TRIAL Lawyer

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In the Service of Justice

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Volunteers

To ensure access to Oregon's justice system, promote juries and jury service.

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TRIAL Lawyer

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President's Message

Ronn Elzinga

Filling a need

By Ronn Elzinga
OTLA Guardian

For nearly fifteen years, my family and I volunteered with Manna Ministry, an inner-city church program that put on a weekly "feed" under the Burnside Bridge. Every Sunday night up to 150 "friends-without-homes" would come for a warm meal, blankets (provided by Ron Wyden's office!) and socks.

One night I was asked to hand out cherries toward the end of the line. "Would you like some cherries?" I asked. Some didn't fully understand my question. Some were too ashamed to look me in the face. Some were in such pain they had difficulty responding. And some simply smiled and said, "Yes, please."

That was the night I sat on the curb with Rose. Rose's husband, Tim, had died recently. She was in great pain because she had lost her soulmate. I remember she kept asking me, "Is he in Heaven? I have to know!"

She was also in deep pain because her body was crying out. She was in the throes of acute heroin withdrawal. Sweats, shivers, cramps, nausea. The stench of her sickness was coming out of her pores.

Our team leader, Ginger, knew Rose well. Ginger and I sat with her begging, begging her to let us take her to the hospital. But Rose wasn't ready to make that decision. Instead, she asked us to pray for her.

I didn't know what to pray, but I awkwardly began to say a couple of sentences when I was interrupted by a voice saying, "Rose, he's here." I stopped, looked up and saw a friend of Rose's. "He's here now," she said again.

I turned and saw a man standing behind me. "That's her pusher," Ginger said. "He's got a fix for her." And with that, Ginger continued to beg Rose to go with her and not with him. I remember Ginger saying, "Rose, it feels like life but what he's offering you is death. What you're going through feels like death, but what I'm offering you is a chance of life. Please, come with me, Rose."

I became angry and, as I turned to get a better look at this man, I was expecting to see Satan incarnate behind me. But he

wasn't. He was a young man, not more than 19 or 20, with a nondescript face. I also wanted to be Rose's hero, her savior, and say, "You're not touching her…over my dead body." But Rose stood, looked at Ginger, and said, "Ginger, respect my decision."

I followed for a little ways as she walked off into the darkness with the man. She got her fix and, for a few hours, she would feel better.

Small steps for a difference

Feeding our friends-without-homes is a good thing. But the homeless situation is so much more complicated than simply a lack of food and a lack of housing. And that's just one of our societal needs.

Oregon is faced with a myriad of needs. Some problems are so complex that the complexity alone can lead to a feeling of helplessness and to inaction.

Yet I am constantly reminded how even the simplest acts of volunteerism can make a life changing difference for a person or family.

This issue of Trial Lawyer should be read from cover to cover. It is a reminder of the overwhelming needs in our state. But, more than that, it is a confirmation you don't have to be heroic to make a real difference in our neighborhoods, cities or state.

Read the stories of OTLA lawyers who, besides dedicating their careers to bringing justice to Oregonians' lives, give of themselves inside and outside their vocation to make life better, safer, healthier for others.

As you read, I hope you will feel just a little more pride for what fellow OTLA lawyers mean to hurting Oregonians.

Ronn Elzinga is the owner of Elzinga & Associates, a personal injury and bankruptcy firm. Elzinga contributes to the OTLA Guardians at the Sustaining Member level. He works from 1020 SW Taylor St., Ste. 888, Portland, OR 97205. He can be reached at ronn@elzinga-law.com or 503-222-2033.

View From The Bench

Hon. Andrew Lavin

Write to help the judge

By Hon. Andrew Lavin
Multnomah County Circuit Court

I had little experience with civil law when I took the bench in January of 2018. I spent the previous 15 years as a prosecutor. The prospect of learning a whole new area of law was both exciting and intimidating. What has helped the most is the steady diet of civil motions the presiding judge assigns to me.

For each motion, I rely heavily on the briefing to prepare for the hearing, learn the applicable law and rule. Some briefs are better than others. It is in your client's best interest for your writing to be as helpful to the judge as possible. That is especially important when your judge is new to civil law.

Judges are busy and they are human. Like anyone, judges have only so much attention they can devote to any given task. When you write your brief, use wisely the limited bandwidth the judge has for your motion. That means making the most important information in your brief easily accessible.

Get to the point

Start by telling the judge what you want the judge to do. Few things are more frustrating to a judge than having no idea what a lawyer wants after reading the lawyer's 20-page brief. Next, clearly state the legal issue/question presented and what you think the answer is. After that, orient the judge with the relevant context. That includes only the facts and procedural history necessary for the judge to understand the legal issue for this motion. Only after taking those steps should you present your legal argument.

Narrow the discussion

Choose your battles. Do you really need to raise every argument and attach every exhibit? If you do that, your strongest arguments and exhibits will get lost among the weaker ones. Exercise discretion by focusing on your strongest points. Be concise and organized.

The most effective method for achieving both those things is to outline your argument before you brief it. Doing so will help you organize to your points in a way that is easy to follow and will prevent you from rambling. Never file a 20-page brief when an 8-page brief will do. By putting the most important information first and writing efficiently, you will avoid wasting the judge's bandwidth.

No hiding the ball

Be up-front and transparent about the applicable law. After telling the judge the answer to the legal question presented, immediately identify the statute, rule or case that comes closest to answering the question and supporting your position. Describe the state of the law. If the issue raised in the motion is a novel one, say so and then do your best to provide an answer. But if the law clearly resolves the issue, say that directly and then explain how. Usually, the state of the law is somewhere in between those two extremes. So be forthright when the law does not provide a completely clear answer. Be the advocate who helpfully identifies the ambiguity in the applicable law and resolves that ambiguity in a persuasive way.

More often than not, that is where motions are won or lost.

Do not hide the ball and do not hide from your argument's weaknesses. If you do either of those things, your opponent and the judge will notice, and you will lose your opportunity to persuade the court to decide the motion in your favor. Be transparent about the law that cuts against your position. Cite it and acknowledge it. Doing so is not only good strategy, it is your ethical obligation. *See* RPC 3.3(a)(2) (duty to disclose adverse law). From there, meet the adverse law head-on by distinguishing it from your case or explaining how it is not as adverse as it appears.

Credibility is king

Credibility is an attorney's most important asset. Your written materials are often your first impression on the judge — especially if the judge is new to the bench. Presenting a brief that is helpful, carefully written, concise and candid goes a long way toward building credibility with the court. Unfortunately, rather than availing themselves of that opportunity, many lawyers write in a way that undermines the court's trust in them. Examples include resorting to name-calling, using hyperbole, and taking obvious persuasion shortcuts like, "I've been practicing for 20 years and I've never seen a judge rule that way."

Nothing destroys an attorney's credibility faster than mischaracterizations. That includes mischaracterizing the other party's position to make it seem less reasonable or more vulnerable than it actually is. That tactic will get you nowhere. The judge and opposing counsel will notice, you will miss an opportunity to respond to the other party's real argument. You will lose credibility.

Stay true

Misstatements of fact and law are worse yet. It is obvious a lawyer should not directly misrepresent the holding in a case. But you should also never over-

If you mistakenly make a misrepresentation, make sure you are the first to point it out and correct it.

state how a holding supports your argument. If the holding is helpful, but not the magic bullet that decisively wins your motion, say so. Openly point out whatever ambiguity remains and deal with it. Do not try to hide it. Otherwise, the judge will be irritated and untrusting upon discovering the ambiguity.

If your judge is new, the judge might even conclude you were deliberately attempting to take advantage. That being said, judges understand that mistakes happen. If you mistakenly make a misrepresentation, make sure you are the first to point it out and correct it. Doing so will earn you credibility and the court's gratitude.

Follow the UTCRs

Do you want the judge to read what you wrote? Give the judge time. As much as I wish otherwise, the content of your written materials does not download into the judge's brain as soon as you file it. It is in your best interest for the judge to be as prepared as possible before the hearing and before ruling.

Following UTCR 5.030 will help ensure that you give your judge enough time to prepare. That rule requires parties to file any response 14 days after service of the motion and to file any reply seven days after service of the response. *See also* ORCP 10 A (providing for time computation); ORCP 10 B (allowing three extra days under common circumstances). Do not deviate from those deadlines without the court's permission. For example, avoid the all-too-common mistake of simply stipulating with the other party to give yourself more time to brief your response by taking away the judge's time to prepare. If you need more time, just ask for it. Many times, the court will allow an extension if the court knows why you need one.

Educate us

Two years, a dozen civil trials and many motions later, I am no longer a civil novice. But I am hardly an expert. I still rely extensively on the briefing to decide motions. And I am not alone. Several judges around the state are new to civil law. And regardless of your judge's experience, civil law is vast. Even the most seasoned judge cannot know everything. Be the advocate who we trust to educate us. Your writing is a crucial step toward building that trust.

Hon. Andrew Lavin is a Multnomah County Circuit Court judge. His office is located at the Multnomah County Courthouse, 1021 SW 4th Ave., Portland, OR 97204. He can be reached at andrew.m.lavin@ojd.state.or.us or 503-988-3348.

Dance Like Everybody Is Watching!

Tim Williams

By Tim Williams
OTLA Guardian

October 21, 2017 was a memorable night for me. It was the night of the "Swinging with the Stars" dance competition fundraiser for Sparrows, the Bend area organization that works to benefit youth in need of medical services. My dance partner, Valerie Cummings, and I were nervously waiting our turn to perform our routine for the ticket-buying public. To get an idea of what I was going through, think of the thrill and stress of trial and then double it.

To ramp up the tension, Valerie and I were the last act to perform. For some reason, the organizers saved our act as the big finale. That meant we had to sit in the green room and watch all of the other dancers perform on the monitor — and they were really, really good — before going ourselves. The other dancers would come back down in succession after their routines, relieved they were done, upbeat and festive. I was quite the opposite, with my anxiety building as each routine finished.

I would be remiss if I didn't mention we had a couple of relatively complicated overhead lifts in our routine. I had been working out and felt I could handle it, but, roughly two weeks before the dance competition, I partially tore my right biceps tendon, which put the entire routine at risk given all of the lifts and spins. As it was too late to rechoreograph, we decided to forego practicing those aspects of the routine leading up to the competition, hopeful that my arm wouldn't give out completely during the competition itself.

As I sat there in a pre-performance flop sweat, I had plenty of time to contemplate the age-old question: How did I get myself into this?

Volunteers will volunteer

I have a long history of volunteerism — with legal organizations as well as organizations outside the legal arena. For example, I've served on the Ronald McDonald House Charities of Central Oregon board of directors for six years. I've volunteered with Rotary International for more than a decade. I'm also on the board of directors of Sko Youth Sports — a new nonprofit dedicated to improving youth sports and creating opportunities for underprivileged kids to participate in sports, both at the school level as well as club level. But one of the nonprofits that I'm most proud to have served is Sparrow Clubs USA — a fantastic organization, and one with which I am intimately involved. Indeed, its origins are as inspiring as the work it does.

A small gesture

In 1992, six-month-old Michael Leeland was in desperate need of a bone marrow transplant. With no way to pay for the procedure, Michael's parents, Jeff and Kristi Leland, didn't know where to turn. As luck would have it, Jeff taught a class where Dameon, a big-hearted kid, was a student. After hearing of his teacher's dilemma, Dameon emptied his bank account, offering to donate his entire life savings — $60 — to go toward Michael's procedure. Word of Dameon's generosity quickly got out, and a chain reaction of giving followed. Students and staff at the school raised an incredible $227,000 over the following four weeks. This ultimately allowed Michael to receive his lifesaving bone marrow transplant.

Four years after Dameon's gift, following his lead, Sparrow Clubs USA was

born. Through the program, sponsors fund a sparrow club at a local school. Each club then gets matched up with a local "sparrow" — a child in substantial medical need of medical procedures or durable medical equipment. Students at each school then volunteer in their community to earn funds for their sparrow, with each hour of volunteer service earning money that is used to get the treatment or equipment needed. In doing so, the local school children take great pride in their efforts and the amount of money they raise for their sparrow. Thus, the Sparrow Club USA slogan, "Empowering kids to help kids."

Tim Williams and his dance partner, Valerie Cummings, the night they performed as Moana and Maui in the Sparrows fund-raising event, "Swinging with the Stars."

Dancing for dollars

In Central Oregon, the Sparrows Club sponsor is a local nonprofit, Central Oregon Sparrow Clubs. The nonprofit sponsors a sparrow in nearly every school in the local school districts — and there are many between the grade schools, middle schools and high schools. What is almost as amazing as watching kids in our communities truly get engaged on behalf of others is the fact the Central Oregon Sparrow Clubs does this work with only a handful of staff members. However, sponsoring all of these local sparrows is not cheap. The sparrows' medical needs are great, and the cost of medical treatment is high. Thus, Central Oregon Sparrow Clubs has had to figure out ways to create ambitious fundraising opportunities.

In 2010, Central Oregon Sparrow Clubs had an ingenious idea. With the nationwide popularity of ABC's "Dancing with the Stars," the organization envisioned a similar fundraising format at the local level. Not to be confused with its namesake, they called it "Swinging with the Stars," a dance competition to be held annually in Bend. They would match up local "celebrities" (the "stars") with professional dancers (the "pros"). The "stars" are generally well-known folks in the community — business owners, politicians, real estate agents and, you guessed it, lawyers. All of the dancers, stars and pros alike, are volunteers.

Each spring, eight to ten stars are each paired up with a pro at a "pairing event." It is here where the organizers look for personality and height matches to make the best pairs possible. After the event, each pair is left to create a two to three minute choreographed routine, complete with formal dance steps, spins, flips, props, background video, lighting cues and the like. Thankfully, additional professionals are available to help out with the choreography and set design. The pairs have all summer to practice. Each October, the competition takes place at Bend's Tower Theater in front of a live audience of over 500 people, as well as a panel of four judges. The competition is also livestreamed to the public.

Of course, this being a fundraiser, each star is tasked with procuring donations during the months leading up to the competition itself. The top three fundraisers are presented with awards the night of the competition, based on how much they raised relative to the rest of the group, with the top fund raiser earning the coveted People's Choice Mirror Ball Award. Additionally, during the competition, the audience members and public are allowed to vote for their favorite dance teams with monetary donations. Each dollar received for that team during the night of competition is a vote in that team's favor, with the top teams earning the Shining Star Award. The judges also evaluate the performances based on technical skill, entertainment value and costumes. As you can imagine,

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the fundraising and event itself is all highly competitive.

