

# AdvanceSheet™

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## OWLS' Fall CLE: The Curious Relationship Between Marriage and Freedom

By Banafsheh Violet Nazari

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Professor Katherine Franke

OWLS' 2012 Fall CLE took place on Friday, October 26, at the Benson Hotel in Portland. The CLE, entitled "The Curious Relationship Between Marriage and Freedom," featured Professor Katherine Franke of Columbia Law School and Professor Pamela Karlan of Stanford Law School. Professor Franke's advocacy for unbundling marriage to create a responsive and inclusive alternative for modern-day families paired well with Professor Karlan's zesty primer on standards in constitutional review and her overview of current same-sex cases before the United States Supreme Court. Their presentations were gripping and remarkably fun.

On June 30, 1986, Katherine Franke was driving when she heard the outcome of *Bowers v. Hardwick* over the car radio. Her heart sank, and she had to pull off the road. In the 5-4 decision, the Supreme Court had found the criminalization of homosexual sodomy to be constitutional. Chief Justice Burger declared homosexual sodomy worse than rape. The highest court in the land told Franke that she was immoral, criminal, and disgusting.

Coincidentally, that year Pamela Karlan was Justice Blackmun's clerk. She worked to craft Justice Blackmun's searing dissent. Seventeen years later, the Court relied on Karlan's reasoning to overturn *Bower* in *Lawrence v. Texas*.

In the 1980s, Franke was on the forefront of a young gay movement. Publicly, she advocated against discrimination and injustice in court-

rooms. She crafted legal solutions in pro bono clinics to help gay community members obtain visitation rights in hospitals and access to shared property. Privately, she cared for and stood by many of her friends as they struggled and ultimately died from AIDS. Franke explained that, in those days, families were born out of friendships to deal with the lack of support and legal recognition of partners and caretakers.

Her moving portrayal of her experiences during the 1980s helped explain the devastating effect *Bowers v. Hardwick* had on her. Making matters worse, the opinion came at a time when AIDS and HIV were devastating the community. It's not surprising that obtaining the badge of marriage might help heal the wounds inflicted during the struggle against hate, bigotry, and illegitimacy.

Still, the right of marriage itself is not what Franke advocates. She made a strong case against a one-size-fits-all marriage bundle. Franke drew parallels between the fall-out of marriage legislation on the newly emancipated African Americans in the immediate post-Civil War era, and current efforts to expand the right to marry to same-sex couples.

Most of us understand marriage to be a social institution, a fundamental constitutional right, or a bundle of rights and privileges that brings with it rights to property and public benefits. Professor Franke, however, sees marriage as a one-size-fits-all contract between three parties: two spouses and the state. The presence of the state in the relationship is the source of negative unintended consequences. For most people, Franke stated, the law of marriage is really about the law of divorce.

The marriage laws of the Reconstruction era empowered bigoted government representatives to punish a minority population. African Americans, as a newly emancipated population, were largely illiterate, deprived of economic power, and focused on reconnecting with families that were formed and ripped apart with every sale and transfer of a slave. The right to marry did not mean they were free from white oversight of their relationships. The resulting African American

Continued on page 14

## President's Message



Megan Livermore

Happy New Year! This promises to be another exciting and busy year for OWLS. As we get started, I want to welcome our new OWLS members. We had a wonderful

year in 2012, and we look forward to having you join us for our great programs and events in 2013.

I also want to express my sincere thanks to our renewing members. Without your ongoing support, OWLS would not be the strong organization it is today. Our members allow us to continue to focus on our mission of transforming the practice of law and ensuring justice and equality by advancing women and minorities in the legal profession.

These are just a few things on the slate for 2013:

- OWLS' 21st annual Roberts-Deiz Awards Dinner on March 8, at the Nines Hotel in Portland.
- OWLS' mentoring circles, which provide members an opportunity to learn from successful colleagues in several practice areas and support one another's professional growth.
- The lunches, dinners, CLEs, and other events that our statewide

chapters will hold to foster connections among attorneys.

- OWLS' Leadership Forums, career development and rainmaking dinners, and OWLSNet inter-professional networking events in Portland and around the state.

As we embark on the new year, we also look forward to continuing our efforts to strengthen our ties with other bar groups to provide and support programming focused on issues of gender, race, ethnicity, sexual orientation, and ability. One such exciting event coming up in February is the inaugural Derek Bell Lecture Series, with events in Eugene on February 7 and Portland on February 8. The lecture series is being hosted by the UO School of Law, the Federal Bar Association, and many other organizations. The Portland event is expected to culminate with a CLE and reception.

Bell was dean of the UO law school for five years beginning in 1980 and was the first and only African American dean in the law school's history. He was a prominent civil rights attorney and legal scholar and is credited as one of the creators of critical race theory, which is a critical examination of minoritized racial groups and the law.

Thank you again, OWLS members, for providing the support and momentum for OWLS to be part of these exciting conversations. I look forward to our continued progress and hope to see you at one of our upcoming events.

Megan Livermore  
President, Oregon Women Lawyers

## Upcoming OWLS Events

### Coffee Creek Book Drive

February 1-15

For drop-off sites and other details, please contact book drive co-chairs Amy Blake, at [amy\\_blake@ord.uscourts.gov](mailto:amy_blake@ord.uscourts.gov), or Jennifer Hunking, at [jhunking@gattilaw.com](mailto:jhunking@gattilaw.com).

### OWLSNet Networking with Lawyers, Bankers, and CPAs

Thursday, February 7, 5-7:30 p.m.

Keynote Speaker: 5 p.m.

Networking: 6-7:30 p.m.

Red Star Tavern

503 SW Alder St., Portland

### OWLS' First-Generation Professionals Discussion Group With Special Guest U.S. District Court Judge Anne Brown

Friday, February 15, at noon

Judge Tennyson's Courtroom

308 Multnomah County Circuit Court

1021 SW 4th Ave., Portland. RSVP at

[katherine.tennyson@ojd.state.or.us](mailto:katherine.tennyson@ojd.state.or.us).

The Betty Roberts Portrait Committee is fundraising for the commissioned portrait of Justice Roberts that will hang in the Oregon Supreme Court building. To make a tax-deductible donation, visit <http://bettyroberts.net>.

## Correction

Alas, after the Fall 2012 issue of this newsletter was published, we learned that Congresswoman Suzanne Bonamici is not the first OWLS member to serve in Congress. That distinction belongs to former U.S. Senator Bob Packwood, who was an OWLS member in the early 1990s. Packwood resigned from the Senate in disgrace in 1995.

Congresswoman Bonamici remains the first woman in Congress who is an OWLS member.

## OWLS Members Win Contested Elections

Congratulations to the OWLS members who won contested elections in November. Congresswoman Suzanne Bonamici retained her seat in the U.S. House of Representatives. Oregon Attorney General Ellen Rosenblum retained her position, as did Oregon Secretary of State Kate Brown. Hon. Richard Baldwin was elected to the Oregon Supreme Court.

Jennifer Williamson won a seat in the Oregon House of Representatives, from District 36. Beth Bagley was elected to the Deschutes County Circuit Court, and Melissa Cribbins was elected Coos County Commissioner.

*Our mission is to transform the practice of law and ensure justice and equality by advancing women and minorities in the legal profession.*

## Auction Items Needed

You are cordially invited to attend the annual Oregon Women Lawyers Foundation Auction at the Nines Hotel in Portland on Friday, March 8, immediately preceding the OWLS Roberts-Deiz Awards Dinner.

Please consider making a donation to the auction or being a sponsor.

Some donation suggestions:

- Travel adventures and lodging
- Fine wine and spirits
- Restaurant certificates
- Sports/event tickets
- Hosted/themed dinners

The Oregon Women Lawyers Foundation helps open doors by using auction proceeds to provide grants that help women and minorities access and participate in the justice system, funding for single-parent law graduates for the Oregon State Bar exam, and book grants to third-year law students.

To make a donation or obtain additional information, please visit <http://www.owlsfoundation.org> or contact Libby Davis, at 503.768.6610 or [eadavis@clark.edu](mailto:eadavis@clark.edu), or Robin Jerke, at 503.680.0194 or [robin@owlsfoundation.org](mailto:robin@owlsfoundation.org). Thank you.

## OWLS Offers Assistance to Judicial Applicants

With the new year will come some state trial court and state appellate court judicial openings, including a new Oregon Court of Appeals panel. If you are interested in serving on the bench, please start preparing now, including contacting OWLS for assistance if you would like it.

