Jr. JD'62, who was Oregon's Supreme Court chief justice before De Muniz.

At an Inns of Court debate in January, Carson said he doesn't think Oregonians will give up their right to elect judges. “We tried to get rid of electing assessors in 1973 and people put up one heck of a fight,” he said. “I don't think people are ready to make a change, and I don't want to be ahead of the curve on this one.”

Added Distinguished Jurist-in-Residence Edwin J. Peterson, another former Oregon Supreme Court chief justice: “When you have a contested election, it makes you get out and talk to people. That's an important point we should not lose sight of.”

A change to remove elections would require a constitutional amendment and a vote of the people. Thirty-four states and the District of Columbia use merit selection to choose at least some judges, according to a study on judicial selection by the Institute for the Advancement of the American Legal System.

Adoption Records: Who Gets To See Them?

As Oregon's judicial system moves to computerized recordkeeping and greater public access to those records, a sensitive issue has emerged: who should be allowed to see court records in adoption cases?

Under current law, adoption court records are sealed to everyone — birth parents, adoptive parents, the Department of Human Services, the adoptees and all the lawyers in the case — unless special circumstances persuade a judge to unseal them. Once a record is filed with the court, a court order is needed to get a copy of it again. With the conversion of paper court files to digital ones, the Oregon Judicial Department asked the Oregon Law Commission to review and recommend revisions to update the state statutes and make the access rules for court adoption records clearer and more efficient in the state's new eCourt system.

An OLC work group is finalizing recommendations to the Legislature. The group recommends adoptees be allowed to see the court file from their adoption at age 18 or 21. Since 1998, when Oregonians passed Ballot Measure 58, all adoptees have had the right to see their original birth certificates and limited medical history when they reach the age of 21 and request the information from the state's vital statistics department. The work group agrees that allowing adoptees access to their court records is a logical and important extension of the law, says Wendy Johnson JD '98, deputy director and general counsel of the Oregon Law Commission. "Why are we sealing an official court file when the presumption should be a file that is all about you and your family should be open to you?" she says. "There's no standard in the law now for adoptees to get their court file, but most adoptees are getting it after jumping through hoops and getting a court order. We can be more efficient and give courts both direction and discretion."

The group still is working on exceptions to access of particularly sensitive records, such as home studies, mental health records of the birth parents, police records and the like.

Oregon's secrecy around adoption records dates back to a time when adoption was considered shameful, says John Chally, a Portland-based adoption attorney and a member of the work group. The state has been sealing adoption records since 1957. But over the



"Why are we sealing an official court file when the presumption should be a file that is all about you and your family should be open to you? ... We can be more efficient and give courts both direction and discretion."



years the concept of open adoption, in which birth parents and adoptive parents have contact with each other, became the norm. Adoptees say they resent what they describe as the paternalistic attitude of government officials who don't believe it's a good idea for them to learn unpleasant details about their pasts.

"For the most part, it's going to make them feel good that this information is no longer being kept from them," says Robin Pope, an attorney who has represented birth parents, adoptive parents and adoption agencies in court and also serves on the work group. "This is their story, and they're entitled to that."



Marijuana Is Legal in Washington State. Now What?

By The Honorable Rich Melnick

"As the former chief federal prosecutor, I enforced our marijuana laws ... I've come to believe they don't work. Filling our courts and jails has failed to reduce marijuana use. And drug cartels are pocketing all the profits. It's time for a new approach."

— John McKay, former U.S. Attorney

THE LAWFUL POSSESSION of small amounts of marijuana for recreational purposes by people older than 21 has been legal in Washington state since December. This sweeping social and legal change was approved by approximately 56 percent of Washington voters; it was a reaction to what many people believe is a failed policy on marijuana laws. The stated purposes are to give law enforcement more money to focus on violent and property crimes, to generate new tax revenue for education, health care, research and substance abuse prevention and to remove marijuana from illegal drug organizations and bring it under tightly regulated, state-licensed control. The state's Office of Financial Management speculated the measure could raise \$560 million a year in taxes.

The implementation of the initiative is being phased in this year. The Washington State Liquor Control Board will hold public meetings to

establish rules and regulations for marijuana processors, producers and retailers. State officials will license retail outlets for the sale of marijuana and marijuana-infused products.

The enactment of this new law has led to inquiries regarding its interplay with federal laws. These issues are for law enforcement and not the state courts

However, a number of new issues will confront the courts as judges, litigants and citizens are forced to refocus their thinking as they accept that recreational marijuana use is legal. Some areas likely to be affected: family law, employment law and criminal law, especially in the area of impaired driving.

In family law cases involving children, the court must establish a parenting plan. A court may preclude or limit provisions of the parenting plan if there is a “long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions....” The court also may consider other factors or conduct that is adverse to the best interests of the child, such as the commission of illegal acts — including possession, use and sale of controlled substances. Because the recreational use of marijuana is legal, the courts must be careful to insure that the mere use of marijuana is not a limiting factor when establishing a parenting plan. Absent a long-term impairment from the marijuana use, the question now will be how marijuana use affects parenting ability.

The issue of how one’s recreational marijuana use will affect the workplace also will arise. The courts likely will balance the rights of employers against the rights of employees. Some guidance can be found in prior court rulings.

In *Roe v Tele Tech Customer Care Management*, 171 Wn.2d 736 (2011), an employer rescinded a conditional offer of employment because a prospective employee failed a drug test. The prospective employee was authorized to use medical marijuana. The court held that the Washington State Medical Use of Marijuana Act neither regulated the conduct of a private employer nor protected an employee from being discharged due to authorized medical marijuana use. Nor is an employer prohibited from discharging an employee for medicinal use. The same logic could apply under the new law permitting recreational marijuana use. The extent to which an individual’s lawful right to use marijuana may be curtailed by an employer’s concerns will inevitably be litigated. Additionally, litigation may increase when prospective employees are not hired because of their recreational marijuana use, regardless of whether or not it affects their work performance.

In the criminal arena, the law is well settled that a person cannot drive a motor vehicle while under the influence of intoxicating liquor or drugs or a combination thereof. Initiative 502 has added a provision that a person is guilty of driving while under the influence of marijuana if the person has, within two hours after driving, a THC concentration of 5.00 or higher based on nanograms per milliliter of blood. THC is the psychoactive ingredient in marijuana.



The challenges facing law enforcement and the judicial system involve societal, emotional and legal changes.

A basic tenet of criminal law is that a penal section must be rational. I can foresee widespread litigation as to what level of THC concentration is enough to cause a driver to be impaired. By analogy, Washington’s law that a driver with a blood alcohol concentration of .08 or greater constitutes driving under the influence was uniformly upheld by the Washington State Supreme Court because in court hearings the state demonstrated a correlation between this level of alcohol concentration in a person’s breath or blood and its effects on driving. Whether or not this same correlation exists between unsafe driving and a THC concentration of 5.00 or higher undoubtedly will be litigated. The outcome will depend, in large part, on expert testimony.

Last year the will of the electorate swept aside decades of public policy. The challenges facing law enforcement and the judicial system involve societal, emotional and legal changes. Old notions, ideas and stigmas relating to the use of marijuana will have to be tossed aside or amended.

— Rich Melnick is a Clark County, Wash. Superior Court Judge

Is it ever OK for a prosecutor to be given a bonus for a conviction or plea deal?



This isn't a hypothetical question. A district attorney in Colorado came under fire for offering such conviction bonuses to the prosecutors in her office. The prosecutors needed to actually obtain a conviction, as opposed to a settlement or a plea bargain, for a felony. The bonuses averaged around \$1,100 per conviction. The district attorney claimed that she was merely trying to bring the salaries of prosecutors in her office in line with other counties in Colorado, but the resulting outcry by legal ethicists around the country might cause us to reconsider the wording of Model Rule 1.5 and continue the framework of how we view our ethical rules, as prescriptive or instructive.

My problems with conviction bonuses are threefold. First, it presents a conflict of interest for a prosecutor who would be faced with a financial incentive for rejecting all overtures by a defense attorney. That also would hamper the judicial system. Second, it might encourage prosecutors to persuade defendants to not plead guilty to a felony, hoping to take it to trial. Third, this provides little incentive anyway — every licensed lawyer ought to act with “reasonable diligence” to represent his or her client, period. As Justice Sutherland said in *Berger v. United States*, 295 US 77, 88 (1935), a prosecutor “may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”

— **Judy Parker JD'06 represents licensed professionals such as lawyers, doctors and architects in professional malpractice suits and before agencies for discipline or admissions issues.**



No. Although there may be no ethical prohibition on compensation for results, in the criminal context paying for convictions puts at risk the credibility of the system.

Although rare, criminal convictions are overturned, and even more rarely they're proven to be baseless. If a prosecutor obtained a high-profile conviction and it was overturned or proven baseless, the motives of the prosecutor would be questioned. Prosecutors, just as defense attorneys, are charged with protecting and upholding the integrity of the constitution. Creating a system that could reward them for ignoring this solemn obligation is not a good idea.

— **Mark C. Hoyt JD'92, managing partner at Sherman Sherman Johnnie & Hoyt LLP**

The current ethical rule precludes defense counsel from collecting a contingent fee in a criminal case.

That rule seems anachronistic, given the widespread use of contingent fees in civil matters, where lawyers, one would presume, are no less susceptible to corruption or self-dealing. The goal in a system of lawyer compensation, criminal or civil, prosecutor or defense, should be to induce maximum performance on behalf of the client.

Monetary incentives help managers align the work of agents and subordinates with office goals. In a prosecutor's office, conviction bonuses could encourage prosecutors to work longer and harder, a favorable consequence. Bonuses for convictions also might be used to encourage professional development in newer hires, giving them added reason to bring a case to trial and to strive to produce a favorable result. Alternatively, bonuses for negotiated settlements might be deployed to encourage expeditious case dispositions or to respond to prison overcrowding. In short, bonuses may be used like any other compensation scheme to help align the incentives of the agents with the overall office policy and needs.

The criminal defense bar should not necessarily be alarmed by bonus compensation for prosecutors. One significant problem in the criminal justice system is the classic mischarging of criminal defendants. In a system that disposes of most adjudications by plea agreement, the prosecutor's obvious incentive is to overcharge or to threaten overcharging, hoping to induce a favorable compromise. But if a prosecutor is compensated for convictions, the incentives change and the prosecutor might be more careful to indict on a charge that can be established beyond a reasonable doubt.

— **Jeffrey Standen, associate dean for Academic Affairs; Van Winkle Melton Professor of Law, Willamette University College of Law**





The Mortgage Mess



A law requiring mediation in non-judicial foreclosures was supposed to help stem the tide of homes lost in Oregon. But it has led to unintended consequences.

Everything started falling apart in 2008 for Will and Heather Sirotak. Their grandson, who they'd adopted and were raising, died that year. Heather got cancer. Her insurance wouldn't cover the treatment. The Sirotaks refinanced their house to pay the bills. Will lost his construction job. They missed a mortgage payment. Then another. They tried to sell, failed, went to court to avoid foreclosure and lost the fight. Last November their house became one of 50,000 in Oregon seized by banks and other lenders since 2007.

"All this talk about the recovery? I don't feel it," Heather Sirotak says. "I don't see it. It's not real for us or for a lot of other people."

The same foreclosure crisis that forced the Sirotaks to spend Thanksgiving in a hotel before they settled in a North Portland rental has reshaped Oregon's financial institutions and political landscape for the past five years, often with equally unsatisfying results.



BY COURTNEY SHERWOOD

Now state officials are trying to unravel a situation five decades in the making. Legislators this session want to expand Oregon's groundbreaking law that requires mediation before lenders begin foreclosing on homes. The Oregon Supreme Court is scheduled to decide later this year whether a mortgage recording company, as opposed to a lender, can initiate foreclosure proceedings. The bankers, consumer advocates, attorneys and disgruntled activists jostling to re-shape Oregon foreclosure law all say they want foreclosures to be handled more humanely and at reasonable cost. But they disagree about the best way to make that happen.

"Making the system work again is what we want to do," says Kevin Christiansen BA'95, JD'99, government affairs director at the Oregon Bankers Association. "But the choices we make have consequences."

Legislative Relief

After the 2007–08 global credit crunch, when bankers cut back on subprime loans and home sales dragged to a crawl, state leaders had few options to help homeowners.

That changed with a U.S. Supreme Court ruling in 2009 that said federal bank regulators couldn't stop states from enforcing fair-lending laws. The Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law in 2010, affirmed that states can write and enforce consumer financial laws that affect how national banks operate within their borders.

Then-Oregon Attorney General John Kroger joined peers from 48 other states in negotiating a \$25 billion settlement with the country's five largest banks. Oregon's share, which included \$199.8 million for homeowner relief, has been used to help 3,100 borrowers reduce their mortgage debt.

Kroger appointed Scott Bellows, trained at Willamette University College of Law's Center for Dispute Resolution, to work with bankers, consumer advocates and government officials in developing a better way to help borrowers keep their homes. The group devised a proposal for the 2012 legislative session that required almost all lenders and borrowers in the state to sit down with a mediator before foreclosures could proceed.

Based on recent history, legislators expected the law to affect about 95 percent of non-judicial foreclosures — those that start with a letter of default and end with an auction to the highest bidder. These actions proceed without the oversight of a judge unless homeowners sue to fight their banks — a daunting and expensive hurdle for people in financial distress.

Under Senate Bill 1552, homeowners who want to challenge a non-judicial foreclosure now can opt for mediation. They pay a \$200 fee and meet a housing counselor, then sit down with a state-sanctioned mediator and a representative of the bank. Consumer advocates expected many homes to still be foreclosed upon but hoped that those still capable of making mortgage payments would be able to renegotiate their loans.





Will and Heather Sirotak stand in front of their foreclosed home in Portland, Oregon's Beaumont neighborhood.

“Depending on who’s doing it, mediation allows for a 65 percent to 95 percent success rate,” Bellows says. “It makes parties sit down and face the issues all at once, instead of playing procedural games.”