I began watching the event shortly after its inception, as we were a corporate sponsor, and I found the format intriguing. To be honest, I first expected the routines to be awful and attended, at least in part, out of a sense of morbid curiosity. I was happily surprised to find they were quite the opposite — clearly products of a lot of time, preparation and hard work. The event itself was a hoot as well, as the two emcees were hilarious, as were the judges.

Needless to say, I was hooked, particularly where quite a few contestants over the first six years were friends, acquaintances, and even my own father-in-law and law partner, Roy Dwyer, in 2015. Despite having zero experience dancing (unless you count a mean rendition of the running man back in high school, and by "mean," I mean "terrible"), I always found myself thinking I would someday consider stepping well outside of my comfort zone and throwing my name in the hat, though I never had the gall to actually volunteer to do so on my own.

Then came the call

I distinctly remember sitting at my desk in March 2017 and receiving a phone call from Bill Buchanan, a local attorney. I thought nothing of it, as he, too, is a litigator, and figured he wanted to run litigation strategy by me. However, once he opened the conversation with the fact he was calling in his capacity of one of the "Swinging with the Stars" organizers, my heart skipped a beat, as I knew what was coming next. He quickly made the ask.

Suffice it to say, I've always had a problem telling people "no," and because I was already familiar with the fantastic work Sparrow Clubs does, I accepted. I was now one of the official 2017 Stars. I was beaming with pride when I hung up the phone, but that immediately turned to regret as the realization of what I just committed to came to light. Dancing. In front of a crowd. For money.

Why the regret, you ask? Simply put, I was born with two left feet. Not literally, of course, but suffice it to say that I've never been fond of dancing, nor have I looked remotely coordinated when I tried. Not even when wiggling my hips in a night club. After I committed, I figured, at the very least, the audience would find my attempt at dancing humorous, if not mortifying. I told myself I'd suck it up and suffer through the embarrassment. After all, this was for the kids.

At the pairing event a couple of months later, I was matched with my pro, Cummings. She was fantastic, and had long been a professional competitive dancer, as well as a ballroom dance instructor. We got to work immediately, holding a two-hour practice mid-week and another each weekend. The competition theme that year was "At the Movies," so we picked Suicide Squad as our theme, with "Heathens" by Twenty One Pilots as our song. I was going to dress as the Joker, and Cummings was going to be Harley Quinn.

We next decided we would perform a Latin Fusion routine, focused heavily on Salsa. While some might find it odd to dance a Latin routine to "Heathens," it actually worked quite well. We developed our routine over several weeks. Things were progressing relatively smoothly, though I found the footwork somewhat difficult. By mid-July, things were really coming together.

Last minute changes

However, it was around this time that Cummings broke the news — we had to change our movie theme. Unfortunately, she had a friend who had just committed suicide, and she couldn't bring herself to dance to anything from the movie "Suicide Squad," on account of the name

alone. While panicked, I completely understood, so we went back to the drawing board.

Around the same time, Disney's "Moana" had been released to video and was immensely popular, particularly with my youngest daughter, Elliott. One of the best known songs from the movie was "You're Welcome" by Dwayne "The Rock" Johnson. While we knew it would be a hit with the kids in the audience — and knew we could make an upbeat and uplifting routine out of it — Latin dance simply did not work with the song. We decided to switch to a ballroom fusion based largely on the Jive and Nightclub Two-Step (neither of which I knew anything about). We now only had two months to learn the dance moves, choreograph the routine, and get our costumes and props together! All this was well outside of my wheelhouse, but I'm no quitter.

We worked hard on our routine, often videotaping portions of it for review. We brought in a professional choreographer. We worked on our costume design — I would be Maui and Valerie would be Moana. It took me hours to create Maui's hook by hand, but I had a blast doing so. My wife, Pam, ordered authentic Polynesian skirts from Hawaii. She also ordered us wigs to fit our characters, as a balding blonde guy with a short and tight do could never pass for Maui — a character with a full head of long, curly, dark hair. We arranged for a henna artist to stain me as close as she could with Maui's tattoos — a process that ended up taking more than eight hours. It was ON!

During this time, I was also actively fundraising for the event from every source I could, OTLA included. As much as I dislike fundraising, I am always engaged for a good cause, as most readers will likely recognize. Needless to say, many OTLAns generously donated when I asked, despite not living in Central Oregon themselves. It is a blessing to know so many supportive, well intentioned and big-hearted folks.

A win for the cause

In the end, the routine went fantastically, despite my nervousness. I don't remember most of it. However, while the lifts were less than pain-free, the tendon held during the competition!

Ultimately, I won the coveted People's Choice Mirror Ball award, smashing every fundraising record the organization had, having raised in excess of $30,000. I say "I won the award" because only the star fundraises. Cummings and I also won a Shining Star Award. I am told I was the winningest participant in the program's history and still hold the record today.

However, the real winners were our local sparrows and the kids who support them. Indeed, as a result of the fundraising event, in 2017-2018, over 10,000 students from 18 schools in Central Oregon experienced the "Sparrow Connection," resulting in over 14,000 hours of community service and $137,247 being raised by students for 16 local families with children in medical need.

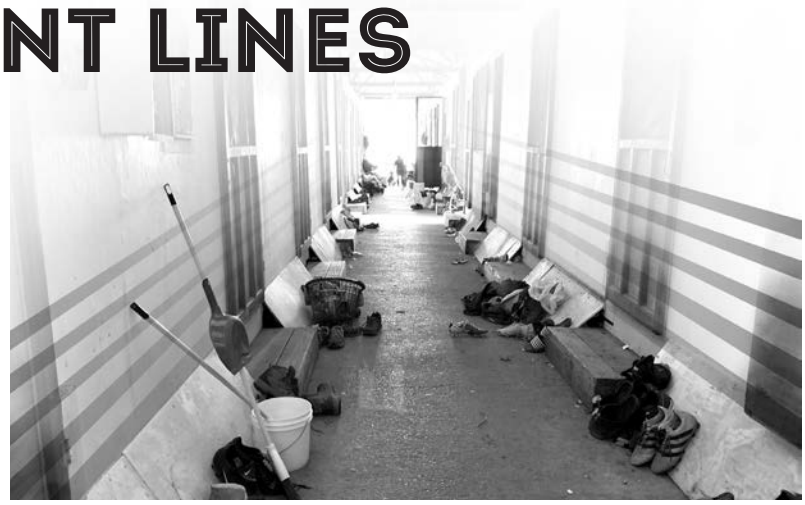
Not bad for a guy with two left feet.

Note: Williams still volunteers with the "Swinging with the Stars" event, having served as a judge for each competition since 2017, the year he competed. He is presently helping organize the 2020 10-year anniversary event. If anybody wishes to donate to the Sparrow Clubs of Central Oregon, please contact Williams directly at 541-617-0555 or tim@rdwyer.com.

Tim Williams specializes in personal injury and product liability. He is a partner at Dwyer Williams Cherkoss Attorneys PC, where he serves as the lead litigation attorney. He is President-elect of OTLA and contributes to the OTLA Guardians of Civil Justice at the Guardians Club Plus level. His office is located at 1051 NW Bond St., Ste. 310, Bend, OR 97701. Williams can be reached at 541-617-0555 or tim@rdwyer.com.

ON THE FRONT LINES

Helping Oregon's Migrant Workers



Michael Fuller

By Michael Fuller
OTLA Guardian

For the past few years, I've been looking for ways to expand my *pro bono* and volunteer service to projects outside of the courtroom. When OTLA colleague Paul Bovarnick introduced me to Western Farm Workers Association (WFWA), I researched the organization and was happy to learn it offered the exact types of volunteer opportunities I'd been looking for.

WFWA is a free and voluntary membership association of low-income farm worker families and other low-income residents of the northern Willamette Valley who are working together with people in the community from all walks of life to change their living and working conditions. The association has a no-charge 11-point benefit program including emergency food and clothing, non-emergency dental care, preventive medical care and legal advice. Members raising legal questions can attend WFWA's "Know Your Law" sessions where volunteer attorneys like me provide free legal advice on topics ranging from renters' rights to bankruptcy to credit reports.

In addition to helping with the "Know Your Law" sessions I've also had the opportunity to volunteer with other WFWA benefit program projects. Volunteering with WFWA has exposed me to people experiencing some of the most dilapidated working and living conditions in Oregon. Many of the laws that protect working-class Oregonians do not apply to migrant farm workers and their families who temporarily live and work here in rural labor camps each summer.

Last August, I had the chance to visit various migrant farm worker camps to help provide much-needed diapers, shoes and clothes to workers and their families. Along the way we helped organize the workers and recruit leaders to act as community delegates to maintain contact with members to inform them about WFWA activities.

The migrant farm worker camps we visited were secluded from the public on remote locations without street addresses in rural Hillsboro. The trailers and shacks house up to 300 workers and have no amenities, though they are guarded by private, around-the-clock security. The workers and their family members sleep on floors inside dwelling units no larger than prison cells. Workers wake up at 3 a.m. and walk several miles to pick strawberries and blueberries in the fields. Work days can last up to 14 hours depending on heat and crop conditions. Minimum wage laws don't apply to these seasonal workers, though some workers are able to earn more than minimum wage on per-bucket and per-pound contracts.

On my last trip to the camps I met a young woman from Mexico named Anna. She was 16 years old and had been working in the fields with her family for

Michael Fuller volunteered as a patient advocate to help a woman obtain the eye care she needed and take home a new pair of glasses.

A workers' camp outside Hillsboro. The Western Farm Workers Association provides benefits to Oregon's low-income farm workers who live in camps like this. The camps are made up of trailers and shacks. The individual rooms are no larger than prison cells.

the past three years. Anna was the only person I met at the camps who spoke English, and she was key in helping us organize the other tenants.

Advocacy for members

Last September I helped provide free legal advice to WFWA members on issues ranging from tenant rights and wage theft to dealing with debt collectors. WFWA's all-volunteer staff acts as advocates for the members to help them carry out the plans of action we draft during our free consultations.

WFWA members originally built their legal benefit to help members with legal problems connected with their employment such as denial of pay or benefits and discriminatory firings. The lack of adequate income faced by many agricultural workers often brings about other legal problems with survival both at work and in their daily lives. Members can ask general questions in a group setting and receive legal information from attorneys at these sessions. The association also recruits lawyers to volunteer confidential individual legal advice. A lay legal benefit advocate is assigned to assist the member from the initial intake, to identify the member's concern or legal problems, to arranging for an individual interview with an attorney. This usually will occur during a block of time a volunteer lawyer has set aside to individually advise several members in the course of what WFWA calls a "legal advice session." The lay advocate will also help arrange transportation, take care of confirmation calls and carry out any follow-up needed after the interview with the volunteer attorney.

In October, I spent a Saturday morning volunteering as a patient advocate for association members in need of eye care. For many members, WFWA's optical benefit was their first time receiving an eye exam. Volunteers and local eye doctors showed up in the early hours of the morning to create a makeshift eye clinic out of the common areas of a Methodist church in Hillsboro. I helped one member complete her exams, take notes about the medical advice she received, and pick out lenses and frames, free of charge.

Providing resources

The WFWA members who request legal information and advice generally have no other recourse to the legal system. Members routinely come with questions regarding wage theft, workers' compensation, landlord/tenant and misdemeanor citations that are a result of their poverty. WFWA needs attorneys of all specialties to assist with expanding the legal information benefit.

My volunteer work with the WFMA is particularly fulfilling because the positive impact on people's lives is immediate and immediately apparent. Twenty percent of my cases in private practice are taken *pro bono*. While *pro bono* wins can be fulfilling, I often put in hundreds of hours of work only to lose a pro bono client's case. But when I volunteer with the WFMA there is no losing — the members are appreciative and deserving, and always walk away better off because of our interaction together.

Michael Fuller specializes in consumer protection and class action litigation. He co-chairs the OTLA Consumer Law Section. He contributes to the OTLA Guardians at the Sustaining Member level. Fuller is an associate with Olsen Daines PC, 111 SW 5th Ave., Ste. 3150, Portland, OR 97204. He can be reached at michael@underdoglawyer.com or 503-222-2000.

VOLUNTEERING IN A SMALL TOWN – A VITAL TOOL FOR NETWORKING

Mark Lansing

By Mark Lansing

"When you're new to town, you have to be a joiner," the retiring partner said just after his firm hired me in my first year out of law school.

When you've just arrived in less populated places, it seems as though everyone knows everybody, except you. Volunteering has the benefit of introducing you to a potentially wide range of other people.

When I first came to Grants Pass thirty years ago, I organized a five-mile run that became an annual event, benefiting a local nonprofit. This put my name and efforts before the public eye, as it morphed into a duathlon then a bicycle ride/race over the next ten years. The gradual shift happened to coincide with the gradual shift I was making into middle age, where the running I loved so much was becoming impossible due to multiple injuries, and cycling became my most enjoyable activity.

Soon I turned to racing my bicycle as well as riding it, which brought me into contact with a 14-year-old twenty years my junior, who had also started racing his bike. This in turn placed me in contact with his father, who happened to be a Josephine County judge who rode a bike, too. A couple years later, the judge was riding his bicycle in the direction of the setting sun, when a one-eyed driver without insurance struck him from behind, and the investigating officer determined the cyclist was at fault.

This may sound strange in the current day and age, but the officer said the judge should have realized the sun would be in the eyes of approaching drivers, and in turn, the judge should have pulled his bike into one of the driveways adjacent to the road, only to re-enter it when there were no cars coming. No kidding.

The inside track

No citation was issued to the driver, and the judge hired me (even though almost every lawyer in town had more experience, my cycling activities had placed me on the inside track for the job). Not that there was any viable claim that could have been made against the driver who had no assets or insurance (his car also had no sun visor that might have helped him see the road on his one-eyed excursion down it). My volunteering and participation in bicycle events was about to lead me to a new legal arena: uninsured motorist coverage! Who knew?

The first thing the judge's insurer did after being notified of the claim was to send down an accident reconstructionist, who promptly agreed the collision had been the fault of the driver and that the insured was lawfully riding his bicycle on a narrow roadway (without the obligation to pull into driveways when the setting sun created a visual challenge).

The insurance company promptly paid the policy limits, and I had just earned the largest fee of my young career.

Bicycling was something I really enjoyed, so other perks of coordinating a bicycle ride included the self-made cycling event in which I could participate, and the money we raised for charity.

More common is to volunteer with an existing group (not create a new event) and assist its next endeavor. The charity run/ride benefited a local drug treatment provider that later asked me to join its board of directors. Both the advantages and disadvantages of having less responsibility and less control attend the joining of an existing organization. For example, when local government later appointed me to its bikeways and walkways committee, it did so on the recommendation of the committee's retiring chairman.