The OWLS judicial work group offers many services to current and future applicants for judicial positions, including our terrific *Road to the Bench* handbook, assistance looking over application materials, and practice interviewing with the local bar, the Governor's Office, or both.

Even if you don't contact us for assistance, please take the time to seriously consider applying for judicial openings. We know it is intimidating to put yourself "out there" for scrutiny, but the more women and minorities are willing to do so, the greater impact we will all have in further diversifying and strengthening Oregon's judicial system.

For more information, contact Heather Van Meter, at [hjvanmeter@gmail.com](mailto:hjvanmeter@gmail.com), or Kate Wilkinson, at [kate.wilkinson@ckmarket.com](mailto:kate.wilkinson@ckmarket.com), co-chairs of the OWLS judicial work group.

## Leadership Workshop for Professional Women: Feb. 8 and 9 in Texas

By Diane Rynerson

**B**e in Dallas, Texas, on Friday, February 8, and Saturday, February 9, to combine networking opportunities with women attorneys and other professionals with two days of practical leadership skills training. On Friday, award-winning, non-defensive communications expert Sharon Strand Ellison will provide a full day of insights and skill building in a communications style that previous workshop attendees have termed "transformational."

Saturday's session will feature Karen Lockwood, newly appointed executive director of the National Institute for Trial Advocacy, who will lead the group through practical exercises in negotiation skills. Lauren Stiller Rikleen, of the Boston College Center for Work and Family, will assist participants in developing their own roadmaps for leadership. Lunchtime speakers will be Brigadier General Wilma Vaught (U.S. Air Force, ret.), the founder of the Women in Military Service Memorial, and dynamic Texas State Senator Wendy Davis.

The program is sponsored by the National Conference of Women's Bar Associations and is co-sponsored by the ABA Commission on Women in the Profession, the Center for Women in Law, the Dallas Women Lawyers Association, Texas Women Lawyers, and the National Association of Women Lawyers.

The cost of the two-day program, which includes two luncheons and a reception, is \$295, or attend just one day for \$195. The program has been approved for seven hours of Texas MCLE credit. (See Oregon State Bar MCLE Rules and Regulations section 4.6 for information on possible reciprocity.) The conference will take place at the Embassy Suites Hotel Dallas-Market Center. There is no charge to register for the concurrent ABA Midyear Meeting, so this is the perfect time to take advantage of ABA networking and events.

For more information, contact Diane Rynerson at 503.775.4396 or go to [www.ncwba.org](http://www.ncwba.org).

"A Portland lawyer called me at 4:12 pm and asked if I could get him a reporter that afternoon and again the next day. The location was aboard a Greek ship which could only be reached by a short ride in a small boat and a long climb up a rope ladder. There was only one thing to say.

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—Catherine Teach



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# Phylis Myles Earns OWLS Volunteer Service Award

By Hon. Jill Tanner

At the 2012 OWLS Fall CLE, OWLS President Megan Livermore presented the Katherine H. O'Neil Volunteer Service Award to Phylis Myles. Megan stated:

On our 20th anniversary a few years ago, OWLS presented the inaugural Katherine H. O'Neil Volunteer Service Award to OWLS' founding president, Katherine O'Neil. The Katherine H. O'Neil Volunteer Service Award is given to an OWLS member who epitomizes steadfast dedication and long-term volunteer service to promote women in the legal profession. The award is given for at least eight cumulative years of service in an identified position with OWLS or an OWLS chapter, the Oregon Women Lawyers Foundation, the National Conference of Women's Bar Associations, the National Association of Women Lawyers, or the ABA Commission on Women in the Profession.

Katherine O'Neil is affectionately referred to as one of the founding mothers of OWLS, which was incorporated in 1989.

After serving as OWLS' first president, Katherine continued to coordinate and volunteer at OWLS events. She served for many years as the OWLS *AdvanceSheet* editor, in addition to serving as an Oregon State Bar delegate to the American Bar Association. Katherine continues to promote women and minorities in the legal profession, offering guidance and encouragement.

In 2011, Terri Kraemer became the second recipient of the Volunteer Service Award. Terri served as OWLS president in 1998–1999 and as Oregon Women Lawyers Foundation president in 2009–2010. Terri became chair of the OWLS *AdvanceSheet* committee when Katherine stepped down in 2000, and continues to hold that volunteer position. Terri is a constant supporter of OWLS.

The Volunteer Service award was bestowed on Phylis Myles in 2012. Phylis served as OWLS president in 1995–1996 and as Oregon Women Lawyers Foundation president in 2010–2011. She is the director of career and professional development and externship at Willamette University College of Law, and she

actively participates in the Oregon State Bar mentor program committee and in Opportunities in Law in Oregon (OLIO), an affirmative action program for ethnic minorities.



Phylis Myles

Phylis encourages law students and attorneys to volunteer, explaining that volunteering builds confidence and self-esteem, provides an opportunity to gain leadership and team-building skills, and can lead to a new job or career. At the reception following the OWLS Fall CLE, Phylis concluded her acceptance remarks by quoting Leonard Nimoy: "The miracle of volunteering is that the more we share, the more we have."

*Hon. Jill Tanner is the presiding magistrate of the Oregon Tax Court and an OWLS board member.*

# Lane County Women Lawyers Presents Fifth Annual CLE

By Amanda Walkup

On November 16, Lane County Women Lawyers (LCWL) and the Eugene-based CPA firm Kernutt Stokes hosted a full-day CLE at the University of Oregon School of Law. Over 50 people attended and received six hours of CLE credit in ethics, access to justice, and child abuse reporting.

The morning session was focused on access to justice. The first hour featured an interesting discussion between Stacey Smith and Lydia Pickard. Stacey, who has a hearing impairment, is an attorney in Eugene with the law firm Spinner & Shrank. Lydia is a certified American Sign Language interpreter. The discussion included a reminder that access-to-justice issues extend beyond clients and include jurors and witnesses who need accommodations.

In the second hour, Shari Gregory of the Oregon Attorney Assistance Program spoke about working with clients who have mental health issues. She listed things to watch for that might indicate that a client has a mental health condition, and she outlined steps an attorney

can take to provide assistance, including encouraging the client to seek counseling and requesting immediate intervention.

In the morning's final segment, Rachel Hecht talked about how cultural and language differences can sometimes become a barrier to justice. Rachel practices immigration law with the law firm Hecht & Norman in Eugene. She shared several humorous stories about how her clients' different cultures have affected their understanding or ability to navigate the American legal system.

Over the lunch hour, the attendees watched a video presentation about how Oregon's child abuse reporting laws would have been triggered by the facts that came to light as Jerry Sandusky committed child abuse in Pennsylvania. The replay was from a live presentation by Amber Hollister, the deputy general counsel for the Oregon State Bar.

In the afternoon, Scott Morrill, the assistant general counsel for the Oregon State Bar, explained how the OSB Client Assistance Office handles inquiries and complaints about Oregon attorneys.

He described the types of complaints that the office receives and how it works toward resolving those complaints. The most common complaints include those from clients



Stacey Smith

or former clients who were unable to contact their attorney, unable to obtain a copy of their client file, or both.

Many thanks to the speakers who prepared and presented at the CLE. Because so many people attended, the LCWL steering committee was able to donate \$2,000 to Womenspace in Eugene and \$500 to the Child and Family Law Association at the law school.

*Amanda Walkup is a partner at Hershner Hunter in Eugene, where she focuses on labor and employment law.*

# Judge Jean Kerr Maurer and Julia E. Markley to Be Honored at Roberts-Deiz Awards Dinner on March 8

By Laura Craska Cooper

According to *Dictionary.com*, the word *mentor* means “a wise and trusted counselor or teacher” or “an influential senior sponsor or supporter.” *Mentor* is perhaps the best single word to use to describe this year’s recipients of the Justice Betty Roberts Award and the Judge Mercedes Deiz Award.

Each year, Oregon Women Lawyers recognizes and honors an individual whose personal and professional conduct promotes women in the legal profession and the community by awarding the Justice Betty Roberts Award. This year’s recipient is Multnomah County Circuit Court Judge Jean Kerr Maurer.



Julia E. Markley

Each year, OWLS also recognizes and honors an individual whose personal and professional conduct promotes minorities in the legal profession and the community by awarding the Judge Mercedes Deiz Award. This year’s recipient is Julia E. Markley, a partner with Perkins Coie.