Bankers were worried. Today, many large financial institutions hire third parties to manage foreclosures across the country. To participate in mediation, they’d have to send a representative authorized to negotiate mortgage modifications — a costly and time-consuming commitment.

Christiansen says the mediation requirement is a burden. “The banking industry has inherited a lot of regulation over the last few years,” he says. “It creates a burden that ultimately is borne by consumers, who have to pay higher prices.”

Who Owns the Loans?

Around the same time that mediation was being proposed for non-judicial foreclosures, state judges were asked to evaluate the financial sector’s interpretation of Oregon foreclosure law.

In 1959, the Oregon Trust Deed Act for the first time allowed banks to foreclose without going through the courts. Foreclosing became easier, faster and less expensive — a change that lenders said allowed them to write more loans. But a lender had to be on record at the county property records office as the beneficiary of a deed of trust, or mortgage.

In the decades that followed, the U.S. financial sector grew increasingly complex. Formally recording these transactions in each county of every U.S. state was time-consuming and costly. In 1997, an East Coast company called the Mortgage Electronic Registration

System began tracking servicing and ownership rights of loans as a service for financial institutions.

In 2005, an Oregon homeowner filed a lawsuit challenging MERS’ role in the mortgage business. Rebecca Niday had borrowed \$236,000 to buy a Clackamas County house. The recorded deed of trust named Green Point Mortgage Funding Inc. as the lender. When she defaulted on her loan, however, Green Point didn’t try to collect. Instead, MERS and GMAC Mortgage initiated the foreclosure.

Niday sued, saying that only the beneficiary of a trust deed — the lender — could foreclose under Oregon law. She aimed to halt her foreclosure, arguing that because she did not owe her mortgage payments to MERS or GMAC, they did not have the right to take her home. A Clackamas County judge, noting that the deed of trust specifically described MERS as a beneficiary, ruled against Niday.

But the Oregon Court of Appeals agreed with her, ruling that state law defines a beneficiary as the party collecting on a mortgage loan — in Niday’s case, Green Point Mortgage Funding Inc. Just calling MERS a “beneficiary” in paperwork was not enough to change its legal designation. GMAC could not foreclose, either, because county property records only showed Green Point as the lender, the court’s ruling said.

MERS appealed to the Oregon Supreme Court, which heard arguments in January and is expected to rule later this year.

Unintended Consequences

The Court of Appeals ruling came exactly one week after Oregon’s new mediation requirements went into effect in July 2012. That

month, foreclosures in the state underwent a dramatic change. Both SB 1552 and the Niday ruling only applied to non-judicial foreclosures. For years, 95 percent of Oregon foreclosures had been handled outside the court system. But with both mediation and the Niday ruling, large numbers of banks began foreclosing through the courts – a situation that lawmakers hadn’t anticipated and that ended up putting a strain on the legal system.

“Costs and uncertainties are driving our banks to the judicial foreclosure route,” says Christiansen of the Oregon Bankers Association. He said the banking industry is pushing for legislative changes that would clarify the mediation program and allow MERS foreclosures to proceed outside the courts once more.

“It takes close to a thousand days for a foreclosure to run through the court system – almost three years,” he says. “We’ve had approximately 50 years of non-judicial foreclosure in this state. It’s worked effectively. Our banks are very interested in getting back to that point.”

Consumer advocates, who had worried about finding enough mediators to handle demand, say they’re happy to see lenders opt to foreclose through the courts. “Homeowners are better off in the judicial foreclosure process, because you have the oversight of a judge,” says Angela Martin, executive director of Economic Fairness Oregon.

Kelly Harpster, a Lake Oswego foreclosure lawyer, says it’s difficult for struggling homeowners to challenge non-judicial foreclosures. They must sue their banks and bear the burden of proving that a foreclosure is improper. That’s a costly process for those who can afford an attorney.

The Sirotaks learned that first-hand. When they were told it could cost \$17,000 to hire a lawyer to challenge their non-judicial foreclosure, they decided to act as their own attorneys. Will Sirotak says his lender’s paper trail didn’t follow state requirements for foreclosure. But he and his wife were unable to meet the burden of proof to show that the lender didn’t comply with state law. Their suit was dismissed before trial. Oregon’s mediation law came too late to save their house.

With mediation, homeowners now have a chance to renegotiate their mortgage terms to avoid foreclosure. If banks opt to sue, homeowners have far more legal options than the Sirotaks did. A couple doesn’t have to prove they have a right to challenge a foreclosure — instead, the lender must prove it has the right to foreclose.

What’s Ahead

Tweaks to Oregon’s mortgage mediation program are all but inevitable in the 2013 Legislature. The state senators who negotiated the foreclosure mediation program have said they want

Judicial vs. non-judicial foreclosures in Multnomah County

Multnomah is Oregon’s most populous county.

Source: Multnomah County property records



to expand mediation requirements to judicial foreclosures, since more lenders are going through the courts.

Christiansen opposes that idea. “Taking mediation and putting it in the courts is going to add cost and further delay,” he says. “This is not going to help the system, the economy or the state.”

With Democrats controlling both branches of the Legislature, Christiansen says he expects the Oregon Bankers Association may have a tough time with its wish list. The group has sought small changes in the mediation program, such as a refund of fees if borrowers opt out of mediation. It also wants to do away with a requirement that lenders enter mediation with borrowers who say they are “at risk,” even if they haven’t missed a mortgage payment.

“I don’t see a scenario where anything gets through committee that doesn’t strengthen the hand of consumers,” says Rep. Chip Shields, D-Portland. But he adds that federal law still limits what Oregon can do, and legislators’ best option may be to pressure state regulators to increase their scrutiny of lenders.

Meanwhile, Multnomah County in Portland, Ore. is suing MERS in an attempt to collect mortgage-related county property recording fees that MERS was set up to help lenders avoid. Will Sirotak sees that decision as a rare bright spot in the mortgage mess. “It’s time to bring those funds back to public coffers where they belong,” he says. “But that money won’t help people who’ve already lost their homes. I have no faith in the system to help them anymore. That’s the tragedy.” ■





AFRICA'S LEGAL RENAISSANCE

Africa leads the world in guaranteeing children special rights and protections. But on the ground, it's more complicated.

JOHANNESBURG — Death was once a regular visitor to Cotlands children's hospice. The first of its kind in South Africa, the hospice — a splash of orange stucco in a neighborhood of sagging porches and dusty yards — sheltered hundreds of babies during the worst of the AIDS epidemic, back when the disease was unmanageable and the country's leaders downplayed the crisis. Newborns as fragile as baby birds slipped away almost as quickly as they were admitted, their soiled diapers stuffed into an incinerator that Cotlands bought to keep up with the load. As treatment methods advanced, the hospice admitted older children who were born healthy and got sick, who tacked photographs of themselves above their beds to remind them of what they looked like before their glands swelled and their hair fell out and they relied on oxygen tanks to breathe.

PHOTOGRAPHS BY NICHOLE SOBECKI



Warren Binford

“The South African constitution is one of the most beautiful documents I’ve ever read. It embodies the values any society needs to flourish; care well for your children, or your society will suffer.”

Sixteen years after its historic opening, the hospice’s bright yellow walls and cheerful flowered curtains remain, as do the rows of cribs. But the beds today are filled with healthy children waiting to be adopted. It has been four years since a child at Cotlands died of AIDS, and last November the hospice announced it was shifting its focus to child development — largely due to the dramatic reduction in AIDS-infected newborns. Children’s rights lawyers share the credit for that achievement, since it was their lawsuit that forced the South African government to begin administering anti-retroviral drugs to pregnant women with HIV. The lawsuit said that by denying women those drugs, the government was violating childrens’ right to health care as outlined in South Africa’s constitution.

“It shows the power attorneys and judges have literally to save children’s lives,” says professor

Cotlands was the first AIDS hospice in South Africa, and a model for similar organizations. After no AIDS-related deaths for four years, Cotlands is closing its hospice center to focus its resources on education.



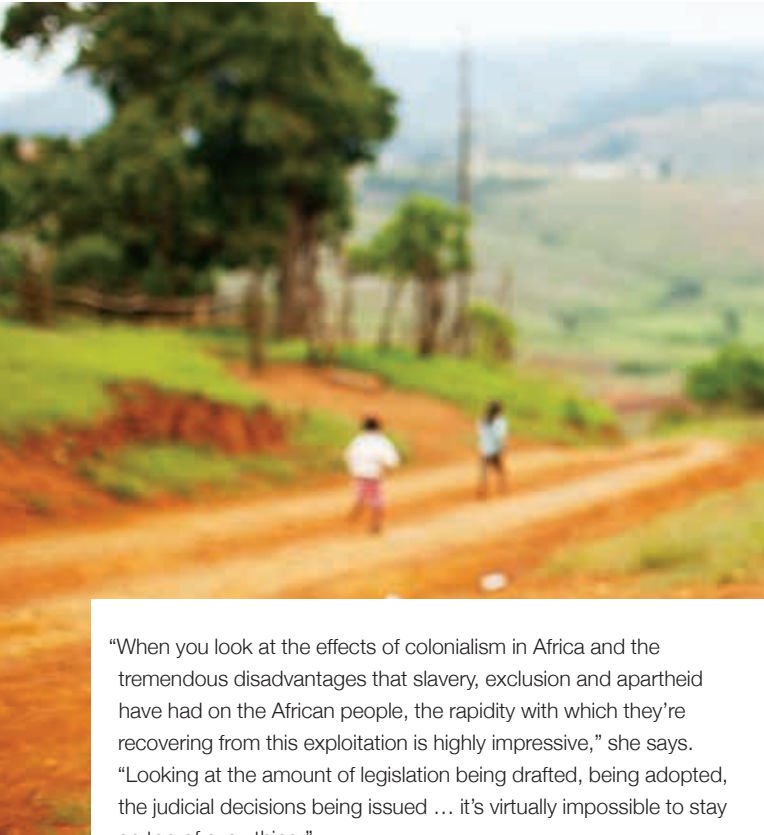
Warren Binford, who researched and lectured on children’s rights last semester as a Fulbright Scholar at the University of the Western Cape. “This is what makes South Africa a leader. Its politicians, attorneys and judges are showing other nations how to develop a legal system from scratch that recognizes children as rights holders.”

Africa’s grim history of oppression, poverty and civil war appears to have deeply affected its thinking about the continent’s half a billion children. At least on paper, countries across the continent are showing an unparalleled commitment to their children by placing children’s rights directly in their post-colonial constitutions, giving children’s rights lawyers a legal framework to advocate for better schools, access to justice and other issues that affect children’s ability to thrive. The constitution of Nigeria, for instance, requires that government provide free and universal public education. Uganda’s constitution says children are entitled to protection against social and economic exploitation. South Sudan’s constitution prohibits corporal punishment, the first such prohibition in Africa. South Africa’s constitution goes the furthest by expressly outlining socio-economic rights for children: the right to basic nutrition, shelter, health care and social services. Children’s lawyers have used those provisions to advocate on behalf of children whose rights aren’t being realized and to persuade the government to eliminate programs incompatible with constitutional provisions.

“The South African constitution is one of the most beautiful documents I’ve ever read,” Binford says. “It embodies the values any society needs to flourish; care well for your children, or your society will suffer.”

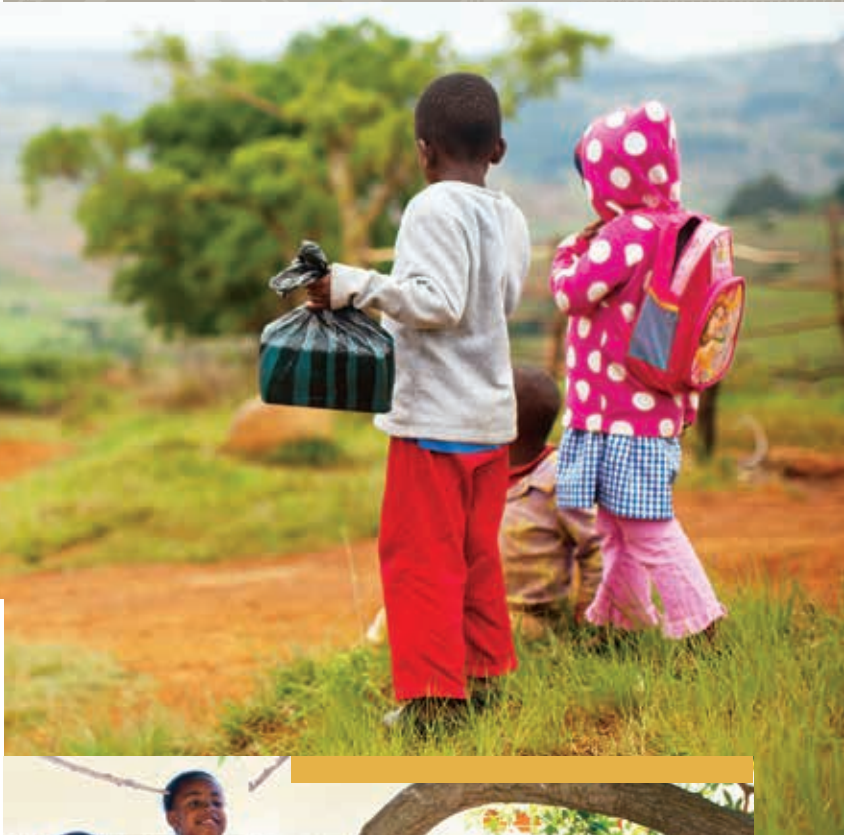
While overseas, Binford visited Ethiopia, Namibia, Zimbabwe, Zambia, Botswana, Swaziland and South Africa. She lectured, researched, facilitated and attended workshops on children’s rights. Binford is writing a book on the topic and a law review article on the leadership of Africa in advancing children’s rights. She also developed relationships with child advocates and members of non-governmental organizations who could offer opportunities for Willamette students to provide research, drafting and analytical support for law reform projects.

