

AdvanceSheet™

Published Quarterly by Oregon Women Lawyers

Volume 33, No. 4 Fall 2022



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Voting rights see shakeup in Oregon, across nation

By Ayla Ercin

Oregon Women Lawyers hosted its 2022 Fall CLE with a comprehensive look at some of the most important cases, legal theories, policy issues and activist initiatives affecting voting in Oregon and across the United States.

This look at the "Modern Voting Rights Landscape" kicked off with a keynote address from Eliza Sweren-Becker, counsel in the Voting Rights & Elections Program at the Brennan Center for Justice.

Norman Turrill of People Not Politicians followed with a discussion



of a proposed initiative for an independent redistricting commission to remedy the harms of partisan gerrymandering in Oregon, and Zach

Winston and Anthony Pickens from the Oregon Justice Resource Center

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OWLS Dragonflies members are all smiles as they return to the water after a two-year pause due to the pandemic. See story and photos, pages 10-12. (OWLS Dragonflies)



President's Message

Showing up these days can be difficult. I say that as I write my second President's Message from my basement home office where I have spent many of my waking hours for the past two and a half years, and where I will continue to work for the foreseeable future in a fully remote position.

I know that I am privileged to be in such a position, and I know many of my colleagues who are now working from home feel the same way.

Yet I know that things are changing for many of us. When I do get out, usually for dragon boat practice with the OWLS Dragonflies, I hear my attorney teammates sharing stories about the return-to-office plans at their respective workplaces. I can tell there are mixed feelings. Nearly universal is the fact that if they only have to be in the office a few days a week, they pick the days that they have dragon boat practice. "If I have to go into the office, I will do it on a day when I'm planning to leave the house anyway."

Showing up for work is only a small part of our lives, however. Many of us were very actively engaged in professional and community organizations pre-pandemic. The stress of unexpected and added child care or schooling responsibilities for many who are parents, or the simple task of staying healthy and employed for the rest, often meant that the thing to hit the chopping block first when trying to simplify or avoid burnout has been volunteer work.

I am sure many of us are asking ourselves, "How did I do all of this before?"

When I look around at my OWLS-centric network, I know that I am not the only one asking that question. On top of a commute from the Portland suburbs to downtown, I managed not only to complete my work tasks, but I also kept up with my volunteer commitments to OWLS and the dragon boat community, had something of a social



life attending concerts and live sporting events, and was able to prepare dinner at home more often than ordering out.

All around me were similarly situated and successful individuals, some with the added

responsibility of raising young children or caring for the older generation at home. I lucked into gaining a grown-up stepson through marriage, so I don't have much insight into the added responsibility of raising kids to this equation, but still, I thought that I mostly had this work-life balance thing that we all used to talk about figured out.

As of the time that I am writing this, COVID cases appear to be on the decline (yet again) and most people I know are booking appointments for the latest boosters. Most organizations have already returned to in-person events, and OWLS and its chapters are cautiously starting to do the same. But at the same time, we have learned to adapt to functioning entirely online and that we can service members throughout the state better by offering the option of virtual participation.

That said, just as we have been trying to stay "business as usual," there has been little turnover in committee membership and leadership. Some committees haven't been active or meeting during the pandemic and some of the leadership is ready to turn over the reins without clear succession in sight. Similarly, in all but the larger metropolitan areas, the chapters are largely inactive, and it's not necessarily because there isn't an appetite for getting together again.

I don't mean for this to sound like OWLS is in crisis. I know that many of you have checked the box on your OWLS membership form when you joined or renewed that you wanted to volunteer. To that end, I hope you received and completed the volunteer interest survey that we sent out earlier this year. If someone hasn't been in touch with you already, we hope to do so before the end of this year to help place you in a committee or chapter

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Our mission is to transform the legal profession by pursuing equitable access to the legal system and equity for women and communities who are systemically oppressed.

OWLS members seek votes in November

By Joslyn Keating

Several OWLS members will appear on the ballot in Oregon's general election on Nov. 8. (Please see the Spring and Summer 2022 AdvanceSheets for more information about OWLS members who ran during the May primary.)



OWLS member Christina Stephenson is running for Commissioner of the Bureau of Labor and Industries and will face

Cheri Holt in November's election.

In the May primary race, Jamie McLeod-Skinner beat incumbent Kurt Schrader to become the Democratic nominee for the U.S. House of Representatives for Oregon's 5th Congressional District. She will face Republican Lori Chavez-DeRemer in the November election.

Three additional OWLS members — Court of Appeals Judge Anna Joyce, Marion County



(Left): Amy Queen with her family, and (above) Erious Johnson Jr. with his wife and dog.

Circuit Court Judge Jennifer Gardiner, and Multnomah County Circuit Court Judge Jenna Plank — are candidates for uncontested positions and will be elected by plurality in November.

Recently appointed Lane County Circuit Court Judge Beatrice Grace is being challenged for her seat by Marshall Wilde.

In the only contested race between two

OWLS members, Marion County Deputy District Attorney Amy Queen and incumbent Judge Erious Johnson Jr. are vying for Position 14 on the Marion County Circuit Court. Good luck to all OWLS candidates.

Joslyn Keating is an attorney for Reinisch Wilson Weier in Portland and owner of Cake Hoopla, www.cakehoopla.com.

President

Continued from page 2

that matches your interests. If you didn't check the box last year when you renewed but have the desire and capacity to become more involved with OWLS, please be sure to check the box this year (membership renewal season is upon us!) and/or complete the survey linked here.

I have to believe that reengaging with our volunteer pursuits will ultimately be beneficial and rewarding. Much like a workout that you don't want to do or, in my case, an early Saturday morning dragon boat practice that I might not want to get out of bed for, I always feel better once I get started and am especially glad that I went after I'm done. I just need to show up and, together with the group, we move forward.

I look forward to showing up with all of you in the coming year.

Kristin Sterling

Kristin Sterling,
President, Oregon Women Lawyers



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UPCOMING EVENTS

Cascade Women Lawyers Lunch

Wednesday, Oct.
26, noon.

Old Towne
Pizza, 118 N.W.
Greenwood Ave.,
Bend

Chapter meets the
last Wednesday of the month from
noon-1 p.m.
No RSVP required.



1200 S.W. First Ave., Courtroom 13,
Portland and Facebook Live. No cost.

[Register Online.](#)

The Queen's
Bench Chapter
Presentations
are the second
Tuesday of the
month at noon.