Both Judge Maurer and Ms. Markley have exemplary careers, and both are outstanding role models. Both have also tirelessly and enthusiastically mentored scores of young lawyers, and they continue to mentor. That’s one of many things about each of them that stood out in this year’s award selection process.

**Judge Jean Kerr Maurer**, the former presiding judge of the Multnomah County Circuit Court, has demonstrated a commitment to improving the legal profession and promoting women from early in her career until today. She obtained her undergraduate degree from

the University of California at Berkeley and her law degree from the University of Santa Clara. She then moved to Oregon and began her career in the district attorney’s office in Marion County, later moving to the Multnomah County District Attorney’s Office. After spending time in private practice, she rejoined the Multnomah County District Attorney’s Office, and she was appointed to the bench in 1996. In January 2008, she became the first woman to serve as the presiding judge for Multnomah County.

Through it all, Judge Maurer has continued to support, promote, and mentor both women and men. She has coached mock trial teams at Lake Oswego and Jefferson High Schools through the Classroom Law Project, and she has taught at Lewis & Clark Law School. She served on the General Fairness Task Force of the Oregon Supreme Court and the Oregon State Bar. She has used her role on the bench to work to improve the judicial system’s response to domestic violence.

As many women can attest, Judge Maurer has served as a marvelous role model, demonstrating how it’s possible to balance a notable career with a fulfilling family life and service to the legal community specifically and to the broader community generally. She has offered guidance on career-life balance to many, responding to email requests with invitations to visit her in her chambers. She has encouraged women to seek public office or the bench, to put themselves forward for promotions or partnerships, and to demand more responsibility in their professional roles. Judge Maurer has reminded women of the obligation they owe not only to themselves but to other women in the legal profession. As one lawyer she mentored wrote:

From the moment I sat in the clerk’s chair, I saw an almost endless stream of women attorneys, prosecutors, mothers on maternity leave,

defense lawyers and other judges seeking Judge Maurer’s counsel on



Photo by Nancy Mensch

Judge Jean Kerr Maurer (right) and Laura, her daughter

their cases, their careers, how to manage their clients, their partners at the firm and at home. Jean, as she preferred to be called in these moments, always made time. She would squeeze these very important sessions in between settlement conferences, jury selection, motions and lunch. . . . Judge Maurer helped me find my way. . . . Importantly, she has expected me to do the same for other women.

For her proven dedication to promoting women in the legal profession and the community, OWLS is pleased to recognize Judge Jean Kerr Maurer by naming her the 2013 recipient of the Justice Betty Roberts Award.

**Julia E. Markley**, a partner with Perkins Coie in Portland, is a founding member and the first elected president of the Oregon Asian Pacific American Bar Association (OAPABA). After graduating from Stanford University, she earned her law degree from the University of Washington.

Julia does a significant amount of volunteer work, including her involvement with OWLS (she’s a former board member and a current judicial work group member), the ACLU of Oregon, the National Asian Pacific American Bar Association, the Oregon Minority Lawyers Association, and Filipino Lawyers of Washington.

Julia has earned a reputation as an

*Continued on page 6*

# Queen's Bench Members Honor Women Judges

By Teresa Statler

On December 11, Queen's Bench President Christine Coers-Mitchell welcomed approximately 250 members, friends, and women judges to its 22nd annual Holiday Luncheon, held at the Benson Hotel in Portland. Attendees enjoyed a delicious buffet lunch in the Benson's beautifully decorated mezzanine ballroom.

Christine recognized the many Oregon women judges in attendance, from both state and federal courts. She also presented, on behalf of Queen's Bench, a \$500 check to the Multnomah CourtCare project. OWLS Secretary Kendra Matthews then announced the recipients of the Roberts and Deiz Awards. [See page 5.] Next, Christine passed the Queen's Bench president's jeweled crown pin on to next year's president, Julie Lohuis.

Christine then introduced the luncheon's keynote speaker, U.S. Bankruptcy



Judge Elizabeth Perris, Mariann Hyland

Court Judge Elizabeth Perris. In wide-ranging remarks, Judge Perris imparted wisdom learned from her 35 years as a lawyer and 28 years as a judge. She began by noting that when she joined Queen's Bench in 1975, after graduating from law school, the group was small enough to meet in members' living rooms.

Judge Perris believes that law is a pro-



Christine Coers-Mitchell, Julie Lohuis

profession, not an occupation—something she tries to instill in her clerks. "Opportunities in the law are to be seized," she said—"you just don't know where the law is going to take you and where you will end up." She illustrated this fact by explaining that because she had said yes to a volunteer opportunity early in her career, she had been charged with training bankruptcy judges for many years now. Noting that student loans are not dischargeable in bankruptcy proceedings unless the debtor is suffering "undue hardship," Judge Perris expressed concern that the often six-figure loans that law graduates accrue is really changing our profession in a negative way.

Judge Perris also spoke about her time with USAID's Rule of Law & Development programs in Eastern Europe, helping countries such as Romania to put functioning judiciaries in place. She remarked that a properly functioning court system, something we take for granted in the United States, may not necessarily exist in new democracies. A functioning judiciary should be part of a country's infrastructure, Judge Perris believes, like roads. Courts are needed; otherwise businesses may be loath to enter into contracts if there is no way they can be enforced.

*Teresa Statler practices immigration law in Portland.*

## Roberts-Deiz Honorees

excellent litigator, with a specialty in intellectual property. And like prior recipients of the Judge Mercedes Deiz Award, she manages to maintain high standards of achievement in her professional life, while also spending significant time promoting others, especially minorities, in the legal profession and the community.

In particular, through her roles as a member of the OWLS judicial work group for the past seven years and as a member of several judicial selection committees, Julia has demonstrated a commitment to improving the diversity of our judiciary—at both the state and federal levels. She encourages minority lawyers to consider the judiciary, and wherever she goes, she reminds legal professionals of the benefits of a diverse and representative judiciary. She urges those with the power of appointment to consider the value of diversity to the legal system. As one lawyer wrote, "[h]er aim always seems to be to want to identify talented minority lawyers who might otherwise be overlooked in the judicial selection process. . . . [B]ecause of her work, our elected officials have had a much broader field from which to choose judges than they otherwise would have had."

In addition to her efforts to promote minorities in the legal community, and despite the fact that she has a busy practice, a family, and numerous volunteer

activities, Julia also actively mentors others, especially minority lawyers. She makes the time to answer questions, listen, and advise.

One lawyer tells the story of the time the Oregon State Bar was considering the sunset of its Affirmative Action Committee. This lawyer was quite upset, which was clear to Julia when she called on an unrelated matter. Julia immediately "stopped everything she was doing and listened and advised [the other lawyer] thoughtfully and passionately. Moreover, she was one of the many lawyers who dedicated their time and talent to defeating the sunset of the Affirmative Action Program."

For her demonstrated commitment to supporting and promoting minorities in the legal profession and the community, OWLS is pleased to recognize Julia E. Markley by naming her the 2013 recipient of the Judge Mercedes Deiz Award.

Both awards will be presented at OWLS' 21st annual Roberts-Deiz Awards Dinner on Friday, March 8, at the Nines Hotel Ballroom in Portland. The dinner is nearly sold out. To register for the dinner or the OWLS Foundation Auction, visit [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org). For more information, call 503.595.7826.

*Laura Craska Cooper is OWLS' treasurer and the managing partner of the Bend office of Ball Janik.*

*continued from page 5*

## Save the Date Women's Wellness Retreat for Lawyers

April 26–27

Resort at the Mountain, Welches

CLE credits!

Details at [www.oaap.org](http://www.oaap.org)

# Female Attorneys Still Make Less Than Male Attorneys

By Kathleen Rastetter

In May 2012 the Oregon State Bar hired an independent consultant to conduct a survey of OSB members to obtain economic and demographic information about Oregon attorneys.<sup>1</sup> The *Oregon State Bar 2012 Economic Survey*<sup>2</sup> shows a disturbing disparity in compensation for women regardless of location or years in practice. The survey also points out the ongoing need to increase the racial, ethnic, disability, and sexual orientation diversity of the bar. For example, 92% of the respondents were white or Caucasian, and only 6% or less identified themselves as disabled or gay, lesbian, or bisexual (there were no transgender respondents).

The tables below, included in the *OSB 2012 Economic Survey*, show compensation for male and female attorneys in 2011. As shown, whether women worked full-time or part-time, their compensation lagged in comparison to male attorneys. The average pay for female attorneys working full-time was about 68% of the average pay for full-time male attorneys.