“[South Africa’s] politicians, attorneys and judges are showing other nations how to develop a legal system from scratch that recognizes children as rights holders.”



“When you look at the effects of colonialism in Africa and the tremendous disadvantages that slavery, exclusion and apartheid have had on the African people, the rapidity with which they’re recovering from this exploitation is highly impressive,” she says. “Looking at the amount of legislation being drafted, being adopted, the judicial decisions being issued ... it’s virtually impossible to stay on top of everything.”

The idea that children, as the most vulnerable members of society, have special and unique rights developed in Britain and the United States in the late 1800s around the issues of abuse and horrific work conditions for children. In 1920, Eglantyne Jebb, who had been deeply moved by the suffering of child victims of the Balkan Wars and then World War I, founded Save the Children as a way of funneling aid to German and Austrian children. Four years later, believing that children needed some kind of legal scaffolding to ensure their protection in times of war and peace, Jebb drafted the Geneva Declaration on the Rights of the Child, which the League of Nations adopted in 1924. Children’s rights advanced further with the formation of UNICEF in 1948, the United Nations Declaration on the Rights of the Child in 1959 and the U.N. Convention on the Rights and Welfare of the Child in 1989. The 1989 treaty is the most widely and rapidly ratified human rights treaty in the world. African nations were underrepresented in the drafting process, which lasted 10 years. But those nations ratified the U.N. Convention and simultaneously began drafting the African Charter on the Rights and Welfare of the Child (ACRWC), which the Organization of African Unity adopted in 1990. Unlike the U.N. treaty, the ACRWC reflects Africa’s unique cultural heritage, history and family values and asserts that children have rights as well as responsibilities.



Professor Warren Binford, director of the Clinical Law program at Willamette University, visits SOS Children’s Village in Cape Town, South Africa. SOS Children’s Villages provide homes for orphaned and abandoned children. Eight to 10 children are cared for in small family-type homes and are raised like brothers and sisters.



Nomile Simelane, 19, of Swaziland, married at 18 without her family's consent. Before they were married Nomile's husband used to give her money for food and basic necessities, and she says she thought that was love. Now, community aid workers who have followed Nomile's case say she has lost a lot of weight since she was married and she says she fears her husband.

Nelson Mandela was released from prison the same year as the adoption of the African Charter. Multiracial elections put the African National Congress into power in 1994, and Mandela — who had tremendous respect for the role children played in the Soweto student uprising, a turning point in the movement to end apartheid — led the effort to spell out rights for children in the country's new constitution. As a major player on the continent, South Africa set the standard for adopting the idea of *ubuntu* outlined in the ACRWC: children should view the family and community as significant parts of their lives but also should expect that those groups will respect their rights.

"Today's children are the economically active adults, the urban dwellers, the manufacturers of the future," says Julia Sloth-Nielsen, dean of law at the University of the Western Cape and an internationally recognized expert on children's rights. "It makes sense to have the best educated, fittest population in Africa."



Palesa Lagu

Education

The key to open the closed doors

The remote control of your future

Right now can be your responsibility

But at the end it gives you ability, opportunity, dignity and quality

It makes you independent

From being a depender

Palesa Lagu, 17, delivers her poem in staccato bursts, her expression tightening with each in-your-face retort to the adults who failed her. The verses bounce off the walls of Welwitschia Primary School and into Delft South, a township outside the center of Cape Town. Visitors to the school pass the Glory Hair Salon, the CheapCheap Store and rows of outdoor barbecue grills with sheep's heads jumbled together for sale — 40 rand, considered a delicacy. Big-bellied grandfathers butcher cows on the street, blood streaking their knives like paint on canvas.

Lagu, verbally abused by her mother, beaten by her stepfather and nearly raped by her uncle, says she thought about going to the police for help but her stepfather told her she'd never be able to come home again. She says people in her neighborhood tried to help her, but they didn't want to fight with her mother.

Then she got involved with Molo Songololo, a child advocacy organization that informs children about their rights through workshops, camps and activities. Now Lagu stays in her bedroom after school, writing poetry instead of roaming the streets with her schoolmates. They've attempted to force her into a gang but she refuses to join because "I don't like fighting. I don't like arguing. Even when I was in my home, they shouted at me and called me a coward."

Molo Songololo's belief in her "helped me to be strong," Lagu says. "When I'm in pain, I have my pen and write it down, and I just read to other people and tell them how I feel. Even if my mother is shouting at me, I think of the words I write and I don't lose hope."

Molo Songololo dedicates itself to teaching children about their rights. The organization hosted a summit where youths drafted the Children's Charter of South Africa in 1992 and was instrumental in getting them included in the crafting of the country's constitution. Director Patric Solomon says South Africa has made great strides in

carrying out the principles embedded in those documents: 90 percent of children in South Africa finish primary school; child and infant mortality rates are falling; immunizations have increased; sanitation and access to safe drinking water have improved; and birth registrations have swelled.

Now Molo Songololo and other organizations are focusing on how to conquer the more intractable challenges: economic inequality; racism that lingers nearly two decades after apartheid's end; inadequate budgets to ensure that children thrive; and the feeling by many that the mere existence of laws is enough to guarantee children a healthy future.

"We have a very good children's rights framework. On paper, it's great," Solomon says. "The problem is implementation."

Statistics back him up. Although poverty rates have declined for children overall, disparities still exist among white, black and "coloured" children of mixed race or other non-white background. More black children live below the poverty line than their white and coloured counterparts. Although most children finish primary school, fewer than 50 percent graduate secondary school. South Africa falls short of the African Union's commitment to allocate 15 percent of the national budget to health (South Africa allocated 10.2 percent in 2008, the most recent year for which figures are available) and 7

"We have a very good children's rights framework. On paper, it's great. The problem is implementation."

percent to education (South Africa spent 5.4 percent).

"Very few children have access to support services," Solomon says, "and there are very few support services for children when they want to defend their rights as teenagers."

Palesa Lagu says she wants to attend the University of the Western Cape and become a social worker. Her mother tells her there's no future in poetry, but Lagu refuses to listen.

"I wish I could do something about all these kids being abused; I wish I could help all of them," she says. Her voice, hard to understand as the words tumble out, picks up the cadence of one of her poems: "They must cope even if there's no hope. Every opportunity they get, they must grab with both their hands. If they want success, they must stand on their own and fight for their future."



Sithembiso Lukhele, 7, (right) is an HIV-positive orphan who lives with his grandmother in Swaziland. His mother died of AIDS shortly after he was born, without telling anyone in the family that he was positive. At 5 the disease began showing symptoms and Sithembiso was hospitalized. He no longer is able to attend school, and his grandmother, who also is HIV-positive, worries about what type of man he will become.



Gabisile Nxumato, 19, of Swaziland, gave birth to her young daughter when she was just 18. The father, 31, is unemployed and unable to help care for the child, forcing Gabisile to drop out of school. Orphaned since the age of 14, Gabisile lives with her uncle and helps take care of her younger siblings, as well as her own child.



THE CONSTITUTION OF THE KINGDOM OF SWAZILAND, 2005

Rights of the child.

- (7) Parliament shall enact laws necessary to ensure that —
- (a) a child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;
 - (b) a child is entitled to reasonable provision out of the estate of its parents;
 - (c) parents undertake their natural right and obligation of care, maintenance and proper upbringing of their children; and
 - (d) children receive special protection against exposure to physical and moral hazards within and outside the family.

Swaziland, South Africa's tiny neighbor and Africa's last absolute monarchy, has a similarly uneven record on children's rights. The challenges facing the country and its children are daunting. Swaziland's life expectancy is just 49 years; nearly 70 percent of its people live below the poverty line. AIDS has devastated the country: the number of people with the disease — 26 percent of the population — is the highest in the world.

The constitution, adopted in 2005, requires the government to enact laws that guarantee children a free education through the end of primary school, protects them against "moral and spiritual hazards inside and outside the family" and requires children to respect their parents and care for them when needed. Last September King Mswati III signed into law the Children's Protection and Welfare Act, which makes illegal all practices that would adversely affect a child's health and intellectual development.

"We now have it in black and white that children are protected," says Mandla Luphondvo, communications manager for World Vision Swaziland, a Christian humanitarian organization that fights poverty and injustice. "There is a recognition that children have the right to be children. I'm happy to say that we have turned a corner."

But the immense challenges facing this lush country of beehive-shaped houses and sorghum fields arranged like tiers of wedding cake along the mountainside show how difficult it is to prioritize

To read an essay by Warren Binford and view a slideshow of her stay in Africa, please visit: willamette.edu/wucl/alumni/lawyer

children's rights when the foundations of society are buckling. Children in Swaziland have a right to education and health care, but what happens when a 5-year-old boy like Sithembiso Lukhele, who has HIV and can't hear or speak, lacks medication because his grandmother — who also has HIV — doesn't have the money to pay for it? Children have a right to proper care, but what happens when a 10-year-old girl is raped by a relative, contracts gonorrhea and her family refuses to help her? And why should Swaziland's citizens believe child marriage is wrong if the polygamous king repeatedly selects teenagers as brides?

Zodwa Baartjies, development practitioner at the Bantwana Initiative, which helps communities in sub-Saharan Africa support vulnerable children and their caregivers, says laws protecting children are little more than words on paper. She has grown so exasperated by the Swazi government's inability or unwillingness to prosecute offenses against children that she relies on the media to publicize the cases she leaks to them.

"Laws are passed just to please the international community," she says. "They have no meaning for the typical Swazi. The rural people, and the authorities, are unaware."

S. Dlamini, 13, was sexually abused by an uncle over several years. She went to her grandmother and aunt for help, but they didn't believe her. She told the head of her primary school, who appealed to the police. They refused to act. Eventually the story came out at a workshop that the Bantwana Initiative sponsored for kids at Dlamini's school. Baartjies asked if anyone wanted to share a story about abuse they'd suffered. In a soft voice, Dlamini told what had happened to her. "Everyone in the workshop started crying," Baartjies said. "I had to break early and bring in a counselor to talk to the children."

Dlamini's school uniform of a navy blue sweater, yellow skirt, white blouse and black shoes stands out amidst the scrubby trees and bare concrete walls at her school in rural Swaziland. Asked through a translator what can be done to improve the lives of children in her country, Dlamini — who likes science and math and wants to be a nurse or a teacher when she grows up — answers without hesitation in perfect English, "I think the government should help the children that are abused to make a hotel and provide them with everything they need."

The next set of battles around children's rights likely will involve the quality of education and the elimination of traditional practices such as female genital mutilation, child marriage and corporal punishment, says Sloth-Nielsen of the University of the Western Cape.

"It's a battle of winning hearts and minds at a very grassroots level," she says. "You can't write a law and expect it will be fulfilled. You have to get to the villages, you have to talk to people differently about chastity, sexuality, bride price — all those things."

Lawsuits like the one that led to the distribution of anti-retroviral drugs to pregnant women are among the tools children's advocates use to prod African governments to do right by their children. In 2010, the Centre for Child Law at the University of Pretoria in South Africa sued the government of the Eastern Cape for educating children in mud-walled schools that lacked desks, chairs, running water, toilets and school supplies. A settlement resulted in the government pledging to repair and rebuild seven schools, as well as other mud schools throughout the country.

"This government doesn't have a large fiscal system to draw on; there's a small tax base to garner the funds needed to serve the entire population," says Ann Skelton, the center's director. "The government has a huge challenge to meet all expectations."

Binford, whose childhood image of Africa was one of hungry children needing to be saved, says she has come to realize that the continent doesn't need saving. Giving children a set of rights won't eliminate the poverty they're born into, or the pressure on them to give up their education to help support their families. Nevertheless, she says, "rights at least are a recognition of human dignity. If the world around you realizes you have a right to education, to health, to be cared for by your parents, to not be abused, you are far better off than you would be without public recognition of those rights." ■



Swaziland is experiencing a major increase in child-headed households as a result of the HIV/AIDS pandemic. **Sonto Kunene**, 15, (right) cares for her four younger siblings in eastern Swaziland.



—5'9"

—5'6"

—5'3"

830282

COUNTY SHERIFF
0357



Some legal experts

say that soldiers who commit minor crimes after returning from battle deserve an option other than jail. Veterans court gives them a shot at redemption.

A SECOND CHANCE

BY PETER SLEETH

The bumper stickers are easy to embrace: "We Support Our Troops." But the soldiers who stagger home from the battlefield don't always get the support they seek. Disability benefits can take years to arrive. Counseling can't always undo the trauma they suffered. Some veterans end up in jail, leaving the courts to decide: Does the fact that they served their country earn them a second chance?

The philosophy behind veterans court says yes. As the pullout of troops in Afghanistan intensifies, more and more soldiers will end up in the legal system as they try to cope with the aftereffects of a little-understood

war. In Klamath County, the first veterans court in Oregon, soldiers appear before Judge Marci W. Adkisson JD'88. Part mom, part Mother Superior, Adkisson every week must move beyond her role as an arbiter of justice and help rehabilitate criminals.

"Some people want to come to veterans court even if it would be easier in regular court," said Adkisson, a diminutive blonde who shrinks to 5'5" when she steps down from the bench. "I tell them they don't have to do this ... I'm going to reward if it's appropriate and I'm going to punish if it's appropriate."

A Measure of Mercy

Veterans court, a new addition to the legal system, is built on the idea that veterans who commit low-level crimes deserve some measure of mercy for serving a country that has been slow to recognize their unique needs. Modeled after drug and mental health courts, veterans courts emphasize treatment and diversion over punishment, getting veterans help for their problems before they find themselves in a hole too deep with substance abuse, mental health problems and crime.

That this judicial experiment is getting its first full-fledged Oregon tryout among the sagebrush and volcanic carvings of Klamath County is numerically appropriate. The conservative county's veterans comprise 12 percent of the population of 66,380 people, while statewide veterans comprise about 9 percent of the population. Lane County started a veterans court last March and Marion County debuted a new veterans court last October under Judge Vance Day JD'91. Klamath County's court has been operating since 2010.

