

NOT IN, BUT LARGELY ABOUT, THE APPELLATE
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Theodore P. Heus, Editor

A NOTE FROM THE CHAIR

By Theodore P. Heus, Chair, OSB Appellate Practice Section

Eight years ago, the Appellate Practice Section's Executive Committee published the first Oregon Appellate Almanac. Then-Chair, Keith Garza, crafted a 323-page tome filled with wisdom and insight collected from Oregon's most renowned appellate practitioners and judges. Well, times have changed...

But hopefully not too much! This year, the Executive Committee seeks to transform the Oregon Appellate Almanac into an online publication. Like its six predecessors, Volume 7 of the almanac will serve appellate lawyers and judges by retaining key elements, such as case law summaries, court calendars, statistics, profiles, and articles that improve the practice of appellate law in Oregon. The new format will foster efficient access to that valuable information. The section will notify section members when new articles are published, and members can access the articles on the section's website as soon as they become available.

On behalf of the Executive Committee, I hope that Oregon's valued appellate practitioners and judges find the new format useful. I also hope that the format will encourage section members to submit articles for this and future almanacs. Thank you bearing with us as we make this important transition. And have an "Appealing" New Year!

The Honorable David Schuman

By Danielle Lordi, Attorney, Bryant Lovlien and Jarvis PC

The Honorable David Schuman of the Oregon Court of Appeals retired last month after 13 years on the bench. A true public servant, Judge Schuman came to the court in 2001 having served the state as an Oregon Supreme Court law clerk, Assistant Attorney General, and Deputy Attorney General. He returns now to the University of Oregon School of Law, where he obtained his law degree and taught previously for more than ten years as a tenured faculty member, to resume his cherished role as professor. He will also begin work as a “Plan B” judge, providing him the opportunity to preside over trial court proceedings for the first time in his career.

Chicago born and raised, Judge Schuman headed west to California in the early 1960s, graduating from Stanford University in 1966 with a degree in psychology. He began law school later that year at Hastings College of the Law, but, finding it intolerable, dropped out after six weeks. Changing course, he enrolled at San Francisco State University, where he earned a masters degree in English, continuing on to the University of Chicago, where he earned his English Ph.D.

After completing his doctorate studies, he and his wife Sharon accepted a job share arrangement to teach literature on the Nevada border at Deep Springs College, a cattle ranch and alfalfa farm 40 miles from the nearest town. The college, a two-year program for just 26 carefully selected students, requires each student to perform at least 20 hours of manual labor per week. When their children reached school age, the couple decided to move so that the kids would not have to travel 80 miles each day to attend school. In 1981, the judge resolved to give

law school another go, this time at the University of Oregon. Thankfully, he stuck it out.

I served as Judge Schuman’s law clerk from 2007–2009, directly following my graduation from the University of Oregon Law School. His respect for the law, love of the written word, and work ethic, as I’m sure his other clerks will attest, instilled in me an enthusiasm for my profession that continues to this day (as well as a truly nerdish passion for conventions of style, grammar, and usage). Even having authored hundreds of judicial opinions, he never lost sight of the fact that his cases involved real people and real-life consequences.

A devoted mentor, Judge Schuman met with his clerks each day to hear about their progress on current assignments and to elicit feedback on his own cases. He invited questions, discussion, and even debate on matters before the court. Despite his “lawyer celebrity” status, it was often easy to forget that he was an appellate judge. Humble and always approachable, Judge Schuman could be found, during his “Eugene days,” among the students, seated at his usual table in the back of the law library reading briefs or working diligently on an opinion. It is hardly surprising, then, that the judge has accumulated such an extensive network of mentees. His popularity has resulted in what must be a record number of weddings officiated.

If history is any indication, Judge Schuman is not likely to fit your typical retiree bill. A former marathon runner and competitive speed skater, among other things, he’s likely to be found on his ultra-lightweight, carbon-frame bike (ask him about it sometime, if you have a few hours to spare), busting out his weekly 50-mile rides, then refueling at his favorite breakfast diner, the Eugene Glenwood. Each summer, he completes a “century,” covering a distance of 100 miles. The judge also rides in Bend’s Tour des Chutes each year, covering 50–75 miles to

support cancer care and survivorship for adults and children in Central Oregon.

