



## In this issue:

Odyssey is Here, Page 2  
Profile: Judge Sims, Page 4  
H-1B Season, Page 5  
Law Library News, Page 6  
March CLE Recap, Page 8  
Announcements, Page 11  
Classifieds, Page 11  
CLE Flyer, Page 12



*Lawyers associated for justice, service, professionalism, education, mentoring, social interaction and leadership for our members and our community*

## Notes from Your Board

By Rebecca Guptill  
WCBA Immediate Past President

**It** seems like just yesterday that I was writing a President's letter every month apprising WCBA members on the happenings and goings on around the Washington County Bar Association and local legal community. This month I get the honor of reprising my role.

It is my privilege to get to write this article the month before staff appreciation day for our organization. I think I have said it before, but I will say it again, because it cannot be said enough: any success I have as an attorney is owed in large part to my wonderful staff. I would be lost without them. It may sound a bit cliché, but I will say it anyway, because it is absolutely true.

In fact, I feel the same way about our amazing court staff in Washington County. With the recent transition to eCourt, they have all been working extra hard and have been under even more pressure than usual to keep our county up and running. Each and every court staff person deserves a huge thank you from the WCBA membership. Please remember to tell them thank you today (and every day for that matter).

Also, please consider bringing your staff to our May meeting so that we can thank them in person.

In other news, we had an excellent Search & Seizure CLE this past month. The Search & Seizure appellate update is always an interesting CLE, but this one was particularly informative. I know I am not the only person who found the discussion of the warrant requirement to enter a home when investigating a DUI especially nuanced and interesting. David B.

# WCBA Newsletter

Washington County Bar Association  
PO Box 912  
Hillsboro, Oregon 97124  
Phone: 971.238.2595  
April 2016, Page 1 of 12  
Published monthly, September-June  
Deadline: 20th of preceding month

Thompson Sr., Assistant Attorney General for the Oregon DOJ, was kind enough to drive to Hillsboro to present the CLE on the eve of oral arguments in Eugene. Thanks again, David.

April's CLE is sure to be informative as well, as it is our annual Probate CLE. We have Judge Andrew Erwin presenting again this year so you don't want to miss this CLE if you practice in the probate arena in Washington County or are interested in doing so.

For those who are unaware, Amanda Crume from court calendaring in Washington County is our new Administrative Assistant for WCBA. Please say hello to her and thank her for the work she does for us as well. She is quickly becoming an essential part of the team and I know I speak for everyone on the Board when I say that we are glad to have her on board to keep us in line. (Something we definitely need.)

Finally, I want to thank Carol Hawkins who puts this newsletter together every month for us on a voluntary basis. We appreciate that she is willing to continue to perform this service for us and to be so giving of her valuable time. Thank you, Carol.

To all of our members, thank you for being a part of WCBA. We truly appreciate you. Your attendance and participation make our organization what it is.

## Upcoming Events

**Wednesday, April 13, 2016**

CLE: Probate, Judge Erwin  
Dinner Guests: Supreme Court Justices

**Wednesday, May 11, 2016**

CLE: Family Law  
Dinner Guests: Staff Appreciation  
Annual Business Meeting

**Wednesday, June 8, 2016**

Spring Social—Ruby Vineyard

*The WCBA uses email to promote its programs and services to members only and does not share its email list with third parties. If you would like to be removed from our email list, please reply to this message with the word "remove" in the subject line.*

## FROM THE PJ: Odyssey is here.

By Charlie Bailey, Presiding Judge  
(with real credit to Amanda Crume)

**For** nearly four years the talk has been about shedding the green screen OJIN for the new windows based Odyssey. It started in Yamhill County June of 2012 and the last counties will go live on D-Day of 2016 (for those who didn't listen very well to their history teacher in High School - June 6th) with Morrow, Umatilla, Wallowa, Union, Grant, Harney, Baker, and Malheur counties.

Monday March 7, 2016 was our "Go Live" date. I was very proud of the way the court staff jumped right in with great attitudes and graciously gave away their Sunday the day before we went live. I am also very thankful for the patience all attorneys gave and continue to give both Judges and, especially, our staff. Please continue to be patient, especially to those staff working on Uniform Criminal Judgments (UCJ). There might be a time when you start to see a "STOP" sign in front of staff, indicating they are working on a UCJ and are not to be disturbed. It is fair to say, and apology up front, we will never be as fast in the court as we once were. Going forward, the court returns to our regular business hours and will be reopening the public service counters and other departments during the lunch hour previously closed to accommodate training and implementation.