The idea came from retired Klamath County District Attorney Edwin I. Caleb. While watching a public television news show about veterans courts in Buffalo, N.Y., three years ago — he was up for re-election at the time — Caleb said he found the possibilities intriguing. He thought veterans court would be popular with voters and a chance to lower costs at the county jail. If a veteran was receiving treatment from the Department of Veterans Affairs instead of occupying a jail cell, Caleb reasoned, it could be a better deal for everyone.

"I called the people back there and asked them how it worked and it didn't seem

impossible to me," said Caleb, who retired last December. "I figured, 'Why not?' So I started working on rounding everybody up."

Veterans courts, which exist in nearly 30 states, are almost entirely a local affair, designed, implemented and operated by county justice officials working — sometimes quite loosely — from the model developed in Buffalo, N.Y., by Buffalo City Court Judge Robert Russell Jr. in 2008. How they work varies in each of the more than 100 courts now operating nationwide.

Some courts apply only to combat veterans. Others only allow veterans of the wars in Iraq and Afghanistan. Most, but not all, require a guilty plea for the veteran to participate. Still others don't allow anyone with less than an honorable discharge from the military. Virtually all focus on veterans who are dealing with drug, alcohol or mental health problems; in fact, Klamath County only admits veterans who suffer from at least one of the three conditions. Eighty-five percent of the veterans who have passed through Adkisson's court have been dually diagnosed with mental health problems and substance abuse.

Klamath County's district attorney can veto participation by a veteran, but that is rare, said Steve Tillson, the coordinator of the county's treatment courts. Of the 39 veterans admitted as of Jan. 1, 2013, 23 remained in the program, 12 have graduated, three were terminated and one was killed in an automobile accident prior to completing the program. Not a single graduate has committed a new crime, Tillson said.

Most of the veterans courts nationwide have been operating for fewer than three years, the low end of statistically significant recidivism rates. Yet recidivism is by most accounts very low, in part because many of the veterans are first-time offenders



*One veteran was killed in an auto accident before graduating.

Source: Steve Tillson, coordinator of the Klamath County treatment court.

who are greeted by a system that tailors treatment programs to the individual.

Broad and Inclusive

Soldiers leaving the military may carry with them extensive psychological problems that, if not addressed, can spill over into drug and alcohol abuse, suicide, depression and crime. Suicide is at epidemic levels in the military, and the Department of Defense calls substance abuse within the ranks a public health crisis. Of the approximately 834,467 veterans from the Afghanistan and Iraq wars who have used Department of Veterans Affairs benefits, 53 percent have been diagnosed with mental disorders of some degree. Legal experts say many of those veterans are bound to end up in the nation's jails and prisons.



Recognizing the problem, Klamath County from the beginning took a broad and inclusive approach to its veterans court. Veterans from all wars are welcomed. They must plead guilty to their offense and agree to an 18-month program that includes a combination of mental health treatment,

drug testing, vocational counseling and other programs. The program excludes sexual offenses, Measure 11 crimes, commercial drug offenses, and anyone who is currently on a medical marijuana program.

Almost everyone involved agrees that running cases through the regular court docket is far easier for the defendant. In criminal court it's simple: you're innocent or guilty. In veterans court, everyone is guilty and everyone has to get better.

"One of the Best Decisions I've Ever Made"

Travis Brown refuses to fault his many missions in and around Baghdad for his troubles today. Still, after being sent to Iraq with the Oregon National Guard in 2009 for a one-year stint, he returned to his hometown of Klamath Falls a little different from when he left.

"I don't blame Iraq," said Brown, 23, whose wiry frame and close-cropped military haircut mark him as a soldier. "I blame myself, because everything is a choice and I made that choice myself."

In Baghdad his job had been working as security for military commanders, careening through the brown streets of the jumbled city and trying to avoid ambushes and bombs. Back in his hometown, the explosives were internal.

In August 2011, after a domestic disturbance call, he was charged with menacing. While being booked, he noticed a flier about veterans court and asked to be part of it.

"It just so happened to be one of the best decisions I ever made," he said. "They understand the veteran. They are not there to throw the hammer at you; they are there to help you be successful."

Jail intake is where the Klamath County veterans court gets the majority of its clients. In the more than two years the court has been operating, almost all of its participants were self-referrals from the

booking desk. In Lane County, which started its veterans court in March 2012, most of the veterans come on referrals from the Lane County district attorney. But severe budget cutbacks have forced the district attorney to stop prosecuting the kind of lower level crimes that fill therapy courts, said Judge Cynthia Carlson.

"That's the terrible irony of this situation," said Carlson, who helped start the program. "We have funding for treatment ... all of this has been hard fought for and is in place. We can treat them. But if we don't have the referrals ..."

"I'm going to reward if it's appropriate and I'm going to punish if it's appropriate."

—Judge Marci W. Adkisson JD'88

A Camaraderie Among Veterans

Each Tuesday, prior to the in-court sessions for veterans, Adkisson, Tillson and a treatment team of attorneys, employment specialists and representatives from the Department of Veterans Affairs gather in a conference room behind Adkisson's nondescript courtroom. They discuss their upcoming cases that day, tentatively agree on the best course for each veteran and try to figure out the particulars such as basic shelter, jail time and job counseling. Some veterans end up in nearby White City at a Department of Veterans Affairs residential facility.

At a recent meeting, the treatment team was filled with veterans. In veterans courts across the nation, many of the probation officers, judges and counselors are veterans themselves, or have family members who served. Volunteer mentors typically are veterans themselves, creating a camaraderie among the veterans to be treated and the ones doing the treating.



“They gave us exclusive service.
They gave us their lives in many
instances”

— Edwin I. Caleb

Retired Klamath County District Attorney



Veterans, the ACLU says, shouldn’t
get their charges dropped based on
their military status because non-
military defendants don’t always
get that option.

Weekly and bi-weekly court appearances affords close monitoring of each veteran, although if a defendant is progressing well, he or she might only show up every four weeks. The court is a hybrid of several adjudicatory processes. Veterans may enter into a diversion agreement, conditional discharge or simply avoid a prison sentence by completing the program. The options are determined on a case-by-case basis through negotiations between the defense attorney and the district attorney.

Stephen R. Hedlund JD’02 is Klamath County’s public defender and represents virtually all the clients in veterans court. He believes the program is a better choice for veterans than regular court, despite the mandatory guilty plea.

“With these guys, especially with the PTSD (Post Traumatic Stress Disorder) issues they go through, there is just not a general recognition of this when you go through the regular docket,” Hedlund said.

Last August, Travis Brown’s case came up before the treatment team — and not because he was about to graduate. Instead, Brown had been arrested in a second domestic violence case.

Brown had completed 13 months of the program. But the most recent charge of menacing meant he might be headed to the regular court docket, where it seemed a conviction was certain. That was a problem for Brown, because he has an infant son with whom he does not want to lose

visitation rights. Successful completion of veterans court likely would lead to the charges being dropped.

"My son is a big motivation," Brown said. "I need him back in my life."

Adkisson, Hedlund and the rest of the team came up with a plan: He would commit to another 18 months in the program, add in a program for domestic violence counseling and continue his regular Tuesday court appearances. Brown would get another stab at repairing his life.

"It's like a second chance," Brown said later. It's awesome."

Preferential Treatment

The idea that veterans deserve preferential treatment in some courts isn't universally accepted. In some states, the American Civil Liberties Union has voiced concerns about equal treatment under the law. Veterans, the ACLU says, shouldn't get their charges dropped based on their military status because non-military defendants don't always get that option.

But Caleb, Klamath County's former district attorney, said he has no qualms about preferential treatment. "They gave us exclusive service. They gave us their lives in many instances," he said. "I'm not a guy who feels you have to put everybody in jail. Most of the criminals aren't necessarily bad."

Clark County, Washington District Court Judge James P. Swanger JD'79 said veterans court serves another purpose: it stretches judges, removing some of the adversarial relationship from the courtroom.

"You kind of have to step out of your role, the traditional thinking, and have a more therapeutic or restorative justice in mind," he said.

Swanger said he believes the combination of a shift in thinking among judges,

States with the highest number of veterans courts



Source: Justice for Vets

combined with the support veterans give each other in the programs, works to everyone's advantage. "The camaraderie among the clients, the support they get from the VA and their mentors, I think bodes well for their success," he said.

A Changed Approach

Back in Klamath County, Judge Adkisson has similar thoughts. She sits one day as a judge in veterans court; the rest of her week is consumed with the standard trial docket. Her time with veterans has changed her approach to jurisprudence, she said. "What I always say to people is I wish I could do all my criminal courts the way we do veterans court, because it is so much more involved and personal," she said. She has tried that to some extent by taking a more therapeutic approach when she considers it appropriate.

"I talk to people a little more, whereas before ... maybe I ran through it faster," she said.

Adkisson grew up in nearby Lakeview, a childhood of "4H and family." She wanted to come back after law school on the wet side of the state to work in a small town in the arid desert of Eastern Oregon. Adkisson married an Air Force veteran and said the appeal of being a local is knowing her local bank clerk and occasionally running into one-time defendants at the grocery store.

Or being able to double-check a veteran's story.

Not long ago, one veteran told her he couldn't make his upcoming court date.

"Why?" Adkisson asked.

"I have to go to my grandfather's funeral in Lakeview," he replied.

That evening, Adkisson called her sister in Lakeview. She asked who had died recently. "Only Chuck Reed," her sister said. Reed was a family friend and no relation to the veteran.

At his next court appearance, Adkisson asked the veteran his grandfather's name. He replied, "Chuck Reed."

"He's not your grandfather," Adkisson replied. "I know Chuck Reed and I know he's not your grandfather."

The veteran eventually returned to the regular court docket. He is now on probation. ■



Curtis Bridgeman, Associate Dean at Florida State Law School, is Willamette's New Law Dean

Curtis Bridgeman, associate dean for Academic Affairs at Florida State University, will start as the 21st dean of Willamette University College of Law in July. A scholar in contract law, Bridgeman has almost a decade of experience at FSU, ranked the 48th best law school in the nation by U.S. News & World Report and the 25th best in the nation by The Wall Street Journal at placing graduates in jobs requiring law school degrees.

Bridgeman says he's excited about leading Willamette, the oldest law school in the Pacific Northwest. The school is unique in the region for several reasons, he notes: "Willamette is a place where students know their professors, they know the dean and the dean knows them. It's located in the state capital, and that provides so many opportunities for students to get real-word experience. And Willamette has a fantastic faculty that is very scholarly but also places a high value on teaching.

"That great sense of tradition, combined with a great location, a nimble size and great faculty allow us to be more responsive to the needs of students," he says. "We have to be vigilant to make sure the education we're providing gives students the opportunities they can reasonably expect."

Willamette is similar to FSU in that both schools are located in state capitals — FSU is in Tallahassee — and Bridgeman has worked with state agencies and FSU alumni to get them more involved at the law school. Those same opportunities exist in Salem, he says.

"We use our location to provide the best possible education and job opportunities for our students," he says. "A lot of things we've done here we can do at Willamette."

Bridgeman clerked for the Hon. Gilbert Merritt of the Sixth Circuit, U.S. Court of Appeals in Nashville, before he became a professor at FSU in 2004. Members of the first-year class chose him Professor of the Year three times; in 2007 he was named the James Edmund and Margaret Elizabeth Hennessey Cory Professor of Law. Currently he teaches contracts, commercial law, creditors' rights, jurisprudence and philosophy of private law.

Bridgeman's scholarship explores the structure and philosophy of contracts, commercial law and bankruptcy law. He has spoken at law



“I always try to find time for students outside of class. You get to be part of a student’s life at a very important and exciting time, and it’s great to mentor them throughout their careers.”

schools around the world and serves on the executive committee of the American Association of Law Schools’ contracts section. Four years ago, his Tennessee Law Review article “Bullshit Promises,” co-authored with Willamette Law Professor Karen Sandrik and focusing on deceptive contract language, drew praise from Elizabeth Warren, now the U.S. senator from Massachusetts. “Treat yourself to reading ‘Bullshit Promises,’” she wrote. “It is well-written and engaging, and it makes an important point about the shortcomings of consumer contract law.”

Contract law scholars tend to approach their subject from an economic or a philosophical perspective, says Stanford University Law School Professor Dick Craswell, a contracts law expert who knows Bridgeman’s work well. Bridgeman, he says, is sympathetic to arguments from both perspectives.

“He’s one of the few people trying to provide corrective justice theories to contract law,” Craswell says. “It’s an important line of inquiry and he’s right out front with it.”

Bridgeman, 41, grew up in Alabama. His father was a computer programmer and his mother worked for a junior college helping laid-off factory workers find new training and jobs. Bridgeman was intrigued by law as a youth, and when he enlisted in the U.S. Army out of high school he worked as a legal clerk in Alaska. The lawyers there mentored him and he picked up a lot about the law, but then Vanderbilt gave him “a great offer” to study philosophy. He took it.

After receiving his master’s and doctorate in philosophy, Bridgeman decided to try law school. He enrolled at Vanderbilt, serving as articles editor of the Vanderbilt Law Review. Bob Rasmussen, dean of the law school at the University of Southern California, was Bridgeman’s contracts professor at Vanderbilt. “He was the type of student you loved to have in class; he always asked a question that made the discussion better,” Rasmussen says. “He wrote one of the best contracts exams I ever graded.”

Bridgeman says education made a huge difference in his life and he’s grateful for the donors who paid for the scholarships that enabled him to earn multiple advanced degrees. One of the reasons

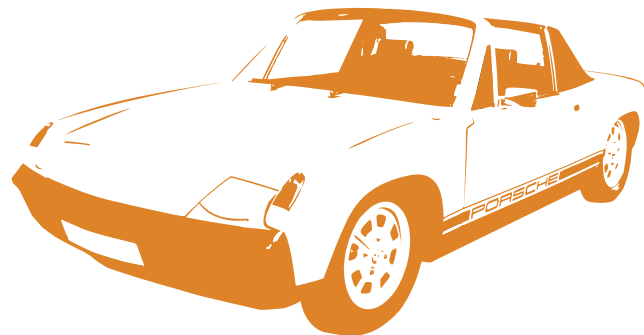
he wants to be a dean, he says, is that he wants to help professors make a difference in students’ lives the way professors made a difference in his.