First Wednesday

Wednesday, Nov. 2, 11:45 a.m.-1 p.m.

"New Admittee Welcome, How to
Break Down Barriers and Not Accept
Limits"

Virtual; no cost.

[Register Online.](#)

Queen's Bench Monthly Presentation

Tuesday, Nov. 8, noon-1 p.m.

Big Ideas: "The Case for Abrogating
Qualified Immunity"

Fourth annual Chief Justice Martha Walters Award

Friday, Nov. 18, 11:45 a.m.-1:15 p.m.

Eugene location TBD

[Register Online.](#)

Queen's Bench Holiday Luncheon Honoring Women Judges

Tuesday, Dec. 13, 11:30 a.m.-1 p.m.

Featuring Supreme Court Justice
Sonia Sotomayor (virtually)

Sentinel Hotel, Governor Ballroom,
fourth floor, 614 S.W. 11th Ave.



U.S. Supreme Court Justice
Sonia Sotomayor

Queen's Bench holiday lunch will honor women judges

The Queen's Bench is pleased to
invite you to its 32nd annual
Holiday Lunch Honoring Women
Judges. Please join us from 11:30 a.m. to 1
p.m. Tuesday, Dec. 13, at the Sentinel Hotel
(614 S.W. 11th Ave., Portland).

This year, we are honored to announce
that U.S. Supreme Court Justice Sonia
Sotomayor will be joining us for a virtual
discussion.

This event is sponsored by the Queen's
Bench Chapter. The registration link will
be available soon, which includes an option
to attend the event remotely for a reduced
ticket price. Only OWLS members will be
allowed to attend the event. At the time
of registration, attendees also have the
opportunity to submit questions for Justice
Sotomayor.

Signed copies of books written by Justice
Sotomayor — "My Beloved World"; "Turning
Pages: My Life Story"; "Just Ask! Be Differ-
ent, Be Brave, Be You"; and "Just Help! How
to Build a Better World," will be available
for purchase in both English and Spanish, to
be picked up prior to the event.

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What is the future of reproductive rights after *Dobbs*?

By Teresa Statler

On Sept. 12, OWLS, along with the American Constitution Society of Oregon, presented a noontime Zoom presentation, "The Future of Reproductive Rights after *Dobbs v. Jackson Women's Health Organization*."

Panel members included Professors Yvette Lindgren, of the University of Missouri-Kansas City School of Law, Ederlina Ko, of the University of the Pacific School of Law, and Maya Manian, of the American University Washington College of Law. Professor Laura Appleman of Willamette University College of Law moderated the program.

The upshot of the presentation was that the future of reproductive rights in the United States is now under serious threat and the legal complications and unintended consequences of the decision are and will be numerous.

Manian set the stage by telling us that in *Dobbs*, the U.S. Supreme Court overturned outright the court's prior decisions on abortion in *Roe v. Wade* and *Planned Parenthood v. Casey*. The opinion, written by Justice Samuel Alito, holds that the due process clause of the 14th Amendment cannot be read as it had been before, that there are various unenumerated liberty rights present. After *Dobbs*, those liberty rights (which include the right to an abortion), are now cramped, according to Manian, because the court held that in order for them to exist, they must be "deeply rooted in the nation's history and tradition."

In other words, the laws or rights ostensibly protected must have existed in the 19th century. The court further disregarded the right to an abortion based on an equal protection theory, as well.

Manian highlighted the words and the reasoning of the dissenting opinion in *Dobbs*: that the majority wished to "overrule *Roe* and *Casey* because it has always despised it." She emphasized that the new "rational basis" test of *Dobbs* will almost always permit a state's "legitimate interest" in regulating abortion, no matter what the law might be.

Manian went on to note that the court's



Alpha Stock / Nick Youngson

recent decision has implications for other privacy rights previously enshrined in the 14th Amendment, such as birth control and same sex marriage. She ended her part of the presentation by stating that "Roe was

for the past 20 years.

Because various states are passing laws prohibiting this, as well as the importa-

the floor not the ceiling. We have now lost the floor."

Lindgren discussed how *Dobbs* has affected the issue of "self-managed care," or the right to an early medication-induced abortion, which has been safe and effective and available

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Law students get advice from attorneys at networking social

On Thursday, Sept. 1, OWLS Leadership Committee held a Sidebar Social networking event at Willamette University.

Committee member Lee Ann Donaldson (WUCL '09) was joined by Melissa Parker (WUCL '09) and Dorothy Bean (WUCL '09) to discuss the benefits of OWLS and Mary Leonard Law Society membership and to pass along practical advice to the students in attendance. Assistant Dean Phylis Myles, a founding OWLS member, also joined the event to talk about the historical need for an independent organization for women lawyers.

After several years of not having on-campus events, OWLS was happy to host the lunchtime networking event that included small bites. About 20 students attended and most had just started their first year, so questions arose mainly about how to survive law



From left: Lee Ann Donaldson, Stephanie Olvera Lugo, Melissa Parker, Lillian Garcia (1L), Madison King (1L), Hannah Garhofer, Phylis Myles, Dorothy Parker.

school and about exams later in the year.

The three attorneys shared their experiences in finding

satisfaction and success in legal careers. They focused on ensuring that the students knew the benefits that OWLS offers

following graduation and also encouraged them to seek camaraderie and support among their classmates.

Dobbs

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tion of the medication by mail or over the internet, individuals needing an abortion are going to have to obtain the medication from another state or from abroad. States also are enacting various civil enforcement provisions, such as Texas' SB8, which allows for surveillance by private individuals who later turn in a woman seeking abortion care to obtain a financial bounty.

Lindgren also mentioned the proliferation of new state laws criminalizing importation of abortion medication, with such laws conflicting with federal regulations promulgated by the Biden administration allowing for the medication to be mailed to any state.

Ko concluded the discussion by noting that right now, only 24 states provide for legal and safe abortion. She spent most of her

time discussing the ramifications of *Dobbs* allowing the states to prohibit abortion in almost all circumstances and how women who might suffer an ectopic pregnancy or a miscarriage might have their health or life put at risk because medical providers are afraid of criminal and civil liability if they provide what would otherwise be medically appropriate care.

The supposed "exceptions" that anti-abortion state legislatures have enacted are under-inclusive, unclear and vague and they do not consider the myriad situations a provider might see in an emergency situation. The result is that *Dobbs* allows for a wide scope of stabilizing medical care to not be provided, resulting in poor health outcomes for women.