He didn't want responsibility for

coordinating the committee's annual bike fair ride anymore and saw me filling that role. But after surrendering this obligation to me, he wanted to instruct me as to how the event should be run. In turn, this volunteering episode became a teaching moment. The lesson I learned? Be wary of a group that wants to step away from the responsibility while it operates the controls.

Mark Lansing's volunteer activities often led to rewarding experiences in the bicycling community, including memorable rides along the coast from Grants Pass to San Francisco.

Too close for comfort

Soon I became chair of the Grants Pass Bikeways Committee. Meanwhile, I had become antagonized by the number of motor vehicles that passed bicyclists far too closely. The operative theory appeared to be that, as long as the car does not strike the biker, a non-collision should be good enough. But as anyone who rides a bicycle can tell you, having a car come within a foot of hitting you while traveling at the posted speed is just a heart attack waiting to happen.

There ought to be a zone of protection surrounding the biker, I argued to the committee members, into which a motor vehicle should not be allowed to intrude. For reasons unclear, I could not quickly obtain committee agreement to that seemingly obvious proposition. But eventually the idea started gaining support, the committee passed a resolution, and the Grants Pass City Council was convinced to enact a local ordinance preventing motor vehicles from coming any closer than three feet of cyclists when overtaking them.

This was the first law of its kind in Oregon. But the momentum was beginning to build. Not long after the three-foot rule was enacted here, the Legislature passed a law requiring "safe falling distance" when drivers overtake bike riders on rural roads (which is more like a six-foot rule). Did we lead the way? I'd like to think so.

Over the arc of my cycling days, I was harassed by many motorists, either by inattention or malicious intent. I would memorize the license plate in the particularly serious incidences, and then run the plate through the DMV database to come up with the registered owner of the vehicle. I could not assume that the owner was the driver, so there was a bit of difficulty addressing that problem. But I wrote a series of letters to the owner/driver of the car and obtained satisfactory redress of the problem in 90% of those cases. Several led to contested cases after I issued citizen's complaints (yes, there is a way in Oregon for a private person to prosecute those infractions).

I not only volunteered to prosecute the illegal driving that I witnessed, I also pursued other incidents on behalf of other cyclists, which sometimes led to new clients and always led to my satisfaction at having played a role in the trend that has made bicyclists sharing the road with cars a lot safer.

Making connections

Over the past 12 years, I have also volunteered as a mock trial coach for Grants Pass High School. While volunteering with bicycles and cycling created my public identity, volunteering as the trial coach led to one of my former students going to law school and being admitted to the Bar. He is now practicing law right across the street from me. I hired another former participant as an intern last summer (who did find some good case law I could use). Several other of my former mock trialers have become lawyers. All this, of course, brings me a certain amount of satisfaction.

If there is one drawback to volunteering in a small community, it might be the difficulty of finding an exit strategy. As the retiring partner later told me, "I spent the first ten years of my career trying to join as many groups as possible, then I spent the last 40 years of my career trying to unjoin."

To this day (even though I haven't ridden a bicycle in years) if someone has heard of me, it is usually because of my bicycling publicity. Not only do citizens see you doing something to contribute to the community, volunteering for a good cause also makes it easier to look yourself in the mirror every morning.

Mark Lansing handles a wide variety of civil matters, including litigation, employment law and elder law. He is a solo practitioner at 307 NW E St., Grants Pass, OR 97526. He can be reached at 541-471-9239 or lansingatlaw@gmail.com.

Working on the CONSTITUTION

Ashley Vaughn

By Ashley Vaughn
OTLA Guardian

"Give me your tired, your poor, your huddled masses yearning to breathe free…"

Such are the familiar lines from the poem "The New Colossus" by Emma Lazarus inscribed on the base of the Statue of Liberty.

You've probably heard that quote many times, but when was the last time you thought about what it means? Or how it's reflected by our country's immigration policies? Or how it echoes the democratic ideals of our country? I've actually spent quite a bit of time over the last five years thinking about it in my role as a volunteer coach at Franklin High School for the Classroom Law Project's *We the People* national constitutional law competition.

Approximately six months out of each of the past five years, I have spent almost every Sunday morning meeting with a group of five to six high school seniors studying constitutional law. My Sundays usually begin with multiple texts of "I need a ride," "I overslept," "I got called-in to work," "My cat/dog/grandma/third-cousin-twice-removed is sick/has a birthday/is in town for these next two hours only," and, my favorite, "…I forgot." My husband, fellow OTLA member Tom Adams, has also volunteered with the program the past five years. He and I drive to our friend and retired attorney Jeremy Sarant's house for the meeting. The kids trickle in, sleepy-eyed, grab coffee and one of the various newspapers lying around, and start combing the articles for topics relevant to constitutional law, usually spending more time discussing the latest movie, soccer game, or TikTok video than reading. After a delicious breakfast cooked by Sarant, we get to work for a couple of hours. And so it goes, almost every Sunday, August through January.

The program

The *We the People* program is a bit like mock trial, but with a congressional hearing/appellate oral argument format. Around 10 high schools in Portland host the program, and each develops its own format for preparing for the competition. At some schools, like Franklin, competition preparation is joined with an AP Government class. There are regional, state and national competitions. For a school to have a full team to participate in each competition, the school must have six "units," with three to six students per unit. Each unit has a different focus of constitutional law.

I volunteer with Unit 6, which has the theme: "What challenges might face American constitutional democracy in the twenty-first century?" Or: the "civil rights, current events and kitchen sink" unit. Other units focus on the philosophical and historical underpinnings of our government, the Framers and their creation of the Constitution, the Declaration of Independence, how constitutional principles have shaped our institutions and practices, and the Bill of Rights. Each unit is assigned three weighty questions for which they must research, prepare a four-minute oral team

response and prepare for unknown follow-up questions. At the competition, each unit delivers its prepared response and answers six minutes of follow-up questions by a panel of volunteer judges — usually local teachers, lawyers, judges and politicians. Each unit and school are scored. The best of the regional units advances to the state competition, and one team from the state competition advances to the national competition.

Every year, each unit is assigned a new set of questions. The questions are far from simple. They often strike at some of the most contentious and complex issues our nation has faced. This year alone, Unit 6 is tackling birthright citizenship, enlightened self-interest and populism. In recent years, Unit 6 topics have covered immigration rights, the Universal Declaration of Human Rights, mandatory voting, parliamentary v. presidential government, tribal law and citizenship, and foreign policy. The students are expected to research the history of each issue, how it is tied to constitutional theory and interpretation, and relevant historic and modern examples. They must form opinions and develop evidence to support those opinions.

Getting involved

In all honesty, I got started with the We the People program without a clear idea of what it was or how I could help. A friend told me a teacher at Franklin High School was looking for volunteer lawyers to help with a constitutional law program. It sounded interesting so I went to the first meeting, liked what I saw and started volunteering. I was assigned to Unit 6 — the unit I still teach — with two retired attorneys who were good friends and weren't quite sure how they felt about this newcomer. It turned out to be a perfect fit. We quickly all became friends and sorted out our roles depending on our strengths and weaknesses. I still volunteer with one of them today, Sarant, teaching Unit 6. Along with being my fellow coach, he has become a close friend and mentor.

It took me a while to find my groove. I was intimidated and, admittedly, still am sometimes. My fellow coaches at Franklin consist of attorneys, newer and more experienced, active and retired, local circuit court judges, and appellate court justices. The breadth of leadership, talent and knowledge collected in one place is astounding. I still learn from my fellow coaches at every meeting.

That feeling when

We hear a lot in the media about how our country is deteriorating thanks, in large, part to the apathy and stupidity of the next generation. But I can tell you that our country is in able hands. Granted, the kids I interact with through the program are generally the overachievers — the mostly straight-A students who have more extracurricular activities then I can keep track of. But their knowledge, optimism and desire for real change in our government and society is thrilling and contagious. When I am depressed about the current state of affairs in the world, my attitude always improves when I think about the future leadership of these great kids.

My fellow coach, Jeremy Sarant, says it best. He first started coaching the Franklin team 15 years ago, when his daughter was on the school's first team. His leadership has been instrumental to the program's success. I have learned so much from him about how to be a teacher and leader. I wholeheartedly share his sentiments about the value of the program and am thankful (as, I know, so many other coaches are) for his insight:

> I've seen a lot of changes over the years, but I am still carried along by the joy of watching, and helping, young people push themselves to meet the individual challenges that the competition presents. Those challenges generally arise in three areas.

First, students have to learn and understand the material presented in their specific questions. For some, this comes naturally, but for others, it requires a real stretch. Because of the nature of the program, we coaches have the opportunity to work closely with students who are struggling with the dense and often conflicting constitutional concepts.

Second, students have to learn how to work together. Ninety percent of school work is individual work; but ninety percent of life's work is teamwork. Students must understand not only their own strengths, but also those of the other unit members, and work together. One common challenge is to teach the very smart, articulate student, who wants to answer every question, to use his or her abilities to provide support to the other unit members by "filling out" an answer, giving examples or presenting a different viewpoint.

Third, students have to learn how to present information in a clear, concise and convincing manner. Sometimes it's easy to overlook the obvious. I had one student, for whom English was a second language, who presented his prepared material fluently but in a monotone. When I finally sat down individually with him, and showed him how to emphasize some words and use phrasing, the change was astounding. It wasn't that he couldn't do it, it was just that he had never been shown.

After explaining the program to friends, I'm often asked if any of our students go on to law school. They have, but I relate my most rewarding moment, which occurred a few years after the first year I coached. I opened the newspaper — you do remember those, don't you — and

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there was an op/ed piece on a current local issue. The author explained the issue, took a position, and supported her position with logic, information, and examples. It was signed by a student from my first team. That, ultimately, is my reward.

— Jeremy Sarant

Every one of the kids has impacted me in some way, but some kids stand out, and they are usually the ones I don't see coming. Tony was one of our students two years ago. He was a high school senior but had never taken an AP class. As such, he struggled in the class because he was not prepared for its academic demands. He is a beautiful dancer, and he was much more interested in his dance classes and cheerleading than constitutional law. He made it clear he was not sure why he was even in the class, other than because a friend of his wanted him to join, and he could get AP credit. He was a great kid in a lot of ways — cheerful, funny, energetic and caring — but the skills he needed to succeed in the program needed development.

Tony was Hispanic and would be a first-generation college student. He frequently did not have a ride or overslept for the Sunday morning meetings, until my husband and I offered to pick him up on our way each time. After that, every Sunday morning, we started the day by texting Tony multiple times to make sure he was awake, then driving several miles out of our way to make sure he could attend the Sunday morning meetings. During those car rides, Tony shared with us issues in his life: his hesitancy about applying for college, his desire to move to New York to be a dancer and the intimidation he felt in the program, because he believed he was not "as smart" as the other kids. Several times he threatened to quit the program because he wasn't sure how much he was contributing to the team. Every time, we reassured him that his involvement was appreciated and convinced him to stay.

Tom Adams (left), Jeremy Sarant (center) and Ashley Vaughn (right) enjoy a "We the People" competition with members of their constitutional law team.

By the time the competition rolled around, Tony was an integral member of the team. He was the moral center of our team. It was a joy to watch the team interact and perform together. At some point during the regional competition, a judge made a comment that was upsetting to Tony as a Hispanic student. He held it together during their performance but burst into tears afterward. His team members gathered around him to offer support. The moment just motivated him to do even better at the state competition.

At the end of the year, the class had a banquet where the coaches present the kids with cards and mementos, and *vice versa*. Tony was the spokesperson for our Unit 6 kids. He told us about the impact we'd had on his life that year, and how glad he was we wouldn't let him quit. He cried. We cried. Everyone cried. We still keep in touch with Tony, and he appears to be thriving at the University of Oregon, dancing his way through college.

Those times

Some Sunday mornings I'd rather sleep in or have brunch with friends. Some Monday nights after a long day I don't feel like meeting with a bunch of teenagers. Some weeks are frustrating, when the students aren't showing the level of commitment we expect or haven't finished their work or just seem not to care. At those moments, I wonder why I devote hundreds of hours each year to this program. But then I remember Tony and the so many other kids I've enjoyed working with over the last five years. The constitutional law competition brings out qualities in them and challenges them in ways they probably would not have imagined when they signed-up for it. And I grow in ways I couldn't imagine by being there to help them along.

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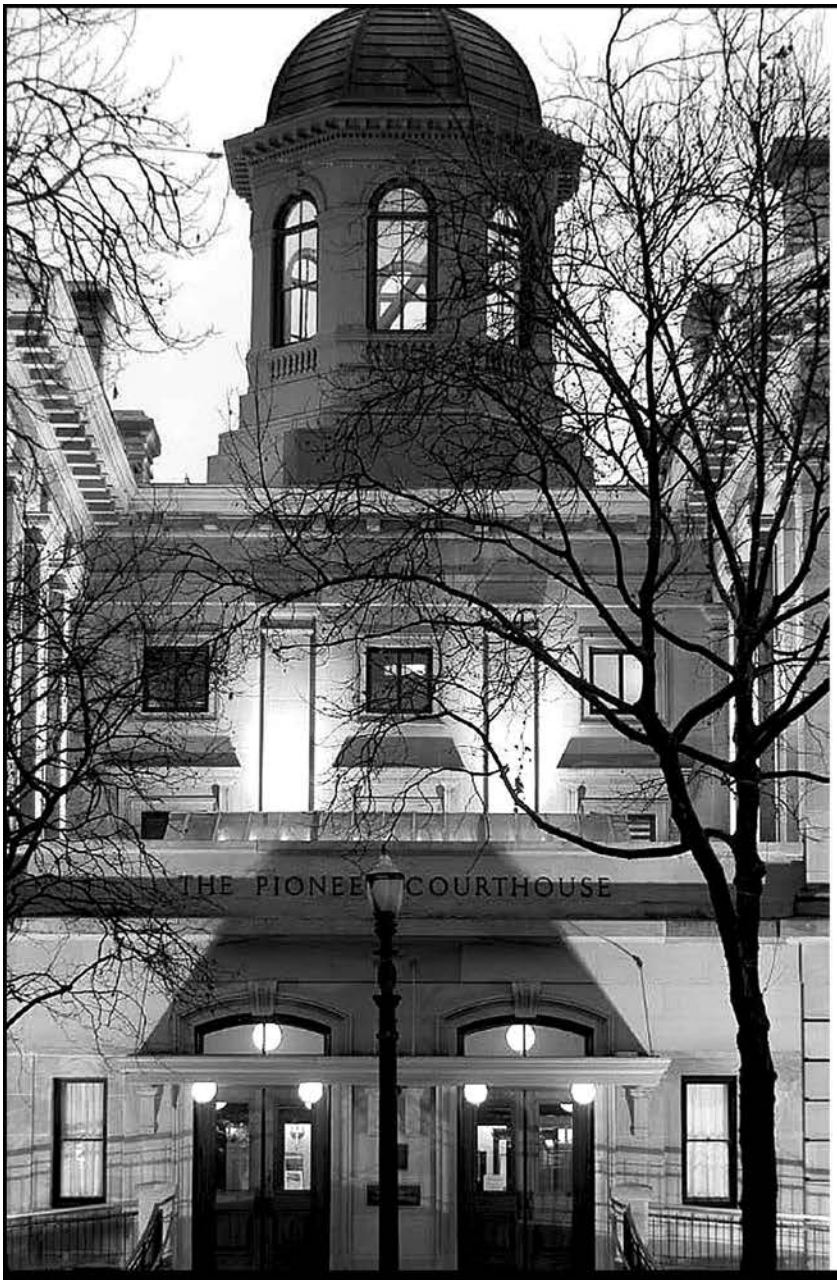

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A Part of Something Special

John Devlin

By John Devlin
OTLA Guardian

Two elementary school girls drew funny pictures of me. That's my memory of my first night volunteering for Portland Homeless Family Solutions (PHFS). That's what hooked me. Now, I can't imagine my life without PHFS.