“Teaching is all about understanding things from the students’ point of view, and I always try to keep that in mind,” he says. “I always try to find time for students outside of class. You get to be part of a student’s life at a very important and exciting time, and it’s great to mentor them throughout their careers.”

In his spare time Bridgeman fixes up old cars, something he did as a teenager with his grandfather. (The fixer-uppers aren’t for show; Bridgeman drives a 1976 Porsche that he repaired after it sat idle for five years). He has two grown sons, one of whom has followed him into teaching. His wife, Beth King, is a pediatrician who will join Salem Pediatric Clinic in the fall. They enjoy outdoor activities like hiking and fly-fishing, which is one of the reasons he’s looking forward to relocating to Oregon.

Rasmussen, of USC, has followed Bridgeman’s career closely over the years. He says he isn’t surprised Bridgeman went into teaching, or that he got the offer to run a law school.

“It’s clear Curtis would’ve had a lot of opportunities,” Rasmussen said. “The fact that he was chosen for this says good things about Willamette.”



Symeon C. Symeonides Honored by Greece's Largest University



Alex L. Parks Distinguished Professor of Law and Dean Emeritus Symeon Symeonides was awarded the title of Doctor Honoris Causae of the Law Faculty by the Aristotle University of Thessaloniki. Symeonides, who led the law school for 12 years until stepping down in 2011, attended the University of Thessaloniki as a student. He graduated summa cum laude and received degrees in public and private law.

The award is for lifetime achievement, given to individuals with exemplary accomplishments in their fields. Symeonides also

received two degrees from Harvard Law School.

Symeonides spent last fall helping the European Union (EU) draft new laws and reform old ones. He presided over four work groups consisting of representatives of the 27 member states of the EU, who are drafting new EU laws on a common European sales law; the property relations of spouses; the property consequences of registered partnerships; and cross-border freezing of bank accounts.

Symeonides presides over another work group that completed the revision of the EU law on jurisdiction and judgment recognition in civil and commercial cases. His mandate is to act as a mediator to ensure that the three EU institutions — Parliament, Commission and Council — will agree to the same text or amendments to it.

Symeonides also represents the Presidency of the EU Council at The Hague Conference of Private International Law in negotiating a new international convention on choice of law for international contracts.

Paul J. De Muniz joins Willamette as Distinguished Jurist-in-Residence



Former Oregon Supreme Court Chief Justice Paul J. De Muniz JD'75 joined the law school faculty after retiring from the court last December. He is teaching classes in criminal procedure and practice and judicial opinion writing. He hopes to start a center for judicial excellence to educate and train judges.

De Muniz also will sit on the Oregon Court of Appeals as part of his retirement and plans to work with his students to research and draft opinions on cases. "I'm trying to combine the academic and the practical," he said. "It will really help students' writing because they'll learn how difficult it is to drill down to the fundamental issues that need to be resolved."

De Muniz was appointed to the Court of Appeals in 1990 and elected to the Oregon Supreme Court in 2000. His fellow justices elected him chief justice in 2005. While on the court, he crusaded relentlessly to streamline Oregon's justice system and started a project called eCourt, with the goal of making Oregon's courts fully electronic and accessible to the public 24 hours a day, seven days a week.

While on the court, De Muniz started a virtual clerkship that provides the services of a Salem-based law clerk to rural judges. He hopes to expand upon that. He also wants to establish a judicial externship that would give students the chance to clerk for judges around the state.

"I love teaching; I love working with young lawyers," De Muniz said. "I think it's a great opportunity."

Dean Peter Letsou and Associate Dean Jeffrey A. Standen Leaving Willamette

Peter Letsou, who has been dean of Willamette University College of Law since 2011, has been named dean of the Cecil C. Humphreys School of Law at the University of Memphis. He will start his new job June 1.

"With his leadership and the accomplishments of our faculty, students and alumni, we will continue to raise the national profile of the Cecil C. Humphreys School of Law," said Shirley Raines, president of the University of Memphis. U of M's incoming provost says Letsou brings a wealth of experience as an academic leader, a sitting dean and a legal scholar.

"It's a privilege and an honor to be selected to lead such an outstanding institution," Letsou said. "But at the same time, I'll miss Willamette and all the great friends I've made here over the last 11 years. Willamette's a wonderful law school and I know its future is very bright."

Letsou joined the Willamette faculty in 2002 as the Isaac Van Winkle Professor of Law and was named the inaugural holder of the Roderick and Carol Wendt Chair in Business Law in 2003. He became associate dean in 2006. Prior to his tenure at Willamette, Letsou was a professor and director of the Center for Corporate Law at the University of Cincinnati College of Law and spent seven years at George Mason University School of Law, earning tenure there in 1996. He has been a visiting professor at the University of Connecticut and Emory University law schools and at University of Paris 1 Pantheon-Sorbonne.

Also leaving is Van Winkle Melton Professor of Law and Associate Dean for Academic Affairs Jeffrey A. Standen. Standen has been named dean of the Chase College of Law at Northern Kentucky University effective July 1. He has been at Willamette since 1990 and has been a visiting professor and scholar-in-residence at the University of Virginia School

of Law and a visiting professor of law at the University of San Diego. Standen has published three books in the last five years, three book chapters and several articles. Prior to joining Willamette, Standen served as deputy general counsel for the United States Sentencing Commission and spent four years in litigation practice focused on financial instruments and civil racketeering.

"I am honored to be selected by NKU to lead the Chase College of Law," Standen said, "and I very much look forward to working with the faculty, administration and alumni to ensure that our students receive a

world-class, practice-ready education that prepares them for every success. Chase has a long and storied tradition and an even brighter future, and I look forward to contributing to the substantial accomplishments of my predecessors."

NKU Vice President for Academic Affairs and Provost Gail Wells said Standen will take Chase to a new level. "Jeffrey has the experience, vision and demonstrated leadership capacity to be an extraordinary dean who will build upon the strong foundation of excellence in the Chase College of Law," she said.

"I'll miss Willamette and all the great friends I've made here over the last 11 years. Willamette's a wonderful law school and I know its future is very bright." —PETER LETSOU



Letsou



Standen

by Professor Paul Diller

After 30 years of dramatic increase, obesity rates in the United States may finally be plateauing. Before we celebrate, let's realize just how much the landscape has changed.

In 1980, about 15 percent of the population was obese; today it is more than a third, or almost 36 percent. Among children the rate has tripled, from fewer than 7 percent of 6- to 11-year-olds in 1980 to more than 20 percent today; and from 5 percent of adolescents in 1980 to 18 percent today.

If the leveling off of obesity rates represents some modest success of legal and public policy interventions, it raises the question: what took us so long? One explanation is that, compared to some other public health problems, the causes of obesity are complex. Whereas the link between smoking and lung cancer is fairly direct, the link between any one behavior — eating fast food, drinking soda, living a sedentary lifestyle — and obesity is not so clear-cut.

Indeed, efforts to use the torts system to change food industry behavior have failed utterly, in part because of this complicated causal chain. Moreover, both the legal and political systems often have viewed obesity as resulting from a failure of individual willpower, rather than as the result of the social and economic environment. In

OBESITY AND THE LAW

The dramatically increased obesity rate will impact the nation's health, economy and even national security for years to come. More instances of Type-2 diabetes among children, higher health care costs (which strain employers, Medicare and Medicaid), and fewer fit recruits for the military all are ways in which obesity will continue to affect our nation.

response to lawsuits against McDonald's, consider the proliferation of "cheeseburger bills" passed by 23 states (including Oregon), that immunize the food industry from any consumption-based claims of harm.

The cheeseburger bills represent a second reason why it has taken our legal and political systems so long to react to the obesity epidemic: the enormous influence of the

A big part of changing the food environment is increasing the supply and availability of nutritious foods like fruits and vegetables and whole grains.

food and beverage industry on public policy. From federal farm subsidies that indirectly subsidize soda to the rejection of proposed changes to the school lunch and food stamp programs, various industry groups have demonstrated they wield significant political clout, likely due to their campaign contributions and economic importance.

Despite these barriers to change, and despite the fact that food and beverage consumption isn't the only cause of obesity's rise, public health experts have argued that we won't reduce the nation's obesity rate until we change the food environment. Expecting Americans to "rationally" reject pizza and hamburgers in favor of tofu and brown rice won't happen. Rather, government and private entities need to "nudge" (to borrow from Cass Sunstein, the Harvard law professor and former Obama White House official who has promoted the notion of "libertarian paternalism") people into making a healthier choice, whether by lowering costs or increasing convenience.

A big part of changing the food environment is increasing the supply and availability of nutritious foods like fruits and vegetables and whole grains, which are often hard to find in "food deserts" publicized by Michelle Obama. Efforts such as neighborhood vegetable gardens, mobile produce carts and more farmers' markets have sought to address this problem.

Just as important as irrigating food deserts, however, is draining the "food swamp" of an environment in which we live. Recent empirical research shows that what affects obesity more than the presence of healthful options is the competing presence of obesogenic options from fast-food restaurants and the like.

Toward this end, local governments have taken the lead in regulating the food environment to reduce unhealthy options, or to help customers make more informed choices. Those efforts include Los Angeles's zoning moratorium on fast-food restaurants in areas currently saturated with them, and San Francisco's prohibition on packaging toys with children's meals laden with sugar, fat and sodium (sometimes inaccurately called a "Happy Meal ban").

If the leveling off of obesity rates represents some modest success of legal and public policy interventions, it raises the question: **what took us so long?**

New York City, under the leadership of Mayor Michael Bloomberg, has been particularly aggressive in adopting obesity-prevention regulations. In 2007, the city's health board banned artery-clogging artificial trans fats in restaurant food. Numerous other cities and counties have since followed suit, as has the state of California. New York City also requires chain restaurants to prominently post the calorie content of their menu items. This regulation spread to other jurisdictions almost as speedily as a grease fire, with Multnomah County and then Oregon adopting a similar law in 2009. The 2010 Affordable Health Care Act essentially nationalized menu labeling

policy, although the implementing regulations are forthcoming from the FDA.

More recent and most controversial are New York City's proposed size limits on single servings of soda, which have attracted much scorn and mockery from the media, perhaps because they seek to change consumer behavior in a more obvious and, to some, paternalistic fashion.

Local governments are clearly at the forefront of combating obesity through food regulation. Why they seem uniquely capable of tackling this issue is a fascinating question. Is it their smaller scale, their political orientation, or something related to the structure of their governments (usually unicameral legislatures with no supermajority requirements)? Whatever the reason, perhaps local governments have something to teach other levels of government about how to enact regulatory policies opposed by powerful interest groups.



— Paul Diller is an associate professor of law who teaches and writes in the area of state and local government. His recent articles in the

Georgetown Law Journal and the *Journal of Law, Medicine & Ethics* have examined local efforts to combat obesity. He also has served as an advisor to ChangeLab Solutions, a nonprofit public health organization that works with local governments around the nation to implement obesity-prevention strategies.



“To Me, That’s Unforgivable”

Third-year law student Allison Wils watched friends and family members guide their loved ones on a maddening journey through America’s health care system. She wants to change that.

Allison Wils BA’08 tears up when she talks about her Dutch ancestors: the grandfather who was imprisoned in a concentration camp for his anti-Nazi activities. The grandmother who was an opera singer in England before immigrating to the United States. Her grandfather and grandmother died of cancer a few years ago, and Wils says it was “heart-wrenching” to watch her father weigh financing for different treatment options so his parents’ extraordinary lives could end in peace.

“You’re scared the whole time because you just want to get the treatment for someone you love,” Wils says. “It still pulls all my heartstrings.”

Wils says her grandparents were lucky because her father, a nurse, was able to help them decipher the information from doctors, bankers and insurance companies. One of Wils’s friends wasn’t so fortunate; her grandmother developed bedsores because her caregiver didn’t move her often enough. “The family had no voice; they didn’t know any of the disciplinary proceedings,” Wils says. “To me, that’s unforgivable.”

Wils graduates from the College of Law this spring. She will be the first Willamette student to receive a Certificate in Law and Government with an emphasis in health policy. Wils is an extern at the Oregon Health Authority and clerks at the Oregon Depart-

ment of Justice. She also is a student member of the health law section of the Oregon State Bar and was a Lilly Research Scholar.

Medicine runs in her family; her aunts and uncles are doctors and nurses and her sister is a lab tech. Wils was raised on her dad's stories of seeing patients sitting in hospital lobbies because they needed a warm place to sleep. They had colds that should have been treated by their primary care doctors, but they didn't have the money for the co-pay.

As part of her externship with the Oregon Health Authority, Wils has immersed herself in the details of the Affordable Health Care Act, the federal health care overhaul that President Barack Obama signed into law three years ago. Wils calls it the equivalent of the feminist and civil rights movements of her parents' era. "I hope people will start to see the good in it even if ideologically they're opposed to it," she says. "I really believe once people have coverage in times of great pain — and they're able to get the care they need because they have insurance and they don't have to go bankrupt — then people will realize how powerful it is."

Wils, who also will earn a Certificate in Dispute Resolution, attended meetings and offered her insights during talks about how the Oregon Health Authority and the Indian Health Service should work together during the rollout of the Affordable Care Act. Although those negotiations had started before she joined, "she was quickly accepted as a contributing member," says Bob DiPrete, a health policy analyst for the Oregon Health Authority. "What struck me is how quickly she understood the discussion and how gracefully she participated. All her questions and all her observations were on point."

Jeremy Vandehey, former legislative director for the Oregon Health Authority, supervised Wils as she researched the idea of creating a loan repayment program for primary care providers who treat Medicaid recipients. "She was very smart, very bright, energetic," he says. "She was trying to find a mesh between her law degree and health policy. It's not easy to blend those, but she was really motivated."