This scenario is truly frightening and very real. Ko also spoke about the complicated jurisdictional and preemptive legal fights on

the horizon. For example, [states enacting anti-abortion provisions without exceptions are in conflict with federal law](#) providing that medical facilities receiving federal funding give medical care to women if their health, not just their life, is in jeopardy.

Additional legal fights will ensue between states where one state wants to prevent its residents from traveling to another "sanctuary" state where unlimited access to abortions is available.

The presentation was sobering and full of food for thought. Despite the situation now post-*Dobbs*, the panelists nevertheless were hopeful that the decision has galvanized abortion-rights supporters to vote and to agitate and organize to change draconian laws.

Teresa Statler recently retired from her solo immigration practice in Portland.

Improve your courtroom advocacy

By Judge Jenna Plank

When asked the question, “What does effective courtroom advocacy look like?” I turned to several members of the Multnomah County Bench for their input and thoughts. There was no single, across-the-board response, but a couple consistent themes surfaced — preparation of a story (also called a case narrative) and clarity.

This article is written from the perspective of the bench. Jurors and other observers undoubtedly have their own ideas and impressions of effective advocacy. In the end, people are different. No two judges are the same and certainly no two jury panels are alike. So read this with the caveat that this advice should be tailored to fit your audience.

Storytelling

Many judges underscore the importance of preparation. Most attorneys already appreciate that in order to be an effective advocate, they must study and be able to reference the applicable law. What fewer appreciate is the lawyer’s role as storyteller, and the preparation required to transform evidence into a compelling narrative. The most effective attorneys are those who not only recall the minutiae of discovery and the relevant case law but who also are able to thread together the component parts into a broader narrative (or story) of the case.

The “story” or narrative of the case must be directly related to the evidence. Attorneys who are overly focused on their own courtroom performance often forget that it is the evidence that drives the “story” of their case and will ultimately drive the case’s outcome. Lawyers often fail to envision how all the evidence will fit together for the fact finder and thus fail to see in advance the need for certain witnesses and pieces of evidence to fill gaps in the narrative. An easy-to-follow story that directly provides the fact finder with the evidence needed to prove or negate the elements of a claim often makes the difference between winning or losing in court.

Clarity

The closely related second pillar of effective advocacy is clarity — expressing an argument or legal theory in a concise, coherent and logical way. Civil complaints and criminal charges shape the case narrative and outline



what the attorneys must ultimately prove (or disprove) to prevail. Clear and concise pleadings without unnecessary clutter lead to focused litigation and a well-trying case. A convoluted or disorganized theory of liability or a charge that alleges an amorphous course of conduct often spells doom for the advocate who cannot then communicate a straightforward theory of their case to the fact finder. This is particularly true for the party that bears the burden of proof in a case.

Clear, organized and focused motions, evidence and oral arguments tell the judge and jury exactly what is at issue, what must be decided at that juncture of the case, and what

the requested verdict, ruling or order needs to state. Inconsistent verdicts are often the result of confusing case theories and evidence presentation. Similarly, court rulings or orders that need to be revisited or clarified are almost always the product of convoluted arguments.

Obfuscation and confusion can at times benefit a party, particularly when opposing counsel’s theory of the case is convoluted. However, an attorney who can concisely state what is at issue and why the issue must be decided in their favor often will prevail over an opponent who relies on a “see what sticks” approach.

Ultimately, there are innumerable ways to effectively advocate in the courtroom, and advice on this subject will vary widely depending on the source. These are just a few suggestions gathered from members of the bench. Trial attorneys who excel in court often exemplify these themes, and focusing on these concepts will improve the courtroom advocacy of any attorney.

Judge Jenna Plank is on the Multnomah County Circuit Court.

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Voting

Continued from page 1

discussed their current advocacy efforts to restore voting rights to incarcerated adults in Oregon.

Independent state Legislature theory and voter suppression

Sweren-Becker began by orienting CLE participants in the current environment of increasing voter suppression. Laws are being proposed across the country that seek to limit voting access by restricting voting hours, restricting mail-in-voting, purging voter rolls and making voter registration or identification more difficult.

Recently, legislation also has been proposed that would overturn elections, criminalize common and benign voting practices, and unduly penalize election officials for innocent mistakes. Since the 2020 election, 148 bills categorized as causing election interference have been introduced in 27 states. Six states have successfully enacted nine election interference laws.

Primarily, Sweren-Becker focused on the case of *Moore v. Harper*, a North Carolina case set to be heard by the Supreme Court of the United States. The Moore case focuses on partisan gerrymandering and a formerly obscure legal theory that is ascendant among a small group of conservative voting activists. According to Sweren-Becker, this “independent state legislature” theory could turn our democracy upside-down and throw election administration into chaos.

The “independent state legislature” theory relies on a narrow reading of the U.S. Constitution’s Elections clause, which gives authority to a state’s “Legislature” to govern the time, place and manner of holding elections. Proponents of the theory argue that only legislatures have these listed powers, and legislative action cannot be second-guessed or checked by the governor or judiciary of a state. Under this reading, election legislation cannot be overturned even if it is found to be in violation of a state’s constitution. All election laws adopted by referenda, or through administrative regulation would potentially be nullified. In the Moore case, the General Assembly of North Carolina argues the “independent state legislature” theory in an attempt to allow their gerrymandered district map to remain in effect, despite the



Eliza Sweren-Becker



Norman Turrill



Anthony Pickens



Zach Winston

state Supreme Court’s determination that the map violated the state’s constitution.

Sweren-Becker believes the “independent state legislature” theory is flatly contradicted by precedent and history, but has potential appeal to some sitting Supreme Court Justices. The Moore case is being closely watched because of its potential to radically change election law in the United States. Moore v. Harper will be heard by the US Supreme Court in the 2022-2023 term.

Partisan gerrymandering, independent redistricting

The discussion of Moore, a partisan gerrymandering case, was followed by a discussion of a recent voter initiative proposing to create an independent commission to manage political redistricting in Oregon.

Norman Turrill is the chair of People Not Politicians, the advocacy group putting forward the initiative petition for the November 2024 ballot. Turrill discussed some of the problems of political gerrymandering — noncompetitive districts where the same candidates consistently win despite a changing electorate — and the younger and more diverse voters who are typically left without a voice.