As for practitioners, you should start to receive electronic notifications of hearings, trials, and entry of orders and judgments. The notice will only be sent to the email address on file with the Oregon State Bar (OSB). Please make sure you keep it updated with OSB, not the court. Below is a list of addresses in which the notices might be sent from so please adjust any SPAM program to allow them to be received:

- [courtnotification@ojd.state.or.us](mailto:courtnotification@ojd.state.or.us)
- [hearingscheduled@ojd.state.or.us](mailto:hearingscheduled@ojd.state.or.us)
- [hearingrescheduled@ojd.state.or.us](mailto:hearingrescheduled@ojd.state.or.us)
- [hearingcancelled@ojd.state.or.us](mailto:hearingcancelled@ojd.state.or.us)
- [judgment@ojd.state.or.us](mailto:judgment@ojd.state.or.us)

For those who have signed up with OECl please understand one limitation. Any documents scanned by the court using our old scanning system WILL NOT be available for viewing in OECl. They will be available for review in the Records Department or at either of the two public kiosks located in the Records department. Any document scanned on or after March 7, 2016 will be available in OECl unless it is deemed confidential. Permissive eFiling begins on April 18, 2016. Mandatory eFiling begins May 31, 2016. We will be having training sessions for any of you on Thursday April 7, 2016 and Friday April 8, 2016. Details of locations and times will be announced as soon as possible.\*\*

For criminal matters, the conversion to Odyssey includes new procedures for creating Uniform Criminal Judgments (UCJ) in the courtroom. Courtrooms will re-

quire in addition to a plea petition, a UCJ offer worksheet\* for each count the defendant is pleading to. A copy of this worksheet is included for your reference. Copies of this can be obtained from each criminal courtroom.

Additionally, the Supplemental Local Rule 2.501 effective February 1, 2016 gives instruction as to stipulated or ex parte matters which must be filed conventionally rather than electronically for both civil and family case matters. Civil: Assurance of Voluntary Compliance, Fee Deferral and Waiver, Guardian ad Litem Appointments, Judgment Debtor Bench Warrant, Motion to Disqualify Judge, Preliminary Injunction Show Cause (TRO), Provisional Process Show Cause, Receivership Show Cause, Registration of a Foreign Writ, Orders, Letters Rogatory, Transport of a witness or party, Writ of Assistance, Writ of Mandamus Show Cause, Writ of Review, and Identity Case Orders (change of name or sex). Family: Contempt Show Cause Order, Emergency Custody and Parenting Relief based on Immediate Danger, Elderly Persons and Persons with Disabilities Abuse Prevention Act, Family Abuse Prevention Act Applications, Family Abuse Prevention Act dismissals, Fee Deferral and Waiver, Guardian ad Litem Appointment, Motion to Disqualify Judge, Order of Assistance, Post Judgment Status Quo Order to Show Cause, Postponements, Sexual Abuse Prevention Act, Warrant in Lieu of Habeas Corpus.

SLR Chapter 21 includes rules allowing electronically filed documents to serve as originals, along with electronic signatures. It also prohibits combined motion and orders along with staples in binding documents.

\*See Page 3 for an example of the worksheet

\*\*See schedule on Page 6



State v. \_\_\_\_\_ Case #: \_\_\_\_\_ DDA #: \_\_\_\_\_ Defense #: \_\_\_\_\_

Count #: \_\_\_\_\_ Crime: \_\_\_\_\_ Lesser Included: \_\_\_\_\_ Attempted: \_\_\_\_\_  
**Sentence Type:** Merged with Count(s) \_\_\_\_\_  Stipulated Sentence

**Statutory Provisions:**  Blood/Buccal Sample  Blood Sample for DNA testing  HIV Blood Draw  Sex Off. Regis.

**Sentencing Details:**  Suspend Imposition  Suspend Execution  
Grid Block: \_\_\_\_\_ **Special Factors:**  137.700  BM57  161.610  Vic < 12  
 137.712  137.717 **ORS:** \_\_\_\_\_

**Departure:** Dispositional -  Up  Down Durational -  Up  Down  Stipulated

Substantial and Compelling Reason(s): \_\_\_\_\_

**License Suspension:** Duration: \_\_\_\_\_  Life  Permanent  Suspend  Revoke

**Probation:**  Supervised  Bench Duration: \_\_\_\_\_

**Conditions:** (Codes) \_\_\_\_\_

**Packages:**  Sex Offenses Involving Children {WSHSOIC}  Sex Offenses Involving Adults {WSHSOIA}  
 Alcohol Offenses: Formal Probation {WSHDUII}  Alcohol Offenses: Enhanced Bench Prob. {WSHEBP}  
 Drug Offenses: Formal Probation {WSHDRG}  Drug Offenses: Enhanced Bench Prob. {WSHDEBP}  
 Domestic Violence Offenses {WSHDV} Comments: \_\_\_\_\_

**Incarceration:** Location:  DOC  Jail Duration: \_\_\_\_\_  No CTS  
 Remand OR  Report by date/time: \_\_\_\_\_  
 Concurrent  Consecutive  With previously imposed sentences OR  With case/count: \_\_\_\_\_  
 Eligibility for leave, alternative sanctions, or alternative incarcerations.  PPS: \_\_\_\_\_

Fine/Fee: \$ \_\_\_\_\_ DUII Fee: \$ \_\_\_\_\_ Attorney Fee: \$ \_\_\_\_\_  Waive  Stip  
Restitution: \$ \_\_\_\_\_ Compensatory Fine: \$ \_\_\_\_\_ Other: \$ \_\_\_\_\_  
 Restitution TBD w/in 90 days  
 Joint and Several Liability with \_\_\_\_\_ Case# \_\_\_\_\_