Wils is plunging into health care policy just as Oregon is undergoing a fundamental shift in the way it distributes health care to Oregonians. The state has established a health insurance exchange, a regulated online marketplace for residents to shop for coverage. The state also aims to improve quality with "coordinated care organizations," groups of doctors, hospitals and other caregivers who will coordinate mental, physical and dental care for the 600,000 people covered

by the Oregon Health Plan. Caregivers will be rewarded for keeping members healthy and achieving quality goals.

"I really believe once people have coverage in times of great pain — and they're able to get the care they need because they have insurance and they don't have to go bankrupt — then people will realize how powerful it is."



The new distribution system will require the legal expertise of people like Wils to help draft administrative rules, develop an advocacy strategy and advise lawmakers as they craft bills to make the system work.

"Health reform is going to be around for a number of years to come," Vandehey says. "Having a diversified background is really important in today's market, and I applaud Allison for taking that on."



A Warrior for Conservation

Who gives up a prosperous career to fight environmental degradation? Ralph Bloemers did, and he never looked back.

At just 40 years old, Ralph Bloemers JD'98 already has etched his legacy into the Northwest's landscape.

His four-attorney Portland environmental law firm, the Crag Law Center, regularly challenges the government, oil and timber companies and big corporations on behalf of individuals or community and environmental groups fighting to preserve the West's most wild places and natural resources. They've notched some big wins in recent years: After the firm filed a lawsuit in state and federal court challenging a destination resort proposal on the north side of Mount Hood and a large old-growth timber sale, Bloemers and his colleagues worked closely with Oregon's congressional delegation to craft successful legislation resulting in the designation of 125,000 acres of new wilderness and 85 miles of new river protection. The firm also challenged the U.S. Forest Service's plans for a massive old-growth logging project in undesignated roadless areas in the Umatilla National Forest in Washington state, winning a ruling from the 9th U.S. Circuit Court of Appeals that said the Forest Service must disclose the quality and quantity of roadless areas within forests and must consider options that don't log old-growth forests.

Crag also won a unanimous decision in 2010 in the 9th Circuit requiring timber companies to comply with the Clean Water Act. Advocates of the law maintained for decades that the pipes, ditches and channels used by the timber industry constitute industrial point-source pollution, thus requiring companies to get permits when they channel polluted stormwater directly into a river or stream. As the case was set to go before the U.S. Supreme Court last December, the Environmental Protection Agency issued a last-minute rule amending the central regulation at issue in the case.



Ralph Bloemers stands at a farm on Grand Island in Oregon's Willamette Valley, where he is helping residents block the expansion of a gravel pit.

Bloemers (pronounced "Bloomers") and Christopher G. Winter, both of whom formerly practiced at Stoel Rives, founded the nonprofit Crag Law Center in 2001. "Crag" originally was an acronym for Cascade Resources Advocacy Group, but the firm changed its name in 2006. At first it focused its work on environmental issues affecting the Cascades mountain range in Oregon and Washington, but "as the needs have grown, so has the extent and reach of our work beyond the Pacific Northwest," Bloemers said.

Crag differs from other organizations that concentrate on litigation and lobbying in that the firm serves as a complete legal resource for conservation groups. Because industry lobbies are heavily funded, conservationists are at "a huge disadvantage in any decision-making process," said Dick Roy, an attorney who heads the Center for Earth Leadership in Portland. "Crag allows small groups to be represented in what turns out to be major issues."

Recently retired Oregon Supreme Court Justice Robert D. Durham, to whom Bloemers refers as "my mentor during law school and a positive influence in my career development," said Bloemers has achieved much legal success and has been savvy in attracting financial support.

"I knew that down in his heart, Ralph would end up in some type of environmental work on behalf of the community," Durham said.

"I'm impressed with Crag. It's grown in respect since he began it. They blended a strong environmental ethic with professionalism, as well as good, old-fashioned political fundraising."

Bloemers is a farm boy and a city kid. He was born in Rotterdam, the Netherlands, and lived there until he was about 5 years old when his family moved to Virginia. His father, who is Dutch, went back and forth for many years while continuing to run his business in the Netherlands.

Bloemers grew up on a 600-acre farm in the Blue Ridge Mountains outside of Charlottesville, Va., where his mother was raised. His family's farm was near the Shenandoah National Park and on the river that provided the drinking water to Charlottesville. They owned 75 Holstein cows and made Gouda cheese for sale at specialty stores on the East Coast. Young Ralph was responsible for making hay, taking care of 30 or so chickens, mowing, weeding and doing farm maintenance.

Bloemers often spent summers in Rotterdam and studied international environmental law for a semester at the Rijks Universiteit de Rechtsgeleerheid (Royal Dutch Law School) in Leiden during the first semester of his third year at Willamette. He speaks fluent Dutch, decent German and some basic French and Spanish. At Willamette, he completed an externship at 1000 Friends of Oregon and a fellowship at The Nature Conservancy, where he learned about land use and natural resources work. He graduated cum laude.

"I feel strongly that what I have created here is bigger than me," he said of Crag. "I am

as proud of the role I play supporting my colleagues and being a part of creating an organization where the next generation of environmental advocates can grow as lawyers as I am about my own cases."

Bloemers concedes that his work involved sacrificing the high income he was making at Stoel Rives, where he spent three years before co-founding Crag. He estimates he gave up about \$1.5 million he would have made had he remained with Stoel Rives. But he says it was a personal choice, one he planned for by living below his means and paying off his law school debts.

That was more than a decade ago, and he has no regrets. "I couldn't have dreamed it would turn out as well as it did, and that the

Crag differs from other organizations that concentrate on litigation and lobbying in that the firm serves as a complete legal resource for conservation groups.

community would respond the way it has," he said. "I went to law school to do this, not just to make money. I had the sense that something needed to be done."

— *Cliff Collins*



Ralph Bloemers with his son, Theo, age 1.



A Balanced Hand

Ted Runstein is part of a cadre of attorneys who find analytical bliss within Portland's competitive bridge community.

An impressive roster of lawyers, politicians and businessmen make up the ranks of bridge devotees: U.S. Supreme Court justices John Paul Stevens and Stephen Breyer, President Dwight Eisenhower and billionaires Warren Buffet and Bill Gates.

Tennis legend Martina Navratilova credits the game with teaching logic, quick thinking, patience and partnership skills. "No matter where I go, I can always make new friends at the bridge table," she has said.

Ted Runstein JD'66, a founding partner of Portland's Kell Alterman & Runstein, discovered the benefits of bridge while majoring in business administration at the University of

Washington. He and his friends would gather regularly in the school commons to play, a habit he continued at Willamette University College of Law.

"It was a good way to meet people. We didn't have the Internet and social networking back then, so this was a way we could socialize while also challenging our minds," he said.

Runstein and several law classmates would spend afternoons playing in the cafeteria. Some evenings, they would visit the Knights of Columbus Hall, where they often encountered local judges like Val Sloper who would invite them to join their games.

Runstein quickly learned the nuances of the game, in which four players sit at a square table and the players across from each other become partners. Each player is dealt a hand of 13 cards, and each set of partners tries to win as many "tricks" as possible.

"Bridge is like an onion. You think you've learned something and then you peel a layer back and there is another level. You're constantly learning new things," Runstein said, adding that if four bridge experts are asked how they would play a certain hand, they respond with four differing opinions.

Despite his love of the game, Runstein quit playing entirely upon graduating from

Willamette. His burgeoning personal injury practice and family left little time for bridge. When he picked it up again about six years ago, he became part of a close-knit community of local lawyers who play competitive bridge and have gained national attention for their skills.

"Many of the finest bridge players in the world are Portland lawyers," Runstein said.

"It was a good way to meet people. We didn't have the Internet and social networking back then, so this was a way we could socialize while also challenging our minds."

Among them is Marc Zwerling, a world champion who began playing as a youth. Lake Oswego lawyer John Stanley Sather and Randy Pickett, a Portland attorney, also play. Pickett admires how quickly Runstein improved his game, which has evolved dramatically since the college years.

"What he did is very difficult to do," Pickett said. "To go away from it for so long and then come back to it is very difficult, so he has certainly done well in re-establishing his game."

Though bridge has been around in some form since the 1700s, it changed rapidly over the last century. With so many attorneys who are fans, it's probably not surprising that it was invented by the famous barrister and card game enthusiast Edmond Hoyle. According to one author, the game that started as whist became bridge-whist and, ultimately, contract bridge, which became popular across the United States during the 1920s.

By the 1930s, books on bridge were best sellers, playing card production rose to 52 million packs a year and more than 1,200 people were working as bridge instructors. By the 1960s, there were more than 35 million bridge players across the U.S. Today, the American Contract Bridge League has 160,000 members and is one of the nation's largest hotel users due to its national tournament. The 10-day contest hosts an average of 6,000 players.

Runstein said he returned to bridge because his practice is slowing down as he nears retirement. Over the last six years, he has elevated his game using many of the skills that made him a successful

lawyer: thinking strategically, having patience and discipline and being competitive yet congenial at the bridge table. As Pickett noted, the ability to adapt to the ever-evolving nuances of the game is an invaluable skill that enhances Runstein's game.

Ever humble about his skills, Runstein is quick to state that he doesn't think he'll ever be a world-class player, though he has become a life master and has won district honors. He has competed at the national level four times — qualifying for the finals three times — and last year he and his partner tied for first place at a regional competition in Yuma, Ariz.

Prizes aren't financial windfalls, which Runstein appreciates. "Tennis and bridge, in my opinion, you do strictly for the fun and enjoyment," he said, adding that enthusiasts can play bridge well into old age.

The atmosphere surrounding competitive bridge also appeals to Runstein, who has seen Gates and Buffet at competitions and has met interesting new partners. These include a retired Boeing engineer and a retired doctor, both from Seattle. Runstein sometimes partners with clients, and he and his wife, Sandy, play socially.

On the competitive front, stamina — and a yen for an adrenaline rush — are key to success, Runstein said.

"As a trial attorney I'd have to say one of the things I enjoy is stress, frankly, and it's about as stressful as things come," he said.

— Melody Finnemore



the 1960s

A well-deserved honor was bestowed on longtime Oregon lobbyist **David S. Barrows AB'57, JD'61** of Lake Oswego, Ore. Last November, Dave received the Oregon State Bar's Award of Merit at its annual luncheon in Portland. The highest honor the bar bestows, the award is given to an individual who has made outstanding contributions to the bench, the bar and the community at large, and who exhibits the highest standards of professionalism. Over the years, Dave forged personal relationships with most, if not all of Oregon's political leaders and mentored legislators and lobbyists alike. Perhaps the most influential lobbyist in the state, he truly "wrote the book" on how to lobby effectively and appropriately in Salem. "The Oregon Lobbyist's Briefcase Companion" is available online.



Tonkon Torp LLP partner **Daniel H. Skeritt BA'65, JD'68** of

Portland, Ore., has been appointed Oregon State membership chair for the U.S. Supreme Court Historical Society. The private, nonprofit organization is dedicated to the collection and preservation of the history of the Supreme Court of the United States. "This is a fitting honor for Dan, who is one of Oregon's most respected and successful litigators," said Michael Morgan, Tonkon Torp managing partner.

"Throughout his career, he has been an advocate not only for his clients, but for the highest principles in the practice of law and respect for and protection of our judicial system."

the 1970s

Michele T. Grable JD'76 of Pendleton, Ore., received the President's Public Service Award at the Oregon State Bar's annual luncheon in November 2012. Michele has practiced family law in eastern Oregon for more than 20 years. Her partners are **Seth W. Hantke JD'95** and **Evan D. Hansen JD'03**.



Pondera Valley and Golden West Lutheran Churches in Conrad,

Mont., are pleased to announce the installation of The Rev. **Alan L. Daugherty JD'78**, most recently of Spokane, Wash., as their new pastor. Alan practiced civil law for 15 years, but went inactive in 1995 and followed his calling. He attended the Lutheran seminary in St. Paul, Minn., and has since served congregations in California, Oregon, Wisconsin and Washington. Alan and his wife, Sandy, have six children and seven grandchildren. An interesting fact about the pastor: he collects old comic books (somewhere in the neighborhood of 15,000 to date) and toys from the 1950s and 1960s.

the 1980s

Jeffrey A. Bowersox JD'81 of Lake Oswego, Ore., has been elected chair of the American Association for Justice Section on Toxic Environmental and Pharmaceutical Torts for 2012-13. He has served on the section's environmental committee since 2006. Jeff heads the Bowersox Law Firm in Lake Oswego.



Best Lawyers, the oldest peer-review publication in the legal profession,

has named **Mark F. LeRoux BA'78, JD'82** of Portland, Ore., the 2013 Portland "Lawyer of the Year" in the specialty of tax law. Mark is a member of Tonkon Torp LLP's taxation practice group, where he focuses on federal, state and local tax matters — including taxation of corporations, partnerships and LLCs — as well as personal investments. He is a frequent speaker on tax matters for both business organizations and continuing legal education seminars.

U.S. Attorney General Eric Holder has named **Gail B. Geiger JD'83** of Eugene, Ore., acting U.S. trustee for Alaska, Idaho, Oregon and Washington, also known as Region 18. Prior to her appointment, Gail served as the assistant U.S. trustee in the Eugene office. U.S. trustees protect the integrity of the bankruptcy system by overseeing case administration and litigating to enforce bankruptcy laws in 21 regions across the nation.

Federal Trade Commission Chairman Jon Leibowitz recently announced that **Charles A. Harwood JD'83** of Washington, D.C., will serve as acting director of the Bureau of Consumer Protection. He has served as a deputy director in the bureau since November 2009 and previously spent 20 years as director of the FTC's northwest regional office in Seattle, where he led law enforcement and consumer education efforts — often in cooperation with state authorities — involving a wide range of antitrust and consumer protection issues. In 2001, Charles received the FTC Chairman's Award for his service to the agency and the public. He joined the FTC in 1989.