The initiative would create a 12-person independent commission made up of four Democrats, four Republicans, and four others who are third-party members or nonaffiliated. The commission would listen to public testimony and create congressional voting maps in accordance with strict and nonpartisan criteria. Many states use some form of a commission model and seven already have independent citizen redistricting commissions. The initiative is in the process of getting the required signatures before gaining a ballot title and will likely not move forward in the process before early 2023.

Restoration of voting rights in Oregon

Finally, Zach Winston and Anthony Pickens of the Oregon Justice Resource Center (OJRC)

presented on the OJRC’s work advocating for the restoration of voting rights for incarcerated adults in Oregon. Winston argued that the disenfranchisement of incarcerated adults can seem unremarkable, but causes undue harm to individuals and the community and should be reexamined. It is also not truly a norm — adults with misdemeanor convictions already can vote while inside prison in Oregon, and unlike in some other states, all formerly incarcerated individuals are eligible to vote after their release.

The OJRC presenters pushed back against the narrative that those in prison do not want to participate in the political process. Adults in prison commonly have children or families outside of prison and are deeply impacted by political decisions — they may have children in public schools with elected school board members, or have families affected by land or economic policy. Formerly incarcerated individuals will return home and be expected to reintegrate into their communities after years of political and social alienation.

Disenfranchised adults also have no voice in the policy decisions affecting their own health and safety — they had no voice in the policy decisions guiding public health at a time when COVID-19 cases were 10 times higher in Oregon prisons than in the state overall. The OJRC argues that disenfranchising people in prison allows the state to deprioritize their health and well-being, maintain low wages for jobs in prison, and perpetuate the harms of incarceration without any incentive toward harm reduction.

The OJRC currently is focusing on legislative advocacy and outreach. Proposed legislation was introduced in 2021 and again in 2022, and advocates continue to fight for the policy’s advancement and for the restoration of voting right to 13,000 currently incarcerated adults in Oregon.

Ayla Ercin is an attorney and staff member at the Campaign for Equal Justice in Portland.

Judicial appointments, nominations

On July 14, President Joe Biden nominated Oregon Supreme Court Justice and OWLS member Adrienne Nelson to serve as a federal judge for the U.S. District Court of Oregon.

If confirmed by the U.S. Senate, Justice Nelson will be the first Black woman to serve on the U.S. District Court for Oregon.

On Aug. 9, Gov. Kate Brown announced the appointment of OWLS members Michelle Bassi and Beatrice Grace to the Lane County Circuit Court. Judge Bassi filled the vacancy created by the retirement of Judge Charles Carlson, and Judge Grace filled the vacancy created by the retirement of Judge Lauren Holland.

Congratulations to all.



Adrienne Nelson



Michelle Bassi



Beatrice Grace

Oregon State Bar honors OWLS members

By Joslyn Keating

At its annual awards presentation on Oct. 27, the Oregon State Bar will honor three OWLS members who have made outstanding contributions to the legal community and profession.

OWLS member and former Oregon Supreme Court Justice Lynn Nakamoto will receive the OSB Award of Merit, which is the highest honor the bar can bestow.



Lynn Nakamoto

This award recognizes the recipient's exemplary professionalism and their outstanding contribution to the bench, the bar and the community at large.

Diane Sykes will be one of four recipients of the President's Public Service Award. This award recognizes Oregon attorneys who made significant contributions to the public through pro bono work, coordination of law-related events, or service with a community board or organization or similar activity that benefits the public.

Diego Gutiérrez and Karla Márquez are two of four recipients of the Public Leadership Award. They are being recognized for UndocuLaw NW, their program that helps undocumented immigrants apply to law school. The other recipients are Jose

Garcia-Fuerte and Alyne Sanchez.

Finally, M. Christie ("Chris") Helmer will receive the Edwin J. Peterson Professionalism Award. This award is presented to an Oregon attorney who publicly and consistently demonstrates integrity, honesty and the highest ethical standards;

promotes efficient resolution of disputes; fosters the respect of others; encourages professional conduct; and demonstrates the importance of pro bono work.


Congratulations to Justice Nakamoto, Sykes, Gutiérrez, Márquez, and Helmer on receiving these prestigious awards.

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HOW TO TRAIN YOUR *Dragon*

OWLS Dragonflies happy to be back in their boats

By Lindsey Craven

Following two nonexistent race seasons due to COVID, the OWLS Dragonflies are back and better than ever.

We started paddling again in July 2021 after nearly a year and a half off the water. With no races during the summer of 2021, we had lots of time to recruit and get back in the groove of things.

Starting in May, with 13 paddlers on the roster who had never raced before, we had a strong fourth-place finish at the Rainier Dragon Boat Festival in Tacoma, Washington.

In June we braved a torrential downpour and sudden three-foot rise of the Willamette River to bring home silver medals in the Rose Festival race.

In July, we again headed to Washington for the Kent Cornucopia Days festival and then busted out our passports for an August trip to Victoria, British Columbia, where we won silver medals in the women's B division.

We wrapped the season with an amazing second-place overall finish in the Portland Dragon Boat Festival and placed third in the 2,000-meter bridge-to-bridge race, despite the smoke in the air and the high winds. What an incredible return to the sport!

We are now heading into our off-season, but we will still be paddling, albeit at a more relaxed level throughout the fall and winter.

Interested in coming out to see what all the fun is about? Contact recruiter Lindsey Craven at lindsey.e.craven@gmail.com or coach Eleanor DuBay at eleanor.dubay@gmail.com.



OWLS' Dragonflies practice on the Willamette River ahead of this year's Rose Festival races in June.

The Dragonflies would like to thank our families, friends and sponsors (including OWLS) for yet another wonderful season.

Lindsey Craven is a staff attorney with the Oregon Court of Appeals.

All photos courtesy of OWLS Dragonflies.



Above left:
Ringer Amanda
Tazelaar
catches the
flag at the
Rose Festival
races.

Above right:
Captain Stacy
Harrop shows
off the silver
medals the
team won
at the Rose
Festival race.

Left: The
Dragonflies
paddle out to
the start line
in Tacoma,
Washington.



Holly
Martin (left)
and Blanche
Niksich
enjoy a
beverage
after the
Portland
race.

Join the fun!

The OWLS' Dragonflies is seeking new members. They practice year-round and compete in several regional races, all while maintaining busy professional lives. Team members practice in just about every area of law. In addition to the attorneys

(and sometimes judges) on the team, OWLS Dragonflies members are law students, paralegals, legal assistants, and other law-related professionals.