**Summary:**  
 Stipulated Sentence (List tracking cases/charges/violations requesting dismissal)  
Case#: \_\_\_\_\_ Ct(s) \_\_\_\_\_  Waive prelim/Indictment  Dismiss Ct(s) \_\_\_\_\_  
Case#: \_\_\_\_\_ Ct(s) \_\_\_\_\_  Waive prelim/Indictment  Dismiss Ct(s) \_\_\_\_\_

Offer:  Accepted  Rejected \_\_\_\_\_  
Defendant Defense Attorney Deputy District Attorney

## Profile: Judge Theodore Sims

Washington County Circuit Court

By Kathy Proctor

WCBA President-Elect



*Judge Theodore Sims and Retired Chief Justice Edwin Peterson*

**Washington** County welcomes our newest circuit court judge. Judge Theodore Sims was appointed by Governor Kate Brown to fill the vacancy on the bench created by the retirement of Judge Thomas Kohl. At his formal investiture, which took place on March 18, 2016 at the Hillsboro Civic Center, Judge Kirsten Thompson noted that he is in position one. Judge Sims joins the thirteen other judges who serve our community as well as full time pro tem judge Michelle Rini and numerous volunteer pro tem judges.

I had the opportunity to interview Judge Sims in his office on the fourth floor of the courthouse. His office is close to Judge Letourneau whom he states has been a generous wealth of information. It was apparent when interviewing Judge Sims that he is energized by his new job as circuit court judge. He noted that not many people at his age, he is 60, get to start a whole new career. Before taking the bench he clearly has had a career that has allowed him to interact with people having a variety of legal concerns. He obviously has a broad understanding of the practice and rules of law having been in private practice himself for approximately 36 years. Judge Sims' private practice included working for clients in probate, consumer, family law and personal injury.

Judge Sims previously worked entirely in private practice at the Sims & Sims law firm that was begun by his grandfather. His grandfather became a lawyer by 'reading into the profession.' Judge Sims explained to me that at the time his grandfather became a lawyer, a person could enter the profession by learning the law while working under a more experienced practitioner,

until they were able to pass the bar exam. That is how his grandfather became a lawyer. In addition to his grandfather, his father, who went to night school at what is now Lewis & Clark, was also a lawyer, so Judge Sims has a long history of being exposed to the law and the legal profession. However, Judge Sims is the first of his family to become a Judge. He obtained his education from Willamette University, first obtaining his undergraduate degree in economics in 1977 and then his law degree in 1980.

One thing that I noticed about Judge Sims is that he is very easy to talk with, which is probably a result of an interesting life and his long legal career helping individuals. He indicates that he is open to suggestions and is willing to make suggestions as well. I asked what can lawyers who appear before him do to make it easier for him to make good decisions in their cases. He responded that, if possible, attorneys should provide memorandums and materials to him the day before the trial and not to wait until the day of trial. He wants to be as prepared as possible for a case so that he can make good decisions. While he often has to make decisions on the fly, if attorneys know they have a complicated or unusual issue, it is probably a good idea in general to give the judge a head's up the day before trial if you can.

Judge Sims' judicial assistant is Susan Wilcox. Materials may be emailed to her at [Susan.L.Wilcox@ojd.state.or.us](mailto:Susan.L.Wilcox@ojd.state.or.us). Her phone number is 503.846.8311. His judicial clerk is Charlene Wiseman, [Charlene.J.Wiseman@ojd.state.or.us](mailto:Charlene.J.Wiseman@ojd.state.or.us), phone 503.846.8312. Of course any materials sent should be simultaneously copied to opposing counsel. Attorneys who email or fax documents should first contact the accounting department at 503.846.2924 or 503.846.2290. There is a small charge for sending documents by fax or email, although the charge is slightly less for email; your receipt number must be included in the body of the message.

Although he's only been on the bench since early February, Judge Sims has already presided over a variety of cases including criminal trials and civil cases. He noted that while Washington County is a large county we still have the small town feel that makes this county a great place to be. At the moment he is on general assignment, but will be joining the civil team soon.

Stay tuned for a full update on judicial assignments in our next issue.



## The H-1B Season is Upon Us: What Employers Should Know Before Filing an H-1B Petition with U.S. Citizenship and Immigration Services

By Irina Batrakova



The H-1B is a non-immigrant visa that allows U.S. employers to temporarily employ foreign workers in a specialty occupation. Currently the law provides for an annual cap on the H-1B category, which is 65,000 visas. Not all H-1B nonimmigrants are subject to this annual cap. The quota does not apply to renewals and certain other applicants. The law also exempts up to 20,000 foreign nationals holding a Master's or higher degree. In addition, excluded are all H-1B non-immigrants who work at (but not necessarily for) Universities and non-profit research facilities. Free Trade Agreements carve out 1,400 H-1B1 visas for Chilean nationals and 5,400 H-1B1 visas for Singapore nationals. However, if these reserved visas are not used, then they are made available in the next fiscal year to applicants from the other countries.

As part of the H-1B qualifying criteria, the foreign worker must possess at least a Bachelor's degree or its equivalent, as well as state licensure if required to practice in that field. The H-1B work-authorization is strictly limited to employment by the sponsoring employer.