Judge Schuman's invaluable contribution to Oregon jurisprudence lives on through his written opinions. But his intellect, expertise, and friendship will undoubtedly be missed by his colleagues at the court.

Congratulations, judge, on your well-deserved retirement.

JUDICIAL PROFILE: JUDGE ERIN LAGESEN, OREGON COURT OF APPEALS

By Julie A. Smith, Partner, Cosgrave Vergeer Kester LLP

Lawyers aren't all that good at math. This is a stereotype, of course, but it's one many members of the legal community seem to openly embrace. As a math whiz *and* one of the newest members of the Oregon Court of Appeals, however, Judge Erin Lagesen is busting it.

From the casual observer's standpoint, the path Judge Lagesen took to becoming an appellate court judge might look – well, a bit circuitous. A closer examination reveals a clear, logical thought process – not unlike the clear, logical thought process one might use to solve a difficult math problem.

Judge Lagesen grew up in Portland, the daughter of a long-time attorney, who, she says, discouraged her and her two brothers from going the lawyer route. Not that she found lawyering all that appealing when she was younger. From what she could tell, being a lawyer involved a lot of sitting, talking, and moving papers around – nothing a child would find particularly interesting.

After graduating from high school, Judge Lagesen went on to Williams College, which is where she discovered, to her surprise, that she had an aptitude for math. She eventually graduated from Williams with double majors in English and math, before going on to get a master's degree in math from the University of Oregon.

At the time, she thought she would probably continue on to a Ph.D., then go on to teach math at the college level. She jettisoned that plan, however, after finding life in math academia too socially isolating

for her taste and realizing that she wanted to have a more direct impact on the world around her.

Teaching math at the high school level, she thought, might allow her to apply her math skills in a more social environment, while also giving her an opportunity to give back to her community. So, after obtaining a second master's degree in education from Harvard University, she taught math at Milwaukie High School.

Teaching, as it turns out, was, in some ways, the flip side of Judge Lagesen's academic experience with math. It was much more social – in a single day, she might interact with as many as 180 different kids. But, although the kids progressed as they interacted with the material, she did not. From year to year, the curriculum and her interaction with it did not change much, and there were no new, high-level math problems for *her* to solve.

After teaching for a few years, Judge Lagesen started taking a closer look at what the practice of law entails and decided that there might be more about it that interested her than she had previously realized. So she decided to go to law school.

She graduated from Willamette University, then went on to clerk for Judge Susan Graber on the U.S. Court of Appeals for the Ninth Circuit, where she developed a particular interest in appellate work. Following her clerkship, she worked as a litigation associate for Stoel Rives. In 2004, she joined the Appellate Division of the Oregon Department of Justice, where she handled hundreds of appeals in civil, criminal, and administrative cases in state and federal court.

Over the years, she has also served as an appellate lawyer representative to the Ninth Circuit Judicial Conference, a member of the executive committee of the Oregon State Bar Constitutional Law

section, and a coach of the Franklin High School constitutional law team, which is part of the “We the People” program of the Classroom Law Project.

Now, of course, Judge Lagesen sits as one of the newest members of the Oregon Court of Appeals, where she tackles new and different legal problems each week, while working in a highly collegial environment. It’s the perfect fit.

And, in case you’re wondering, Judge Lagesen’s background in math does play into the way she approaches legal problems. She approaches the law with much the same logical, direct, and clear way of thinking she would use to tackle a challenging math problem. She recognizes, of course, that there are some differences between math and the law. The law is not always based on an objective truth. It doesn’t always lend itself to an objective answer. It turns out, however, that Judge Lagesen has an aptitude for both kinds of problems. The bench and the bar are fortunate to have this math whiz serving on the appellate bench.