To join, contact
Lindsey Craven at

lindsey.e.craven@gmail.com
or Eleanor DuBay at eleanor.dubay@gmail.com





Dragonflies history

The Oregon Women Lawyers (OWLS) Dragonflies Dragon Boat Team traces its origins back to 1995, when students and professors from Lewis & Clark Law School formed the Scales of Justice dragon boat team to compete in the Portland-Kaohsiung Sister City Association Rose Festival Dragon Boat Races.

From there, in 1999, several female alums (now attorneys) organized under the sponsorship of Oregon Women Lawyers and recruited their friends and colleagues as benchmates to form the OWLS Dragonflies as it exists today.



Above left: Katie de la Forest and Lindsey Craven quench their thirst at the Portland Race beer garden.

Above right: Dragonflies members show off their custom team socks.

Left: Team shot from the Rose Festival races.

Below: A close-up of this year's Portland Race medals.



Right: The freshly painted decorative heads and tails are added to the boats before the races.



Queen's Bench covers the complicated history of climate science litigation

By Jessica Wilcox

For over 20 years, climate change attribution scientists and litigators have attempted to hold fossil fuel companies liable for the damages incurred from hurricanes, floods and fires. But despite all their efforts and varied approaches, courts continue to punt on the topic.

For the August Queen's Bench webinar, Lisa Benjamin, associate professor at Lewis & Clark Law School, and Leah Aronowsky, lecturer and Mellon Teaching Fellow at Columbia University, discussed their research on the history of climate risk and its intersection with the law.

Since 2003, there have been three waves of climate litigation. The first wave saw private citizens suing private companies for property damage caused by their emissions, *Comer v. Murphy Oil*, 2013. (Mississippi citizens filed a class-action against an oil refining company for the property damage wrought by Hurricane Katrina.)

The second wave had local governments suing companies, *City of Oakland v. BP*, 2020. (The city needed to build seawalls and Chevron even acknowledged — for the first time — that global warming is real and caused in part by its products.); *Native Village of Kivalina v. ExxonMobil Corp.*, 2013. (The arctic sea ice that protected the Kivalina coast from storms had been diminished resulting in the relocation of the residents at a cost of between \$95 million and \$400 million).

The third wave pitted state attorneys general against these companies on false information claims, similar to those used in tobacco litigation, *Massachusetts v. EPA*, 2007. (The EPA to regulate emissions that contribute to global warming from new motor vehicles under the Clean Air Act. The court found that the EPA had discretion to defer a decision until more research could be done on "the causes, extent and significance of climate change and the potential options for addressing it."); *Massachusetts v. ExxonMobil Corp.*, 2019.

All approaches have failed so far, with courts consistently dismissing these actions before trial on the basis that climate change falls under the political question doctrine and



Lisa Benjamin



Leah Aronowsky

Even though there has been scientific consensus on the link between extreme weather and greenhouse gas emissions since 1988, neither branch of government has attempted to address the issues alleged in these lawsuits.

is outside the scope of the judicial branch.

The political question doctrine refers to the idea that an issue is so politically charged that federal courts, which are typically viewed as the apolitical branch of government, should not hear the issue.

This doctrine is used mainly in cases that deal directly with issues that the Constitution makes the sole responsibility of the executive branch and/or the legislative branch. *Baker v. Carr* (1962). Regarding climate change actions, judges often invoke the doctrine due to ongoing discrepancies over causation, affected parties and suitable remedies for present and future harms, which necessitate a larger approach to change that, in some judges' minds, only the other branches of government can make. Federal preemption also has served as a barrier to successful outcomes.

However, even though there has been scientific consensus on the link between extreme weather and greenhouse gas emissions since 1988 and a finding that the United States is responsible for a quarter of these emissions since 2003, neither branch

of government has attempted to address the issues alleged in these lawsuits. Event attribution science, which links extreme weather events and greenhouse gas emissions, has advanced to the point where it can now quantify emissions of certain companies, and one ground-breaking study by Professor Richard Heede found that 90 companies produced two-thirds of all emissions and could pinpoint percentage share to each company, i.e., Exxon produces 5%. (<https://climateaccountability.org/carbonmajors.html>)

To quantify the role of climate change in an event requires risk modeling, which can now show the degree that climate change had in increasing the statistical probability for an event to take place. For instance, a climate attribution study produced evidence that global warming doubled the risk of a heat wave that resulted in the death of 20,000 people. However, despite this knowledge, companies' emissions were not curbed. Rather, they started campaigns to cast doubt on climate change science.

Benjamin and Aronowsky ended their presentation with their hope that future climate action could be facilitated by this kind of litigation. Some international climate cases often are more successful than domestic U.S. ones have been. For example, in May 2022, the Massachusetts state court rejected 0-7 a bid by ExxonMobil to dismiss the lawsuit and is still proceeding with the state's attorney general's lawsuit that the oil company misled consumers and investors about climate change and the dangers of using fossil fuels. *Massachusetts v. Exxon* (2022).

However, in the *City & County of Honolulu v. Sunoco LP* (2022), the court made the unprecedented move to deny Sunoco's motion to remove the state claims of failure to disclose and deceptive practices to federal court. These cases continue to demonstrate that climate scientists and litigators are not giving up on holding these companies accountable, and it is perhaps only a matter of time before they succeed.

Jessica Wilcox is a Labor and Employment attorney for the City of Vancouver, Washington.

Legislative Days, licensure, comity rule, paralegals and more

By Susan Grabe

September Legislative Days were held the week of Sept. 20. During that time, numerous issues of importance were discussed. Below are some issues of particular interest to lawyers and the legal profession.

Judicial Department Priorities

During the September Legislative Days, the House and Senate Interim Judiciary Committees met. Of particular interest was an update from the Oregon Judicial Department (OJD) in the House Judiciary Committee. The OJD touched on a number of issues including equity, diversity and inclusion, court procedures and legislative initiatives.

The OJD, like executive branch agencies, is in the process of finalizing a proposed budget for the 2023-25 legislative session. While the full budget will be shared closer to the legislative session, OJD shared a list of [legislative proposals](#) that they will submit to the Legislature for consideration during the 2023 session.