In early 2016, I felt like something was missing in my life that work, family and friends could not fill. I wondered whether an ongoing volunteer commitment might provide a source of satisfaction that those other aspects of my life could not. I decided to volunteer as a non-lawyer, because I wanted the volunteer experience to be different from my work life.

I also wanted to teach my daughter (then 9 years old) that we have an obligation to help other members of our community and to take action to address social problems. Her religious school served a meal at a local homeless shelter once a year, but that was not the same as a regular volunteer commitment. Because I know that kids do what you do, and not what you say, I had to model the behavior that I wanted her to emulate.

At various points in my life, I had done some episodic volunteer work with people experiencing homelessness. I still have vivid memories of taking big pots of soup from my college dining hall and driving into downtown Philadelphia to hand it out on the street. I knew that my synagogue staffed the PHFS night shelter once a month. I decided to take the plunge and sign up for a volunteer shift.

I could tell from the start that PHFS was very thoughtful about its volunteer program. All volunteers must attend a training before working in the shelter. The training talks about what to expect and explains some of the causes of family homelessness. The goal is to foster positive, thoughtful interactions between the volunteers and the families living in the shelter.

Even with the training, my first night was pretty intimidating. The staff, regular volunteers and families all understood the rhythm and flow of the shelter. The accommodations were modest — eight wooden cubicles in a church gym with mats on the floor and curtains as doors. It was difficult to see parents and children living in such conditions.

It was clear, however, that something special was happening at this shelter. The volunteers sat down and ate with the families, sharing a meal instead of serving a meal. The shelter was a warm and dry refuge on a cold, rainy night. I had so much fun with the kids — laughing,

cracking jokes, playing basketball — just being kids.

Together

I started going to the shelter once or twice a month. I got to know a few of the families, so we became more comfortable with each other. I loved spending time with the kids.

I also started learning more about the issue of family homelessness. I learned that over 4,000 students experience homelessness in Multnomah County every year. I learned that many of the families living in the PHFS shelter include at least one person who is working. The problem is those families either do not make enough money to afford an apartment or do not have any cushion when an unexpected expense (hospital bill, car breakdown, temporary loss of work) hits.

During one of my shifts, a staff member told me that one of the parents in a particular family would be getting up around 4 a.m. I noticed the parents had a newborn baby. I assumed the parent would be waking up to care for the baby. The staff member told me the parent was getting up to go to work. I tried to imagine what it must have felt like to be that parent — the stress of having a newborn baby, the inability to provide that baby with a stable place to live and the struggle of facing those challenges even though you have a job. Whenever I need some inspiration to do something for PHFS, I think of that parent.

More to do

Once I became a regular PHFS volunteer, I sought out additional ways I could help. In the summer of 2016, the PHFS development director sent out an urgent email asking for school supplies for the kids living in the shelter. She had just learned that the nonprofit that had provided the school supplies for the last few years had shut down. School was starting in a few days, and the kids had nothing. This was such a stark contrast to the back to school excitement at my house. My daughter could not wait to start fourth grade with her new backpack, school supplies and clothes. I thought about the challenges for a kid living in a shelter to get up every day and go to school. I then pondered what it would feel like to show up on the first day of school with nothing. I explained the situation to my friends in a Facebook post, and we raised enough money to get new backpacks and school supplies for all 14 kids before school started.

OTLA members donated generously to the purchase of backpacks full of school supplies for children experiencing homelessness.

That project has grown into an annual fundraising drive that has provided 300 backpacks to kids experiencing homelessness over the last four years. I have been blown away by the generosity of the many OTLA members who have supported this project. We couldn't do it without you. I also have been struck by the fact that none of it would have happened if I hadn't reached out to the development director on a whim four years ago.

In the fall of 2017, I joined the PHFS board of directors because I wanted to deepen my commitment to the organization. At that point, PHFS ran two shelters for families experiencing homelessness — a day shelter (open from 8 a.m. to 6 p.m.) and a night shelter (open from 6:30 p.m. to 7:30 a.m.). The shelters were located a half mile from one another, in two downtown Portland churches. During my board interview, the PHFS executive director talked with me about the organization's "moon shot" plan to purchase a building and create a single 24 hour shelter.

Soon after I joined the board, that long-term plan got accelerated when we found a building that fit all of our needs. There was only one problem — we needed to raise $3,300,000 in just a few months to buy the building. I can still remember the board meeting where we looked at each other and asked, "Can we do this?" We knew we had to try.

The PHFS staff and board spent months talking with community members about the opportunity. The response was overwhelmingly positive. Foundations, local businesses and individual donors stretched themselves to make sizable financial donations. Organizations offered their services or materials *pro bono* or at a steep discount — everything from *pro bono* legal work and civil engineering to free toilets, tile and wood floors. Once we had a critical mass of community support, the City of Portland and the Joint Office of Homeless

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Services helped us to get over the finish line with the last $800,000. We were able to purchase the building and pay for a complete renovation of the interior and exterior.

Two years after that board meeting, we opened the PHFS Family Village. I am so proud I was able to play a small part in making that "moon shot" come true. We have tripled our shelter capacity, so we can serve 25 families per night. We have built the first shelter in Oregon that employs trauma-informed architecture and design to create spaces to help people heal from the crisis and trauma of homelessness. We have room for more educational programs, volunteer activities and community building. The development director told me she was giving a tour of the Family Village to one of the mothers being helped by PHFS. At one point, the mom stopped and said, "You really care about us."

The sweetest lullaby

That leads me to perhaps my favorite example of how PHFS cares about its families. For the last two years, PHFS has partnered with the Oregon Symphony and local singer-songwriters to create the Lullaby Project. Mothers experiencing homelessness meet with the musicians to compose original lullabies for their children. The mothers talk about their children — their hopes, their dreams, their funny stories and family traditions. The musicians turn those stories into songs. The mothers are involved in every part of the process, including the professional recording sessions and a very family-friendly concert.

While I primarily volunteer as a non-lawyer, I do look for opportunities to use my legal skills and connections to help the PHFS families. At one board meeting, a staff member was talking about a family that had a dispute with a landlord over a security deposit. It was clear the landlord figured the family had no resources and would not be able to fight back to recover the $3,500 he was keeping without proper cause.

I reached out to my OTLA colleagues, and we now have a team of landlord-tenant lawyers willing to help families in this situation. I usually make a plea to this group once or twice a year, and someone always responds to provide the needed help.

If you are thinking about making a regular volunteer commitment, I encourage you to consider volunteering as a non-lawyer. I understand that many lawyers like to use their skills to take on *pro bono* cases or advise nonprofit organizations. That is extremely valuable and necessary work. For me, volunteering is a break from my legal work. I am not in charge. I am not making big strategic decisions. I am just showing up and helping — sorting donations, playing with kids and doing whatever I can to ease the burden on the staff and the families.

My volunteer experience has given me more than I could have imagined on that first night back in 2016. When I came home that night, I showed my daughter the funny pictures the girls made of me. We discussed the fact the girls were the same age as her and that they were living in a shelter because their parents could not afford a place to live. Over time, my daughter came with me to the shelter and to the annual holiday party. She and her friends now play a crucial role in filling all those backpacks every August. I have no doubt she has learned about family homelessness. I hope she will find her own way to give back to her community.

John Devlin primarily handles civil rights cases, including cases related to the preventable deaths of people in jails and prisons. Devlin contributes to the OTLA Guardians of Justice at the Stalwart level. He can be reached at Devlin Law, PC, 1212 SE Spokane St., Portland, OR 97202. He can also be contacted at 503-228-3015 or john@johndevlinlaw.com.

PROTECTING RIGHTS AND ACCESS - NARAL-

Leslie O'Leary

By Leslie O'Leary
OTLA Guardian

I must have been six or seven when I asked my mother about a foreboding brick building a few miles outside of town that, according to a friend of mine, was where "bad girls" went. I wondered what these bad girls did to get sent to a place in the middle of nowhere. She told me it was mainly a home for unwed mothers.

"Is it like a jail?" I asked.

"Sort of," Mom said.

"Are the girls being punished for having babies?" I asked.

"They're being punished for being women."

I was too young to know what Mom meant at the time, but her words stuck with me. When I started college in the 1970s, I finally understood. By then, the Supreme Court guaranteed women the right to oral contraceptives and abortion. But for many of us, being able to exercise those rights was illusory.

Back then, my university health service did not offer contraceptives or even PAP smears. There was no Planned Parenthood in the town where I went to school. You had to pay for an office visit with a gynecologist at a private clinic to get a prescription — an expense that was out of reach for most students. For those who managed to get a prescription, the Pill was not cheap. It could cost $20 to $30 for a month's supply, more than many college students could afford. Having rights did not mean having access.

I saw my circle of friends and classmates dwindle each year, claimed by unintended pregnancies. Reproductive care and birth control were either too costly, too hard to find or both. Abortion was an option only for the few who could shell out hundreds of dollars, and it often meant traveling hundreds of miles. The forced exodus of so many bright young women from college seemed like an epidemic. I felt both lucky and outraged. I had enough resources to get the care I needed, but those same doors were closed to other women simply because of where they lived and their financial status.

What Mom said when I was a child remained true as I grew up, but in different, more subtle ways. Society has continued to punish women by creating an unspoken economic barrier to reproductive healthcare and to women in communities that need it the most. These experiences fueled my passion for reproductive justice.

Joining NARAL

NARAL (National Abortion Rights Action League) Pro-Choice America was established in 1969 as a grass roots political organization to advocate for women's right to safe and legal abortion. NARAL has affiliates in 20 states, including Oregon.

Through its 13,000 members, NARAL Pro-Choice Oregon "develops and sustains a constituency that uses the political process to guarantee every person who can become pregnant the right to make personal decisions regarding the full range of reproductive choices, including preventing unintended pregnancy, bearing healthy children and choosing legal abortion."

I began supporting NARAL in small ways beginning in the late 1980s before I had any money, clout or a law degree. I was awed that NARAL's annual events attracted hundreds of supporters, including the governor, nearly all of Oregon's congressional delegation, and dozens of state legislators, mayors, and city and county council members. NARAL was also instrumental in thwarting ballot

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measures and legislation that threatened to cut access to and funding of women's reproductive health services.

I was especially drawn to One Key Question (OKQ), a concept developed by NARAL Pro-Choice Oregon's then-executive director, Michele Stranger-Hunter. OKQ's objective is to prevent unintended pregnancies and support healthy births by training primary care health teams to ask all women of reproductive age, "Would you like to become pregnant in the next year?" Patients who wanted to become pregnant would receive medical screening and a follow-up plan for preconception care and treatment. Patients who said "No" would receive counseling and treatment options for preventive reproductive care and treatment. Patients who were unsure would receive extensive counseling to address root causes and risks for poor birth outcomes. Most public and many private clinics throughout Oregon have now adopted OKQ in their practices, and the program has caught on nationally. OKQ has been a huge success, and early studies show it is effective in reducing unplanned pregnancy and improving health outcomes for women and their children.

Some years later, both Stranger-Hunter and my law partner at the time, OTLA Past President Linda Love, who was on the NARAL board, encouraged me to apply for board membership. With gratitude, I joined the board of NARAL Pro-Choice Oregon in 2009.

At first, I felt like a fish out of water. Although I had served on the boards of OTLA and Oregon Women Lawyers (OWLS), I was unfamiliar with nonprofit board structures. Unlike OTLA and OWLS, the NARAL board was much smaller and was composed mostly of non-lawyers who worked in fields such as healthcare and grassroots policy. I was also amazed that such a powerful organization could accomplish so much with such a tight budget and a small staff. And like many nonprofit organizations, NARAL also has a 501(c)(3) operation, which has its own board (NARAL Foundation) and separate functions. Although there was a lot of overlap between the (c)(3) and (c)(4) board activities, each had to be treated separately for tax, financial accounting and budget purposes. NARAL ProChoice Oregon, the (c)(4) board on which I served, oversaw the activities and budgets of both entities. Although it took a while to learn the ropes, I thoroughly enjoyed the challenge. It was so rewarding to immerse myself in an issue I cared about deeply that had nothing to do with my legal practice, and to make new friends with individuals whose backgrounds were far different from mine.

Unfortunately, after about a year or so, the demands of my work and travel schedule became so overwhelming I started to miss monthly meetings. Board member absences create a great deal of stress and disruption, especially for nonprofit boards and their staffs. Without enough board members present at meetings, there is no quorum, which means the board can't vote on important actions. Also, board members are expected to help with fundraising events and attend political activities. Not showing up is a let-down for everyone else on the board and staff, who must then shoulder the additional work of the absentee member.

I offered to resign from the board, but instead NARAL graciously gave me a leave of absence. After a couple of years, my life settled down, and I gratefully resumed my board service.

Advice: Before agreeing to volunteer for board service, find out what the time and work commitment is, as well as the length of the term of service. Make sure you have the time and energy for the job. If something unexpected arises that prevents you from fulfilling your board responsibilities, submit your resignation

immediately so the board can fill your vacancy.

New directions

Exciting changes were afoot at NARAL when I rejoined the board as secretary. NARAL Pro-Choice Oregon had partnered with a coalition of progressive organizations to draft the Comprehensive Women's Health Bill. The proposed law would guarantee all women in Oregon eligibility for public or private health insurance access to the full range of reproductive healthcare. This cause resonated with me for the same reasons it did as I was growing up. Despite having "rights" in the abstract, women persistently faced barriers to accessing the medical care they needed to live healthy and productive lives, especially women of color, immigrants, women from rural and tribal communities, and those living in poverty.