As reported in the bar's *2007 Economic Survey*, in 2006 the average pay for male attorneys was \$133,652, while the average female attorney's pay was only \$82,061, that is, about 61% of

the average male attorney's pay. The prior survey shows that male attorneys earned an average salary of \$114,554 in 2001, while females earned only \$72,065 (63%). In other words, since 2001 female attorneys have improved their earnings as compared to male earnings by only 5%.

In addition, women lagged behind men in earnings regardless of where in Oregon they lived.

The survey published in 2012 found that the main factor influencing compensation was the number of years in practice. Here, too, female attorneys lag behind male attorneys, throughout their entire careers.

The amounts in the second table below indicate that full-time females earn the following percentage of full-time males' pay, by number of years in practice: 80% (0-3 years); 87% (4-6 years); 75% (7-9 years); 74% (10-12 years); 81% (13-15 years); 63% (16-20 years); 69% (21-30 years); 84% (30+ years). The downward trend as female lawyers gain experience is especially troubling.

Interestingly, both males and females reported work satisfaction at 3.8 on a 5-point scale, which is the same rate for females as reported in 2007 (males reported 3.9 in 2007). The numbers were

similar for legal satisfaction by gender for non-legal work (males reported a score of 3.3, and females reported 3.4).

What does all this mean? Female attorneys are paid less than male attorneys at every stage of their careers. Female attorneys never close the gap in earnings, and actually fare worse as they gain experience. Perhaps female attorneys fail to request salaries commensurate with their abilities, or they may suffer pay disparities from leaving the workforce for a time to raise families. Whatever the cause, the results are clear: despite the increased numbers of female attorneys in the workforce, their pay has remained substandard for over a decade.

**Kathleen Rastetter**, senior counsel for Clackamas County, is OWLS' president-elect.

1. The study looked at six main areas: attorney profile and characteristics, compensation, billing practices in private practice, practice profile and characteristics, career satisfaction, and future plans. The survey grouped respondents into seven geographic areas. The bar has conducted similar surveys in 1994, 1998, 2002, and 2007.

2. The survey is available online at [www.osbar.org/surveys\\_research/snrtoc.html#economicsurveys](http://www.osbar.org/surveys_research/snrtoc.html#economicsurveys).

## 2011 Compensation by Full-Time and Part-Time

Gender	Full-Time		Part-Time	
	Average	Median	Average	Median
Male	\$154,510	\$112,000	\$55,178	\$35,000
Female	\$105,659	\$85,000	\$49,607	\$42,000

## 2011 Compensation by Gender – Full-Time Attorneys

Gender		Total Years Admitted to Practice							
		0-3 Years	4-6 Years	7-9 Years	10-12 Years	13-15 Years	16-20 Years	21-30 Years	Over 30 Years
Male	Average	\$67,572	\$79,466	\$116,330	\$139,785	\$154,755	\$187,518	\$184,075	\$185,921
	Median	\$50,000	\$75,000	\$105,500	\$101,325	\$109,000	\$120,000	\$130,000	\$147,000
Female	Average	\$53,816	\$69,265	\$87,681	\$103,441	\$125,459	\$117,457	\$127,193	\$157,008
	Median	\$56,616	\$67,850	\$78,245	\$98,500	\$110,000	\$106,000	\$115,000	\$115,000

These tables are found in the *Oregon State Bar 2012 Economic Survey* and are reprinted here with permission.

# Tips for Dealing with the Media

By Denise R. Case

If a reporter called and asked you for a comment on one of your cases, what would you say? Thinking about that lately, given the high-profile transactions I've worked on, I asked some experienced OWLS members for tips on dealing with the media. Their suggestions are summarized below.

## Prepare for the conversation

The first, and most important, thing to do when contacted by the media is to review the Oregon Rules of Professional Conduct (RPC). RPC 3.6 specifically addresses trial publicity, but for those of us in the transactional realm of practice, RPC 1.6 (Confidentiality of Information) and RPC 1.9 (Duties to Former Clients) are good starting points.<sup>1</sup> Review the RPCs, if possible, before having any interaction with the media. As Portland attorney Lori E. Deveny said, "It's better to be safe than sorry," particularly when it comes to preserving our clients' confidential information.

After consulting the RPCs, attorneys should review the "Statement of Principles Governing Certain Lawyer-Press-Broadcasters Relationships" adopted by the Oregon State Bar, Oregon Newspaper Publishers Association, and Oregon Association of Broadcasters. That statement outlines principles to "keep the public fully informed without violating the rights of any individual" and is available for download from the Oregon State Bar website, [www.osbar.org](http://www.osbar.org).

After an RPC refresher, it may seem that we are ready to speak with that reporter, whom we'll call Ace Reporter, but my sources say our pre-interview work isn't done yet. We should review the publicly available pleadings and other documents relating to the matter. Lori notes that those pleadings and documents will serve as the framework for the interview, and can help us generate talking points to use during the interview.

As part of his interviews, Assistant Attorney General Simon Whang likes to have copies of the pertinent public documents available for the reporter. Simon can then highlight and give pertinent provisions to the reporter, making it easy to obtain accurate quotes. Portland criminal defense attorney Janet Hoffman takes a similar approach, noting that the press may not be aware of certain public information, so having materials handy may speed up the interview process.

We've reviewed the RPCs, the statement of principles, and the pertinent documents, but we still aren't ready to call Ace Reporter back just yet. Instead, our next call should be to our client, who will most likely appreciate advance warning that she may receive a deluge of follow-up inquiries. When talking with your clients, consider suggesting that they either (a) screen their phone calls or (b) direct all callers to you. After all, we don't want our clients saying anything more than is necessary or appropriate.



Simon Whang

During the call with your client, and depending on the amount of media attention the matter is receiving, you might consider discussing with your client the option of engaging a media consultant. As described by Mark J. Fucile in his article "Talking with the Media" (*Oregon State Bar Bulletin*, July 2010), a media consultant can help "shape either coverage or public opinion" of the case at hand.

## What to say

Now it's finally time to call Ace Reporter. But what do we say?

"No comment." Across the board, my sources say that simply stating "no comment" is a bad idea. Attorney Lori E. Deveny explains: "In the civil context, 'no comment' makes it look like you're hiding something." Attorney Janet Hoffman sees "no comment" as "a lost opportunity to generate goodwill for the client." Furthermore, saying "no comment" is a missed chance to do damage control or otherwise spin potentially negative news.

Start the conversation by asking Ace Reporter, "What can I help you with?" Knowing the scope of the reporter's story allows us to provide the most useful information. Next, consider asking Ace Reporter about her deadline. Being respectful of the reporter's time helps to build a good rapport. With a good rapport in place, Ace Reporter may be more inclined to "pick quotes that make us look smart and not idiotic," according to Simon Whang.

When the introductions are out of

the way and the interview actually starts, Simon suggests that it may be helpful to "think in sound bites," since the entire interview may ultimately be summed up in a single sentence as part of a larger article.



Lori E. Deveny

Once printed, posted, or broadcast, your interview will forever be in the public realm. Janet reminded me that "saying less, graciously, is better than saying too much and having to later rue your words." With that in mind, keep your statements neutral to avoid having to make future retractions.

Before ending the interview, ask Ace Reporter whether it will be possible to obtain a courtesy copy of any quotes being attributed to you, prior to the story's being published. By performing a quick review of the article, you can help avoid having quotes taken out of context.

The scenario discussed above assumes that Ace Reporter called you, but your interactions with the media may be impromptu, occurring as you leave a courtroom, city council meeting, or even a restaurant. If you're working on a matter that may result in media attention, having a one sentence "sound bite" in mind would be prudent. For example, characterizing an issue on the courthouse steps as "one of basic fairness," is likely better than "no comment."

Also, we need to keep in mind that while somewhat informal, email exchanges with a reporter should be treated as interviews. Beyond the general tips to comply with the RPCs and otherwise be honest, tips for dealing with "electronic" interviews varied widely among the people with whom I spoke while preparing this article. Some, like Simon, don't mind email exchanges, in certain contexts, because "email allows us to create a perfect record of what was said and is editable before sending." Others never provide email or other written statements to reporters regarding a case, keeping all contact by telephone or unrecorded in-person interviews.