The H-1B visa is initially issued for a period of three years and may be extended up to six years. An exception to maximum length of stay applies in certain circumstances:

- If a visa holder has submitted an I-140 immigrant petition or a PERM labor certification prior to the fifth year anniversary of having the H-1B visa, the visa holder is entitled to renew the H-1B visa in one-year or three-year increments until a decision has been rendered on the application for permanent residence.
- If the visa holder has an approved I-140 immigrant petition, but is unable to initiate the final step of the green card process due to the priority date not being current, the visa holder may be entitled to a three-year extension of the H-1B visa.

One of the reasons the H-1B visa is desirable is that, unlike many other non-immigrant visa categories, it is a "dual intent" visa, which means the H-1B worker may continue on to obtain a permanent resident status (a "green card"). In addition, this dual intent means that an H-1B visa will not be denied simply because a person has an intention to become a permanent resident.

If an H-1B worker quits, or employment is terminated by the sponsoring employer, the worker must ei-

ther apply for and be granted a change of status to another non-immigrant status, switch ("port") to another employer, or leave the U.S. within a short period of time.

There are also regulatory obligations related to the Labor Condition Application (LCA) and the Public Access File that employers must comply with under the H-1B nonimmigrant classification. The LCA program was conceived as part of the process to protect U.S. workers from foreign workers willing to work for less pay and under less-favorable working conditions. The LCA has a number of attestations, public posting requirements and record maintenance obligations for employers. Employers who fail to comply with the LCA attestations or public access requirements may find themselves faced with civil penalties in amounts ranging from \$1,000 per violation to as much as \$35,000 per violation, accompanied by an order for back-pay of salary and fringe benefits to the foreign worker, or debarment from participating in the H-1B program for one to three years.

For the last several years, a lottery has been held, as there have been three to four times as many H-1B petitions filed as visas available. Employers looking to onboard prospective H-1B visa holders should plan to have their H-1B petitions submitted in the first week of April 2016 to have a chance at being entered into such a lottery this year.

*The practice of The Batrakova Law Office (TBLO) is concentrated in the areas of business and family-based immigration. Founding immigration attorney Irina Batrakova and her team of trusted business professionals work closely with foreign investors, domestic employers, and international companies. The firm specializes in developing appropriate strategies to facilitate the international transfer of skilled employees, temporary employment visas, and permanent residence options. Irina manages the relationships with key corporate and investor clients, providing legal advice and guidance to small and large companies regarding immigration and compliance. She also works with individual clients in the area of family-based immigration. To date, Irina has represented clients from over 70 countries around the world.*



## LAW LIBRARY NEWS

Washington County Law Library

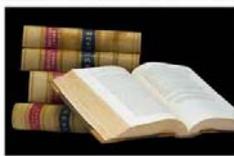
111 NE Lincoln

Hillsboro OR 97124

Phone: 503.846.8880

Email: [lawlibrary@co.washington.or.us](mailto:lawlibrary@co.washington.or.us)

Website: <http://www.co.washington.or.us/LawLibrary/>



### Looking to the Future

As Lee mentioned at the Washington County Bar Association dinner March 9, the Law Library is planning for the next five years. In our view this means focusing on services (research assistance by our trained reference librarians, our popular "red bag" service that allows you to return materials via any Washington County Public Library, Lexis Advance and Westlaw Next, among others) and space (our conference room, computers, scanner) as well as our legal research collection. We don't plan to get rid of our books - where will you find "the law" when the big earthquake hits and the internet is down? - but we want to make sure we are meeting the needs of the local community, bar, and courts.

### Library Foundation of Washington County

We're also eagerly working on the new Library Foundation of Washington County, a joint venture with Washington County Cooperative Library Services. This foundation will raise funds to support the Law Library above-and-beyond our normal operating expenses covered by state appropriations. Interesting conversations are already starting about how we can raise money for technological enhancements that could benefit the Law Library, local bar, and the court.

### A New Face

The Law Library is excited to welcome Jennifer Giovanetti as a part-time employee who will allow us to return to some neglected projects, and support staff participation in local, state, and national library organizations and access to justice efforts. Jennifer joins us from San Francisco where she worked in the San Francisco Public Library for over 10 years.

### Find us on Facebook!

Our Facebook page is live as of 3/16/16:

[www.facebook.com/WC.LawLib](http://www.facebook.com/WC.LawLib)

See page 7 for a list of library services available to Oregon attorneys.

## YOU ARE INVITED



### Oregon eCourt File and Serve Presentations

Washington County Circuit Court  
Invites you to attend a 90 minute presentation  
on eFiling for Bar Members, Support Staff, and  
other community business partners.