When it was finally introduced in 2017, the bill had strong backing. However, key legislators killed the bill because they feared that a provision covering abortions was too "controversial." Ironically, these were the same lawmakers who sought and obtained political endorsements from NARAL as pro-choice candidates. Vowing not to be betrayed again, NARAL Pro-Choice Oregon withdrew its support of these politicians and conditioned future endorsements on candidates' signed agreements to champion legislation guaranteeing access to abortion.

Meanwhile, NARAL was going through a period of internal growth. The board voted to expand the organization's mission beyond abortion rights to advocate for reproductive equity and justice to empower all who can have children to have autonomy to make decisions that improve the health of their families. By the time I became president of NARAL ProChoice Oregon, we'd hired a director of equity and restructured our boards to increase diversity of membership to reflect not only our values, but our constituencies. We recruited a diverse population of board members who infused NARAL with fresh and energetic ideas for attracting a broader group of donors and engaging more effectively in community organizing. Our new leaders helped NARAL carry its message to a wider audience.

My experience volunteering for NARAL... gives me hope that for all people... having legal rights means having access to exercise those rights.

These structural changes to the board were a heavy lift, requiring a complete overhaul of NARAL's bylaws. The process took two years and hundreds of hours of careful deliberation. But the end result was a healthier organization. As board president, I felt proud of this accomplishment.

During this same time, Stranger-Hunter, NARAL's wise and intrepid executive director, announced she would retire at the end of 2016. Conducting a nationwide search for a new director of a nonprofit organization was another learning curve for me and others on the board. Stranger-Hunter would leave enormous shoes to fill. But after almost a year, and dozens of meetings and interviews with candidates, we were fortunate to hire Grayson Dempsey. She became executive director in January 2017.

In May 2017, my term limit expired and I rotated off the board of NARAL Pro-Choice Oregon. It was hard to leave an organization I had worked so hard to help strengthen. But I continue to support NARAL however I can, including hosting house parties and attending fundraising events in Eugene.

What I am most proud of, however, happened shortly after I left the board. On August 15, 2017, Governor Kate Brown signed into law the Oregon Reproductive Health Equity Act (House Bill 3391). NARAL Pro-Choice Oregon, along with other coalition partners, campaigned to support the passage of this groundbreaking legislation. The law protects and expands coverage for reproductive health services at no out-of-pocket cost for Oregonians covered by commercial health plans, provides reproductive health coverage for undocumented women, prohibits commercial health plans from discriminating on the basis of gender identity, and codifies the right to abortion in the State of Oregon.

But NARAL didn't stop there. Partnering with the Time to Care Oregon Coalition, NARAL Pro-Choice Oregon helped win the passage of Oregon's first statewide paid family and medical leave insurance program (House Bill 2005), which provides up to 12 weeks of paid leave to all working Oregonians.

Finally, women (at least in Oregon) are no longer being punished for their ability to become pregnant. As Grayson Dempsey noted, "There can be no reproductive justice without strong economic policies that allow families to welcome a child or care for themselves and their loved ones… without jeopardizing their financial security."

It is has been my great honor to support an organization that guarantees that women (at least in Oregon) are not punished for their ability to become pregnant. My experience volunteering for NARAL ProChoice Oregon gives me hope that for all people — regardless of what they look like or where they come from — having legal rights means having access to exercise those rights.

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"INSPIRING ALL GIRLS TO BE STRONG, SMART AND BOLD"

Dana Sullivan

By Dana Sullivan
OTLA Guardian

When I was asked nine years ago to join the board of Girls Inc. of the Pacific Northwest, I jumped at the chance. I first learned about the organization through my law partner, Courtney Angeli, who had served on the board before me. Angeli had shared with me how impressed she was by the organization's focus on helping girls navigate gender, economic and social barriers, and to develop self-confidence and important life skills. Although I had experience serving on the boards of legal organizations, including OTLA and the MBA, I had never before served as a board member of a social services organization. I was eager to put my leadership experience to work for an organization whose statement of purpose — "Inspiring All Girls to be Strong Smart and Bold" — meant a great deal to me personally. It was also important to me that the organization has a measurable impact on the girls it serves. I did not foresee at the time how devoted to the organization I would become or how much my involvement would contribute to my own personal and professional development.

Personal connection and approach

One of the aspects of Girls Inc.'s programming that I consider particularly compelling is that the organization provides girls the opportunity to meet regularly in a small group led by a trained female mentor. The girls' groups provide a safe, supportive and affirming pro-girl environment in which girls can feel free to express themselves, to forge bonds with one another and to develop their inherent strengths.

I credit my own experience attending an all-girls' high school with enabling me to develop a strong sense of self-confidence. I had spent my first year of high school in a co-ed school and had been shamed by multiple teachers for speaking out in class. That experience left me feeling self-conscious in class and reluctant to participate. After I switched schools, I found it liberating to be in an environment where I never had to ask myself whether a teacher would treat me differently because of my sex or whether the fact that I was a girl might hinder my

chances at being selected for a leadership role. When every classmate, student leader, valedictorian and team captain is a girl, gender falls away as a potential barrier. I love the fact that Girls Inc. provides a similar experience for the girls it serves.

Importance of measurable results

I have found my work with Girls Inc. to be so rewarding in part because the organization has invested a great deal of thought into developing curriculum that results in measurable improvements in the lives of the girls it serves. The girls' groups programming is research-based and developed at a national level. Throughout the course of a term, girls focus on a particular life-skill through age-appropriate, interactive projects. For example, a girl might spend several weeks learning about the importance of financial literacy. One week, she and her peers might use ads, websites and apps to talk about salaries or the cost of renting an apartment and buying a car. The following week, members of the group might each create a scenario for a future career, while asking themselves questions such as, "How much money would I make?" "What apartment would I rent?" "What car could I afford to buy?" At another point in the year, the group might participate in the "Allies in Action" curriculum, which aims to address bullying through interactive projects helping girls to foster healthy peer relationships or programming aimed at helping girls develop positive body images.

In 2008, Girls Inc. launched a national measurement strategy to determine the effectiveness of its programming. Survey results were published in 2018 and the results clearly show the programming is achieving its mission. The numbers tell an encouraging story. Of the girls surveyed:

- 83% said they had not skipped school in the past month and 94% said they believed getting pregnant would interfere with their goals for school.
- 77% were happy with how their bodies look, compared to 48% of girls in the U.S. nationally.
- 90% said they planned to attend college.
- 80% had a career in mind and knew what education and training was needed to prepare.
- 90% believed they could make a positive difference in their community.
- 80% believed they had a responsibility to improve their community and recognized that youth has an important role to play.

Taking on a national leadership role

Due to a six-year term limit for board members, I rolled off the board of the local chapter in 2017. I was sad to step down, as the Portland affiliate was in the early stages of a program expansion that would enable Girls Inc. to serve girls in Seattle and Vancouver, Washington. However, only a month or so after I left the board of the Portland affiliate, I was invited to join the national board as a regional representative.

At my first national board meeting in New York, I felt way out of my league. Participating in the governance of a nonprofit with an annual revenue of $20 million requires grappling with issues of a whole different magnitude than I had encountered on the board of the Pacific Northwest affiliate, which has annual revenue of just over $1 million. Around the conference room table sat female executives (and a small number of men) from Fortune 50 and Fortune 500 companies. One was a former board chair of the Make-A-Wish Foundation. Another had served in the Obama administration and was launching a mayoral campaign in Dallas. Others attending the meeting were stopping in New York in between intercontinental business trips.

Although initially intimidated, over time I became more comfortable speak-

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ing up in meetings. My fellow board members have even relied upon my legal expertise, for example, when developing an employment agreement for our new executive director. I have forged close relationships with a number of my fellow board members and have learned something from each of them.

The impact of board service

Serving a nonprofit organization as a board member is a very different role than serving as a volunteer working directly with the community served. My opportunity to interact with girls who participate in Girls Inc. programming is limited. However, when that opportunity arises, it is always gratifying to receive affirmation that the board's efforts to maintain a healthy, well-run organization and to raise funds to support Girls Inc. affiliates throughout the U.S. and Canada are having a positive impact on individual girls.

At an annual lunch held in New York in March, I was touched by the story of Nina, a recipient of one of the college scholarships that Girls Inc. grants as part of its National Scholars program. Nina joined Girls Inc. in eighth grade at the recommendation of her school counselor. She was experiencing bullying in school due to her bisexuality. Nina also struggled with body image issues and was habitually cutting herself. Nina bravely described to an audience of 500 people how, in her Girls Inc. group, she, for the first time, felt comfortable in a group of her peers. Once she came to trust the other girls in the group, she opened up about her habit of examining her body in the mirror and crying. She showed them the scars on her arms. For Nina, the fact that her revelations were met with understanding, not judgment, and that there were girls in the group with similar struggles was transformational. She described feeling truly seen for the first time — a feeling that allowed her to find a confidence she had never experienced. With the encouragement of her Girls Inc. mentor, Nina became involved in her high school debate team, which competed at the state level. She aimed to attend college and, with the help of the scholarship she was awarded by Girls Inc., became the first member of her family to do so.

Personal and professional rewards

For me, becoming involved in a youth-serving organization has been a welcome and rewarding complement to a law practice representing individuals who have been subjected to discrimination at work. For example, so many of the women I have represented in sexual harassment cases experienced some form of childhood abuse that left them feeling unworthy of respect and made them more vulnerable to harassment at work. Knowing their stories, I am confident that if these women had had access to a program like Girls Inc. as teens, they may have never needed my services as adults. Just like the girls we serve, I have become stronger, smarter and bolder as a consequence of my involvement with Girls Inc. Serving as a board member at both the local and national level, I have learned valuable lessons about budgeting, fundraising, advocacy and organizational development. I am more confident than I have ever been about my ability to contribute a valuable perspective, even in a group that I find intimidating. I feel more passionately than ever that empowering girls is a critical element of achieving an equitable society. It has been transformational for me to play a leadership role in an organization that is successfully improving girls' lives in measurable ways.

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POWERFUL INCENTIVES

Faith Morse

By Faith Morse
OTLA Guardian

We are sitting in a semi-circle in folding chairs, in the lobby of a church. I am sitting next to Pastor Tomas, who is translating for me. My three years of high school Spanish and more recent two years of study on Duolingo are insufficient for me to communicate with Manuel. Manuel sits next to his wife, who is sitting next to Manuel's grandmother, who is holding their four month old baby. Their 3-year-old son is playing in the background.

Manuel and his wife are both crying. But this time, it is the good tears. Life changing tears. You see, Tomas and I have just told this family that Manuel's 601-A waiver application has been approved. Combined with the visa and other steps we had taken over the past 18 months, this means that he needs to go back to Mexico for a couple weeks, attend a consular interview, and then can return to the United States and his family as a legal migrant. He can work, he can drive, he can live his life without daily fear of deportation. His life is suddenly open and full of possibilities. Most importantly for him, his children do not have to fear growing up without their dad.

We talked for a long time that night. About dreams, and gratitude, and hard work, and family. As I drove home in the dark, I pondered the gift that this service to Manuel and his family brought to me. The way I see it, I volunteer a few hours on my Wednesday nights — leaving my own family for a little bit each week — but those few hours will give this family decades together, in safety and peace. That is a powerful incentive to show up.

Powerful work

Many times I think we as lawyers do not realize the power we have to make a tangible and real difference for others with very little of our time. We are privileged members of our society — simply by showing up to court, judges will listen to us. We can quickly read and understand forms that the average person finds befuddling. We can research and persuasively present the law in a fraction of the time it would take anyone else.

When we take those skills and put them to work in a volunteer environment, we can multiply the good that can be done in this world.

"Research has found that participation in voluntary services is significantly predictive of better mental and physical health, life satisfaction, self-esteem, happiness, lower depressive symptoms, psychological distress, and mortality and functional inability. As proved recently, the health benefits of volunteering are not due to self-selection bias."[1] Maybe it's the research that tells me this is so, maybe it's because I can't imagine life without volunteering, and maybe it's just because I love helping people, but I have seen the truth of those research conclusions in my own life. When offered something so simple that can have such a profound impact on our own lives and health, it makes sense to make room for it in our lives.

It is worth noting that this work does not have to be political or partisan. One of the ladies who helps us at our clinic wears a MAGA shirt most days and is highly involved in the local Republican committee. Another is on the other end of the political spectrum. We all work together in harmony to do a great deal of good in our community.

My story

My alarm goes off at 4:15 a.m. most

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mornings. I drag myself out of bed and get ready and go to the gym. Not because I like going that early, but I just could not make any other time really work in my day. Between my job, my 3-year-old, my family, and trying to occasionally have a social life, the gym was only going to happen at 5 a.m. Because of this, I compare most new activities to my desire not be awake at 4 a.m. Unless it's better than sleep, I am going to say, "No."

Those boundaries are important, because life has a way of filling up the time available to it. And squeezing out time for One. More. Thing. sometimes seems like it will be the death of me. Volunteering can feel like the last thing that is important. Especially since it means learning — deep learning — a complicated new area of the law. But the evidence is clear that volunteering and making a difference in the lives of others can actually help us, too. Much like finding gratitude everywhere possible, it dramatically improves our own lives when we help others. Sometimes that still doesn't make it easier.

I fell into my volunteer work in immigration law. I received a call out of the blue from Pastor Tomas at my church. I had some awareness that we had recently begun an immigration clinic centered out of the church, but had not thought much of it, other than it seemed like a great way to help people. Something great for other people to spend their time doing. I reluctantly agreed to lunch with Tomas and Dana to discuss the project, while telling them I was very busy and unlikely to be able to get involved. I was hoping I could give them a few legal pointers and go back to my regularly scheduled life.

Over a lunch of lemon chicken, I learned about the lives that were being touched. About families staying together. Children growing up with two parents. People getting to go to work and live without fear. Drawing entire families and communities out of poverty. How in the world could I say no to helping that happen?

I quickly found myself named the assistant director of the Oregon Pacific Immigration & Social Services Immigration Clinic. A very fancy title for the work I do most Wednesday nights. I largely sit at a computer, reviewing paperwork, researching, making lists of more documents that I want to see, filling out forms and writing persuasively. Sounds an awful lot like our day jobs, no? The transition is easier than one might think.

Immigration law

When I started this new adventure, I quickly discovered that immigration law is very complicated. There is no "line" for people to wait in to come into the U.S. There are endless forms, which can be incredibly technical and complex. I consider myself a better than average native English speaker, and I still sometimes have to puzzle out what in the world some sentence means. Entire paragraphs feel like they twist words into awkward positions, almost seeming to intentionally obscure meaning rather than make things clear and simple. These forms are not something that a person with limited education and speaking English as a second language will be able to understand and competently fill out on his or her own. Some days I am not convinced most native English speakers could do it.