Continued on page 9



# Oregon State Bar Bestows Awards on OWLS Members

By Megan Lemire

OWLS members Judge Marco Hernández, Judge Michael J. McShane, Emilie Edling, Akira Heshiki, Diane Henkels, and Sarah J. Crooks received awards from the Oregon State Bar (OSB) in November. Mitzi Naucler, then OSB president, presented the awards at a luncheon on November 29, except for the Edwin J. Peterson Professionalism Award, which Judge Mary James presented. Ms. Naucler also acknowledged the Oregon New Lawyers Division award recipients, two of whom are OWLS members: Kaori Tanabe received the Member Services Award, and Laura Salerno Owens received the Volunteer of the Year Award.

Hon. Marco Hernández, who serves on the U.S. District Court for the District of Oregon, received the Wallace P. Carson, Jr. Award for Judicial Excellence. Judge Hernandez earned this recognition for his significant contributions to the judicial system, as well as his professionalism, integrity, and judicial independence.

Ms. Naucler traced his career path from representing migrant workers with Legal Aid Services of Oregon in Hillsboro, to the Washington County District Attorney's Office, to serving as a judge on the Washington County Circuit Court, to his current federal judgeship. Judge Hernández's colleagues commend his knowledge, professionalism, and commitment to service. Throughout his legal career, Judge Hernandez has also dedicated his time to community service, including, for example, volunteering with the Classroom Law Project.

For his community service endeavors, Judge Michael McShane received the President's Public Service Award. Judge McShane sits on the Multnomah County Circuit Court and has been nominated by President Obama for a seat on the U.S. District Court for the District of Oregon. Ms. Naucler noted Judge McShane's talent for mentoring—from middle-school children to adults. For example, he has opened his courtroom to students from the Metropolitan Learning Center, conducted mock trials with the Classroom Law Project, and mentored new lawyers.

Judge McShane's passion for societal change reaches into his work on the bench as well. Judge Jean Kerr Maurer has described him as "a remarkable lawyer, judge, and person [who] serves his family, friends, and community with care and compassion."

Emilie Edling and Akira Heshiki both received the President's Affirmative Action Award, most notably for their tireless contributions to the 2011 Convocation on Equality (COE). The COE marked ten years of advancing diversity in the bar and the bench since the original COE and, as Ms. Naucler observed, "energize[d] our community for continuing diversity work." During the more than two years of planning that contributed to the success of the event, Emilie and Akira were "the two volunteers at the center of it all."

Emilie also volunteers with the OSB Diversity Section and Basic Rights Oregon, among others. Akira is also a member of the OSB Diversity Section as well as the ABA Legal Opportunity Scholarship Committee, which promotes racial and ethnic diversity in law school students by providing financial assistance.

A dedicated pioneer of advancing sustainability in the legal profession, Diane Henkels received the President's Sustainability Award. Through the Environmental & Natural Resources Section of the bar, she promoted teleconferencing and using recycled paper. As a member of the

Board of Governors' Sustainability Task Force, Diane recommended the creation of the OSB Sustainable Future Section, of which she is a founding member. Fellow section member Dick Roy has said that "Diane stands out as the Oregon lawyer most deeply steeped in the history and issues related to ecological degradation and what is required to create a truly sustainable future."

On behalf of the Oregon Bench and Bar Commission on Professionalism, Judge Mary James presented the Edwin J. Peterson Professionalism Award to Sarah J. Crooks, a past OWLS president. Given the previous recipients of this award, Judge James said that it is thought of as a lifetime achievement award. Indeed, Sarah is younger than the next youngest recipient by 20 years. She has earned a reputation for being direct yet personable, an adept leader, and a compelling, trustworthy lawyer. Her colleagues note that Sarah effectively shows how "women's issues" are a shared social responsibility. Among her many contributions, Sarah has been a committed pro bono advocate for victims of domestic violence.

## Tips for Dealing with the Media

*continued from page 8*

That said, as a best practice, we should assume that our telephone interviews are being recorded, because, as Simon notes, "Oregon is a one-party consent state."

Many thanks to these attorneys and the others who offered tips for dealing with the media. I'm now confident that I can handle a call from Ace Reporter should one ever come.

**Denise R. Case** is of counsel at the Portland firm *Radler White Parks & Alexander*, where she practices real estate and corporate law.

1. The *Oregon State Bar Bulletin* has printed many excellent articles on the interplay between attorneys and the media, including "Media Matters: Bench, Bar and Press Craft New Guidelines for the 21st Century," by Janine Robben, January 2009, and "Minding the Media," also by Ms. Robben, May 2004. Copies of these articles are available for download from the Oregon State Bar website, [www.osbar.org](http://www.osbar.org).



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# Meet Clackamas County Circuit Judge Katherine Weber

By Mary Anne Anderson

Clackamas County Circuit Court Judge Katherine Weber always planned to go to law school, but never aspired to be a judge. She grew up in Walnut Creek, California, and has a brother and sister who practice law. During her middle school years, she spent a day at work with her dad in the federal building in San Francisco. She remembers vividly the “awe” of walking into a federal courtroom in session that day.

Judge Weber attended the University of California at Berkeley, working her way through school as a bank teller. She spent her junior year at the Universidad Complutense in Madrid, Spain, then graduated in 1990 with a bachelor of arts in political science and Spanish. She moved to Oregon and attended Willamette University College of Law, earning her JD in 1994. During law school, she met and married Skip Winters, now a partner at the Bodyfelt Mount firm. They have a teenage son and are “still incredibly happy” after nearly 20 years together.

Following law school, Judge Weber focused on being the best possible lawyer she could be. She worked a couple of years in private practice, then joined Multnomah Defenders, Inc., working there from 1995 to 1999 as a misdemeanor staff attorney. She remembers those years fondly, loving the “freedom and autonomy” she had over her cases “without any need to worry about overhead, billable hours, or administrative issues.”

She tried “many, many cases” over the years she worked there and “learned so much” from her co-workers, colleagues, and Multnomah County judges.

In 1999, Judge Weber took a position at the Gevurtz Menashe firm. She soon longed for more litigation experience, however, so she opened a solo practice in Clackamas County in 2001, focusing on criminal defense. She represented retained and court-appointed clients, but indigent cases were her favorites.

Judge Weber never planned to be a judge, but she was encouraged by many people to put her name in for consideration when Judge Selander announced his retirement. She hesitated, thinking long and hard about the prospect of ending her solo practice and losing the flexible schedule it provided. Ultimately, however, she did apply, was appointed in January 2010, and took the bench a month later.

Judge Weber finds that the most challenging part of her work is making decisions that affect the lives of children. As examples, she cites choosing between two good parents in divorce cases and deciding whether children should be removed from their parents in juvenile dependency cases. As one of three juvenile-dependency judges in the county, she works exclusively on juvenile law every third week. The remainder of her time is spent working on whatever she is sent by the calendaring department.

When not busy being a jurist, Judge Weber loves to cook. Her family has also taken up running, planning family vacations around half marathons.



Judge Katherine Weber

Judge Weber offers this advice to attorneys who want to be judges: “Be the very best lawyer that you possibly can be. Practice the kind of law that you really enjoy. Treat everyone you encounter with respect and courtesy, especially law office and courthouse support staff.” She also offers this sage advice to lawyers struggling with the age-old difficulty of finding balance in their work and personal lives:

Don't believe anyone who tells you that you can't have a family and be a successful attorney . . . or makes you feel that working part time, as a contract attorney, or out of your own home makes you less of a lawyer. They are coming from their own construct . . . their own experiences . . . their own biases. Don't listen to them. Forge your own way.

*Mary Anne Anderson is a staff attorney at the U.S. District Court in Portland.*

# Mary Leonard Law Society Welcomes New Admittees

By Maureen McGee

On November 14, the Mary Leonard Law Society (MLLS), the OWLS chapter in Salem, hosted a sold-out luncheon to honor people admitted to the Oregon State Bar in 2012. The keynote speaker was Attorney General Ellen Rosenblum, who drew on her own professional experiences to highlight the fact that you can never know at the outset where your career will lead, and to encourage new admittees to not shy away from new and unexpected challenges.

Attorney General Rosenblum stressed that taking joy in your work and building a strong community for yourself are both key to enjoying a successful and fulfilling legal career. She offered several practical tips on how to achieve those goals. First, remember that “what you do well

now will lead you to what you do next.” By concentrating on producing quality work for your clients, you will gain the support of others who recognize your early achievements and are in a position to help you succeed.

Second, become involved in groups and activities that enhance and inform your work, such as formal and informal mentoring opportunities, organizations like OWLS, or committees within the state bar structure. Third, understand the importance of involvement in the greater community, and be willing to take an active role in non-legal endeavors that are of interest to you.