Please attend a presentation on any  
following date and time:

April 6<sup>th</sup> Noon – 1:30 Or 2:00 – 3:30

April 7<sup>th</sup> Noon – 1:30 Or 2:00 – 3:30

April 8<sup>th</sup> Noon – 1:30 Or 2:00 – 3:30

**Location: Public Service Building  
Auditorium, 155 N 1<sup>st</sup> Ave Hillsboro, OR  
97124**

For questions please contact Jessica King, Washington County Odyssey & eFile  
Implementation Manager @ 503-846-8739 email: [Jessica.d.king@co.washington.or.us](mailto:Jessica.d.king@co.washington.or.us)

## WCBA Contacts

President Nicholas Heydenrych

President Elect Kathy Proctor

Immediate Past President

Rebecca Guptill

Secretary Ben Evans

Treasurer Arthur Saito

Director Meghan Bishop

Director Rachel Edwards

Director Matthew McKean

Director Jennifer Peckham

Director Simeon Rapoport

Director Zoe Smith

WCBA Email

[wcba.association@frontier.com](mailto:wcba.association@frontier.com)

Newsletter Editor: Carol Hawkins,

[washingtoncountybarnews@gmail.com](mailto:washingtoncountybarnews@gmail.com)



## WASHINGTON COUNTY LAW LIBRARY

www.co.washington.or.us/lawlibrary

503-846-8880

E-mail: lawlibrary@co.washington.or.us

111 NE Lincoln St Suite 250-L

Hillsboro, OR 97124

### Services for Oregon Attorneys

#### **CONTINUING LEGAL EDUCATION**

- CLE course books and CDs for credit (10 day circulation for active members of the Oregon State Bar)
- Archived CLE materials for research

#### **ONLINE SERVICES**

- *Lexis Advance* (on-site access only)
- *Westlaw Next* – including *American Jurisprudence* (on-site access only)
- *HeinOnline* – Law Journals, Federal Register, and legal classics (on-site or remote access via Washington County public library card)
- Online catalog (on-site or remote access via Law Library's website)

#### **BOOKS/PRINT**

- Oregon case reporters and digests, and select regional and federal reporters
- Oregon and national topical legal treatises, including OSB Bar Books
- Legal encyclopedias and forms books
- *OSB Bulletin* (1978 - present) and OSB section newsletters (dates vary)
- Statutes: ORS (1953 - present) and current ORS Annotated
- Oregon Laws from 1845 and Oregon Senate and House Journals from 1961
- Oregon legislative history source materials (print and microfilm) from 1971 to present
- Oregon Administrative Rules (current and previous 2 years)
- Select Oregon appellate briefs from 236 Or (1963) and 23 Or App (1975) (microfilm)

#### **OTHER SERVICES**

- Reference/research assistance in-person, or via telephone or email
- Document retrieval, copying, scanning, and faxing
- Conference Room (no charge) for meetings, depositions, listening to CLEs, etc.
- Oregon Notary Public services (by appointment)
- Secure wireless internet access
- Two public internet/research computers
- 24-hour access for local attorneys (requires application and nominal fee)



facebook.com/WC.LawLib

## MARCH CLE RECAP

By Kathy Proctor  
WCBA President Elect

Once again we were fortunate to have David B. Thompson, Senior Assistant Attorney General, Department of Justice be the presenter for our Search and Seizure CLE. Mr. Thompson does a great job discussing the criminal cases and issues most recently before our Oregon Appellate Courts and the U.S. Supreme Court. This very brief summary relies on the materials and information provided by Mr. Thompson. For a thorough analysis practitioners should read the cited cases to fully appreciate the facts and the legal analysis. Mr. Thompson's in-person presentation of the material was much more interesting and informative because of his knowledge of the arguments and case law. His handouts were also more extensive than this excerpt. We hope to see him again next March!

This year's discussion included the following cases:

### DUII And Exigent Circumstances

1. *State v. Rice*, 270 Or App 50, *rev allowed*, 350 Or 550 (2015) (argued and submitted to the Oregon Supreme Court on January 12, 2016). This case involved a DUII investigation and blood alcohol evidence. *Held*: The trial court erred when it denied defendant's motion to suppress holding that to justify a warrantless entry into a residence under the doctrine of exigent circumstances, the state has the burden to prove that the time it would have taken to obtain a warrant would have sacrificed the evidence.

2. *State v. Ritz*, 270 Or App 88, *rev allowed*, 350 Or 550 (2015) (argued and submitted to the Oregon Supreme Court on January 12, 2016). The Court of Appeals held that after first showing how long it would take to obtain a warrant, the state may prove exigency by further showing that police had an objectively reasonable belief that the circumstances were such that, had they waited for a warrant, the suspect's blood would have lost all evidentiary value, and police officers had reasonable belief that waiting for warrant would have resulted in complete loss of evidence, and thus exigent circumstances existed such that police were not required to obtain warrant prior to entering defendant's home.

### New Crime After Illegal Stop

3. *State v. Suppah*, 358 Or 565 (2016). The state charged defendant with giving false information to a deputy sheriff who had stopped him for a traffic violation. Later, at a hearing on defendant's motion to suppress, the deputy could not remember the specific traffic violation that had led him to stop defendant. *Held*: Defendant's new crime of providing the deputy sheriff a false name and address during the traffic stop sufficiently attenuated taint from the "illegal" traffic stop,

and thus, defendant's statements to the deputy and the subsequent confession to giving deputy sheriff false information were not the result of the illegal stop. Nothing in the deputy's behavior justified defendant providing him with false information. Nor was deputy seeking to exploit the stop. Defendant's reason for giving the deputy false information, namely, that he was driving his girlfriend's vehicle and did not want it to get towed, was unconnected to the illegality of stop. Further, the illegality was not flagrant, given that stop was conceded to be illegal only because deputy did not note the basis for the original stop in the citation and could not remember the original basis for stop, and the stop itself lasted no longer than reasonably necessary to obtain and confirm defendant's identification. Court of Appeals' decision reversed.