OSB Legislation

At its Sept. 23 meeting, the OSB Board of Governors approved a package of legislative concepts for submission to the Oregon Legislature for introduction in the 2023 legislative session. The proposals are reviewed by the Public Affairs Committee and the board of governors to ensure that they meet the criteria established by both the statutory guidelines, OSB bylaws and the U.S. Supreme Court case *Keller v. State Bar of California*, 496 US 1 (1990). This year, six OSB sections, workgroups and committees submitted nine law improvement proposals.

To review the proposed legislative concepts and guidance on *Keller*, visit the Oregon State Bar's Public Affairs/Legislative web page (<https://www.osbar.org/pubaffairs>). For questions, contact Public Affairs staff at pubaff@osbar.

Licensure Pathway Development

The Oregon Supreme Court directed the creation of what was then called the Alternatives to the Bar Exam Committee, for the purpose of assessing alternate pathways to attorney licensure. That committee issued its final report in June 2021.

In January 2022, the Oregon Supreme Court

approved in concept two additional pathways for attorney licensure.

- Participate in a period of supervised practice and generate a portfolio of work to be reviewed by the Board of Bar Examiners

- Dedicate their last two years of law school to a practical skills-focused curriculum and generate a portfolio of work to be reviewed by the BBX.

The OSB BBX established the Licensure Pathways Development Committee (LPDC) to further develop these pathways. The LPDC met for the first time in May 2022. Under either pathway, the Board of Bar Examiners retains the responsibility to determine whether the applicant has demonstrated the competence to practice law. The OSB BBX has convened a committee made up of lawyers, academics and bar administration to draft the specifics of the two programs. The committee is aided by an advisory group of over 40 lawyers across the state and expects to publish initial drafts for public comment this winter and then incorporate input into the proposals to present to the court in late spring 2023.

Licensed Paralegal Program

On July 19, the Oregon Supreme Court approved a proposal to license paralegals to provide some legal services that only lawyers may currently provide. Under the new rules, licensed paralegals will be allowed to provide limited legal services only in family law cases (divorces, custody, parenting time, etc.), and landlord-tenant cases. These two areas of law have the greatest unmet need for legal assistance in Oregon.

Licensed paralegals will have specific requirements for education and experience, and will be subject to many of the same rules and regulatory requirements that currently apply to lawyers, such as being insured through the PLF. The intent is to provide access to legal help for those who cannot afford a lawyer or who otherwise might go to court with no legal assistance. Throughout the development of this proposal, the bar received input from hundreds of Oregonians. All the comments were provided to the court before its decision. This input has improved the proposal.

For additional information, please visit the Oregon State Bar's [Paralegal Licensing page](#).

Court Adopts Comity Rule

On July 19, the Oregon Supreme Court approved the adoption of a [comity rule](#) to direct how the Oregon State Bar admits licensed attorneys from other jurisdictions. The rule expands jurisdictions from which licensed and experienced attorneys can be admitted without taking the bar exam, while retaining most other requirements.

The change to the admission rules was spurred in part by the fact that Oregon currently has 2.9 lawyers per 1,000 Oregonians. This ratio, coupled with the fact that many of the state's lawyers are concentrated in Oregon's cities and in the Willamette Valley, has resulted in several "legal deserts" where clients must travel a significant distance to find legal help. Further, Oregon has been experiencing a lack of attorneys in high-volume practice areas such as criminal law and landlord-tenant law.

Under the adopted rule, applicants are still required to meet specific qualifications for admission, but they do not have to come from a jurisdiction that offers the same rules of admission to Oregon attorneys (i.e., reciprocity). Before the rule change, Oregon offered a mechanism for admission without taking a bar exam — reciprocity — to lawyers in 40 jurisdictions. Under the new rule, lawyers from all 54 U.S. jurisdictions will be able to be admitted to Oregon if they meet the criteria.

The OSB Board of Bar Examiners has published an [FAQ](#) outlining the new rule.

Indigent Defense in Oregon

In late April, Gov. Kate Brown, Chief Justice Martha Walters, Senate President Peter Courtney and Speaker of the House Dan Rayfield created a work group to address the challenges that public defense is currently experiencing in Oregon. The work group, chaired by Sen. Floyd Prozanski and Rep. Paul Evans has been meeting to develop legislation for the 2023 and 2024 legislative sessions. The first meeting of the work group, held in early May, provided an overview of Oregon's public defense system and identified immediate state funding needs for indigent defense. Future meetings are expected to delve further into the Oregon service delivery model, other public defense

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Meet OWLS board member Emily Lohman

By Marisa Moneyhun

Inspired by the attorneys she has met, Emily Lohman views public service as paramount to a career well spent.

Growing up in a rural community in the Missouri Ozarks, not many people in Lohman's community attended college or became lawyers. This was especially true for the women. Upon completing high school, Lohman left Missouri with a small amount of savings to attend college in Kansas. There, she became passionate about community organizing and advocacy groups.

Lohman became aware of a predatory payday lender that was targeting marginalized communities. She reported the lender to the local police department and was advised that the matter should be brought to the attention of the Department of Justice (DOJ). This was the first time Lohman had even heard of the Department of Justice and its mission of protecting the public. From then on, Lohman knew her career would include public service — maybe even at the Department of Justice. In speaking with DOJ employees, Lohman learned that if she went to law school she might join their ranks. Her career goal was set.

Lohman moved to Oregon to attend Willamette University College of Law, drawn to



graduation Lohman clerked for the Honorable Adrienne Nelson, and she currently is a law clerk for the Honorable Ann Aiken.

One of Lohman's current duties at the U.S. District Court is to train new law student clerks for fall, winter and summer sessions. She views this as an

important opportunity to bring full circle the mentorship she received while in law school and starting her career.

Lohman hopes one day to join the Department of Justice, the organization that first inspired her to become an attorney. In her spare time, Lohman likes to spend time with friends, explore the outdoors, and pursue her painting hobby, which she started during the pandemic.

Lohman hopes one day to join the Department of Justice, the organization that first inspired her to become an attorney. In her spare time, Lohman likes to spend time with friends, explore the outdoors, and pursue her painting hobby, which she started during the pandemic.

Marisa Moneyhun is a founding partner at Kehoe Moneyhun Law in Portland.

Legislature

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service models, and review the findings of the ABA's report and the [6th Amendment Center's report](#) on Oregon's indigent defense system.

Public Defense Services Commission

The Public Defense Services Commission is recruiting for both an interim and a permanent executive director for the Office of Public Defense Services. The PDSC also is considering steps to address the lack of public defenders in many counties. This includes compensation increases in some cases.