By taking those steps, Rosenblum advised, a young lawyer can begin to build a network of mentors and a community

that will identify new opportunities and provide support for years to come. And when those new opportunities arise, she added, take advantage of them. It is by keeping an open mind that one can come to fully enjoy and appreciate a career in the law.

The MLLS also recognized first-year law student Rachel Staines at the luncheon, for her winning submission to its annual essay contest for incoming students to Willamette University College of Law. This year's contest asked participants to discuss the challenges women leaders in the political and legal profession still face today.

*Maureen McGee is a law clerk to Judge Erika Hadlock at the Oregon Court of Appeals.*

# The Mystery of the Missing Juror

It is mid-morning on the first day of trial. The large jury venire files into the courtroom in awkward silence. A clerk efficiently ushers each juror to his or her place according to the seating chart already in the lawyers' hands. Every seat appears to have a body in it. The clerk calls out: "All rise!" The crowd snaps to attention. A judge strides into the courtroom and takes the bench. "You may be seated," she says, before the clerk swears the jurors.

The judge introduces the lawyers and their clients, describes the burden of proof, and asks the jurors to sum themselves up in 20 words or less. One juror after another gives an abbreviated statement of who they are. The lawyers jot notes. Everything appears in order. Nothing, no one, seems to be missing. And so, *voir dire* begins. A lawyer rises and ambles toward the jury box.

"Ms. Marple, I'll pick on you first. You've heard the phrase 'preponderance of the evidence,' haven't you? What do you think that means?"

Ms. Marple struggles through a stilted, halting reply.

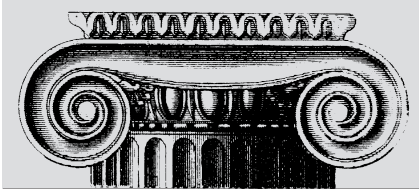
"That was not quite right, but a good try, Ms. Marple. I'll let you off the hook now, thank you. Would anyone else like to take a stab? Mr. Holmes? Do you have an idea what 'preponderance of the evidence' means?"

As we visualize this scene, we feel an absence we cannot quite see. A juror is missing. No seat has emptied, no body been lost. But a juror has clearly vanished. Solving the mystery of the missing juror takes empathy, wisdom, and insight. Whoever can it be?

The missing juror we know, but cannot see, is the one that once lived in us. We were once as jurors are now—unsure of the law, intimidated by the power of the court, naively clear about our expectations of justice. But after many years of study, debate about elastic interpretations, and humbling realizations of the law's nuanced complexities, our juror's brain has become a lawyer's brain. The distance we've traveled from who we were to who we are has carved a chasm between our conscious lawyer self and our forgotten juror self. That chasm also separates us from the 12 people to whom we must entrust the final word on justice.

Our former selves, our juror selves, are like strangers to us now. And so, we

## THE JUDGES' FORUM



By Judge Susie L. Norby  
Clackamas County Circuit Court

wonder: Who are these jurors? How do they think? What do they know? Do they understand? Do they care? Can we trust them to do what is right? Does this process work? *Can it work with such legally inexperienced decision makers? Or does all our work and effort merely culminate in a coin toss?*

As a judge, I have the incalculable privilege of learning answers to these questions, and the answers reconnect me to my own inner juror. I have met with dozens of juries after verdicts, and listened to explanations of their processes. In this column, I hope to dispel some myths and mysteries and share the answers I have collected with you. My goal is to encourage the construction of bridges across the chasms that separate our long-lost, subconscious juror brains and our conscious, hard-won lawyer brains. I believe that remaking this connection can help improve our confidence in, respect for, and appreciation of the jurors that grace our courtrooms every day. It can also build our own confidence, so that speaking to jurors, and selecting them, can become less mystifying and more inspiring.

Jurors come to the courtroom with the same questions about us that we have about them: Who are these lawyers and judges? How do they think? What do they know? Do they understand? Do they care? Can we trust them to do what is right? Does this process work? *Can it work with such legally convoluted thinkers in charge? As these questions whirl through their minds, many jurors also feel concern about their wish to earn the respect and confidence of the very lawyers they doubt, and of their fellow jurors. This is where they begin.*

### Myth #1: Jurors Arrive with Minds Made Up

With few exceptions, jurors *do not* come to the courtroom with unyielding, preconceived notions about the greed of plaintiffs, the motives of defendants, or the likelihood that a particular claim or charge has merit, or is bogus. They come

with open, curious, and unprejudiced minds. People untrained in the law are far less inclined to assume patterns and predict outcomes than those of us the law has



Judge Susie L. Norby

relentlessly ingrained with a compulsion to glorify consistency. We lawyers devote our careers to identifying patterns, categorizing sequences, and anticipating judicial interpretations. But before our legal training, once upon a time, we took things as they came. Our long-ago juror brains held opinions lightly, and considered them subject to change without notice. It is only our lawyer brains that reflexively commit to opinions, relishing opportunities to defend them with our inexorable logic. The longer we practice law, the more we presume that other people are as vigorously committed to their opinions as we are. But, it isn't true.

Getting in touch with our forgotten inner juror begins with remembering a time when our opinions were not carved in stone, but merely tentative theories easily shaken out of us by a feisty law professor's skillful inquisition. Whatever doubts jurors have about lawyers, they respect our legal acumen, and they generally want to live up to it with their verdict. They come to serve, to meaningfully contribute, and to individualize their decision to the case they hear. Jurors want their experiences in court to reinforce their confidence in justice. Forcing a preconceived outcome would undermine their goal.

### Myth #2: The Jurors' Primary Objective Is to Get It Over With

While many jurors acknowledge that they come to court hoping not to stay, I have it on excellent authority that their wish to depart falls to a very low priority, or disappears entirely, once they are selected and sworn. It is a misconception that jurors grow angry in lengthy trials and carelessly rush through deliberations. I received the most compelling proof of the contrary in a nine-week civil jury trial. The case was originally expected to last six weeks, and the jurors were told to plan accordingly. In the seventh week, the trial's end was nowhere in sight. A juror delivered a letter to my clerk with

*Continued on page 12*

## The Judges' Forum

a note from her employer. The letter informed me that jury duty had become too onerous for her and her family, that her inability to work was about to trigger suspension of medical coverage her spouse needed for an ongoing condition, and that her employer's business was suffering significantly from her absence. I met with the attorneys to discuss the juror's situation, and we agreed to allow her to step down, and to replace her with an alternate.

I invited the juror to my chambers to thank her and release her. Before I uttered much more than a word, I saw a tear roll down her face. I asked what it meant. She told me that she was compelled to submit the letter by her husband and employer, but she did not want to go. I reassured her that we could continue without her, and she had done enough. She replied: "It's just not right. This is hard, but there are so many others on the jury who have it harder, yet who are determined to see it through. My troubles are comparatively small. My husband and employer will manage, but only if you order me to stay. I am invested now. I owe this duty to our community, and I don't

want to quit. Please make me stay." We did as she asked, and she completed all nine weeks of trial.

Her story, and those that went untold in that lengthy trial, illustrate how seriously jurors take their duty of service. Understanding this phenomenon reminds me once again of our forgotten inner jurors. Our current perspective as lawyers is diluted by our experiences handling hundreds of cases. Each has been important to us, but over time, we have had to recalibrate our perception of the magnitude of them all. For jurors, though, their case is always the first (or among the first) they will ever hear and decide. There is no timeworn softening of their perception of the magnitude of the work. Our forgotten inner juror can remember our earnest sense of importance in our first trial, and the monumental impact that feeling had on us. Even when we wanted to go home, we stayed at the office, we stayed at the client meeting, we stayed at the court, because we felt the work was greater than ourselves, and we felt invested in completion.

That sense of enormity is something we lose along the way, so it's something we easily forget that jurors still feel. In fact, though, that sense of importance and larger meaning overrides the jurors' instinct to hurry back to their usual lives, and instills focus and commitment while they work within the courts.

### Myth #3: Jurors Make It Up As They Go Along

Ultimately, many lawyers' most significant concern involves the mystery of jurors' decision-making process. What do they do in deliberations? If their verdict is not the one expected, does that mean they lacked intelligence? Does it mean they didn't care about the outcome, and tossed a coin to end it? If not, what were they thinking?