Best Lawyers has named **Loren D. Podwill JD'84** of

Hillsboro, Ore., the 2013 Portland "Lawyer of the Year" in the specialty of litigation — banking and finance. Loren is a shareholder at Bullivant Houser Bailey PC. He was joined on the Best Lawyers list by fellow Bullivant attorneys **Ronald G. Stephenson JD'67** of Portland, Ore. (product liability litigation — defendants) and **E. Pennock "Penn" Gheen JD'75** of Seattle (medical malpractice law — defendants, products liability litigation — defendants). Loren, Ronald and Penn also were named 2012 "Super Lawyers," and **Matthew C. Casey JD'98** of Portland, Ore., a "Rising Star" in Super Lawyers magazine.

Peter C. McKittrick JD'85 of Portland, Ore., and Justin

D. Leonard have formed a new firm, McKittrick Leonard LLP, a commercial bankruptcy and business law firm. With 36 years of combined experience, the attorneys will continue to work with creditors, debtors and fiduciaries in the specialized area of commercial bankruptcy and insolvency law and will represent small businesses in litigation and transactional matters. Peter also is a bankruptcy trustee in Chapter 7 and Chapter 11 cases, and serves as a court-appointed receiver and examiner.

Tonkon Torp LLP attorney **Robert L. Carey JD'87** of Portland, Ore., has been elected to the board of directors of the Portland Human Resource Management

Association. He will serve as the board's general counsel. Robert leads Tonkon Torp's labor and employment practice group, where he represents companies in employment litigation and provides counsel on a wide range of employment and labor law issues.

Vandeventer Black LLP is pleased to announce that **Marie E. Colmey JD'89** of Manhattan Beach, Calif., has joined the firm's Pasadena office. Marie concentrates her practice primarily on the defense of lawyers, architects and engineers, healthcare professionals, accountants, insurance agents, real estate brokers, and appraisers in professional malpractice actions in both

California and Oregon. She also has represented corporations in a variety of business disputes, and handles all phases of complex civil litigation.



Troy D. Greenfield JD/C'89 of Bainbridge Island, Wash.,

recently joined the board of directors of the Boys & Girls Clubs of King County. "I spent my youth benefitting from the support of a youth organization and I believe in the Boys & Girls Club mission," notes Troy. "The positive experiences I had in my club shaped my life, and my favorite memories are about the activities and friendships I developed. I look forward to giving back to the clubs and to the kids we serve." Troy is a shareholder in the Seattle office of Schwabe Williamson & Wyatt, where he focuses his trial practice on intellectual property and securities and bankruptcy-creditors' rights.

the 1990s



The International Association of Defense Counsel, a 2,500-member, invitation-only professional association for corporate counsel and insurance defense lawyers, has named **Nancy M. Erfle JD'90** of Portland, Ore., to its board of directors. Nancy is the co-chair of Schwabe Williamson & Wyatt's products liability litigation group. Nancy recently was ranked among the

2012 "Top 250 Women in Litigation" by Benchmark Litigation.

Congratulations to the new district attorney in Polk County, Ore. **Aaron D. Felton JD'93** of Salem was elected to the position in November 2012, and was sworn in on Jan. 7, 2013. Aaron previously chaired the Oregon Board of Parole and Post-Prison Supervision.



Paul D. Migchelbrink JD'93 of Portland, Ore., has been

appointed chair of Farleigh Wada Witt's real estate practice group. He concentrates his practice in the areas of real estate, business, intellectual property and commercial lending.

Garrett Hemann Robertson PC has named **Tammy M. Dentinger BA'91, JD'94** of Salem, Ore., its managing officer. Tammy was elected to a three-year term by the firm's 17 shareholders. She joined the firm in 1994, became a shareholder in 1999, and has served as head of the divorce and family law practice section since 2004.



Dunn Carney Allen Higgins and Tongue LLP has named **Jeffrey S. Perry JD'95** of Tualatin, Ore., a partner of the firm. Jeff focuses his practice on tax and corporate law. With an advanced degree in taxation and more than 15 years of experience, Jeff advises clients on all types of transactions and



Erik S. Rohrer JD'85 of Forks, Wash., was sworn in as the newest superior court judge for Clallam County in January, after his election to the bench in November 2012. Erik previously was a district court judge in Clallam County for 12 years. Prior to his work as a judge, he worked as an attorney in private practice and as a

Washington State assistant attorney general. He established the Olympic Peninsula's first attorney general's office in 1991 and managed it for more than a decade. He currently serves as chair of the Washington Civil Legal Aid oversight committee and on the Peninsula College board of trustees.



Thank you to **Carl L. Gay JD'79** for sending us this great photo from the swearing-in ceremony,

showing (from left to right): **Robert N. Tulloch JD'79**, Washington Supreme Court Justice Susan J. Owens, Erik, Carl, and a fabulous College of Law pennant that Carl has displayed in his law office since 1979.

tax-related matters, including entity formation and structure, mergers and acquisitions, restructurings, partnerships, limited liability companies and other pass-through entities. He also serves as general counsel for several closely held businesses.

Ascending to the bench is **Beth A. Allen JD'96** of Portland, Ore. Gov. Kitzhaber appointed her to the Multnomah County Circuit Court in January 2013, stating that she has been a tireless advocate for diversity and access to justice. She was the founder of the first law firm dedicated to LGBT issues in Oregon.

Ryan W. Collier JD'97 of Salem, Ore., recently opened a new office in Salem. He purchased James Long's former eye clinic and conducted an extensive interior and exterior remodel, working with Pence N.W. Construction and Studio 3 Architecture before moving his practice to the new location. Collier Law will focus exclusively on estate planning, probate, trust administration and guardianships. The new office is located at 1020 Liberty Street S.E.

the 2000s



When someone dies, what's the legal status of his or her online

accounts and files? **P. Haans Mulder JD'00** of Holland, Mich., and his associate at Cunningham Dalman PC, Jessica Arends, have tackled

this question in the article they co-wrote for the Michigan Probate & Estate Planning Journal. "Estate Planning for Digital Assets: Are You Incorporating This into Your Practice?" addresses situations such as the one that arose when U.S. Marine Justin Ellsworth died in 2004. Ellsworth's father wanted to create a memorial using emails the marine had sent and received while overseas. Yahoo, Ellsworth's email provider, refused to give the father access, saying it would violate its privacy agreement. Ultimately, a judge ordered Yahoo to provide access. Haans is a Certified Financial Planner™ and concentrates his law practice in the areas of estate planning, elder law and business law.

Ellen M. Voss JD'00 of Lake Oswego, Ore., has become a member in the firm Williams Kastner. Her practice focuses on medical malpractice litigation, health care regulatory compliance, and advising health care clients.

Juan J. Aguiar JD/MBA'02 of Quito, Ecuador was named director of legal advice of the Secretaria de Hidrocarburos (the department of oil in Ecuador) in May 2012. He also joined a choir, which participated in the Cantus Angeli festival in Italy in October 2012.



David P. Claiborne JD'02 of Meridian, Idaho, has opened his

own firm, Sawtooth Law Offices PLLC, with partners S. Bryce Farris and Daniel V. Steenson.

"We have offices in Boise, Challis and Twin Falls, Idaho and our practice is heavily focused on serving the needs of farmers, ranchers, recreationists and other natural resource users," says David. "We provide representation in administrative matters and litigation and handle legislation and lobbying."

Miller Nash LLP partner **Michael J. Ryan JD'02** of Portland, Ore., has joined the board of De Paul Treatment Centers. Mike leads Miller Nash's business and mergers and acquisitions practice team. He also is involved with the Cascade AIDS project, the Portland Youth Philharmonic, the Willamette University Public Interest Law Project, the Campaign for Equal Justice and the I Have a Dream Foundation.

Adina Matasaru JD'03 of Portland, Ore., won The Lawyer's Campaign for Equal Justice "Why I Give" award after submitting a brief but poignant statement about what drives her to support the organization. Adina wrote of her experiences as a child in Romania as her main reason to support the Campaign: "I give because no one stood up for my family when it was stripped of dignity and abused by the Communist regime, because my sons are blessed to be free and because without equal access there is no justice." She is an attorney with Dunn Carney Allen Higgins and Tongue LLP. The campaign's mission is to make equal access to justice a reality for all Oregonians. Donations support 90 legal aid attorneys who serve clients in all 36 Oregon counties.

Two College of Law graduates were honored by the Daily Journal of Commerce as "Up & Coming Lawyers" for 2012.

Sean C. Gay JD'04 of Wilsonville, Ore., is a partner in the real estate and construction group at Stool Rives LLP. **Naomi L. Levelle-Haslitt JD'07** of Portland, Ore., is an associate in Miller Nash LLP's employment law and labor relations and education law practice groups. The awards honor attorneys admitted to the Oregon State Bar within the past 10 years who exhibit outstanding commitment to both the legal profession and their community.



Gevurtz Menashe Larson & Howe has named **Alex P. Sutton**

JD'04 a shareholder. He has been with the firm since 2004, focusing his practice on a broad range of family law issues including divorce, custody and parenting time, domestic violence, military divorce, third party rights and same-sex marriage. He has been a "Rising Star" in Super Lawyers magazine since 2009.

Barran Liebman LLP has welcomed **Kyle T. Abraham JD/C/MBA'05** of Portland, Ore., as an associate. Kyle's practice focuses on representing employers in labor and employment law matters. Prior to joining Barran Liebman, Kyle was an officer in the U.S. Air Force serving in the judge advocate general corps. During that time, he served as a labor and employment attorney, military defense counsel and military prosecutor. Kyle continues to

serve as a major in the Oregon Air National Guard JAG corps.

Word from Duluth, Minn. is that **Mia E. (Peterson) Thibodeau JD'06** was named a "Top Lawyer of Duluth-Superior" for 2012 in Duluth-Superior magazine for a third year in the category of family law. She practices family law, estate planning and municipal law with the firm of Fryberger, Buchanan, Smith and Frederick PA. She also was recognized as a "Rising Star" in Super Lawyers for 2012.

In June 2012, **Allison R. Boomer JD'09** of Salem, Ore., shed her title of magistrate pro tempore, and now is enjoying a new one — magistrate of Oregon Tax Court. Allison is a board member of Oregon Women Lawyers and president of the Mary Leonard Law Society in Salem. In 2011, the Oregon State Bar New Lawyers Division honored her with its public service award.

Aaron S. Price JD'09 of Los Angeles is the assistant director of athletic compliance at the University of Southern California. He previously was the compliance coordinator for Oregon State University. Aaron is a member of both the Oregon and Idaho state bars.

Portland-based Yates Matthews & Eaton PC has welcomed **Jacqueline L. Alarcon BA'07, JD'10** of Gresham, Ore., to the firm. Jacqueline limits her practice to family law and is dedicated to providing her clients with honest advice and strong advocacy while focusing on their best interests.

Taylor-Francis Online published an article by **Tapiwa G. Kapurura LLM'10** of Salem, Ore. "Guest Editorial: A Synergistic Approach to Revamping Local Forensic Science Needs; A Case Study for Zimbabwe," went live on the journal publishing site in June 2012. Visit tandfonline.com to read the full article.

Oregon State University is pleased to announce the addition of **Richard C. Riggs JD'10** of Salem, Ore., to the College of Science as director of operations. In his new role, he will serve as a liaison between the college and various service providers, assisting with all manner of projects, including renovations and new construction, maintenance, compliance, budgeting and more. Richard previously was in private practice in Salem, and served in the U.S. Navy for 20 years in the nuclear propulsion program prior to attending the College of Law.

Nellie F. DeVries JD'12 of Salem, Ore., is director of public affairs for the Oregon Restaurant & Lodging Association. Working closely with the organization's vice president of government affairs and its members, she works to help elect and support business-friendly legislators. Now that the campaign cycle is over, she's focusing on issues ranging from health care and state and local taxing issues to bed bugs and fats, oils and grease removal. The organization works closely with various agencies, including the Oregon Lottery and the Oregon Liquor Control Commission to monitor and participate in the rulemaking process.

Another recent graduate, **Jeffrey D. Goodwin JD/MBA'12** of Salem, Ore., has joined **John R. Wittwer BA'71, JD'75** in private practice in Sweet Home, Ore. He'll add family law, criminal law and personal injury law to the established practice.

McKinnon H. Hanson JD'12 of Tacoma, Wash., is clerking for Judge Marywave Van Deren at the Washington State Court of Appeals, Division II.

Lauren E. Johnson JD'12 of Portland, Ore., has joined the employee benefits team at Miller Nash LLP.

Routh Crabtree Olsen PS in Portland has hired **Kyndre A. Lundquist JD'12** of Happy Valley, Ore., as an associate. She'll focus on real estate law, specifically representing banks in judicial foreclosures.



Hurley Re PC is pleased to announce the addition of **Meagan**

E. Masten JD'12 of Salem, Ore. She is now an associate in the firm's land use and real estate practice in Bend, Ore.

Tony L. Swartz JD'12 of Ellensburg, Wash., is a deputy prosecutor in Kittitas County. He is enjoying settling into his new role.

Best of luck to all our 2013 graduates as they begin their new careers!

Additions



A darling girl has joined the family of **Travis R. Marker JD/C'03** and wife Ronna of St. George, Utah. Auriette Elizabeth made her debut on July 25, 2012, weighing 9 lbs., 11 oz. and measuring 22 inches long. She joins big brother Boston and sisters Avalon, Adelaide, Andenelle and Ambria.



Monica Atiyeh Whitaker BA'00, JD'03 of Tualatin, Ore., shared the following happy news: "On April 8, 2012, my husband, Ben, and I welcomed our first child, David Marc Whitaker, who weighed in at 7 lbs., 2 oz."



Welcome to the world, Luke Xiel! **Zhiling Zhang LLM'11** of Portland, Ore., and

husband Liangqi welcomed their sweet "little peanut" on Aug. 28, 2012. That's wonderful news, indeed. Zhiling and baby Luke are pictured here with College of Law professor James A.R. Nafziger.