The Oregon Criminal Defense Lawyers Association has recommended changes to criminal law procedural rules set forth in the Uniform Trial Court Rules intended to streamline the provision of indigent defense services.

Susan Grabe is the Oregon State Bar chief communications and public affairs officer.

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To learn more about the Armonica Law Student Grant and other grants, please visit:
<https://owlsfoundation.org/>

Shortlisted

Civil Rights Queen: Constance Baker Motley and the Struggle for Equality

By Tomiko Brown-Nagin
(Pantheon Books, 2022, 497 pages)

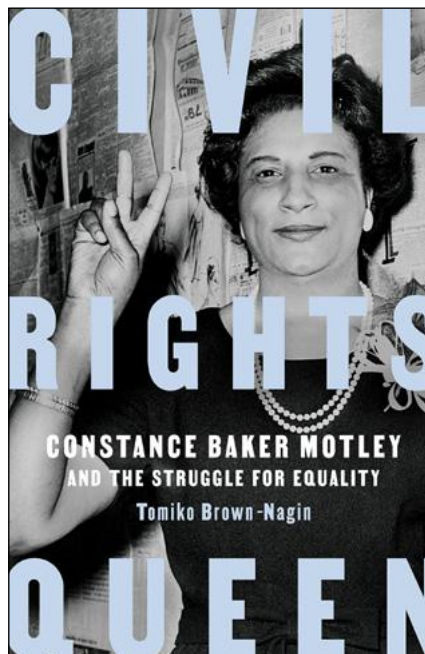
Book Review by Teresa Statler

This riveting biography of the first Black female federal judge is a must-read for all women lawyers.

Constance Baker Motley, the daughter of working-class West Indian immigrants who grew up in New Haven, Connecticut, was a force of nature. As the only woman attorney for many years on the legal team of the NAACP, Motley worked with Thurgood Marshall to successfully litigate *Brown v. Board of Education*. In addition, she represented The Rev. Martin Luther King Jr. after his arrest in Birmingham, Alabama, and James Meredith in his yearslong quest to attend the University of Mississippi. Motley represented children expelled from school and who were assaulted by “Bull” Connor’s firehoses in Alabama during the Children’s Crusade. She represented hundreds of other less-famous plaintiffs in their fight against various Jim Crow laws in the American South of the 1950s and 1960s.

Tomiko Brown-Nagin, a professor of constitutional law at Harvard Law School and a history professor at Harvard, tells Judge Motley’s inspiring and path-breaking story, from her childhood to her incredible legal career, to her short time as a politician in New York before being named in 1966 by President Lyndon Johnson to the U.S. Federal District Court for the Southern District of New York.

The book is exhaustively researched, well-written and kept this reader turning the pages, wanting to know more about this accomplished woman, who “ought to be as well-known as ... Ruth Bader Ginsburg,” according to historian and author Jill Lepore. U.S. Supreme Court Justice Ketanji Brown Jackson named Judge Motley as her “hero” in her speech during the April ceremony confirming Brown Jackson’s appointment to the U.S. Supreme Court. Justice Sonia Sotomayor called Motley “one of my favorite people” and said she was someone “who believed that talented people of color had an obligation to show the world what we



can do.” Throughout the book, Judge Motley is named by many others as a mentor, an inspiration and a legend.

Brown-Nagin begins her book with the understatement that Judge Motley’s “world-changing accomplishments, which made her a ‘Queen’ in her time, should place her in the pantheon of great women leaders.”

Brown-Nagin thinks that Judge Motley’s life and legacy are not well-known today because she was a woman, and because “in Western societies, historical significance is coded male.” In fact, Brown-Nagin believes that “despite all she achieved, Motley has mostly been defined by Thurgood Marshall’s mentorship.”

The book delves deep into Motley’s legal career at the NAACP and discusses the many suits in which she represented victims of discrimination in the Jim Crow South. These include such well-known cases as *Gober v. City of Birmingham*, *Meredith v. Fair* and *Hawkins v. Board of Control of Florida*. Her trips to the South to try these and other cases often resulted in death threats and frightening incidents, including one in which she and Medgar Evers were shadowed by police vehicles on a country road at night in rural Mississippi.

Brown-Nagin tells us that Motley won six out of the seven cases she argued before the

U.S. Supreme Court. The author’s detailed recounting of Motley’s civil rights cases and the discussion of the legal strategies she chose to present them often read like a suspense story. I wondered if and how Motley would win them, and was sickened to read about the many racist judges she was forced to appear before, including, shockingly, many federal judges appointed by President John F. Kennedy.

For two years in the mid-1960s after leaving the NAACP, Motley entered New York politics. She was encouraged to run for a state Senate seat and won, allowing her to be an instrumental force in enacting laws addressing racial inequality in New York criminal law, public school equity and unfairness in the housing market. Just 13 months after Motley sought elective office, the New York City Council selected her to fill an open seat as Manhattan borough president. She held this position until she was sworn in as a U.S. federal district judge in October 1966.

Brown-Nagin devotes an entire chapter to the confirmation process for Judge Motley, including surprising facts like Sen. Robert Kennedy’s support of her nomination was “lackluster.” She gives lots of detail about Judge Motley’s courtroom, including how she ran it and interacted with those before her, both the public and lawyers. She even tells us that Judge Motley’s chamber’s walls were “pink, and she decorated the room with a floral chintz sofa and matching drapes.”

Brown-Nagin turns a critical eye on the cases Judge Motley decided, some of which were groundbreaking, such as being the first federal judge to award monetary damages to prison inmates for violations of their constitutional rights. In the excellent chapter, “A ‘Woman Lawyer’ and a ‘Woman Judge’: Making Opportunity for Women in Law,” Brown-Nagin details the unprecedented class-action case in which Judge Motley held that the “white shoe” New York law firm Sullivan & Cromwell discriminated against women attorneys in hiring and promotion. She further tells the reader that Judge Motley did not always get things right: “Motley’s judicial record showed that she, like every

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Meet MBA Bar Fellow Aleesha Kazi

By Gizem Demirel

Aleesha Kazi is one of the Multnomah Bar Association (MBA) Bar Fellows of 2022. Kazi was this summer's intern at the Legal Aid Services of Oregon (LASO), sponsored by the OWLS Foundation through the MBA Bar Fellows Program. She is a law student at the University of Oregon and a 2021 cum laude graduate of Willamette University, where she majored in politics, policy, law and ethics.