I do not ask jurors how they reached their verdicts, especially when their verdicts surprise me. But almost without fail, juries *want* to explain. Jurors show me charts with damages figures, sections of jury instructions, details in photographs. They explain their logic, their math, the concerns they took most seriously, and they ask if I think they were right. They care a great deal about *getting it right*. They take turns telling me which important point each of them "discovered."

*continued from page 11*

They tell me their final interpretation of confusing jury instructions, and describe how the interpretation changed their analysis of the case, and altered the vote on the verdict.

Prior to these conversations, I would not have believed the depth of their determination, or the extent of their grasp of details large and small. Factual details, legal details, visual details—nothing is missed. The fact that there are 12 of them inevitably means that they retain more details as a collective body than I could ever retain as a single individual. It also means that they consider more alternative theories than I could ever come up with alone.

Jurors see reaching a verdict as completing an open-book test that must not be failed. In the end, they work the law and the facts just as our forgotten inner jurors did when we were new to law school. We read and re-read the law. So do they. We dissected the facts. So do they. We arranged the facts around the law, then tried it in reverse. So do they. We did not throw our hands in the air and give up—we discussed cases with our study group; we used the tools the professor gave us; we reached the best answer we could with the pieces we were given. So do they. As serious as we were when we first attempted to conquer the law, so are they. Their methods are not mysterious. They are methodical.

### Conclusion

Searching for the missing juror in ourselves is an enlightening and rewarding venture. It is a reminder that there is diversity not only among us but within us. We are not only our present selves, we are the people we once were but have forgotten. We are the sum of our experiences, fears, and expectations, just like the strangers we meet in the jury box.

One small step toward embracing diversity in the outside world, and bridging the chasms between us and people we think we don't understand (like jurors), is to recognize and embrace the diversity within us, between who we are and who we have been in the different stages of our lives. The mystery of the lost juror is a mystery of aging, of changing, and of coming back to trusting ourselves, so that we can better understand and trust the others we rely on in our communal quest for justice.

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## 2013 Legislative Session

Oregon's 2013 legislative session began with an organizational meeting January 14–16, but the official work will not begin until February 4. The hastily called special session in mid-December seems to have set the tone for January and the session that will follow. The target date for adjournment is June 28.

The November 2012 election shifted the dynamics in the House of Representatives. In 2013, the Democrats will have a 34–26 edge over Republicans in the House. The Senate Democrats will retain a 16–14 majority. It will be interesting to see whether a Democratic governor and a Democratic majority in both chambers will be able to enact major policy initiatives. On the table already are proposals to reform education, health care, PERS, and public safety sentencing.

The Oregon State Bar's top priority for 2013 is adequate funding for both the courts and low-income legal services. The bar, under the leadership of president Mike Haglund, is developing a two-tiered strategy for funding the courts, based on recent findings by the National Center for State Courts: In the short term, the bar will target key legislators for the 2013 session, with assistance from the Multnomah Bar Association in refining the message and soliciting stories that show how the courts intersect with real people and the community. In the long term, the bar will develop a statewide task force composed of respected public figures within the legal and business community to educate the public and build support for the court system.

As lawyers, we realize that Oregon's constitution requires the judicial branch to administer justice completely and without delay. Oregon's courts perform a crucial role in promoting public safety, protecting vulnerable citizens, resolving issues for families in crisis, and promoting a sound business environment. That message is one about which the bar will endeavor to educate the 2013 legislature.

Since the onset of the 2008 recession, trial court staff has been reduced by 15%



By Susan Evans Grabe

and budgets by 25%. Courts have implemented nine furlough days during the current biennium; many court offices are closed at times. Budget forecasts predict revenue growth insufficient to maintain the level of current services.

To preserve access to justice, the bar will try to persuade the legislature to do the following: restore trial court staff to levels sufficient to fully serve the public; provide funds for the new three-judge panel for the Court of Appeals authorized in 2011; continue support for Oregon eCourt, to increase efficiency and reduce the need for trial court staff; and increase judicial compensation.

Issues of interest to the OSB in the 2013 session include these:

- Adequate funding for the judicial branch, including eCourt, trial court staffing, and the new panel for the Court of Appeals
- Support for civil legal services for low-income people and indigent criminal defense in criminal cases
- State court filing fees and fines, including how the funds are distributed
- Criminal sentencing reform
- Litigation reform, including legislative consideration of a medical liability proposal involving disclosure, offer, and mediation
- Changes to Oregon's judicial selection procedure
- The OSB law improvement package, set forth at <http://osblip2013.homestead.com/index.html>.

For more information, visit [www.osbar.org/pubaffairs](http://www.osbar.org/pubaffairs) or [www.leg.state.or.us](http://www.leg.state.or.us).

*Susan Evans Grabe is the public affairs director at the Oregon State Bar.*

The 2013–2014 Legislative Assembly will have one fewer member with legal training than the 2011–2012 legislature. Suzanne Bonamici (D, Washington County) and Dave Nelson (R, Pendleton) are no longer serving in the Senate, leaving only three legally trained senators. No longer in the House are Jefferson Smith (D, East Portland), Matt Wand (R, Troutdale), and Shawn Lindsay (R, Hillsboro).

On the other hand, these four newly elected representatives are lawyers: John Davis (R, Wilsonville), Jennifer Williamson (D, SW Portland), Brent Barton (D, Oregon City), and Shemia Fagan (D, North Clackamas). They bring the number of lawyers in the House to 11.

### State legislators who are lawyers or have legal training

#### Senators

Peter Courtney  
(D, Salem/Gervais/Woodburn)  
Betsy Johnson (D, Scappoose)  
Floyd Prozanski (D, Parts of Lane and Douglas Counties)

#### Representatives

Phil Barnhart (D, Central Lane and Linn Counties)  
Brent Barton (D, Oregon City)  
Cliff Bentz (R, Ontario)  
Jason Conger (R, Bend)  
John Davis (R, Wilsonville)  
Shemia Fagan (D, North Clackamas and East Multnomah Counties)  
Chris Garrett (D, Lake Oswego)  
Wally Hicks (R, Grants Pass)  
Mike McLane (R, Powell Butte)  
Dennis Richardson (R, Central Point)  
Jennifer Williamson  
(D, SW Portland)

## OWLSNet Brings Together Lawyers and Real Estate Professionals

OWLS hosted a networking event with lawyers and real estate professionals on November 14 at the Red Star Tavern in Portland. Generously sponsored by Davis Wright Tremaine, the event brought dozens of lawyers from different practice areas together with residential and commercial real estate brokers. OWLS members are great at bringing other women business owners to these events as well, such as public speaking coaches, caterers, and print shop owners. Lively discussions, story telling (the caterer, for example, told tales about being on the set of the TV series *Grimm*), and business-card swapping make these networking events fun and rewarding.

The next OWLSNet event will be held at the Red Star Tavern in Portland on Feb. 7. [See page 2 for details.]

## OWLS' Fall CLE



Professor Pamela Karlan

communities and families were not copies of the traditional white nuclear family.

Sweeping legislation then married cohabiting couples regardless of their consent or intent. Those cohabiting couples who later ended their relationships without a divorce were in violation of the marriage laws. The state, now able to prosecute under the adultery laws, found it could alleviate its responsibility to treat its new black citizens equally by punishing black men for committing adultery. Soon the state had created a new population of black felons that it could lease to farms for labor. The state had effectively replaced a slave population with a felon-lease program. These are the unintended consequences of imposing a system on a community that has a culture and identity that are not the same as the majority's.

Franke's advocacy of unbundling the benefits of marriage is rooted in her understanding of how our community members are organizing themselves into families. Coincidentally, the domestic partnership laws that some states have enacted better serve our new reality. These laws provide the benefits and obligations that are bundled under a traditional marriage, but they do so only at the state level.

Federal entitlement benefits, such as Social Security benefits, cannot be granted through state-enacted laws or by personal contracts. Currently, 17.5% of children living in the Washington, DC, area are being raised by someone who is not their kin. These households actually benefit from DC's domestic partnership option because in some cases these families can take advantage of benefits that come under the umbrella of marriage.

Professor Karlan's presentation drew on her personal experiences as a Supreme Court clerk. She illustrated how much the

personal lives of the justices affect their position on an issue. During the oral arguments in *Lawrence v. Texas*, the "peanut gallery" was lined with former Supreme Court clerks. She explained, "You could see the 'aha' and 'oh' moments surface on the faces of the justices as they deliberated. They were finally able to put a face on the issue."