One of the nice things about volunteering in immigration law is there is a lot of easily accessible, practical training available. My clinic sent me to a week long training in San Diego that covered the basics of immigration law and the history that explains why so much of this area of the law is so complicated. There are online CLEs and free programs, and experts willing to help you if you are willing to step in and help.

Fortunately for me, there is enough

work in our clinic that I can specialize. I write the narratives for 601-A waiver applications. This is a hardship waiver that applies only to certain immigrant visa applicants who are relatives of U.S. citizens or lawful permanent residents. It allows them to request a provisional waiver of the unlawful presence grounds of inadmissibility under the Immigration and Nationality Act § 212(a)(9)(B). The formal instructions for how to fill out this form are 21 pages long. The informal instructions, case law and examples are much longer.

In essence, this allows the spouse of an American citizen who is undocumented to ask the US government to waive inadmissibility based on illegal entry based on hardship to the U.S. spouse. The 601-A waiver process is difficult to do. There is a lengthy, complicated form to fill out, and it must be accompanied by a narrative and supporting documentation. My narrative is generally eight to ten pages long, and the entire packet I submit is usually one to two inches thick (with nary a medical record in sight). As you can imagine, this takes hours of work.

Filling the need

My clinic only works with low income clients, people who could not afford to hire a lawyer to do this otherwise. I work for free. We have a lot of other volunteers who work for free as well. The clinic charges a nominal fee to cover overhead and trainings. The church pays the pastors who run the clinic and do most of the work. But the clients also have to pay the government's fees, which usually means even this low cost clinic costs the clients $1,500-$2,500 to get this service done, largely because in addition to the 601-A, there are a number of other steps to be completed, each with its own forms and fees. Most of our clients have found a way to get that money over the 18 months it takes to go through the full process. For the few who can't, our clinic finds a way to make it happen.

There is a desperate need in our community for more lawyers to help at immigration clinics. The clients of these clinics are low-income minorities, most of whom do not speak English, who are confronted with an arcane system that makes dealing with Medicare or ERISA look simple. They desperately want to do things the right and legal way, but they need help.

Some amazing organizations you can contact if you're interested in immigration work:

- Catholic Legal Immigration Network, Inc. (https://www.catholiccharities-oregon.org/services/migration-services/immigration-legal-services/)
- Immigration Counseling Service (http://www.ics-law.org)
- Innovation Law Lab (https://innovationlawlab.org/volunteer-with-innovation-law-lab/), by OTLA's own Nadia Dahab
- Check out websites such as "volunteermatch.org" for organizations looking for volunteers in your local area.

When you see the smiles and the happy tears, and you hold a baby who will grow up in a stable, two parent household, loved and cherished, and all because you gave up a couple hours on Wednesday night — well, let's just say I found something better than sleep.

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[1] Yeung *et al.*, "Volunteering and health benefits in general adults: cumulative effects and forms," BMC Public Health (2018) 18:8 DOI 10.1186/s12889-017-4561-8

CONTESTED RESTRAINING ORDER HEARINGS

Rob Wilkinson

By Rob Wilkinson
OTLA Guardian

When I was a younger attorney, I decided to do some *pro bono* work and put my legal education to work by helping people in need. A friend suggested I volunteer to take contested restraining order cases for the Domestic Violence Project (DVP) run by Legal Aid Services of Oregon. Many years later, I am still taking those restraining order cases. In many ways, it is the most rewarding work I have done over my career.

I won't deny it, when I got my first restraining order case, I was nervous. I remember that I read all the training materials and CLEs from Legal Aid, studied the law and dusted off my law school evidence textbook. I think I had about a week to get ready for the hearing. I carefully prepared for it. I had my exhibits prepared and practiced getting them admitted. I interviewed my client and my client's witnesses. I prepared an opening statement and outlines for the questions I would ask my client and the witnesses.

I met my client outside the courtroom before the hearing. She was nervous and scared. The abusive ex-partner contesting the restraining order was there, without counsel. Once we got into the courtroom for the hearing, the judge organized the list of hearings for the day. We had the first contested hearing, so we had an audience of all the other people waiting their turn.

I probably made an impassioned opening statement. I remember the audience at the back of the courtroom making a lot of noise as we went through the hearing. The ex-partner and my client had some heated exchanges during cross-examination. After all the evidence was in, I made my closing statement. I'd like to think it was a comprehensive and persuasive argument for the restraining order. Without hesitation, the judge ruled in my client's favor.

My client was relieved. Relieved and empowered. I could see the change in her. The act of publicly speaking out and confronting her abuser in court had given her a newfound confidence and dignity that I could see and feel. I was relieved, too, and overjoyed to win. Looking back on it, I didn't win that restraining order hearing because I was a great lawyer. The client would have won that hearing without me. What was more important was that I stood by my client, gave her the support she needed, and she was able to step up and win the battle, not me.

Since that first hearing, I have continued to volunteer with DVP. I have represented many clients in contested restraining order hearings. Some years I have been able to take a lot of clients, other years not so much. I keep coming back to this *pro bono* work though, because the volunteer attorneys with DVP provide desperately needed access to justice for so many people who cannot afford to hire an attorney. Going to court is a frightening prospect to most of us, but to a domestic violence survivor, there is a whole other level to the anxiety. No person in that situation should have to do it without an attorney.

Satisfaction and rewards

Representing clients in these restraining order hearings is very rewarding. There is something that is just deeply satisfying about using your legal training to have an immediate positive impact in a person's life. The clients in these situations really do need attorneys. Our training and background can make all the difference at the hearing by presenting evidence so that it is admitted and considered, and making sure the evidence

satisfies the legal standard for continuation of the restraining order. Even when the respondent opposing the restraining order does not have counsel, the client depends on his or her attorney for support, advice and guidance in navigating the court and courtroom process. When the respondent does have counsel, there is even more need for the survivor to have an attorney. The clients know this, and they are usually incredibly appreciative and grateful for the time and effort the volunteer attorney brings to the case.

Exciting and rewarding as this work can be, it can also be emotionally hard to go through one of these hearings as the attorney. The clients are naturally scared, stressed and worried. Often, they struggle with other issues such as drug and alcohol problems, housing and rent, jobs, childcare and money. They depend on the attorney for support and encouragement as they move through the hearing process. To be fair, I don't win every hearing. I have lost some of these over the years. Sometimes when the evidence comes in, it is unclear if it rises to the level that a judge needs to see. Some cases have settled with a civil order, particularly when there is an attorney on the other side. Win, lose or settle, as emotional as these hearings can be for me, I try to keep it in perspective. I am not half as resilient or brave as the client willing to testify publicly and confront an abuser in court.

DVP coordinates and supports volunteer attorneys like me in the contested restraining order hearings. Most of the restraining order hearings I have handled are based on the Family Abuse Prevention Act (FAPA) which provides for a restraining order forcing an abusive partner or family member to stay away from the survivor and children, move out of a shared home, and stops contact in any form unless specifically authorized in the court's order. An FAPA order can also address temporary custody and parenting time for children. A volunteer attorney with DVP might also get a referral to work on a different type of contested restraining order:

- The Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) provides for a restraining order that forces an abusive person to stay away from the survivor, stop all contact, and if needed, move out of the home. This requires the survivor to be 65 or older or a person with a disability.
- The Sexual Abuse Protective Order (SAPO) is a restraining order that requires a sexually abusive person to stay away from the survivor and stops all contact. Minors can use this order to get an abusive family or household member to move out of the home.
- The Stalking Protective Order (SPO) is a restraining order that requires a stalker to stay away from the survivor and stops all contact between the litigants.

Legal Aid performs all the intake for DVP clients. The clients must qualify for *pro bono* representation, and Legal Aid staffers decide which clients to refer to the volunteer attorneys. Legal Aid staffers try to handle the more complex cases in-house but they have limited capacity. The staffers also try to match the cases to the experience level of the volunteer attorneys. More experienced volunteer attorneys may end up taking more complicated cases than attorneys just starting out with DVP.

The right match

Volunteer attorneys for DVP come from all different practice areas. Some volunteers are litigators, and some are not. Some work for large firms, some are in solo practice. Some volunteers are fresh from law school and some are more seasoned. Retired attorneys can even work with the Bar to be licensed for *pro bono* work and take on restraining order cases.

Volunteers sign up for hearings in advance using an online calendar form for specific hearing dates. The restraining order hearings are held on Mondays, Thursdays or Fridays. The sign-up calendar has space for three volunteer attorneys per hearing date. Legal Aid also encourages volunteer attorneys to be on-call without selecting a specific date. An attorney with the on call list will be contacted when the staff have a client it can't otherwise assign out.

When Legal Aid refers a case to a volunteer attorney, it provides a lot of support to make sure the attorney feels comfortable and prepared. Legal Aid sends the attorney a package of materials including the legal filings for the restraining order and a sample retainer agreement for use with the client. The retainer agreement includes a release so that the volunteer can communicate with Legal Aid about the case. This is helpful because Legal Aid staff can provide much-needed advice and help. Legal Aid provides meeting rooms that volunteer attorneys can use to meet with the clients, regular live trainings, training and CLE written materials, and legal updates on case law and legislative changes. Legal Aid will provide draft pleadings and other documents. Legal Aid also provides PLF coverage for work on the cases and will pay for interpreters when they are needed.

For the volunteer attorneys, these tend to be short-term representations. This has always been helpful for me in being able to fit this work into a busy litigation practice at my firm. The attorney may get the case referral a week or two in advance of the hearing date. Once I get a referral, I review the materials sent by Legal Aid and contact the client for a meeting. At the meeting, we go over the process and the evidence. I contact and prepare witnesses (if there are any) and prepare exhibits for the hearing. Most of the time, we have just one meeting to prepare, and then we meet at the courthouse for the hearing. The representation typically ends right

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after the hearing.

Volunteering with DVP is just one way to get involved in the direct provision of legal services for those in need. Legal Aid Services of Oregon offers a number of different *pro bono* programs in its service area (Clackamas, Hood River, Multnomah, Sherman and Wasco counties). All the programs rely on volunteer attorneys.

Attorneys who volunteer are performing an important service in our society. The Bar encourages all of us to perform *pro bono* work throughout the year. Section 13.1 of the OSB Bylaws encourages attorneys to provide 80 hours of unpaid service each year. Of that 80 hours, the Bar encourages attorneys to provide "20-40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation." DVP is a great opportunity for Oregon attorneys to provide that "direct provision of legal services" and make a difference for someone in need.

Surprises and challenges

On a personal level, the restraining order work is exciting and challenging. For my regular job, I do civil litigation. Trial is not only infrequent, it is preceded by extensive discovery and preparation. In contrast, there is limited preparation time and little discovery of the other side's case in most restraining order matters. Sometimes the respondent challenging the restraining order will not show up and you win by default. Sometimes your own witnesses will be late or not show up at all, sometimes there are surprise witnesses from the other side.

The witnesses will say things you never expected. You might be surprised at the hearing by evidence such as text messages, photos, voice recordings — you name it. In one hearing, the respondent opposing the restraining order surprised me by falling into tearful hysterics on cross-examination. At another hearing, the elderly abusive respondent showed up to court confined to a wheelchair and argued that he was no longer a threat to my client. You just never know exactly what you are in for when you show up for the hearing.

All of this means that you really have to think on your feet, and you have to be able to adjust your case and arguments on the fly. I have no doubt that volunteering for these restraining order hearings has made me a better advocate for all my courtroom work.

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THE FUTURE IS FEMINIST. EMERGE HELPS US GET THERE.

Blair Townsend

By Blair Townsend
OTLA Guardian

The night of November 8, 2016, I, along with hundreds of Oregon Democrats, gathered at the Oregon Convention Center to, en masse, witness (and celebrate) the election of the first female President of the United States. Donned in white pantsuits and "I'm With Her" paraphernalia, you could hear a pin drop as we watched, dumbfounded and shattered, the returns catapult Donald Trump to the White House.

For many women Democrats, this election signified an opportunity to shatter a glass ceiling in the highest dome in the land and condemn the actions and statements of a politician with a disgusting and disqualifying track record toward women. Instead, this election triggered a sea change in feminist political engagement.[1] A surge of women became first-time political candidates in local and nationwide races.[2] At least 476 women filed paperwork to run for the U.S. House of Representatives. This wave of female first-time candidates post-Trump was not striking for its sheer size alone. Society's branding of a successful female candidate as a white heterosexual with family money, helmet hair and shoulder pads was directly challenged by those stepping up to lead. The women running included more women of color, a number of immigrants, more female veterans, younger women, LGBTQ+ women and single women than at any other time seen in our country.

In Oregon, this movement had already been building for over ten years thanks to programs like Emerge Oregon, a nonprofit with established infrastructure in place to recruit and train women to run successful campaigns and WIN.[3] And it was working. In 2016, women made up the majority of the Oregon House Democratic Caucus and the Oregon House elected its most diverse freshman class.[4] Currently, there are over 70 Emerge Oregon graduates in elected office, including OTLA's Theresa Kohlhoff (Lake Oswego Councilor, currently running for Lake Oswego Mayor), Shemia Fagan (Oregon Senate, currently running for secretary of state)and Immediate Past President Sonya Fischer (Clackamas County Commissioner).[5] In May 2019, 90% of the Emerge-trained candidates won their elections.

My classmates became my sisters and I graduated with a toolkit for how to articulate my values and political vision, build networks, manage a campaign and, above all, embrace my strengths and better advocate for myself and my clients.

Prior to the 2016 election, I had applied, interviewed and was selected as one of 23 members of the 2017 Emerge class.[6] Some fellow classmates were already in elected office and others were running and actively campaigning. Most, if not all, had concrete plans to run for office. I, on the other hand, only knew I wanted to be involved in politics, particularly regarding overturning caps on damages. I didn't know how, for what office, when or how I could even manage a political life if I somehow won. On the first day of training, as we shared our values and our potential campaign platforms, I was inspired (and intimidated) by the journeys and goals of my class-

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mates. Frankly, I didn't feel like I deserved to be there but instead had somehow grifted my way into the program.

Over the next seven months of training, I would learn the fallacy of these fears of inadequacy as well as its pervasiveness among women and women candidates, in particular. Emerge forced me to understand, confront and combat my perceived limitations (always a work in progress). My classmates became my sisters and I graduated with a toolkit for how to articulate my values and political vision, build networks, manage a campaign and, above all, embrace my strengths and better advocate for myself and my clients.

What is Emerge?

Emerge America is a national organization with locally-based, in-depth, seven-month training programs that provide aspiring women leaders with cutting-edge tools and training to run and win elected office. According to the Emerge website, "Emerge has trained over 4,000 Democratic women to run and 690 serve in elected office today."