The MBA Bar Fellows Program is a highly selective program that aims to diversify the Oregon bar by supporting diverse first-year law students through paid summer internships, scholarships, networking opportunities and judicial mentorships. Successful applicants must demonstrate their potential for success in the legal profession and their commitment to practice law in Oregon and must contribute to the diversity of the Oregon State Bar.

Kazi wanted to be a lawyer since she was a young girl, especially after going through hard times when her family needed legal assistance for a potential medical malpractice case and could not attain it. Not having any lawyers in her family, Kazi saw the power lawyers have and their role in shaping the legal system. She resolved to become a lawyer and bring change not only to her family but also to her community.

Kazi is well ahead in her path to achieving those dreams. In her undergraduate years, she worked as a legislative assistant for Sen. Rob Wagner at the Oregon State Legislature. There, she learned how laws are enacted, directly participated in the legislative process and witnessed how lawyers can change public policy. With the help of the MBA Bar Fellows



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Program, she is one step closer to her goal of practicing law in Oregon.

At LASO, Kazi learned how to help vulnerable communities by working directly with clients, researching to find groundbreaking precedent, matching clients with lawyers, drafting letters to clients and adverse parties and even representing a client at an administrative hearing.

Although it was her first time doing a hearing, Kazi presented the opening statement, questioning and objections with confidence. She made a successful closing argument for her client's unemployment benefits before the administrative judge, thus winning the first case of her blossoming legal career.

Through the support of the OWLS Foundation and MBA Bar Fellows Program, Kazi experienced the joy of helping people directly at LASO, which made her more hopeful and ambitious for the future. Kazi is more determined than ever to move forward with her goals to fight injustice and help the people who most need our legal system, such as those affected by the lack of housing and domestic violence. She looks forward to joining the Oregon legal community. The OWLS Foundation thanks our donors for making this opportunity possible for Kazi.

***Gizem Demirel** is an attorney licensed in Oregon and Turkey. She is a member of the OWLS Board and OWLS Foundation Board.*

Book Review

Continued from page 16

other judge, was more likely to rule against than for alleged victims of discrimination."

The author is also careful to tell us that Judge Motley's life was not all roses: She was passed over in favor of a less-qualified white man for head of the NAACP's legal office upon the appointment of Marshall to the bench. She also was not nominated

for a seat on the Second Circuit or the U.S. Supreme Court, according to Brown-Nagin, due to "politics" and "a perception that as a Black woman, she was not worthy."

Constance Baker Motley's life and legal career covered a period of great social upheaval in this country, and the reader will get an excellent background in American political and legal history in the last half of the 20th century.

Brown-Nagin provides a very detailed

section of notes and sources, as well as many interesting photos of Judge Motley and notable events in her life. "Civil Rights Queen" would make an excellent choice for book groups. This thorough and elegantly written biography of an extraordinary woman is one of the best books I have read in a very long time.

***Teresa Statler** recently retired from her solo immigration law practice in Portland.*

By Laura Gardner

The Oregon Hispanic Bar Association (OHBA) marked its 20th anniversary with a dinner celebration July 22 at Beacon Hills Winery in Gaston. In 2002, OHBA was created to improve the lives and conditions for lawyers of Hispanic heritage in Oregon. The group focused not only on current attorneys, but future attorneys too by encouraging Latinx individuals to pursue law school and raising awareness of Latinx legal issues.

This night was a celebration of all the work OHBA has done for the Oregon legal community — from hosting and highlighting many continuing legal education panels; creating scholarships for high school students, college students and law students; and the various events and conferences created for the community.

The association also presented its annual La Voz Latina Award and the Paul J. De Muniz Professionalism Award at the dinner. Familias en Accion, a local nonprofit, won the La Voz Latina Award for strengthening the health and well-being of Latino families and communities in Oregon. Founded in 1998, this organization was created to promote support and stability for Latinx communities and includes community health work, climate health equity, food equity advocacy and HIV/STI sexual health education.

The Paul J. De Muniz Professionalism Award was presented to the Honorable Jacqueline Alarcón, OWLS immediate past president and recently appointed Multnomah County Circuit Judge. This award honors an individual who shows exceptional efforts in professionalism and outstanding service.

Right: Adele Ridenour, Jovita Wang, Linda Roman, Hon. Jackie Alarcón and Michael Yates attended the Oregon Hispanic Bar Association's 20th anniversary soiree in July.



OREGON HISPANIC BAR ASSOCIATION CELEBRATES 20 YEARS



Hon. Jackie Alarcón received the Paul J. De Muniz Professionalism Award.

While grateful for the award, Judge Alarcón described her own thoughts about “professionalism.” As a woman of color whose family moved from El Salvador to Oregon as she was starting high school, Judge Alarcón became all too familiar with being considered a minority at Gresham High School. Even though she spoke English, the school immediately enrolled her in an ESL (English as a Second Language) class. She learned from a young age the necessity of advocating for herself.

In her speech, Judge Alarcón explained that the term “professionalism” could be a trigger for people of color because it is not applied to everyone equally. Professionalism, especially in the legal community, is a concept defined by people of privilege, mostly older, white, cis-gender men.

A 2019 article by Aysa Gray in the Stanford Social Innovation Review titled “The Bias of ‘Professionalism’ Standards” (<https://doi.org/10.48558/TDWC-4756>) concluded that in the workplace, the standards of professionalism are heavily defined by white supremacy culture. This “systemic, institutionalized centering of whiteness” discrimi-

Continued on page 19

nates against people of color and non-Western professionalism standards. We see this in workplace rules defining what is appropriate and inappropriate clothing, hairstyles, behaviors, etc.

Judge Alarcón continued that “professionalism” should include diversity. There are many ways to succeed in the legal community, and she believes there is space for all paths of excellence. She believes it because she has seen it in her legal career from her mentors, colleagues and individuals she has mentored along the way. Judge Alarcón concluded her speech explaining there is also space for a variety of emotions on the bench as she is a “Latina and a Leo.”

The Oregon Hispanic Bar Association is one of the oldest specialty bars in Oregon. This event honored this organization’s past 20 years and everything it has accomplished. The number of Latinx attorneys in Oregon has grown as well as Latinx individuals pursuing law school and a legal career. OHBA’s part in this is undeniable, and OWLS looks forward to what the next 20 years will bring.

Laura Gardner is an associate attorney at MLR Legal Team.



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Rachel Hecht

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