Karlan drew parallels between today's same-sex marriage litigation and the biracial marriage litigation that resulted in the Court's 1967 decision *Loving v. Virginia*. She said that the Court's fundamental fear has always been "getting it wrong." *Loving* was the outcome of multiracial children who were schooled together under *Brown v. Board of Education* now wanting to marry. Public sentiment had clearly shifted, with a majority of the states recognizing biracial marriage. The justices today don't have the same luxury of time and public consensus as the Court did in 1967. Less than ten years has passed since *Lawrence*, and the rapid approach of same-sex marriage cases to the Court's door has left the justices uneasy.

Today the message from the public is less clear. Our nation has seen significant tension around this issue. Currently, nine states and the District of Columbia have the freedom to marry for same-sex couples. Nine states prohibit same-sex marriage by statute, while 30 have constitutional bans. There is a generational gap over the issue. Karlan sees her students struggling to make sense of why same-sex marriage isn't legal. The most significant objection and hesitation is seen among older Americans. So, Karlan proposes, as with *Loving*, "Are we just waiting for the old folks to die?"

The struggle over marriage is "a trademark dispute," Karlan crisply declared. It's about who gets to use the title and how.

The Court's 2013 docket will force the justices to deal with same-sex marriage despite a lack of guidance from the public. This struggle is reflected in the cases awaiting the Court's attention. There are six cases pending review. Karlan focused on two of the six cases and discussed their standards of review.

*Hollingsworth v. Perry*, also known as California's Prop 8 case, will involve the most exacting Court standard, strict scrutiny. That case has captured the nation's attention, but the most interesting case has skirted the radar. *Winsor v. United States* is a challenge to section 3 of the Defense of Marriage Act (DOMA) by a sur-

living spouse in an estate taxation case. Judge Barbara Jones of the U.S. District Court for Southern New York ruled that DOMA violates the U.S. Constitution's guarantee of equal protection when it requires a same-sex spouse to pay a federal estate tax from which heterosexual spouses are exempt.

Judge Jones found that DOMA failed the lowest standard of review, rational basis. Karlan compared rational basis review to "hip-hop clothes," baggy and ill-fitting, to demonstrate the importance of this case. "With rational basis," Karlan explained, "anything goes," as long as you can come up with some reason, even if it only exists in the judge's head. *Winsor* suggests that DOMA fails even under the lowest level of scrutiny.

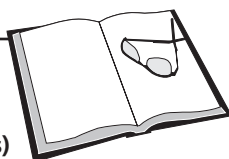
The erosion of the traditional nuclear family is a sign of great change. The shifting perspective on marriage is giving us the opportunity to create something better than a one-size-fits-all solution. Young people have taken a different view on marriage. To them, marriage is no longer the great immortal institution but rather a status that brings with it some neat tax benefits. Among these young Americans, the age of marriage has risen. Divorce is no longer a death knell for one's status. Those who do marry may decide to contract themselves out of the obligations of marriage with a prenuptial agreement. Although the fight for an expansive definition and use of the term *marriage* may be timely, as Franke so passionately advocates, a menu of options will benefit all communities.

The CLE was followed by a reception, at which attendees were able to speak with the presenters.

Prior to the CLE, Professor Franke gave a presentation on her work with Palestinian women attorneys in Ramallah, Palestine. During her two weeks there, she helped the group identify goals and strategize around getting support from organizations and individuals with political power. We, like these Palestinian women, were astonished to learn the similarities we share as professional women. The struggle to actualize our potential as parents and professionals crosses continents and cultures. Franke's presentation facilitated a fascinating exchange and set the mood for the CLE.

**Banafsheh Violet Nazari** is an OWLS board member. Her solo practice is dedicated to advocacy of employees' workplace rights.

*continued from page 1*



## Feminist Constitutionalism: Global Perspectives

Edited by Beverly Baines, Daphne Barak-Erez, and Tsvi Kahana (Cambridge University Press, 2012, 494 pages)

Book Review by Yael Livny

Many of us start calling ourselves feminists in college. Often, it's a certain piece of writing that jolts us into consciousness. The end result is a dog-eared text, furiously written marginalia, and a solemn vow to change everything. I miss those days.

Enter Cambridge University Press's *Feminist Constitutionalism: Global Perspectives*. This is an eclectic, brainy compilation of cutting-edge gender justice scholarship. The 24 essays tackle a wide range of subjects—including reproductive rights, workplace fairness, adjudication, headscarves, and domestic violence—and cogently explores how current democratic institutions and laws in several countries measure up in the quest for gender equality.

The authors present case studies and proposals to achieve feminist goals, which are the recognition and eradication of social and physical oppression and the attainment of full access to democratic and social structures. At the same time, the essays are examples of feminism, by their critical examination of current institutions and norms and by arguing that equality, discrimination, and subordination should be elevated from "side issues" to central questions of constitutional scholarship.

One of the key strengths of this collection is its practical proposals. The first essay by Judy Nedelsky, "The Gendered Division of Household Labor: An Issue of

Constitutional Rights," is a calm, well-reasoned call for a complete transformation of North American approaches to domestic responsibilities and employment norms. Nedelsky explains that women still bear the brunt of household work (or are complicit in the exploitation of women from poorer countries to do it). Because domestic work is accorded a lower status in society, women are accorded a lower status in all aspects of life.

This is most clear when it comes to employment. Women who stay home or pull the "double shift" of working and caregiving are not considered "ideal workers" in professional settings and remain underrepresented there. Workplaces, therefore, lack adequate accommodations for employees who want to try to juggle caregiving responsibilities, and families are burnt out. Nedelsky's conclusion is damningly simple: Until men share the rewards and burdens of domestic work, women will never achieve full rights in the workplace and, by extension, in society.

Nedelsky offers a few intriguing solutions. First, men and women need to talk frankly about parenting and household work, in classrooms, churches, and community forums. The goal is that men be persuaded to share in household labor (for example, they should begin to want to spend more time with their kids, and women need to show them

how). Second, once men and women are willing to share domestic roles, they need de-gendered parental leave, both formal (gender-neutral leave time and financial incentives) and informal (employers need to signal to men that taking leave won't damage their careers). Finally, both men and women require access to part-time work and day care to combat the sheer exhaustion caused by living the "double-shift" life.

Nedelsky's most important point, however, is the first one: it is only through collective dialogue, a complete rethinking and overhaul of "core values," that families will achieve a structural shift that liberates both women and men from the dissatisfaction and exploitation inherent in the current division of labor.

*Feminist Constitutionalism* can serve as a bridge text between inspiration and action, offering ideas that can be taken into management meetings and legislative chambers with a straight face. As Catherine McKinnon (*the Catherine McKinnon*) writes in her foreword, "feminism has become something to be done more than a flag to be flown." Thus, this compilation deserves not only a place on your bookshelf, but a cracked spine and many exclamation points penciled in the margins.

*Yael Livny is a labor and employment law associate at Jackson Lewis in Portland.*

## Meet OWLS Board Member Megan Burgess

By Mavel Morales

In 2008 the bright, sunny skies of Bend called to Megan Burgess, who had grown up in the hustle and bustle of the Portland suburbs. Megan is currently working at Peterkin & Associates in Bend as an associate specializing in commercial and real estate litigation. She feels fortunate to have the opportunity to delve into a wide variety of legal issues on a daily basis, and she enjoys trial work. After moving to Bend, Megan became an OWLS board member to connect with other lawyers working on the "other" side of the mountains.

As a student at Hillsboro High School, Megan was chosen to serve as a U.S. Senate page in Washington, DC. She was only 16 years old. As a page she was able to meet countless world leaders, assist

U.S. senators on the Senate floor, and witness historic moments, such as Bob Packwood's resignation on the Senate floor. The experience not only showed her how the political system works in our country, but also led her to enroll at Willamette University College of Law after graduating from Linfield College. She received her JD from Willamette in 2004.

As an OWLS board member, Megan has been working hard to provide a variety of opportunities for members of Cascade Women Lawyers (the local OWLS chapter) to connect with one another. Last year she assisted with a successful Road to the Bench event in Bend, and this year she started a playgroup for members with families who can't always attend the chapter's monthly lunch.

As a mom and a wife, Megan has first-hand knowledge of the challenges of staying connected. To help keep herself focused and balanced, Megan tries to work when she is at work and focus only on her family when she is home. She makes time for fun and vacation because that is what makes all the hard work worth it.



*Megan Burgess*

*Mavel Morales is an attorney at the Oregon Law Center in Hillsboro.*

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