### Asking About Weapons During Traffic Stop

4. *State v. Jimenez*, 357 Or 417 (2015). In this case, an Oregon state trooper stopped defendant for jaywalking and asked him if he had any weapons on him. *Held*: The Court concluded that that Article I, section 9, of the Oregon Constitution 1 does not permit a law enforcement officer to make such an inquiry as a matter of routine and in the absence of circumstances that indicate a danger to the officer or members of the public. In contrast, when an officer has probable cause to detain an individual and conduct a traffic investigation, and the officer has reasonable, circumstance-specific concerns for the officer's safety, the officer may inquire about the presence of weapons. In that instance, the officer's inquiry is reasonably related to the traffic investigation and reasonably necessary to effectuate it, and therefore does not violate Article I, section 9.

### Consent to Search (Actual Authority)

5. *State v. Bonilla*, 358 Or 475 (2015). The Supreme Court held that valid third-party consent to a search, under the consent exception to the warrant requirement of the Oregon Constitution, depends either on the third party's common authority over the property based on her or his own property interest, or, alternatively, on application of agency principles; and there was no evidence that defendant's mother, who shared a bedroom with defendant, had authority to consent to the search of defendant's wooden box, inside which police found methamphetamine residue. Court of Appeals' decision affirmed.

### Warrantless FST's

6. *State v. Mazzola*, 356 Or 804 (2015). Following a traffic stop and after concluding that he had probable cause to arrest defendant for driving under the influence of a controlled substance, but unsure what drugs she might have taken, the officer asked the defendant if she was willing to step out so he could check her eyes and make sure she was okay to drive. The defendant said, "Okay." The officer administered the HGN and three additional FSTs. The defendant moved to suppress

the evidence obtained as a result of the traffic stop and DUII investigation. *Held*: Because the defendant was subject to arrest for DUII, and because the administration of the challenged FSTs was reasonable in time, scope, and intensity, the evidence of exigent circumstances in this case was sufficient to make the warrantless administration of those tests constitutionally permissible. Court of Appeals' Decision Affirmed.

#### Automobile Exception

7. *State v. Andersen*, 269 Or App 705 (*en banc*), *rev allowed*, 357 Or 595 (2015) (argued and submitted to the Oregon Supreme Court on January 12, 2016). The defendant moved to suppress all evidence obtained from a search of her vehicle arguing that the automobile exception to the warrant requirement did not apply to the search. The officer did not actually see the vehicle move, but he did see it located in a place where it had not been before when he had circled the parking lot. The defendant subsequently allowed drug sniffing dogs to sniff the outside of her Jeep. The officers then decided to search the interior of the Jeep and found methamphetamine in defendant's purse. *Held*: The Court of Appeals held that a vehicle which was parked in a parking lot when officers first encountered it in connection with a crime, but was not moving when the officers encountered it was not "mobile" as required to fall within the *per se* automobile exception to the warrant requirement for search of a vehicle under the state constitution. Trial court's judgment reversed.

#### Possessory Interest in In-Transit Mail

8. *State v. Barnthouse*, 271 Or App 312, *rev allowed*, 258 Or 69 (2014) (scheduled for argument and submission to the Oregon Supreme Court on March 9, 2016). As part of an inter-agency drug interdiction team, a United States Postal Inspector and two Portland Police Bureau officers regularly examine in-transit US mail at a postal air cargo center near the Portland International Airport for packages that might contain illegal drugs or drug money. On one of these occasions one of the officers noticed one of the packages was addressed in a way that to them had characteristics indicative of illegal drug or drug-money parcels. The officer removed the package from the sorting bin and took it to another area where a drug detection dog alerted to the package. Later, rather than obtaining a search warrant, the officers went to the addressee's residence with the package and asked if the defendant would consent to a search of the package. Consent was given and marijuana and money were found in the package. The trial court decided that the police had violated the state and federal constitutions in doing that and suppressed the challenged evidence finding that an illegal seizure occurred (1) when the officer took the package from the sorting bin for the drug dog's inspection, and (2) when the police exploited that illegality in obtaining defendant's consent to search the package and his bedroom. *Held*: The defendant, as the addressee on the package, had an Article I, section

9 possessory interest in the package from the moment it was mailed, because he had constructive possession of the package while it was in transit. It further held that the government significantly interfered with defendant's constitutionally protected possessory interest in the package (and thus 'seized' it), beginning with the initial removal of it from the stream of mail (at the sorting bin) and continuing through their entire interaction with defendant. Finally, the court held that the package was illegally seized because, for an in-transit USPS express mail package, the police may not detain such a package without probable cause and a warrant or without the existence of one of the carefully delineated exceptions to the warrant requirement. Accordingly, the court concluded that the trial court properly suppressed the challenged evidence, because the state had failed to demonstrate that the fruits of the consent searches did not derive from police exploitation of the illegal seizure of the package. The trial court's suppression order was affirmed.