Emerge Oregon is helmed by its accomplished and adroit Executive Director Jillian Schoene, whom, I suspect, is on the speed dial of every female Democratic candidate in the state. Schoene leads the trainings and engages local leaders and consultants to provide practical and strategic guidance on:

- Public speaking and communications
- Positioning and networking
- Campaign planning
- Field operations
- Fundraising
- Media and messaging
- Endorsements
- Cultural competency
- Ethical leadership

In essence, Emerge hones a candidate's skills so she can run a successful campaign. Emerge students learn how to listen, engage and connect with others, to crystallize their values and how to communicate them to others, to build a fundraising network, hire campaign staff and build support on the ground.

The sessions take place once a month, on the weekend and last all day. Since the 2016 election, the number of applicants to Emerge has grown considerably. To accommodate its growth, Emerge has launched short, intensive boot camps and has opened a training exclusively for Southern Oregon candidates.

Emerge is also a political sorority of sorts. A wonderful benefit of Emerge is the sisterhood that develops among each class as well as all of the graduates since the program's inception in 2009. An Emerge graduate does not stand alone. She has a network of support in which she can strategize, seek campaign volunteers and have a safe place to land. Our class still supports each other and sees each other on a regular basis, at campaign events, fundraisers and reunions

at each other's homes.

Who qualifies?

Research and experience demonstrate that gender diversity in local and national political processes yields better outcomes in political decision-making. And when women do run for office, they have the same chance of winning as their white male counterparts.[7] Yet, women are far less likely to believe in their political potential and are shown to have less confidence in their own abilities as a candidate or leader. For every eight women who think about running for office, an average of one puts her name on the ballot. According to a 2013 study, college-age men who doubted they'd be qualified to run for office were 50% more likely to run than women who felt the same way.[8] Even among women with equally relevant political experience as men, only 57% of those women thought they were qualified, compared to 73% of men.

One impediment to a decision to run is that female potential candidates feel (or are told) that they need to wait their turn, that they need to ask for permission or that they are not qualified.[9] Before seriously considering launching a campaign, a woman has to be asked to run repeatedly and often — multiple times more than a man. For women of color, that figure is significantly higher.

This gender confidence gap is exactly why groups like Emerge are necessary to recruit and encourage women to run by arming them with the tools to feel prepared and capable.

In some ways, ignorance is bliss. The dream of a campaign is a much more accessible satisfaction than the intense groundwork, endurance and sacrifice required to successfully run one.[10] Certain impediments include a candidate's ability to build a network, raise money, talk about themselves and share their story. All Emerge trainings were useful but some were more painful than others. For instance, my least favorite thing to do is to fundraise (although I'm sure all of you love being on the receiving end of one of my pleas). But to fundraise for myself was my nightmare. A top-notch political fundraiser trained us how to communicate our goals, how long to be on the phone, what to ask for, how to ask for it, and to set a schedule with goals so we wouldn't go crazy. Another arduous training involved mock endorsement interviews with former journalists from publications like The Oregonian and Willamette Week. I was surprised by how much more difficult it was to talk about myself versus my clients. My "deer in headlights" impression, however, was spectacular.

I can't imagine the stress and pressure of experiencing intimidating aspects of a real campaign. Rather than trial by fire, however, Emerge provided us an opportunity to contemporaneously fail and learn from experts' guidance and

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strategies. The lessons learned have endured in my life and practice to this day.

An asset to our legal practice

Only nine members of the Oregon legislature have legal training (it's even lower for female representation), an astonishingly low figure given how crucial the drafting and enactment of laws is to our legal practice. Oregon needs trial lawyers at every step of the process where public policy and our laws take shape, to ensure better laws and access to justice for our clients. Women lawyers, like current candidate Christina Stephenson, are part of the solution.

And really, after all, aren't jury trials a bit like campaigns? After months or years of preparation, research and financial risk, you are ultimately walking into a courtroom and asking a jury to believe in you and your story over your opponent's. You make a closing argument, as a credible, confident and authentic voice and arm the jurors with facts and purpose, so they will vote in your favor. Emerge's curriculum completely overlaps with our tools for effective trial advocacy: communication, leadership, authenticity and persuasion.

Be a champion of Emerge

Attention: male readers. Gender balance in politics can only be achieved if all of us pitch in. Emerge's training programs are financed by individual donations, fundraising events and low tuition fees. Regardless of your gender identity or your future political plans, I highly encourage your support of Emerge by donating money and attending its events. Your involvement will bolster Emerge as it continues to expand in Oregon and break political barriers.

Enrollment for the Class of 2020 is now closed but be on the lookout for applications for the next round of classes. If you are not sure you want to run but are interested in learning more about what it takes to run a successful campaign, a boot camp is a great option. These take place more often than the general training.

Politics is not a spectator sport. Indifference is the enemy of good and fair laws. Get involved with OTLA's legislative work and support programs like Emerge!

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[1] On President Trump's first day in office, nearly four million Americans, men and women alike, gathered for the Women's March, likely the largest single-day protest in U.S. history. In the following months, the #MeToo movement would cast a light on sexual harassment and assault by powerful public figures, mostly men.

[2] While some may argue that the election of Donald Trump was not the main catalyst for this markedly increased participation, a May 2017 survey of over 2,000 potential candidates conducted by Politico, American University and Loyola Marymount University suggests otherwise. You may download the survey's findings here: https://www.american.edu/spa/wpi/upload/the-trump-effect.pdf. According to the survey, "all told, the results reveal that Democrats—especially women—hold very negative feelings for Trump, and that those feelings have indeed generated more political interest and activity." It continues to state that although the overall gender gap in political ambition was not dramatically higher, "one quarter of the female Democrats who were interested in running first started thinking about it only after Trump was elected."

[3] Nonprofits and political action committees like Emily's List and Color PAC have also been instrumental in recruiting and training women and candidates of color to win elected office.

[4] As of September 2, 2019, 54% of Oregon's House Democrats were female, a rare majority in state capitols. Oregon's Legislature is the third highest in the country for the percentage of its members who are women, and it has more women in top leadership roles — including the house speaker and majority leaders of both chambers — than any other state's, according to Kelly Dittmar, a scholar at the Center for American Women and Politics at Rutgers University.

[5] For the full and impressive list of candidates, visit https://or.emergeamerica.org/alumnae/in-elected-office/.

[6] Fellow OTLA Member Christina Stephenson was also in my class and is now running for Oregon House District 33 in a hotly contested primary. Go, Christina, Go!

[7] Source: "The Electability Myth: The Shifting Demographics of Political Power in America." June 2019, Reflective Democracy Campaign.

[8] Source: Jennifer Lawless and Richard Fox, "Girls Just Wanna Not Run," March 2013 report, Women and Politics Institute at American University

[9] For a thoughtful discussion from four women leaders of color in Oregon (Portland Commissioner Jo Ann Hardesty, Multnomah County Commissioner Susheela Jayapal, TriMet board of directors and North Clackamas school board member Kathy Wai, and Color PAC executive director Ana del Rocio) regarding the difference between getting elected and holding office, check out https://www.opb.org/radio/programs/thinkoutloud/segment/women-of-color-oregon-politics-hardesty-jayapal-wai-del-rocio/.

[10] In addition to the sacrifice of time away from your life, the salary can be prohibitive to potential candidates. On February 1, 2019, Oregon state lawmakers got a raise to a salary of $31,200 per year (not including per diem).

Comp Corner

Issues & Topics for the Workers' Compensation Attorney

Board Statistics

By Julene Quinn
OTLA Guardian

Win/loss statistics are highly relevant to our work. As we are paid only when our clients prevail, how often injured workers prevail is important to our practices, beyond being of the utmost importance to our clients.

Julene Quinn

In 2015, the Legislature required the Board to "consider the contingent nature of the practice of workers' compensation law" when determining attorney fees under the chapter. ORS 656.388(5). The Board has recently been struggling to put this into practice.

Currently, the Board is considering a contingent multiplier as a means to compensate injured workers' attorneys for the contingent nature of a claimant practice.

Injured workers' attorneys have urged a multiplier since the 1990s, *see Schoch v. Leupold & Stevens*, 144 Or App 259, 261 (1996). The Board has resisted applying one in its decisions and in codifying a multiplier because of heavy lobbying against one by employers and insurers. Insurers know that effective attorneys with appropriate resources only increase workers' ability to obtain benefits to which they are entitled.

While the Board and WCD have stopped publishing win/loss statistics, OTLA member Jodie Phillips Polich has been kind enough to maintain a chart of recent years' Board decisions. I have attempted to provide a calculation of the results. Because these results are not official and are hand-collected, they may vary slightly from actual results. Nevertheless, they provide a picture of Board appeals for injured workers. They are also the best we have in the absence of official reporting.

These statistics speak volumes as to the inability of workers' compensation to attract and retain attorneys willing to represent injured workers.

Current data

In 2019, there were approximately 217 reported Board decisions. Injured workers were the appellants in about 66% of those. (This provides a strong indication injured workers more often lose cases at the hearing level, and the actual statistics support that.) On Board review, employers were appellants just over 35% of the time. (The total is over 100%, accounting for times when both parties appealed the opinion and order or raised a cross-issue.) Injured workers prevailed on the main issue in the case just over 43% of the time.

Past data

The raw data from WCD, that was produced during the aftermath of the 2015 legislation, reports outcomes by issue. Again, this is based on hand calculations.

In 2011, the Board reported a total of 727 cases/issues, where injured workers prevailed on an issue 32.7% of the time. In 2012, out of 571 cases/issues, injured workers prevailed 29.9%.

In 2013, with 609 cases/issues, injured workers prevailed 29.7% of the time. And, in 2014, out of 454 cases/issues, injured workers prevailed 33.9 %. Lastly, in 2015, injured workers won 37.1% of the time on 544 cases/issues.

More interesting is the percentage of wins on the initial compensability. After all, this is the key to an injured worker's ability to obtain benefits in workers' compensation.

Statistics from WCD for the year 2012 indicate claimants prevailed at hearing on initial claim denials 39.7 % of the time. In 2013, there was a slight rise to 40.9%. In 2014, that number climbed to 49.3%. In 2015, the number settled slightly, to 46.6%. That is the last year of information. Unfortunately, ongoing and public reporting of hearing statistics does not currently occur.

At the Board level, the statistics were not as good for injured workers. In 2011, the Board voted in 26.1% of the cases for acceptance of the claim. In 2012, it was increased to 35.7%. In 2013, it dipped, again, to 30.9%, but in 2014, it rose to 36.3%. In 2015, it rose to its highest level at 39.6%.

The issue regarding contingent attorney fees really only highlights the plight of our workers. In the final analysis, 60% to 75% of those in litigation are not prevailing on their full claim denial, . There are some scratch-it lottery games that have better odds of winning than injured workers in the comp system.

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Between the Sheets


Cody Hoesly


Lisa T. Hunt


Christine Moore

By Cody Hoesly, OTLA Guardian

By Lisa T. Hunt

By Christine Moore, OTLA Guardian

DECISIONS OF THE OREGON SUPREME COURT

An employer's unlawful withholding of wages prevents it from asserting as an affirmative defense to an employee's wage claim the value of lodging, meals or other facilities or services furnished by it for the benefit of an employee; however, the employer may still assert an equitable counterclaim for the value of the benefit.

Rich Jones v. Four Corners Rod and Gun Club, 366 Or 100 (2020); Flynn, J. Nelson, J. dissenting in which Nakamoto, J. joined. The plaintiff was represented by Conrad Yunker and David Schuck. Shenoa Payne filed the amicus brief for OTLA.

The plaintiff filed a claim to recover unpaid wages that the defendant unlawfully withheld after the parties agreed to trade labor for lodging. Under the wage statutes, an employer may deduct from an employee's wages "the value of lodging, meals or other facilities or services furnished by the employer for the employee's benefit" if the employee gives advance written authorization and the employer keeps a record of the deductions. Here, the employer admitted it failed to meet those requirements. Yet, the trial court and Court of Appeals allowed the employer to assert successfully the benefit of lodging as an affirmative defense. As a result, the employer was the prevailing party on the plaintiff's wage claim and recovered attorney fees.

On appeal to the Supreme Court, because the employer failed to abide by the wage statute requirements, the plaintiff argued the employer was precluded from asserting the value of the benefit as either an affirmative defense or counterclaim. The Supreme Court affirmed in part and reversed in part, holding the employer could not raise the value of the benefit as an affirmative defense but could raise it as an equitable counterclaim.

In regard to the employer's affirmative defense, the Supreme Court noted that an affirmative defense, if successful, defeats the claim and shifts the parties' obligations with respect to attorney fees and other relief that may be available to the party who prevails on the claim. The court concluded the purpose of the wage statutes is to protect employees from abusive wage-withholding practices. An employer's failure to comply with record keeping requirements carries a penalty, including allowing the employee to bring a civil action and recover unpaid wages and attorney's fees for prevailing. The court held that the statutory protections are rendered meaningless if an employer who has unlawfully withheld wages to cover a debt can use the same debt to avoid liability by asserting such an affirmative defense and potentially shift the parties' obligations as to relief, when the employee brings a wage claim.

Regarding the employer's equitable counterclaim, the Supreme Court differentiated a counterclaim from an affirmative defense in that a counterclaim is a separate cause of action against a plaintiff that does not impact a plaintiff's claim nor shift the parties' obligations. The court concluded the defendant's counterclaim in *quantum meruit* for equitable recovery was lawful under Oregon law. The court found that the established facts met the *prima facie* requirements for quantum meruit relief — the employer provided the plaintiff lodging, the plaintiff understood he was to provide something of value in exchange, there was no dispute the lodging value exceed the amount the plaintiff earned, and, absent equitable relief, the plaintiff would have received the lodging benefit without having provided anything of value to the employer. The court stated that the counterclaim may be disqualified if the employer's conduct was inequitable but found no such inequity.

The court rejected the plaintiff and amicus' argument that the employer could not obtain equitable relief because it had unlawfully deducted the plaintiff's wages by failing to abide by the wage statute requirements. The court referenced the OTLA Amicus cited authority

establishing the general rule that the courts will not enforce any rights arising from an illegal contract when the parties are in equal fault but will allow relief when equity requires it if one party is more innocent. In response, the court drew a distinction, based on the "Restatement (Third) of Restitution and Unjust Enrichment," between transactions that the law prohibits under all circumstances, which are inequitable, and transactions that are intrinsically unobjectionable but fail to comply with statutory requirements, which are not inherently inequitable. The court held the contract here was of the latter because the transaction sought a result that the employer could have accomplished legally under the wage statutes. Thus, the court determined the employer was not precluded from seeking equitable relief. The court noted one exception to its holding: an employer's failure to follow the statutes regulating wage deductions denies a plaintiff notice that his or her wages may be falling short of the value of his lodging benefit. The employer cannot seek to recover the excess amount because it is a harm the wages statutes address and would allow recovery beyond what equity permits.