In Memoriam



A great man has died. **Otto R. Skopil Jr. BA'41, LLB'46, H'83** of Portland, Ore., died Oct. 20, 2012, at the age of 93. Otto, the son of German immigrant parents, attended Willamette University on a full basketball scholarship and was named all-conference. He worked part time at a local gas station while in

school and also served as freshman class president. Skopil was in law school when Japan attacked Pearl Harbor. He dropped out to enlist in the U.S. Navy and served as a supply corps officer. After the war, he returned to Salem and finished law school in 1946. Skopil played a critical role in the release of law school classmate **Taul Watanabe BA'41** from an internment camp for Japanese Americans in Idaho. The two had grown up together and "it bothered Otto no end that his good friend was being taken away from his educational pursuits," said **Mike Bennett BA'70**, senior vice president and director of development and alumni relations at the College of Law. Otto convinced Willamette President G. Herbert Smith and the board chair to intervene on Watanabe's behalf with federal authorities. After graduation, Skopil became a criminal defense lawyer. He and **Bruce W. Williams BA'40, LLB'48** became partners in a Salem law firm that included insurance defense and plaintiff's civil work. Skopil argued a case for State Farm that made it to the U.S. Supreme Court — and he won. He was nominated to the federal district court bench by then-U.S. Sen. **Mark O. Hatfield BA'43, H'58**, and after he was appointed, he helped usher in a system that allows parties to consent to a trial before a U.S. magistrate judge — ensuring that only the most qualified lawyers are appointed to magistrate positions. That was a national expansion of the system that existed in Oregon. Skopil was nominated to the U.S. District Court bench in 1972 by then-President Richard M. Nixon and to the 9th Circuit Court of Appeals bench in 1979 by then-President Jimmy Carter — making him one of few judges to be appointed by two presidents of different parties. Willamette University College of Law professor **Valerie Vollmar JD'75**, who clerked for Skopil, said he was wise, fair and had "great common sense. You could never find someone who was more like a judge should be." Otto had two sons and two daughters. **Otto Richard "Rik" Skopil JD'72** and **Shannon Ida (Skopil) Bronson JD'85** followed their father at the College of Law.

Curtis L. Ludwig JD'54 of Richland, Wash., died peacefully with his daughters by his side on Oct. 18, 2012, at 83. After serving in the U.S. Army for three years, and prior to his years as an attorney, Curtis was an insurance claims adjuster in Spokane. He started his private law practice in Kennewick before joining the Benton County prosecutor's office. He served as a deputy prosecuting attorney for 14 years and as the prosecutor for another 12 before retiring from practice in 1987. He served the citizens of Benton County again as a state representative for the 8th district, and was appointed to the Washington State Senate in 1993. In 1996 he was appointed to the Washington State Gambling Commission before delving back into private practice in 2001. After a second retirement in 2004, Curtis spent a great deal of time on the Oregon coast, flying his hot air balloon, and with his four daughters and seven grandchildren.

Multnomah County lost a longtime prosecutor and pro tem judge last fall. **Harold J. Blank JD'58** of Portland, Ore., died Sept. 9, 2012, at 78 from cancer. Harold served as a Multnomah County deputy district attorney for more than 30 years before becoming a pro tem judge in Multnomah County — a role in which he served from 1992 until his death. He was a member of the Oregon State Bar, the Multnomah Bar Association, Multnomah Athletic Club, Aircraft Owners and Pilots Association, the Beaverton Elks Club and Tualatin Valley Elks.



We're sorry to report that **Kenneth F. White JD'68** of Nampa,

Idaho, died at home on Oct. 4, 2012 at 74. Kenneth was the ninth of 13 children, and the first in his family to attend college. After graduating from the College of Law, he returned to his hometown of Nampa and hung out his shingle. He loved the practice of law, loved a good battle and a formidable foe, taking on the power company, the railroad, the seed company, and any other opportunity on behalf of his favorite client, "The Common Man." He was active in the Idaho Trial Lawyers Association, and was honored by the organization for his outstanding contributions to the practice of law. He argued in front of the Idaho Supreme Court 16 times, prevailing 15.5 of those times. When not tilting at windmills and fighting dragons, his favorite places were the golf course and the garden. He is survived by his wife of 52 years, Carol Sue, two sons and three grandsons. He fought his last battle with Alzheimer's disease with the same courage, strength and dignity with which he lived his life.

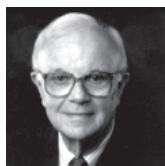
A kind and generous man has died. **Philip L. McCormick JD'69** of Seattle died July 29, 2012 at 73. Phil attended the University of Wisconsin and Carleton College in Minnesota. He joined the U.S. Navy and served in Vietnam. After attending the College of Law, Phil practiced law in Seattle for

many years. He was passionate about fishing, stamp collecting, singing, playing bridge, hiking and listening to jazz and classical music. He is survived by son Andrew and grandson Oliver.

Soldier, Scholar, Father, Friend.

William B. "Bill" Duncan

JD'70 of Portland, Ore., died Jan. 5, 2013, at 72. Raised in Seattle and Sequim, Wash., Bill graduated from Washington State University in 1962 and was a member of the Tau Kappa Epsilon Fraternity. He attained the rank of captain as a U.S. Army Ranger in the Vietnam War. Bill was proud to serve with the Vietnamese soldiers whom he held in high esteem. As a soldier, Bill earned two Vietnamese Army Gallantry Crosses with Silver Stars, the Bronze Star for Merit, the Purple Heart, a U.S. Army Ranger Tab, the Vietnamese Army Ranger Badge and Combat Infantryman's Badge. After graduating from the College of Law, Bill studied and practiced law for the remainder of his life. As a scholar, he held firm to his commitment to the rule of law. As a father of three, he led with wisdom and love. As a friend, he offered an open hand to all in need and was a friend and mentor to many.



Sad news from Salem: **Thad C. "Tad" Stanford JD'77** died

Dec. 5, 2012, at 80. Tad died softly, wrapped in love and light, amidst unconditional offerings from family, friends, patients, colleagues, and those he barely knew. Tad came from a family full of laughter, card games, kindness, and English Setter puppies. Giving came naturally to Tad. He could be fierce when injustice was committed or lies spoken, yet he never did understand a cold heart. Practicing orthopedic medicine fed Tad's spirit. Exercising the law titillated his mind. Writing poetry uplifted his soul. His curriculum vitae didn't interest him much. He treasured all kids, championing their dignity, their gifts, and their health. Tad was a wide receiver and golfer at the University of Michigan, Ann Arbor, from 1950 to 1954. He also was a member of the top men's honoraries in both undergraduate and medical schools. After two years in the U.S. Air Force and a three-year residency, Tad and his family moved to Salem, Ore., sight unseen, in 1965. He co-created

a family that was very dear to him, including sons John, Steve and Brad and daughter Jenny, five granddaughters and one grandson. Says his wife, "On our 58th wedding anniversary, June 20, 2012, Tad wrote:

'Thank you, Susanne, for being my partner, lover and friend, no matter what. I love you always.'



Lester E. Seto BA'70, JD'78 of Salem, Ore., died unexpectedly Oct. 31, 2012, as a result of complications from a long-term medical condition and a recent illness. He was 63. Lester practiced law in Salem his entire career, and focused his practice on criminal defense. He was a voracious reader and enjoyed history, politics, woodworking, computer technology and cooking. Friends eagerly anticipated his homemade cookies or bread at Christmas, or a surprise handcrafted piece of furniture. Lester converted basement space in the Pacific Building to a wood shop, where he crafted Adirondack chairs, end tables and bookcases to give as gifts. A family heirloom clock kept time in every office in which Lester worked, and he

relished compiling a history of the family home in Ladd's Addition in Portland, Ore., where his brother, Wesley, still lives. He is survived by many family members and friends who will miss him.

After a valiant battle with cancer, **Jan M. Cote JD'90** of Salem, Ore., died Oct. 7, 2012.

She was 64. Jan grew up in the Northeast and moved to Salem in 1983. After graduating from the College of Law, Jan practiced for a number of years in the area of estate planning.

We were fortunate to have Jan serve for a time as the associate director of foundation and corporate relations at Willamette University. She was an avid gardener who took great satisfaction in raising flowers and vegetables from seed, lovingly transplanting them as they grew, until they were ready for harvest. She also enjoyed writing, sewing and crafts. Jan's heart was full of love, which she showed in many ways. Family was most important to her, and she was so very proud of her three children, Nicole, Danielle and Jonathan. She also took great joy in her three grandchildren, Celeste, Arianna and Emma, and was a caring wife to her husband, Rob.

Class Action Contact Submit information for Class Action to: Cathy McCann Gaskin, Associate Director of Alumni Relations, at wu-lawyer@willamette.edu or via mail at Willamette University College of Law, 245 Winter St. S.E., Salem, OR 97301.

Please print or type all submissions. Please submit a brief summary of the original piece if sharing something printed in another publication about you.

Submission deadlines are Jan. 15 for the spring issue and July 15 for the fall issue.

Pregnancies, engagements, and candidacies for political offices will not be published due to the lag time between receiving such information and publication dates. Willamette Lawyer reserves the right to edit or omit any information submitted.

We welcome photographs, depending on space and photo quality. Please note if you would like your photo returned.

Editorial Contact Direct comments, suggestions and reprint requests to Lisa Grace

Lednicer, editor in chief, at 503-370-6760 or the address listed above.

Job Listings If you have a position opening, please contact the Career and Professional Development Center. They will accept job postings or accommodate on-campus interviews at any time. For more information contact Bev Ecklund at becklund@willamette.edu. Phone: 503-370-6057

Key JD Doctor of Jurisprudence. **L** Non-degreed. **LLB** Bachelor of Law (equivalent of JD). **LLM** Master of Law. **MM** Master of Management, Master of Administration. **MBA** Master of Business Administration. **H** Honorary degree. **C** Certificate in Dispute Resolution, International and Comparative Law, Law and Government, Law and Business, or Sustainability Law. **BA** Bachelor of Arts. **BS** Bachelor of Science

Events

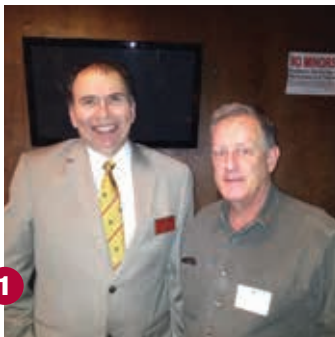
Eugene Alumni/Admission Gathering

Feb. 20, 2013

The Bridge Bar & Grill

1 Left: Daniel P. Santos JD'86 and James K. Walsh JD'86

2 Right: Cathy M. Ouellette JD'02 and Stephen J.R. Shepard JD'72



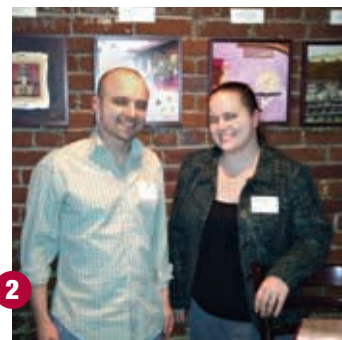
Medford Alumni/Admission Gathering

Feb. 21, 2013

Porters at the Depot

1 Left: Robert C. Robertson JD'66 and Walter L. Cauble BA'63, JD'67

2 Right: Joshua L. Lute JD'07 and Faith M. (Berger) Morse JD/MBA'10



Seattle Alumni/Admission Gathering

Feb. 28, 2013

Tulio

1 Faith (Enyeart) Ireland JD'69, Michael N. Mulvihill JD'76, James R. Verellen JD'76

2 Jennifer L. Miller BA'97, JD/MBA'01, Professor Michael Wise, Katherine E. Voke JD'98

3 Han-Shin Lin JD'12, Mckenna A. Krueger JD'12, Andrew T. Reinen JD'12

4 From Left to Right: John H. "Jack" Ludwick JD'74 and daughter Kathryn Ludwick (JD expected May 2013), Jack R. Wallace JD'85 and daughter Rachel Constantino-Wallace (JD expected May 2013)





They've sweated through contracts and torts. They've poured over briefs in The Bistro. They've toured Salem's finest — and not-so-finest — nightspots after a grueling afternoon of Bar Review.

But before they leave Willamette, law school grads have one more task: acquiring a wardrobe that makes them look like, well, lawyers. While female attorneys-to-be have a world of options when it comes to finding their first suit, the choices for men are limited. Many find their way to Shryock's Menswear, a Salem fixture since original owner Ward Shryock opened the Court Street doors in 1948.

Brothers Kirk and Mark Messmer's father bought the business from Shryock in 1976, and the sons took over in 1991. Countless Willamette law students have marched through the store's glass doors searching for just the right suit — and the air of gravitas it projects — for a first uneasy appearance before a judge, an afternoon meeting with a client, the endless round of networking events essential to building a practice.

"When you're younger, if you don't look like you know what the game is, you're less likely to be trusted," Mark Messmer (pictured left) says.

Suits, he says, can make the difference.

Of course, formalities are fading. Attorneys used to wear suits five days a week; now, many only wear them in court. In November, Messmer revamped a third of Shryock's floor space into a separate, casual menswear store called Rugged.

A few gravitate to suits with a "Ryan Seacrest boy band look," but Messmer gently steers them to more appropriate attire. Graduates bound for the Department of Justice are placed in a soft-shouldered charcoal pinstripe; those embarking on a career at a progressive Portland firm get crisp jackets with a subtle, black Deco weave.

At first, a customer complains that the jacket feels tight. He holds his arms out in front of him in a modified zombie stance to test the armholes.

And then something clicks. Five minutes ago, if he'd walked into a grocery store, the clerk might have called this young man "dude." But in this suit? He'd probably call him "sir."

— Paige Parker



College of Law
900 State Street
Salem, OR 97301

NONPROFIT ORG
US Postage PAID
Salem, OR
Permit No.152

Willamette University College of Law
Filling the leadership ranks of the
Pacific Northwest since 1883.



willamette.edu/wucl