#### Exclusionary Rule (Attenuation)

9. *State v. Pichardo*, 275 Or 49 (2015). Officers were on the lookout for a wanted person who had fled from police on foot after they attempted to execute an arrest warrant. The officers on the lookout did not know the basis for the search warrant. While looking for the suspect, officers saw defendant's car stopped and idling in a traffic lane. The officers thought defendant's car was impeding traffic which was a violation. While they were observing the car, officers saw a man matching the description of the wanted person get into the car. After other officers arrived to take the wanted man into custody, the officers who stopped defendant's car asked him for his drivers' license and insurance. The defendant stated he had insurance but no license. Officers then asked him for consent to search for drugs. Consent was given. Defendant argued that even if there was probable cause that defendant had parked his car in a way that impeded traffic, the office unlawfully extended the scope and duration of the stop by asking about drugs without reasonable suspicion that the defendant was engaged in criminal drug activity. *Held*: The State did not meet its burden of demonstrating that defendant's consent to the search was not the product of police exploitation of the misconduct (unlawful seizure). Other considerations may arguably weigh in favor of the state, or could be viewed as neutral. Defendant was originally stopped for lawful purposes, and the police had probable cause to detain him on other matters. Nevertheless, the police misconduct in this case was at least moderately flagrant in that the prohibition against extending stops by way of gratuitous investigatory inquiries had been well established as of the time of this stop. Thus, a reasonable officer would have appreciated that that inquiry was prohibited. Further, the degree of intrusion was moderate in that it effected an illegal seizure. Procuring defendant's consent to an exploratory search for drugs and obtaining drug-related evidence

was, necessarily, the purpose and intended consequence of the police misconduct in this case-and, as we previously determined, defendant's subsequent consent and inculpatory admission was indeed "directly responsive" to that impermissible inquiry.

#### Discovery of Warrant After Unlawful Stop

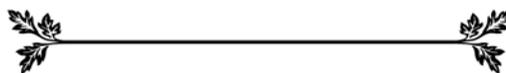
10. *State v. Jones*, 275 Or App 771 (2015). One night, a law enforcement officer on patrol saw defendant walking on the sidewalk and subsequently ducking into nearby bushes. The officer interacted with the defendant and questioned him to obtain his identification; he also inquired as to why the defendant had ducked into the bushes. After unlawfully seizing the defendant, the officer ran a records check and discovered that the defendant had an outstanding warrant. The defendant was placed in the back of the police car where methamphetamine was subsequently found in the area of the car where defendant had been placed. The trial court concluded that suppression of the drug evidence was not appropriate because the subsequent discovery of the arrest warrant purged the taint of the earlier police illegality pursuant to Article I, section 9. However, the court found that under the Fourth Amendment, stop was unlawful and the warrant check was unreasonable, therefore, the evidence was subject to suppression. *Held*: The state failed to rebut the presumption that the evidence in question should be suppressed. The trial court's suppression order affirmed.

#### Privacy Interest in Bank Records

11. *State v. Ghim*, S063021 (argued and submitted to the Oregon Supreme Court on November 10, 2015). It appears this case has not yet been decided but has to do with whether the state can obtain the bank's own records when those "papers" also contain information belonging to a person who entrusts the bank to keep their records. The defendant is asking the Court to find that defendant had a protected privacy interest in his records and reverse the decision of the Court of Appeals. The State argues that the records in question were generated by the banks themselves for their own business purposes. Moreover, the pertinent information within those records was information that defendant had intentionally disclosed to his banks. When defendant undertook the actions that the bank records document, he knew that the bank would generate records that recorded his actions. Because the banks generated and possessed the records, because they did so for their own business purposes, and because the records contain information that defendant intended the banks to have, defendant had no constitutionally protected privacy interest in them. The trial court concluded that the state did not need to use a search warrant to obtain the records from defendant's banks. Time will tell whether the Oregon Supreme Court agrees.

UNITED STATES SUPREME COURT  
Extension of Traffic Stop

12. *Rodriguez v. United States*, 135 S Ct 1609 (2015). *Held*: Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the constitution's shield against unreasonable seizures.



### **OWLS Coffee Creek Book Drive**

Every year the Oregon Women Lawyers conducts a state-wide book drive for the Coffee Creek Correctional Facility, Oregon's only women's prison. Coffee Creek is also the intake facility for all male state prisoners. The book drive enriches the inmate library at Coffee Creek, as well as the libraries in other correctional facilities in the state. We have heard the following feedback from inmates:

"I love the variety of book that we receive."

*V.M.*

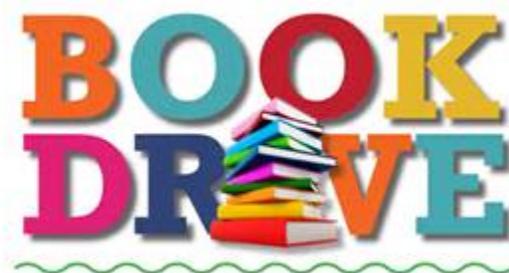
"I am grateful for the donations because it gives me a chance to leave this place for a while."