The dissent agreed with the majority's conclusion that the employer could not raise the value of the lodging as an affirmative defense but disagreed that the employer could raise the value as an equitable counterclaim. The dissent diverged with the majority's conclusion that equitable relief is only denied on an illegal contract when the contract itself is illegal in its object or purpose. The dissent pointed out that in the "Restatement" that rule only holds true when such an allowance of recoupment will not frustrate the policy of the underlying prohibition. The dissent maintained that this matter indeed frustrated the wage statutes policies because it would allow an employer who violated the wage statutes to still recoup the benefit paid. The dissent reasoned that while the employer could contract with the plaintiff to trade lodging as consideration for the plaintiff's labor, the defendant could not do so under a contract that ignored statutory requirements put in place by the legislature to protect employees. The harm to the plaintiff was that the value of the plaintiff's labor was less than the value of lodging but the employer never informed the plaintiff of that fact because the employer ignored statutory requirements. Consequently, the plaintiff was deprived of options such as quitting, renegotiating his salary or accepting the situation as is. The majority did prohibit the employer from seeking recoupment of the value difference between the labor and the lodging. However, as the dissent stated, there is no guarantee that other plaintiffs will fare as well, particularly where the agreed-upon terms are different, ambiguous or nonexistent. In sum, the dissent concluded an employer should not be allowed to bring an equitable counterclaim where it defeats the public policy of the wage statutes to protect wage earners from employers who might use their position of economic superiority to hinder the payment of such wages.

DECISIONS OF THE OREGON COURT OF APPEALS

When a plaintiff alleges both a written contract — which allows the prevailing party to recoup attorney fees — and an implied contract, and the plaintiff prevails on the latter but not the former, the plaintiff is the prevailing party; however, the plaintiff may only recover attorney fees if there is evidence of conduct from which to infer that the parties had reached an implied agreement on a term related to attorney fees.

Mindful Insights, LLC v. Verify Valid, LLC, 301 Or App 256 (2019); Powers, J. The plaintiff was represented by Amy Heverly.

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The plaintiff filed an action to recoup unpaid consulting fees, alleging alternative claims for relief including: 1) breach of written contract, which expressly allowed attorney fees to the prevailing party; and 2) breach of an implied contract. The jury found there was an implied-in-fact contract but no express contract. Subsequently, each party sought attorney fees. The defendant argued it had prevailed on the claim there was no express contract. The plaintiff contended it had prevailed on an implied agreement to the same terms as the written contract. The trial court ruled the plaintiff prevailed and awarded the plaintiff attorney fees. The defendant appealed.

The Court of Appeals reversed in part and affirmed in part. The court held that the plaintiff's claims were alternative theories within a single claim for breach of contract. Therefore, the trial court correctly ruled the plaintiff was the prevailing party. However, the record contained no support that the jury found an implied contract with the same terms as the written contract.

Instead, the plaintiff tried the case as if the implied-in-fact agreement was limited to promises focusing on payment and expectation of payment. The court concluded the fair reading of the verdict was the jury found only an implied contract as to payment and explicitly rejected that the parties, through words or conduct, had agreed to express terms, such as attorney fees.

The general acceptance of a theory of causation in the scientific community is relevant to the determination of the scientific validity of that theory, but its absence does not preclude the theory from evidence under OEC 702.

Miller v. Elisea, 302 Or App 188 (2020); Armstrong, P. J. The plaintiffs were represented by Steven Krafchick.

The plaintiffs brought personal injury claims resulting from a car crash caused by the defendant. The plaintiffs sought to introduce the testimony of two physicians who would testify that a neck injury sustained by one of the plaintiffs in the crash caused her to develop fibromyalgia. The defendant did not dispute the professional qualifications of the expert witnesses. Instead, the defendant argued the court should exclude the plaintiffs' experts' testimony as to causation because the defense expert opined there is insufficient concrete evidence of a causal link between physical trauma and fibromyalgia. The trial court agreed and excluded the plaintiffs' experts' testimony because the plaintiffs had failed to show under OEC 702 the threshold requirement for admissibility of scientific evidence that there is consensus in the scientific community as to the scientific theory at issue.

The plaintiffs appealed and the Court of Appeals reversed and remanded. The Court of Appeals held that whether or not there is consensus in the medical community as to a connection between physical trauma and fibromyalgia is relevant for a trier of fact to consider in weighing the evidence but not dispositive in the court's function as a gatekeeper to admit or exclude scientific evidence.

Evidence that medical providers were paid less than they billed is insufficient to prove the reasonableness of the amounts paid.

State v. Aguirre-Rodriguez, 301 Or App 42 (2019); Lagesen, P.J. The state was represented by Michael Casper.

This is a criminal case, but civil law principles apply, because the issue is restitution. While intoxicated, the defendant drove into the victim's truck, damaging it. After the defendant was convicted of DUII and other crimes, the state requested the court order restitution for the amount the victim's insurer paid to repair the truck. The trial court granted the restitution, reasoning the amount was reasonable.

The Court of Appeals reversed. The court held that, in order to receive compensation for the cost of repairing damaged property (in either the criminal restitution or civil damages context), the reasonableness of that cost must be proven, such as by evidence that the amount paid was at or below market rates. Here, although the insurer paid less than the auto body shop's estimate, and more than the Bluebook value of the truck, there was no evidence addressing how the amount paid related to the market rate for the repairs. Accordingly, the evidence was insufficient to prove the reasonableness of the amount awarded as restitution.

Evidence that medical providers were paid less than they billed is insufficient to prove the reasonableness of the amounts paid.

State v. Hilburn, 301 Or App 48 (2019); Lagesen, P.J. The state was represented by Michael Casper.

This is a criminal case, but civil law principles apply, because the issue is restitution. After the defendant was convicted of sodomy and sexual abuse, the state requested the court order restitution for the victim's medical expenses, which were paid by Willamette Valley Community Health (WVCH) and the Department of Human Services (DHS). The trial court granted the restitution, reasoning that the expenses were reasonable.

The Court of Appeals reversed. The court recognized that, in order to receive compensation for medical bills (in either the criminal restitution or civil damages context), the reasonableness of those bills must be proven, such as by evidence that the payments are at or below market rates. Here, although WVCH and DHS paid the medical service providers less than those providers billed — significantly so, in some instances — there was no evidence addressing how the amounts paid related to the market rates for the services provided. Accordingly, the

evidence was insufficient to prove the reasonableness of the amounts awarded as restitution.

Trial court errs in granting summary judgment by reading requirements into a statute unsupported by text, context, and legislative history, and by *sua sponte* concluding that plaintiff's evidence was insufficient under a statute, an issue never raised in the defendant's motion.

L.L., by and through Nay v. State by and through DHS, 301 Or App 222 (2019), Lagesen, P.J. Erin Olson represented the plaintiff.

The plaintiff is foster child L.L.'s, guardian *ad litem* in this strict liability and abuse of a vulnerable person action brought against DHS. While on a school bus, another foster child, T., exposed himself to L.L., who is developmentally disabled, and coerced her into acts of sexual contact. Plaintiff alleged claims against DHS for the intentional tort of a foster child under ORS 30.297, for negligence, and for permitting the abuse under ORS 124.100. DHS sought summary judgment on both statutory claims, arguing that ORS 30.297 only permitted claims brought by foster parents against DHS rather than the person harmed by a foster child's intentional tort, and that ORS 124.100 does not permit claims against the state. The trial court granted summary judgment against those claims, but concluded that plaintiff's lack of evidence sufficient to support a vulnerable person claim under ORS 124.100 warranted dismissal. The plaintiff voluntarily dismissed the negligence claim, entered a final judgment and pursued this appeal.

On appeal, DHS withdrew its argument under ORS 30.297 and agreed the dismissal of that claim should be reversed. The Court of Appeals agreed, concluding that nothing in the text, context or legislative history of the statute limited claims for the intentional torts of foster children to foster parents. The court next concluded the trial court also improperly dismissed the ORS 124.100 claim under arguments DHS never raised. DHS had not briefed the court on whether the plaintiff's evidence would be sufficient on the issue of DHS permitting the abuse. Accordingly, the court reversed the trial court's decision and remanded the case for trial.

Under abuse of vulnerable person statute, financial abuse claim belongs to the vulnerable person; trustee of revocable trust may bring claim on behalf of the vulnerable person but, upon vulnerable person's death, claim belongs to estate and personal representative must be timely substituted in for pursuing the claim.

Monique Tyler on behalf of Butler v. Whetzel, 301 Or App 504 (2019), Brewer, S.J. Andrew Reilly represented the plaintiff.

Jury to decide merits of plaintiff's invasion of privacy claim against former employer that secretly installed GPS device on plaintiff's truck to trigger alarms should plaintiff drive through "geo fences" erected at former work site and former supervisor's family home.

Reed v. Toyota Motor Credit Corp, 301 Or App 825 (2020), Mooney, J. George Kelly represented the plaintiff.

Defendant Toyota Motor Credit/ Toyota Financial Services terminated the plaintiff's employment following a series of complaints from fellow employees regarding the plaintiff's behavior and conduct. Coworkers did not feel safe given, among other things, the plaintiff's wearing a large dagger at work, writing online product reviews for a "military-style serrated dagger," watching videos at his work computer about bullet making and shooting firearms, buying a bullet proof vest online, exhibiting "increasing hostility" during performance reviews, and generally giving coworkers the impression that he was "odd," a "loner" and the type of "gun nut" who could be "one of those classic cases" of someone going "over the edge" one day.

Upon termination, the defendant entered into a separation agreement to minimize the potential of the plaintiff becoming violent or lashing out at co-workers or management personnel. One of the terms included continuing the lease of the plaintiff's Toyota Tundra at no charge and giving him the vehicle at the end of the lease term so long as the plaintiff continued to return to Capitol Toyota for routine safety inspections and servicing.

The plaintiff did not return to Capitol Toyota and later submitted a bill for repairs performed at a different dealership. The defendant said it would not honor the separation agreement unless the plaintiff brought the truck to Capitol Toyota immediately. While there, the defendant installed a GPS device to the truck without the plaintiff's knowledge that was designed to set off an alarm should the vehicle approach the "geo fences" set up at both its Lake Oswego office and the family home of the plaintiff's supervisor.

One month later the plaintiff discovered the GPS device and thereafter sued the defendant for invasion of privacy and civil conspiracy. On the defendants' motions for summary judgment, the trial court dismissed the claims on the basis of, (1) defendant Toyota had not monitored or tracked the GPS device such that a "private place" had been intruded, and (2) there being no evidence to show that Capitol Toyota had been involved.

On appeal, the court concluded differently as to defendant Toyota. Because the defendant had transferred the right to use and to exclude others from the truck through the lease, the court concluded that a genuine issue exists whether the defendant had intruded into the plaintiff's privacy when installing the GPS device. The court also concluded that another genuine issue is created by the defendant's ongoing collection of

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location data, whether or not the defendant monitored the data or responded to an alarm. The court also disagreed with the defendant's argument (under the search and seizure analysis of *State v. Campbell)* that the plaintiff had no reasonable expectation of privacy while driving the vehicle on public roads. The court determined that a material fact remains whether "the secret installation of the device onto plaintiff's leased vehicle" constituted an invasion of his privacy.

Lastly, the court disagreed with the defendant's argument that, as a matter of law, its actions would not be deemed "highly offensive to a reasonable person" under the third prong of the tort. Even given the context, circumstances, and rationale for the defendant installing the device on the plaintiff's truck, the court concluded that a jury might reasonably find that choosing to covertly install the device rather than take other available steps to address its employees' safety concerns was "highly offensive."

When fraud theory is tried to jury and equitable estoppel theory is tried to court, and jury (applying clear and convincing evidence standard) does not find a fact to be true, court (applying preponderance of the evidence standard) can find the fact to be true.

Vukanovich v. Kine, 302 Or App 264 (2020); Shorr, J. The plaintiff was represented by George Kelly.

In this long-running and complicated real estate dispute, the plaintiff sued the defendant for breach of contract. The defendant asserted two affirmative defenses: fraudulent inducement (which was tried to the jury) and equitable estoppel (which was tried to the court). The jury found for the plaintiff on both the plaintiff's contract claim and the defendant's fraudulent inducement defense. The jury specifically answered "no" to the question whether the plaintiff had induced the defendant to enter the contract by concealing material facts. In doing so, the jury applied the clear and convincing evidence standard of proof. The trial court then decided the equitable estoppel defense and found for the defendant. The trial court specifically found that the plaintiff had induced the defendant to enter the contract by concealing material facts. In doing so, the court applied the preponderance of the evidence standard of proof. The trial court then entered judgment for the defendant.

The plaintiff appealed, arguing the trial court could not find facts relating to the equitable estoppel defense in a manner that contradicted the jury's findings of fact related to the fraudulent inducement defense. The Court of Appeals affirmed.

As the court explained, the jury's and trial court's factual findings did not necessarily conflict, given the different standards of proof that each applied. The jury could have found the defendant did not meet his burden of proving by the higher clear and convincing evidence standard that the plaintiff fraudulently induced the defendant to enter the contract by concealing material facts. At the same time, the trial court could still find that the defendant met his burden of proving by the lower preponderance of the evidence standard that the plaintiff should be equitably estopped from enforcing the contract for inducing the defendant to enter the contract by concealing material facts.

Court of Appeals skeptical about ORS 20.080(2) counterclaims for attorney fees.

Lansing v. Doe, 300 Or App 803 (2019); Aoyagi, J. The plaintiff, Mark Lansing, was self-represented.

The plaintiff brought a negligence claim against the defendant under ORS 20.080(1), which authorizes an award of attorney fees to a prevailing plaintiff in tort claims involving damages of $10,000 or less. The defendant asserted a counterclaim under ORS 20.080(2), which does the same thing. The unconventional thing about the counterclaim was that the defendant sought only attorney fees. The defendant did not allege any tort of its own or seek damages other than attorney fees.

The trial court dismissed the plaintiff's claim and then awarded $9,999 in fees to the defendant on its counterclaim. The Court of Appeals reversed as to the plaintiff's claim (as described in the Winter 2020 issue of Trial Lawyer) and therefore also reversed as to the counterclaim. Regarding the counterclaim, the court opined that the defendant's gambit is "unusual" and "odd," and that its "skepticism" about the gambit was "apparent." But the court declined to decide the merits, as that was not necessary in this case. In practice, however, this defense maneuver in 20.080 cases is becoming more common, so the court's opinion will be helpful to defeating it in future cases.

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