*C.N.*

"The books that OWLS provides are a valuable resource. They enrich our lives with knowledge that wouldn't otherwise be available to us."

*A.T.*

The Washington County Bar Association will be collecting books for the drive at the April 13 CLE & Dinner. Please donate! We take everything except textbooks and encyclopedias, true crime stories, books about gambling, and magazines. Anything else, including children's books, are welcome. Please make sure the books are in good condition. If you have any questions about the book drive, contact Danielle Hunsaker: [dhunsaker@larkinsvacura.com](mailto:dhunsaker@larkinsvacura.com).



AFCC Oregon Chapter 2nd Annual Conference  
 Advocacy and Its Playgrounds: Father Involvement,  
 Overnights, and Parenting Post-Divorce  
 Friday, April 8  
 8:30am to 5:30pm  
 Oregon State Bar Meeting Room, Tigard, OR  
 Morning Plenary Speaker:  
 Marsha Kline Pruett, Ph.D., MSL  
 Afternoon Panel Discussion  
 Eligible for 6.0 CEs (pending)  
 \$125 Oregon Chapter Members; \$180 non-  
 members  
 Register here: <http://www.or-afcc.org/>

## Enjoy Writing?

Interested in submitting a newsletter article?  
 We welcome inquiries. Please contact WCBA  
 Board member Sim Rapoport by emailing  
[srapoport@epiqsystems.com](mailto:srapoport@epiqsystems.com).

**PLEASE NOTE:  
 THE ANNUAL WCBA STAFF  
 APPRECIATION DINNER HAS  
 BEEN MOVED TO MAY.**

May is our business meeting.  
 There will be at least one or two  
 openings for directors and we will  
 be electing a new president-  
 elect.

If you are interested in join-  
 ing our board, please feel free to  
 contact the current President-  
 Elect Kathy Proctor, or any of our  
 board members.

## CLASSIFIEDS

### Space

Downtown Portland - 2 Offices - Class A Space -  
 River & Mountain View  
 \$1,500 & \$1,300/Monthly: Class A office space,  
 18th floor of Umpqua Bank Building, at One SW Co-  
 lumbia. Both exterior office's with panoramic view  
 of mountains, riverfront and downtown. AV family  
 law practice will share two conference rooms, re-  
 ceptionist services, and kitchen. Copier, fax, tele-  
 phones and email provided at cost. Building ameni-  
 ties include conference rooms, private gym and  
 bank in building. Approximate room sizes 17 x 14  
 and 10 x 15. Call Cecelia Connolly 503.224.7077.

The Professional Collective is Hillsboro's first co-  
 working space dedicated to helping professionals  
 grow their business. Available are affordable office  
 and conference/media/meeting rooms along with  
 complimentary snacks and beverages. Come enjoy  
 a professional environment with the feel of home.  
[www.TheProfessionalCollective.com](http://www.TheProfessionalCollective.com) 1400 NE 48<sup>th</sup>  
 Ave., Suite 200 Hillsboro (across from Costco).

### Classified advertising rates

\$20 for 50 or fewer words; \$40 for 51-100 words;  
 \$60 for 101-150 words; \$80 for 151-200 words. If  
 over 200 words, a quote will be provided upon re-  
 quest. Classified ads must be prepaid.

Please submit your classified ad via email to:  
[washingtoncountybarnews@gmail.com](mailto:washingtoncountybarnews@gmail.com).

**Pay for your ad here:**

[www.wcbabar.org/newsletter-advertising.asp](http://www.wcbabar.org/newsletter-advertising.asp)

### Display advertising rates

Business card size (2" x 3.5")	\$30
1/4 page	\$50
1/2 page	\$90

Please submit your ad in JPEG format to:  
[washingtoncountybarnews@gmail.com](mailto:washingtoncountybarnews@gmail.com).

# THE WCBA APRIL CLE & DINNER MEETING WEDNESDAY April 13, 2016

## CLE: Probate

Presented by The Honorable Andrew Erwin  
Washington County Circuit Court Judge

Dinner Guests – Oregon Supreme Court Justices

Date: Wednesday, April 13, 2016

Time: CLE - 5:15pm    Cocktails & Dinner - 6:30pm

Place: The Old Spaghetti Factory, 18925 NW Tanasbourne Drive, Hillsboro

CLE Credit (Pending approval): 1 General Skills Credit

PLEASE NOTE: To pre-register, please check the appropriate box below and email or send via regular mail with the name of the attendee.

Payment will be taken at the door unless you would like to pre-pay on our website via Pay Pal.

**We now accept all major credit cards at the door.**

**PRE-REGISTER:**

WEBSITE: [www.wcbabar.org](http://www.wcbabar.org)

EMAIL: [wcba.association@frontier.com](mailto:wcba.association@frontier.com)

PHONE: 971.238.2595

MAIL: PO Box 912, Hillsboro OR 97123

-----

NAME: \_\_\_\_\_

- Dinner + CLE = \$30 (member)
- Dinner + CLE = \$40 (non-member)
- Dinner only = \$15 (member and non-member)
- CLE only = \$15 (member)
- CLE only = \$25 (non-member)